

May 27, 2003

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98540-7250

Re: Qwest Petition for Competitive Classification, Docket No. UT-030614

Dear Ms. Washburn:

The Washington Electronic Business and Telecommunications Coalition (“WEBTEC”) oppose the Petition of Qwest Corporation (“Qwest”) Requesting Competitive Classification of Basic Business Exchange Telecommunications Services (“Petition”). On its face the Petition falls far short of what is required to justify a finding of the existence of effective competition. Accordingly, WEBTEC urges the Commission to deny the Petition, or, suspend it and set it for full investigation and hearing.

As noted by the Commission Staff in its memorandum to the Commission recommending suspension of this matter, Qwest estimates that the market share of competitors in the relevant service market is only 17 percent, ranging across geographic areas in Washington from a low of 7 percent to a high of 22 percent. That means that Qwest retains a minimum market share of 78 percent. Moreover, there is no competition in at least five of Qwest’s exchanges. As recently noted by the 9th Circuit Court of Appeals in *MetroNet Servs. Corp. v. US West Communs.*, 325 F.3d 1086, 2003 U.S. App. LEXIS 6007 (9th Cir. 2003); amended, *MetroNet Servs. Corp. v. US West Communs.*, 2003 U.S. App. LEXIS 9796 (filed May 21, 2003), a market share of 65% is prima facie evidence of market power. *Id.* at *38. Staff also notes that, based on its analysis of the market concentration ratio for each wire center in Qwest territory, all Qwest wire centers are characterized by a highly concentrated market. In light of this information alone it would be inappropriate for the Commission to approve Qwest’s Petition at the May 28, 2003 Open Meeting.

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Much more information and analysis is needed before the Commission can properly conclude whether Qwest retains significant market power and has a significant captive customer base. As noted by the Staff in its memorandum, Qwest did not file any reliable information with its Petition concerning competitive market shares for PBX and centrex services. There is also no information about the type or location of UNE loops used by competitors. Nor is there information or analysis about the economic viability of competing against Qwest in all areas of the state, including an analysis of the full costs faced by a competitive carriers (collocation costs, non-recurring costs of coordinated installation and testing). There appears to be no information about which, if any, of the CLECs operating in the state are EBITDA positive or have reached the minimum viable scale necessary to be able to exert any pricing constraint on Qwest.

Qwest's reliance on the continuing availability of unbundled network elements ("UNEs"), including the UNE Platform ("UNE-P"), which includes local switching, is misplaced. Given the uncertainties surrounding the FCC's Triennial Review Order and any implementing state proceedings, the Commission cannot rely on the availability of UNE-P, or even of all UNE loops, as a basis for concluding that customers throughout the state will have reasonably available alternatives to Qwest's basic business exchange services. At this point, the availability of high capacity loops is also uncertain.

Qwest's assertion that the impact of the FCC's Triennial Review Order is irrelevant because either UNE-P will continue to be available or the Commission will find that it is not required to sustain competition is wrong. At this point it is impossible to know what the FCC's standard for impairment will be or whether it will satisfy the standards for competitive classification required by RCW 80.36.330.

In sum, Qwest's Petition is wholly inadequate to justify a finding of the existence of effective competition throughout its service territories in the state. At a minimum it is premature pending the issuance of the FCC's Triennial Review Order and the resolution of any implementing proceedings. Accordingly, WEBTEC urges the Commission to deny the Qwest Petition or, in the alternative, suspend it and set it for full investigation and hearing.

Sincerely,

ATER WYNNE LLP

Arthur A. Butler
Attorneys for WeBTEC

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