

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Utilities General – Tariffs, Price Lists, and  
Contracts, Chapter 480-80 WAC;  
Customer Notice Rules, Chapters 480-90,  
480-100 and 480-120 WAC**

**DOCKET NO. U-991301**

**COMMENTS OF QWEST CORPORATION**

**ON**

**PROPOSED TARIFF, PRICE LISTS, AND CONTRACT RULES AND  
CUSTOMER NOTICE RULES**

**December 26, 2001**

Qwest Corporation ("Qwest") provides the following comments on the draft rules in Utilities General - Tariffs, Price Lists and Contracts, Chapter 480-80 WAC and Customer Notice Rules, Chapter 480-90, 480-100, and 480-120 WAC in Docket No. UT-991301 that the Commission distributed by its December 5, 2001 notice in this docket. Qwest supports the draft rules to the extent they clarify and better organize existing regulatory requirements. For the most part, the following comments mirror those filed by Qwest on October 22, 2001 unless the issue was addressed in the December 5, 2001 proposed rule. Qwest repeats its comments here to facilitate Commission review of Qwest's concerns.

**I. CHAPTER 480-80 WAC COMMISSION GENERAL -  
TARIFFS, PRICE LISTS AND CONTRACTS RULES**

Qwest appreciates the revisions in the proposed Chapter 480-80 WAC Commission General - Tariffs, Price Lists and Contracts rules that improve upon the prior May 9, 2001 draft. The previous concerns raised by Qwest with respect to a number of issues have been addressed 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. Under the proposed rules, services, which are competitively classified, such as intraLATA toll, are subject to different filing requirements, depending upon the status of the offering carrier. 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.

### **COMMENTS ON SPECIFIC DRAFT RULES**

#### **A. The Commission should refrain from adopting a new cost standard in the rules.**

Qwest continues to oppose the cost standard proposed by the Commission staff within the following proposed rules:

- Banded rate tariff filings: WAC 480-80-112(1)(b)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-80-142(7)(b)(iii)
- Using contracts for services classified as competitive: WAC 480-80-242(4)
- Filing contracts for services classified as competitive: WAC 480-80-241(6)
- Price lists format and content: WAC 480-80-204(6)

These proposed rules introduce a new cost standard that requires inclusion of the price charged to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method. Specifically, WAC 480-80-112(1)(b) includes the following statement:

Costs will be determined using 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;

WAC 480-80-142(7)(b)(iii) includes the following statement:

Costs will be determined using 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.

WAC 480-80-204(6) includes the following statement:

Costs must be determined using 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.

Qwest opposes this proposed standard in these rules. WAC 480-80-242(4) and 480-80-241(6) reference the proposed cost standard and should also be eliminated.

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 (the competitive classification of certain business services), 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 - the competitive classification of toll services (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 (the competitive classification of DS1 and above services), 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 (U S WEST rate case) 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. Such a finding 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 WAC 480-80-112(1)(b) - lines 399-403, WAC 480-80-142(7)(b)(iii) - lines 601-603 and WAC 480-80-204(6) lines 745-747 be eliminated or revised as follows:

Costs will be determined under a long run incremental cost analysis 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.

### **B. Proposed Qwest rule revisions.**

Qwest offers proposed revisions to the following rules:

- Banded rate tariff filings: WAC 480-80-112(1)(c)
- Interpretation and application of price lists: WAC 480-80-202(1) and (2)
- Price lists format and content: WAC 480-80-204(3) and (4)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-80-142(8)(a)

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.

### **New Section: 480-80-112 Banded rate tariff filings.**

Qwest requests that WAC 480-80-112(1)(c), line 404 be amended to clarify exactly what is required. As currently proposed, WAC 480-80-112(1)(c) states the following:

(c) Information detailing the revenue impact of the proposed 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.

**New Section: 480-80-202 Interpretation and application of price lists.**

Section (1), lines 700-702 should be qualified to investigations in accordance with RCW 80.36.330(4). As currently proposed, WAC 480-80-202(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 480-80-202(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 480-80-202(2) continues to imply the Commission will review the price list to determine if the provisions are conflicting or ambiguous. As currently proposed, WAC 480-80-202(2) states:

If the commission determines that a telecommunications company's price list or other offer of service is ambiguous or conflicts with other offers, there is a rebuttable presumption that the conflict or ambiguity should be construed 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 480-80-202(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 480-80-202:

- (1) 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 *formal complaint against a price list, in accordance with the provisions outlined in RCW 80.36.330(4).*
- (2) *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.*

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

The Commission could also rewrite subsection (2) as follows:

- (2) *In any Commission initiated complaint proceeding under subsection (1), there will be a rebuttable presumption that the conflict or ambiguity should be construed in favor of the customer.*

**New Section: 480-80-204 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 480-80-105 *Tariff filing instructions*, 480-80-102 *Tariff content*, 480-80-103 *Tariff format*, 480-80-111 *Substitute tariff filings*, 480-80-112 *Banded rate tariff filings*, 480-80-131 *Withdrawing a tariff filing* and 480-80-134 *Discontinuing a tariffed service or services* 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.

Furthermore, WAC 480-80-204(3) and (4) should be modified to clearly state that the rate for the service must be publicly available. As currently proposed, WAC 480-80-204(3) states:

(5) A price list of a competitive telecommunications company may state the rates, charges, or prices as maximum amounts rather than specific prices.

As currently proposed, 480-80-204(4) states:

(6) A price list of a noncompetitive telecommunications company 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 (6).

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.

**New Section: 480-80-142 Special contracts for telecommunications companies not classified as competitive.**

WAC 480-80-142(8)(a), line 620 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 620 be modified as follows:

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

**II. CHAPTERS 480-90, 480-100 AND 480-120 WAC**

**CUSTOMER NOTICE RULES**

Qwest supports the draft rules for Chapters 480-90, 480-100 and 480-120 WAC Customer Notice Rules to the extent they clarify and better organize existing regulatory requirements. Qwest appreciates the revisions in the December 5, 2001 proposed rules that improve upon the prior drafts. The previous concerns raised by Qwest with respect to a number of issues have been addressed and resolved in the latest proposed rule. Qwest appreciates the Commission's involvement in the workshop process and has no further comments on the proposed customer

notice rules. Qwest especially appreciates the omission of the previously proposed customer notice obligation for local tax changes in WAC 480-90-195.

### III. CONCLUSION

Qwest appreciates the staff efforts to incorporate a number of changes proposed by the industry at the June 12, 2001, August 3, 2001, and the September 6 and 18, 2001 workshops. Qwest continues to be concerned with the proposed price list and contract 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.