

Agenda Date: May 28, 2003
Item Number: A4

Docket: UT-030614
Company: Qwest Corporation

Staff: Tom Wilson, Telecommunications Analyst
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Recommendation:

Suspend the request for competitive classification of basic business exchange telecommunications services filed by Qwest Corporation in Docket UT-030614, and set the matter for hearing.

Background:

On May 1, 2003, Qwest Corporation (Qwest) filed a request for competitive classification of business basic exchange telecommunications services in Washington. Qwest contends that these services, including basic business local exchange service, private branch exchange (PBX), centrex services, and business features, are offered by other, competing providers and that Qwest no longer has a captive customer base.

Competitive Classification Standards and Process

RCW 80.36.330 authorizes the Commission to "classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service" if it finds that the service is "subject to effective competition." The statute defines "effective competition" to mean that "customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base."

In determining whether a particular service is a competitive service, the law requires that the Commission consider, among other factors:

1. The number and size of alternative providers of services;
2. the extent to which services are available from alternate providers in the relevant market;
3. the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
4. other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

RCW 80.36.310 requires that the Commission act on a competitive classification petition within six months of filing, which in this case would be by November 1, 2003. This will require that the Commission establish an expedited schedule for testimony, hearings and briefs.

Evidence

The Qwest petition includes:

1. A list of the business services for competitive classification (attachment A);
2. estimates of the total business specific market (confidential attachment B),
3. names and addresses with contact information for 37 alternative providers who purchase unbundled loops (UNE loops), unbundled network element platforms (UNE-P), and resold services (confidential attachment C);
4. a list of 34 companies offering flat, measured rate basic and stand by business line, centrex and foreign exchange local exchange service to business customers in Washington (confidential attachment D);
5. estimated competitive local exchange company (CLEC) market shares compared to Qwest access line quantities by wire center and aggregated to geographic areas of study, based upon quantities of CLEC resold lines, UNE loops and UNE-P purchased from Qwest (confidential attachment E); the same information aggregated alphabetically by exchange

(confidential attachment F1); and by wirecenter (confidential attachment F2); and

6. a list of Qwest's 13 affiliates (attachment G).

Qwest provided information about the presence of specific CLEC by wire center, but the identities of the CLECs were masked.

The competitive evidence is substantially based on the quantities of wholesale service Qwest sells to competitors. Qwest's petition states that it now has interconnection agreements with 152 competitors, and highlights the recent approval recommendation by the Commission¹ and the U.S. Department of Justice for authority to provide in-region long distance pursuant to Section 271 of the Telecommunications Act of 1996. Qwest also notes that it has accordingly received 271 approval in Washington from the Federal Communications Commission (FCC) with findings of provisioning parity, deployment of operations support systems, and change management processes. Qwest has filed and received approval of a Statement of Generally Available Terms, and the Company is subject to provisions for performance assurance, reporting, monitoring and compliance. Qwest notes that the availability of UNE-P will be subject to the pending text of the FCC Triennial Review decision and a Commission review process.

Qwest reports in its petition that as of December 31, 2002, competitors purchased a total of 104,019 basic business access lines from Qwest. At that time this gave Qwest a statewide average 83 percent market share. The reported number of competitors lines includes 7,275 resold basic business lines, 51, 576 unbundled loops, and 45,168 UNE-P lines.

Qwest argues that comparing competitor-purchased business lines to Qwest's retail basic exchange lines provides a minimum competitive market share

¹ "Qwest has developed an adequate performance assurance plan to protect local competition once the company enters the long-distance business, and an extensive test of Qwest's operating systems, as well as its actual commercial performance, demonstrates compliance with the federal law's 14-point competitive checklist. In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 and SGAT Pursuant to Section 252(f) of the Telecommunications Act of 1996, Docket No. UT-003022/UT-003040, 39th Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest at page 1.

estimate. Qwest says in the petition that total market share would also include facilities based competition. Qwest also says in the petition that it does not have access to competitor's data, so it has provided only the minimum estimated competitive market share data. Qwest estimates a minimum competitive market share in the relevant service market is 17 percent, ranging across geographic areas in Washington from a low of seven percent to a high of 22 percent. Qwest alleges a positive overall 32 percent growth trend in resold, UNE and UNE-P lines in 2002, and a 57 percent increase in exchanged traffic during that same time period.

