

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	Docket No. UT-033044
QWEST CORPORATION	)	
	)	
To Initiate a Mass-Market Switching	)	AT&T'S RESPONSE TO QWEST'S
and Dedicated Transport Case	)	MOTION TO STRIKE AT&T
Pursuant to the Triennial Review	)	TESTIMONY REGARDING
	)	ELECTRONIC LOOP PROVISIONING
_____	)	

AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") respond to Qwest's motion to strike portions of the direct testimony of AT&T's witness, Robert V. Falcone, concerning Electronic Loop Provisioning ("ELP"). Qwest filed its motion on Friday, February 6, and the Administrative Law Judge conducted a hearing on the motion on Tuesday, February 10. AT&T submits this written response in addition to the arguments it made at the ALJ's hearing. The Commission should deny Qwest's motion to strike for the following reasons:

1. Mr. Falcone's ELP testimony is relevant to this proceeding because AT&T's ELP proposal provides a benchmark against which Qwest's batch hot cut process can be measured. AT&T's ELP proposal demonstrates the level of performance a batch hot cut process must achieve in order to cure the impairment found by the Federal Communications Commission ("FCC").

2. The FCC gave state commissions wide discretion to develop solutions to the hot cut impairment problem. Although the FCC did not adopt AT&T's ELP proposal at the federal level, the Triennial Review Order ("TRO") does not prohibit

state commissions from considering and comparing ELP to Qwest's batch hot cut proposals and adopting ELP. The FCC stated the batch process should provide customers of competitive local exchange carriers ("CLECs") with the same experience as Qwest's customers, and AT&T's ELP proposal provides an effective guide to the level of performance needed to reduce impairment. Mr. Falcone's ELP testimony is relevant to this Commission's batch hot cut analysis, even if the Commission does not adopt AT&T's ELP proposals.

3. The FCC identified a number of inherent difficulties in the incumbent local exchange carriers' ("ILECs") current hot cut processes (TRO, ¶422) and recognized those barriers are the result of the ILECs' historical local monopoly. TRO, ¶465. The FCC also recognized that customers feel these deficiencies and CLECs are likely to lose customers as a result of these problems. TRO, ¶¶ 466.

4. In contrast to the current batch hot cut proposals by the ILECs (which involve the physical and manual transfer of a customer's line from an ILEC to a CLEC switch), the FCC recognized that when an ILEC connects and disconnects a customer, it makes an efficient software change, as opposed to a manual change. TRO, ¶465. The FCC directed states to review evidence of reliable performance and implement a batch hot cut process that is *as efficient* as the ILECs own process. TRO, ¶ 512 fn. 1574 (state commissions should ensure that ILEC to CLEC transfers are made "as promptly and as efficiently as" ILEC transfers using unbundled local switching).

5. Although a batch hot cut process may mitigate impairment, it will not eliminate the current state of impairment. TRO, ¶¶423, 475. Indeed, the FCC recognized that CLECs could continue to be impaired after implementation of the batch

hot cut process required by the TRO. TRO, ¶¶512, 526 (requiring continuing review of impairment). Mr. Falcone’s ELP testimony is relevant not only to measure Qwest’s batch hot cut proposals, but also to identify a remedy to the impairment that will continue if Qwest’s proposals are adopted and implemented.

6. In its motion to strike, Qwest relies on the FCC’s determination that “an ELP process, to be effective, would require significant and costly upgrades to the existing local network . . .” Qwest’s Motion to Strike at ¶3 (quoting TRO, ¶491). However, the FCC based its order solely on the record that it reviewed. The TRO, which requires a state-specific and more granular analysis than the study conducted at the federal level, does not prohibit states from examining the benefits of ELP in the context of this case. In fact, the FCC specifically noted it would reexamine ELP if the hot cut processes it mandated do not adequately handle necessary volumes. TRO, ¶491.

7. Next, Qwest cites SBC’s suggestion that the ELP proposal would be costly. Qwest’s Motion to Strike at ¶3 (citing TRO, ¶491). SBC estimated that the entire cost to implement ELP could be greater than \$100 billion. TRO, ¶491 fn. 1524. This was a single, nationwide estimate of costs; and, although the FCC cited this estimate in the TRO, it does not reflect the cost that Qwest would incur. More importantly, regardless of SBC’s cost estimate, ELP’s performance levels are relevant to this proceeding as a comparison to Qwest’s batch hot cut proposals.

8. Qwest also cites the Oregon ALJ’s decision removing ELP from the Oregon issue list. The Oregon ALJ’s decision was based on the “extensive amount of work” that needs to be done in the proceeding without the addition of the ELP issue, not on a determination that ELP was irrelevant. *See* Qwest’s Motion to Strike at ¶8 (quoting

Transcript of Oregon Prehearing Conference). The Oregon Commission has scheduled one week of hearings in this case, while the Washington hearing is scheduled for two weeks. There is adequate time in this proceeding to compare Qwest's batch hot cut proposal to ELP.

### **CONCLUSION**

9. The FCC decided not to adopt ELP at the time it heard the case, based on the record in its proceeding. However, the TRO does not prohibit states from considering or even adopting ELP. Instead, the FCC directed state commissions to "approve and implement a batch cut migration process – a seamless, low-cost process for transferring large volumes of mass market customers . . ." TRO, ¶423. ELP is relevant to this proceeding because it provides a useful measure of the performance of Qwest's hot cut proposal. AT&T is not asking the Commission to adopt and implement ELP in this proceeding, but the Commission should receive testimony describing ELP because that testimony is relevant to the adequacy of Qwest's proposal and the Commission's analysis. In addition, the Commission should open a separate proceeding to investigate whether Washington should require ELP as a long-term solution, to eliminate the current and future impairment created by the batch hot cut process.

AT&T respectfully requests that the Commission deny Qwest's motion to strike portions of Mr. Falcone's testimony.

Respectfully submitted this 11th of February, 2004.

**AT&T COMMUNICATIONS OF THE  
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