

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

Qwest Corporation Petition for Competitive  
Classification of Business Services in Specific  
Wire Centers

No. UT-000883

TRACER'S RESPONSE TO PUBLIC  
COUNSEL'S PETITION FOR  
RECONSIDERATION

I. INTRODUCTION

*1* In its Seventh Supplemental Order Denying Petition and Accepting Staff's Proposal, entered December 18, 2000 (hereinafter, the "Order"), this Commission granted competitive classification to all of Qwest's business services delivered over DS-1 or larger circuits in 23 wire centers throughout the state. In addition, the Commission waived the requirement that Qwest comply with the prohibitions against unreasonable preference and discrimination contained in RCW 80.36.170 and RCW 80.36.180, with respect to these services. In December 2000, both Public Counsel and Commission Staff filed separate petitions, requesting that the Commission reconsider its decision to waive the prohibitions against unreasonable preference and rate discrimination.<sup>1</sup> Pursuant to this Commission's Request for Response and Notice of Opportunity to file Answer, issued January 17, 2001, the Telecommunications Ratepayers' Association for Cost-Based and Equitable Rates ("TRACER") files the following response.

///

///

---

<sup>1</sup> Public Counsel also requested clarification as to whether all business services purchased by customers who are served over DS-1 circuits as a result of aggregation were classified as competitive under the terms of the Order. TRACER will not address that issue in this response.

## II. ARGUMENT

### A. The Level of Competition in the Competitively Classified Areas is Insufficient to Protect Qwest Customers Against Rate Discrimination and Unreasonable Preference.

2 In RCW 80.36.170 and 80.36.180, Washington law prohibits utilities from unduly discriminating amongst its customers. Those statutes (respectively) provide that (a) no telecommunications company shall give any undue or unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage; and (b) no telecommunications company shall, by virtue of any special rate, rebate, etc., unduly or unreasonably charge any person a greater or less compensation for any service.

3 Under RCW 80.36.330(8), the Commission *may* waive these prohibitions against unreasonable preference and discrimination for a service classified as competitive *if* the Commission finds that competition in the marketplace will serve the same purpose and protect the public interest. However, the evidence in this case supports no such conclusion. Indeed, although the Commission found that effective competition exists in the 23 wire centers covered by its Order, the evidence suggests that there are many customers in those areas that have no reasonable alternatives to Qwest services, and thus will be unprotected should Qwest exercise its right to discriminate.

4 First, as pointed out by the Commissioners at hearing, Qwest has failed to produce evidence in this case to show that all customers in the wire centers at issue have reasonably available alternatives to Qwest services. *See, e.g.,* Tr. pp. 387-388. In granting competitive classification to Qwest's business services provided over DS-1 or larger circuits, this Commission made an implicit finding that with respect to those services, there is no significant captive

customer base. *See* Order, p. 3. Nonetheless, the unrebutted evidence in this case suggests that *at least some* Qwest customers have no reasonable alternatives to Qwest services. *See Brief of Public Counsel and TRACER*, pp. 20 -36, and evidence cited therein.

5 It is significant in this regard that, in finding that effective competition exists for services provided over DS-1 and larger circuits, the Commission appears to have relied almost entirely on the availability to competitors of special access circuits. *See* Order, p. 19. Similarly, Staff's recommendation that the Commission competitively classify business services provided over DS-1 or larger circuits is *explicitly* based upon the availability of high capacity special access circuits. *See* Ex. 202. And yet, the only direct evidence in the record regarding the availability of special access circuits is the testimony of Kaylene Anderson of XO, who states that competitors are having difficulty obtaining them. *See* Ex. 281T. Moreover, in many of the areas covered by the Commission's Order, these high capacity special access circuits have also been competitively classified, thus allowing Qwest the ability to further limit competitor's access to them through calculated price increases. *See In the Matter of the Petition of US West Communications, Inc., for Competitive Classification of its High Capacity Circuits in Selected Geographical Locations*, Eighth Supplemental Order Granting Amended Petition for Classification, at 15, Docket No. UT-990022 (Dec. 1999) (hereinafter "High Capacity Case, Eighth Supplemental Order"). Thus, many of the customers affected by the competitive classification will be vulnerable to an attempt by Qwest to discriminate.

6 Second, there is ample evidence in the record to suggest that with its grant of competitive classification, Qwest will have the incentive to discriminate amongst its customers based upon the competitive alternatives available to them. Once Qwest's price changes are freed from regulatory oversight, it will be in Qwest's interest to file relatively higher tariffed rates for business

services, while it cuts special deals by contract for all customers in areas where it perceives it faces real competition. And if successful, over time, in eliminating the competitive threat, Qwest can and will just as easily raise prices where competition once existed. As observed by Dr. Goodfriend: “Competitive classification [will] provide[] Qwest an enhanced opportunity to fit the circumstances of the competition facing *each* distinct customer.” Ex. 168T, ll 3-4. Freed from the statutory constraints against unreasonable preference and discrimination, many Qwest customers will be defenseless against such pricing tactics. Clearly, the competition which does exist in the 23 wire centers is inadequate to protect the public interest.

B. Prior Commission Decisions Suggest that RCW 80.36.170 and 80.36.180 Should Not Be Waived in This Case.

7 In the past, when this Commission has classified other Qwest services as competitive, it has declined to waive the prohibitions against undue preference and discrimination contained in RCW 80.36.170 and RCW 80.36.180. For instance, when the Commission classified certain of Qwest’s high capacity circuits as competitive in Docket No, UT-990022, it did not waive these statutory prohibitions. *See High Capacity Case*, Eighth Supplemental Order. Similarly, when the Commission classified Qwest’s intraLATA toll service as competitive, it did not waive the statutory prohibitions against undue preference and rate discrimination. *In the Matter of the Petition of U S West Communications, Inc., for Competitive Classification of its IntraLATA Toll Service*, Commission Order Granting Petition, Docket No. UT-990021 (Jan. 1999). The Commission apparently determined that, while it may have been appropriate to competitively classify Qwest’s intraLATA toll service and high capacity circuits, the competitive market for these services was not yet sufficiently developed to protect Qwest customers against undue preference and rate discrimination. In this case, where the evidence suggests that business customers do exist in the

relevant wire centers who do not have access to reasonable alternatives to Qwest service, it is critical that the Commission retain the protections offered in RCW 80.36.170 and 80.36.180.

### III. CONCLUSION

8 For all of the above reasons, this Commission should grant the petition of Public Counsel and Commission Staff, and deny Quest's request for waiver of RCW 80.36.170 and 80.36.180.

DATED this 22<sup>nd</sup> day of January, 2001.

ATER WYNNE LLP

BY \_\_\_\_\_  
Arthur A. Butler  
Lisa F. Rackner  
Attorneys for TRACER