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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In The Matter Of
TEL WEST COMMUNICATIONS, LLC
Petition for Enforcement of Its Interconnection
Agreement With Qwest Communications Pursuant
to WAC 480-09-530

Docket No. UT-013097
RESPONSE TO SUPPLEMENTAL
COMMENTS RE MOTION TO
SUSPEND

INTRODUCTION

It is ironic that Qwest is critical of the Bench's independent efforts to try to confirm the assertions about the scope of Docket UT-003022 in Qwest's original motion. Had Qwest met its burden as the moving party to back up its factual assertions, the Bench would have had no need to try to confirm the validity of the factual bases of Qwest's motion. Qwest has no grounds to complain of the procedure that was occasioned by Qwest's own failures. Even now, Qwest fails to tie the Section 271 review to the specifics of Tel West's complaints.

DISCUSSION

I. Qwest, Both As Moving Party and The Party With Knowledge of The 271 Review Process, Should Have Detailed Where, How, And To What Extent The 271 Issues Overlap Those Raised By Tel West.

The ROC test has taken two years to develop and carry out. The Master Test Plan has hundreds of pages in numerous versions. The draft final KPMG report on the ROC test has over a thousand pages. There may be tens or hundreds of thousands of backup work papers. Qwest has a small army of experts working on PIDs, the QPAP, the Liberty data reconciliation,

1 the testing, and numerous other 271 issues. Since Tel West is not active in the 271 case, only
2 Qwest is capable of understanding what, from Tel West's case, is or is not covered in the ROC
3 test and the degree to which it is covered. Accordingly, the burden is on Qwest, both as the
4 moving party and the one with a full understanding of the voluminous and complex 271
5 processes, to convince the Commission that the issues are overlap. The burden should not be on
6 Tel West to prove a negative.

7 **II. Qwest Has Failed to Demonstrate How, and To What Extent, The Section 271 Review Will**
8 **Address Tel West's Issues.**

9 Qwest had Tel West's direct testimony for 7 days before it filed its supplemental
10 comments. It also received the KPMG draft final report the week before filing its supplemental
11 comments. The Master Test Plan ("Plan") Qwest submitted with its motion has been in
12 development for quite some time.¹ Accordingly, Qwest should have been able to show, point by
13 point and specifically in its supplemental comments, how the KPMG report or the Master Test
14 Plan specifically addressed the following points raised in Mr. Swickard's and Ms. Hild's direct
15 testimony:

- 16 (1) Qwest's retail OSS interface ("SONAR") is easier to use than Tel West's
17 OSS interface, called Interconnect Mediated Access - Graphical User
18 Interface ("IMA-GUI").
- 19 (2) SONAR is faster than IMA-GUI
- 20 (3) SONAR has better features than IMA-GUI.
- 21 (4) SONAR gives Qwest's retail customer service representatives ("CRs")
22 more information, more quickly than IMA-GUI gives information to
23 Tel West.
- 24 (5) Qwest's policies favor its retail division over Tel West.
- 25 (6) Qwest retail CRs have access to systems and critical information that
26 Tel West CRs cannot access.
- 27 (7) Qwest retail CRs provide special, expedited treatment to Qwest retail
28 orders.

26 ¹ Qwest submitted Version 5.2, which was dated April 9, 2002.

1 (8) Qwest retail CRs are better trained, and have more resources than
2 wholesale CRs who assist Tel West.

3 (9) Qwest has made it more complicated for Tel West CRs to solve customer
4 service issues than it is for Qwest retail CRs to do so.

5 Swickard Direct, p. 2, l. 14 to p. 3, l. 4 (April 15, 2002). Qwest utterly failed to tie in the ROC
6 process to these specific points, even though it has the superior knowledge, as well as the burden
7 of proof, to do so.

