

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(I) of the
Telecommunications Act of 1996

DOCKET NO. UT-003040

RESPONSE OF PUBLIC COUNSEL
TO QWEST'S COMPLIANCE
FILING ON THE QPAP

I. INTRODUCTION

In response to the Commission's 30th and 33rd Supplemental Orders Qwest was required to make a compliance filing. Qwest filed its QPAP compliance filing (with exhibits) on May 29th, 2002. Public Counsel believes the compliance filing does not accurately reflect the Commission's 30th and 33rd Supplemental Orders. Public Counsel believes the Commission should reject the changes incorporated in Qwest's compliance filing which are not reflective of the 30th and 33rd Supplemental Orders.

II. QWEST'S COMPLIANCE FILING IS AN UNTIMELY AND INAPPROPRIATE MOTION FOR MODIFICATION AND SHOULD BE REJECTED

A. Six Month Review

In its compliance filing Qwest interprets the commission's intent to be a desire to reflect the outcome of the Colorado CPAP review and has modified its compliance filing for Washington to so reflect. *Qwest's QPAP Compliance Filing* at p. 2-3 ("Compliance Filing"). Public Counsel does not perceive any language in the 30th or 33rd Supplemental Orders which

could reasonably be reasonably interpreted as an intent by the Commission to adopt the outcome of subsequent, and unknowable, processes from another state such as Colorado. We believe the plain language of the orders requires Qwest to comport with the requirements of the orders and not infer or extrapolate desires that are not explicit.

Qwest had an opportunity to seek modification (and/or clarification) of the Commission's 30th Supplemental Order. It did so. The Commission's 33rd Supplemental Order is the Commission's final word on the content of the QPAP and Qwest's compliance filing should so reflect. Qwest's compliance filing should be rejected to the extent it does not reflect the content of the explicit directions contained in the 30th and 33rd Supplemental Orders.

B. Critical Values

For a second time, Qwest has, in the guise of its compliance filing, requested the commission to modify its 30th and 33rd Supplemental orders to allow the application of critical values to Tier 2 payments. *Compliance Filing* at p. 6. Public Counsel can find no basis for this position in the language of the Commission's order. *30th Order* at p. 24 and the *33rd Order* at p. 7. Qwest's implicit motion for modification is both untimely and inappropriate in the context of what was intended to be a compliance filing reflective of commission orders. It should be rejected.

C. Audits

For a third time, Qwest seeks to inappropriately modify the Commission's orders by requesting modification of its QPAP to avoid duplicative audits. *Compliance Filing* at p. 8. While avoiding duplication and waste of resources among the parties and state commissions in Qwest's fourteen-state region are indeed laudable goals, they are inappropriately raised here. The Commission's orders were clear and unambiguous. *30th Order* at p. 60-61 and *33rd Order* at p. 13. To the extent Qwest's compliance filing does not reflect the clear and unambiguous language of the commission's orders it should be rejected.

III. CONCLUSION

Public Counsel recommends the Commission reject Qwest's compliance filing. It is our position that the Commission should maintain the decisions announced in its relevant orders and not accept the untimely and inappropriate requests for modification Qwest has incorporated in its compliance filing which are inconsistent with the commission's orders.

Qwest should not be permitted an additional "bite at the apple." If the Commission is inclined to make further modifications to the QPAP it ordered Qwest to produce pursuant to the 30th and 33rd Supplemental Orders based upon facts not in the record which developed after the briefing on Qwest's motion for reconsideration of the 30th Supplemental Order than all parties should have a concomitant right to address such proposed changes; whether they be sua sponte from the Commission, or as here, from Qwest. It is entirely inappropriate for Qwest to use compliance filing as a vehicle for further requests for modification. Qwest's proposed changes to the QPAP which are inconsistent with the Commission's orders should be rejected and Qwest should be ordered to produce a true and accurate compliance filing which reflects the Commission's orders.

DATED this ____ of June, 2002.

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