

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	DOCKET NO. UT-033044
)	
QWEST CORPORATION)	ORDER NO. 14
)	
To Initiate a Mass-Market)	ORDER GRANTING QWEST MOTION
Switching and Dedicated Transport)	TO SUSPEND PROCEEDINGS
Case Pursuant to the Triennial)	INDEFINITELY; CANCELLING
Review Order)	PROCEDURAL SCHEDULE
.....)	

1 **SYNOPSIS.** *In this Order, the Commission suspends this proceeding indefinitely, due to the uncertainty prompted by the March 2, 2004, decision of the D.C. Circuit Court of Appeals. By this Order, the Commission cancels the procedural schedule in this case, including the remaining hearings scheduled for the weeks of March 15-19, 2004, and April 27-30, 2004. The Commission will schedule at a later date a status conference to address whether the proceeding should continue, and how to address the evidentiary record in the proceeding.*

2 **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.

3 **PROCEDURAL HISTORY.** On October 10, 2003, Qwest filed a petition with the Washington Utilities and Transportation Commission (Commission) in Docket

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.*

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

4 On March 1, 2004, the Commission began hearings in this proceeding scheduled to continue through March 5, 2004, and continue on during the weeks of March 15, 2004 and April 26, 2004. On the morning of March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit entered a decision in *United States Telecom Association v. Federal Communications Commission (USTA v. FCC)*, No. 00-1012, the appeal by numerous parties of the FCC's Triennial Review Order. In its decision, the D.C. Circuit vacated and remanded significant portions of the FCC's Triennial Review Order. Following an extended break, the Commission gave the parties an opportunity to comment on how the Commission should proceed given the D.C. Circuit's decision. During that discussion, Qwest renewed a previously filed motion to suspend the proceedings.

5 **APPEARANCES.** Lisa A. Anderl, Associate General Counsel, and Adam Sherr, Senior Attorney, Qwest Corporation, Seattle, Washington, and Ted Smith, Stoel Rives, LLP, Salt Lake City, Utah, represent Qwest. Rebecca DeCook and Steven Weigler, AT&T Law Department, Denver, Colorado, represent AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon. Karen S. Frame, Senior Counsel, Denver, Colorado, represents Covad Communications (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, Inc., Eschelon Telecom of Washington, Inc., Global Crossing Local Services, Inc., Integra Telecom of

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"].

Washington, Inc., McLeodUSA Telecommunications, Inc., Pac-West Telecom, Inc., Time Warner Telecom of Washington, LLP, and XO Washington, Inc. 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). Arthur A. Butler, Ater Wynne, LLP, Seattle, Washington, represents the Washington Electronic Business and Telecommunications Coalition (WeBTEC). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Simon ffitch, Assistant Attorney General, represents the Public Counsel Section of the Attorney General's Office.

6 **QWEST MOTION TO SUSPEND PROCEEDINGS.** On February 10, 2004, Qwest filed a letter with the Commission requesting a 60-day delay in the procedural schedule in this proceeding. Qwest sought the suspension because of concerns expressed during oral argument in the appeal of the Triennial Review Order before the D.C. Circuit Court of Appeals that the FCC lacks authority to delegate impairment determinations to state commissions. Qwest asserted that the Court's decision was expected in the near future and asserted that the decision was likely to have a significant impact on the proceeding. The Commission denied Qwest's request in Order No. 10 in this proceeding, noting that it was premature to determine whether to delay or suspend the procedural schedule in this proceeding based upon statements made in oral argument.

7 During the hearings on March 2, 2004, Qwest renewed its motion to suspend the proceedings, requesting that the proceedings be suspended indefinitely in view of the D.C. Circuit's decision.

8 **DISCUSSION AND DECISION.** After providing other parties an opportunity to respond to Qwest's oral motion, the Commission granted the motion to

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.

suspend the proceedings indefinitely due to the uncertainty prompted by the D.C. Circuit's decision. The procedural schedule in this proceeding is cancelled, including the hearings scheduled for the weeks of March 1-5, 2004, March 15-19, 2004, and April 27-30, 2004. The Commission will schedule by separate notice a status conference to be held at a later date, most likely after the 60-day stay of the D.C. Circuit's decision has elapsed, to address whether to continue with the proceeding, and how to address the evidentiary record in the proceeding, given the amount of testimony and exhibits that have been filed with the Commission.

- 9 **NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810(3).**

DATED at Olympia, Washington, and effective this 3rd day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge