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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

WAC 480-120-201 through WAC 480-120-209 and WAC 480-120-211 through WAC 480-120-216

Relating to Telecommunications Companies – Customer Information Rules.

Docket No. UT- _____

QWEST’S PETITION FOR AN INTERPRETIVE STATEMENT REGARDING WAC 480-120-201 THROUGH WAC 480-120-212

On November 7, 2002 the Commission entered General Order No. R-505 in Docket No. UT-990146, Order Adopting and Repealing Rules Permanently (“Order”). This Order adopted various rules relating to how telecommunications companies may use information about the telecommunications services a particular customer uses and how the customer uses them. The rules are to become effective on January 1, 2003. Qwest has reviewed the rules and has determined that there is an interpretive question on which it must seek clarification, and therefore files this petition for an interpretive statement pursuant to RCW 34.05.230 and WAC 480-09-200.

I. INTRODUCTION

Qwest asks the Commission to issue an interpretive statement pursuant to WAC 480-09-200, clarifying and affirming that the provisions of the newly adopted rules do not prohibit the use of customer information by Qwest’s agents or contractors when such agents/contractors are acting in the same capacity as a Qwest employee, are using the information in the same manner as a Qwest employee might, and are subject to the same confidentiality obligations as would a Qwest employee. In other words,

1 when those agents or contractors are performing the same work that would permit the use of that
2 information within Qwest, where the rules permit a company to “use” customer information, Qwest seeks
3 an interpretation that such use may be by Qwest’s employees, or by agents or contractors. The rules that
4 are implicated in this request for an interpretive statement include WAC 480-120-201 (Definitions), -204
5 (Opt-in approval required), -205 (Using CPNI in the provision of services), -206 (Using CPNI during
6 telemarketing calls) -207 (Use of PAI by company or associated company requires opt-out approval), -
7 208 (Use of PAI without customer approval), and -212(5) (Illustrative table).

8 Qwest believes that the interpretation it seeks is consistent with the rules and with how the
9 Commission has previously stated it will interpret these rules. However, Qwest believes it is in the best
10 interests of the industry, who must comply with these rules, and the Commission, who will enforce them,
11 to have a formal clarification on this issue.

12 II. DISCUSSION

13 Qwest requests that the Commission issue an interpretive statement pursuant to RCW 34.05.230
14 and WAC 480-09-200 clarifying and affirming that the provisions of the newly adopted rules do not
15 prohibit the use of customer information by Qwest’s agents or contractors when such information could
16 otherwise be used by Qwest and when those agents or contractors are performing the same work that
17 would permit the use of that information within Qwest. In other words, where the rules permit a company
18 to “use” customer information, Qwest seeks an interpretation that such use may be by Qwest’s
19 employees, or by Qwest’s agents or contractors acting as Qwest employees.

20 This issue arises in part from Qwest’s own reading of the rules, and in part because of the
21 interpretation of the rules advanced by Verizon in its Complaint for Declaratory and Injunctive Relief
22 (“Complaint”), filed in the United States District Court on November 21, 2002. In that action, Verizon
23 states that it believes that under the new Washington rules, any disclosure of CPNI to agents and
24 independent contractors “is treated as a disclosure to an unrelated third party requiring opt-in consent.”¹

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26 ¹ Complaint for Declaratory and Injunctive Relief at ¶49, *Verizon Northwest, Inc. et al. v. Showalter, et al.*, No. CV02-2342R (W.D. WA filed November 21, 2002). Verizon appears to interpret the Commission rules to require opt-in approval for any disclosure to a third party. This interpretation might be at odds with the language of WAC 480-120-

1 An interpretive statement by the Commission may be issued upon the petition of any interested
2 person when necessary to end a controversy or to remove a substantial uncertainty about the application
3 of Commission rules. WAC 480-09-200(1). As described below, Qwest believes that there is sufficient
4 uncertainty about how certain provisions in the new rules will be applied that an interpretive statement is
5 appropriate.

6 The basic issue for Qwest is the use of agents/independent contractors to carry out Qwest's
7 business functions, when those people are performing equivalent functions to an employee, and are using
8 CPNI in a manner that is permissible under the rules. Qwest currently uses agents and independent
9 contractors for aspects of customer care, service order processing, order fulfillment as well as for
10 marketing Qwest's products and services. Qwest believes, and seeks clarification from the Commission,
11 that when it is permitted under the rules to "use" CPNI (either without any approval or with opt-in or
12 opt-out approval) it may do so via agents and independent contractors in the same manner as if Qwest
13 employees were using the information.

14 A question arises under WAC 480-120-208 (and perhaps other rules as well) as to whether such
15 disclosure to an agent or contractor is permissible when the disclosure is for marketing purposes that are
16 permitted under the rule without customer approval. Qwest asks the Commission to clarify that it is.
17 Clearly, 480-120-208(1) allows a company to "use" PAI without customer approval to market its
18 service offerings among the categories of services to which the customer already subscribes. WAC 480-
19 120-208(1)(a) also allows disclosure of private account information to associated companies. WAC
20 480-120-208(2) allows Qwest to use PAI related to the provision of local exchange service to market
21 "adjunct-to-basic" services without customer approval.

22 Thus, under WAC 480-120-208(2), Qwest could clearly use the information about the

23 205, which allows use and disclosure under certain circumstances, but is arguably supported by the table in WAC 480-
24 120-212(5), which states that disclosing to third parties is only permissible on an opt-in basis. However, the citation in
25 support of that requirement is WAC 480-120-204, and the exceptions to WAC 480-120-204 are defined in WAC 480-120-
26 205. Thus, there may not be a real conflict within the text of the rules, but there is sufficient uncertainty around this
issue due to language in the Order in conjunction with its proposed rules to require an interpretive statement.

1 customer's caller ID order to market additional "adjunct-to-basic services" to that same customer.
2 However, Qwest has determined that its "use" of private account information under WAC 480-120-208
3 may be through an agent or contractor, acting in the same capacity as an employee would. The definition
4 of "associated company" is silent with respect to agents or contractors, and Qwest is concerned about
5 the possible interpretation of these rules that would require opt-in consent for any disclosure to third
6 parties.

7 It appears as though the Commission has already considered and addressed this issue in its
8 response to Verizon's motion for a preliminary injunction. In that case, the Commission filed its
9 Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction, and the accompanying
10 Declaration of Glenn Blackmon on December 9, 2002. In the Declaration, Dr. Blackmon states that
11 Verizon's interpretation of the rules is incorrect with regard to the use of agents, concluding that
12 "[b]ecause an agent is responsible under the law to the same degree as Verizon, use of CPNI by an agent
13 is the same as use of CPNI by Verizon. Again, if there were a legitimate dispute on this point, it could be
14 readily eliminated by seeking clarification or a declaratory order from the WUTC."²

15 In accordance with that conclusion, and consistent with Dr. Blackmon's suggestion that some
16 clarification from the Commission might be appropriate, Qwest's petition seeks such clarification. Qwest
17 believes that such an interpretation is supported by both the language of the rules and the policy goals that
18 underlie the rules, but is sensitive to the Commission's concern about the use of CPNI. Qwest therefore
19 seeks an interpretation and clarification from the Commission that this "use" of CPNI will be permissible
20 under the rules.

21 III. CONCLUSION

22 For the reasons stated above, the Commission should issue an interpretive statement pursuant to
23 RCW 34.05.230 and WAC 480-09-200 removing the uncertainty with regard to the appropriate

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25 ² Declaration of Glenn Blackmon in Opposition to Plaintiff's Motion for a Preliminary Injunction at ¶18, *Verizon
Northwest, Inc. et al. v. Showalter, et al.*, No. CV02-2342R (W.D. WA filed December 9, 2002).

1 interpretation of the above-mentioned rules, and clarify that when a company is permitted to “use”
2 information under these rules, it is permitted to do so either with its own employees or with agents or
3 contractors who may not otherwise fall within the definition of “associated company.”

4 Respectfully submitted this 23th day of December, 2002.

5 QWEST

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