BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Chapter 480-120 WAC
Telecommunications - Operations **DOCKET NO. UT-990146**

COMMENTS OF QWEST CORPORATION

ON

PROPOSED TELECOMMUNICATIONS - OPERATIONS RULES CHAPTER 480-120 WAC

November 5, 2001

Qwest Corporation ("Qwest") provides the following comments on the draft rules for Docket No. UT-990146, Chapter 480-120 WAC, Telecommunications - Operations. Qwest supports the draft rules to the extent they clarify and better organize existing regulatory requirements.

I. INTRODUCTION

Qwest appreciates the revisions in the August 24, 2001 proposed Chapter 480-120 WAC Telecommunications - Operations draft rules that improve upon the prior draft rules. 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 a number of proposed rule changes as discussed at the October 18 and 19, 2001 workshop. Qwest reiterates its concerns in these comments for the following proposed rules:

480-120-X16 Service interruptions, excluding major outages
480-120-520 Major outages
480-120-X12 Response time for calls to business office
480-120-X15 Response time for repair calls
480-120-141 Operator services providers
480-120-X13 Payment agencies
480-120-500 Telecommunications service quality -- general requirements
480-120-535 Service quality performance reports
480-120-051 Application for service
480-120-041 Availability of information
480-120-056 Establishment of credit -- residential services
480-120-061 Refusal of service
480-120-081 Discontinuation of service -- company initiated
480-120-X32 Restoring service based on WTAP or federal enhanced tribal lifeline program eligibility

Qwest would also like to discuss the following proposed rules at the November 20, 2001 workshop:

480-120-X33 Customer complaints -- responding to the commission
480-120-X30 Company responsibility
480-120-515 Network performance standards
480-120-540 Terminating access charges
480-120-X01 Universal service cost recovery authorization
480-120-542 Washington Exchange Carrier Association
480-120-031 Accounting requirements for companies not competitively classified
480-120-X09 Service transfer from one local exchange company to another
480-120-X22 Discontinuation of service -- customer requested
480-120-138 Pay phone service providers
480-120-X20 Responsibility for drop facilities and support structures
480-120-089 Information delivery services

480-120-101 Complaints and disputes
480-120-X05 Responsibility for maintenance and repair of facilities and support structures
480-120-X34 Pro-rata credits
480-120-021 Definitions

Qwest also has comments on the following proposed rules, but does not expect a need to discuss these rules at the November 20, 2001 workshop. If the Commission staff disagrees with the offered changes, then Qwest would like to discuss these rules at the November 20, 2001 workshop as well. Qwest suggests minor changes for the following proposed rules:

480-120-042 Directory service
480-120-106 Form of bills
480-120-X10 Guarantee in lieu of deposit

II. COMMENTS ON SPECIFIC DRAFT RULES DISCUSSED AT THE OCTOBER 18 AND 19, 2001 WUTC RULE WORKSHOP

480-120-X16 Service interruptions, excluding major outages

Qwest opposes the introduction of a new 24-hour repair standard included in this proposed rule. The proposed 90% cleared within 24-hour standard is unreasonable in that it does not take into consideration the process steps that occur when a trouble report is received, of which the most significant step is scheduling when a dispatch is required. A number of tests occur before the need for a dispatch of a technician is determined. Once a dispatch is determined then the work is generally scheduled for the next day since the current day workload is typically full. Of course emergency or critical situations are given priority.

Qwest itself has a 24-hour out-of-service repair objective of 85%; however, it sets such a standard knowing it will not complete all repairs within 24-hours. Qwest performance in 2001 would not meet the 90% proposed standard. Nor is Qwest meeting the current 100% standard of two working days. At the end of third quarter 2001, Qwest repaired 88.4% of all service outages in Washington in 24 hours or less. 99.35% of all out-of-service conditions have been cleared in two working days. Qwest respectfully requests the proposed 24-standard be omitted and the current standard, as found at WAC 480-120-520(8), be amended to 99.5% within two working days.

In addition, as discussed at the workshop, only out-of-service conditions should be subject to a rule standard. The Commission should refrain from adopting rules that include requirements for non-essential services, such as features, as a matter of policy. This does not mean that such services are not important to the Company. However, it is not necessary for the Commission to define by rule business practices that are best determined by the Company based on its unique experiences and knowledge of day to day business demands. The Commission should limit its rules to only those concerns that it considers essential to the welfare of the public network and its subscribers. In addition, the policy adopted by the Commission on the service credit rules for service outages require pro-rata credits for trouble reports not cleared within 24 hours. Such a

rule will ensure all outages are restored as soon as practical. Therefore Qwest requests this rule be limited to out-of-service interruptions and that such interruptions be defined as a no-dial tone condition that prevents the use of the telephone exchange line for purposes of originating or receiving a call.

Qwest also requests additional exclusions be added to proposed 480-120-X16(1). The proposed rule includes all outages other than those considered to be major outages and excludes Sundays and holidays. The current rule (WAC 480-120-520(8) excludes Sundays and holidays and interruptions caused by emergency situations, unavoidable catastrophes and force majeure. Qwest requests that the existing exclusions are continued and that disruptions of service caused by persons or entities other than the local exchange company also be added as an exclusion. Qwest also requests that the standard be waived during work stoppages and civil unrest and that the rule should be clear that the standards only apply to regulated services, in other words trouble reported for non-regulated services such as voice messaging, inside wire or customer premises equipment should be excluded.

Qwest respectfully requests the following changes to 480-120-X16(1):

> (1) For service interruptions that are not excluded in (ii) below, a company must repair 85% of out-of-service interruptions within one working day (twenty-four hours) from the time a customer initially reports the problem to the company and 99.5 percent of out-of-service interruptions within two working days (forty-eight hours) from the time of the initial report. An out-of-service interruption is defined as a no-dial tone condition that prevents the use of the telephone exchange line for purposes of originating or receiving a call and does not include trouble reported for non-regulated services such as voice messaging, inside wire or customer premises equipment.
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> (i) Disruptions of service caused by company maintenance will not be considered an interruption of service for purposes of this section. Disruptions of service caused by routine company maintenance shall occur during the least busy hour when possible. Disruptions of service caused by company maintenance during typical business hours are permitted when such is necessary to restore service.
>
> (ii) For the purposes of this section, Sundays and legal holidays are not considered working days and are excluded from the twenty-four hour and forty-eight-hour standard. Outages caused by emergency situations, unavoidable catastrophes, force majeure and disruptions of service caused by persons or entities other than the local exchange company are not subject to this standard. The standard is also waived during work stoppages and civil unrest.

Qwest also requests 480-120-X16(2) be modified as follows:

> (2) In instances when repair requires construction work, the twenty-four hour and forty-eight hour periods begin when a company has met all legal requirements imposed by an applicable governing body associated with the repair and authority has been received from such an entity (e.g., utility location services are completed and, if applicable, a permit is granted). A company must immediately contact the appropriate authorities to request applicable utility location services and permits upon determination by the company that an outage report requires construction work.

The proposed modifications better articulate what actually occurs and the sequence of work involved. It is unnecessary to define how approval is received and defining such may conflict with existing ordinances. Qwest respectfully suggests this proposed language be eliminated.

Finally, Qwest requests 480-120-X16(3) be modified to qualify that the Company shall determine which customers should be notified since not all customers may be affected by a planned service interruption. Qwest proposes the following revised language:

> (3) When a company plans a service interruption, it must notify customers that it determines will be affected by such an interruption not less than seven days in advance or, if seven days' notice is not possible, as soon as the interrupted service is planned.

480-120-520 Major outages

The current rule defines a major outage as a service failure lasting for thirty or more minutes, which causes the disruption of local exchange service or toll services to more than one thousand customers, or which causes the total loss of service to a governmental emergency response agency. In addition, the FCC has established procedures for major outages and its own definition of a major outage. Under 47 C.F.R. section 63.100, all companies must report to the FCC duty officer via fax within 120 minutes of a major outage that effects 50,000 customers for thirty minutes or more. The proposed staff definition of a major outage now qualifies such as one thousand customer hours lost or the total loss of service to a public safety answering point or governmental emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more; or an intermodal link blockage (no dial tone) in excess of ten per cent for more than one hour in any switch or remote switch. Qwest respectfully suggests that the major outage definition and the proposed rules be revised to adopt the definition and requirements of the federal rules. Adoption of one set of rules enables the Company to focus on the restoration of service and eliminates the need for the Company to follow differing rules dependent upon the state jurisdiction as well as FCC rules.

Should the Commission feel a need to retain its own rules, QWEST respectfully requests the Commission retain its existing rule and definition. Revisions to the existing rule require the introduction of new business practices, additional training and revisions to existing documentation that is costly and may not be necessary. For example, under the current rule, intercompany trunks or toll trunks not meeting service requirements for four hours or more, effecting one thousand customers for thirty or more minutes would trigger internal company major outage procedures. However, under the new rule, all intercompany trunks or toll t runks not meeting service requirements for four hours or more would trigger internal company major outage procedures whether such outages are customer effecting or are even caused by the company itself. It is not clear that all outages, under the proposed definition, require the procedures articulated in the proposed rule or that problems have been encountered because such procedures were not followed when the outages effected less than one-thousand customers or were less than thirty minutes.

Should the Commission decide to revise its existing rules, Qwest urges the Commission to retain the existing definition. The new definition does not define a major outage and had it been in place this year, Qwest would not have reported any major outages. Such a dramatic shift suggests that either the Commission believes the current rule is wrong or that the current rule does not capture those outages it considers to be so significant that it must prescribe business practices and priorities. Telecommunications companies understand the need for notice to appropriate entities when major outages occur and also understand the priority that must be

established for service restoration, as well as the need for security precautions. The proposed definition does not encompass the outages that would typically call for this special handling.

In addition, Qwest offers the following comments on the proposed rule.

WAC 480-120-520 (3) requires notice to the state emergency management divisions when a major outage affects any governmental emergency response facility. Qwest respectfully suggests that the state emergency management division has defined when it desires to be notified and under what circumstances and the Commission should refrain from imposing conflicting or additional requirements, particularly on another state agency. Nor is it necessary for the Commission to repeat existing state requirements in its rule. WAC 480-120-520 (3) should be modified as follows:

> (3) **Notice to county and state emergency agencies and coordination of efforts.** When a major outage affects any governmental emergency response facility, a company must notify immediately the county 911 coordinator and the state emergency management division in accordance with its published requirements, and provide periodic updates on the status of the outage if requested to do so. The company must report the progress of restoration efforts to the commission's disaster services coordinator upon request.

Qwest also requests proposed WAC 480-120-520 (4)(a) be omitted. The priority of service restoration should be defined by the state emergency management division not the Commission and such standards do not need to be replicated in the rule.

WAC 480-120-520 (4)(b) is a major deviation from the existing rule. WAC 480-120-520(9) currently requires cases of service interruptions affecting public health and safety to receive priority restoration attention and requires such service to be restored within 12 hours unless conditions beyond the company's control prevent such. The proposed rule requires all services be restored within 12 hours unless conditions beyond the company's control prevent such. It is unclear why such a significant change is introduced and suggests that the Commission should adopt a policy that now includes a 12-hour, 24-hour and 48-hour service restoration standard. In other words, under the proposed definition of major outages, a new 12-hour standard is adopted that has previously not existed. It provides restoration priority to customers effected by intercompany trunks or toll trunk outages or intermodal link blockage. This too requires the development of new business procedures and documentation, as well as training. Qwest has never heard a complaint that the current standards are inadequate and does not believe such a significant change is warranted. A major outage typically requires extensive work and a twelve-hour turnaround is unreasonable for restoration of all customer service affected by a major outage. The current rule language should be retained.

WAC 480-120-520 (4)(c) also introduces a new obligation to notify affected customers of intercompany trunks or toll trunk outages of the status of restoration efforts twice daily. The current rule requires daily notice. Again, Qwest has never heard a complaint that the current standards are inadequate and does not believe such a significant change is warranted. The current rule language should be retained.

WAC 480-120-520 (5) should be revised to include recognition of the need for security precautions, as discussed at the October 2001 workshop. Qwest proposes the following revision:

> (5) **Information to public.** During major outage recovery efforts, all companies must implement procedures to disseminate information to the public, public officials, and news media. All companies must provide a statement about the major outage that includes the time, the cause - if known, the general location (consistent with reasonable security precautions) and number of affected access lines, and the anticipated duration.

WAC 480-120-520 (6) is unnecessary since the requirement is already addressed in WAC 480-120-X16(3). Should the commission retain the proposed language it should be revised as follows:

> (6) **Notice of intentional outage.** When a company intends to interrupt service to such an extent that it will cause a major outage, it must notify all customers that it determines will be affected and the state emergency management division not less than seven days in advance if circumstances permit or as soon as it plans to interrupt service if circumstances do not permit seven days' advance notice.

480-120-X12 Response time for calls to business office

Qwest appreciates the number of revisions the Commission staff has incorporated into this proposed rule based on industry feedback. However, Qwest does respectfully request further rule provisions. Qwest currently handles approximately 716,000 regional business office calls each month or over 8.5 million calls a year and receives 33% more calls on Mondays than any other day in the week. Our automated call answering system typically answers a call on the first ring. Our menu asks the caller if they are an existing customer or a new customer. This questions takes about fifteen seconds. If the caller is a new customer the system gives them two choices – residence or business services. This takes approximately ten seconds; the caller is then routed to a live representative. If the caller is an existing customer they are given another menu that takes about twenty seconds to complete. This menu provides for the customer to be directed to the representative best equipped to handle their request. If the caller does not make a selection from the menu options presented, they are automatically routed to a live representative. This automated call answering system approach has enabled Qwest to improve customer service, in the most efficient manner.

Qwest respectfully requests the following rule revisions:

WAC 480-120-X12(1)(a) should be changed from 30 to 35 seconds. Purdue University conducted research on call center performance metrics and benchmarking in 1999. Dr. Jon Anton found that United States call centers typically answer 80% of all calls within 42 seconds. The 1999 Purdue University Benchmark report shows an average wait time in queue of 35 seconds as best in class from 15 industries, with the telecommunications industry at an average wait time in queue of 38 seconds. Therefore, a more reasonable standard would be an average answer speed of 35 seconds. The Commission should refrain from adopting a standard that exceeds the best in class since few companies, if any, will be able to achieve such a standard.

At the October workshop, I believe the Commission staff agreed to revise WAC 480-120-X12(1)(c) as follows:

> (c) It will connect calls received during business hours and completed with an automated call answering system to a live representative within an average of sixty seconds when customers indicate they wish to speak to a live representative.

Qwest respectfully requests that WAC 480-120-X12(1)(c) be omitted. As proposed, it requires customers to be connected to a live representative upon request within sixty seconds. A specific interval is not necessary since WAC 480-120-X12(1)(a) already includes an answer interval measurement for all calls. A second measurement would require a system modification to measure a specific interval for a very specific transaction. It is unclear as to whether automated call answering systems could even separately measure a specific type of customer request. The Commission should refrain from introducing new measures that may require major software modifications that may not currently be available.

As previously stated, Qwest's existing automated call answering system automatically transfers the caller to a live representative if the caller does not make a menu selection. The transfer typically occurs within sixty seconds but is not separately measured. This approach is more efficient for the caller and protects the automated call answering system benefits provided to both customers and the company. Qwest opposes a requirement that the automated call answering system menu offer the customer the opportunity to speak to a live representative and that the customer be connected to a live representative within sixty seconds. Such a requirement would simply increase the length of the automated call answering system initial response and may eliminate the benefit of the menu which is designed to facilitate directing the customer call to the office with the expertise to handle the specific customer need.

480-120-X15 Response time for repair calls.

Qwest respectfully requests WAC 480-120-X15(a) be revised to the more reasonable standard of an average answer speed of 35 seconds for the reasons stated above. In addition, Qwest has the same concerns with WAC 480-120-X15(c) as it did with WAC 480-120-X12(c) and requests the Commission omit WAC 480-120-X15(b) and (c).

480-120-141 Operator services providers (OSPs)

Qwest respectfully requests WAC 480-120-141(1), lines 1704-1705 be deleted. Operator service providers and their ratepayers should not have an obligation to monitor or determine if their competitors (other pay phone service providers) are in compliance with the commission's rules.

Qwest also requests that WAC 480-120-141(3)(a), (b) and (f) be omitted and the existing rule language at 480-120-141(2)(b) be retained. The Commission should not require companies to provide a rate quote if the customer has not requested one. Nor should the Commission differentiate such a requirement based on the rate charged by the company. It is unnecessary to add a requirement to quote rates if customers had not asked for a rate quote. Such a requirement will further increase the cost of an operator handled call, is inefficient and may create customer dissatisfaction. The Commission has demonstrated that it will monitor and penalize those

companies that do not comply with its existing rule. The existing rule is the appropriate approach to this issue.

WAC 480-120-141(3)(d), lines 1741-1745 should be deleted. WAC 480-120-141(3)(d), lines 1741-1745 states the following:

> If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

The proposed language is unnecessary and conflicts with the requirement that Commission hear evidence on the complaint from all parties.

WAC 480-120-141(7) should be modified to retain the original qualifying language. Qwest suggests it be modified as follows:

> The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including **as pertinent** the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge **when the capability to accomplish** reorigination with screening and allow billing from the point of origin of the call **is in place**. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

The requirement to maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including as pertinent the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour, was qualified to recognize not all facilities were subject to the control of the operator service provider. The facilities available "for access to consumers' preferred interexchange companies" are subject to decisions made by the interexchange company, not the operator service provider.

In addition, the requirement to reoriginate calls with screening and to allow billing from the point of origin of the call based on "technical ability" as opposed to when the "capability is in place" may be a significant change. The proposed language could be interpreted to require deployment of the technology. The prior language required the operator service provider to re-originate calls with screening and to allow billing from the point of origin of the call based on the existence of the capability not simply that such a capability was "technically available". The prior language should be retained.

480-120-X13 Payment agencies

Qwest respectfully requests the last sentence in WAC 480-120-X13(2) be omitted. WAC 480-120-X13(2) states the following:

(2) The payment agency must clearly post and maintain regular business hours and may be supported by the same personnel as the business office or customer service center. It must not assess a charge from the applicant or customer for processing a payment.

Qwest has roughly 126 payment agencies in Washington; 28 of which charge a fee of $1.00. To the best of our knowledge, no customers have complained of the $1.00 fee. The average number of customers who utilize payment agencies each month is 92,919 or less than 4% of Qwest's customer base. Yakima, Spokane, Downtown Seattle and Tacoma, Bremerton, Renton, Longview and West Seattle are the areas of the state where payment agents are most utilized. Des Moines, Federal Way, Castle Rock and Seattle – University District areas are consistently difficult areas for finding a payment agent that will collect payments for Qwest. The general retention time of a payment agent before they terminate their services for Qwest is 26 months. When an agent terminates their payment agent status with us, the reason generally given is that the agent is going out of business, the cost, or customer issues. Qwest has paid and does pay some agents for this service. However, it remains difficult to retain agents in accordance with the Commission's rule.

Qwest respectfully requests the rule allow for a minimum fee of no more than $1.00. With postage at $0.34, the additional cost of $0.66 is not exorbitant when a minority of customers choose to pay their bill at a payment agency. Other ratepayers should not be required to subsidize the costs associated with late paying customers or customers who prefer to pay in cash. WAC 480-120-X13(2) should be amended as follows:

(2) The payment agency must clearly post and maintain regular business hours and may be supported by the same personnel as the business office or customer service center. It must not assess a charge greater than $1.00 from the applicant or customer for processing a payment.

Qwest also reiterates its comments at the workshop concerning WAC 480-120-X13(4) and (5). Qwest cannot force an agent to stay in business that chooses to exit the market or no longer wishes to collect payments. In addition, as stated at the workshop, there have been instances in the past where a payment agency has been "closed" by Qwest for unlawful behavior. Therefore, Qwest respectfully requests WAC 480-120-X13(4) and (5) be amended as follows:

(4) When possible, at least thirty days before closing any payment agency, business office, or customer service center that accepts cash and urgent payments, a LEC must provide the commission, in writing, the exchange(s) and communities affected by the closing, the date of the closing, a list of other methods and locations available for making cash and urgent payments, and a list of other methods and locations for obtaining business office and customer service center services.

(5) When possible, a LEC may not close a payment location until alternatives for making cash and urgent payments have been provided to affected customers.

480-120-500 Telecommunications service quality--General requirements.

The August 23, 2001 proposed rule draft totally eliminates WAC 480-120-500. Initially the Commission staff proposed only the removal of subsection 500(3), which was adopted in 1993, and states the following:

> These rules are not intended to establish a standard of care owed by a telecommunications company to any consumer(s) or subscriber(s).

Qwest urges the Commission to refrain from removal of WAC 480-120-500 as its removal could lead to confusion among the public, the industry and the courts and to unnecessary, time consuming and costly litigation.

To fully understand why Subsection 500(3) should be retained, it is important that the Commission is fully aware of the context of its original enactment. As originally proposed, the quality of service rules ultimately adopted in 1993 did not include the language of Subsection 500(3). It was added in its present form in response to concerns raised by multiple telecommunications companies. Specifically, in its August 1992 written comments regarding the proposed quality of service rules, Ellensburg Telephone Company stated:

> Finally, Ellensburg's chief concern about this entire rule making process is the question of liability. The standards that are set forth in these rules appear to have as their purpose the establishment of minimum performance standards for the offering of telecommunications service. This means that if the company deviates, even slightly, from the standards the company can be characterized as failing to meet the minimum standards applicable to the provisions of that service. For Ellensburg, the concern is that a violation of these standards would be held by a court to be negligence and could open Ellensburg up to claims by customers for damages and losses. This is an extremely difficult position for the company to be in given the litigious[ness] of today's society.
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> To avoid these quality of service rules being held by the courts to set the standard for determining negligence in damage cases, Ellensburg suggests that a rule be added which reads as follows:
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> > The purpose of these rules is to allow the Commission to measure the performance of local exchange companies. These rules are not intended to establish a standard of care owed by a local exchange company to any customer or customers.

In its written comments, Toledo Telephone Company similarly urged the Commission to clarify that the rules are not intended to expose telecommunications companies to civil suits. It stated:

> Toledo is also concerned whether or not these rules, as proposed, will create liability standards that the company will have to face. These rules should not be meant to encourage customers to sue companies for failure to meet these standards. Even if every lawsuit can be successfully defended, simply the cost [to] defend lawsuits is expensive to a company as small as Toledo. For example, it would not make sense to have these rules create a situation in which a company would be sued by a customer if the transmission loss from the central office to the subscriber exceeds minus 8.5dB at 1004 Hz (WAC 480-120-515) and claim loss of business income [due] to the transmission loss. Even if the

> company could prove that there is no cause and effect relationship between the transmission loss and the alleged lost income, the cost of defending such a lawsuit would be expensive. Toledo suggests that the Commission make it clear that these rules, if they are adopted, are not meant to be used for such purpose.

Upon this urging, the Commission at its September 9, 1992 open meeting adopted the recommendation of these two carriers. In written comments dated September 17, 1992, QWEST confirmed the Commission's deliberate inclusion of Subsection 500(3):

> At the open meeting, Chairman Nelson directed the Attorney General's staff to prepare language for inclusion in the proposed rules clarifying that the rules do not provide new grounds for civil lawsuits. USWC supports this effort, and would encourage the Commission to further emphasize that the proposed rules do not in any way undermine or void those limitations of liability that may be applicable to telecommunications services providers.

Implied in a Staff May 10, 2001 e-mail is its apparent belief that Subsection 500(3) is redundant of the Legislature's 1986 "elimination" of the doctrine of negligence per se. Whether the Legislature effectively eliminated negligence per se remains an open question, however. Subsection 500(3) serves to clarify that, even should a court be persuaded that the negligence per se doctrine or an equivalent doctrine survives under Washington law, it does not apply in the context of a telecommunication company's alleged deviation from the service quality standards codified in Chapter 480-120. As the Commission (and not the superior court) is the appropriate enforcing agent for those standards, Subsection 500(3) must be retained to preserve the consistency and integrity of the Commission's enforcement mechanisms. This conclusion is supported by *Moore v. Pacific Northwest Bell,* 34 Wn. App. 448, 662 P.2d 398 (1998), in which the Court of Appeals clarified that courts, in the exercise of discretion and judicial restraint, will generally defer to agencies with special competence to enforce systemic rules violations if the agency is part of a pervasive regulatory scheme and has special competence over issues presented in the claim. *Id. at 452.* [1] Specifically, the Court distinguished between claims involving tortuous injury unique to individual subscribers and inadequate telephone service common to the public. *Id. at 453-54.* In the latter case, the Court held that a subscriber's claim would generally be referred to the Commission for exercise of primary jurisdiction. *Id. at 452-54.* The general performance standards set out in Chapter 480-120, under the *Moore* court's analysis, are thus the province of the Commission and not a local superior court.

