

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET NO. UT-033044
)	
QWEST CORPORATION	)	ORDER NO. 13
)	
To Initiate a Mass-Market	)	PREHEARING CONFERENCE
Switching and Dedicated Transport	)	ORDER; GRANTING AT&T'S
Case Pursuant to the Triennial	)	MOTION TO STRIKE QWEST
Review Order	)	TESTIMONY; GRANTING THE
	)	JOINT CLECS' MOTION TO
	)	COMPEL; MODIFYING
	)	PROCEDURAL SCHEDULE;
	)	NOTICE OF HEARING (April 27-30,
	)	2004); NOTICE OF PREHEARING
	)	CONFERENCES (March 1, 2004, 8:30
	)	a.m., March 4, 2004, 8:30 a.m., and
	)	April 27, 2004, 9:30 a.m.)
.....)	

1 **SYNOPSIS.** *In this Order, the Commission grants AT&T's motion to strike portions of Qwest witness Mr. Pappas' Direct Testimony on Batch Hot Cut Issues addressing electronic loop provisioning, or ELP. The Commission grants in part the Joint CLECs' Motion to Compel Qwest Responses to Data Requests Nos. 02-005 and 02-010.*

2 *In this Order, the Commission also modifies the procedural schedule in this proceeding, scheduling additional prehearing conferences, scheduling additional days of hearing to separately address batch hot cut issues, establishing a third round of testimony for batch hot cut testimony, modifying the existing briefing schedule, and establishing a separate briefing schedule for batch hot cut issues.*

3 **NATURE OF THE PROCEEDING.** This proceeding addresses a petition filed
by Qwest Corporation (Qwest) seeking review of the findings of the Federal
Communications Commission (FCC) in its Triennial Review Order¹ concerning
impairment to competitors without unbundled access to mass-market switching
and dedicated transport.

4 **PROCEDURAL HISTORY.** On October 10, 2003, Qwest filed a petition with the
Washington Utilities and Transportation Commission (Commission) in Docket
No. UT-033044 to initiate a review of the FCC's findings in the Triennial Review
Order concerning mass-market switching and dedicated transport.² In Order No.
01 in this proceeding, the Commission scheduled a prehearing conference for
Tuesday, February 24, 2004, to make final preparations for the hearings
scheduled to begin March 1, 2004.

5 On Wednesday, February 18, 2004, 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 with the Commission a Motion to Strike Qwest
Testimony Regarding Electronic Loop Provisioning. By notice dated February
18, 2004, the Commission established a date for filing responses to AT&T's
motion, and noted that the motion would be addressed at the February 24, 2004,
prehearing conference.

6 On Thursday, February 19, 2004, Eschelon Telecom of Washington, Inc.
(Eschelon), Integra Telecom of Washington, Inc. (Integra), Global Crossing Local

¹ *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96098, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. August 21, 2003) [Hereinafter "Triennial Review Order"].

² A summary of earlier procedural history in this docket is set forth in Order Nos. 05 and 06 in this proceeding and will not be repeated in this Order.

Services, Inc. (Global Crossing), McLeodUSA Telecommunications, Inc. (McLeodUSA), Pac-West Telecomm, Inc. (Pac-West), and XO Washington, Inc. (XO) (collectively Joint CLECs) submitted to the Commission via electronic mail a Motion to Compel Qwest to Respond to Data Requests, and filed the motion with the Commission on Friday, February 20, 2004. By notice dated February 19, 2004, the Commission established a date for filing responses to the Joint CLECs' motion, and noted that the motion would be addressed at the February 24, 2004, prehearing conference.

7 During the conference on February 24, 2004, Qwest made an oral motion requesting leave to file an additional round of testimony addressing batch hot cut issues. Parties were given an opportunity to respond to Qwest's request during the conference.

8 **APPEARANCES.** Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest. Rebecca DeCook, AT&T Law Department, Denver, Colorado, represents AT&T. Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad Communications Company (Covad). Stephen S. Melnikoff, Regulatory Law Department, US Army Litigation Center, Arlington, Virginia, represents the Department of Defense and all other Federal Executive Agencies (DOD/FEA). Gregory J. Kopta, Davis Wright Tremaine, LLP, Seattle, Washington, represents Advanced TelCom Group, Inc. (ATG), Eschelon, Global Crossing, Integra, McLeodUSA, Pac-West, Time Warner Telecom of Washington, LLP (Time Warner), and XO. These parties are referred to as the Joint CLECs. Michel Singer Nelson, attorney, Denver, Colorado, and Lisa Rackner, Ater Wynne LLP, Portland, Oregon, represent WorldCom, Inc, d/b/a MCI, Inc. (MCI). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents Commission Staff.

