

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
VERIZON NORTHWEST, INC.
For waiver of WAC 480-120-071(2)(a).

Docket No. UT-011439

QWEST CORPORATION'S
REPLY TO STAFF'S AND RCC
MINNESOTA, INC.'S RESPONSES
IN OPPOSITION TO MOTION TO
JOIN RCC MINNESOTA, INC. AS
A PARTY

COMES NOW QWEST CORPORATION (hereinafter "Qwest") and requests leave to reply to Staff's and RCC Minnesota, Inc.'s (RCC's) response to Qwest's Motion to Join RCC Minnesota ("RCC") as a party. Qwest's reply is set forth below. Staff and RCC have shown no reason to deny Qwest's motion.

1. Staff's and RCC's responses did not address the issue that RCC Minnesota is a necessary party. Qwest's motion presented information sufficient to establish, and for the Commission to conclude, that RCC Minnesota is a necessary party. Since no other party addressed or contested the issue (besides Verizon which supported Qwest, the Commission should conclude that RCC is a necessary party.

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2. Staff is incorrect in claiming that Qwest is too late to file this motion. Staff criticizes Qwest for not filing this motion in January¹, February² and after May 31, 2002 but before June 20, 2002³, and during the prehearing conference June 17, 2002. It is not clear when in January Qwest could have filed this motion, since Staff did not seek to join Qwest until February. When Staff filed its motion in February to join Qwest as a party, Qwest had no reason to believe the motion would be granted, RCC was not then an ETC in the Verizon Bridgeport exchange and Qwest had no standing as a party to file a motion in this case. When Qwest became a party May 31, 2002, RCC was still not an ETC in the Verizon Bridgeport exchange. RCC was designated an ETC in that exchange in the open meeting held June 14, 2002. At the prehearing conference on June 17, 2002 (which was not noticed for the purpose of filing oral or written motions), Qwest informed the parties and the Administrative Law Judge during that conference that it intended to file the motion to join RCC Minnesota. The prehearing conference was held the first working day after RCC was designated an ETC in the Verizon exchange, and Qwest followed up with its written motion three days later. Qwest believes that this is not undue delay under the circumstances.

RCC, on the other hand, claims that Qwest's motion is premature because the Commission's order designating RCC as an ETC has not yet been issued and may be appealed when it is issued. The fact is, according to the application which Qwest attached to its motion, RCC states that it is providing service throughout the service area and that representation formed a basis for granting RCC's request for designation. The fact that RCC

¹ Staff Response at p. 3.

² Ibid. at p. 2

does not expect to receive federal high cost support until early 2003 does not affect the fact that RCC is a necessary party.

Staff's main argument is that granting this motion will jeopardize the timely extension of service to the Taylors and the Timm Ranch occupants, and the issuance of an order that will lead to service in 2002. However, the issue of timing must be secondary to the issue of whether there is a necessary party which must be joined. In any event, there is no evidence that RCC could not provide service immediately, so it is not clear that joinder would delay the current schedule.

The fact that there were (before June 14, 2002) wireless carriers which were not ETCs but which provided service in the Verizon Bridgeport exchange does not affect the argument that RCC is a necessary party. Staff's response seeks to foreclose the issue of the impact of RCC's new ETC status on this case. Staff claims that evidence demonstrates that Ms. Taylor and Mr. Nelson have requested wireline service and that they have requested cellular service from other companies but not from RCC Minnesota.

However, these facts, even if proven at the hearing, are not dispositive. One of the legal obligations of an ETC under §214(e)(1) of the federal act is to advertise the availability of the supported service. There is no evidence that any of the requesting customers ever saw such an advertisement by RCC or was otherwise aware of RCC's service. RCC also argues that Mr. Nelson has requested wireline service, but the Verizon amended petition makes it clear that Mr. Nelson also today uses cellular service, from a company other than RCC. RCC also contends that RCC is not required to file tariffs and therefore the Commission's line

³ Ibid. at p. 3

extension rule does not apply to it, and that Qwest should have approached RCC and asked RCC to serve on Qwest's behalf. RCC has misconstrued the issues. The Commission ruled in the Third Supplemental Order that it is not necessary to proceed under the line extension rule. The issues include whether Qwest can be required to provide service under RCW 80.36.090 when there is an available service from RCC which would make Mr. Nelson not "reasonably entitled" to Qwest's service. The issues also include whether the Commission can enforce the federal obligation of an ETC (which RCC voluntarily assumed) to serve all potential customers in its service area.

Because RCC Minnesota is a necessary party, Qwest's motion to join should be granted.

Respectfully submitted this 9th day of July, 2002.

QWEST CORPORATION

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document on all parties to this proceeding by depositing copies of the said motion in the United States mail, properly addressed and with postage prepaid.

Dated July 8, 2002.

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