Prior to 1986, under Washington common law a violation of a duty imposed by statute, ordinance or regulation was deemed negligence per se. That is, the violation alone satisfied a

[1] In its May 10, 2001 e-mail, Staff requested briefing on the *Moore* decision. Aside from the distinction between proper jurisdiction over acts of negligence aimed at a single subscriber as opposed to general performance lapses (see above), the case does not bear on issues underlying Staff's proposed removal of Subsection 500(3). Staff implies that the *Moore* decision establishes that negligence requires a court's determination regarding a defendant's duty and thus that Subsection 500(3) serves no proper purpose. Staff's implication is incorrect. Instead, if Subsection 500(3) had not been included in the quality of services rule when adopted, the Commission's codification of those standards would have likely been deemed to have set particular duties and standards of care. *See* Sections I.A above and I.C. and II. below. Staff's implication thus supports retention of Subsection 500(3) for that very reason.

tort plaintiff's burden to prove the existence of a duty and the defendant's breach thereof.[2] *See Portland-Seattle Auto Freight, Inc. v. Jones*, 15 Wn.2d 603, 607-08, 131 P.2d 736 (1942). In 1986, the Legislature adopted RCW 5.40.050, which provides:

> A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se.

While this statute appears on its face (as Staff states in its May 10, 2001 e-mail) to eliminate negligence per se in all but a few designated instances, subsequent appellate decisions call this conclusion into question. Relying on the four-part test set out in the Restatement (Second) of Torts Section 286 ("Restatement Section 286"),[3] Washington courts continue to treat (in some cases) a violation of a statutory or regulatory duty as a per se breach of that party's duty of ordinary care. In *Yurkovich v. Rose*, 68 Wn. App. 643, 847 P.2d 925 (1993), for example, the Court of Appeals ruled that, while it is true RCW 5.40.050 precludes negligence per se, the defendant bus driver was nevertheless negligent as a matter of law for his failure to comply with statutory and regulatory requirements regarding the proper manner to safely discharge a student from a school bus. *Id. at 654*. By reaching this conclusion, the court (albeit under the guise of Restatement Section 286) substituted the statutory and regulatory safety requirements for the defendant's duty to act with ordinary care. As this very substitution is the essence of negligence per se, it remains unclear whether RCW 5.40.050 is as conclusive as it at first appears.

Especially in light of courts' deference to an agency's interpretation of a statute it is charged to enforce and administer,[4] Subsection 500(3) in its present form[5] renders moot the confusion left

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[2] A plaintiff in a negligence action bears the burden to prove the existence of four elements: (1) duty; (2) breach of that duty; (3) proximate cause; and (4) resultant damages. *Moore*, 34 Wn. App. at 452. In cases of negligence per se, a plaintiff is merely required to prove causation and damages.

[3] Restatement Section 286, as articulated by the Washington Supreme Court in *Hansen v. Friend*, 118 Wn.2d 476, 480-81, 824 P.2d 483 (1992), provides that a court may adopt legislative enactments as a reasonable person's standard of conduct if the purpose of the enactments is found exclusively or in part:

(a) to protect a class of persons which includes the one whose interest is invaded, and

(b) to protect the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

While Qwest would certainly oppose such a view, in the absence of Subsection 500(3), a litigant could arguably take the position that the technical performance standards of Chapter 480-120 satisfy this four-part test. While Qwest believes it would ultimately prevail, the costs of repeatedly defending such claims could be significant.

[4] *See Mahoney v. Mahoney*, 105 Wn. App. 391, 401 n.16, 20 P.3d 437 (2001).

[5] This is not to say that Subsection 500(3) is unimpeachable in its present form. For instance, Qwest would invite a clarification of the sections and subsections of Chapter 480-120 the Commission had in mind by its use of the words "these rules" in Subsection 500(3). Qwest would suggest the Commission, if inclined to alter the language of Subsection 500(3), replaces the introductory phrase "These rules" with "The standards set forth in Chapter 480-120".

by the confluence of RCW 5.40.050 and Restatement Section 286. Regardless of whether a statutory or regulatory duty is generally considered to establish a higher standard of care, Subsection 500(3) clarifies that the standards set out in Chapter 480-120 are not to be appropriated by a would-be plaintiff as imposing a particular standard of care on a telecommunications company. Subsection 500(3)'s removal would cause confusion over whether the highly-technical standards of the Chapter meet the four-part test set out in Restatement Section 286 (*see* footnote 8). Whether they do or do not in the view of the courts before which the issue is raised, litigation costs for all telecommunications providers could be staggering. This result runs afoul of the Commission's purpose in adopting Subsection 500(3) in 1993 (*see* Section I.A. above) and of the fact – verifiable by careful review of documents generated by the Commission at the time it initiated the quality of service rulemaking process in late 1991 and early 1992 -- that the Commission's goal in codifying quality of service standards was not simply to articulate the lowest, non-negligent standard of performance (i.e., to set a low bar below which performance should be deemed negligent), but was to assure high performance standards in the state.[6] Accordingly, it would be improper for the Commission to remove Subsection 500(3) since doing so will invariably connote to future litigants and some courts that any lapse (even a momentary and unavoidable lapse) in meeting these performance standards constitutes negligence as a matter of law.

Outside the context of negligence or negligence per se sits RCW 80.04.440 ("Section 440"),[7] which provides:

> In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was willful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for

[6] In an undated policy statement distributed at an open public meeting in early 1992, Staff described the purpose of the rulemaking as in part to "maintain high quality telecommunications service on a consistent basis across customer classes and throughout service territories of Washington telecommunications companies" (underline added). A true and correct copy of this undated statement of purpose is attached hereto at Appendix D.

[7] With regard to Section 440, Staff's May 10, 2001 e-mail refers interested parties to the Supreme Court's decision in *Employco Personnel Services, Inc. v. Seattle*, 117 Wn.2d 606, 817 P.2d 1373 (1991). In *Employco*, the Supreme Court affirms a trial court's ruling that a Seattle ordinance purporting to immunize the City (and Seattle City Light) from liability for interruptions in electrical service is void. This case is irrelevant to the questions presented here. This Docket does not involve issues of sovereign immunity and Section 440 does not apply to municipal utilities. The case is thus inapposite. Furthermore, the type of duty violated by the City of Seattle leading to the *Employco* case was a specific statutory duty (imposed by Chapter 19.122, RCW) to properly identify underground electrical facilities; that type of duty is wholly distinct from the technical quality of service standards codified in Chapter 480-120. As discussed above with reference to the *Moore* decision, complaints regarding those more minute performance standards are more properly raised before the Commission, which has special competence in assuring high quality telephone service throughout the state.

> such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation.

Neither the text of Section 440 nor any case citing it defines what the Legislature meant by "act, matter or thing required to be done." Left to the statute alone, it is unclear whether for instance the technical network performance standards set forth in WAC 480-120-515 constitute acts, matters or things the failure with which to comply exposes a telecommunications company to civil liability. Should a telecommunications company be required to defend litigation by virtue of a subscriber's complaint that it lost business because the circuit noise objective on the subscriber's loop exceeds 20.0 dBrnC? Intuitively, it is unlikely that the Legislature's goal in enacting Section 440 was to permit and encourage consumers to bring costly actions against their telecommunications providers for such highly technical performance issues.

This raises the question of why the Legislature failed to exclude these technical requirements from the scope of the statute. The answer to this question is simple. While the Chapter 480-120 service quality standards were not adopted by the Commission until 1993, the Legislature adopted Section 440 in 1911 when no such particular standards existed in the Commission's rules. In conjunction with its efforts to codify for the first time specific service quality standards, the Commission wisely protected the telecommunications industry and the court system from widespread litigation by including Subsection 500(3). Should it be removed, and despite the availability of penalties and informal and formal grievance procedures available to the general public through the Commission's rules, the scope of Section 440 will become less certain and litigation will invariably ensue.

While Qwest would and will (if compelled to as a result of the Commission's removal of Subsection 500(3)) argue that Section 440 was not intended to create a private right of action for individual subscribers against telecommunications companies because of occasional lapses as measured against the Chapter's service quality standards, it is foreseeable that at least some courts may interpret Section 440 as doing exactly that. This is especially true given judicial deference to the Commission's interpretation of the telecommunications statutes and the likelihood that a court will infer that the Commission's conscious deletion of Subsection 500(3) could be motivated by and have only one purpose – to permit individuals to bring private actions against telecommunications companies based on technical performance failures. *See State v. Cleppe*, 96 Wn.2d 373, 378, 635 P.2d 435 (1981);[8] *State v. Dubois*, 58 Wn. App. 299, 303, 793 P.2d 493 (1990) ("[I]t is presumed that an amendment [in the language of a statute] indicates a change in legal rights.")

[8] In *Cleppe*, the Supreme Court was faced with interpreting whether the State's prosecution of a defendant under the criminal statute prohibiting possession of a controlled substance required proof of the defendant's guilty knowledge or intent. On its face, the statute (RCW 69.50.401(d)) is silent as to the required mens rea. The Supreme Court ruled that, even though the statute was now neutral on its face, because the prior criminal section contained an intent requirement, the Legislature clearly intended that guilty knowledge or intent was no longer an element of the crime. Specifically, the Court held: "The court notes that a precursor statute [Laws of 1923, ch. 47, sec. 3, p. 134] contained the words "with intent", which words had been omitted from the current statute, leading conclusively to the view that '[h]ad the legislature intended to retain guilty knowledge or intent as an element of the crime of possession, it would have spelled it out as it did in the previous statute.' We are similarly compelled to that view in the cases before us." 96 Wn.2d at 378.

Although the Commission staff may feel that Subsection 500(3) is imprecise and that the public would be better served should it be simply extracted from the rules, Qwest respectfully disagrees. Should Subsection 500(3) be removed, telecommunications companies (large and small alike) could be forced to defend superior court litigation to run concurrently, in many cases, with Commission enforcement proceedings.

The Commission has no authority to create or preclude private rights of action – that being the province of the legislative and judicial branches. However, the original adoption of Subsection 500(3) did neither. It merely maintained the status quo. Because the 1993 rule amendments for the first time contained a codification of numerous, highly-technical service quality standards not mandated by the Legislature, the Commission's inclusion of Subsection 500(3) was necessary to avoid the Commission having arguably also thereby created numerous equivalent private rights of action under Section 440. Clearly, the Commission recognized this when directing the Attorney General's staff to draft Subsection 500(3). Further, it is Qwest's position that, for just this reason, the Commission may not remove Subsection 500(3) without simultaneously removing all the specific performance standards adopted in and subsequent to 1993.[9] If the Commission removes only Subsection 500(3), the net effect will be, in the view of some courts in the future, the creation of causes of action for individual subscribers based on these recently-codified standards.

For the reasons set forth above, Qwest urges the Commission to refrain from deleting this very useful and clarifying language.

Qwest also requests that WAC 480-120-500 be amended to identify that no service quality requirement contained in WAC 480-500, 505, 510, 515, 520, 525, 535, 999, X05, X05.5, X06, X08, X16 and X20 establishes a level of performance to be achieved during periods of emergency, disaster or catastrophe, nor do they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, holidays, civil unrest, force majeure, or disruptions of service caused by persons or entities other than the local exchange company. In addition, it should be clarified that companies are not obligated to meet service standards when efforts to install or repair service are delayed due to circumstances over which the company has no control, such as permit delays, county restrictions, etc. until such barriers are removed.

480-120-535 Service quality performance reports

Qwest respectfully requests WAC 480-120-535(6) be modified to require reports only for those exchanges that do not meet the standard. WAC 480-120-X14 should apply to exchanges not central offices. In addition, WAC 480-120-535(6) should be modified to also exclude trouble reports caused by emergency, disaster or catastrophe, civil unrest, force majeure, or disruptions of service caused by persons or entities other than the local exchange company since the WAC 480-120-X14 standard is not applicable to such reports.

480-120-051 Application for service

[9] These standards include, without limitation, those codified at: WAC 480-120-138(5), (8), 141(6), 505(2),

Qwest respectfully requests WAC 480-120-051(2) be modified as follows:

> (2) If the company does not provide the applicant with a due date for installation or activation at the time of application as required in subsection (1)(b), the company must state the reason for the delay. Within five business days of the date of the application, the company must provide the applicant with a estimated due date for installation or activation. The credit requirements of WAC 480-120-X08 are not altered by this subsection.

If Qwest is unable to provide the applicant with a due date for installation due to a lack of facilities, a work stoppage, emergency, etc. it most likely will not be able to assign a firm date within five business days. Therefore Qwest respectfully requests WAC 480-120-051(2) be amended to require an estimated due date within five business days.

Qwest also respectfully requests WAC 480-120-051(3) be modified as follows:

> (3) When installation of new service orders requires on-premise access by the company, the company must specify the time of day for installation within a four-hour period upon customer request.

Not all customers require a four-hour installation interval. Customers with time constraints will ask for an appointment window. Qwest currently provides morning or afternoon appointments upon request. Telecommunications providers should only be obligated to establish such an interval upon customer request. Qwest currently provisions approximately 3.3 million orders a year; approximately 250,000 order require an on-premise access. While that is only 7.5% of total orders received, that is still approximately 1,000 orders that require on-premise access each business day. It is extremely difficult to meet a four-hour window when the technician does not know how much work is entailed at the premises and may cover a large service area. Qwest believes it would be poor customer service to establish a customer expectation that may not be met because the rule requires all dispatched appointments to be set within a four-hour window, whether or not the customer desires such. Qwest respectfully requests WAC 480-120-051(3) be modified as requested above.

480-120-041 Availability of information

Qwest respectfully requests the Commission retain the existing rule language in WAC 480-120-041. Qwest urges the Commission to let each telecommunications company determine how best to inform their customers about business practices, prices and tariffs.

Should the Commission decide to proceed with the proposed rule, Qwest respectfully requests the following modifications.

WAC 480-120-041(1)(a), (b), (c) and(d) should be revised as follows:

> (a) The company's toll-free telephone number, and web address (if available); and
> (b) Confirmation of the services being provided to the customer by the company

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515(3)(a)-(d), 520(7)-(10), 525(2) and 530(1).

The Commission should not include a requirement that the company's business office hours, mailing address, repair number, rates for each service, including banded rate information, be included in a welcome letter, as required in the proposed rule. The company's business office hours, mailing address, and repair numbers are contained in its directory, which is readily available to all customers. And the rates for each service, including banded rate information, is available at no cost to customers as stated in the Company's tariffs or price lists. Furthermore, the Company quotes the charges for service at the time service is ordered. In addition, Qwest offers a 60-day product guarantee for most of its services which allows customers to discontinue service within 60 days and all charges are waived.

The requirement for local exchange providers to provide the name and toll-free telephone numbers of the customer's presubscribed interLATA and intraLATA carriers, if applicable, also should be eliminated WAC 480-120-041(d). The interLATA and intraLATA carrier currently is required to provide this information directly to their customer under FCC rules as well as under this rule. The local exchange carrier should not have this obligation; nor should the costs of such notification be imposed on local exchange carriers.

Qwest respectfully requests these same changes be made to WAC 480-120-041(2)(a) and (b) for the reasons cited above.

WAC 480-120-041(3) should be eliminated. The customer's local exchange service provider should not be required to retain a six month account history for every customer it serves reflecting changes of an interexchange company. Nor should the local exchange service provider be required to supply the name and telephone number for each interexchange company the consumer subscribed to over the last six months. This creates an expense to the local provider for a service that in many cases it may not provide. Particularly in the case of Qwest since it cannot provide interLATA interexchange service. The Commission should refrain from imposing unnecessary new costs on local exchange service providers.

480-120-056 Establishment of credit -- Residential services

Qwest continues to suggest deleting this rule in its entirety. Each Local Exchange Company should develop sound business practices that are responsive to individual customer needs while serving to protect the interests of the company and its ratepayers (minimizing bad debt, reducing administrative expense, subject to existing consumer protection laws, etc.).

However, should the Commission continue to proceed with retention of this rule, Qwest respectfully requests WAC 480-120-056(1) be modified to enable a company to request a deposit when a customer has not previously established credit or does not have a stable monthly income.

480-120-061 Refusal of service

Qwest respectfully requests that the last sentence in proposed WAC 480-120-061(3)(b) be deleted. It states the following:

> Applicants may refuse to provide a social security number to establish identity.

Qwest does not believe customers should be allowed to refuse to provide their social security number. This information is protected and in many cases is necessary to prevent fraudulent behavior.

480-120-081 Discontinuation of service-- Company initiated

WAC 480-120-081(5), which addresses Medical Emergencies, should be modified to eliminate the new requirement of specified intervals for reinstatement of service. WAC 480-120-081(5)(i) and (ii) state the following:

> (i) If the customer's service has been discontinued within the last forty-eight hours, and the customer does not currently have access to 911, restricted service must be reinstated as soon as possible, but no later than four hours after notice; or
> (ii) If a discontinued customer has access to 911 emergency services or, if basic service or restricted basic service has been discontinued for a period that exceeds forty-eight hours, the company must restore service as soon as possible but no later than twelve hours after notice.

Qwest objects to a specified interval under either circumstance when the customer was already provided an opportunity to contact the company to explain why payment had not been made as required and when the customer should have informed the Company of such a condition before service was terminated. Qwest would not object to a requirement to reinstate service as soon as possible.

Proposed WAC 480-120-081(b)(i-iv) eliminates the existing rule requirement for certification to include the name of the resident whose health would be affected by the discontinuance of local service and that person's relationship to the customer. The Commission staff advised Qwest that elimination of this requirement is due to RCW 70.24.105. However, Qwest does not agree that existing language should be removed. Qwest respectfully requests the existing requirement be retained and amended in recognition of RCW 70.24.105 as follows:

> (v) The name of the resident whose health would be affected by the discontinuance of local service unless such is protected under RCW 70.24.105
> (vi) The relationship to the customer

RCW 70.24.105 does not prohibit the identification of all medical condition individuals rather it is specific to any person "who has investigated, considered, or requested a test or treatment for a sexually transmitted disease". Qwest does protect this information and will continue to do so.

Proposed WAC 480-120-081(6) requires a disconnection notice to include a disconnection interval date of at least eight business days prior to disconnection of service for non-payment. Qwest respectfully requests the interval be modified based on the method of notice provided and shortened. The notice is intended to initiate a call by the customer to make payment arrangements. Customers who intend to pay their past due bill will typically call and make arrangements which may in fact include a payment date beyond the payment interval specified in the notice. Qwest's goal is to receive payment of the past due amount not to disconnect service. Those customers that don't call are typically disconnected and in many cases the bill is never paid. Therefore Qwest respectfully requests WAC 480-120-081(6)(a)(i) be modified as follows:

> A disconnection date that is not less than five business days after the date the notice is mailed, or two business days after the date the notice is transmitted electronically (with prior customer permission), facsimile or delivered personally; and

A new rule requirement that the Company must allow customers who call to make payment arrangements at least an eight-day interval to make the payment would not be objectionable.

Qwest also respectfully requests elimination of 480-120-081(6)(c). The need to reinitiate the process if disconnection does not occur within ten business days should be eliminated. The customer has been advised that service will be disconnected if payment is not made by the interval specified. The Company should be free to disconnect service at any time once that interval has past. If a company chooses to give the customer (who has not responded to the notice) a few more days before it actually disconnects service it should not be penalized by having to repeat the process. The Company should be free to disconnect service when it has complied with the notice interval specified by rule.

480-120-X32 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility

Qwest respectfully requests WAC 480-120-X32 be modified to include a requirement that the customer agree to participate in WTAP or the federal enhanced tribal lifeline program before service is restored. Qwest understood staff to agree with this change. WAC 480-120-X32 should be modified as follows:

> A customer whose service is restored under this section must agree to participate in WTAP or the federal enhanced tribal lifeline program before service is restored, agree to pay unpaid local service and ancillary service amounts due to the LEC in six monthly installments, and agree to toll restriction, and ancillary service restriction if the company requires it, until the unpaid amounts are paid.

III. COMMENTS ON SPECIFIC DRAFT RULES TO BE DISCUSSED AT THE NOVEMBER 20, 2001 WUTC RULE WORKSHOP

480-120-X33 Customer complaints--Responding to commission

Qwest appreciates the amendments proposed in the latest draft rule in response to earlier comments made by the industry. These changes will enable both the Commission staff and the Company to focus on those complaints that require immediate resolution.

However, Qwest respectfully requests that subsection WAC 480-120-X33(2)(b), be omitted. The Company should be encouraged to resolve the complaint directly with the customer even if the customer has taken the complaint to the Commission. The Commission should not require the Company to get permission from the commission before it can contact its own customer.

Qwest also respectfully requests WAC 480-120-X33(4) be eliminated or qualified as follows:

> (4) The company must provide complete responses to requests from commission staff for additional information on pending complaints within five business days. If the information cannot

be obtained within five business days, the company and the commission staff will mutually agree on an appropriate later date.

Qwest is most concerned that it meet whatever intervals are specified by rule and does not believe it appropriate to set a standard interval for subsequent requests for information that were not included in the initial request. Experience indicates that such requests vary significantly and may require collection of information not readily available and stored in secondary locations that must be retrieved. In addition, the initial request for information should include the information necessary to resolve the customer concern. The Company and the Commission should be able to agree on subsequent commitment dates and should not need to specify an interval by rule that may need to vary by Commission request.

Should the Commission decide to retain this requirement, requests for additional information on pending complaints, not included in the initial Commission staff request, should be treated comparable to requests for information on non-service affecting complaints. In addition, there may be instances where it requires more than three or five business days to collect the information requested, and when that occurs the commitment date should be mutually agreed upon by both the Company and the Commission staff.

480-120-X30 Company responsibility

Qwest opposes the adoption of proposed WAC 480-120-X30. WAC 480-120-X30 suggests that a carrier is not responsible for it own customer and provides for indirect accountability. Qwest believes such an approach establishes a dangerous precedence that is not in the best interest of retail customers. The Commission needs to direct a customer complaint to the provider of the customer's service or their authorized agent. It is up to that provider to resolve the customer's concern, regardless of how service may be provisioned. If the customer's provider has issues with their underlying carrier, there is an existing process by which such issues are to be resolved. However, in no case should a carrier be allowed to not take full responsibility for their service to a customer or to blame another provider. It is up to each company to ensure their customer's needs are met and to respond to the commission in accordance with its rules. Qwest respectfully suggests the omission of this proposed rule.

480-120-515 Network performance standards

Qwest respectfully requests WAC 480-120-515 not be modified and that the existing rule language be retained. The language was originally adopted in 1992 and was based on current industry standards set forth by the American National Standards Institute ("ANSI"). The standards are technically correct and are written in such a way as to identify how standards are properly measured. The existing rules followed those principles. However, the proposed rules have lost some of the necessary detail. Rather than attempt to rewrite the rules for simplicity sake, it is more appropriate to maintain technical application. Therefore, the rules should not be revised.

Should the Commission proceed with the proposed rule revisions, Qwest requests a number of necessary technical revisions. Qwest requests WAC 480-120-515(2)(a) be amended as follows:

> **(a) Dial service. For each switch, companies must provide adequate equipment to meet the following minimum standards during the normal busy-hour of the average busy season:**

The normal busy-hour may vary by the period of study. The existing rule defined the study period to the average busy season. Absent this qualification, the Commission cannot guarantee a consistent measurement or standard from company to company. The existing language should be retained.

Qwest also requests WAC480-120-515(2)(b) be amended as follows:

> (b) **Intercept**. Central office dial equipment must provide adequate access to an operator or to a recorded announcement intercept to all vacant codes and numbers of the operating company. Less than one percent of intercepted calls may encounter busy or no-circuit-available conditions during the average busy-hour, of the average busy-season service levels.

Telecommunications providers cannot provide access to an operator or to a recorded announcement intercept for vacant codes and numbers of other providers.

Qwest also requests WAC480-120-515(3) be amended as follows:

> (3) **Interoffice facilities**. Blocking performance during average busy-hour of the average busy season for trunk groups must be less than one-half of one percent for intertoll and intertandem facilities and less than one percent for local and EAS interoffice trunk facilities. The blocking standard for 911 dedicated interoffice trunk facilities must be less than one percent during average busy-hour of the average busy season.

A standard base on each month's performance or each week's performance may be of less value than a standard of the average busy hour during the average busy season. The average busy hour during the average busy season, also commonly referred to as the administrative hour, is the hour with the highest trunk requirement and is used by engineers to administer the trunk group. It is typically based on a study over an "N" period of time and is necessary to develop weighted averaged data based on the carried load and day-to-day variations.

Qwest appreciates the proposed revisions that are consistent with the standards set forth by the American National Standards Institute ("ANSI"). Only one standard is not fully consistent with the ANSI standard - WAC 480-120-515 (4)(a)(ii). Qwest respectfully submits WAC 480-120-515 (4)(a)(ii) be modified to include the ANSI acceptable standard of 30 dBrnC. WAC 480-120-515 (4)(a)(ii) should be modified as follows:

> (ii) For voice grade service, the circuit noise level on customer loops measured at the customer network interface must be equal to or less than 20.0 dBrnC, except that loops in excess of 18,000 feet must have noise levels less than 30.0 dBrnC and digitized loops using customer loop carrier systems must have noise levels less than 30 dBrnC.

Long, rural metallic routes typically function at less than 23 dBrnC however the ANSI standard allows for noise levels less than 30.0 dBrnC.

480-120-540 Terminating access charges

Qwest objects to the proposed new rule language at WAC 480-120-540(7); it states the following:

> (7) Prior commission authorization is not required for competitively classified LECs to charge up to, but no more than, the sum of the incumbent LEC's subsection (2) and subsection (4) rate elements in each respective exchange.

Competitively classified local exchange companies should not be allowed to charge a terminating access rate that includes the universal service rate element of an incumbent local exchange company when the competitive company does not serve high cost customers. The Commission should not adopt this rule provision when it allows competitive providers to selectively serve customers in Washington.

480-120-X01 Universal service cost recovery authorization

Qwest does not believe the Commission has the authority to adopt this proposed rule under RCW 80.36.600, absent legislative authorization. While Qwest supports explicit subsidies as opposed to implicit subsidies, RCW 80.36.600 does not allow the Commission to adopt a rate element for support of universal service without legislative approval of a universal service program. The Commission does of course have the authority to allow companies to rebalance rates so that implicit subsidies are eliminated and high cost services are priced closer to cost. The proposed rule however suggest that subsidies can be authorized as longer as they are explicit. Qwest does not believe the Commission has the authority to do such.

Once the Commission has the authority to implement a universal service program, Qwest also believes it is inappropriate to suggest a competitively classified company may recover support for universal service based on the cost of an incumbent local exchange company. The competitive provider should be required to produce their own cost study and should also be required to demonstrate they serve high cost customers and have a need for high cost support.

480-120-541 Access charge and universal service reporting

Qwest appreciates the revisions made to the earlier draft rule proposals.

480-120-542 Washington Exchange Carrier Association (WECA)

Qwest continues to oppose continuation of the traditional universal service fund ("USF") pooling approach through WECA tariffs. The traditional pool has no basis in current USF funding needs and should be replaced by the current explicit USF switched access terminating rate. USF funding for any telecommunications provider should be based on a verifiable showing of need in conjunction with a clear set of USF cost guidelines. The Commission, in conjunction with the industry and the legislature, needs to develop a new universal service cost methodology and recovery mechanism that serves all telecommunication providers pursuant to the guidelines provided in the Telecommunications Act of 1996. In the interim, until a permanent USF funding

mechanism is available to all companies, on equal terms and conditions, the WECA companies should be required to satisfy their USF needs through the interim USF element allowed under the Commission's terminating access rule, WAC 480-120-540. Each company should set their access rates based on their specific need. Therefore, Qwest opposes adoption of this proposed WAC.

480-120-031 Accounting requirements for companies not competitively classified

Qwest suggests language be added to subsection (2) to allow Class A companies to implement FCC updates to Part 32 accounting rules, without WUTC approval, to the extent the effect on annual revenue requirements is less than 1% or $1 million. The proposed rule allows companies to implement FCC updates to Part 32 accounting rules, without WUTC approval, to the extent the effect on annual revenue requirements is less than 1%.

480-120-042 Directory service

WAC 480-120-042(6) includes a reference to WAC 480-120-041(1) that is no longer relevant; therefore this subsection needs to be revised accordingly.

480-120-X09 Service transfer from one local exchange company to another

Proposed WAC 480-120-X09 states the following:

> When a local exchange company processes a service order transferring a customer's service to another local exchange company, the company transferring the service must not discontinue service unless the customer specifically requests that service be discontinued before the accepting company provides confirmation.

Qwest opposes the proposed rule and respectfully requests this rule be deleted. Qwest opposes the rule for a variety of concerns. First, a local exchange company does not transfer service to another local exchange company. They simply discontinue the customer's service upon request. Second, the customer changing their local exchange provider may not be aware that the new company is a reseller of the prior company's local exchange service. Nor does the proposed rule address who is liable for service provided and charges incurred during the proposed transition period and during the obligation that extends beyond the date of disconnection requested by the customer. This rule requirement should be addressed in carrier agreements or carrier to carrier service quality rules and not included in this rulemaking. It requires further development and is insufficient at this time.

480-120-X11 Deposit administration

Qwest respectfully requests WAC480-120-X11(1) be rewritten to mirror the existing rule language at WAC 480-120-056(6) as it is more accurate than the proposed rule. If the Commission chooses to rewrite this rule it should be qualified as follows:

> (1) **Transfer of deposit.** A company must transfer a customer's deposit, less any outstanding balance, from the account at one service address to the account at another service address,

when a customer moves to a new address, is required to pay a deposit and continues to receive service from that company.

WAC 480-120-X11(3)(c) should be amended as follows:

(c) A company may apply a deposit refund to a customer's account or, upon customer request, must provide the refund in the form of a check issued and mailed to the customer no longer than fifteen days after satisfactory payment history is established as defined in (b) above.

WAC 480-120-X11(3) does not need to require the Company to refund a deposit in the form of a check for termination of service since that is what will occur once the deposit has been applied to any outstanding balance, should a residual amount remain.

480-120-X22 Discontinuation of service -- Customer requested

Qwest appreciates the Commission staff adoption of the proposed Qwest language at WAC 480-120-X22(4) based on previous concerns raised by Qwest. However, Qwest is still not clear what the Commission staff means by "treat the customer's service as continuing". The use of the term "continuing" requires definition. WAC 480-120-X22(4) states the following:

(4) At the customer's request, the company must treat the customer's service as continuing through a change in location from one premise to another within the same service area if a request for service at the new premise is made before discontinuation of service at the old premise and service is not subject to discontinuation for cause.

The proposed rule is attempting to define an obligation for service that overlaps; in other words, the same customer has service at two locations. The Company does not understand what the Commission is requesting when it states that the customer's service must be treated as continuing. It is unclear if the request is specific to deposits or some other need. Qwest respectfully requests the staff clarify the need at the November 20th workshop.

480-120-106 Form of bills

Qwest appreciates the number of revisions that have been made in this proposed rule based on industry input. However, Qwest respectfully requests WAC 480-120-106(4)(a) be modified as follows:

(a) Bills may only include charges for services that have been requested by and provided to the customer or other individuals authorized to request such services on behalf of the customer.

A strict interpretation of proposed WAC 480-120-106(4)(a) may suggest only the customer of record can authorize charges for services such as collect calls or pay per use features. The rule should not be limited to "customer".

