

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	Docket No. UT-003022
U S WEST Communications, Inc.'s Compliance)	
with Section 271 of the Telecommunications Act)	
of 1996)	
.....)	
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)	PUBLIC COUNSEL'S COMMENTS ON
Telecommunications Act of 1996.)	THE TWENTIETH SUPPLEMENTAL
)	ORDER; INITIAL ORDER
)	(WORKSHOP FOUR) REGARDING
)	PUBLIC INTEREST

I. INTRODUCTION.

The Public Counsel Section of the Office of the Attorney General of Washington ("Public Counsel") concurs in the conclusion of law entered by Administrative Law Judge Rendahl ("ALJ Rendahl") that Qwest has not yet presented sufficient evidence to meet its burden of persuasion that its application to the Federal Communications Commission ("FCC") is in the public interest at the present time. *See the Twentieth Supplemental Order; Initial Order (Workshop Four); Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272 at 681 (70) ("20th Order").* Public Counsel makes the following comments regarding the 20th Order pursuant to the November 15, 2001 *Notice Amending Date for Comment on Initial Order and Date of Presentation to Commissioners of Initial Order.*

PUBLIC COUNSEL'S COMMENTS ON
 THE TWENTIETH SUPPLEMENTAL ORDER;
 INITIAL ORDER (WORKSHOP FOUR)
 REGARDING PUBLIC INTEREST
 (Docket Nos. UT-003022 & UT-003040)

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II. QWEST HAS FAILED TO CARRY ITS BURDEN OF PERSUASION AND ITS SECTION 271 APPLICATION IS NOT IN THE PUBLIC INTEREST AT THIS TIME.

As noted by ALJ Rendahl, Qwest has failed to carry its burden of persuasion to demonstrate that its application to the FCC under 47 U.S.C. §271(d)(3)(C) is in the public interest at the present time. *20th Order at 473, 475, 598 (86), and 734 (43)*. Qwest argued to the Washington State Utilities and Transportation Commission ("Commission") that it met the public interest requirement while also admitting its Operations Support Systems ("OSS"), its Performance Assurance Plan ("PAP" or "QPAP"), and other relevant areas of inquiry were incomplete. This made it impossible for the Commission to "... determine whether or not the local market is open to competition, ..." *20th Order at 475*.

As stated in Brief, Public Counsel concurs that Qwest has not yet met its burden of persuasion to demonstrate that its local markets are open to competition; with its incomplete OSS and PAP two of the most apparent indications of this fact. *See Brief of Public Counsel on Public Interest at 44-47*.

III. THE COMMISSION'S EXAMINATION OF THE PUBLIC INTEREST UNDER 47 U.S.C. §271(d)(3)(C) SHOULD BE RE-OPENED AFTER THE OSS FINAL REPORT IS RECEIVED.

As noted above, the 20th Order found that Qwest's application is not in the public interest at this time and the 20th Order defers review of the public interest issue at least until such time as Qwest's OSS vendor has released its final report on OSS test results. *20th Order at 475*.

Public Counsel recommends to the Commission that it would be appropriate after the OSS final report is issued *and* the Commission's final order on the QPAP has been entered for the Commission to re-open the factual inquiry regarding the public interest issue under 47 U.S.C. §271(d)(3)(C). Doing so will provide all parties, including Qwest, an opportunity to re-evaluate

their positions regarding the Commission's public interest inquiry in light of the final OSS and QPAP. It continues to be Public Counsel's position that only after the OSS and QPAP are finalized can the Commission properly take up the question of whether Qwest has in fact fully and irrevocably opened its local markets to competition.

Public Counsel continues to advocate that 90 days of QPAP performance without statistically significant penalties will be the best quantitative measure for determining whether Qwest is committed to a pro-competitive course of action.

After the QPAP and OSS testing are complete the Commission should re-open the factual record and hold an additional workshop or hearing so that parties may address the public interest issue with the totality of the record before them. This will enable all parties to re-evaluate their present positions and determine whether, given the totality of the evidence before the Commission, Qwest's application is in the public interest at that time. Additionally, the parties will have the monthly QPAP results Qwest has been providing pursuant to the Commission's orders and bench requests. Public Counsel concurs with ALJ Rendahl that the Commission will then be capable of making a public interest determination.

IV. PUBLIC COUNSEL ALSO CITED TO "UNUSUAL CIRCUMSTANCES" AS AFFECTING THE COMMISSION'S PUBLIC INTEREST INQUIRY.

The 20th Order cites to "...various allegations by CLECs about 'unusual circumstances' that might affect a determination of whether Qwest's application to the FCC would be in the public interest." *See 20th Order at 476.* Public Counsel wishes to note for the record that it also addressed the question of a number of significant "unusual circumstances" which it believes weighs against a public interest finding by the Commission. *See Brief of Public Counsel on Public Interest at 51-65.* The Commission's order should reflect this fact.

V. CONCLUSION.

Public Counsel concurs with the public interest conclusions reached by ALJ Rendahl in the 20th Order. Public Counsel recommends that the Commission adopt them in its final order regarding workshop four's public interest inquiry. Public Counsel believes it is consistent with those conclusions that after the QPAP has been finalized and the OSS final report has been issued that the Commission re-open the factual record so that parties may again address the question of the public interest in light of a complete record.

Public Counsel looks forward to discussing the public interest issue at the January 10, 2002 presentation to the Commissioners.

Respectfully submitted on this _____th day of December, 2001.

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