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### VIA COURIER AND EMAIL

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Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Post Office Box 47250  
Olympia, Washington 98504-7250  
Attention: Ms. Carole J. Washburn, Executive Secretary

**Re: Proposed Rule WAC 480-120-365**

Dear Ms. Washburn:

We are special securities counsel to Qwest Communications International Inc. and its subsidiaries. We responded to the initial proposal of WAC 480-120-365 (the "Rule") on September 21, 2004. We are now submitting comments pursuant to the Commission's request on the revised proposed Rule (the "Revised Proposal"), which requires non-investment grade telecommunication companies to file specific, descriptive information relating to the issuance of securities at least five business days before the issuance of such security.

In particular, the Commission requested comments in its December 23, 2004 notice on (i) the consequences of providing information five days in advance and (ii) whether disclosure to Commission would require disclosure to others.

#### Consequences of Providing Information Five Days in Advance

The consequences of providing information five days in advance for non-investment grade telecommunication companies should be analyzed from a market efficiency viewpoint and a federal securities law perspective.

#### *Market Efficiency*

From a market efficiency viewpoint, we believe that public disclosure of the estimated terms of a financing or merely making public disclosure of a future issuance of securities – even without providing expected pricing details – could create an arbitrage opportunity and adversely affect the pricing of the new securities. We believe this is especially true for non-investment grade companies such as Qwest. For example, in the event market conditions make it attractive

for an issuer to quickly issue new debt securities, including situations where the issuer desires to effect a "tack-on" to an existing issuance of outstanding debt securities under an existing indenture, the Revised Proposal would require the issuer to provide at least five business days' advance notice of the potential issuance. This public disclosure, even if the pricing terms of the offering were not provided, could affect the current trading of the outstanding securities. Such trading would likely result in a demand for additional yield on existing issuances and, as a result, the issuer would be required to offer a higher yield on the new issuance of securities. As a result of this market reaction, the issuer's cost of capital would increase, which would result in a greater cost basis for its overall operations, thus negatively impacting all of its constituencies, including the rate paying public.

We believe an early notice requirement more dramatically impacts non-investment grade companies than investment grade issuers, as the pricing of non-investment grade securities is generally more sensitive to market activity than the pricing of securities issued by investment grade companies, which tend to price more closely in relation to benchmark treasury securities. This effect is partially explained by the more limited universe of investors that are interested in, and in many cases, are even legally permitted to invest in, non-investment grade debt securities. Many investors are prohibited from purchasing securities of non-investment grade issuers by their investment guidelines because of the increased risk profile of such securities.

The premature disclosure of a future issuance of securities could also affect an issuer when contemplating exchange offers for securities in transactions that do not require prior filing under the federal tender offer rules. For example, an issuer may want to negotiate privately with large bond holders for a certain exchange ratio in order to effectively refinance large portions of an outstanding bond issuance. If the issuer has to publicly disclose its intent to issue new debt securities in the exchange offer in advance of the issuance of the new securities, the bonds held by other holders may trade in a manner that would potentially negatively affect the negotiated exchange terms with the large bond holder.

#### *Federal Securities Law*

The Revised Proposal still conflicts with many rules under the federal securities law for both private and public offerings.

*Private Placements.* Exempt offerings under Section 4(a) of the Securities Act of 1933, as amended ("Securities Act") and Regulation D promulgated thereunder, prohibit issuers or related parties from engaging in a "general solicitation" for the related offering. The Securities and Exchange Commission has provided only general guidance as to what constitutes a general solicitation. As a result, companies are often counseled that a general solicitation can be deemed to be almost any public statement regarding the offering.

Although the Revised Proposal may permit certain portions of the advance notice to be designated confidential, we believe that the mere announcement of an impending offering (which we understand may not be confidential under the Revised Proposal) could be construed as a general solicitation under the federal securities law.

An issuer seeking to utilize Section 4(a) or Regulation D, therefore, would be confronted with the prospect of not satisfying the "no general solicitation" requirement through compliance with the Revised Proposal and could be required to raise financing through a less efficient means. As the Commission understands, a telecommunications company requires a large amount of capital resources to build its infrastructure. To take away the ability to raise capital through private placements would hinder the development of telecommunications companies and could increase their costs of doing business. Non-investment grade companies, in particular, would be placed at a competitive disadvantage to other telecommunication companies because only they would be required to provide advanced notice and potentially fail to meet the no general solicitation requirement.

The Commission should also consider that any notice filed with the Commission and deemed confidential could result in its staff being classified insiders under the federal securities laws because such staff would be in possession of material, non-public information. Trading on material, non-public information or even "tipping" such information inadvertently to others could result in severe consequences. Thus, if it has not already done so, the Commission would need to develop a system to prohibit its staff from trading in the relevant securities and educate its staff on "tipping" liability under the federal securities law.

*Registered Offerings.* If the Commission intends to make publicly available the notice for the issuance of securities, the Securities and Exchange Commission could potentially view this as a form of prospectus that does not meet the requirements of Section 10 of the Securities Act. Rule 134 of the Securities Act allows certain communications to be deemed not a prospectus. Rule 134 only allows certain information to be included in these communications. The Commission's requirement for the advance notice to include (a) a description of the purpose of the issuance and (b) why the transaction is in the public interest would fall outside the scope of Rule 134. If such notice were deemed an illegal prospectus by the Securities and Exchange Commission, it could result in a violation of Section 5 of the Securities Act. The Securities and Exchange Commission could, among other things, cause the issuer to delay the issuance of its securities up to six months, especially in a large, high profile industry, such as the telecommunications industry. Any such unnecessary delay could have materially adverse effects on a company's financing plans.

#### Selective Disclosure

In recent years, the Securities and Exchange Commission has focused on the selective disclosure of material, non-public information. An example of the Commission's concern is reflected in its adoption of Regulation FD in 2000. We believe that if the filing were not confidential, a company would clearly be required to disclose the information simultaneously via a broader medium, such as a press release. Again, such a circumstance requires either that the information filed with the Commission (including the existence of the filing itself) be kept strictly confidential or, as noted above, be broadly disclosed, which would likely have a negative market effect in connection with the issuance of the securities, whether registered or through a private placement, as discussed above.

As a result of our concerns above, we believe the Commission should reconsider the usefulness and potential benefits created by the Revised Proposal versus the additional costs to a non-investment grade issuer in terms of both market efficiency and potential non-compliance with the federal securities laws.

Respectfully submitted,

  
Richard Boehmer  
of O'MELVENY & MYERS LLP