

**Qwest**

1600 7th Avenue, Room 3206  
Seattle, Washington 98191  
Phone: (206) 345-1574  
Facsimile (206) 343-4040

**Lisa A. Anderl**

Associate General Counsel  
Regulatory Law Department

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*Via E-mail*

Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: Docket No. UT-060676 – Rulemaking to Consider Price List Elimination  
Qwest’s Second Set of Comments

Dear Ms. Washburn:

On June 30, 2006, Qwest submitted its initial comments in this matter, recommending edits to current rules to comply with amendments to Chapter 80.36 RCW that became law on June 7, 2006. The new law, SSB 6473, eliminated price lists for competitively classified services. As such, the Commission may no longer accept or require such filings, and companies are no longer authorized to make them.

On July 27, 2006, the Commission issued a CR-102, notifying interested persons of an opportunity to comment on the Commission’s proposed rules, and of the Commission’s intent to hold a rule adoption hearing on September 13, 2006.

Qwest hereby submits its comments regarding the Commission’s proposed amendments and new rules. In sum, Qwest believes that most of the amendments are necessary to implement the new law, but believes that in some cases it is not sufficient to simply strike the reference to “price lists” in existing rules. Further, Qwest believes that much of proposed WAC 480-120-266 runs afoul of the new restrictions on the Commission’s authority to require price lists or to otherwise control the method by which carriers offer services to and communicate with their customers.

Comments regarding specific rules:

**WAC 480-120-061 Refusing service.**

The current proposal removes the reference to “price list” in the rule without replacing it with a reference to services provided pursuant to competitive classification.

Qwest Comment: Qwest believes such a reference is necessary because SSB 6473 did not affect the application of WAC 480-120-061 to competitively classified services. Qwest recommends that the words “price list” be deleted and the phrase “service agreement” or some equivalent phrase inserted in its place. Otherwise the implication might be that there is no basis at all upon which to refuse service, which is clearly not the rule with regard to competitive services.

**WAC 480-120-104 Information to consumers.**

The proposed rules would remove the following language:

“Except for service provided under contract pursuant to WAC 480-80-241, Filing contracts for services classified as competitive . . .”

Qwest Comment: Qwest believes the exception should remain in the rule because SSB 6473 did not affect the inapplicability of WAC 480-120-104 to contracts for services classified as competitive. Qwest believes that it is appropriate to delete the reference to WAC 480-120-241, which Staff proposes be repealed. The rule should be edited to delete the language quoted above and insert “Except for competitively classified services”

**WAC 480-120-161 (4) (e) Form of bills.**

**WAC 480-120-450 (3) Enhanced 911 (E911) obligation of local exchange companies**

**WAC 480-120-540 Terminating access charges**

These rules all include references to proposed new WAC 480-120-266.

Qwest Comment: Because Qwest believes that certain aspects of WAC 480-120-266 expand the Commission’s authority beyond that provided for by SSB 6473, these rules should be modified in accordance with Qwest’s proposed modifications to WAC 480-120-266 (3).

**WAC 480-120-266 Rates, terms and conditions for telecommunications services provided pursuant to competitive classification.**

This new rule purports to establish new regulatory requirements for services that are competitively classified, and essentially transfers the previous requirements for price lists to this new rule. Under the rule, the Commission requires companies with competitively classified services to meet requirements regarding the availability of rates, terms and conditions for service, much as with price lists.

Qwest Comment: In general, Qwest believes that the amendment to RCW 80.36.100 effected by SSB 6473 prohibits the Commission from imposing these requirements on competitive services. RCW 80.36.100(1)-(4) contain the general requirements regarding the form and availability of carriers' rate schedules. It is that authority that enables the Commission to require carriers to keep tariff schedules on file with the Commission and publicly available. That authority, until recently, extended to price lists as well.

However, new (5) of that statute explicitly and clearly removed competitively classified services from any of those requirements. Thus, the Commission cannot rely on that statute as conferring authority to promulgate this rule. With the legislative intent so clearly stated in RCW 80.36.100(5), it is improbable to suggest that the Commission could derive authority to promulgate this rule from other, more general statutes, when the legislature very recently and very clearly removed from the Commission any authority it once had to impose particular requirements on carriers regarding filing, printing, posting, publication, or notice in connection with rates, terms and conditions for service.

**WAC 480-120-266(1)**

Rates, terms and conditions for telecommunications services offered pursuant to competitive classification must conform to all applicable laws, rules, and orders.

(a) The commission does not review or approve rates, terms and conditions of services offered pursuant to competitive classification.

(b) The commission will, when appropriate, investigate or complain against a rate, term or condition provided pursuant to competitive classification.

(c) If the commission determines that a rate, term or condition for service offered pursuant to competitive classification

is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer.

Qwest Comment: RCW 80.36.330 (3) states that the commission “may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.” Qwest believes that subparts (1)(b) and (1)(c) of the rule impermissibly expand the scope of the statute, which limits the Commission’s authority to price investigations. The rule should mirror the statutory language and not go beyond it. Furthermore, now that competitively classified services are no longer price listed, disputes should be governed by principles of contract law. Subpart (c) is inconsistent with principles of contract interpretation under state law, and because the Commission has no authority with regard to terms and conditions, is impermissible in any event.

**WAC 480-120-266(2) and (3)**

(2) A telecommunications company offering intrastate telecommunications services pursuant to competitive classification shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its intrastate telecommunications services. Such information shall be made available in an easy to understand format and in a timely manner. Following an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

(3) In addition, a telecommunications company offering intrastate telecommunications services pursuant to competitive classification shall make information about rates, terms, and conditions of services specified in subsection (2) of this section available on-line at its internet web site in a timely and easily accessible manner, and shall update this information regularly.

Qwest Comment: These subparts of the rule are clearly outside the Commission’s jurisdiction by virtue of the amendment to RCW 80.36.100 in SSB 6473. RCW 80.36.100(1)-(4) deal with requirements to file/post rates terms and conditions for services as directed by the Commission. RCW 80.36.100(5), added by SSB 6473, states that “[t]his section does not apply to

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telecommunications companies classified as competitive under RCW 80.36.320 or to telecommunications service classified as competitive under RCW 80.36.330.” That amendment was not strictly necessary to the elimination of price lists, as that could have been accomplished simply by amending RCW 80.36.320 and .330. Thus, it appears clear that the legislature not only meant to eliminate price lists, it meant to eliminate the Commission’s authority to require price list filings under a different name.

Sincerely,

Lisa A. Anderl

LAA/llw

cc: All parties of record (*via e-mail and U.S. Mail*)