

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
Qwest Corporation)	Docket No. UT-000883
For Competitive Classification of Business)	
Services in Specified Wire Centers)	JOINT CLEC ANSWER TO
_____)	RECONSIDERATION PETITIONS

Pursuant to the Request for Response and Notice of Opportunity to File Answer (Noon, January 22, 2001) served on January 17, 2001, in the above-referenced docket, Advanced TelCom Group, Inc., AT&T Communications of the Pacific Northwest, Inc., Electric Lightwave, Inc., Focal Communications Corporation of Washington, McLeodUSA Telecommunications Services, Inc., MetroNet Services Corporation, and XO Washington, Inc. (collectively “Joint CLECs”) provide the following Answer to the Petitions for Reconsideration filed by Commission Staff and Public Counsel (“Petitions”) seeking reconsideration of two issues in the Commission’s Seventh Supplemental Order (“Order”). The Joint CLECs support the Petitions and urge the Commission to reconsider its Order and (1) refuse to waive prohibitions on unreasonable preference and rate discrimination in RCW 80.36.170 & 180, and (2) clarify that the grant of competitive classification extends only to business services provisioned at or above the DS-1 level.

DISCUSSION

A. The Commission Should Not Waive RCW 80.36.170 & 180.

1. Both Staff and Public Counsel request reconsideration of the Commission’s decision to waive statutory restrictions on unreasonable preference (RCW 80.36.170) and rate discrimination (RCW 80.36.180). Staff correctly observes that the Commission has not granted

waivers of these provisions when classifying other Qwest services as competitive. Staff Petition at 2-3. The Commission, however, should also consider that it has never waived these statutory provisions for *any* company, including companies that are classified as competitive. *See, e.g., In re Petition of NEXTLINK Washington, Inc.*, Docket No. UT-981162, Order Granting Petition, Appendix A (Oct. 14, 1998). Indeed, the Commission has stated in the context of rejecting additional waivers for competitively classified companies that “all applicable consumer rules must remain in force for all telecommunications for the foreseeable future.” *In re Petition of TCG Seattle*, Docket No. UT-941204, Order Granting Petition at 13 (June 30, 1995). The Order in this case does not address, much less explain, why the Commission has altered this view and why Qwest’s business service offerings should be entitled to *less* regulatory constraints than comparable services offered by Qwest’s competitors.

2. Qwest counters that each case must stand on its own merits and that the testimony of Dr. Taylor supports the waiver of these statutory restrictions. Qwest Response at 3. Nothing in Dr. Taylor’s testimony, however, justifies granting only Qwest the ability to discriminate among its customers. To the contrary, Dr. Taylor’s testimony touting alleged economic efficiency improvements is premised on the ability of *all* participants in a competitive market, not just Qwest, to engage in price discrimination. Indeed, the premise of Qwest’s petition for competitive classification was that Qwest should receive parity of regulatory treatment where a market is competitive. Qwest never requested, and the Commission has no basis on which to grant, regulatory flexibility for Qwest that is greater than the regulatory flexibility granted to all other local exchange companies offering service in the relevant markets.

B. The Commission Should Clarify That Its Grant of Competitive Classification Does Not Extend Beyond Business Services That Are Provided at or Above a DS-1 Level.

3. The Order grants Qwest's petition for competitive classification "only for those business customers served on DS-1 or larger circuits" in the Seattle, Bellevue, Vancouver, and Spokane exchanges. Order ¶ 93, Ordering Paragraph 1. The Joint CLECs agree with Public Counsel that this language is ambiguous and could be interpreted to mean either (1) that competitive classification applies only to those business customers whose telecommunications needs are of sufficient quantity to justify using a DS-1 or larger circuit for each customer, or (2) that competitive classification extends to any business customer whose service is provided using a DS-1 or larger circuit, even if that customer is only one of several customers served on that circuit. The Commission's discussion supports the former interpretation.

4. The Commission found, "While both small and large business customers may be served by DS-1 or larger circuits, the *volume* of telecommunications service demanded by a customer is more critical to the determination of reasonably available alternatives than is the size of the business." Order ¶ 72 (emphasis added). The Commission thus based its decision on whether the amount of telecommunications service demanded by each customer justified the use of a DS-1 or larger circuit to provide service to that customer, not on whether the technology of the network used to serve multiple customers with lesser telecommunications needs included DS-1 or larger circuits.

5. Qwest believes that the Order speaks for itself and does not need clarification, but Qwest appears to believe that the Commission's grant of competitive classification extends to any service provisioned in whole or in part using DS-1 or larger circuits. Qwest Response at 4-5.

Not only is such an interpretation inconsistent with the Commission's stated rationale, but

Qwest's position lacks any record support. Staff witness Glenn Blackmon, who sponsored the Staff proposal that the Commission adopted, recommended denial of pricing flexibility for small business service, concluding that "competitors cannot economically and practically reach small business customers." Ex. 201TC (Staff Blackmon) at 19. The Commission relied on this testimony – specifically citing Dr. Blackmon's testimony that competitors generally provide service to customers only at a DS-1 or higher level – to demonstrate that "competitors make their service offerings from the DS-1 or larger circuits." Order ¶ 74 (citing *id.* at 20-21); *see* Order ¶ 71 (concurring with Dr. Blackmon's testimony that "there is not effective competition for small business customers in the requested areas").

6. Dr. Blackmon's testimony concerning service provisioning and repair problems associated with unbundled network elements further supports the limitation of Qwest's pricing flexibility to customers with business telecommunications needs at a DS-1 or higher level. Nothing in the record demonstrates that Qwest permits competitors to obtain individual channels within a DS-1 circuit or anything less than an entire DS-1 circuit. Accordingly, a CLEC can provision service to a customer who needs less than a DS-1 level of service only through the CLEC's own facilities or by obtaining a separate unbundled loop from Qwest, and CLECs must rely on the use of Qwest facilities to serve most customer locations. Where Qwest serves several customers on a single DS-1 circuit, however, a CLEC cannot use the same facility Qwest uses to provide service to just one of those customers and correspondingly cannot match Qwest's efficiencies in providing service to that customer. In addition, as Dr. Blackmon explained, Qwest discriminates against CLECs in provisioning and repair of unbundled network elements, and thus "[t]he current situation is that unbundled loops and the UNE-P are not readily available for serving the mass market small business customer segment." Ex. 201TC at 14; *see id.* at 15-

17. Both the Commission and the record on which the Commission relied thus support the conclusion that business customers with telecommunications needs at less than a full, dedicated DS-1 level do not have readily available alternatives to Qwest service, regardless of whether Qwest provides that service using a portion of a DS-1 or larger circuit.

7. Even if the Order language could be interpreted as Qwest proposes – which it cannot – that language would effectively eliminate any limitation on the business services permitted pricing flexibility in the four exchanges. Few instances, if any, exist in which Qwest could not claim that the business service is not provided using DS-1 or larger circuits. Not only has Qwest likely constructed DS-1 facilities to most of the buildings in which business customers are located in the four exchanges, but Qwest aggregates business customers on DS-1 or larger circuits using digital loop carrier (“DLC”) or inter-office transport. The Commission could never hope to determine whether a specific business customer’s service is being provisioned using DS-1 or larger circuits under these circumstances. Qwest’s interpretation thus, in practice, would grant Qwest the pricing flexibility for *all* business customers in the four exchanges, including those customers with small telecommunications needs that the Commission expressly found have no effective alternative to Qwest’s service.

CONCLUSION

8. For the foregoing reasons, in addition to those set forth in the Petitions, the Commission should reconsider its Order, deny waiver of RCW 80.36.170 & 180, and clarify that the grant of competitive classification extends only to those business services provisioned at a DS-1 or higher level.

RESPECTFULLY SUBMITTED this 22nd day of January, 2001.

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