

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**Utilities General – Tariffs, Price Lists,
and Contracts Chapter 480-80 WAC;
Part B – Comprehensive Review and
Part D – Price Lists**

DOCKET NO. U-991301

COMMENTS OF QWEST CORPORATION

ON

PROPOSED TARIFF, PRICE LISTS, AND CONTRACT RULES

June 11, 2001

I. INTRODUCTION

Qwest Corporation ("Qwest") provides the following comments on the draft rules for Chapter 480-80 Tariffs, Price Lists and Contracts that the Commission distributed by its May 9, 2001 Notice in this docket. Qwest has previously submitted comments on some of the issues raised by the draft rules and does not repeat those comments below.

In addition to commenting on the substance of the draft rules, Qwest seeks clarification of the intent of several of the rule proposals. It requests that the Commission Staff provide this information at the June 12, 2001 workshop established by the Commission's Notice.

II. GENERAL COMMENTS

Qwest supports the draft rules to the extent they clarify and better organize existing regulatory requirements. However, some of the draft rules would increase the burdens on telecommunications companies doing business in Washington, and would do so without any evident justification.

III. COMMENTS ON SPECIFIC DRAFT RULES

Amend: 480-80-010 Application of rules. [Includes subsection (4) from Docket U-991301, effective 5/5/01]

Qwest is confused by the statement at lines 15 and 16 that states: "Tariffs, price lists or contracts that conflict with these rules without approval are superseded by these rules." This statement suggests that tariffs, price lists or contracts that conflict with these rules, with Commission approval, are not superseded by these rules. This is untrue; tariffs, price lists or contracts that conflict with these rules, require Commission approval of a waiver of the

applicable rule(s) concurrent with or prior to their effective date. Qwest believes this statement should be modified to reflect its actual intent or else totally eliminated as it is unnecessary. Should the commission decide to retain this language it should at a minimum reference WAC 480-80-0X1.

In addition, some of the WAC references in Subsection (4) appear to be incorrect. Based on the latest proposed rules, the "General Rules" end with WAC 480-80-030 and not with WAC 480-80-0X3 as noted in the proposed rule. In addition, the contract rules referenced should note WAC 480-80-3X1 through 480-80-3X5 and not just WAC 480-80-3X4.

New Section: 480-80-0X1 Exemptions from rules in chapter 480-80.

Qwest would like the Commission staff to clarify the intent of proposed section (4). Does staff intend to limit a petition for waiver to these circumstances or is this language informational in nature only, as suggested by the use of the term "may" at line 62.

Amend: 480-80-030 Definitions.

Parties are currently commenting in Docket UT-990146 on the definitions contained in proposed rule WAC 480-120-021. Qwest prefers that any definitions that are contained in both WAC 480-120-021 and WAC 480-80-030 be the same. The definitions for "Business Office" and "Company" in proposed rule WAC 480-120-021 differ from draft 480-80-030. Qwest requests the Commission Staff to clarify whether any difference in substance is intended for the two sets of rules.

Qwest also would like the Commission staff to clarify the intent of the modified definition of "Banded rate". The current definition for a "banded tariff" is more accurate than the

new definition for a banded rate proposed by staff. The key words "within which the rate may vary" should be added to the banded rate definition.

Amend 480-80-040: 480-80-1X1 Definition and use of tariffs.

Section (1), line 137 should be modified as follows:

“Tariff” means a publication containing terms and conditions of regulated service, including rates and charges, and the manner in which such are assessed, for goods, services and commodities provided to customers.

The use of the term "and methods" that a company uses to calculate bills for goods, services and commodities provided to customers" is unclear. Methods is typically used to describe a procedure or a process. The proposed language is most likely trying to require a definition of how a rate will be assessed; e.g. on a transactional basis, on a recurring basis or on a non-recurring basis. This language should be modified to more accurately state the intent or totally eliminated as it is unnecessary. The Commission will not approve a tariff that is incomplete with respect to this element of rates or charges.

The statement at lines 138-141 should also be eliminated. A tariff does not repeat the Washington Administrative Code rules and regulations governing the service obligations of the company or its customers. If this is not the intent of the proposed language, and the intent is applicable to the Company's terms and conditions governing its service commitments, the reference to "terms and conditions" at line 136 should be sufficient.

Section (4), lines 152-153 should be modified as follows:

If the commission issues an order that requires the filing of compliance tariffs, the company

Not every Commission order requires a refiling of tariffs previously submitted. There may be instances where the Commission approves the tariffs originally filed by the Company.

Section (7)(c) should allow fax filings on business days up to 4:30 p.m. Pacific time.

New Section: 480-80-1X2 Tariff filing instructions.

Section one, lines 193-195 should be modified as follows:

(1) When a company is required to have a tariff on file with the commission, the company must file and maintain its tariff(s) with the commission as required in 480-80-1X3 and 480-80-1X4.

The Commission should refrain from requiring specific tariff language or format. The rules should simply define what content is required without eliminating a company's free speech rights. The above proposed edit eliminates this concern.

Section (2), subsections (c), (e), (g) and (h) require more information than is reasonable as a general matter. If in a given case additional information is pertinent to the Commission's review, it may be requested from the company. Qwest concurs with the proposed modifications offered by Verizon for subsections (b) and (e) as follows:

- (b) Generally describe the tariff provisions being filed, including the affected services and the nature of new or changed provisions and rates.
- (e) If the tariff is a compliance filing, identify the proceeding (including the docket number) and the commission order pursuant to which the filing is being made.

Proposed subsection (b) will alert the Commission to the nature of the changes that are set forth in detail in the filed tariff sheets, making the Commission's draft (g) and (h) unnecessary. The rate change specifics covered by the Commission's draft (g) and the text changes covered by proposed subsection (h) are unnecessary because they will be apparent in the tariff sheets. Subsections (g) and (h) should be eliminated.

Subsection (c), lines 200-202 requires a company to convey the requested action. The requested action is typically a request for approval of the tariff filing. Qwest would like to better understand what the intent is with respect to staff's proposed language and requests that this subsection be addressed at the workshop. Should staff proceed with this subsection, Qwest requests it be qualified to when applicable since not every tariff filing can convey technical terms in a "common term" fashion. For example, the introduction of new features or functions may only be explainable in technical terms.

Subsection (e), lines 204-205 should be eliminated. The Company should not be expected to explain what is prompting the filing. Such a requirement will generally result in a subjective statement that will not serve any useful purpose. This proposed rule language should be eliminated.

Subsection (f), lines 206-207 should be qualified to when applicable; not every tariff filing is related to a proceeding, nor is the docket number known at the time the transmittal letter is filed.

Section (3), line 226 should define what the Commission expects to be included with tariff filings or it should be eliminated. The proposed language is too general and is too subjective. As previously stated, in a given case where additional information is pertinent to the Commission's review, it may be requested from the company. Therefore this language is unnecessary.

New Section: 480-80-1X3 Tariff content.

Qwest requests that the commission staff not specify the order of tariff contents. For example, sections (2), (3), (4) and (5) specify the order in which each tariff section must be filed.

Qwest believes the rules should specify what each tariff must contain but should not prescribe the order of tariff pages or sections. The current rules only prescribe the order of appearance of the title and index pages.

Qwest also opposes the new requirement at line 254 that specifies a title page requirement for each respective section of the tariff. This requirement does not make sense and should be eliminated. Perhaps the Commission staff intended this language for the index requirements.

Qwest requests that the commission staff explain the purpose of introducing the unified business identifier (“UBI”) number, the phone number, address, the electronic web page address and the electronic mail address title page requirements at lines 260-262 in subsection(1)(d). It is not clear why this level of detail is necessary and this new requirement would require most companies to refile their title tariff pages since they don't currently include this degree of detail.

Qwest requests an explanation of what is intended at line 266, subsection (2)(a) where it states "(index, legend of symbols, rules and rate schedules)".

Qwest also suggests Section (4) be reworded to "Conditions of Offering" as a more consumer friendly term as opposed to "rules and regulations". The use of the term rules and regulations could be confused with the rules and regulations found in the Washington Administrative Code.

Qwest respectfully suggests (4)(a)(ii), line 281 be modified to the current rule language that requires a definition of service as opposed to a definition of each service. Each service is defined within the tariff section applicable to it. The rules should not require a definition of each service in the "rules" section as well.

Amend 480-80-045: 480-80-1X6 Banded rate tariff filings.

Qwest opposes the new proposed language at subsection (1)(b) that specifies the determination of cost methodology by rule for banded services. Qwest is not aware of a Commission decision specifying such a cost determination, specifically with respect to imputed cost for essential functions and believes this matter should receive full hearing before it is codified in rule. The proposal has significant implications with respect to how costs are imputed when such costs are deaveraged and existing rates are averaged. It also needs to be considered with respect to residence service, which is traditionally subsidized and which may be selectively competitively classified in the near future. Qwest respectfully suggests the statement at lines 455-458 be eliminated.

Qwest also requests Subsection (1)(c), line 459 be clarified to be applicable to rate changes within the band.

Amend 480-80-070: 480-80-1X7 Tariff filings with statutory notice.

Qwest suggests section (1), lines 480-481 should also include the exception permitted in WAC 480-80-1X8. The deadline in proposed subsection (3)(b), line 489 should be 4:30 p.m. Pacific time.

Amend 480-80-240: 480-80-1X8 Tariff filings with less than statutory notice (“LSN”).

Qwest requests that the Staff explain the purpose of introducing the unified business identifier (“UBI”) number requirement at Subsection (1)(a)(ii), line 523.

New Section: 480-80-1X9 Tariff filings that do not require statutory notice. [From -240]

Qwest requests that the existing qualifying language be retained at section (2), line 582.

The existing rule states the following:

(2) A tariff revision that reflects no basic change affecting the public;

It is not clear why this language was modified.

Qwest agrees with the proposed Verizon clarification for subsection (4), line 585; the clarification that it be expanded to read as follows: (4) Initial tariffs of newly registered carriers.

New Section: 480-80-1X11 Withdrawing a filing.

Qwest opposes the requirement proposed at Section (2), line 620. An order should not be required and the company should be free to withdraw a tariff or price list prior to its effective date or in the case of a tariff, after it has been suspended without the requirement for Commission approval of such a withdrawal.

Amend 480-80-300: 480-80-1X13 Rejecting tariffs.

Qwest is confused by the change in this rule that suggests that the Commission may not reject a tariff that reflects retroactive rate treatment or that is out of compliance with commission rules. It suggests that the Commission has no responsibility for ensuring such and may be inconsistent with RCW 80.04.470 and 80.36.130.

Amend 480-80-250: 480-80-1X14 Tariff adoption notice.

Qwest suggests Section (1) be qualified to changes that effect an existing tariff. If the changes included in subsection (1)(a), (b) and (c) occur but do not affect any existing tariff, a

company should not be obligated to make such changes as required in WAC 480-80-1X14. The existing rule and modified proposed rule makes several assumptions about the nature of changes in "ownership," "control" and company names that may not be accurate and that may not warrant the use of an "adoption notice."

Qwest concurs with the following examples cited by Verizon as changes that may not require an adoption notice:

- A change in the ownership of a corporation accomplished by the transfer of stock that does not change the identity of the legal entity. In other words, the same telecommunications corporation will still be providing services under its same tariffs.
- A "transfer of operating control."

Qwest supports Verizon's proposed rule language changes, as follows:

- (1) When there is a change in the legal entity providing tariffed telecommunications services, the new entity must either;
 - (a) Put in place its own tariffs, effective with the change in the legal entity providing the services; or
 - (b) File a tariff adoption notice at least one day before the change in the legal entity providing the services.
- (2) A tariff adoption notice must contain, at a minimum, the following:

(Name of company) adopts and makes its own in every respect all tariffs, supplements and amendments filed with the Washington Utilities and Transportation Commission by (Name of previous company) prior to (Date).
- (3) The company adopting the tariff must either:

- (a) File to incorporate the adopted tariff into its own tariff within sixty days of the date of the filing of the adoption notice; or
- (b) Refile the tariff under its own name within one year.
- (4) When a telecommunications company changes its legal name, it must refile its tariffs under its new name within one year.
- (5) Until a company refiles tariffs under its own name, all revisions must include:
 - (a) The prior company name, at the top of the sheet, and
 - (b) The new name at the bottom of the sheet.

Amend 480-80-080: 480-80-1X16 Tariff availability to customers. [Includes -090]

Qwest respectfully suggests the title to this section include a reference to price lists since the requirements encompass both tariffs and price lists.

Section (2), lines 732-739 should be modified to require one of the options listed at (a), (c) or (d) but not each of the options. The addition of the word "or" at the end of each subsection would accomplish this change. In addition, several modifications should be made to this section and subsection (2)(b) should be eliminated. A company should not be required to "deliver" a copy of its tariff or price list.

Subsection (2)(d) should not be qualified to only those location where the company does not maintain a business office within the customer's service area. This option may be desirable even if there is a business office location available to the customer. Nor should the company be required to mail a copy of its tariff or price list, if electronic access is available to the customer.

Qwest respectfully suggests section (2) be modified as follows:

- (2) Each company must maintain a complete copy of tariff and price list pages:
- (a) At designated business offices; or

(b) In electronic form on a company web site;

The company must provide the customer with a copy of the requested relevant tariff or price list information by mail if the customer does not have electronic access to such information or does not wish to obtain such information from the designated business office(s). The company must provide the equipment needed, at its business offices, to access its electronic tariffs or price lists, if no other form of access is available.

Qwest agrees with Verizon's concern that the rule should also specify that it is limited to actual customers requesting copies of tariffs for services they have or are genuinely interested in ordering. Qwest also agrees that the rule should expressly allow the company to direct competitive carriers seeking tariff or price list copies to its website. Qwest has also encountered carriers seeking list copies of thousands of pages of tariffs or price lists.

Proposed Price Lists Rules

Qwest incorporates its previous comments opposing the proposed rule's imposition of different requirements on the price listing of competitively classified services depending upon whether the company offering the service is itself competitively classified. Under this proposal, services, which are competitively classified, such as intraLATA toll, are subject to different filing requirements, depending upon the status of the offering carrier. However, regardless of whether the Commission has granted competitive classification to a company or not, the factual analysis and legal conclusions that the Commission must reach in granting competitive classification, either for a company under RCW 80.36.320, or a service under RCW 80.36.330, are exactly the same. Thus, as previously stated, there is no basis for treating competitively classified services differently based on the identity of the carrier providing the service. Qwest will not repeat its earlier comments concerning the three factors the Commission must consider in evaluating the proposed Price List Rule. (See Qwest March 2, 2001 comments). Qwest

continues to advocate the Commission create a rule that affects telecommunications companies in a competitively neutral manner. Following are Qwest's comments on specific sections of the proposed price list rules.

New Section: 480-80-2X2 Interpretation and application of price lists.

The last sentence in Section (1), lines 810-811 should be qualified to investigations in accordance with RCW 80.36.330(4).

The last sentence in Section (2), lines 814-816 and section (3), lines 817-818 should be eliminated. The proposed language in Section (1) disavows the Commission of any regulatory action that would legitimize a price list change. However, in proposed section (2) the Commission re-introduces itself as an authority on proper notification of price list changes based on the customers "actual" knowledge of such a change and the form and content of such notice. Proposed section (3) now infers the Commission will review the price list to determine if the provisions are conflicting or ambiguous. If the Commission does not wish to view the price list as a document or filing with legal effect, then the Commission should refrain from involvement in rate disputes or legal disputes after the price list has become effective. The Commission should either regulate price lists or refrain from regulating any aspect of a price list other than those specified in accordance with RCW 80.36.330(4).

