

Regulatory Law Office
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VIA ELECTRONIC FILING & FIRST CLASS 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 Comments on Qwest Petition**

In Re: **Docket No. UT-030614** – Request for Competitive Classification of
Basic Business Exchange Telecommunications Services.

To The Honorable Commission Secretary:

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"), hereby files its comments on the petition filed by Qwest Corporation ("Qwest") on May 1, 2003. In its petition, Qwest asks that the Commission classify its basic business exchange telecommunications services as competitive telecommunications services throughout the state of Washington. The Commission is scheduled to consider the petition at its May 28, 2003 meeting. A group of competitive carriers (the "Joint CLECs") and Public Counsel, by letters dated May 21 and May 23, 2003, respectively, have requested that the Commission set this matter for a public hearing. Although DoD/FEA may not necessarily be in agreement with the Joint CLECs or Public Counsel as to the substantive issues in this matter, it does agree that the Qwest petition raises significant issues and concerns that are not fully addressed in the material presently before the Commission.¹ Accordingly, a hearing or further proceedings is required to develop a better record upon which the Commission can rule on the petition.

Qwest attempts in the petition to show that it meets the statutory criteria for reclassification as set forth in RCW 80.36.330(1). Qwest must show that the services are subject to "effective competition" and the Commission must consider, at a minimum, four indicators as to the competitive nature of the service. Qwest has provided evidence as to the percentage of business access lines that competitive local exchange carriers (CLECs) serve in the state, along with data as to the number of competitors, their price lists, their size, affiliates and growth, and their ability to enter the market using different approaches.

¹ Certain material upon which Qwest relies was not publicly filed. Until DoD/FEA has seen all relevant material purportedly supporting Qwest's petition, we are unable to fully respond to the merits thereof. As we show herein, however, publicly-available data suggest that Qwest must explain its position in greater detail if it is to meet its statutory burden of proving that effective competition for its subject services exists throughout the state of Washington.

In opposing a grant of the petition as filed without any further proceedings, DoD/FEA urges the Commission to consider whether the market for Qwest's business exchange services in Washington is, without question, sufficiently competitive such that market forces, rather than Commission regulation, will establish just, reasonable and nondiscriminatory services, rates and practices for local business services throughout the state. If a service is misclassified before market forces can ensure just, reasonable and nondiscriminatory services, rates and practices, Qwest could impose unjust rates on those consumers without competitive alternatives, and also selectively eliminate competitors from the deregulated market through the use of below-cost pricing. The existence of market forces to constrain unjust and discriminatory, services, rates and practices requires a showing of more than the number of competitors. Rather, it is essential to demonstrate their current strength and ability to remain in the statewide market as competitive providers.

Qwest's petition presents little assurance that the presence of competitors in Washington can effectively set prices statewide for the services to be deregulated. Although Qwest has cited market share data, the Commission has found that the existence of competitors' market share without showing the number of customers served by competitors, fails to establish "effective competition."² The petition's showing as to market share also raises issues that need to be more fully explored -- for example, for purposes of reviewing whether effective competition exists so as to replace regulation, the Commission must carefully consider whether the presence of resold lines has any decisional significance. Clearly, competitors providing resold lines have lesser ability to establish fair market prices than do facilities-based competitors. Moreover, more data as to the geographic presence of competitive offerings is required. We also note that in general, competition for local service is somewhat weaker in Washington than on a national basis. The Federal Communications Commission's ("FCC's") latest semi-annual report on local competition, released in December 2002, shows that throughout the state of Washington (not just in Qwest's service areas), competitors served approximately 9% of end-user switched access lines, compared to the CLECs' national share of 11%.³ The strength of competition, not just the existence of certified competitors, must guide the Commission in assessing Qwest's request.

Hasty action on the Qwest petition is also unsupported by precedent, not only in Washington but elsewhere. Qwest's petition asks for a degree of reclassification that exceeds similar requests granted elsewhere -- actions that were taken only after full hearings. There are examples, in addition to the *2000 Reclassification Order*, of a state reclassifying business exchange service to some extent. For example, the New Jersey Board of Public Utilities issued a News release in June 2002 stating its approval of a reclassification of business exchange service, but only for customers with more than four access lines.⁴ The Pennsylvania Public Utility

² Petition of Qwest Corporation for Competitive Classification of Business Service in Specified Wire Centers, Docket No. UT-000883, *Seventh Supplemental Order Denying Petition and Accepting Staff's Proposal*, December 18, 2000 ("*2000 Reclassification Order*"), p. 20.

³ Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2002*, Table 6. The FCC's statistics do not differentiate between business and residence generally, and treat small businesses (four access lines or less) in the same category as residence.

⁴ In *The Matter Of The Application Of Verizon New Jersey, Inc. For Approval (i) Of A New Plan For An Alternative Form Of Regulation And (ii) To Reclassify Multi-line Rate Regulated Business Services As Competitive*

Commission has approved reclassification of business service for larger customers only, based on revenues, and certain other conditions.⁵ A grant of the petition, deregulating all of Qwest's basic business exchange telecommunications services throughout the state, would be virtually unprecedented nationwide, even after a hearing on the merits -- all the more reason for the Commission to question an immediate grant of the petition at the May 28 meeting.

Finally and very importantly, DoD/FEA agrees with the Joint CLECs and Public Counsel that a better understanding of whether effective competition for business exchange service exists and will continue to exist will depend in part upon the FCC's decision in its Triennial Review Order, which has not yet been released. Clearly, an important basis (the availability of UNEs and UNE-P at "wholesale" rates to alternative providers) upon which competition has been developing is now in an uncertain state. A full hearing on the petition would allow the Commission sufficient understanding to take into account the possible impact of the FCC's decision as to present and future competition in Washington.

Electronic copies of this letter are being sent as indicated below. 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,

Stephen S. Melnikoff
General Attorney
Regulatory Law Office
U.S. Army Litigation Center
901 N. Stuart Street, Suite 700
Arlington, Virginia 22203-1837
Telephone: (703) 696 - 1643
stephen.melnikoff@hqda.army.mil

CF: Chairwoman Showalter
Commissioner Hemstad
Commissioner Oshie
Glenn Blackmon, Assistant Director—Telecommunications
Tom Wilson, Telecommunications Analyst
Lisa A. Anderl, Counsel for Qwest
Adam L. Sherr, Counsel for Qwest
Public Counsel
Gregory J. Kopta, Counsel for "Joint CLECs"

Services, And Compliance Filing, Docket NO. TO01020095, June 19, 2002. The Board apparently has not yet released the decision.

⁵ Joint Petition of Nextlink Pennsylvania, Inc. et al., *Opinion and Order*, Docket Nos. P-00991648 and P-00991649 (August 26, 1999), pp. 242-248.