

**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 )  
Telecommunications Act of 1996 )

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**AT&T'S PETITION FOR ADMINISTRATIVE REVIEW  
ON GENERAL TERMS & CONDITIONS INITIAL ORDER  
& PETITION TO REOPEN  
(WORKSHOP IV)**

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AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit this Petition for Administrative Review and Petition to Reopen the workshop on General Terms and Conditions ("GT&Cs") in so far as it relates to Qwest's misuse of CLEC data for Qwest's retail marketing efforts.

**INTRODUCTION**

While the proposed initial order resolves most of the issues related to CLEC confidential data by stating that "Qwest must maintain the confidentiality of proprietary CLEC forecast data" whether aggregated or disaggregated, it overlooked one of the more

troubling aspects of Qwest's misuse of CLEC wholesale data.<sup>1</sup> That is, the order should also resolve the question of whether Qwest is misusing AT&T's wholesale orders by using them to have Qwest retail representatives engage in solicitation sales calls asking customers not to switch to AT&T before the actual switch has taken place. AT&T has no problem with Qwest soliciting customers to come back once the customers' service has actually been switched to AT&T—that is, when Qwest's retail personnel would fairly know that they lost a customer, but Qwest should not be using confidential wholesale CLEC orders and data to engage in win-back sales efforts even before the customer leaves Qwest's service. This conduct violates the law, and AT&T hereby requests that the Washington Commission reopen the record to consider the information provided herein and resolve this issue by investigating just how Qwest is providing the confidential wholesale CLEC order information to its retail telemarketers and order Qwest to cease and desist from all such marketing efforts conducted in the window between the customer installation with AT&T and the CLEC wholesale orders to switch the customer. As grounds therefore, AT&T states as follows:

### **DISCUSSION**

During the workshops, AT&T provided un-refuted evidence that Qwest, not only had the ability, but also had solicited a customer that was switching, but had not yet technically transferred away from Qwest to AT&T. Qwest has never submitted any tangible evidence of its investigation into this incident. Rather, Qwest attacked AT&T's witness, Mr. Tade, engaged in pure speculation on the reasons this fortuitous solicitation could have happened and then summarily dismissed it.

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<sup>1</sup> AT&T argued this issue in its Closing Brief on pages 27 through 29.

Evasive tactics do not hide the fact that Qwest has failed to prove its compliance with the Act's requirements regarding the confidentiality of wholesale customer information. In this Petition, AT&T will address the following issues: (1) the unwarranted speculation regarding Mr. Tade's affidavit; (2) the various avenues of access that Qwest retail personnel and outside telemarketers apparently have to confidential wholesale customer information; and (3) a recent Washington incident of wrongful solicitation virtually identical to that described by Mr. Tade.

**I. Mr. Tade Described Qwest's Solicitation Request that He Not Switch His Service to AT&T While AT&T's Wholesale Order for the Tade Account was Pending and Any Qwest Speculation Aimed at Discrediting the Affidavit Is Absolutely Wrong.**

On June 21, 2001, James W. Tade, under oath, described his experience when he attempted to switch his local telephone service away from Qwest to AT&T. He stated that Qwest called him to solicit him four times in the week between the time he requested AT&T's service and the actual installation of that service. During those solicitations, Qwest sales representatives asked Mr. Tade to stay with Qwest. Moreover, when he asked Qwest not to call again, Qwest solicited him again anyway and even tried one last time on the morning of his scheduled AT&T install to convince him not to switch.

During the workshops throughout its region and in later filings, Qwest speculates that Mr. Tade may have contacted Qwest and told Qwest he was switching or perhaps the Tade contact was solicitation in the normal course of Qwest telemarketing practices.<sup>2</sup> Qwest could have asked Mr. Tade during the Washington workshops if either of these guesses were accurate, but Qwest did not want to speak to Mr. Tade.

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<sup>2</sup> Qwest Multi-State Reports on Measures to Protect CLEC Data at p. 4.

**Attachment A** to this Petition is a further Affidavit from Mr. Tade responding to this speculation. In it Mr. Tade, again under oath, states that he did not contact Qwest to inform it that he was discontinuing his Qwest local service. He also acknowledges again, that the Qwest sales representatives called him with the knowledge that he was intending to switch his service. Although he has no knowledge of Qwest's telemarketing practices, two things are clear: (a) it is doubtful that four telemarketing calls asking a customer not to switch away in a single week is "normal" or based on fair trade practices, and (b) Qwest violated at least federal do-not-call requirements after Mr. Tade asked that the solicitation stop.

Qwest discounting the Tade incident as pure speculation is not only a disservice to competition, but constitutes a complete failure to engage in a fair investigation. Furthermore, Qwest has never supplied any evidence to support its telemarketing theory or other speculation. Therefore, AT&T respectfully requests that the Commissioners reopen this record and take another look at the affidavits and judge for themselves whether this problem can be summarily dismissed in light of Qwest's conduct and complete lack of evidence proving that it complies with the law.

## **II. By its Own Admission, Qwest Retail Personnel Have Access to Confidential Wholesale Customer Information.**

Qwest is able to and does engage in "win-back" marketing efforts of future AT&T customers before the customer has even switched carriers. In the case of a new AT&T Broadband customer, such as Mr. Tade, the only way Qwest gets access to the customer switch request is by receipt of AT&T's local service request ("LSR").<sup>3</sup> Furthermore, AT&T expressly informs its new customers that they need not contact

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<sup>3</sup> See WA Exhibit 799 (8/22/01 CO Tr. at pp. 266-271).

Qwest to disconnect their service. Rather, the LSR is sent to Qwest from AT&T seeking a scheduled cut-over.<sup>4</sup> The information on AT&T's LSRs is confidential information that should not be flowing to Qwest's retail marketing arm or telemarketers such that it can solicit those customers before they have even left Qwest.

In its Multi-State Report, Qwest claims that its retail sales and marketing personnel are prohibited from "using" proprietary information received from other carriers.<sup>5</sup> Further it states, "Qwest supervisors are charged with ensuring that employees are trained in their obligations regarding the *use* of proprietary information and that employees vigorously adhere to their obligations."<sup>6</sup> In addition, Qwest admits that its retail employees have access to Customer Service Records ("CSRs"), which contain information obtained from CLEC LSRs; the information includes that the particular customer is "disconnecting" or switching his or her service.<sup>7</sup> It defies credulity to think that retail-marketing people should have access to CLEC pending switched orders and be expected not to "use" it. Moreover, information regarding pending disconnects due to customers switching service should not be accessible to Qwest retail personnel or outside telemarketing vendors via CSRs or otherwise, and placing this information on CSRs or aggregating it in any form constitutes use of information relating to confidential CLEC

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<sup>4</sup> See Attachment B.

<sup>5</sup> Qwest Report at p. 10.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 12.

data which is strictly prohibited by the Act.<sup>8</sup>

Finally, in a case in Colorado regarding Qwest's IMA interface, it was shown through a Staff member's CSR that Qwest's retail personnel did indeed have access via CSRs to the identity of the CLEC that touched the CSR using IMA.<sup>9</sup> Typically, the CLEC examines the CSR when its representatives are on the phone with a potential customer. The CSR history would report to Qwest retail personnel who touched the record, what was touched and when it was touched. In Washington, Qwest provided no tangible evidence that this has changed. Furthermore, given that the CSRs are maintained in a database, it is highly unlikely that somebody at Qwest cannot sort the data by pending disconnects and misuse the information by—for example—providing lists of customers with pending disconnects to telemarketing vendors to solicit during particular times. Moreover, Qwest's Multi-State Report states only that *its* retail and marketing personnel supposedly cannot compile this information from the CSRs themselves; it says nothing about others compiling the information and providing it to outside telemarketers or using it internally to create solicitation lists.

In summary, the Commission should insist that Qwest cease providing—via CSRs and any other means—retail access to “proprietary information of, and relating to, other

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<sup>8</sup> 47 U.S.C. § 222 (a) & (b), which states in regard to carriers sharing information:

(a) In General—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, *and relating to*, other telecommunications carriers, equipment manufactures and customers, including telecommunications carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of Carrier Information—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing a telecommunications service shall use such information only for such purpose, *and shall not use such information for its own marketing efforts*.

(emphasis added).

<sup>9</sup> See WA Exhibit 799 (CO Exhibit 6 ATT 84 at pp. 89-91).

telecommunications carriers.”<sup>10</sup> Only by denying all retail access can CLECs maintain the confidential nature of the information and ensure that, for example, pending disconnect information should not be given to individuals who should not have access to the information in the first instance.

### **III. Other Incidents of Wrongful Solicitation**

Qwest has asserted that no other Tade-type incidents occurred as evidenced by the lack of customer complaints to the Commission or Qwest.<sup>11</sup> This alleged “evidence” misses the mark. As AT&T stated during this proceeding, end-user customers do not know that Qwest is doing anything other than soliciting them to offer a better deal; they do not generally understand that the timing of the solicitation prior to the install with AT&T is suspect. So, barring any complaints about telemarketing generally, neither Qwest nor the Commissions should expect to receive customer complaints of Qwest’s anticompetitive marketing practices, and the alleged lack thereof is insignificant because it does not prove Qwest’s compliance.

In fact, AT&T discovered that Qwest recently solicited a non-employee Washington customer of AT&T Broadband between the date he ordered the switch of local service and the actual install. The customer ordered AT&T service on November 16, 2001; the installation date was set for November 28th. Qwest contacted him on November 17th and again on November 19th offering him one month’s free service not to switch. *See Attachment B* for the verification, under oath, of this statement.

Because incidents such as these exist and they are difficult to catch, it is likely that Qwest’s telemarketing practices are improper and impact more customers than are

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<sup>10</sup> 47 U.S.C. § 222(a).

<sup>11</sup> 7/10/01 WA Tr. at pp. 4061-4062.

currently known. Therefore, AT&T requests that this Commission reopen this investigation into Qwest's win-back solicitation practices using CLEC data. In short, Qwest's claim that the Tade example is an isolated incident is false and AT&T hereby requests a further investigation into this problem.

### **CONCLUSION**

For the foregoing reasons, AT&T requests the Commission grant this Petition for Review and Re-open the investigation.

Respectfully submitted this 13th day of December 2001.

**AT&T COMMUNICATIONS  
OF THE PACIFIC NORTHWEST, INC.  
AND AT&T LOCAL SERVICES ON  
BEHALF OF TCG SEATTLE AND  
TCG OREGON**

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