The proposed language might also suggest to consumers that a formal complaint is not required for price list rate disputes. This would be misleading since the Commission cannot resolve a formal customer dispute without a full hearing as provided for in RCW 80.04.110. In addition, the Commission is not likely to limit its decision to only the factors proposed in section (2). All facts relevant to the complaint would be considered. This language is unnecessary and should be stricken.

New Section: 480-80-2X3 Price lists format and content.

Qwest objects to the disparate treatment proposed in this rule section concerning the filing requirements for price lists. It is unclear why the Commission staff would propose detailed tariff format and content requirements for non-competitive companies in proposed WACs 480-80-1X3, -1X4, -1X5 and -1X6 and find that customers of service from non-competitive companies would not require a comparable structure for price lists. While Qwest supports the general nature of the price list format and content requirements proposed in this rule section, it cannot support the more burdensome requirements imposed on companies who must file tariffs. The requirements specific to tariff format and content create costs that are not required of competitive providers resulting in disparate regulation. Qwest objects to this disparate treatment. Regulated companies should be given the same latitude in tariff format and content as competitive providers are given in filing price lists.

Not with standing this objection, Qwest requests the Commission staff clarify the intent of proposed Section (2), lines 825-826 at the June 12 workshop.

Qwest also requests the Commission staff clarify the intent of sections (5) and (6) at the workshop. The proposed rule at section (5), lines 832-833 appears to suggest that a rate can be set below or at a maximum amount and can differ by customer, without qualification, on any basis deemed appropriate by the Company.

The proposed rule at section (6), lines 834-837 appears to suggest that a rate can be set within a band and can differ by customer, without qualification, on any basis deemed appropriate by the Company. Qwest objects to the disparity in rules for competitive services based on the carrier's designation. There should be parity in regulation for competitive services and one

company should not be forced to publish its cost floor while another is not required to do so. All competitive services should be treated in a equal fashion. Section (6) should be eliminated and Section (5) should apply to all competitive services.

Qwest opposes the proposed language at section (8) that specifies the determination of cost methodology by rule. Qwest is not aware of a Commission decision specifying such a cost determination, specifically with respect to imputed cost for essential functions and believes this matter should receive full hearing before it is codified in rule. The proposal has significant implications with respect to how costs are imputed when such costs are deaveraged and existing rates are averaged. It also needs to be considered with respect to residence service, which is traditionally subsidized and which may be selectively competitively classified in the near future. Qwest respectfully suggests the statement at lines 841-844 be eliminated.

Subsection (9)(c) should be changed to 4:30 p.m. Pacific time.

New Section: 480-80-2X4 Effective date of price list filings.

Subsection (1)(c) should be dropped because its reference to the date of receipt of actual notice is wholly unworkable. Should the Commission decide to retain this language it should be modified as follows:

(c) ten days after notice of the revisions has been made to any existing customers

In addition, the proposed language should not be adopted until the rules on WAC 480-120-XXX are adopted. In addition, the rule should distinguish between rate increases and decreases, new service or feature introductions and promotions. Clearly, rate decreases, new service or feature introductions or promotions should be allowed to become effective upon filing or one days notice. There is no customer benefit to delaying them as the draft rule proposes.

Proposed Contract Rules

Qwest incorporates its previous comments opposing the proposed rule's imposition of different requirements on the filing of contracts for competitively classified services depending upon whether the company offering the service is itself competitively classified. Under this proposal, services, which are competitively classified, such as intraLATA toll, are subject to different contract filing requirements, depending upon the status of the offering carrier. However, regardless of whether the Commission has granted competitive classification to a company or not, the factual analysis and legal conclusions that the Commission must reach in granting competitive classification, either for a company under RCW 80.36.320, or a service under RCW 80.36.330, are exactly the same. Thus, as previously stated, there is no basis for treating competitively classified services differently based on the identity of the carrier providing the service. Qwest will not repeat its earlier comments concerning the three factors the Commission must consider in evaluating the proposed contract rules. (See Qwest March 2, 2001 comments). Qwest continues to advocate the Commission create a rule that affects telecommunications companies in a competitively neutral manner. Following are Qwest's comments on specific sections of the proposed contract rules.