8 Instead of providing specifics, Qwest's supplemental comments remain extremely
9 high-level and vague. Qwest provides only broad platitudes. For example, Qwest asserts the
10 ROC test is a "comprehensive review" with no detail as to what has and has not been reviewed.
11 Qwest quotes the Plan stating that the "evaluation will examine an end-to-end view" with no
12 information about what it will take to pass for 271 purposes. The Section 12.6.2 test limits the
13 comparison with Qwest retail to "where information is available." There is no detail as to what
14 information was available to the reviewer, KPMG, nor a comparison to the information Tel West
15 has submitted in this case. The supposed "measure of parity performance between retail and
16 wholesale" Qwest quotes provides zero detail as to what specifics were examined to measure
17 "parity."

18 In contrast to the vague and general statements used by Qwest to describe the
19 ROC process, Tel West has provided specific and detailed information to show the added
20 complexity and time consuming steps that Qwest requires of CLECs in IMA-GUI but does not
21 require of its own retail order provisioners. For example, attached hereto as confidential
22 Attachment 1 is a comparison listing the steps required to process various types of orders in
23 Qwest's retail OSS system "SONAR," compared to IMA-GUI. Qwest has provided no indication
24 whether this kind of qualitative and comparative analysis was undertaken by KPMG and if so,
25 whether the analysis is relevant to Tel West's experience under its interconnection agreement
26 with Qwest.

1 In sum, all that Qwest has demonstrated is that the 271 process and this case are
2 examining the same broad and general subject. Qwest has made no showing that there is any
3 overlap whatsoever as to any of the specifics.

4 III. **Qwest Has Failed to Address How To Reconcile The Different Legal Standards Applicable**
5 **To A Section 271 Review And Breach of Contract Case In The Context Of Conclusory**
6 **Evidence Such As The KPMG Report.**

7 Until the end of both this docket and the 271 docket it is impossible to know how
8 the Commission will interpret and define the legal standards for determining Section 271
9 compliance or for determining whether Qwest has complied with Tel West's interconnection
10 agreement. Section 271 will be determined under the Telecommunications Act and FCC Orders
11 interpreting the Act. Tel West's contract will be determined based on the four corners of the
12 agreement, if it is unambiguous. As occurred in Part 1 of this proceeding, the contract questions
13 may be determined by reference to state law principles of contract interpretation, if there is an
14 ambiguity.

15 Qwest blithely ignores the different legal standards. Even though the two cases
16 are distantly related, the conclusions of the Section 271 docket cannot simply be imported or
17 overlaid on this docket because of the different legal standards. Tel West has skimmed the April
18 19, 2002, KPMG draft final report, which is available at: [http://www.nrri.ohio-](http://www.nrri.ohio-state.edu/oss/master/kpmg_draft/final_report.htm)
19 [state.edu/oss/master](http://www.nrri.ohio-state.edu/oss/master/kpmg_draft/final_report.htm) /kpmg_draft/final_report.htm. The report, which is over a thousand pages,
20 sheds no light on whether the test truly reviewed Tel West's issues, much less whether any such
21 review was thorough, reliable, and comparable to Tel West's experience. The test was designed
22 to evaluate whether Qwest should be granted Section 271 relief. It finds, on an *overall, industry-*
23 *wide basis* that Qwest either did or did not "pass." In fact, Qwest recently made this argument in
24 the Section 271 docket. It urged this Commission to disregard certain "unresolved" issues in the
25 most recent ROC OSS test, because "the FCC repeatedly has held that it looks at the 'totality of
26 circumstances' and that 'individual performance disparities. . . [are not] dispositive of whether a
BOC has satisfied its checklist obligations.'" Qwest's Summary of Closed/Unresolved

1 Observations and Exceptions in the ROC OSS Test at 4, ll. 16-18. (April 30, 2002). Because of
2 the broad and conclusory nature of the KPMG report it is impossible to use its findings in this
3 docket. Additionally, the contract standard, to the extent it calls for parity with Qwest, is specific
4 to Tel West, while 271 is presumably much broader.

5 The ROC and KPMG recognize the limited purposes for which the report can
6 fairly be used. By its own terms the Report is not to be used for purposes other than what was
7 intended, i.e. Section 271 evaluation:

8 This report has been prepared solely for the purpose stated, and should not be
9 used for any other purpose. Except as specifically stated in the report, neither
10 KPMG Consulting's report nor its contents is to be referred to or quoted, in whole
11 or in part, in any registration statement, prospectus, public filing, loan agreement,
or other agreement or document without KPMG Consulting's prior written
approval.

12 Qwest Communications OSS Evaluation Draft Final Report, Version 1.0 submitted by KPMG
13 Consulting (April 19, 2002) § IB. Moreover, KPMG acknowledges that its interviews and tests
14 rely on information from Qwest and other third parties that KPMG did not audit or
15 independently verify:

16 Certain information and assumptions (oral and written) have been provided to
17 KPMG Consulting by the management of Qwest Communications and other third
18 parties. KPMG Consulting has relied on this information in its analysis, and in
the preparation of the report, and has not independently verified to the accuracy or
completeness of the information provided. Accordingly, KPMG Consulting
expresses no opinion on such data.

19 Id. Thus, the test results are double hearsay. The original source of the key information is
20 particularly unreliable in that it comes from Qwest, the party seeking the Section 271 approval.
21 While such an approach to "evidence" may be appropriate or necessary in the 271 context, such
22 an approach is not appropriate in breach of contract litigation such as this.

23 Finally, it is important to understand the limitations on the independence of
24 KPMG consultants. KPMG Consulting was hired by Qwest. See Id. Additionally, KPMG's
25 report does not rise to the level of an independent audit:

1 KPMG Consulting has not conducted an audit or review of the historical data
2 provided to us in accordance with generally accepted auditing procedures and/or
3 standards promulgated by the American Institute of Certified Public Accountants
4 ("AICPA").

5 Id.²

6 Because of the different legal standards, Qwest's argument about the fear of
7 inconsistent determinations is a red herring. If Qwest loses this case, but wins Section 271, it
8 should be happy with the outcome. It is really a consistent determination that Qwest fears—that
9 this case may have a negative impact on its 271 bid. But if it loses Part 2 of this case, Qwest will
10 undoubtedly argue that the experience of a single CLEC should not be dispositive on
11 Section 271. If so, the converse should be true.

12 **IV. Tel West's Experience Is Not The Same As The Statistical Averages Reported In The 271**
13 **Process.**

14 It is unlikely that Tel West has experienced an average level of service from
15 Qwest, by the very nature of averages. For example, Tel West is served by inexperienced Aegis
16 employees, but some CLECs are served by Interconnect Services Centers staffed by experienced
17 Qwest employees. CLECs like Tel West that are served by Aegis receive inferior service, while
18 CLECs that are served by Qwest will receive better service. The average may be sufficient to
19 earn a "pass" from KPMG.

20 The inferior service provided by Qwest also has a disproportionately negative
21 impact on Tel West compared with other CLECs. This is due to the nature of Tel West's
22 customer base. Many of Tel West's customers have no service because their service was
23 disconnected by Qwest. They need their service restored as soon as possible. In contrast, the
24 average CLEC is merely converting customers from Qwest retail to Qwest wholesale. A delay
25 for these customers has fewer consequences since the customer has local service throughout the
26 process. Thus, meeting a benchmark performance standard established by the ROC may be

² With the accounting revelations in relation to Enron and other publicly traded companies, even in their
role as "independent" auditors, serious questions have arisen regarding conflicts of interest and the
question of just how independent public accounting firms and their consulting arms are from their clients.

1 adequate under a Section 271 analysis, but could constitute a material breach of Tel West's
2 agreement.

3 Tel West's orders are also more error prone than other CLECs because Tel West
4 has so many new service orders, due Tel West's growth and to customer churn. Tel West's
5 orders often have to be re-typed and Qwest will fail to install essential features, like blocking. In
6 contrast, the average CLEC does a conversion "as is" which is easy and more likely to "flow
7 through" electronically without retyping and consequent errors. Again, Qwest may earn a "pass"
8 from KPMG based on the average CLEC's experience even though Tel West's experience is
9 miserable.

10 CONCLUSION

11 If the ROC test really covered all of Tel West's issues, then it should have been an
12 easy matter for Qwest cite the responsive information and data to respond point-by-point to Tel
13 West's complaints. Qwest has not met its burden. Its motion should be denied again.

14 Respectfully submitted this 2nd day of May, 2002.

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