

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET NO. UT-033044
)	
QWEST CORPORATION	)	ORDER NO. 09
)	
To Initiate a Mass-Market	)	PREHEARING CONFERENCE
Switching and Dedicated Transport	)	ORDER; ORDER GRANTING IN
Case Pursuant to the Triennial	)	PART AT&T's MOTION, GRANTING
Review Order	)	QWEST'S MOTION; PROVIDING
	)	OPPORTUNITY TO RESPOND TO
	)	MOTION FOR SUMMARY
	)	JUDGMENT; ESTABLISHING
	)	BRIEFING SCHEDULE
)	
	)	(Answers due by Noon, Friday,
	)	February 13, 2004, Replies due by
	)	Noon, Wednesday, February 25,
.....	)	2004)

1 **SYNOPSIS.** *In this Order, the Commission grants in part AT&T's motion to strike, or in the alternative, to extend time for discovery, approving an agreement of the parties allowing supplemental responsive testimony to be filed on Friday, February 20, 2004, on the narrow issue of the revised direct testimony and exhibits of Qwest's witness Ms. Torrence. The Commission grants Qwest's motion for an exception to the masking requirements in Order No. 05 for a particular exhibit. The Commission also provides an opportunity to respond to Covad's Motion for Summary Judgment and establishes a briefing schedule to allow the matter to be fully briefed prior to the hearings scheduled to begin on March 1, 2004.*

2 **NATURE OF THE PROCEEDING.** This proceeding addresses a petition filed by Qwest Corporation (Qwest) seeking review of the findings of the Federal Communications Commission (FCC) in its Triennial Review Order¹ concerning

¹ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos.*

impairment to competitors without unbundled access to mass-market switching and dedicated transport.

3 **PROCEDURAL HISTORY.** On October 10, 2003, Qwest filed a petition with the Washington Utilities and Transportation Commission (Commission) in Docket No. UT-033044 to initiate a review of the FCC's findings in the Triennial Review Order concerning mass-market switching and dedicated transport.²

4 On January 27, 2004, AT&T Communications of the Northwest, Inc. and AT&T Local Services, d/b/a TCG Seattle and TCG Oregon (AT&T) filed with the Commission a Motion to Strike Certain Qwest Filings, or in the alternative, to Extend the Time for Discovery. On January 28, 2004, Qwest filed with the Commission a Motion for an Exception to the Masking Requirement in Order No. 05 and Request for Expedited Resolution. By notices dated January 28 and 29, 2004, the Commission scheduled a prehearing conference for Friday, January 30, 2004, to address both motions, allowing an opportunity for written and oral responses.

5 On Friday, January 30, 2004, Covad Communications Company (Covad) filed with the Commission a Motion for Summary Judgment on Qwest's dedicated transport case.

6 **Appearances.** Lisa A. Anderl and Adam L. Sherr, attorneys, Seattle, WA, and Chuck Steese, attorney, Denver CO, represent Qwest Corporation (Qwest). Rebecca DeCook and Richard Wolters, attorneys, Denver, CO, represent AT&T. Brooks E. Harlow and David L. Rice, attorneys, Seattle, WA, and Karen S. Frame, Attorney, Denver, CO, represent Covad. Stephen S. Melnikoff, attorney, Arlington, VA, represents the Department of Defense and all other Federal Executive Agencies (DOD/FEA). Gregory J. Kopta, attorney, Seattle, WA, and J. Jeffrey Oxley and Dennis J. Ahlers, attorneys, Minneapolis, MN, represent Eschelon Telecom, Inc. (Eschelon). Gregory J. Kopta, attorney, Seattle, WA, represents Advanced TelCom Group, Inc. (ATG), Global Crossing Local Services, Inc. (Global Crossing), Integra TelCom, Inc. (Integra), McLeod Local Services,

01-338, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. August 21, 2003) [Hereinafter "Triennial Review Order"].

² A summary of earlier procedural history in this docket is set forth in Order Nos. 05 and 06 in this proceeding and will not be repeated in this Order.

Inc. (McLeod), Pac-West Telecomm, Inc. (Pac-West), Time Warner Telecom of Washington, LLP (Time Warner), and XO Communications, Inc. (XO). Together with Eschelon, these parties are referred to as the Joint CLECs. Michel Singer Nelson, attorney, Denver, CO, and Lisa Rackner, attorney, Portland, OR, represent WorldCom, Inc, d/b/a MCI, Inc. (MCI). Brooks E. Harlow and David L. Rice, attorneys, Seattle, WA, represent the Northwest Competitive Communications Coalition (NWCCC). Arthur A. Butler, attorney, Seattle, WA, and Lisa Rackner, attorney, Portland, OR, represent WeBTEC. Jonathan Thompson and Gregory Trautman, Assistant Attorneys General, Olympia, WA, represent Commission Staff. Simon J. ffitich and Robert Cromwell, Assistant Attorneys General, Seattle, WA, represent Public Counsel.

