

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
VERIZON NORTHWEST, INC.
FOR waiver of WAC 480-120-071(2)(a).

Docket No. UT-011439

COMMISSION STAFF'S
RESPONSE IN OPPOSITION TO
QWEST'S MOTION TO JOIN RCC
MINNESOTA, INC. AS A PARTY

On June 20, 2002, Qwest filed a motion to join RCC Minnesota, Inc, as a party to this proceeding. The motion should be denied. This motion comes much too late and as a result it jeopardizes the timely provision of services to which Ms. Taylor and Mr. Nelson are reasonably entitled. The time for this motion, either by Qwest or Verizon, which states it supports Qwest's motion, was in February, not 25 days before the hearing. The only result of granting such a motion will be a significant delay in a case in which Ms. Taylor and Mr. Nelson have sought service since February 2001 and Mr. Nelson since June 2001.

A. The Time for this Motion in February, Not on the Eve of the Hearing.

This proceeding concerns a petition for a waiver of the obligation to provide a line extension pursuant to WAC 480-120-071(7). That section sets forth factors, in subsection (7)(b)(ii)(A) through (G), which the Commission may consider in determining whether an applicant for service is reasonably entitled to service, or whether instead a waiver should be

granted. One of the factors the Commission may consider is “[t]he comparative price and capabilities of radio communication service or other alternatives available to customers.” 480-120-071(7)(b)(ii)(C).

The prehearing conference in this case was held January 22, 2002. Very shortly thereafter, on February 1, 2002, Commission Staff filed a motion to join Qwest as a party, for the express purpose of possibly requesting the Commission to adjust the exchange boundary line and require Qwest to provide service. The Commission’s line extension rule was in effect at that time, and Qwest was aware of its provisions.

If, in fact, Qwest believed that wireless companies (not just RCC Minnesota, but any others as well, perhaps including Americell, AT&T Wireless, or Verizon Wireless) should be joined in this proceeding, Qwest had ample opportunity to raise this issue in its response to Staff’s motion to join Qwest as a party. Qwest responded to Staff’s motion on February 22, 2002. Qwest opposed its being joined as a party. But clearly, Qwest could then have asserted, as a defense to its having to provide service, that *if* Qwest were to be joined, that any other wireless company (including RCC Minnesota) should also be joined in this proceeding to determine “the comparative price and capabilities of radio communication service or other alternatives available to customers.” In other words, the issue of wireless service, and its relevance as a factor to be considered in determining whether companies are obligated to provide line extensions, under the Commission’s rule, did not suddenly become an issue on June 20, 2002.¹

Qwest and Verizon have participated in another proceeding in which RCC was made a party, as was Verizon Wireless and AT&T Wireless. In Docket No. UT-003106, those wireless

¹Ms. Taylor has chosen cellular service from Americell and AT&T Wireless. See Taylor Deposition at 18 and 19. Nelson has chosen cellular service from Verizon. See Nelson

companies were made parties to a proceeding along with Qwest, Verizon, and CenturyTel to designate a common carrier to serve Moses Coulee.² Qwest and Verizon thus knew in February of this year that they could move to join cellular companies as parties. No relevant federal or state law, or commission rule has changed since January; either or both of these companies could have made a timely motion but neither of them did so.

B. RCC's ETC Status Does Not Change Issue of Timing

WAC 480-120-071(C) does not distinguish between CMRS companies that are eligible telecommunications carriers and those that are not. There is nothing about RCC's status as an ETC that changes its "comparative price and capabilities." If Qwest or Verizon wanted to determine facts about RCC's service, or Americell's, AT&T Wireless', or Verizon Wireless' service, the time to move to join any or all of them was before it would jeopardize the possibility of a timely hearing and Order that will lead to service in 2002.

C. Even if Qwest Did Not Move to Include RCC in February, Then It Should Have Done so Prior to June 20, 2002.

As is clear from the plain language of the rule, ETC status is not an issue in interpretation of 480-120-071(C). Qwest should have made its motion in January, but even if it was not obligated to do so until it was named a party itself, it should have named RCC immediately.

When it was named a party On May 31, 2002, it was presented with a schedule with an evidentiary hearing July 8. It should have acted immediately to move to join others parties if that is what it desired to do.

Deposition at 23. Qwest was present for the Taylor deposition and participated in the Nelson deposition, both held on February 27, 2002. See Nelson Deposition at 32.

²The proceeding later settled, with Century Tel agreeing to extend facilities and provide service. Docket UT-003016 (Second Supplemental Order).

Qwest did not move to join RCC or any other CMRS company, but did participate in discussions concerning a revised hearing date. Between June 7 and June 14, when the Commission considered a Petition from RCC for designation as an ETC, Qwest did not file a motion to include RCC as a party. At the prehearing conference on June 17, 2002, Qwest did not file a motion or make an oral motion to include RCC as a party. Not until June 20, 2002, facing the same hearing dates proposed by the ALJ on June 7, did it file a motion to join RCC.

Qwest had from January to May 31 to consider its approach to this case if it were named a party, and from May 31 to June 14 to consider joining RCC before it became aware of RCC's change of status, a change that is immaterial to 480-102-071(7)(b)(ii)(c). Ms. Taylor and Mr. Nelson should not have to wait months for a hearing and decision, and the turning of another year, before having this important issue addressed because Qwest did not take advantage of the time it had, and the knowledge it had from UT-003106, to make a timely motion to join RCC.

D. RCC's ETC Status Does Not Obligate It to Serve Ms. Taylor or Mr. Nelson; It is Obligated to Offer Its Service and Neither Ms. Taylor Nor Mr. Nelson Has Requested Service from RCC.

RCC, just like Verizon and Qwest in areas where they are ETCs, must “throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier).[.]” 47 U.S.C. § 214(e)(1). RCC offers its services, but neither Qwest nor Verizon states that Ms. Taylor or Mr. Nelson has requested them, and the evidence to the contrary is substantial.

Ms. Taylor and Mr. Nelson have requested wireline service. RCC does not offer wireline service, but Qwest and Verizon do. Ms. Taylor and Mr. Nelson have requested cellular service from other companies, but not from RCC.

Ms. Taylor has requested service from Verizon. Mr. Nelson has requested service from Verizon, and also indicated that he thought his request might lead to a trade between Qwest and Verizon because each are facing circumstances in which it has the obligation but the other has facilities closer to the customers. Staff explained this in the Open Meeting memo:

Mr. Nelson told Staff that he made his request when he learned about the change in the service extension rule because he would like telephone service at his home and, in part, because of a service request made by residents near Turtle Lake in central Okanogan County. While those homes are located in Qwest exchange territory and it has facilities about 10 miles away, Verizon has facilities approximately one mile away. Qwest, Nelson told Staff, asked Verizon to serve the area and it declined. Mr. Nelson, in addition to desiring service to his home, thought his request might create the circumstances under which a trade of territory could be made between Qwest and Verizon, with Verizon taking the territory around Turtle Lake and Qwest taking the territory where Timm Road dips into Verizon's Bridgeport exchange.

Staff Open meeting Memo at 4.

Mr. Nelson has clearly expressed an interest in Qwest service, even though his formal request was to Verizon because he knows his home is located in Verizon territory.

RCC meets its obligations as an ETC by offering service, not by forcing people to accept it. It has offered its service for many years in the Bridgeport exchange and neither Ms. Taylor nor Mr. Nelson has requested it.

E. The Commission Should Have Ample Opportunities to Address Wireless Carrier or ETC-Related Issues, When These Issues are Properly Presented to It in a Timely Fashion

The Commission should reject Qwest's motion at this late date to join RCC Minnesota as a party to this case. To join RCC now would require additional significant disruption and delay to the procedural schedule established, and would unfairly prejudice both Ms. Taylor and Mr.

Nelson, who have each waited more than a year to obtain service. However, the Commission should, in any event, have ample opportunity to address wireless carrier or ETC-related issues in the near future. Commission Staff is currently working informally on several cases involving these issues; any of these may serve as a forum for the Commission to address these issues, in an orderly and timely manner.

CONCLUSION

For the reasons set forth above, Commission Staff asks that the Commission deny Qwest's June 20, 2002, Motion to Join RCC Minnesota, Inc. as a party in this case.

DATED this 3rd day of July, 2002.

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