

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

QWEST'S COMMENTS REGARDING
PROPOSED WRITTEN DISCOVERY

The Triennial Review proceeding presents an unprecedented series of hearings that require unprecedented discovery. The ultimate questions the Washington Utilities and Transportation Commission ("Commission") must decide are all fact intensive and require the collection of information from all members of the telecommunications industry throughout Washington. The data, experiences, facilities and business plans of all carriers are germane to one or more of the Triennial proceedings irrespective of whether the carrier intervenes in one of the Triennial proceedings. These matters are complicated by the short time frames the FCC has provided the Commission to complete these proceedings: 90 days and 9 months. Thus, creating a vehicle to obtain prompt discovery from both parties and third-parties is central to the Commission's ability to fulfill its mandate of determining whether impairment exists in certain markets. These comments identify the discovery that Qwest believes it needs of all telecommunications carriers in Washington.

I. DISCOVERY IS CENTRAL TO THE TRIENNIAL PROCEEDINGS

As Qwest informed the Commission on September 26, 2003, Qwest will initiate a mass

1 market switching case in Washington. Since September 26, Qwest has made the decision that it
2 will not bring a high capacity loop case. Qwest is still evaluating whether it will initiate a
3 dedicated transport case. It is not yet clear whether any CLEC will initiate a 90-day case.

4 Written discovery will be critical to each of these proceedings. Based on discussions at the
5 September 25 prehearing conference, it appears the Commission has already decided to utilize a
6 five-business day response time for written discovery. This time frame is appropriate. It is just as
7 important, however, that the Commission issue the written discovery so the discovery has the
8 imprimatur and urgency of the Commission behind it. This will help the parties avoid many
9 potential discovery disputes that could arise and unnecessarily delay the proceedings.

10 **A. Qwest Needs Significant Written Discovery to Support its 9-Month Case**

11 Qwest spent a significant amount of time and effort to develop the written discovery that it
12 believes is necessary for all aspects of this case. Qwest submitted that discovery in this docket on
13 September 16, 2003. Since that time, however, Qwest refined this written discovery even further.
14 First, there is a series of questions that Qwest needs answered from everyone in the industry for the
15 9-month case. *See Exhibit 1*. Second, given that Qwest will not initiate a high capacity loop case,
16 it has removed questions concerning that subject from its template. If Qwest elects not to initiate a
17 dedicated transport case, general questions will not be necessary either (*Exhibit 1 at Questions 7-*
18 *14*). The remaining questions concern (1) placement and use of switches in the market, which
19 evidence goes to both triggers and barriers to entry (*Exhibit 1 at Questions 1-6 & 20-30*); (2)
20 operational issues identified by the FCC (*Exhibit 1 at Questions 65-70*); (3) economic issues
21 identified by the FCC (*Exhibit 1 at Questions 32-64*); and (4) the state of competition in
22 Washington (*Exhibit 1 at Questions 15-19 & 31*). All of these issues are central to the issues
23 identified by the FCC and the questions addressing these issues constitute permissible discovery
24 under WAC 480-09-480 as they certainly could (and will) “lead to the discovery of admissible
25 evidence.” Qwest crafted each question with some aspect of the FCC’s Triennial Review Order in
26 mind. Rather than going through each question here, Qwest will be prepared to defend each

1 question at the October 9, 2003 pre-hearing conference.

2 **B. If Qwest Must Defend a 90-Day Case, it Will Need Written Discovery**

3 In the 90-day case, the Commission's assigned task is to determine whether competitive
4 local exchange carriers ("CLECs") are "impaired" without access to switching at the DS1 level or
5 above. In the Triennial Review Order ("TRO"), the FCC defined impairment as follows:

6 We find a requesting carrier to be impaired when lack of access to
7 an incumbent LEC network element poses a barrier or barriers to
8 entry, including operational and economic barriers, that are likely to
9 make entry into a market economic. That is, we ask whether all
potential revenues from entering a market exceed the costs of entry,
taking into consideration any countervailing advantages that a new
entrant may have.

10 (TRO, ¶ 84). To determine whether the potential revenues from entering a market exceed the
11 costs of entry (including the cost of switching), the Commission will have to know what those
12 potential revenues are. Said another way, the Commission will need to determine the total amount
13 of revenue CLECs could receive each year from the provision of telecommunications services in a
14 given market.

15 In addition to information about industry revenues, there are various other categories of
16 information Qwest needs to collect from all Washington telecommunications providers
17 participating in the 90-day case. For example, the Commission needs to know whether switches
18 have been self-provisioned by CLECs; the capabilities of those switches; and the geographic reach
19 of the switches. This information is all in the control of the CLECs who have deployed switches.

20 Attached as Exhibit 2 is a set of questions directed to CLECs that covers the primary issues
21 involved in the 90-day case. The Commission should issue these questions to any CLEC
22 participating in a 90-day case.

23 **C. The TRIP Discovery Should Not Be Issued**

24 On September 26, 2003, Administrative Law Judge Ann Rendahl circulated template
25 discovery drafted by TRIP and asked the parties for comments on the propriety of using this
26 discovery in the 9-month case. Qwest is strongly opposed to use of these requests. The TRIP

1 requests for information consist of approximately one hundred ninety requests excluding subparts.
2 Most of the questions are directed to the ILEC, in this case Qwest. If the entire set were served on
3 all parties, discovery would become needlessly complicated. Even if the questions were answered
4 in their entirety only a small portion of the information actually needed for the 9-month case would
5 actually be obtained. The TRIP questions simply do not elicit the information that is central to the
6 case.

7 The most significant failing of the TRIP requests is the failure to request information
8 concerning CLEC revenues and costs. CLEC revenues and costs go to the very heart of whether
9 there is impairment. Unless a trigger is satisfied, one cannot determine whether there is a barrier
10 to entry under the FCC's definition of impairment without information concerning whether actual
11 and potential CLEC revenues exceed the costs of entry. Only one of the TRIP requests to CLECs
12 and ILECs concerns CLEC revenues (No. 6), and it is a very narrow. Furthermore, there is only
13 one question that addresses the cost of switching (No. 7) and it only addresses the initial cost of
14 the switch.

15 Furthermore, the TRIP requests provide limited coverage on mass market switching.
16 While mass market switching will be the main focus of the TRO proceedings, only twenty-five of
17 the one hundred ninety questions are directed to CLECs. Of the twenty-five switching questions
18 directed to CLECs, fifteen concern wholesale switching which is likely to be secondary to self-
19 provisioned switching. The remaining questions do not address other relevant issues, such as
20 customer churn.

21 Finally, the TRIP requests do not cover enterprise switching adequately. The TRO makes
22 plain that switches used to serve enterprise class customers are germane to the determination of
23 impairment. (TRO, ¶508). Very few of the TRIP nine-month requests seek detailed information
24 necessary to determine independently of the FCC whether CLECs can transition their enterprise
25 class switches to the mass market. These are just a few examples of the problems within the TRIP
26 questions. Simply, the TRIP questions do not elicit the information necessary for the Commission

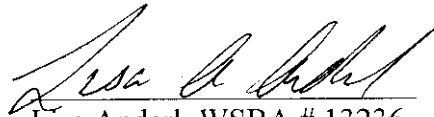
1 to make a determination about impairment, and request much information that is irrelevant to the
2 ultimate questions presented by the 9-month case.

3 **II. CONCLUSION**

4 The Commission should issue the discovery questions propounded by Qwest and as
5 attached to this document. These questions are a subset of the questions already circulated in this
6 case on September 11, 2003. These questions will help the Commission make the detailed
7 determinations required by the TRO. In contrast, the TRIP questions are in many instances
8 unimportant to the analysis the Commission must decide. Finally, Qwest requests that the
9 Commission propound *Exhibit 1* upon each and every carrier conducting telecommunications
10 business in the state of Washington. This will ensure a greater likelihood of responses, without
11 requiring Qwest to issue a multitude of subpoenas.

12 RESPECTFULLY SUBMITTED this 3rd day of October, 2003.

13 QWEST

14 

15 Lisa Anderl, WSBA # 13236
16 Adam Sherr, WSBA # 25291
17 Qwest
18 1600 7th Avenue, Room 3206
19 Seattle, WA 98191
20 Phone: (206) 398-2500

21 Charles W. Steese
22 STEESE & EVANS, P.C.
23 6400 South Fiddlers Green Circle
24 Suite 1820
25 Denver, CO 80111
26 Phone: (720) 200-0677

Attorneys for Qwest Corporation