- 7 **AT&T'S MOTION.** In its motion, AT&T objects to Qwest's submittal on January 16, 2004, of revised Exhibit RT-9HC to the testimony of Qwest witness Rachel Torrence several weeks after the deadline for the submittal of Qwest's primary case in this docket. AT&T asserts that the revised exhibit contains new routes and carriers not contained in the original exhibit, and that AT&T is substantially prejudiced by the new information presented by Qwest. AT&T requests the Commission strike the revised exhibit, or allow AT&T, and presumably all other parties, an extension of time to file Round 2 or responsive testimony from February 2, 2004, to February 20, 2004.
- 8 On January 29 and 30, 2004, Commission Staff and MCI filed letters with the Commission supporting AT&T's motion. On January 30, 2004, Qwest filed a letter with the Commission stating that AT&T and Qwest had reached a resolution of the issues. On January 30, 2004, the Joint CLECs proposed an alternative resolution to the matter.
- 9 During the January 30, 2004, conference, the parties agreed to the resolution reached by AT&T and Qwest, as follows: AT&T will coordinate discovery concerning the revised testimony and exhibits of Ms. Torrence. Qwest will provide discovery responses by February 16, 2004. Any party may file supplemental responsive testimony concerning the narrow issue of Ms. Torrence's revised testimony and exhibits by February 20, 2004. The Commission will determine during the hearing whether oral rebuttal testimony on this very narrow issue is necessary or appropriate.

- 10 **QWEST'S MOTION.** Order No. 05 in this proceeding requires parties to mask identities of competitive local exchange carriers (CLECs) in any highly confidential information submitted in the proceeding. Qwest seeks an exception to this requirement for one exhibit – Exhibit DP/LN-20. Qwest proposes to submit the exhibit as highly confidential, but without masking CLEC identities. Qwest explains that masking is difficult to accomplish due to the way the spreadsheet is constructed, the data is regional, and that only one CLEC operating in Washington is reflected on the exhibit. There are no alpha-numeric codes for the other CLEC's listed on the exhibit. During the hearing, Qwest asserted that the exhibit has already been filed without masking codes in other states in Qwest's region.
- 11 No party objected to Qwest's motion, and the motion was granted during the conference. Qwest was directed to file the exhibit with the Commission as highly confidential on Monday, February 2, 2004.
- 12 **COVAD'S MOTION.** In its summary judgment motion, Covad alleges that Qwest failed to support its case with evidence that CLECs are actually offering dedicated transport facilities on a wholesale basis as the FCC requires in the Triennial Review Order. Covad alleges that the testimony and exhibits of Qwest's witness Ms. Torrence assume that these conditions exist, but do not provide factual evidence,
- 13 **BRIEFING SCHEDULE.** Pursuant to WAC 480-07-380(2)(b), parties must file motions for summary judgment at least thirty days prior to the next applicable hearing session. Covad has complied with this requirement. Under WAC 480-07-380(2)(c), answers to motions for summary judgment or cross motions must be filed within twenty days after the motion is served, unless the Commission establishes by order a different date for such motion to be filed. The Commission establishes the briefing schedule set forth below to allow the matter to be fully briefed prior to the hearings scheduled to begin on March 1, 2004.

Answers/Cross Motions:

**Friday, February 13, 2004, by
Noon**

Replies/Answers to Cross Motions:

**Wednesday, February 25, 2004,
by Noon**

- 14 Given the shortened time for responses, parties may file answers, cross motions, replies, and answers to cross motions with the Commission electronically or via facsimile pursuant to WAC 480-07-145(6). **Parties must file an original and seven copies of these pleadings with the Commission on the business day following the date of electronic filing.**
- 15 **OTHER PROCEDURAL ISSUES.** During the conference, the parties were reminded of the requirement in Order No. 01 that **cross examination exhibits, exhibit lists, witness lists, and estimated times for cross examination must be filed with the Commission by Noon on February 23, 2004.** In addition, parties were reminded of the change in location of the prehearing conference scheduled for February 24, 2004, from Room 206 to Room 108, and that **parties must advise Kippi Walker of ALD staff (360-664-1139) by February 17, 2004, of the party's wish to participate in the conference via teleconference bridge facilities.**
- 16 Qwest requested a limitation on additional discovery following the filing of responsive testimony on February 2, 2004, specifically a time limitation and limitation on the number of discovery questions posed. The parties agreed to try to reach agreement on the issue and will bring the matter back to the Commission if no agreement is reached.
- 17 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 3rd day of February, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge