

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Investigation into  
U S WEST COMMUNICATIONS, INC.'S  
Compliance with Section 271 of the  
Telecommunications Act of 1996**

**Docket No. UT-003022**

**In the Matter of  
U S WEST COMMUNICATIONS, INC.'S  
Statement of Generally Available Terms  
Pursuant to Section 252(f) of the  
Telecommunications Act of 1996.**

**Docket No. UT-003040**

**QWEST CORPORATION'S NOTICE OF UPDATED STATEMENT OF  
GENERALLY AVAILABLE TERMS AND CONDITIONS**

Qwest Corporation, formerly known as U S WEST Communications, Inc. ("Qwest"), submits this notice of its updated Statement of Generally Available Terms and Conditions ("SGAT") in the State of Washington, along with the SGAT itself, which is attached.<sup>1</sup> Qwest respectfully requests that the Commission allow this version of the SGAT to go into effect within 60 days, pursuant to section 252(f)(3)(B) of the Telecommunications Act of 1996, 47 U.S.C. § 252(f)(3)(B).

**I. INTRODUCTION**

On March 22, 2000, Qwest filed its original SGAT with the Commission pursuant to Section 252(f) of the Telecommunications Act of 1996 ("Act"). Since then, Qwest and competitive local exchange carriers ("CLECs") throughout Qwest's 14-state region have participated in a collaborative process to explore and resolve literally hundreds of issues relating to specific provisions of Qwest's

---

<sup>1</sup> For the convenience of the Commission, Qwest is attaching both a "clean" version of the current SGAT that Qwest wishes to take effect, along with a red-lined SGAT that reflects the changes between the present submission and the last updated SGAT, which Qwest filed on January 29, 2002.

proposed SGAT in connection with Qwest's intent to enter in-region interLATA long distance markets in states throughout Qwest's 14-state region under Section 271 of the Act. This process has included the convening of numerous workshops where the parties have engaged in formal and informal discovery and submitted testimony, comments, and legal briefing—all of which ultimately lead either to consensus or to an order or recommendation of a state commission. To date, the process has been, by any measure, extremely successful in that the parties have been able to resolve the vast majority of disputed issues. In addition to the current filing, this collaborative process has resulted in three prior SGAT revisions, which were filed on June 29, 2001, September 21, 2001, and January 29, 2002.

As discussed further below, the document attached to this Notice is intended to comply with a pair of recent orders from the Commission. These include: the *Twenty-Eighth Supplemental Order; Final Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272*; and *Twenty-Sixth Supplemental Order Denying Qwest's Petition for Reconsideration of the Fifteenth Supplemental Order*.

The current filing also incorporates language related to the same checklist items that the parties have agreed to in Washington as well as in other states, including the joint undertaking of the state commissions of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah and Wyoming (the “multi-state proceeding”).

## **II. DISCUSSION**

### **A. Revisions Made to Comply with the Washington Commission’s Decisions**

As noted above, the Commission has issued several reports on Qwest’s compliance with various Section 271-related issues since Qwest’s most recent SGAT revision. Like the reports and orders of other state commissions investigating Qwest’s Section 271 checklist compliance, these orders recommended a number of changes to Qwest’s SGAT. Qwest modified the accompanying

SGAT to comply with these orders.<sup>2</sup> Qwest also notes that there are many instances where the Commission had recommended a modification that had already been implemented or otherwise approved the SGAT language as written—so no revision marks are shown in the red-lined SGAT.<sup>3</sup>

**B. Sections Related To Recommendations That Qwest Has Challenged Or Modified, As Well As Other Proposed Language.**

Despite Qwest’s acceptance of most of the Commission’s recommendations, Qwest has implemented language that modifies the Commission’s decisions in a few instances. Specifically, the Commission’s *Twenty-Eighth Supplemental Order* was not implemented in its entirety with respect to Sections 5.9.1.2,<sup>4</sup> 9.5.2.5,<sup>5</sup> and 9.7.2.9.<sup>6</sup> Rather, these sections were modified to be consistent with Qwest’s Petition for Reconsideration and Clarification of *Twenty-Eighth Supplemental Order*.

Further, Qwest has modified Section 7.3.1.1.2 and related subsections in connection with the Commission’s order on “ratcheting” or proportional rates in paragraph 41 of the *Twenty-Sixth Supplemental Order*. Qwest has included modifications to specifically reflect that the proportional pricing will apply only to those circuits that are purchased under Qwest’s intrastate tariff, and not from its FCC (interstate) tariff. The rationale for that approach is set forth below.

Qwest provides interstate special access services through federal tariffs filed with the Federal Communication Commission. These tariffs provide the exclusive means by which purchasers of interstate access can use Qwest’s services. Neither Qwest, its customers nor state regulators can

---

<sup>2</sup> See Changes resulting from *Washington Utilities and Transportation Commission (WUTC) Twenty-Eighth Supplemental Order; Final Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272* in SGAT §§ 2.1; 5.8.4; 5.9.1.2; 9.1.2.1; 9.1.2.1.5; 9.1.14; 9.2.2.8; 9.2.6.4; 9.3.3.5; 9.3.6.4.1; 9.4.1.1; 9.4.2.3.1; 9.5.2.1; 9.7.2.2.2; 9.7.2.2.2.1-9.7.2.2.2.12; 9.24.1.1; 18.1.1; 18.1.2; 18.3.1.1; Changes resulting from *WUTC Twenty-Sixth Supplemental Order Denying Qwest’s Petition for Reconsideration of the Fifteenth Supplemental Order* in SGAT §§ 7.3.1.1.2; 7.3.1.1.2.1.

<sup>3</sup> See SGAT §§ 2.2; 2.3; 2.3.1; 5.2.1; 5.8.1; 5.8.6; 5.12; 5.16.9; 5.16.9.1; 9.1.2.1.3; 9.2.2.3.1; 9.2.6.2; 9.3.5.1.1; 9.3.5.4.1; 9.4.5.1.4; 9.5.1; 9.7.1; 9.20.2.1; 9.20.2.1.3; 9.21.2.1.6; 9.21.7.3; 17.12.

<sup>4</sup> See *Twenty-Eighth Supplemental Order*, para. 121.

<sup>5</sup> *Id.*, para. 80.

<sup>6</sup> *Id.*, para. 54.

modify the terms and conditions of these federal tariffs without complying with the specific procedures set forth in the Communications Act. This rule arises in several contexts.

*Carter v. AT&T Co.*, 365 F. 2d 486 (5th Cir 1966), *cert denied*, 385 U.S. 1008 (1967), involved a private antitrust action against AT&T filed under 15 U.S.C. §§ 15 & 22. The antitrust action was closely related to a tariff that AT&T had filed with the FCC. The District Court held that "'primary jurisdiction' is 'vested in the' FCC 'to resolve all questions relating to the justness, reasonableness, validity, and effect of the tariffs and practices complained of,'" *Id.* at 491-92, and referred the matter to the FCC. At the urging of AT&T, the Court of Appeals for the Fifth Circuit affirmed. The court rejected the plaintiffs' argument that "the tariff is initially the handiwork of the Telephone Companies' scribes." *Id.* at 496. It emphasized that "a tariff, required by law to be filed, is not a mere contract. It is the law." *Id.*

More recently, *AT&T Co. v. Cent. Office Tel.*, 524 U.S. 214 (1998), involved an action brought by a long-distance reseller against AT&T, alleging breach of contract and tortious interference with contract arising from alleged defects in AT&T's provisioning and billing of services. The District Court entered a judgment based on a jury verdict for the reseller, and the Court of Appeals for the Ninth Circuit affirmed in part, but the Supreme Court reversed, holding that the reseller's claims were barred by the filed-tariff doctrine. AT&T had been required to file tariffs with the FCC. Citing a long line of cases, the Supreme Court held that these tariffs preempted plaintiff's claims. As the Court explained, the rate filed is "the only lawful charge" and "[d]eviation from it is not permitted upon any pretext." *Id.* at 422, *quoting Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915).

Under the "filed-rate doctrine" (which is not limited to rates),

the Supreme Court has ruled that where the FERC [Federal Energy Regulatory Commission] has lawfully determined a rate, allocation, or other matter, a state commission cannot take action that contradicts the federal determination. And even without explicit federal approval of a rate, the Court has treated a rate reflected in a FERC tariff as setting a rate level binding on a state commission in regulating the costs of the purchasing utility.

*Public Serv. Co. of New Hampshire v. Patch*, 167 F.3d 29, 35 (1<sup>st</sup> Cir. 1998), citing *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 373-74 (1988); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 962-66 (1986); cf. *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951).

Qwest's interstate tariffs are subject to the sole and exclusive jurisdiction of the FCC. As the court stated in *AT&T Communications of the Mountain States, Inc. v. Public Serv. Comm'n of Wyoming*, 625 F. Supp. 1204, 1208 (D. Wyo. 1985), citing *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133 (1930),

The *Smith* Court went on to say that the interstate tolls were not a matter for determination by state commissions, but rather were exclusively federal matters.

*See also In re AT&T Co. & Associated Bell System Companies Interconnection with Specialized Carriers in Furnishing Interstate Foreign Exchange Service & Common Control Switching Arrangements*, 56 FCC 2d 14, 20 (1975), *aff'd*, *California v. FCC*, 567 F.2d 84 (D.C. Cir 1977). States may take action with respect to interstate services and services in federal tariffs only to the extent permitted by law or, in limited circumstances, by the FCC itself. *See General Communication, Inc. v. Alaska Communications Sys. Holdings, Inc.*, 16 FCC Rcd 2834, 2844 (2001).

Here, Qwest's federal tariff is clear and explicit. The tariff cannot be modified by a state commission any more than the FCC can regulate the prices of local exchange services offered by Qwest. Any effort to modify Qwest's federal tariffs must be presented to the FCC, which has sole jurisdiction to modify these tariffs.

Section 2.7 of Qwest Tariff F.C.C. No. 1 covers shared use of an interstate special access circuit. This tariff provides for proportional charges for some shared services, but *only for shared use of federally tariffed services*. For example, Section 2.7 and 2.7.2 provides for proportional pricing when DS1 and DS3 special access service (called PLTS or Private Line Transport Services in the tariff) is shared with switched access service since both are federally tariffed services.

