

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into	)	
	)	DOCKET NO. UT-003022
U S WEST COMMUNICATIONS, INC.'s <sup>1</sup>	)	
	)	
Compliance With Section 271 of the	)	
Telecommunications Act of 1996	)	
_____	)	
	)	DOCKET NO. UT-003040
In the Matter of	)	
	)	26 <sup>TH</sup> SUPPLEMENTAL ORDER;
U S WEST COMMUNICATIONS, INC.'s	)	ORDER DENYING QWEST'S
	)	PETITION FOR
Statement of Generally Available Terms	)	RECONSIDERATION OF THE
Pursuant to Section 252(f) of the	)	15 <sup>TH</sup> SUPPLEMENTAL ORDER
Telecommunications Act of 1996	)	
_____	)	

**I. SYNOPSIS**

1 In this order, the Commission denies Qwest's petition for reconsideration of the Commission's *15th Supplemental Order*, ordering (1) proportional pricing when facilities are used for both interconnection and special access, and (2) publication of Centrex Prime prices in Qwest's tariff or price lists that contain the terms and conditions of Centrex Prime service.

**II. BACKGROUND AND PROCEDURAL HISTORY**

2 This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc., with the requirements of section 271 of the Telecommunications Act of 1996 (the Act)<sup>2</sup> and to review and consider approval of Qwest's Statement of Generally Available Terms and Conditions (SGAT) under section 252(f)(2) of the Act. The Commission is conducting its review in this proceeding through a series of workshops, comments by the parties, and the opportunity for oral argument to the Commission on contested issues.

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<sup>1</sup> Since the inception of this proceeding, U S WEST has merged and become known as Qwest Corporation. For consistency and ease of reference we will use the name Qwest in this Order.

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

- 3 The Commission held its second workshop in this proceeding in November 2000 and January 2001 to consider issues related to Checklist Item Nos. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale) and provisions of the SGAT addressing these issues. The administrative law judge entered the *Initial Order Finding Noncompliance in the Areas of Interconnection, Number Portability and Resale* on February 23, 2001 (February 2001 Initial Order), and the *Eleventh Supplemental Order Finding Noncompliance on Collocation Issues* on March 30, 2001. Following additional comments and oral argument by the parties, the Commission entered on August 17, 2001, its *Fifteenth Supplemental Order, Commission Order Addressing Workshop Two Issues: Checklist Item Nos. 1, 11, and 14 (15<sup>th</sup> Supplemental Order)*.
- 4 On August 27, 2001, Qwest filed a petition for reconsideration of the Commission's *15th Supplemental Order*. Qwest's petition was limited to two issues: (1) the Commission's decision to allow proportional pricing of interconnection and special access facilities; and (2) the Commission's requirement that Qwest include in its tariff or SGAT the prices at which it offers Centrex Prime service. Qwest asserts that the Commission made an error of law or fact in reaching each decision.
- 5 Electric Lightwave, Inc. (ELI), XO Washington, Inc. (XO), and AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively AT&T), filed responses with the Commission on September 10 and 12, 2001, respectively, opposing Qwest's petition on the issue of proportional pricing of interconnection and special access facilities. MetroNet filed a response on September 13, 2001 opposing Qwest's request that the Commission reconsider its decision to publish Centrex Prime prices.

### III. DISCUSSION

#### A. Proportional Pricing of Interconnection and Special Access Facilities

- 6 The issue of how to price facilities used for both interconnection and special access first arose during the first workshop in this proceeding concerning Qwest's compliance with Checklist Item No. 13 addressing reciprocal compensation. During the first workshop, AT&T, WorldCom, and Sprint contested Qwest's proposed SGAT section 7.3.1.1.2, which provides that Qwest will apply its private line tariff rate to all special access facilities used for interconnection, in particular entrance facilities. The CLECs argued that Total Element Long Run Incremental Cost (TELRIC) rates should apply to the portion of special access facilities used for interconnection, and private line tariff rates should apply to the portion used for exchange access. Qwest objected, arguing that the Federal Communications Commission (FCC) prohibited in its *UNE*

*Remand Order*,<sup>3</sup> *Supplemental Order*,<sup>4</sup> and *Supplemental Order Clarification*<sup>5</sup> the “commingling” of rates on special access trunks that may also be used for local interconnection. *Revised Initial Order*, ¶234-35.

- 7 The *Draft Initial Order* recommended adopting the CLECs' proportional use and payment proposal, finding that the proposed use was not the same arrangement discussed in the FCC's *Supplemental Order*. *Draft Initial Order*, ¶209. The *Revised Initial Order* recommended a change in course, determining that Qwest's SGAT proposal appropriately allowed CLECs to purchase private line facilities for interconnection to achieve network efficiency, and saved them the cost of purchasing separate interconnection entrance facilities in addition to private line facilities. *Revised Initial Order*, ¶251. In the *Commission Order Addressing Workshop One Issues*, entered on June 4, 2001, the Commission adopted the findings and conclusions entered in the *Revised Initial Order*. *Workshop One Final Order*, ¶¶65, 84.
- 8 The same issue arose in the second workshop in the context of Qwest's compliance with Checklist Item No. 1, interconnection. The administrative law judge recommended that, where entrance facilities are used for both interconnection and exchange or special access, Qwest must modify its SGAT to allow proportional pricing based upon the portion of the facility used for interconnection and the portion used for special access. *February 2001 Initial Order*, ¶70.
- 9 In the 15<sup>th</sup> *Supplemental Order*, the Commission adopted and extended the administrative law judge's recommended decision, requiring Qwest to modify its SGAT to charge proportionate prices when *any* facility is used for both interconnection and special access. 15<sup>th</sup> *Supplemental Order*, ¶19. The 15<sup>th</sup> *Supplemental Order* specifically reversed the recommended decision in paragraph 251 of the *Revised Initial Order*. *Id.*, ¶17.
- 10 **Qwest:** Qwest asserts that the Commission erred in allowing CLECs to obtain both scale economies, or volume discounts, and interconnection discounts when using facilities for both interconnection and special access. Qwest contends that the FCC rulings permit a CLEC to combine different types of circuits on a larger facility, but that the CLEC cannot then obtain the interconnection discount on the portion of that facility that is used for interconnection. *Qwest Petition at 2, 3*. Qwest argues that the Commission decided this issue correctly in its *Workshop One Final Order*.

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<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC99-238 (rel. Nov. 5, 1999), (*UNE Remand Order*).

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, FCC 99-370 (rel. Nov. 24, 2000) (*Supplemental Order*).

<sup>5</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) (*Supplemental Order Clarification*).

- 11 Qwest also claims that 11 other state commissions have decided the issue in its favor and contrary to this Commission's decision in the *15<sup>th</sup> Supplemental Order*. *Qwest Petition at 4*. According to Qwest, the Colorado, Oregon, and Multi-State 271 proceedings have all considered the same issue, have rejected the CLEC proposal, and have agreed with Qwest's position. Qwest asserts that the decisions in both the Colorado and Multi-state proceedings were based in part on a concern that universal service would be adversely affected if interconnection circuits were provided at the discounted prices on the same facilities as special access circuits. *Id.*
- 12 **CLECs:** AT&T, ELI, and XO argue that the Commission should not modify its decision in the *15<sup>th</sup> Supplemental Order* on this issue. These CLECs argue that the FCC orders to which Qwest cites refer not to the combination or sharing of interconnection and special access service on the same facilities, but instead to the connection, or attachment of UNEs, specifically loops or loop-transport combinations, with special access facilities. *AT&T Response at 4-5; ELI/XO Response at 2-3*. In addition, ELI and XO argue that the nature of individual circuits as either interconnection or special access should be able to be readily identified and tracked, and that Qwest's proposal to allow such use of facilities implies that Qwest can track them. *ELI/XO Response at 4*. AT&T addresses the universal service argument by stating that support will not be affected, because special access circuits would continue to be priced at their current levels. *AT&T Response at 6-7*.
- 13 **Discussion and Decision:** Qwest's petition for reconsideration on this issue should be denied. The particular concern at issue here is whether it is permissible for CLECs to take advantage of both the scale economies that arise from aggregating multiple circuits on a larger facility, and the discount (i.e., lower TELRIC) price, that are provided for facilities used for interconnection. The Commission's decision rests, fundamentally, on the economic principle that companies should exploit scale economies where they exist. It would be unfortunate if a pricing distinction required companies to separate circuits based on how they are used and thereby caused smaller, less efficient, facilities to be employed.
- 14 The FCC has prohibited some types of combinations, and this has resulted in considerable confusion about how the discounts can be applied. Through the TELRIC pricing principles contained in section 252(d)(1) of the Act and in the *Local Competition First Report and Order*, the FCC permits interconnecting local exchange companies to obtain facilities to be used for interconnection at lower prices than the company would pay if it were using the facilities for special access.<sup>6</sup> The FCC then imposed various restrictions and safeguards to reflect the fact that facilities may be

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<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd.15499, ¶190 (1996), (*Local Competition First Report and Order*).

priced differently depending on their use. It specifically stated that carriers would not be permitted to obtain interconnection pursuant to section 251(c)(2) if the facility is to be used solely for the purpose of originating or terminating its interexchange traffic.<sup>7</sup>

15 The Commission's own understanding of these constraints has evolved between the *Workshop One Final Order* and the 15<sup>th</sup> *Supplemental Order* addressing Workshop Two issues. We reiterate that our decision on this issue is not limited by or based upon the FCC's *Supplemental Order* or *Supplemental Order Clarification*. As the CLECs' pleadings show, the FCC has not addressed the specific combination of interconnection and special access facilities, only the connection of UNEs with special access facilities. Absent a legal prohibition on their combination, CLECs should be able to exploit the full economic benefits of larger facilities without giving up the discount for local interconnection to which they are entitled.

16 There is no basis for the argument that this decision will undermine universal service support in this state. Qwest has not shown that universal service in this state depends on revenues from special access circuits; nor has it shown that these revenues would be diminished with proportionate pricing.

### **B. Publication of Centrex Prime Prices**

17 The *February 2001 Initial Order* found that the manner in which Qwest offers Centrex Prime service creates an unreasonable restriction on resale. *February 2001 Initial Order*, ¶278. Specifically, the Commission required Qwest to publish its standard pricing schedule for Centrex Prime, "either in its tariff or in the SGAT" to remove the restriction. *February 2001 Initial Order*, ¶279. In the 15<sup>th</sup> *Supplemental Order*, the Commission directed Qwest to publish its standard Centrex Prime pricing "either in the SGAT or a tariff, within 10 days of service of [the] Order." 15<sup>th</sup> *Supplemental Order*, ¶103.

18 **Qwest:** Qwest asks the Commission to reconsider the requirement that Qwest publish its Centrex Prime prices in the SGAT or tariff. Qwest believes this requirement is premised on a mistake of fact, namely that CLECs may only get price information if prices are published in the SGAT or tariff. Qwest argues CLECs can obtain Centrex Prime prices by reviewing any Centrex Prime contract filed with the Commission. Qwest submitted an appendix to its petition consisting of a copy of one such contract with a non-confidential statement of essential terms and conditions. Qwest also argues that the Commission has already approved the non-publication of Centrex Prime prices, when the Commission approved terms and conditions that state that pricing will be on a special contract basis.

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<sup>7</sup> *Local Competition First Report and Order*, ¶191.

- 19 **MetroNet:** MetroNet opposes Qwest's petition on this issue. MetroNet agrees with Qwest that Centrex Prime prices should not be included in the SGAT and asserts that prices should be published in Qwest's tariff or price list. However, MetroNet argues that the Qwest petition merely speculates as to the Commission's basis for ordering publication of prices, ignores record evidence supporting the conclusion that the absence of published prices hinders resale, and is based on new factual evidence that should not be considered in a petition for reconsideration.
- 20 **Discussion and Decision:** The Commission was well aware of the procedure for filing contracts when it concluded that Qwest's failure to publish Centrex Prime prices hindered resale. At best, reviewing already-executed Centrex Prime contracts lets resellers know what offers Centrex Prime customers *have accepted* from Qwest. These contracts can not tell the reseller what prices Qwest is *currently* offering; nor do they show what prices Qwest *offered* but were not accepted by the customers. Qwest's practice of providing a pricing schedule to its own sales staff, but not to resellers, is an unreasonable impediment to resale.
- 21 Qwest's argument that the Commission should reconsider its decision to publish prices because the Commission has approved this practice is without merit. The Centrex Prime tariff does state that prices are to be developed on an individual case basis and specified in a service agreement with the customer.<sup>8</sup> That tariff took effect under operation of law on August 30, 2000. The fact that the Commission did not suspend or reject the tariff does not mean that it approved the tariff. The Commission's acceptance of the filing in the past does not prevent the Commission now from determining whether Qwest's practices constitute an unreasonable impediment to resale.
- 22 The Commission concurs with MetroNet that the appropriate way to publish Centrex Prime prices is not in the SGAT but rather in the tariff or price list containing the terms and conditions of the Centrex Prime service itself. We note that Qwest has complied with the requirements of the 15<sup>th</sup> *Supplemental Order* and MetroNet's request by filing a tariff and price list in Docket Nos. UT-011323 and UT-011324, which became effective by operation of law on January 31, 2002.

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<sup>8</sup> Qwest Exchange and Network Services Washington Tariff, WN U-40, Original Sheet 38. The same provision is listed in Qwest's Exchange and Network Services Washington Price List, Original Sheet 105. The price list applies to Qwest's offering of service to customers served over a DS-1 or larger circuit in certain urban wire centers where the Commission determined in Docket UT-000883 that Qwest's local exchange service was subject to effective competition. The determination of effective competition does not affect Qwest's duty under federal law to make its service available for resale.

**V. FINDINGS OF FACT**

- 23 (1) SGAT section 7.3.1.1.2 provides that private line tariff rates apply when CLECs use existing facilities purchased as private line transport service as entrance facilities for interconnection.
- 24 (2) In the *Workshop One Final Order*, the Commission adopted findings in paragraph 231 of the *Revised Initial Order* that SGAT section 7.3.1.1.2 need not be modified to allow proportional pricing of interconnection and special access on existing facilities.
- 25 (3) The *February 2001 Initial Order* recommended in paragraph 70 that CLECs pay TELRIC rates for the portion of DS-1 entrance facilities used for interconnection as long as CLECs pay the private line DS-1 rate for the portion used for private lines.
- 26 (4) In paragraphs 17 and 19 of the *15<sup>th</sup> Supplemental Order*, the Commission adopted the recommended decision in paragraph 70 of the *February 2001 Initial Order*, reversed its decision to adopt the recommendation in paragraph 231 of the *Revised Initial Order*, and ordered proportional pricing of *all* facilities when used for interconnection and special access.
- 27 (5) The Commission did not suspend or reject Qwest's Centrex Prime tariff, but allowed the filing to go into effect under operation of law on August 30, 2000.
- 28 (6) Qwest's Centrex Prime tariff provides that prices are to be developed on an individual case basis and specified in a service agreement with the customer.
- 29 (7) Resellers may review already-executed Centrex Prime contracts to determine what offers Centrex Prime customers have accepted from Qwest. The contracts do not identify the prices that Qwest is currently offering, or identify prices that Qwest has offered but that customers did not accept.
- 30 (8) Paragraph 103 of the *15<sup>th</sup> Supplemental Order* requires Qwest to publish its standard Centrex Prime pricing "either in the SGAT or a tariff, within 10 days of service of [the] Order."
- 31 (9) Qwest has filed a tariff and price list including Centrex Prime pricing in Dockets No. UT-011323, and UT-011324, which became effective on January 31, 2002.

## V. CONCLUSIONS OF LAW

- 32 (1) The Commission's decision to require proportional pricing rests on the economic principle that companies should exploit scale economies where they exist.
- 33 (2) The FCC's *Supplemental Order* and *Supplemental Order Clarification* do not apply to the circumstances in this order or SGAT section 7.3.1.1.2 nor prohibit proportional pricing for facilities used for interconnection and special access. The FCC orders address the connection of UNEs to special access facilities, not the use of existing facilities for both interconnection and special access.
- 34 (3) Qwest has not demonstrated that proportional pricing will undermine universal service support, specifically that universal service in Washington depends on revenue from special access circuits, or that these revenues would diminish with proportional pricing.
- 35 (4) Allowing Qwest's Centrex Prime tariff filing to go into effect under operation of law does not preclude the Commission from later determining whether Qwest's practices constitute an unreasonable restriction on resale.
- 36 (5) Prices listed in already-executed Centrex prime contracts do not adequately identify the prices at which Qwest offers Centrex Prime service.
- 37 (6) Qwest's practice of providing a pricing schedule to its own sales staff, but not to resellers creates an unreasonable restriction on resale.
- 38 (7) Qwest has complied with the requirements of paragraph 103 of the *15<sup>th</sup> Supplemental Order*, and MetroNet's request, by filing a tariff and price list including Centrex Prime pricing in Dockets No. UT-011323, and UT-011324, which became effective on January 31, 2002.

## VII. ORDER

THE COMMISSION ORDERS That:

- 39 (1) The Commission retains jurisdiction to implement the terms of this order.
- 40 (2) Qwest's Petition for Reconsideration of the *15<sup>th</sup> Supplemental Order: Interconnection, Collocation, LNP, and Resale*, is denied.
- 41 (3) Qwest must modify its SGAT, including section 7.3.1.1.2, to apply proportional rates to CLECs using facilities for both interconnection and special access service, i.e., apply TELRIC rates to the portion used for



interconnection and private line tariff rates for the portion used for special access.

- 42 (4) Qwest must publish its standard Centrex Prime prices in its tariff or price list containing the terms and conditions of Centrex Prime service.

DATED at Olympia, Washington and effective this day of February, 2002

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner