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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

TEL WEST COMMUNICATIONS, LLC

Petitioner

v.

QWEST CORPORATION, INC.

Respondent.

Docket No. UT-013097

QWEST CORPORATION'S MOTION TO
SUSPEND THE PART B PROCEDURAL
SCHEDULE AND NARROW THE ISSUES

[PROVISIONING PARITY ISSUES]

I. INTRODUCTION

Qwest Corporation, by and through its undersigned counsel, hereby requests the Commission to enter an order (a) suspending the current procedural schedule pending entry of a final order in Dockets UT-003022 and UT-003040 (the "271 dockets") regarding the hearings currently scheduled for April 22-26, 29-30 and May 13-17, 2002 (the "April/May hearings") and (b) narrowing the issues in this phase of the docket. Qwest believes that this request is reasonable and necessary to conserve the resources of the Commission and the parties in light of the fact that the same fundamental issues of fact and law are being examined by the Commission in the April/May hearings in the 271 dockets.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Part A

This Section 530 (WAC 480-09-530) adjudication was bifurcated by the Administrative Law Judge on January 31, 2002. *Second Supplemental Order, at ¶ 18.* Part A involves Tel West's

1 complaint that Qwest is not complying with the terms of the parties' current interconnection agreement by
2 (a) not providing Tel West basic local exchange lines free of access to operator services and directory
3 assistance without charging Tel West for available blocking products, and (b) failing to expeditiously
4 investigate and respond to Tel West's numerous monthly billing disputes. An evidentiary hearing and oral
5 argument were conducted in Part A on March 11 and 12, 2002.

6 **B. Part B**

7 Part B involves Tel West's concerns that Qwest is violating Section 6.2.3¹ of the parties'
8 interconnection agreement by not providing telecommunications services to Tel West of the same quality
9 or in substantially the same time and manner as it provides to itself and its customers. Section 4.66 of the
10 interconnection agreement defines "telecommunications services" as "the offering of telecommunications²
11 for a fee directly to the public, or to such classes of users as to be effectively available directly to the
12 public, regardless of the facilities used."

13 Tel West uses Section 6.2.3 as a springboard to argue that Qwest's wholesale customer service
14 infrastructure (which apparently Tel West contends is a telecommunications service) is inadequate relative
15 to its retail customer service infrastructure. *Amended Petition, at ¶ 28-30*. This, Tel West alleges,
16 reflects a different quality of telecommunications service.

17 Tel West also argues that Qwest's operations support systems ("OSS") are inadequate.
18 *Amended Petition, at ¶ 18-21*. This, Tel West alleges, reflects that Qwest is not providing
19 telecommunications services in substantially the same manner as it provides to itself and its customers.

20 Lastly, Tel West argues that Qwest is not provisioning service to Tel West's customers as quickly

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22 ¹ Section 6.2.3 provides:

23 Qwest shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and
24 in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries,
25 its affiliates, other resellers, and Qwest's retail end users. Qwest shall also provide resold services to
CLEC in accordance with the Commission's retail service quality requirements, if any. Qwest further
agrees to reimburse CLEC for credits or fines and penalties assessed against CLEC as a result of Qwest's
failure to provide service to CLEC, subject to the understanding that any payments made pursuant to
this provision will be an offset and credit toward any other penalties voluntarily agreed to by Qwest as
part of a performance assurance plan, and further subject to the following provisions***

26 ² The Telecommunications Act defines "telecommunications" as "the transmission, between or among points
27 specified by the user, of information of the user's choosing, without change in the form or content of the information
as sent and received." 47 U.S.C. § 153(43)

1 as it is provisioning service to its own customers. *Amended Petition, at ¶ 13-17.* This, Tel West
2 alleges, reflects that Qwest is not providing telecommunications services in substantially the same time as it
3 provides to itself.

4 An evidentiary hearing for Part B is currently scheduled for May 6 and 7, 2002. The Part B
5 procedural schedule was discussed and informally adopted on March 1, 2002.³ That schedule, as
6 modified on March 12, calls for: Tel West to serve discovery by March 14; Qwest to respond one week
7 later; Tel West to file direct testimony on March 25; Qwest to serve discovery on April 2; Tel West to
8 answer discovery on April 9; Qwest to file responsive testimony on April 19; Tel West to serve additional
9 discovery on April 23; Qwest to respond on April 30; a prehearing conference on May 2; both parties to
10 file prehearing briefs on May 3; and evidentiary hearings on May 6 and 7. *Fourth Supplemental Order,*
11 *at ¶ 4.*

12 **C. Dockets UT-003022 and UT-003040; April/May Hearings**

13 Simultaneously to the hurried preparation of Part B, Qwest, CLECs, Public Counsel and the
14 Commission will be conducting the April/May hearings in the 271 dockets before all three Commissioners
15 and the Administrative Law Judge.⁴ Those hearings pertain to identical issues as Tel West is attempting to
16 litigate in Part B, namely Qwest's provisioning performance (including metric OP-4C) and the efficacy
17 and sufficiency of Qwest's OSS. Tel West's Part B issues are all issues to be considered at the
18 April/May hearings.

19 Unlike Tel West's anecdotal evidence of "contractual violations" by Qwest in these areas, the
20 April/May hearings will involve an evidentiary and analytical record that has been developed over the
21 course of two years. The lengthy performance data collection and OSS test processes are described

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23 ³ Anticipating Tel West's argument, Qwest did agree with Tel West's proposed Part B procedural schedule at the
24 March 1 telephonic prehearing conference. However, at the time, Qwest was concentrating all its resources on
25 preparing for the March 11 and 12 Part A evidentiary hearing. With additional time to consider the reasonableness of
proceeding in Part B immediately, Qwest now believes the issue should be revisited. Qwest also notes that at the
March 12 oral argument, Tel West similarly acknowledged making an unrealistic commitment (regarding the date on
which it would propound discovery to Qwest for Part B) at the March 1 conference because its focus was,
understandably, on preparing for the Part A hearing.

26 ⁴ Attached hereto as Exhibits A and B are copies of the Commission's January 22, 2002 Notice of Proposed
Schedule/Notice of Prehearing Conference and February 8, 2002 27th Supplemental Order in the 271 dockets. Those
documents set out the issues to be considered and the schedule for the April/May hearings.

1 below to demonstrate the complexity of the issues and the exhaustive effort that has gone into bringing
2 these matters forward for determination by the Commission in the 271 dockets.

3 **1. Qwest's OSS Test**

4 The Regional Oversight Committee ("ROC") was convened by 13 of the 14 states in Qwest's
5 local service region to design an overall plan for ensuring that Qwest's OSS and related databases and
6 personnel are available to CLECs in an open and non-discriminatory manner.⁵ The rationale for
7 subjecting Qwest's OSS to the ROC process (as opposed to evaluating Qwest's OSS on a state-by-
8 state basis) was to encourage collaboration among the states and ensure that all CLECs – whether they
9 serve a small area or cover Qwest's entire region – are provided with non-discriminatory access to
10 Qwest's OSS.

11 As part of the testing process, the ROC created the Technical Advisory Group ("TAG") to
12 handle the day-to-day operations of the test. The ROC TAG is a collaborative forum comprised of –
13 and open to – representatives of the ROC, Commission staff, test vendors, CLECs, industry associations,
14 consumer groups and Qwest. The purpose of the TAG is to enable the parties to work together in an
15 informal but structured environment in designing and evaluating the test process. Any party that wishes to
16 participate can become a member of the TAG, and parties today continue to attend (and leave) TAG
17 sessions as they deem fit. Qwest does not believe that Tel West has participated in the TAG, although it
18 has been free to do so.

19 Where necessary, issues were brought before the TAG for discussion and resolution. An
20 escalation process for resolving impasses on issues was in place, involving a Steering Committee
21 (consisting of State Commission Staff members) as the first level of review and an Executive Committee
22 (consisting of designated State Commissioners from the ROC) as an appeal authority.

23 The ROC also has engaged several outside consultants to manage and execute the OSS test,
24 including the following: Maxim Telecommunications Group Consulting ("MTG") as the project manager;

25 _____
26 ⁵ Extensive information about the ROC and the testing process is available on the ROC's OSS Information
27 Repository at <http://www.nrri.ohio-state.edu/oss/oss.htm>. The Arizona Corporation Commission was the only state in
Qwest's local service region to not participate in the ROC. Arizona did not participate largely because its own OSS
testing process was already underway when the ROC convened.

1 KPMG Consulting ("KPMG") as the test administrator;⁶ Hewlett-Packard Consulting ("HPC") as a
2 pseudo-CLEC;⁷ and the Liberty Consulting Group ("Liberty") as a performance measure auditor.

3 As described in the test plan documentation, the ROC third party test has been performed
4 through a series of transactional and operational evaluations. These evaluations tested and are testing the
5 five primary components of Qwest's OSS – pre-ordering, ordering, provisioning, maintenance and repair,
6 and billing – as well as the technical assistance Qwest offers CLECs and Qwest's Change Management
7 Plan. The test has been massive in scope. At a recent ROC test briefing for the FCC and U.S.
8 Department of Justice ("DoJ"), HPC stated that 124,715 pre-ordering and ordering transactions
9 covering a broad base of products and services have been processed so far in the test. In addition, the
10 ROC OSS website shows that 55 individuals have officially registered as participants in the OSS test.
11 These individuals represent 31 CLECs and other organizations, including state Commissions, the FCC
12 and the DoJ.

13 KPMG is currently scheduled to issue its draft final report on the ROC OSS test on April 19,
14 2002. The April/May hearings in the 271 dockets will involve consideration and evaluation of KPMG's
15 final report on the ROC's two-year OSS test.

16 2. Qwest's performance measures and data

17 Under the guidance of the ROC, the 271 performance data measurement process has been a
18 collaborative process over a period of approximately two years. That process was summarized concisely
19 by the Liberty on page 1 of its Final Report on the Audit of Qwest's Performance Measures dated
20 September 25, 2001.⁸

21 Prior to the start of the PMA [the Performance Measures Audit
22 conducted by Liberty at the request of the ROC], the stakeholders in the
23 Qwest region generally reached a consensus about how to measure the

24 ⁶ KPMG was the lead test administrator for Bell Atlantic's OSS test in New York, which was the first successfully
completed OSS test in the nation, as well as the third party test administrator in a number of other states.

25 ⁷ The pseudo-CLEC's role was to emulate a CLEC by establishing a business relationship and conducting on-going
business with Qwest. To ensure that the pseudo-CLEC obtained unbiased information regarding Qwest's OSS, Qwest's
operational personnel were "blind" to the identity of the pseudo-CLEC.

26 ⁸ A complete copy of Liberty's 156-page Final Audit Report was appended to Qwest's performance filing in the 271
dockets for August 2000 to July 2001 data. If requested, Qwest would certainly provide another copy to the
27 Commission.

1 adequacy of Qwest's service to CLECs, what role comparative and
2 absolute measures should play in those measurements, and what detailed
3 measures would be used to evaluate Qwest's fulfillment of its obligations
4 to make the network available to CLECs. This consensus was
5 documented in the Performance Indicator Definitions, or PID report. The
6 PMA did not include an examination of the propriety of the
7 measurements required by the PID. It took them as a given, recognizing
8 that any process for changing them was a matter for the larger group that
9 worked to develop them. However, the audit work did include an
10 assessment of whether all requirements of the PID were objectively
11 stated and not subjected to multiple interpretations.

12 Based on the measurements (also referred to as PIDs or metrics) ultimately agreed to by
13 consensus, Qwest has tracked its commercial data on a regional and a state-by-state basis, both on a
14 CLEC-specific level (which is held confidential) and an aggregate (all CLECs) level. Each month, two
15 versions of each aggregate state and the regional report (one version organized by PID categories and
16 one version organized by checklist item) are posted for public inspection on Qwest's external website at
17 <http://www.qwest.com/wholesale/results/index.html>. During the process of the performance
18 measurement audits, after the data was posted, comments and questions from the auditors, test
19 administrator, CLECs, and Commission Staffs were received. Those from the auditors and test
20 administrator came in the form of data requests, observations, or exceptions. Qwest then thoroughly
21 considered those comments, as appropriate, and responded. Where necessary, corrective actions were
22 taken and reported. Where applicable to the performance measurement audit or OSS Test, the auditor
23 or test administrator re-examined or retested the affected audit or test items to confirm that the corrective
24 actions had resolved the issue. Throughout, CLECs and Commission Staffs had access to and comment
25 on both Qwest's responses and actions and the auditor's/tester's responses and follow-ups. The same
26 escalation process described above for the OSS test was followed for the performance measure audit.

27 The hundreds of metrics and sub-metrics tracked by Qwest are defined and described in
Performance Indicator Definitions, Version 4.0, a small portion of which was attached as Exhibit A to
Qwest's First Amended Answer to Amended Petition. PID Version 4.0 is available in its entirety on
Qwest's public website at <http://www.qwest.com/wholesale/results/roc.html>. The ROC's PIDs have
been audited by Liberty Consulting Group and found to be reliable. Liberty found (at pages 2 and 3 of its
Final Audit Report) the following – "Liberty has now concluded that the audited performance measures

1 accurately and reliably report actual Qwest performance. Therefore, the PMA resulted in significant
2 improvements to both the processes used by Qwest and the specificity and clarity of the PID.” Liberty’s
3 full audit findings were summarized in its 156-page Final Audit Report.⁹ Issues surrounding the accuracy
4 of Qwest’s performance data and the sufficiency of Qwest’s performance, as demonstrated by that data,
5 will be considered at the April/May hearings.

6 **III. RELIEF REQUESTED**

7 Qwest respectfully requests the Commission to enter an order granting the following relief:

8 1. Suspending the Part B procedural schedule pending issuance of the Commission’s final
9 order on the issues to be considered at the April/May hearings in the 271 dockets.

10 2. Narrowing the issues in this case to consideration of whether Qwest has targeted Tel
11 West for special, disparate treatment with regard to the time, manner and quality of telecommunications
12 services its provides to Tel West for resale.

13 **IV. DISCUSSION**

14 As an initial matter, Qwest believes Tel West’s broad allegations and inquiry (via discovery) into
15 the mechanics of Qwest’s OSS run far afield of the subject matter of Section 6.2.3. Tel West suggests
16 these inquiries relate to the “quality” and “manner” provisions of Section 6.2.3. Qwest disagrees. Tel
17 West is attempting to dramatically expand the scope of the meaning of “telecommunications services”
18 and, thus, Section 6.2.3. Even accepting Tel West’s analytical framework as valid for purposes of this
19 motion, the Commission should suspend the procedural schedule pending resolution of these issues in the
20 271 dockets and should narrow the issues.

21 **A. The Commission Should Suspend The Part B Procedural Schedule**

22 Qwest urges the Commission to suspend the procedural schedule pending issuance of the
23 Commission’s final order from the April/May hearings. If this were done, the general issues raised by Tel
24 West in this phase of the docket will have been thoroughly considered and definitively resolved by the
25 Commission. It will thus be unnecessary to re-litigate in this one docket, for this one CLEC in this one

26 ⁹ See footnote 8.

1 state whether Qwest's OSS is sufficient or whether this CLEC is entitled to direct access to Qwest's
2 retail OSS, as Tel West demands in the Amended Petition. Similarly, the framework for assessing
3 Qwest's provisioning parity performance and any necessary remedial actions will have been firmly
4 established by the Commission when it rules on Qwest's performance results, data reconciliation issues
5 and the Qwest Performance Assurance Plan ("QPAP"). It would be illogical for the Commission in this
6 highly-truncated docket to try to litigate each of these very complex 271 issues when it is simultaneously
7 considering the identical issues in the 271 dockets based on a thorough and exhaustive record developed
8 over more than two years.¹⁰

9 The breadth of Tel West's March 13 discovery requests reflects that Tel West is attempting to
10 litigate in rough and tumble fashion the same issues that are pending before the Commission in the
11 April/May hearings in the 271 dockets. A copy of Tel West's March 13 data requests is attached hereto
12 as Exhibit C. To proceed in this manner, in this one docket, on this schedule makes no sense either in
13 terms of efficient use of resources or reaching sound, well-supported conclusions. These issues are
14 remarkably complex and detailed and require much more than a 54-day docket. The potential for
15 inconsistent results is high if this matter is not put on hold until the Commission rules on the April/May
16 hearings.

17 **B. The Commission Should Narrow the Scope of this Proceeding**

18 Since the Commission will be evaluating the sufficiency of Qwest's actual provisioning
19 performance and its OSS in the April/May hearings, the issues in this case should be narrowed to whether
20 Tel West has been singled out by Qwest for special, disparate treatment in terms of the quality, timeliness
21 and manner of its provisioning of telecommunications services. To the extent the Commission requires
22 Qwest to modify elements of its provisioning practices or its OSS, those changes will equally benefit and
23 impact all CLECs, including Tel West. If the Commission finds Qwest's performance (with the overlay of
24 the QPAP) and OSS to be sufficient, those findings should control in this docket as well. To re-litigate
25 those issues would be illogical, duplicative, unduly costly and needless. In addition, the compressed time

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27 ¹⁰ Again anticipating Tel West's argument in opposition to this motion, it may well be true that Tel West has not participated in the 271 dockets. If that is indeed the case, its failure to do so has been entirely voluntary.

1 frame of this docket will make it virtually impossible for the parties to develop statistically meaningful,
2 non-anecdotal evidence on which the Commission can evaluate Qwest's provisioning and OSS practices.
3 If, on the other hand, Tel West can identify and support that Qwest has targeted it for disparate
4 treatment, such claims would still appropriately be before the Commission in this docket.

5 **C. Tel West Will Not Be Prejudiced**

6 Tel West will not be prejudiced by a suspension of the schedule or a narrowing of the issues.
7 First, Tel West is currently receiving provisioning performance from Qwest at parity with that which
8 Qwest provides to its retail customers. In its Amended Petition, Tel West relied solely on metric OP-4C
9 for residential orders to evidence that Qwest is not meeting its obligation under Section 6.2.3 to provide
10 telecommunications services in substantially the same time as it provides such services to its own
11 customers. *Amended Petition, at ¶ 13.* In its answer to the Amended Petition, Qwest explained that it
12 is inappropriate to look solely at any single performance metric. However, even if the Commission does
13 so for purposes of this motion, the most currently-available data shows that Qwest has provided Tel
14 West residential installations at parity with its retail performance each month since the Current Agreement
15 became effective on October 31, 2001. Attached hereto as Confidential Exhibit D is a true and correct
16 excerpt from the most recent Tel West Washington data report; specifically, Qwest has attached the page
17 of the report pertaining to metric OP-4C for residential installations.¹¹ Thus, a delay of a few months is
18 very unlikely to cause irreparable harm to Tel West since Qwest is, according to Tel West's own
19 evidence, providing provisioning parity to Tel West.

20 Second, by allowing the thoroughly-developed record to be evaluated in the 271 dockets, Tel
21 West will also benefit from a resource perspective. To the extent any elements of Qwest's provisioning
22 performance or electronic access to OSS are deemed to require modification, Tel West will benefit from
23 those reasoned conclusions without having to lead the charge to litigate the issues. Again, if Tel West
24 believes it can substantiate that Qwest has singled Tel West out for disparate treatment in terms of
25 provisioning parity or access to Qwest's OSS, Tel West's right to pursue these claims will not be

26 _____
27 ¹¹ For a detailed explanation of how to read and understand Qwest's data reports, see Qwest's First Amended
Answer to Petition, at ¶ 6-13.