However, when PLTS is shared with local exchange service, this tariff explicitly prohibits proportional pricing:

2.7.1. PLTS with Local Exchange Service

PLTS and Local Exchange Service may be provided on a Shared Use facility. However, individual recurring and nonrecurring charges shall apply for each PLTS and local Exchange Line. The Shared Use facility is not apportioned.

This language is very clear. When a jurisdictionally interstate private line is shared with local exchange service, apportionment is not permitted. Qwest's FCC tariff provisions implement the FCC's prohibition against proportional pricing of interstate and local service.

Finally, as contemplated by the *Fifteenth Supplemental Order*, and as further explained in Qwest's Response to AT&T's Supplemental Filing Regarding Qwest's Compliance with Washington Commission Orders regarding Workshop 1 and 2 Issues, the present filing also included proposed modifications to Sections 7.2.2.8.6; 7.2.2.8.6.1; 7.2.2.8.6.1.1; 7.2.2.8.6.1.2; 7.2.2.8.6.1.3; and 7.2.2.8.13.

**C. Consensus Or Other Agreed-Upon Language, Compliance Language Carried Forward from Other Proceedings, And Other Changes Made For Clarity Or Consistency.**

The SGAT filed herewith also includes several revisions made by Qwest that are consistent with the orders and recommendations of other state commissions and the facilitator in the multi-state proceeding for the same checklist items. Qwest believes that in many instances this language resolves issues raised by CLECs in this and other proceedings and, to that end, Qwest is willing to include such out-of-state compliance language in its SGAT in Arizona. In addition, during the course of the SGAT and Section 271 proceedings, many of the issues between the parties have been resolved by the adoption of consensus language for inclusion in the SGAT. The SGAT accompanying this Notice includes consensus language or other agreed-to language, as well as language that was carried

forward from other jurisdictions.<sup>7</sup> Qwest notes that the with the exception of the specific modification indicated in Section 12.2.6 itself, Section 12.2.6 and its subsections reflect language that is being discussed in the CMP review process and does not yet reflect consensus language.

Qwest also notes that Section 9.20.4.1 was modified in the present filing to eliminate a conflict with Section 9.20.4.1.2, which was recommended by the Multi-State Facilitator, and carried forward to Washington.

In the previous SGAT filing, an 8 day interval was inadvertently included in Sections 8.4.3.4.4 and 8.4.4.4.4 rather than the correct 7 day interval; the interval has been corrected in the present filing.

Qwest also notes that the term “IXC” was deleted in Section 7.2.2.3.1 for internal consistency with the remainder of the section.

Qwest also clarified Section 9.23.3.7 to indicate that the definition of an EEL is limited to “Qwest-provided” loop and transport combinations.

Finally, Qwest also notes that Section 21.5 was modified to indicate that Qwest now provides all Technical Publications to CLECs for no charge via the Internet.

#### **D. Correction of Typographical, Grammatical and Other Non-Substantive Matters.**

The updated SGAT also contains a number of corrections to typographical errors, grammatical changes, name changes, capitalization changes, and updates to Qwest Web Site addresses and technical standards.<sup>8</sup>

---

<sup>7</sup> See SGAT §§ 5.4.6; 6.4.1; 7.3.4.4; 7.3.6.2; 7.3.6.2.2; 7.3.6.2.2.1; 7.3.6.2.2.2; 7.3.6.2.3; 7.3.6.2.3.1; 9.2.2.1.3; 9.2.2.1.3.1; 9.2.2.2.1; 9.2.2.2.1.1; 9.2.4.3.1.2.2; 9.13.1.1; 12.1.1; 12.2.1.2; 12.2.1.4.10; 12.2.1.7.1; 12.2.1.9.2; 12.2.1.9.3; 12.2.8.3; 12.2.9.3.3; 12.2.9.3.5; 12.2.9.4; 12.2.9.5; 12.2.9.8; 12.2.10.1; 12.2.10.2.1.2.

<sup>8</sup> See SGAT §§ 2.2; 3.1; 3.2; 3.2.2; 7.1.2; 8.1.1.8.1; 9.2.2.1; 9.6.1.3; 9.6.3.10; 9.23.2; 10.8.2.18; 12.2.2.1; 12.2.3.2; 12.2.5.2.1; 12.2.5.2.7; 21.4.

## II. CONCLUSION

For the foregoing reasons, the Commission should consider the SGAT filed with this notice as the baseline document for any future proceedings in this docket. Qwest respectfully requests that the Commission allow this version of the SGAT to go into effect within 60 days, pursuant to 47 U.S.C. § 252(f)(3)(B).

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of April, 2002.

Qwest Corporation

By: \_\_\_\_\_

Lisa Anderl  
Qwest Corporation  
1600 7th Avenue, Suite 3206  
Seattle, WA 98191  
(206) 345-2500

Blair A. Rosenthal  
Qwest Corporation.  
1801 California Street  
Suite 4900  
Denver, Colorado 80202  
(303) 672-2974

*Attorneys for Qwest Corporation*