

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the
Implementation of the
Federal Communications Commission's
Triennial Review Order

DOCKET NO. UT-033025

STAFF'S COMMENTS ON
FORM OF DISCOVERY AND
QUESTIONS TO BE USED IN
THE 90-DAY AND NINE-
MONTH PROCEEDINGS

- 1 Staff submits the following comments in response to Judge Rendahl's September 30, 2003 Notice of Opportunity to File Comments Concerning Discovery Questions and Form of Protective Order.
- 2 The Commission asks for comments regarding the form of discovery and questions to be used in the 90-day and nine-month proceedings.
- 3 The means of discovery that are available to the parties in these proceedings are those that are set forth in the Commission's procedural rules, and in the state Administrative Procedure Act. *See* WAC 480-09-475 (subpoenas); WAC 480-09-480 (methods for obtaining data in adjudicative proceedings); RCW 34.05.446 (subpoenas, discovery, and protective orders). The Commission may choose whether to make data requests and depositions available by applying the criteria in WAC 480-09-480(2). The subpoena power is always available to parties to an agency adjudication. *Id*; RCW 34.05.446(1).
- 4 For the purpose of developing facts on its own initiative, the Commission possesses some mechanisms that are similar to those available to the parties, and one additional mechanism that is not available to parties. Just as parties may issue data requests to other parties, the Commission may make bench requests of parties. Additionally, just as attorneys for parties may issue subpoenas, the Commission may also issue subpoenas for the attendance of witnesses and the production of documents and testimony. RCW 80.04.020. Finally, under RCW 80.04.070, the Commission possesses authority to inspect the books, papers and documents of any public service company. Under that statute, the Commission could issue an order to non-party local exchange carriers to provide information

that the Commission deems necessary to the proceeding in the same manner it has done in recent competitive classification proceedings such as UT-000883 and ongoing docket UT-030614.

5 Subpoenas, whether issued by the Commission or by an attorney for a party, may be directed to persons or entities who are neither parties to the proceeding nor regulated public service companies.

6 As to the content of discovery, Staff believes that for the given time frames in which these proceeding must occur, the Commission should encourage the use of data requests that are uniform with those being utilized in other States. Staff favors the discovery questions developed by the NARUC Triennial Review Implementation subgroup (TRIP) because the draft questions were specifically developed for use by the States. Staff understands that Qwest and some of the CLECs will be meeting to see if agreement can be reached on discovery questions. If Qwest and the CLECs agree to a set of discovery questions that are different than the TRIP questions, Staff likely would not object to those questions being substituted for use in the proceeding.

7 The Commission should also consider asking the CLECs to identify those questions which will require them to provide highly sensitive competitive information and consider having Staff aggregate that information by market for use in the proceeding as Staff did in the recent Qwest competitive classification proceeding.

Respectfully submitted, this 3rd day of October, 2003.

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