Amend 480-80-325: 480-80-3X1 Contract for service. [Includes part of -326]

Section (1) should be clarified to require the filing of contracts that deviate from the tariff or price list. If a tariff or price list includes rates based on an agreement by the customer to retain the service for a specified length of time, a contract may not be necessary. A letter of agreement may be sufficient since the customer is purchasing service out of the tariff or price list. It is unclear if proposed WAC 480-80-3X1 would require filing of such agreements already

covered by tariff or price list. Qwest requests clarification of intent be provided at the June 12 workshop.

Section (3) should be changed to require companies to provide typical contract forms to the Commission prior to their use, when possible. It is unclear what the Commission staff intended in requiring such to be provided within one business day. Qwest would like the Commission staff to clarify its need at the June 12 workshop.

Amend 480-80-330: 480-80-3X2 Special contracts for telecommunications companies not classified as competitive.

It is unclear what is intended by Section (3), lines 983-985. Qwest opposes this language if it is intended to exclude contracts from the calculation of the rate base for subsequent ratemaking considerations. Such an exclusion would be entirely inappropriate and would not take into account the need for such contracts in a competitive marketplace to preserve existing revenues or a portion thereof. Qwest suggests Section (3) be eliminated and requests clarification of the intent of this proposed language at the June 12 workshop.

Section (5), line 999 should be amended to fifteen "business days."

Section (7)(b)(iii), lines 1020-1023 should be eliminated. The proposed language specifies the determination of cost methodology by rule. Qwest is not aware of a Commission decision specifying such a cost determination, specifically with respect to imputed cost for essential functions and believes this matter should receive full hearing before it is codified in rule. The proposal has significant implications with respect to how costs are imputed when such costs are deaveraged and existing rates are averaged. It also needs to be considered with respect to residence service, which is traditionally subsidized and which may be selectively

competitively classified in the near future. Qwest respectfully suggests the statement at lines 1020-1023 be eliminated.

The last sentence in subsection (7)(b)(v), lines 1028-1029 should be eliminated. A company may not know the alternative provider unless the customer chooses to share such information. The customer may also have bids from several providers not just one alternative provider.

Subsection (8)(a), line 1041 should be limited to the quantity and type of service provided. Information about the nature and characteristics of the service provided may be competitive intelligence and therefore should not be made public. A company should be allowed to protect this information. Qwest respectfully requests Subsection (8)(a), line 1041 be modified as follows:

(a) The quantity and type of service provided;

Qwest also requests clarification of what type of information the Commission is seeking in Subsection (8)(d), line 1045. Is it geographic area, address, or city.

New Section: 480-80-3X4 Using contracts for services classified as competitive.

Section (5) continues to conflict with RCW 80.36.150(5), which states that a contract that covers competitive and noncompetitive services is permitted as long as the noncompetitive services are unbundled and priced separately from all other services, and facilities in the same contract. The proposed rule suggests that only noncompetitive services offered under an approved tariff or contract can be combined with a competitive service. This basically precludes a regulated company from offering a new service under contract combined with competitive services unless it first has an approved tariff in place. This is not required by statute and is anti

competitive. This language should be stricken for the reasons previously stated in Qwest March 2, 2001 comments.

IV. CONCLUSION

Qwest supports the Commission efforts to minimize paper flow that the companies and the Commission must deal with. Qwest does not, however, support rules that treat competitors in a disparate manner and or rules that unreasonably discriminate against a utility that engages in areas where the service it provides has been classified by the Commission as competitive. The current price list and contract rules should be retained until legislation is passed that enables the market to regulate prices of competitive services.