

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of:	)	
	)	Docket No. UT-033044
QWEST CORPORATION	)	
	)	JOINT CLEC MOTION TO
To Initiate a Mass-Market Switching and	)	COMPEL QWEST TO
Dedicated Transport Case Pursuant to the	)	RESPOND TO DATA REQUESTS
Triennial Review Order	)	
_____	)	

Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., Global Crossing Local Services, Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecomm, Inc., and XO Washington, Inc. (collectively "Joint CLECs"), bring the following motion to compel Qwest Corporation ("Qwest") to respond to Joint CLEC data requests.

**MOTION**

1. The Joint CLECs propounded their second set of data requests to Qwest on December 30, 2003. Qwest objected and refused to provide a substantive response to several of those requests, including requests numbers 5 and 10. Counsel for the Joint CLECs conferred with Qwest counsel, but the parties were unable to resolve their differences with respect to these two requests. A copy of Joint CLEC Requests Nos. 5 and 10 and Qwest's objections are attached to this Motion.

**Joint CLEC Request No. 5**

2. Joint CLEC Request No. 5 concerns the "CPRO" model that Qwest has proposed for evaluating whether competing local exchange companies ("CLECs") could profitably serve mass market customers in Qwest exchanges using their own switching. Qwest responded to Joint CLEC Request No. 4 that neither it nor its affiliate uses CPRO to evaluate market entry. Joint CLEC

Request No. 5 requests information on why Qwest or its affiliates have not used CPRO, what factors Qwest and its affiliates use to evaluate market entry as a CLEC (including how and why each factor is reflected in CPRO), and whether Qwest or its affiliates intend to use CPRO to evaluate their own market entry in the future. Qwest has objected on the grounds of relevancy and scope. Neither objection is well-founded.

3. Information on the reasons why Qwest or its affiliates do not use CPRO – and whether they intend to use CPRO in the future – to evaluate market entry are directly relevant to the accuracy and reliability of the model. Similarly, the factors that Qwest or its affiliates use to evaluate market entry and a comparison of those factors with CPRO would provide the Commission and parties with a “real world” check on the inputs and assumptions used in the model. Qwest has advocated just such a need for validation through the testimony of Peter Copeland, the model’s sponsoring witness, who states in his prefiled testimony that “Business case models and cost models are necessarily hypothetical and therefore must be tested against real-world facts to evaluate their reliability.” Copeland Response Testimony at 9, lines 13-14. Such facts necessarily include how the model is used in the “real world” and whether its underlying inputs and assumptions reflect the factors that Qwest and its local exchange company affiliate(s) actually use when evaluating market entry.

4. Qwest also cannot legitimately object to providing information about its affiliates’ evaluation of, and plans to use, the CPRO model or the factors those affiliates use in evaluating local market entry. Qwest does not claim that it does not have or cannot obtain access to responsive information from its affiliates. Indeed, Qwest obviously has access to data from its affiliates given the large volume of such information that Qwest provided in the Section 271 review proceeding, Docket Nos. UT-003022 & UT-003040.

5. Even if Qwest were to make that claim, the Commission has ordered parties – particularly parties sponsoring cost models – to produce relevant information from affiliates or other third parties. *See, e.g.*, Generic Cost Docket, Docket No. UT-023003, Fourteenth Supp. Order (compelling AT&T and MCI to produce data within the exclusive control of a third party). As the Commission has observed, “There is no requirement in the [discovery] rule that a party ‘need’ the data requested or that the information requested must be in the possession or control of the party from whom it is requested. The rule generally requires the Commission to balance the need for the information sought with the overall needs of the adjudicative proceeding.” *Id.* para. 17. The Commission and the parties are entitled to discover any information that Qwest possesses or can obtain that reasonably relates to the inputs and assumptions underlying the CPRO model, including the factors considered by Qwest’s affiliates in determining which local markets to enter.

**Joint CLEC Request No. 10**

6. Joint CLEC Request No. 10 asks for Qwest revenue information for mass market customers that Qwest serves in the markets that it has identified in this proceeding. Qwest objected to this request as overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Qwest, however, selectively produced revenue information for customers who left Qwest for another local service provider. Response Testimony of Peter Copeland at 22 & Ex. PBC-8HC. Qwest cannot provide only the revenue information that Qwest chooses to provide. Qwest has raised the issue of its mass market customer revenues, and the Commission and other parties are entitled to review all such information.

7. The FCC, moreover, has required that the Commission review evidence of the potential revenues generated (and costs incurred) when CLECs serve mass market customers. Qwest,

as the incumbent monopoly provider, is the price leader in the local markets it serves in Washington, and as such, its revenues are the likely maximum that a CLEC serving comparable mass market customers could expect to achieve. Qwest, however, interprets the Triennial Review Order as putting at issue only those revenues generated by CLECs who serve high revenue mass market customers. Nothing in the Triennial Review Order supports such a restrictive interpretation.

8. The Triennial Review Order requires the Commission to “consider *all* revenues that will derive from service to the mass market,” Triennial Review Order para. 519 (emphasis in original), not just revenues from service to those mass market customers who generate the most revenue. Indeed, the FCC noted that another incumbent local exchange carrier “suggests using the incumbent’s average retail per-line local revenues, or the price of the incumbent’s retail local service offerings as the basis for determining competitor’s revenues.” *Id.* at para. 485, n.1511. Far from rejecting that suggestion, the FCC merely observed that “[t]here is significant disagreement concerning what revenues to use in calculating net profits,” *id.*, and left to the Commission the determination of compiling and evaluating all available revenue data. Commission Staff apparently agrees that the Commission should consider Qwest revenue information, having also included selected Qwest data in Staff’s prefiled testimony. Response Testimony of Thomas Spinks at 15, line 19 through 16, line 4. Qwest should be compelled to provide data on all of the revenues Qwest generates from all of its mass market customers.

### **REQUEST FOR RELIEF**

WHEREFORE, the Joint CLECs request the following relief:

A. An order from the Commission compelling Qwest to provide responses to Joint CLEC data requests Nos. 5 and 10 prior to the beginning of the hearings on March 1; and

B. Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 19th day of February, 2004.

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