

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE PETITION OF U S WEST COMMUNICATIONS, INC. FOR COMPETITIVE CLASSIFICATION	Docket No. UT-000883 JOINT MOTION TO STRIKE PORTION OF REBUTTAL TESTIMONY OF DAVID L. TEITZEL OR IN THE ALTERNATIVE FOR ORAL
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Advanced Telecom, Inc. ("ATG"), MetroNet Services Corporation ("MetroNet"), TRACER, Public Counsel, and Worldcom, Inc.¹ ("Joint Movants") move to strike a portion of the rebuttal testimony of David L. Teitzel filed in this docket on October 6, 2000 (DLT-3RT). In particular, Joint Movants move to strike lines 7 through 24 of page 12 of Mr. Teitzel's rebuttal. This motion is based upon Mr. Teitzel's rebuttal testimony and upon Qwest's response to Data Request No. ATG/MSO 03-042.

ARGUMENT

ATG and MetroNet served their request No. 03-042 on Qwest on August 23, 2000. The data request was intended to determine how Qwest intended to keep its commitment not to impose a price squeeze on competitors, including Joint Movants. Qwest served its response on ATG and MetroNet on September 11, 2000. The request and response provided as follows:

¹ Worldcom has not participated actively in this docket and had not planned to participate at the hearing because other intervenors seemed to be adequately representing its interests. However, Worldcom joins this motion because the issue it addresses—the proper method to determine a price floor—is very important. Worldcom agrees that it is highly improper for Qwest to try to avoid established imputation methodology and precedents so late in this docket when no other party has a chance to file responsive testimony.

REQUEST:

With regard to Mr. Teitzel's direct testimony at page 10 that "Qwest will not be able to price in a manner that will result in a price squeeze," please describe Qwest's methodology and give an illustrative example of how Qwest determines or will determine whether or not its wholesale and/or retail pricing imposes a price squeeze on its competitors.

RESPONSE:

Mr. Teitzel was referring to retail pricing in his direct testimony. Qwest will ensure that its retail pricing does not effectuate a price squeeze by pricing its retail services at a level above its comparable wholesale service prices. For example, Qwest will price its retail flat-rates business basic exchange service at a rate higher than the imputed price for an unbundled loop plus all other relevant TSLRIC costs of providing the service purchased on a wholesale basis. In this manner, a price squeeze will be avoided.

(Emphasis added). While the response provided little detail on the specific imputation methodology that Qwest would employ if competitive classification were granted in this docket, at least Qwest committed to comply with applicable law and prior Commission orders requiring imputation. See, e.g., RCW 80.36.186; Northwest Payphone Association, et al. v. U S WEST Communications, Docket No. UT-920174, Order Granting Complaint In Part dated March 17, 1995; WUTC v. U S WEST, Docket Nos. UT-911488, UT-911490, and UT-920252, Fourth Supplemental Order Denying Complaint; Accepting Tariffs Conditionally; Requiring Tariff/Price List Refiling dated November 18, 1993; and WUTC v. Pacific Northwest Bell Telephone Company, et al., Cause No. U-85-23, Eighteenth Supplemental Order dated December 30, 1986.

In reliance on Qwest's response to Data Request No. 03-042, ATG and MetroNet filed the testimony of Don Wood on September 18, 2000. Mr. Wood addressed the deficiencies of imputation in protecting competition from premature competitive classification. However, because Qwest had committed to using an imputed price floor, rather than TSLRIC as a price floor, Mr. Wood did not need to address why at a minimum a price floor must impute prices for monopoly elements of a service. Now, however, Qwest has changed its position as reflected in the rebuttal testimony of Mr. Teitzel at page 12.

Qwest's new position is set forth for the first time in Mr. Teitzel's testimony filed on October 6, 2000. Under its new policy Qwest will only ensure that its rates cover TSLRIC, not TSLRIC plus imputed costs:

- A. [T]o the extent the Commission agrees that competition is now present in the wire centers for the business services for which Qwest seeks competitive classification, the wholesale elements corresponding to those services can no longer be considered "essential" elements. In determining a price floor for a retail service based on nonessential elements, the TSLRIC of the service is considered to be that floor. Qwest commits that the revenues for any service classified as competitive will remain above the TSLRIC of that service. If the Commission finds that Qwest has violated that commitment, it will have the continued authority to reclassify services in question as non-competitive, which would also modify the imputation test to require that the price for essential wholesale elements and the TSLRIC for non-essential elements must be incorporated into the price floor.

Teitzel Rebuttal at 12.

This testimony represents an important and critical change in Qwest's position. Were the Commission to approve competitive classification in this docket based on this new "commitment," which provides no protection from a price squeeze by Qwest against its competitors, development of competition could be severely hampered in Washington. Moreover, were the Commission to implicitly or explicitly approve the new methodology proposed by Mr. Teitzel, it would represent a major shift in Commission policy regarding imputation.

Price floor issues are not to be taken up lightly. Certainly the issue is not at all factually engaged, given that Qwest first stated its new position in rebuttal testimony. Moreover, ATG, MetroNet, and other parties relied on a discovery response stating a different policy and, therefore, did not address the issue in their testimony.

CONCLUSION

Qwest's introduction of a new position on the proper price for the first time in rebuttal testimony is highly prejudicial to other parties. More importantly, allowing the testimony to be introduced into the record without an opportunity for responsive testimony could result in a bad policy decision by the Commission since the issues are not effectively joined. Accordingly, Joint Movants strongly urge the Commission to either strike the testimony of Mr. Teitzel at page 12, lines 7 through 24, or to allow Mr. Wood and other witnesses who may wish to address this issue the opportunity to offer oral surrebuttal to Mr. Teitzel's rebuttal testimony at the time of hearing.

DATED this 24th day of October, 2000.

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CERTIFICATE OF SERVICE
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