

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	
)	DOCKET NO. UT-003022
U S WEST COMMUNICATIONS, INC.'s ¹)	
)	
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	
_____)	
)	DOCKET NO. UT-003040
In the Matter of)	
)	14 TH SUPPLEMENTAL ORDER
U S WEST COMMUNICATIONS, INC.'s)	DENYING REQUEST FOR
)	EXTENSION OF TIME;
Statement of Generally Available Terms)	CLARIFYING 12 TH
Pursuant to Section 252(f) of the)	SUPPLEMENTAL ORDER;
Telecommunications Act of 1996)	GRANTING INTERVENTION
_____)	

I. SYNOPSIS

1 This Order denies the request of Public Counsel for an extension of time for filing comments because it has been granted in the multi-state 271 proceeding considering Qwest's Performance Assurance Plan. This Order clarifies certain procedural issues concerning the Commission's participation in the multi-state 271 proceeding. This Order also grants the request for late intervention of Z-Tel in this proceeding for purposes of evaluation of Qwest's PAP.

II. BACKGROUND AND PROCEDURAL HISTORY

2 On July 23, 2001, the Commission entered its 12th Supplemental Order in this proceeding, determining that it would join seven other states participating in the multi-state 271 proceeding for the purpose of considering Qwest's Performance Assurance Plan (PAP). The order required parties to this proceeding to follow the procedural schedule established by the facilitator for the multi-state 271 proceeding, Mr. John Antonuk.

¹ Since the inception of this proceeding, U S WEST has merged and become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this order.

3 On July 24, 2001, Public Counsel filed a motion with the Commission for
reconsideration and clarification of the 12th Supplemental Order, and simultaneously
filed a motion in the multi-state proceeding requesting an extension of time to file
comments on Qwest's PAP.

4 On July 25, 2001, the Commission issued a notice requesting responses to Public
Counsel's motion by noon on Friday, July 27, 2001. Later on July 25, Mr. Antonuk
issued a notice extending until August 10, 2001, the time for Public Counsel to file
testimony or comments on Qwest's PAP in the multi-state proceeding.

5 On July 27, 2001, Qwest filed a response to Public Counsel's motion.

6 On July 30, 2001, Z-Tel Communications, Inc. (Z-Tel) filed with the Commission a
Petition for Leave to Intervene.

III. DISCUSSION

A. Motion of Public Counsel for Reconsideration and Clarification

7 Public Counsel objects to the timing of the Commission's order, asserting a violation
of its due-process rights given that the deadline for filing responses to Qwest's filing
in the multi-state proceeding was July 27, 2001. Public Counsel also requests a
Washington-specific opportunity for parties to present evidence, rebut evidence
presented by Qwest, and cross-examine witnesses concerning the PAP.

8 Qwest argues that the motion was moot given Mr. Antonuk's extension of time for
Public Counsel to file comments.

9 Public Counsel's motion requests that the Commission revise its 12th Supplemental
Order "[a]bsent a revision to the multi-state procedural schedule." Given that Mr.
Antonuk has granted Public Counsel's motion for an extension of time to file
responses to Qwest's PAP and testimony filed on June 29, 2001, there is no need for
this Commission to revise its 12th Supplemental Order to allow Public Counsel
additional time to file a response. That portion of Public Counsel's motion is denied.

10 In addition, as we discuss further below, the Commission's participation in the multi-
state process for the purpose of evaluating Qwest's PAP will not deny any party the
opportunity to submit evidence, rebut Qwest's evidence, or cross-examine witnesses
concerning Qwest's PAP.

11 In its motion, Public Counsel also requests clarification of whether the 12th
Supplemental Order is a final order for purposes of judicial review. Qwest argues
that the 12th Supplemental Order is not subject to judicial review given that the
Commission lacks authority under the Telecommunications Act of 1996 to approve or

reject Qwest's application. Qwest argues that the Commission's review of Qwest's compliance with section 271 is limited to making a recommendation to the Federal Communications Commission (FCC).

12 The 12th Supplemental Order is a procedural order and is not a final order on the merits of Qwest's PAP or Qwest's application under section 271. As such the 12th Supplemental Order is an interim order subject to the Commission's procedural rules regarding such orders.

B. Evaluating the PAP and Recommendations from the Multi-State Proceeding

13 Combining state resources to evaluate Qwest's PAP will be beneficial, and will allow for a more efficient and complete consideration of Qwest's proposal. However, by participating in the multi-state 271 proceeding, the Commission does not abdicate its responsibility under the Act to conduct a rigorous review and make recommendations to the FCC concerning Qwest's compliance with section 271.

14 As we noted in the 12th Supplemental Order, the facilitator's report from the multi-state proceeding is analogous to an initial order entered by an administrative law judge or hearings examiner. However, should we determine that certain issues were inadequately or incompletely addressed in the multi-state proceeding, we may require additional fact finding and evidentiary hearings to be held in Washington in addition to providing parties the opportunity to present written and oral comments on the facilitator's report. The review process will be determined in a scheduling conference to be held following the issuance of the report.

C. Clarification of Procedural Issues

15 In the 12th Supplemental Order, we required Qwest to file with the Commission and serve on all parties copies of its PAP on the day following the service date of the order. On July 24, 2001, Qwest made its filing in compliance with the order. The Commission has since become aware that Qwest also filed testimony in the multi-state proceeding accompanying its PAP. We direct Qwest to make a complete filing with the Commission including all documents concerning its PAP that Qwest filed in the multi-state proceeding on June 29, 2001.

16 For those parties to this proceeding who have not participated in the multi-state proceeding, the rules and procedure for participating in the multi-state 271 proceeding can be found under the heading "Rules and Procedures for the Multi-State 271 Process" under the heading "Multi-State Regulatory Proceeding" on the following web site: <http://www.libertyconsultinggroup.com>.

D. Z-Tel Petition for Intervention

- 17 Z-Tel is a certified competitive telecommunications carrier that provides residential telecommunications and enhanced services in the state of Washington. It requests late intervention in this proceeding, stating that it just became aware of the proceeding and that any decision might impact Z-Tel. Z-Tel claims that it will not unreasonably broaden the issues, burden the record, or delay the proceedings, and will abide by the procedural schedule adopted in this case.
- 18 We interpret Z-Tel's request for intervention to be limited to the review in this docket of Qwest's PAP in the multi-state section 271 proceeding. Z-Tel does not specifically state that it is requesting intervention in this proceeding only for purposes of Washington state's participation in the multi-state workshop on Qwest's PAP. However, Z-Tel attached to its petition its comments in response to Qwest's PAP in the multi-state proceeding.
- 19 Given the schedule in the multi-state proceeding for purposes of reviewing Qwest's PAP, and the need for rapid resolution of the matter, the petition for late intervention of Z-Tel is granted for the limited purpose of reviewing Qwest's PAP.

VII. ORDER

THE COMMISSION ORDERS That:

- 20 (1) Public Counsel's request for an extension of time to file its response to Qwest's Performance Assurance Plan (PAP) is denied.
- 21 (2) Any issues that the Commission believes are not adequately or completely addressed in the multi-state proceeding may be reviewed through additional fact finding and evidentiary hearings to be held in the state of Washington.
- 22 (3) Qwest must file with the Commission within one day of the date of this order all documents, including testimony or affidavits that Qwest filed in the multi-state proceeding concerning its PAP on June 29, 2001.
- 23 (4) The petition for late intervention of Z-Tel is granted for the limited purpose of participating in the review of Qwest's PAP.
- 24 (5) The Commission retains jurisdiction to implement the terms of this order.

DATED at Olympia, Washington and effective this day of August, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is an Interim Order, and, as such, is not subject to the post-Order review processes of the Administrative Procedure Act. The Commission will, however, entertain all requests for clarification or for revision of any substantial error of fact and law. Because the opportunity is afforded at this juncture, parties will be foreclosed from raising such matters on the issues resolved herein without a showing of good cause for failure to raise the matter at this time.