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Via E-Mail

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. A-021178 - Financial Reporting Rulemaking
Qwest Corporation's Comments

Dear Ms. Washburn:

By this letter, Qwest Corporation ("QC") responds to the Commission's September 3, 2004 Notice of Opportunity to Submit Written Comments on Proposed Rules ("September 3 notice"). The September 3 notice transmitted the Commission's final proposed rules following a two year series of draft rules and industry comments. QC has participated diligently in this process, and appreciates the Commission's consideration of its comments. That said, QC remains strongly opposed to the adoption of many of the proposed rules as they exceed the Commission's jurisdiction and they pose severe practical burdens without offering ratepayers or utilities any corresponding benefit.

Prior Comments. QC will not restate the comments it has made throughout this rulemaking process. Instead, QC incorporates herein by this reference all of its previously-filed comments in this docket.

Additional Comments. In addition to incorporating its prior comments, QC provides the following comments on the proposed revisions to Chapter 480-120, WAC. The Commission should not interpret these additional comments as supplanting QC's previously-articulated objections to the proposed rules. Instead, these supplement QC's prior comments.

Proposed WAC 480-120-325. QC continues to object to the vague definitions of "subsidiary" and "control." QC notes that these important definitions have changed dramatically from draft to draft, and while the Commission has added a slight measure of objectivity to the definition of "subsidiary" (i.e., that Company X cannot be Company Y's subsidiary unless Y owns at least five percent of the voting securities in X), the rule remains unlawfully unclear. QC further notes that

the rule purports to impose a burden on utilities to demonstrate non-control (a puzzling standard to satisfy) without any mention of a process or forum for doing so. For instance, it is unclear (again, likely unlawfully so) whether a utility is required to (and, if so, how often it is required to) petition the Commission for a finding that a company in which it owns five or more percent interest in is not under its "control," as that term is ambiguously defined by the rule. QC reiterates that all parties would be far better served by the Commission adopting the generally-accepted definition of a "subsidiary." That requires no further investigation or analysis other than whether the utility owns a majority of the voting securities of the other company.

Proposed WAC 480-120-331. QC observes that the Commission's reference in the first sentence of subsection (1) to "480-120-*242*" may be in error. It appears that the Commission intended to reference "480-120-*365*."

Proposed WAC 480-120-365. In addition to the many legal, practical and policy-based objections QC has expressed in this docket, QC is also concerned about the impact of new proposed subsection (6). That subsection provides that securities filings "may be submitted with portions designated confidential pursuant to WAC 480-07-160 (Confidential information)." QC appreciates the motivation behind this provision – which appears to be a direct response to QC's concerns about the practical impact of public disclosure. However, QC believes that this provision does not go far enough. It does not, for instance, assure utilities that *the existence* of the filing itself will be held strictly confidential. As QC has discussed in prior comments, *any* premature public disclosure of an impending QC financing transaction would adversely impact QC's financing efforts and costs of capital. This point has not been disputed by any participant in this rulemaking. The mere identification of a securities filing by Qwest could cause this irreparable and absolutely-avoidable harm.

In addition, the proposed rule offers no assurance that, even if QC designates the entire notice as confidential, that confidentiality will be guaranteed by the Commission. During the progression of this rulemaking, QC has inquired of the Commission as to what it envisions that it might do should it find itself in strong disagreement with QC's impending transaction. The Commission indicated that it *may* (among other steps) take legal action if it believes such is appropriate and permissible under the circumstances. Obviously, formal legal action initiated by the Commission would shatter confidentiality and would demonstrably and adversely impact QC's financing activities.

Proposed WAC 480-120-369. Again, QC refers the Commission to QC's prior comments on this proposed rule. Without waiver of its strong opposition to the rule, QC offers three additional thoughts on more minor points. First, QC believes that the end of the first sentence of subsection (1) should be changed from "as described in (a) *or* (b) of this subsection" to "as described in (a) *and* (b) of this subsection." As subsections (1)(a) and (b) must both be satisfied in order for a transaction to be reportable, the conjunctive "and" is more appropriate. Second, QC acknowledges and appreciates the Commission's modification from "two" to "five" percent in

subsection (1)(a). Finally, QC believes that "do" should be changed to "does" in subsection (2)(d).

