

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)
U S WEST Communications, Inc.’s) Docket No. UT-003022
Compliance With Section 271 of the)
Telecommunications Act of 1996)
_____))
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In the Matter of U S WEST Communications,) Docket No. UT-003040
Inc.’s Statement of Generally Available)
Terms Pursuant to Section 252(f) of the) JOINT CLEC COMMENTS ON
Telecommunications Act of 1996) DRAFT INITIAL ORDER
_____))

NEXTLINK Washington, Inc. (“NEXTLINK”), Electric Lightwave, Inc. (“ELI”), Advanced TelCom Group, Inc. (“ATG”), AT&T Communications of the Pacific Northwest, Inc., and TCG Seattle (collectively “AT&T”), and WorldCom, Inc. (“WorldCom”),¹ (collectively “Joint CLECs”) provide the following comments on Commission Staff’s Draft Initial Order in the above referenced proceeding. The Joint CLECs believe that Staff generally has accurately summarized the proceedings to date and has proposed the appropriate resolution of disputed issues. The Joint CLECs, therefore, propose only that the Draft Initial Order be modified to clarify that (1) any Commission approval of a checklist item is contingent on review of performance data at a later date; (2) resolution of disputed issues is applicable to both Qwest’s Section 271 application and its Statement of Generally Available Terms (“SGAT”); and (3) pole and conduit verification fees will be addressed in the new generic cost proceeding, Docket No. UT-003013.

¹ WorldCom joins the joint comments on the issues addressed in this brief but will also file individual comments on a separate issue.

DISCUSSION

A. General Concerns

The Draft Initial Order provides that the Commission tentatively concludes that Qwest Corporation, f/k/a U S WEST Communications, Inc. (“Qwest”) is satisfying its obligations to provide some of the checklist items at issue in the first workshops, subject to future review of performance data. The order, however, uses different language to make those conclusions. For some checklist items, the order finds that Qwest is in compliance with the checklist item “subject to reevaluation if Qwest fails to meet the relevant performance measurements.” Paragraphs 57, 74, 83, 109. For other checklist items the order finds such compliance subject to “satisfactory audited results” of Regional Oversight Committee (“ROC”) operations support system (“OSS”) testing. Paragraphs 127, 141. For dialing parity, the draft order concludes only that Qwest “has satisfied the requirements of this checklist item.” Paragraph 158.

The Joint CLECs proposed that Qwest’s performance be evaluated only after the conclusion of the ROC OSS testing process, and the prehearing conference order and the oral determination by Judge Wallis at the initial workshop adopted that proposal. Qwest, therefore, continues to bear the burden to prove that its performance in providing all checklist items complies with Section 271, even if Qwest has demonstrated that it has the legal obligation to provide those checklist items. A reference to “reevaluation” implies that the Commission has reviewed and approved existing performance data, even though the only such performance evidence submitted was unaudited information provided by Qwest. Conditioning a finding of compliance on “satisfactory audited results” of the ROC OSS testing, on the other hand, implies that other performance data will not be considered. Accordingly, the Joint CLECS suggest that the Draft Initial Order paragraphs

referenced above be modified to state that the Commission finds Qwest in compliance with these checklist items “subject to Commission review of Qwest’s performance following the ROC OSS testing.”

B. Checklist Item No. 3 – Poles, Ducts, Conduits, and Rights-of-Way.

The Draft Initial Order focuses on whether Qwest is in compliance with the requirements of Section 271. This consolidated proceeding, however, also must address Commission approval of Qwest’s Statement of Generally Available Terms (“SGAT”) under Section 252(f). In addition, the Draft Initial Order does not address the procedural means by which the Commission will evaluate disputed pricing issues. Specifically, the order does not address NEXTLINK’s concerns with respect to the prices Qwest proposes to charge for inquiry and field verification other than to state in paragraph 20 that NEXTLINK raised that issue in testimony. This issue was deferred to the new cost proceeding, Docket No. UT-003013, subject to further negotiations on SGAT language that would permit CLECs to conduct their own field verifications. Accordingly, the Joint CLECs propose the following modifications to the Draft Initial Order provisions under this Checklist Item:

Paragraph 13 – Add “and Section 252(f)(2)” to the end of the last sentence.

Paragraph 25 – Insert “non-pricing” before “issues” in the first sentence, and add a footnote after that sentence that states as follows: “There was a lack of consensus on the charges Qwest proposes for inquiries and field verifications, but that issue, like other pricing issues, will be addressed in Docket No. UT-003013. Based on the workshop discussions, that issue also may be resolved if the parties can agree on SGAT language that would permit CLECs to conduct their own field verifications.”

Paragraph 27 – Insert “and any outstanding pricing issues” after “in dispute” in the first sentence, and insert “and any outstanding pricing issues” after “sub-loop issue” in the last sentence.

Paragraph 45 – In the last sentence, substitute the phrase “and the Commission will not approve Qwest’s SGAT until Qwest” for “until it”.

C. Checklist Item 13 – Reciprocal Compensation.

The Joint CLECs’ concern with the Draft Initial Order provisions governing reciprocal compensation is that the order should address the Commission’s review of Qwest’s SGAT pursuant to Section 252(f) and state law, as well as Qwest’s compliance with Section 271. In addition, the issue of cost sharing for interconnection facilities is scheduled to be addressed in the new cost proceeding, Docket No. UT-003013, and the Draft Initial Order should cross-reference that proceeding. Accordingly, the Joint CLECs propose that the relevant provisions of the Draft Initial Order be amended as follows.

Paragraph 165 – In the last sentence, substitute the phrase “nor should the Commission approve Qwest’s SGAT until Qwest” for “until it”.

Paragraph 168 – Insert “and should refuse to approve Qwest’s SGAT” after “Checklist Item No. 13”.

Paragraph 179 – Substitute “Ninth Circuit” for “Supreme Court” in the third sentence.

Paragraph 201 – Add “as well as in proceedings conducted pursuant to Section 252(f)” at the end of the last sentence.

Paragraph 203 – In the last sentence, substitute the phrase “and that the Commission will not

approve Qwest's SGAT until Qwest" for "until it".

Paragraph 206 – Add "or Section 252(f)(2)" at the end of the first sentence.

Paragraph 207 – Substitute the phrase "and that the Commission will not approve Qwest's SGAT until Qwest" for "until it".

Paragraph 208 – Add "and Section 252(f)(2)" after "Checklist Item No. 13" in the first sentence, and substitute the phrase "and that the Commission will not approve Qwest's SGAT until Qwest" for "until it" in the last sentence.

Paragraph 209 – Substitute the phrase "and that the Commission will not approve Qwest's SGAT until Qwest" for "until it" in the last sentence.

Paragraph 210 – Add "and that the Commission cannot approve the SGAT provisions governing this issue" at the end of the first sentence.

Paragraph 211 – In the second sentence, replace "We propose that the parties" with "This issue is scheduled to be addressed in Part B of Docket No. UT-003013, and the parties should".

Paragraph 212 – Add "and that the Commission cannot approve the provisions of the SGAT governing reciprocal compensation" at the end of the sentence.

CONCLUSION

The Joint CLECs appreciate Staff's efforts to prepare a thorough and appropriate Draft Initial Order and propose only that Staff modify that order as described above.

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