- 9 **AT&T'S MOTION TO STRIKE QWEST TESTIMONY.** Given that the Commission granted Qwest's motion to strike AT&T testimony concerning Electronic Loop Provisioning (ELP), AT&T requests that portions of the confidential direct testimony of Qwest witnesses Dennis Pappas and Lynn Notarianni concerning ELP be stricken. During the conference, Qwest stated that it does not oppose AT&T's motion but raised questions about the specific portion of Mr. Pappas' and Ms. Notarianni's testimony that should be stricken. Specifically, Qwest was concerned that the page references in AT&T's motion might result in more being stricken from the testimony than necessary. AT&T and Qwest agreed to work to resolve the issue of the exact portion of the testimony that should be stricken.
- 10 **Discussion and Decision.** AT&T's motion to strike portions of Mr. Pappas' and Ms. Notarianni's direct testimony is granted, subject to AT&T and Qwest reaching agreement on that portion of the testimony that must be stricken. The parties must advise the Commission of their resolution of the issue no later than the prehearing conference scheduled for **8:30 a.m. on Thursday, March 4, 2004.**
- 11 **JOINT CLECS' MOTION TO COMPEL.** The Joint CLECs request that Qwest respond to Joint CLEC Data Requests Nos. 02-005 and 02-010 from the second set of data requests sent to Qwest on December 30, 2003.
- 12 **Data Request No. 02-005.** During the conference, Qwest provided a verbal response to Data Request No. 02-005 that answered the data request to the Joint CLECs' satisfaction. **Qwest must provide a written supplemental response to Joint CLEC Data Request No. 02-005 by Tuesday, March 2, 2004,** to allow the Joint CLECs and other parties to include the supplemental response in what has been marked as Exhibit 229.

- 13 **Data Request No. 02-010.** In Data Request No. 02-010, the Joint CLECs seek Qwest's revenues per line to serve mass-market customers in the Metropolitan Statistical Areas identified by Qwest's witness Mr. Copeland in Table 1, page 2, of Mr. Copeland's Exhibit PBC-4C. The Joint CLECs note that Qwest has provided revenue information for customers who have left Qwest for another local service provider, but not revenue information for all mass-market customers that Qwest serves. The Joint CLECs rely on sections of the Triennial Review Order to support their argument that Qwest must provide data on all revenues Qwest receives from all of its mass-market customers. *See Triennial Review Order, ¶¶ 519, 485, n.1511.*
- 14 Qwest did not file a written response to the Joint CLECs' motion to compel, but provided an oral response at the conference. Qwest asserts that its revenues from serving all mass-market customers are irrelevant to the question of what an efficient CLEC would earn if it provides its own switching. Qwest also relies on paragraph 519 of the Triennial Review Order, asserting that the FCC requires states to "consider "all revenues that will derive from service to the mass-market, based on the most efficient business model for entry." (*Emphasis in original*). Qwest asserts that an efficient business model for entry would rely only on the high revenue customers that CLECs in this state have targeted, rather than the low-end customers that Qwest must serve as a carrier of last resort. Finally, Qwest notes that in an errata filed by the FCC, the FCC removed certain language in paragraph 519 of the Triennial Review Order concerning the requirement to consider all customers in the mass-market.
- 15 The Joint CLECs and AT&T responded to Qwest's arguments. First, the Joint CLECs dispute Qwest's interpretation of paragraph 519 of the Triennial Review Order. Second, the Joint CLECs assert that Qwest must provide data on all mass-market revenues to allow the Commission to determine if CLECs can target the same customers as Qwest. The Joint CLECs assert that these revenues are a benchmark for the likely revenues a CLEC might earn. AT&T argues that

footnote 1497 of the Triennial Review Order, as well as paragraphs 472 and 483, provide the FCC's critique of business models provided during its Triennial Review proceeding. AT&T asserts that the FCC requires states to consider all likely revenue sources for mass-market customers, particularly the average customer in the mass-market.

16 **Discussion and Decision.** Paragraph 519 of the Triennial Review Order addresses the potential revenues a CLEC may earn, one factor state commissions must consider in conducting an analysis of the potential ability of CLECs to deploy their own switches to serve the mass-market. This paragraph does not appear to limit the revenues that must be considered, but requires states to consider revenues "associated with providing voices services, including (but not restricted to) the basic retail price charged to the customer, the sale of vertical features, universal service payments, access charges, subscriber line charges, and if any, toll revenues." *Triennial Review Order*, ¶ 519. While the language of paragraph 519 does state that likely revenues must be based upon the most efficient model for entry, as Qwest asserts, this language must be balanced by the information the FCC requires in a business model for entry, *i.e.*, "the typical revenues gained from serving the average customer in the market." *Id.*, ¶ 472; *see also Id.*, ¶ 483.

17 With this understanding of the potential revenues that states must consider under the Triennial Review Order, Qwest must provide data on all of the revenues Qwest generates from all of its mass-market customers. The Joint CLECs' motion to compel Qwest to respond to Data Request No. 02-010 is granted.

18 **QWEST'S MOTION FOR AN ADDITIONAL ROUND OF BATCH HOT CUT TESTIMONY.** During the conference, Qwest requested leave for all parties to file an additional round of batch hot cut testimony in the proceeding. Qwest

makes the request to allow its witnesses to more specifically address the issue of the costs of Qwest's proposal. No other party objected to Qwest's request.

19 **Discussion and Decision.** As discussed below, it has become necessary to schedule additional days of hearing to address the numerous issues in the proceeding and to accommodate the need for parties to effectively cross-examine all witnesses in the proceeding. Batch hot cut issues will be addressed in a separate hearing in this proceeding scheduled for April 27-30, 2004. In order to allow parties to further address the issue of Qwest's batch hot cut process, including the costs of Qwest's proposal, **parties may file a third round of batch hot cut testimony with the Commission by Friday, March 26, 2004.** As with third round of testimony on other issues in this proceeding, **witnesses filing a third round of batch hot cut testimony must limit their testimony to 20 pages.**

20 **REVISED PROCEDURAL SCHEDULE.** During the conference, it became clear that the parties' estimates of cross-examination time far exceeded the time set aside for hearing in this proceeding. Parties were asked to submit revised cross-examination time estimates by **Noon on Wednesday, February 25, 2004.** In addition, a separate three-day hearing in April was proposed, and the parties tentatively agreed that such a separate hearing would resolve the issue of hearing time. As a result of scheduling the additional days of hearing, the deadline for filing responsive briefs in the proceeding has been extended, and a separate briefing schedule has been established for batch hot cut issues. The revised procedural schedule is set forth below.

21 Additional prehearing conferences have been scheduled to address any remaining procedural issues before the hearings scheduled to begin on March 1, 2004, to identify and mark testimony and exhibits concerning batch hot cut issues that may also address network and operational issues, and to prepare for the April batch hot cut hearing. These prehearing conferences are included in the

revised procedural schedule set forth below, as well as the notices included in this Order.

<u>Event</u>	<u>Date</u>
Prehearing Conference	Monday, March 1, 2004, 8:30 am
Prehearing Conference	Thursday, March 4, 2004, 8:30 am
Third Round of Batch Hot Cut Testimony	Friday, March 26, 2004
Exhibit and Cross-examination exhibit lists, estimates of cross-exam time, and all remaining unfiled exhibits	Tuesday, April 20, 2004, Noon
Prehearing Conference	Tuesday, April 27, 2004, 9:30 am
Batch Hot Cut Hearings	Tuesday, April 27, 2004, 1:30 pm Wednesday, April 28, 2004, 1:30 pm Thursday, April 29, 2004, 9:30 am Friday, April 30, 2004, 9:30 am
Responsive Briefs – Main Case	Friday, May 7, 2004
Initial Briefs – Batch Hot Cut	Friday, May 14, 2004
Responsive Briefs – Batch Hot Cut	Thursday, May 27, 2004

22 **NOTICE OF HEARING.** The Commission convenes a hearing concerning Qwest's Batch Hot Cut proposal beginning at 1:30 p.m., on Tuesday, April 27, 2004, in Room 206, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing will continue beginning at 1:30 p.m. on Wednesday, April 28, 2004, following the Commission's open meeting, through Thursday and Friday, April 29 and 30, 2004.

23 **NOTICES OF PREHEARING CONFERENCES.** The Commission convenes a prehearing conference in this matter to address any remaining issues prior to the hearings scheduled to begin at 9:30 a.m. on March 1, 2004. **The conference will be held in Room 206 of the Commission's Hearing Room, Second Floor,**

Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, at 8:30 a.m. on Monday, March 1, 2004.

- 24 The Commission convenes a prehearing conference in this matter to identify and mark testimony and exhibits concerning batch hot cut and network and operational issues that may be addressed during the second week of hearing scheduled to begin on March 15, 2004, and to address any other issues that may be raised during the hearing. **The conference will be held in Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, at 8:30 a.m. on Thursday, March 4, 2004.**
- 25 The Commission convenes a prehearing conference in this matter to address final preparations for the batch hot cut hearings scheduled to begin on Tuesday, April 27, 2004. **The conference will be held in Room 206 of the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington, at 9:30 a.m. on Tuesday, April 27, 2004.**
- 26 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 26th day of February, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge