



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
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REPLY TO
ATTENTION OF
Regulatory Law Office
U 4113

May 25, 2004

VIA ELECTRONIC FILING & OVERNIGHT MAIL

Commission Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive, S.W.
Olympia, WA 98504-7250

Subject: **DoD/FEA's Response**

In Re: **Docket No. UT-033044** – 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.

To The Honorable Commission Secretary:

Enclosed for filing in the above-captioned proceeding is the original Response by the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to herein as "DoD/FEA").

In accordance with the Commission's Rules, a Certificate of Service (in Docket No. UT-033044) is appended. In addition, nineteen (19) copies of this letter with enclosures are attached. Copies of this filing are being sent to all parties of record in accord with the Certificate of Service. An electronic (by email) copy of this filing will be made on May 25, 2004.

Inquiries to this office regarding this proceeding should be directed to the undersigned at (703) 696-1643.

Thank you for your cooperation and assistance in this matter.

Sincerely,

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Enclosures

Attached: Nineteen (19) Copies

CF: See Certificate of Service (electronic service & first class mail)

Honorable Ann E. Rendahl (Email on 5/25/04)

BEFORE THE WASHINGTON 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

THE UNITED STATES DEPARTMENT
OF DEFENSE AND ALL OTHER
FEDERAL EXECUTIVE AGENCIES'

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing document, together with this Certificate of Service, in Docket No. UT-033044 to be sent this day by electronic service (email) and postage prepaid, properly addressed, first class U.S. Mail (or private courier) to the counsel and parties named below, as indicated:

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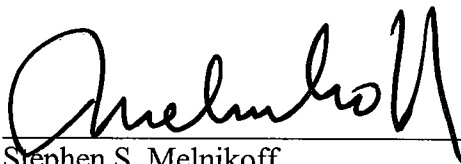
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Dated this 25th day of May 2004,
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

To Initiate a Mass-Market Switching
and Dedicated Transport Case
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Order

Docket No. UT-033044

THE UNITED STATES DEPARTMENT
OF DEFENSE AND ALL OTHER
FEDERAL EXECUTIVE AGENCIES'

RESPONSE

RESPONSE

by

**THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

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May 25, 2004

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

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RESPONSE

RESPONSE

The Secretary of Defense, through duly authorized counsel, on behalf of the customer interests of the United States Department of Defense and all other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"), hereby responds to the "Notice of Opportunity to Respond to Joint CLECs' Motion" (the "*Notice*") issued on May 11, 2004 by the Presiding Administrative Law Judge. In the *Notice*, the Washington Utilities and Transportation Commission ("the Commission") invited parties to file responses to the "Joint CLEC Motion for an Order Requiring Qwest to Maintain Status Quo Pending Resolution of Legal Issues" (the "*Motion*") filed by certain Competitive Local Exchange Carrier ("CLEC") parties herein on May 11, 2004.¹ The Joint CLECs filed the Motion to ensure that Qwest would maintain the *status quo* of its current local service obligations to CLECs in Washington in the event that the decision of the United

¹ The Joint CLECs are Advanced TelCom, Inc. d/b/a Advanced TelCom Group, Eschelon Telecom of Washington, Inc., Global Crossing Local Services, Inc., Integra Telecom of Washington, Inc., MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc., Pac-West Telecomm, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc.

States Court of Appeals for the District of Columbia in *USTA II* becomes effective.²

Specifically, the Joint CLECs seek a Commission order:

"... requiring Qwest to maintain the status quo and continue to honor all of its obligations under existing ICAs and its SGAT, including the provisioning of unbundled local switching (including UNE-P), transport, dark fiber, and high capacity loops at Section 252(d) compliant rates, until final federal unbundling rules are in place or until the Commission can undertake a generic proceeding to determine the impact of the D. C. Circuit's decision on Qwest's existing obligations to provide these UNEs."

In our May 21, 2004 Comments in response to the Commission's invitation to parties to respond to certain questions concerning the effect of *USTA II*, DoD/FEA acknowledged that if *USTA II* becomes effective and the CLECs and incumbent LECs fail to enter into commercial agreements for the provision of local exchange service, Commission action may be required. Such action may be necessary to ensure that the progress that has been made in the development of a competitive marketplace in Washington is not reversed and to ensure that service disruptions do not occur.³ We noted, as do the Joint CLECs herein, that Qwest may seek to amend the Commission-approved interconnection agreements ("ICAs") and its Statement of Generally Available Terms ("SGAT") pursuant to the "change of law" provisions in those documents.⁴ DoD/FEA takes no position herein on whether the effectuation of *USTA II* would be a "change of law" and, if so, the manner and time in which any changes thereto could be

² *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

³ The United States Department of Defense and All Other Federal Executive Agencies' Comments, May 21, 2004, filed in response to the "Notice of Opportunity to Submit Comments" issued on May 6, 2004 ("the *May 6 Notice*").

⁴ Apparently Qwest is in the process of "updating its SGAT to reflect the *USTA II* rulings." However, Qwest further stated, "[I]t intends to honor its interconnection agreements, thus assuring that no disruptions will occur to CLECs and customers if the mandate is issued by the D.C. Circuit on June 15, 2004. Any changes thereafter will occur in an orderly fashion under the change of law provisions of those agreements." Comments of Qwest Corporation, May 21, 2004, filed in response to the *May 6 Notice*,

made. However, given the possibility that the parties may experience disruption in their relationships as a result of *USTA II*, DoD/FEA suggested that the Commission initiate a new proceeding upon implementation of *USTA II* to determine what Commission-mandated services and rules are required to assure that customers in Washington have viable options for obtaining local service.

Importantly, as a customer, DoD/FEA has an interest to ensure that neither market turmoil nor service disruption occurs should *USTA II* become effective. Likewise DoD/FEA has an interest to see that appropriate procedures and processes are in place to effectively handle any resulting migrations during the transition from a pre-*USTA II* to a post-*USTA II* environment. However, DoD/FEA believes that this proceeding is not the proper forum for the Commission's issuance of an order maintaining the *status quo*. First, the Joint CLECs have not demonstrated that disruption of the competitive market is imminent. The record herein contains extensive data as to the current level of competition in Qwest's service area, but that evidence is based on the FCC's requirement that states employ a "trigger analysis" to assess the need for certain unbundled network elements. The record does not contain reliable information as to the possible impact that *USTA II* would have if it became effective -- and that is the type of data and analysis that is needed, in our view, to support a grant of the Motion. Moreover, as the Commission's staff observed in its May 21, 2004 Comments in response to the *May 6 Notice*, there is nothing for the Commission to do in this docket unless the United States Supreme Court grants a stay of *USTA II*.⁵ The staff also noted, as did other parties, that the Commission

paras. 18 and 20. We interpret that commitment, and encourage the Commission to confirm, that Qwest would not discriminate against any new CLEC wholesale customers pending any changes to the ICAs.

⁵ Comments of Commission Staff, May 21, 2004, p. 5.

could start a new proceeding to establish obligations for carrier unbundling under state law.⁶

Accordingly, DoD/FEA recommends that the Commission not take action now in this proceeding, given the procedural uncertainties that exist. Rather, the Commission should initiate a new proceeding upon effectuation of *USTA II*, and allow parties therein to seek any extraordinary relief desired after considering the actual steps, if any, that Qwest is taking that would disrupt the market for local service absent a continuation of the *status quo*.

Respectfully Submitted,



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For

The United States Department of Defense

And

All Other Federal Executive Agencies

Dated: May 25, 2004

⁶ *Id.*, p. 4.