

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

TEL WEST COMMUNICATIONS, LLC,)	
)	DOCKET NO. UT-013097
Petitioner,)	
)	FIFTH SUPPLEMENTAL ORDER;
vs.)	DENYING MOTION TO
)	SUSPEND PROCEEDINGS AND
QWEST CORPORATION, INC.,)	NARROW THE ISSUES; NOTICE
)	OF PREHEARING CONFERENCE
Respondent.)	(June 18, 2002, at 9:30 a.m.);
)	NOTICE OF HEARING
)	(June 24, 2002, at 9:00 a.m.)
.....)	

Qwest Motion to Suspend Proceedings and Narrow the Issues

- 1 **Background.** The Fourth Supplemental Order served on March 20, 2002, established a procedural schedule that had been previously agreed to by Tel West Communications, LLP (“Tel West”) and Qwest Corporation, Inc. (“Qwest”) for the Provisioning Parity part of this proceeding. Provisioning Parity encompasses Tel West’s claims that Qwest does not provision telecommunications services to Tel West in a substantially equal time, manner, or quality.
- 2 The Commission on March 22, 2002, issued a notice suspending procedural schedule until further order in order to develop a revised schedule to allow Tel West adequate time to evaluate discovery responses before filing direct testimony. On that same date, Qwest filed its Motion To Suspend the Part B Procedural Schedule and Narrow the Issues [Provisioning Parity Issues]. Tel West answered the motion on March 26, 2002. The Commission on March 27, 2002, requested that Qwest file a reply to Tel West’s answer. Qwest filed its reply on April 3, 2002.
- 3 **Discussion.** Qwest argues that proceedings are scheduled in consolidated Dockets UT-003022 and UT-003040 (the “SGAT/271 Proceeding”) contemporaneous with this case pertaining to identical issues regarding Qwest’s provisioning performance and the efficacy and sufficiency of Qwest’s OSS. Qwest argues that these complex issues cannot be adequately addressed in a proceeding of this nature, that there is a great potential for inconsistent results. According to Qwest, the Commission will be evaluating the sufficiency of Qwest’s actual provisioning performance and its OSS in the SGAT/271 Proceeding, and that the issues in this case should be narrowed to

whether Qwest provisions telecommunications services to Tel West relative to other CLECs, and not to Qwest itself.

4 Tel West responds that the SGAT/271 Proceeding relies on a statistical analysis based on Qwest's performance relative to other CLECs, and it does not address Tel West's entitlement to substantially equal treatment pursuant to the interconnection agreement between the parties ("Agreement"). According to Tel West, there are material differences between itself and the CLECs that are participating in the SGAT/271. Thus, Tel West infers that outcomes in the SGAT/271 Proceeding will not resolve the disputed issues that have been raised.

5 Tel West points out that Qwest is not compelled to make process improvements as part of the SGAT/271 process, and that the schedule in that case is driven by Qwest's own competitive needs. Tel West argues that it is entitled to remedies for Qwest's alleged breaches of the Agreement, and that it should not be compelled to subordinate its competitive needs to those of Qwest. Tel West concedes that the issues in the SGAT/271 Proceeding and this case are related, but it also contends that they are not identical. Tel West argues, therefore, approval of Qwest's Section 271 application does not necessarily mean that Qwest is also performing its obligations under the Agreement.

6 Qwest replies that an evaluation of its performance under the Agreement requires the same broad inquiry into whether Qwest provisions services at parity with its retail services, and whether Qwest provides non-discriminatory access to its OSS, that is central to the Commission's SGAT/271 Proceeding. Qwest responds that it is not seeking dismissal of Tel West's petition; rather, the company contends that a Commission determination that Qwest provides CLECs with nondiscriminatory access to its OSS in the SGAT/271 Proceeding will vitiate the need to make similar findings in this case. Qwest argues that the evidence under consideration in the SGAT/271 Proceeding is more reliable than that which Tel West purports to present in this case. Qwest also argues that Tel West would not be prejudiced by the proposed delay because Tel West continues to develop new business, and Qwest claims that recent performance measurements demonstrate that Qwest is presently provisioning services to Tel West in substantially the same time as it provides these services to itself.

7 Qwest's motion and reply contain several key assertions that cannot be confirmed by reviewing Commission Orders in the SGAT/271 Proceeding or the pleadings in this proceeding. Further, Qwest relies on assertions of fact that are in dispute in this case. Qwest's contention that Tel West's reliance on "anecdotal" evidence is inferior to statistical analysis is not relevant to the motion under consideration.

8 *Provisioning Telecommunications Services in Substantially the Same Quality (Customer Service)*. Qwest's argument that the company is obligated to provide

telecommunications services that are at least equal in quality, and that customer service is not a telecommunications service, is an affirmative defense to be considered at hearing. However, Tel West's characterization of Qwest's wholesale customer service as a "quality" issue is also susceptible to characterization as the *manner* in which Qwest provides telecommunications services. Thus, Qwest's argument is not controlling for purposes of its motion.

- 9 There is no information available that substantiates the contention that this issue is also being addressed in the SGAT/271 Proceeding. This issue appears to be particular to Tel West, and Qwest's contention that it provides non-discriminatory customer service to Tel West is at the heart of a disputed factual issue between the parties. The fact that at least one party to the U S WEST/Qwest merger case negotiated a special arrangement for customer service and problem escalation further supports denial of Qwest's motion to suspend or narrow this provisioning parity issue.
- 10 *Provisioning Telecommunications Services in Substantially the Same Time.* Qwest contends that its quality assurance plan ("QPAP") will soon be available to Tel West; and that the QPAP will provide a mechanism to resolve the issue of provisioning services in the same time. However, Commission Orders in the SGAT/271 Proceeding suggest that the QPAP is not available until Qwest is granted final Section 271 approval. It is well known that Qwest has allocated substantial resources to this effort and that approval is central to the company's long-term business plan, but the prospective date for final approval remains highly speculative.
- 11 Equally significant is the fact that the QPAP, once it becomes effective, will constitute an arrangement that CLECs must adopt in order to obtain its benefits. Qwest's belief that the QPAP will address Tel West's concerns is not a choice for Qwest to make. There is no term in the Agreement compelling Tel West to adopt the QPAP, nor is there any suggestion in the Commission's Orders in the SGAT/271 Proceeding that the QPAP will constitute the sole remedy for untimely provisioning under existing interconnection agreements.
- 12 Resolution of this issue requires that the Commission establish a standard for determining whether Qwest provides telecommunications services in substantially the same time that it provides services to itself and other resellers. Thereafter, it may be necessary to fashion a remedy. The existence of a proposed or established mechanism in the SGAT/271 Proceeding may provide guidance in this proceeding, but there is no requirement that it be implemented.
- 13 *Provisioning Telecommunications Services in Substantially the Same Manner (OSS).* Tel West argues that there are two systems for mediated access to Qwest's OSS, IMA GUI and IMA EDI. According to Tel West, both systems are intended to be substantially the same as Qwest's internal system – SONAR – but IMA EDI requires

a substantial expense to develop. Based on the record in this case, consultation with the Commission's advisors in the SGAT/271 Proceeding, and Commission Orders it is not clear that the Commission intends to make a determination whether IMA GUI provides access to Qwest's OSS in substantially the same manner as SONAR or IMA EDI. Unless this issue will be definitively addressed in the Commission's SGAT/271 Proceeding, there is no basis for narrowing this issue in this case.

- 14 **Decision.** Based on the reasoning in the foregoing discussion, Qwest's Motion To Suspend the Part B Procedural Schedule and Narrow the Issues is denied in all respects, and a revised procedural schedule is made part of this Order. However, Qwest may proffer additional arguments and evidence within 10 days of this Order to establish that the Commission intends to make a determination whether IMA GUI provides access to Qwest's OSS in substantially the same manner as SONAR or IMA EDI in the SGAT/271 Proceeding. Qwest's submission will be considered subject to WAC 480-09-810.

Procedural Schedule

- 15 The parties agreed to a revised procedural schedule regarding provisioning parity issues.

Tel West pre-filed direct evidence	April 15, 2002
Qwest data requests to Tel West	April 22
Tel West responses to Qwest DRs	April 29
Qwest follow-up to TW Responses	May 3
Tel West Supplemental Responses	Delivered to Qwest by noon on May 10, or no later than May 13
Qwest pre-filed response evidence	May 24, if TW supp. responses delivered by noon on May 10; otherwise May 28, 2002
Tel West data requests to Qwest	June 5
Qwest responses to Tel West DRs	June 12
Prehearing conference	June 18, 2002, at 9:30 a.m.
Pre-hearing briefs	June 19
Tel West rebuttal evidence (live)	June 24
Hearing begins	June 24, 2002, at 9:00 a.m.
Post-hearing briefs or arguments	TBD

- 16 **Legal Briefs, and Filing and Service Requirements.** The parties will file briefs on June 19, 2002. The parties must present an outline of issues to be addressed in briefs no later than June 5, 2002. Briefs must be no longer than forty-five (45) pages.

- 17 Parties must file an original and 10 copies of pleadings and briefs. The deadline for filing and serving pleadings, discovery responses, and briefs is 4:30 p.m. on the

respective due date unless otherwise noted. Parties may file by facsimile transmission, if the requisite number of paper copies are delivered to the Commission on the following business day. The cover letter accompanying fax filed documents should state that the presiding officer in the proceeding has authorized parties to do so. Parties are encouraged to exchange electronic versions of all documents.

Notice of Prehearing Conference

18 **NOTICE IS HEREBY GIVEN That a prehearing conference will be held at 9:30 a.m. on Thursday, June 18, 2002, in Room 108, Commission Headquarters, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

19 The purpose of the conference is to discuss procedural issues regarding the hearing on June 24, 2002, and to address any other procedural matters that may require attention. Parties may attend via teleconference with prior permission from the presiding officer.

Notice of Hearing

20 **NOTICE IS HEREBY GIVEN That a hearing will be convened beginning at 9:00 a.m. on Monday, June 24, 2002, in Room 206, Commission Headquarters, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

Dated at Olympia, Washington and effective this 11th day of April, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this document, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.