BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of QWEST CORPORATION To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order	DOCKET NO. UT-033044 COMMENTS OF PUBLIC COUNSEL

Public Counsel files these comments in response to the Commission's Notice of Opportunity to Submit Comments of May 6, 2004.

Public Counsel is concerned that the *USTA II* decision may result in a significant disruption to the Washington telecommunications market in a number of ways, including: price/rate increases for customers of CLECs, disruption of both ILEC and CLEC business plans and operations, and slowing or deterring of competitive entry. The nature and extent of these and other possible outcomes are, of course, dependent on how the *USTA II* decision is interpreted and acted upon, as well as the status of the litigation itself. It is in the interest of both Washington consumers and of competition in Washington that this disruption be avoided or minimized to the extent possible.

Public Counsel generally concurs with the comments filed in the Colorado proceeding, Docket Nos. 03I-478T and 03I-485T (Decision No. C04-0333) by the Colorado PUC Staff, competitors, and the Colorado Office of Consumer Counsel.[1] The scope of the impact of *USTA*

[1] Public Counsel concurs to the extent comments relate to general federal law and policy issues. We have no comment on matters relating to Colorado state law.

II is not clear at this stage. The decision most directly affects the FCC rules. The unbundling requirements and the cost-based pricing principle continue as ILEC legal obligations under the Telecommunications Act of 1996 itself, however. Existing interconnection agreements may also continue to impose these obligations, at least for a period of time, and depending the implementation and interpretation of "change of law" provisions. The Commission's notice in this docket has begun the process of determining how parties interpret these questions and how they will proceed.

The Commission is also faced with the question of how or whether to deal with new agreements, if any, being negotiated between incumbents and competitors. These negotiations are of significant interest to existing CLEC customers. In essence, their providers are faced with a difficult situation, in which the underlying terms and conditions on which service was established and rates calculated are shifting. CLECs, it would seem, are in a poor bargaining position, having to choose between accepting ILEC alternative interconnection terms, or changing or terminating business plans. Even if they reach an agreement with the ILEC, it may well cause price increases for their customers and loss of market share, with customers perhaps choosing to return to the incumbent. It would be valuable for the Commission to know of the existence of such negotiations and the terms of new agreements. To that end, the Commission should require that any new interconnection agreements be filed with the Commission in Washington.

The Commission may also wish to consider the extent to which it has independent state law authority to continue to require unbundling of network elements, including switching, and to require that such UNEs be offered at cost-based rates (TELRIC) to competitors. The Commission indeed conducted its own state unbundling proceedings well in advance of passage of the Telecommunications Act of 1996, under its own state law authority. *WUTC v. US West*

Communications, Docket Nos. UT-941464, 941465 et al. The question now would be whether and to what extent that authority is affected by the provision of the Act, and *USTA II*.

The *USTA II* decision raises another question which is Washington specific. Qwest was recently granted competitive classification, on a statewide basis, of its analog business services. *In the Matter of the Petition of Qwest Corporation For Competitive Classification of Basic Business Exchange Telecommunications Services*, Docket No. UT-030614, Order No. 17 (December 22, 2003). The Qwest petition, and ultimately the Commission's decision, were based to a significant extent on the availability and use of UNE-P by CLECs as a means of competitive entry. To the extent that *USTA II* is interpreted and implemented to end or significantly change the availability of UNE-P, this is a material change in the competitive conditions in the market. Once the status of UNE-P becomes clear in Washington, and if UNE-P is impacted, the Commission should reopen the competitive classification docket to determine whether the classification continues to be justified. Any new requests for competitive classification raise similar questions.

For these reasons, Public Counsel believes it would be helpful and appropriate for the Commission to convene a status conference in the docket to hear from parties on these and other relevant issues, and to consider the need for further proceedings.

RESPECTFULLY SUBMITTED this 21st day of May, 2004.

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