

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**DOCKET NO. U-991301**

**COMMENTS OF QWEST CORPORATION  
ON  
PROPOSED TARIFF, PRICE LISTS, AND CONTRACT RULES**

**August 14, 2001**

## I. INTRODUCTION

Qwest Corporation ("Qwest") provides the following comments on the draft rules for Chapter 480-80 Tariffs, Price Lists and Contracts and Chapter 480-120-043 Notice to Public of Tariff Changes Telecommunications Companies that the Commission distributed by its July 24, 2001 notice in this docket. Qwest supports the draft rules to the extent they clarify and better organize existing regulatory requirements. Qwest appreciates the revisions in the July 24, 2001 proposed rule that improve upon the May 9, 2001 draft. The previous concerns raised by Qwest with respect to a number of issues have been addressed in this recent draft and resolved in the latest proposed rule.

However, Qwest continues to be concerned with the lack of parity in application of rule requirements for competitively classified services offered under price list or contract with the requirements for services offered by competitively classified companies. 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 adopt rules that affect telecommunications companies in a competitively neutral manner.

In the following comments, Qwest proposes further revisions to the following proposed rules:

- Application of rules: WAC 480-80-010(4) and (7)
- Exemptions from rules in chapter 480-80: WAC 480-80-0X1(3) and (4)
- Tariff filing instructions: WAC 480-80-1X1(4)(d) and (6)
- Substitute pages: WAC 480-80-1X4(1)(a) and (3)
- Banded rate tariff filings: WAC 480-80-1X5(1)(b) and (1)(c)
- Failure to provide statutory notice: WAC 480-80-1X9
- Withdrawing a filing: WAC 480-80-1X10(2)
- Interpretation and application of price lists: WAC 480-80-2X2(1) and (2)
- Price lists format and content: WAC 480-80-2X3(5), (6) and (8)
- Contracts for service: WAC 480-80-3X1(1)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-803X2(7)(b)(iii) and (8)(a)
- Using contracts for services classified as competitive: WAC 480-80-3X4(4)
- Filing contracts for services classified as competitive: WAC 480-80-3X5(6)

The proposed revisions are intended to clarify the intent of the proposed language, as discussed and for the most part previously reviewed with the Commission staff at the June 12, 2001 workshop.

## **II. COMMENTS ON SPECIFIC DRAFT RULES**

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

It is unclear why WAC 480-80-3X1 is excluded from subsection (4) in WAC 480-80-010 Application of rules. As currently proposed, WAC 480-80-010 (4) states:

- (4) Competitively classified telecommunications utilities previously granted exemptions from chapter 480-80 WAC Utilities General – Tariffs are not exempt from Part I. General Rules, WAC 480-80-2X1 through 480-80-2X5, WAC 480-80-3X4 and WAC 480-80-3X5. Exemptions from the provisions of chapter 480-80 WAC include only the provisions in effect at the time the exemption was granted.

As currently proposed, WAC 480-80-3X1 states:

**480-80-3X1 Contract for service.**

(1) Whenever the classification of service under which the customer is to be served requires that the service must be taken for a specified minimum period, or as otherwise provided by tariff, a contract for service may be executed.

(2) Electric, gas, and water companies must provide the commission with a sample of each contract for service form currently used.

(3) Upon request, telecommunications companies must provide the commission with a sample of typical contract for service forms currently used within five days.

WAC 480-80-3X1 is not limited to services offered under tariff. The Commission may wish to exercise the WAC 480-80-3X1(3) requirement with a competitively classified company. As the rule is currently drafted it may imply that the Commission has waived this requirement for competitively classified companies. WAC 480-80-010 (4) should be modified as follows:

(4) Competitively classified telecommunications utilities previously granted exemptions from chapter 480-80 WAC Utilities General – Tariffs are not exempt from Part I. General Rules, WAC 480-80-2X1 through 480-80-2X5, WAC 480-80-3X1, WAC 480-80-3X4 and WAC 480-80-3X5. Exemptions from the provisions of chapter 480-80 WAC include only the provisions in effect at the time the exemption was granted.

WAC 480-80-010 (7) requires filings made after the effective date of these proposed rules be filed in compliance with the new requirements. Qwest respectfully requests WAC 480-80-010 (7) be modified as follows:

(7) After the effective date of these rules any tariff *sheet*, price list *sheet*, or contract filing must comply with these rules.

This would clarify the intent that the total tariff or price list does not need to be filed in accordance with the proposed rules when a subsequent change to a section or sheet of the tariff or price list is proposed. Qwest understands that only the new tariff or price list sheets filed after the effective date of these proposed rules need to comply with the adopted rules.

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

WAC 480-80-0X1 (3) should be modified to change the application of the notice from "persons" to "companies" as follows:

- 3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the *company* requesting the exemption, and other affected *companies*, of the date of the hearing or open meeting when the commission will consider the request.

This change was discussed at the June 12, 2001 workshop and Qwest understood the Commission staff to agree with this change. The notice is actually to companies and not necessarily individuals.

WAC 480-80-0X1 (4) should be modified to clarify that the Commission will consider other factors and does not plan to limit their consideration to just the qualifications proposed in this rule. Qwest respectfully suggests WAC 480-80-0X1 (4) be modified as follows:

- 4) In determining whether to grant the request, the commission may consider, *among other factors*, whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardship imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

**New Section: 480-80-0X3 Transmittal letter.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The previous concerns raised by Qwest with respect to the transmittal letter have been addressed and resolved in the latest proposed rule.

**New Section: 480-80-0X4 Telefacsimile filing.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The previous concerns raised by Qwest with respect to the transmittal letter have been addressed and resolved in the latest proposed rule.

**New Section: 480-80-0X5 Electronic filing.**

Qwest appreciates the proposed rule that permits electronic filing of tariffs, price lists or contracts. This progressive step towards recognition of current technological tools will reduce expenses for both the industry and the Commission and should be applauded. Qwest intends to file all tariffs and price lists electronically once this rule is effective.

**Amend: 480-80-030 Definitions.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The exclusion of a number of definitions that Qwest believed were unnecessary and revisions to proposed definitions included in this proposed rule have resolved Qwest's earlier concerns.

**New Section: 480-80-1X1 Tariff filing instructions.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns. However, the new proposed language at WAC 480-80-1X1(6) does raise a new concern. Qwest also respectfully requests the following clarifying revision to WAC 480-80-1X1(4)(d):

- (d) Include an original and two copies of each revised tariff sheet *unless it is electronically filed*; and

WAC 480-80-0X5 allows for electronic filing. At the SBEIS workshop on August 3, 2001 the Commission staff confirmed that a paper filing did not need to replicate an electronic filing. Therefore the proposed clarification will make it clear that electronic filings do not need to be followed with paper filings that include an original and two copies of each revised tariff sheet.

As stated previously, the proposed language at WAC 480-80-1X1(6) is troublesome to Qwest. As currently proposed, WAC 480-80-1X1(6) states the following:

- (6) The tariff filing must include information sufficient to justify that the tariff filing is in the public interest.

This requirement suggests that tariffs cannot be revised unless such revisions are accompanied by information sufficient to justify that the tariff filing is in the public interest. Such a requirement does not exist in the statutes. Further, given how indefinite the public interest standard is in the proposed rule, it may encourage intervention that would not otherwise occur, may increase costs for all the parties involved and may unnecessarily delay the approval of a filing.

While RCW 80.36.080 requires "a rate, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied" to be fair, just and reasonable, that statute does not require a Commission determination that the contents of a tariff meet any public interest test. Neither do RCW 80.36.110, RCW 80.36.140 and RCW 80.04.130.

The only potentially relevant reference is found in RCW 80.36.340, which requires a "public interest" finding associated with a tariff filing that includes banded rates. It allows the commission to approve a tariff "which includes banded rates for any telecommunications service if such tariff is in the public interest." However, this requirement is already included in proposed

WAC 480-80-1X5(1)(a). Therefore Qwest respectfully suggests that WAC 480-80-1X1(6) be eliminated. This revision would be consistent with statutory requirements.

**New Section: 480-80-1X2 Tariff content.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

**New Section: 480-80-1X3 Tariff format.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

**New Section: 480-80-1X4 Substitute pages.**

Qwest has concerns with the proposed language at WAC 480-80-1X4(1)(a) and 480-80-1X4(3). There have been instances in the past where Qwest has filed substitute pages that increase some rates and decrease other rates based upon a settlement of issues with the Commission staff prior to the scheduled Commission open meeting. Qwest has also filed revised terms and conditions based on such settlement agreements. These agreements have enabled the Commission staff to support the pending tariff filing without delaying the effective date desired by Qwest.

Another option available to Qwest under the proposed rules would be to withdraw and refile a tariff filing and request less than statutory notice. However under the proposed rules at WAC 480-80-1X10(2) this approach would require a Commission order. This option creates unnecessary work for both the Company and the Commission. Therefore the proposed rule



should be amended to include the filing of substitute sheets, regardless of changes included, upon concurrence of the Commission staff. Qwest respectfully suggests the following addition to WAC 480-80-1X4:

- (d) Are filed as a result of an agreement with the commission staff that modifies the Company's pending filing.

The proposed requirements are acceptable when the substitute pages are initiated by the Company without Commission staff involvement.

**Amend 480-80-045: 480-80-1X5 Banded rate tariff filings.**

Qwest continues to oppose the proposed language at WAC 480-80-1X5(1)(b) that specifies the determination of cost methodology by rule for banded services. As currently proposed, WAC 480-80-1X5(1)(b) states the following:

- (b) A verifiable cost of service study supporting the contention that the minimum rate in the banded rate tariff covers the cost of the service. Costs will be determined under a long run incremental cost analysis, including the price charged to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method; and

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 a rule.

The Commission recently had this issue before it and chose to decline the request to impose such a cost standard. In the Seventh Supplemental Order in Docket No. UT-000883, at page 20, paragraph 77, the Commission declined the MetroNet/ATG request to impute rates of essential services to determine a cost floor. The Commission stated the following:

"The conditions proposed by MetroNet/ATG would go beyond the level of regulation that applies today to a noncompetitive service offered under tariff."

The Commission made this ruling because the Company was not proposing a rate change as part of its filing and the existing rates in question "were supported by cost studies demonstrating rates were above the costs of providing the service." The Commission ruled similarly in the competitive classification of Directory Assistance services in Docket No. UT-990259 (April 28, 1999).

The Commission ruled differently in Docket No. UT-990021 (Jan. 1999). In that decision the Commission ruled "that any rate change must continue to cover its related costs and pass the imputation test." However, the imputation test for toll services has been in place for many years and is not a new requirement. In the Eighth Supplemental Order in Docket No. UT-990022, at page 13, the Commission stated that "U S WEST cannot name prices below the cost floors established ... in Docket No. UT-950200." The cost floor established in that proceeding was long run incremental cost.

It is clear from the decisions made to date that the cost standard needs to be considered on a service specific basis that includes a recognition of relevant market conditions and available technology. It is also only required if Qwest proposes a rate reduction that the Commission staff or other parties believe to be priced below cost. The Commission should refrain from adopting a general rule requirement that does not take service specific differences or market conditions into

consideration that may drive a different conclusion. Qwest believes this decision should not be made without a thorough review of the consequences of such a decision on a service specific basis. For example, the proposed rule has significant implications with respect to how costs are imputed when the rates and costs are deaveraged for UNEs and existing retail rates are based on a statewide average cost. The proposed rule also needs to be considered with respect to residence service, which is traditionally subsidized and which may be selectively competitively classified on a geographic, location specific basis in the near future.

In addition, there is no statutory requirement that the rate for a service include "the price charged to other telecommunications carriers for any essential function used to provide the service". RCW 80.04.130 requires a company to "file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service."

Therefore Qwest respectfully suggests the following statement at lines 416-419 be eliminated:

Costs will be determined under a long run incremental cost analysis, including the price charged to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method;

The Commission should address the question of cost on a service specific basis, as they have done in prior orders, as the need arises.

Qwest also is not certain of what information is required in WAC 480-80-1X5(1)(c), line 420. As currently proposed, WAC 480-80-1X5(1)(c) states the following:

(c) Information detailing the revenue impact of the banded rate tariff.

This rule is unclear as to what revenue impact information is required. Qwest respectfully proposes the following revision to clarify the intent of the rule:

(c) Information detailing the revenue impact *of the proposed rate change within* the banded rate tariff.

**Amend 480-80-070: 480-80-1X6 Tariff filings with statutory notice.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

**Amend 480-80-240: 480-80-1X7 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 462.

**New Section: 480-80-1X8 Tariff filings that do not require statutory notice. [From –240]**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

**New Section: 480-80-1X9 Failure to provide statutory notice. [From –070]**

Qwest understood the Commission staff to agree at the June 12, 2001 workshop to add the following language to the proposed rule:

*The commission will promptly notify a company in writing when a tariff filing is rejected for failure to provide statutory notice.*

**New Section: 480-80-1X10 Withdrawing a filing.**

Qwest opposes the requirement proposed at Section (2), lines 541 and 542. As currently proposed, WAC 480-80-1X10 states the following:

(2) When withdrawing a filing that the commission has suspended, a utility must submit a letter that contains all the information in subsection (1) and explains why it is requesting the withdrawal. The proposed withdrawal will take effect only upon commission order.

An order should not be required and the company should be free to withdraw a tariff after it has been suspended by the Commission without the requirement for Commission approval of such a withdrawal.

First, while RCW 80.04.130 (for example) grants the Commission the authority (under certain circumstances) to review, suspend and reject a public service company's filing purporting to increase rates "theretofore charged" to subscribers, the Commission lacks the specific authority to force a public service company to offer a particular product or service. Yet the final sentence of the proposed rule may imply that the Commission has just that authority.

Second, in virtually all legal contexts, a person or entity is given the freedom to withdraw a claim or initiative at any point prior to conclusion of the approval or adjudicative process. By way of illustration, Qwest urges the Commission to consider Civil Rule 41(a)(1)(B), which permits a plaintiff in a civil lawsuit to voluntarily dismiss its own claim at any time in the litigation process up to the close of the plaintiff's direct case.

Third, as a matter of public policy, a rule which grants the Commission an unrestricted power to compel a public service company to offer a product or service under terms or conditions deemed unacceptable or commercially imprudent by the affected company will inevitably stifle innovation and product offerings made available to the public. For example, Qwest will be much less likely to file a tariff revision establishing a new product or service if the Commission asserts the authority to change the price or other terms and conditions of the

offering and to block Qwest from withdrawing the offering under those changed circumstances. The current draft rule, if adopted, will thus have the unintended effect of limiting customer choices and product innovation in Washington.

Should the Commission continue to support the proposed rule language, Qwest respectfully requests the rule be expanded and clarified to articulate the grounds on which the Commission may reject a request to withdraw a filing and the process to be followed for reaching and appealing that determination. Qwest respectfully suggests the following revision to WAC 480-80-1X10(2):

(2) When withdrawing a filing that the commission has suspended, a utility must submit a letter that contains all the information in subsection (1) and explains why it is requesting the withdrawal. The proposed withdrawal *of a filing after suspension by the commission* will take effect only upon commission order, *which shall be promptly issued unless the commission finds, after opportunity for full hearing, that (a) the public interest requires rejection of the utility's request to withdraw the filing and (b) the utility will not be prejudiced by the rejection of its request to withdraw the filing. A commission order rejecting a utility's request to withdraw a filing is a final order subject to de novo judicial review.*

This change would offer the companies affected by this change in law to more fully comprehend the withdrawal process.

**Amend 480-80-300: 480-80-1X11 Rejecting tariffs.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

**Amend 480-80-250: 480-80-1X12 Tariff adoption notice.**

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

### **Proposed Price Lists Rules**

Qwest incorporates its previous comments opposing the proposed rule 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 623-624 should be qualified to investigations in accordance with RCW 80.36.330(4). As currently proposed, WAC 480-80-2X2(1) states:

A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or complain against a price list.

Qwest respectfully suggests WAC 480-80-2X2(1) be modified as follows:

A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or complain against a price list, *in accordance with RCW 80.36.330(4)*.

WAC 480-80-2X2(2) continues to imply the Commission will review the price list to determine if the provisions are conflicting or ambiguous. As currently proposed, WAC 480-80-2X2(2) states:

If the commission determines that any provisions of a price list are conflicting or ambiguous, it will construe the conflict or ambiguity in favor of the customer.

If the Commission does not wish to view the price list as a document or filing with legal effect, as implied in Section (1), then the Commission should refrain from involvement in 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 as specified in RCW 80.36.330(4). In addition, the proposed language suggests to consumers that a formal complaint is not required for price list disputes. This is misleading since the Commission cannot resolve a formal customer dispute without a full hearing as provided for in RCW 80.04.110.

Qwest respectfully requests the Commission omit 480-80-2X2(2). The Commission should refrain from taking a hard-and-fast position as part of its rules. Such a position does not allow for those circumstances where the Commission may choose to rule differently than the manner specified in the proposed rule. Nor is it necessary for the Commission to include this result as part of its rules. The Commission will rule as it deems appropriate and does not require a rule to enable such a disposition.

Should the Commission decide to retain the proposed language, Qwest respectfully suggests the following modification to WAC 480-80-2X2:



A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will investigate a *formal* complaint against a price list, *in accordance with the provisions outlined in RCW 80.36.330(4)*. Upon investigation and a *determination* that provisions of a price list are conflicting or ambiguous, *after full hearing in accordance with RWC 80.04.110*, the *Commission* may construe the conflict or ambiguity in favor of the customer.

This revision will clarify the process required to reach resolution on price list issues that arise after a price list is in effect.

**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 480-80-1X1, -1X2, -1X3, -1X4, -1X5, -1X10 and -1X13 and find that customers of service from 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. This results 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.

WAC 480-80-2X3(5) and (6) should be modified to clearly state that the rate for the service must be publicly available. As currently proposed, WAC 480-80-2X3(5) states:

(5) A price list of a utility classified as competitive under RCW 80.36.320 may state the rates, charges, or prices as maximum amounts rather than specific prices.

As currently proposed, 480-80-2X3(6) states:

(6) A price list of a utility offering a service classified as competitive under RCW 80.36.330 may state the rates, charges, or prices as maximum and minimum amounts rather than specific prices. The minimum price must comply with the cost requirement in subsection (8).

However, the rule does not require the rate charged to be published, available on a web site or disclosed to the customer. Qwest understood the Commission staff to require such based on a discussion at the June 12, 2001 workshop. The rule as currently drafted only requires the price list to include either the maximum amount or the minimum and maximum amount; it does not require the applicable amount to be price listed.

Qwest opposes the proposed language at 480-80-2X3(8) that specifies the determination of cost methodology by rule for the reasons previously stated. Qwest respectfully suggests 480-80-2X3(8) be eliminated.

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

Qwest appreciates the revisions in the proposed rule that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

#### **Proposed Contract Rules**

Qwest incorporates its previous comments opposing the proposed rule 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]**

WAC 480-80-3X1(1) should be clarified to require a contract for service that deviates from service offered under 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 is not necessary. A letter of agreement is 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. The use of "or" indicates such contracts would need to be filed. Qwest respectfully suggests the following revision:

(1) Whenever the classification of service under which the customer is to be served includes terms and conditions that differ from the tariff or price list or that requires that the service must be taken for a specified minimum period, as otherwise provided by tariff *or price list*, a contract for service may be executed.

This revision clarifies that a contract is required when the service that is offered deviates from the tariff or price list.

Qwest appreciates the revisions in WAC 480-80-3X1(3) that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

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

WAC 480-80-3X2(7)(b)(iii), lines 753 and 754 should be eliminated; as currently proposed, it states the following:

(iii) ... Costs will be determined under a long run incremental cost analysis, including the price charged by the offering company to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method.

The proposed language specifies the determination of cost methodology by rule; Qwest opposes this approach for the reasons previously stated. Qwest respectfully suggests the statement at lines 753 and 754 be eliminated.

Qwest appreciates the revisions in WAC 480-80-3X2(7)(b)(v) that improve upon the May 9, 2001 draft. The revisions have resolved Qwest's earlier concerns.

WAC 480-80-3X2(8)(a), line 773 should be limited to the quantity and type of service provided. Information about the nature and characteristics of the service provided may be proprietary information capable of being used by other carriers as 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 773 be modified as follows:

*(a) The quantity and type of service provided;*

Qwest appreciates the revision in WAC 480-80-3X2 (8)(d) that improves upon the May 9, 2001 draft. The revision has resolved Qwest's earlier concerns.

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

WAC 480-80-3X4 (4) should be eliminated as currently proposed, it states the following:

(4) Any contract for a service classified as competitive under RCW 80.36.330 must comply with the cost requirement in WAC 480-80-2X3(8).

The proposed language specifies the determination of cost methodology by rule; Qwest opposes this approach for the reasons previously stated. Qwest respectfully suggests WAC 480-80-3X4 (4) be eliminated.

Qwest appreciates the revision in WAC 480-80-3X4(5) that improves upon the May 9, 2001 draft. The revision has resolved Qwest's earlier concerns.

**New Section: 480-80-3X5 Filing contracts for services classified as competitive.**

Qwest appreciates the revision in WAC 480-80-3X5(3) that improves upon the May 9, 2001 draft. The revision has resolved Qwest's earlier concerns.

As currently proposed, WAC 480-80-3X5(6) states the following:

(6) A utility filing a contract for a service classified as competitive under RCW 80.36.330 must provide information demonstrating that the contract prices comply with the cost requirement in WAC 480-80-2X3(8).

The proposed language specifies the determination of cost methodology by rule; Qwest opposes this approach for the reasons previously stated. Qwest respectfully suggests WAC 480-80-3X5 (6) be eliminated.

**III. CONCLUSION**

Qwest appreciates the staff efforts to incorporate a number of changes proposed by the industry at the June 12, 2001 workshop and supports the Commission efforts to minimize paper

flow that the companies and the Commission must deal with. Qwest continues to be concerned with the proposed rule sections 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.