Input from securities experts. In the September 3 notice, the Commission invited comments from those with professional expertise (e.g., bond counsel) as to specific practical problems that will result from Proposed WAC 480-120-365. Consistent with the September 3 notice, QC shared the Commission's invitation with contacts in the investment community. QC anticipates that comments will be filed from the Bond Market Association, the Securities Industry Association, O'Melveny & Myers LLP, Qwest's special securities counsel, and James J. Clark of Cahill Gordon & Reindell LLP. Mr. Clark does not represent Qwest, but has represented several groups of underwriters that have participated in Qwest financing transactions.

Examples of potentially-affected transactions. In the September 3 notice, the Commission requested that interested persons provide specific examples of transactions that would have been affected by Proposed WAC 480-120-365, if then in effect. QC had two significant securities issuances since mid-2003, a $1.75 billion term loan that closed June 9, 2003, and a $575 million note issuance that closed August 19, 2004. Each will be discussed below.

Proposed WAC 480-120-365(1) requires telecommunications companies such as QC to file notice with the Commission at least five business days before the company "issues stocks, stock certificates, other evidence of ownership, bonds, notes, or other evidences of indebtedness" or before it assumes any obligation as guarantor. As a matter of law, a negotiable instrument such as a promissory note is "issued" when it is executed (signed) by the maker (in this case, QC) and delivered for purposes of giving rights on the instrument to another person. *RCW 62A.3-105.* In other words, the issuance of the debt security occurs at the closing of the transaction, when funds are exchanged and the borrower executes and delivers the debt instrument to the lender. As such, the proposed rule would require notification to the Commission five business days before closing.

June 2003 Term Loan ($1.75 billion). On June 9, 2003, QC closed a senior term loan in the amount of $1.75 billion. Under the proposed rule, notice (including a description of the purposes, a description of the issuance [including the estimated terms of financing] and a statement of why the transaction was in the public interest) would have been due on June 2,[1] five business days before closing. The way this particular transaction evolved is interesting. On May 29, QC made public announcement that it intended to borrow $1 billion. On June 2, QC made public announcement that (due to the robust response from the market) it intended to borrow $1.5 billion. Finally, on June 4, QC made public announcement that (again, due to robust demand) that it intended to borrow $1.75 billion. Arguably, the proposed rule would have required QC to file notice of the $1.75 billion issuance two business days prior to the day it was announced to

[1] QC made notice to the Commission on June 3 and indicated generally that it anticipated "obtaining a senior loan of approximately $1,000,000,000 to $2,000,000,000 aggregate principal amount."

the public. This issuance was a typical "T+3" transaction, meaning that closing occurs three business days (not five) after the transaction is priced and sized in the market. The proposed rule makes extremely risky, if not impossible, T+3 transactions.

August 2004 Debt Offering ($575 million). On August 19, 2004, QC closed a debt offering in the amount of $575 million. The offering was priced in the market on August 12. As this was a T+5 (as opposed to a T+3) transaction, the proposed rule would not have directly affected this transaction.[2] However, T+3 transactions are the industry standard, and this offering was structured on a T+5 basis for a very specific and prudent reason.[3] In conjunction with this debt offering, QC simultaneously made a tender offer to purchase for cash certain debt instruments coming due November 1, 2004. By law, tender offers must be open for twenty business days. And thus, there was a short period of time during which Qwest would be paying interest to existing bondholders and to its new bondholders. Had Qwest structured the $575 million debt offering on a T+3 basis (as it more typically would), it would have been in the troubling position of paying interest to two sets of creditors simultaneously for a longer period of time. However, under more common circumstances, the QC debt offering would have been structured on a T+3 basis, and the proposed rule would have affected it.

In conclusion, QC urges the Commission to be mindful of the legal and practical impacts of these proposed rules, and urges the Commission to reject or modify the proposals consistent with the input of QC, other concerned utilities and third-party experts that have taken the time to respond to the September 3 notice.

Sincerely,

Adam L. Sherr

ALS/llw

[2] QC made notice to the Commission on or about August 9, 2004.

[3] T+3 transactions are the industry standard for private debt offerings. However, for public securities transactions, SEC rules *require* transactions to close on a T+3 or shorter basis. *Rule 15c6-1 of the Securities Exchange Act of 1934.*