WAC 480-120-106(9) appears to require revision as well. As currently proposed, it states the following:

(9) **Billing companies.** A company may bill regulated telecommunications charges only for companies properly registered to provide service within the state of Washington or for billing aggregators. The billing agent must, in its contractual relationship with the billing aggregator, require the billing agent to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the billing agent, provide a current list of all companies for which it bills, including the name and telephone number of each company. The billing agent must provide a copy of this list to the commission for its review upon request.

The responsibilities of the billing agent and billing aggregator appear to be misstated. Qwest believes the statement should be revised as follows:

"The billing agent must, in its contractual relationship with the billing aggregator, require the billing aggregator to certify that it will submit charges only on behalf of properly registered companies; and that it will, upon request of the billing agent, provide a current list of all companies for which it bills, including the name and telephone number of each company. "

480-120-138 Pay phone service providers (PSPs)

Qwest respectfully requests proposed WAC 480-120-138(4)(a) be revised to reflect the existing rule. Proposed WAC 480-120-138(4)(a) requires the rate for local calls, including any restrictions on the length of calls, be posted in thirty point or larger type print and contrasting color. The existing WAC require one or the other, it states the following:

(4)(a) The rate for local calls, including any restrictions on the length of calls. Clear and legible posting of the rate can be accomplished using thirty point or larger type print or contrasting color.

The existing rule language should be retained.

480-120-340 Enhanced 9-1-1 (E911) obligations of local exchange companies

As previously stated this rule is already covered under RCW 80.36.555 and 80.36.560 and therefor unnecessary.

480-120-X20 Responsibility for drop facilities and support structure

Qwest respectfully requests WAC 480-120-X20(2)(b) be modified as follows:

(c) Provision of support structure. The company may require the applicant to provide a support structure that meets company standards. Once the customer provides a support structure that meets company standards, ownership of the support structure and maintenance responsibilities *of the drop facilities* vests in the company. Nothing in this rule prohibits the company from offering the applicant an alternative to pay the company a tariffed or price listed rate for provision of the support structure.

As currently proposed, it could imply the company is responsible for maintenance of the support structure. WAC 480-120-X20(3)(b)(iv) is clear that the Company does not have this responsibility.

IV. COMMENTS ON PROPOSED DRAFT RULES NOT SCHEDULED TO BE DISCUSSED AT THE NOVEMBER 20, 2001 WUTC RULE WORKSHOP

480-120-089 Information delivery services

Qwest respectfully requests WAC 480-120-089(2) be revised to be consistent with 47 CFR 64.1508(2) which requires blocking to be offered at no charge to any subscriber who subscribes to a new telephone number for a period of sixty days after the new number is effective. 47 CFR 64.1508(2)(b) allows local exchange carriers to charge a reasonable one-time fee for "unblocking" requests. WAC 480-120-089(2) should be revised as follows:

> (2) Local exchange companies (LECs) offering information delivery services must provide each residential customer the opportunity to block access to all information delivery services offered by that company. Companies must fulfill an initial request for blocking free of charge *for a period of sixty days after the new number is effective.* Companies may charge a tariffed or price listed fee for subsequent blocking requests (i.e., if a customer has *previously* unblocked his or her access) or to *unblock service.*

These changes would resolve the conflict with the existing rule and 47 CFR 64.1508.

480-120-101 Complaints and disputes

Qwest respectfully requests WAC 480-120-101(1) be qualified to those complaints that require follow-up action. Some customers may complain about the manner service was provided or service itself but may not require investigation of their complaint. If this is the case the Company should not have to acknowledge the complaint as required under subsections (1)(a), (b), (c), and (e). Therefore Qwest respectfully suggests the introduction in section (1) be modified as follows:

> When a company receives an oral or written complaint from an applicant or customer regarding its service or regarding another company's service for which it provides billing, collection, or responses to inquiries, and the customer requests a response or some action, the company must acknowledge the complaint as follows:

480-120-X05 Responsibility for maintenance and repair of facilities and support structures

Qwest respectfully requests WAC 480-120-X05(3) be revised to also add an exclusion for support structures on the customer's property. Such a revision would be consistent with WAC 480-120-X20(3)(b)(iv). WAC 480-120-X05(3) should be revised as follows:

> (3) With respect to cost, subsection (1)(a) does not apply when damage has been caused by a customer or third party, in which case, the company may charge that individual the cost of repair, maintenance, or replacement of company facilities. *Nor does subsection (1)(a) apply to support structures on the customer's premises (see WAC 480-120-X20).* Nothing in this subsection is intended to limit the company's ability to recover damages as otherwise permitted by law.

The customer is responsible for the repair and maintenance of support structures on their personal property.

480-120-X10 Guarantee in lieu of deposit

Qwest respectfully requests the introduction to WAC 480-120-X10 be revised as follows:

> When a residential applicant or customer cannot establish credit or cannot pay a deposit or extended deposit payments, the applicant or customer may furnish a guarantor who will secure payment of bills for service requested in a specified amount not to exceed the amount of required deposit. The company may require that the guarantor:

This revision clarifies the rule is specific only to deposits; not the request for a past due bill payment along with a request for a deposit. In other words, the guarantor is for the deposit only. In addition, WAC 480-120-X10(3) should be revised as follows:

> (3) Have an established *satisfactory* payment history for each class of service being guaranteed.

A requirement for an established payment history alone is insufficient; the payment history must be satisfactory or should meet the criteria defined at WAC 480-120-X11(3)(b).

480-120-X34 Pro-rata credits

Qwest respectfully requests WAC 480-120-X34 be modified to provide for other service credits currently offered by local exchange companies. For example, Qwest has a different credit program for out-of-service conditions over two working days or over seven calendar days. Qwest should not be obligated to provide the credit proposed in this rule as well as the credit it presently offers credits. In addition, WAC 480-120-X32 should not require a credit if the service is unavailable due to faulty customer premises equipment or inside wire. Therefore, Qwest respectfully suggests 480-120-X34 be modified as follows:

> Every telecommunications company must provide a *minimum* pro-rata credit to customers of a service whenever that service is billed on a monthly basis and is not available for more than a total of twenty-four *consecutive* hours in a billing cycle. *If a telecommunications company offers a different credit for out of service conditions that is equal to or greater than the minimum credit required by this rule, the minimum credit is not required.* Pro-rate credits are not required when force majeure is the proximate cause for the unavailability of a service *or the problem is caused by customer premises equipment or inside wire.*

480-120-021 Definitions

Access charge: Qwest respectfully suggests that there is no need for a definition for "access charge". Most carriers already define the term in their tariffs or price lists and understand what is meant by this term.

Centrex: Qwest respectfully suggests that there is no need for a definition for "Centrex". Most carriers already define the term in their tariffs or price lists.

Drop wire: It is unclear what is meant by "pedestals". The pedestal is normally not on the customer's property and the customer is responsible for providing the support structure.

Force Majeure: Force majeure is defined in the dictionary as an event or effect that cannot be reasonably anticipated or controlled. Qwest respectfully requests the proposed definition be revised as follows:

> **"Force Majeure"** is an event or effect that cannot be reasonably anticipated or controlled. It includes natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events: acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

Major Outages: This definition should be modified to the current WAC definition of a major outage. The proposed definition would actually result in fewer outages being classified as "major outages". In addition, if a single intercompany or toll trunk does not meet service requirements for four or more hours it may not be service effecting. This criteria should be removed from the definition.

Voice grade: Qwest would suggest a "voice band" definition followed by voice grade and channel definitions. Following is Qwest's suggested definitions:

> Voiceband: The set of frequencies between approximately 300 Hz and approximately 3300 Hz (not necessarily a passband). The frequencies approximately 300 Hz and approximately 3300 Hz are based on cables with an H88 loading scheme. If another loading scheme is used, e.g. D66, or if the plant is not loaded, the upper frequency of the voiceband is constrained by the anti-aliasing filter of the analog-to-digital conversion to approximately 3400 Hz.
>
> Voicegrade: Suitable for transmitting a voice signal.
>
> Channel: For the purposes of these rules, a bi-directional voiceband transmission path between two points.

Without definitions, these terms sometimes are cause for long discussions. There are modems designed for use in other countries that expect a few more hundred Hz than the generally deployed H88 and voice A/D channel units provide. Also, REA engineering rules embraced the D66 loading scheme.