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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation for a Declaratory Order re WAC 480-120-262(3), or, in the Alternative, Petition for Waiver of WAC 480-120-262(3)

Docket No.
PETITION FOR A DECLARATORY ORDER, OR, IN THE ALTERNATIVE, PETITION FOR EXEMPTION OF QWEST CORPORATION

Qwest Corporation ("Qwest") hereby petitions the Washington Utilities and Transportation Commission ("Commission") for a declaratory order regarding WAC 480-120-262(3) stating that the rule applies to the provision of retail operator services and does not apply to operator services being provided through wholesale agreements. In the alternative, Qwest respectfully requests a waiver of WAC 480-120-262(3) with regard to operator services being provided to CLECs and resellers through wholesale agreements.

THE RULE

WAC 480-120-262 pertaining to Operator Service Providers became effective on July 1, 2003. It provides in part:

(3) Oral disclosure of rates. This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) Oral rate disclosure message required. Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark

1 rate in (f) of this subsection, the oral rate disclosure message must comply with the
2 requirements of (b) of this subsection. In all other instances, the oral rate disclosure
message must comply with the requirements of (c) of this subsection.

3 (b) **Rate disclosure method when charges do not exceed benchmark.** The
4 oral rate disclosure message must state that the consumer may receive a rate quote and
5 explain the method of obtaining the quote. The method of obtaining the quote may be
6 by pressing a specific key or keys, but no more than two keys, or by staying on the
7 line. If the consumer follows the directions to obtain the rate quote, the OSP must state
8 all rates and charges that will apply if the consumer completes the call.

9 (c) **Rate disclosure method when rates exceed benchmark.** The oral rate
10 disclosure message must state all rates and charges that will apply if the consumer
11 completes the call.

12 (d) **Charge must not exceed rate quote.** If the OSP provides a rate quote
13 pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed
14 the quoted rate. If a consumer complains to the commission that the charges exceeded
15 the quoted rate, and the consumer states the exact amount of the quote, there will be a
16 rebuttable presumption that the quote provided by the complaining consumer was the
17 quote received by the consumer at the time the call was placed or accepted.

18 (e) **Completion of call.** Following the consumer's response to any of the
19 above, the OSP must provide oral information advising that the consumer may
20 complete the call by entering the consumer's calling card number.

21 (f) **Benchmark rates.** An OSP's charges for a particular call exceed the
22 benchmark rate if the sum of all charges, other than taxes and fees required by law to
23 be assessed directly on the consumer, would exceed, for any duration of the call, the
24 sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For
25 example, an OSP's charges would exceed the benchmark rate if any of these
26 conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars; or
- (iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

DISCUSSION

18 The rules in Chapter 480-120 WAC apply to any company that is subject to the
19 jurisdiction of the Commission. *WAC 480-120-011*. Pursuant to RCW 34.05.240 and WAC
20 480-09-230, Qwest seeks a declaratory order from the Commission that the obligations in
21 WAC 480-120-262(3) apply only to retail operator services provided directly to the public as
22 opposed to wholesale operator services provided to another carrier. In the alternative, Qwest
23 hereby seeks a permanent exemption from WAC 480-120-262(3) for its wholesale provision
24 of operator services. *WAC 480-120-015*.

25 Qwest has filed this petition to resolve the question of whether Qwest, as the
26 underlying wholesale operator service provider, bears any responsibility for a CLEC's or

1 reseller's compliance with the Commission's rule. Qwest provides operator services to its
2 own retail customers as well as to facilities-based CLECs and resellers through wholesale
3 agreements, such as interconnection agreements and through Qwest's Statement of Generally
4 Available Terms and Conditions (SGAT).

5 Qwest seeks a declaration as to the meaning of WAC 480-120-262(3), or in the
6 alternative a permanent exemption pertaining to provision of wholesale operator services, for
7 the following reasons. First, Qwest cannot confirm that every CLEC or reseller to whom
8 operator services are provided is in compliance with WAC 480-120-262. Second, while
9 Qwest is obligated to provide wholesale operator services, Qwest's operator services contracts
10 and/or wholesale agreements do not currently include specific language or requirements
11 pertaining to Qwest's provision of rate quotes to CLEC or reseller end user customers. Third,
12 as the Commission is aware from Qwest's prior request for waiver of this rule for its own
13 operations, Qwest does not have the capability to provide a rate quote on every CLEC or
14 reseller customer initiated pay phone or business/business aggregator call. If WAC 480-120-
15 262 applies to the provision of wholesale operator services, the only way Qwest could comply
16 with the rule would be for the CLECs' and resellers' rates to not exceed the stated benchmark
17 rate. Thus, the CLEC or reseller must either adjust their rates in compliance with the stated
18 benchmark or reach an agreement with Qwest to pay Qwest's costs to upgrade its operator
19 services platform to allow for an automated rate quote on every pay phone or aggregator
20 location originated call in Washington.

21 Finally, Qwest has no way to ensure that the rate information provided to it is
22 accurate. The CLECs and resellers provide Qwest with the rates to be quoted. This
23 information is loaded and maintained in Qwest's databases accessed by a Qwest operator
24 when a rate quote is requested. Rate information is added or changed only by information
25 supplied by the carriers. Each carrier is ultimately responsible for keeping Qwest apprised of
26 current and accurate rates. A CLEC or reseller may not keep their rate information with

1 Qwest updated. WAC 480-120-262 should thus not apply to wholesale services as Qwest
2 should not be held responsible if a CLEC rate is quoted incorrectly due to incorrect
3 information provided by the CLEC.

4 As can be seen from this discussion, Qwest has no meaningful way to ensure that the
5 CLECs comply with the WAC 480-120-262 regarding rates and rate disclosure. Yet Qwest is
6 required to provide wholesale operator services to other carriers. As such, the burden of such
7 compliance should not be on Qwest as a wholesale provider, but rather should be on each
8 retail provider of operator services to end users.

9 **CONCLUSION**

10 For the reasons stated above, Qwest requests a declaratory order that WAC 480-120-
11 262(3) applies only to retail operator services and does not apply to operator services being
12 provided to other carriers via wholesale contracts and agreements. In the alternative, Qwest
13 requests a permanent exemption from WAC 480-120-262(3) with regard to operator services
14 being provided to CLECs and resellers through wholesale contracts or agreements.

15 DATED this 15th day of December, 2003.

16 QWEST CORPORATION

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