

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition by QWEST CORPORATION for Waiver of WAC 480-120-021 and WAC 480-120-166 with Regard to the Definition of “Business Day”.

Docket No. UT-(NEW)

QWEST PETITION FOR EXEMPTION

I Pursuant to WAC 480-07-110¹ Qwest Corporation (“Qwest”) petitions the Washington Utilities and Transportation Commission (“Commission”) for exemption from the provisions

¹ WAC 480-07-110 prescribes the following with regard to exemptions from Commission rules:

(1) **Exceptions and modifications.** The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes. The commission may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions, without following the process identified in subsection (2) of this section.

(2) **Process.**

(a) **How to request an exemption to or modification of a rule.** To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule for which an exemption is sought, and provide a full explanation of the reason for requesting the exemption. Telecommunications companies, gas companies or electric companies filing petitions for exemption under this section shall provide a copy of the request with the public counsel section of the attorney general's office by mail or e-mail, within one business day of the day the request is filed with the commission.

(b) **Commission process.** The commission will assign the petition a docket number, if it does not arise in an existing docket, and will schedule the petition 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 person requesting the exemption, and other interested persons, of the date of the open meeting or hearing when the commission will consider the petition.

(c) **Standard for consideration.** The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

(d) **Disposition.** The commission will enter an order granting or denying the petition, or setting it for hearing.

(3) **Conflicts involving rules.** In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern.

of WAC 480-120-021 and WAC 480-120-166 insofar as those rules operate to define a “business day” as ending at 5:00 p.m. Pacific time. Qwest requests that, to the extent those rules so provide, that Qwest receive an exemption from that definition and that Qwest be permitted to comply with the rules by submitting its response to consumer complaints by the end of Qwest’s business day, which in certain cases may be as late as 7:00 p.m. Pacific time.

2 The rules at issue are the Commission’s definition of “business day” at WAC 480-120-021², and the Commission’s requirements under WAC 480-120-166, subparts (6), (7), and (8) that Qwest respond to Commission-referred informal complaints, or Commission Staff requests for information within two, three, or five business days.³

3 Qwest has discussed this matter with Commission Staff, and Commission Staff believes that the provisions of these rules require Qwest to respond by 5:00 p.m. on the business day that is the deadline for responding. Qwest believes that because the rules in Chapter 480-120 WAC do not specify a 5:00 p.m. response time the rules can be interpreted to allow a timely response after 5:00 p.m., so long as the response is provided on that business day.

4 Chapter 480-120 WAC is in contrast to other provisions in Title 480 WAC, where it is clear that the end of the business day, for other purposes, is 5:00 p.m. For example, WAC 480-07-120, the rule regarding the Commission’s office hours, states clearly that: “Business day,” as

² WAC 480-120-021 provides, in part, as follows: The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise. *** "**Business days**" means days of the week excluding Saturdays, Sundays, and official state holidays.

³ WAC 480-120-166 provides, in part, as follows:

(6) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

used in this *chapter*, means any day when the commission's offices are open to the public. Commission offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays, as defined in RCW [1.16.050](#), Legal holidays and legislatively recognized days (emphasis added).” This particular rule governs only Chapter 480-07 WAC, not Chapter 480-120 WAC, and thus does not apply to the deadlines in WAC 480-120-166.

- 5 Under the general rules of legislative interpretation, it would be fair to conclude that the Commission intended a 5:00 p.m. deadline where it so stated, and did not intend such a deadline where it did not explicitly so state. Nevertheless, Qwest and Staff have been unable to agree on this issue, and Qwest believes that the most expeditious way of resolving the issue is to simply request an exemption from the rule to the extent that the rule could be interpreted in a manner consistent with Staff’s position.
- 6 Qwest seeks this exemption to allow it to respond to Commission-referred complaints and Commission Staff requests for information no later than 7:00 p.m. on the business day that would otherwise be the deadline for response under the rules. Qwest requests this exemption because Qwest currently has employees who respond to these complaints who work alternative schedules, and are frequently or regularly at work after 5:00 p.m. The alternative schedules allow some of these employees to work four days a week, 10 hours each day, or to arrive at and depart from work later than the usual 8:00 a.m. to 5:00 p.m. schedule. This allows the employees to meet family obligations, and/or to commute during off-peak hours when traffic is lighter.
- 7 Qwest believes that the public interest is not harmed by this exemption, and that no hardships are imposed by the exemption. Further, it is in the public interest to encourage such alternative work schedules to alleviate traffic congestion. Qwest believes that no hardships are imposed

by the exemption because in general, it is likely that even if the Qwest employee responded late in the day, for example at 4:55 p.m., which would still be considered timely, the Commission Staff would not have time to contact the consumer until the next business day in any event. Therefore, there is no operational impact on the Commission Staff or on the consumer by extending the deadline until 7:00 p.m. Either way, the response will be available to be acted on the next morning.

8 WHEREFORE, Qwest Corporation respectfully requests that this Commission grant it an exemption from WAC 480-120-021 and WAC 480-120-166 to the extent those rules define a “business day” to end at 5:00 p.m., and allow Qwest to respond no later than 7:00 p.m. under those rules.

DATED this _____ day of September, 2009.

QWEST

Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 1506
Seattle, WA 98191
Phone: (206) 398-2500