Qwest states that a competitor with an effective interconnection agreement with Qwest can order a UNE-P line anywhere in Qwest territory.

Staff Analysis

One measure of the ability of competitors to compete effectively using resale, UNEs and UNE combinations such as UNE-P is whether Qwest provides these wholesale services to its competitors at parity with the level of service quality Qwest provides its own retail customers. Pursuant to 271 authority, Qwest operations support systems (OSS) are monitored, and reported. On May 1, 2003, Qwest reported aggregate OSS performance results for the period April 2002 – March 2003. The standard time expected from the time an application is made until a UNE-P POTS (plain old telephone service) order is completed is based upon parity with the incumbent. In general, Qwest has been meeting and often exceeding the UNE-P (POTS) parity requirement both within metropolitan service areas (MSAs) with dispatches, outside of MSAs with dispatches, and without dispatches. This is also true for UNE-P centrex.

On the basis of OSS performance for UNE-P (POTS) it appears that, on average, CLECs can operationally provision service competitively at least at parity with Qwest. However, the evidence provided by Qwest shows that in five wire centers, albeit sparsely populated wire centers, there are no competitors purchasing resold loops, UNE loops, or UNE-P services, yielding an estimated minimum 100 percent market share in numerous rural and/or low income areas of its operating territory in Washington. Staff investigations have revealed that several of the carriers listed in confidential attachment D will not actually provide basic business exchange telecommunications service in at least one of the wire centers where Qwest enjoys 100 percent market share.

Staff would focus further analysis on the whether Qwest has captive customers and the reasonable availability of alternatives by studying the "break-even point" for CLECs. This analysis requires knowledge on the expected amount of recurring revenue per line per month compared to the price of UNE-P. Staff has asked Qwest for necessary information on revenues and has not yet received Qwest's response as of May 22, 2003.

Because Qwest did not file any reliable information in the petition concerning CLEC market shares in the market for PBX and centrex services included in the petition, Staff has also asked for revenues and output data for those market segments. However, Staff was able to analyze the market concentration ratio for each wire center in Qwest territory. As anticipated in light of the wire center market share data, all Qwest wire centers are characterized by a highly concentrated market.

Staff has also asked Qwest for information concerning the number of customer locations it serves in each wire center with basic business exchange telecommunications services, PBX, and centrex. The response is still pending. Staff would also anticipate requesting the same information from relevant CLECs, by means of a Commission order and subject to a protective order adopted in the context of a formal hearing process to protect the confidentiality of such information.

Staff does not believe that the information the Company has provided is sufficient to conclude that there is no significant captive customer base for the services included in the petition. Moreover, information has been presented by Qwest in a manner that does not permit verification by Staff. For example, Qwest has provided data by wire center for individual competitive companies, but it has masked the identity of each competitor, even on the confidential document. As mentioned above, one benefit of setting the petition for hearing is that it will be easier to obtain and use information that would be subject to confidential designation.

Finally, Staff finds evidence related to competitors' utilization of UNE-P to be of uncertain value given it is unknown whether Qwest will continue to offer UNE-P in light of the Federal Communications Commission's recent decision in the Triennial Review that UNE-P is no longer necessary to implement local competition goals set forth in the Telecommunications Act of 1996. Staff realizes that the issue of whether Qwest will continue to be required to offer UNE-P will

likely be subject to WUTC review in a separate proceeding. Staff notes however, that the most significant factor Qwest advances in support of competitive classification – the ability of competitors to obtain UNE-P from Qwest - is not assured in the future.

Public Comments

Qwest has given notice of its petition in this matter to its business customers. As of May 21, 2003, the Commission has received three comments opposed to the petition and one in favor. Customers stated that if there are alternative providers for small business customers, they are not aware of those alternatives. Customers believe that if the proposal is approved the company would increase rates.

As of May 21, 2003, the Commission has also received letters requesting that the matter be suspended for hearing. A letter in opposition to the filing was received May 14, 2003, from a representative of the United States Department of Defense and Federal Executive Agencies (as consumers of telecommunications services), and on May 20, 2003, an opposition letter was filed by CLECs Allegiance Telecom of Washington, Inc., AT&T Communications of the Pacific Northwest, Inc., Eschelon Telecom, Inc., Focal Communications Corporation of Washington, Integra Telecom of Washington, Inc., Pac-West Telecom, Inc., Time Warner Telecom of Washington, LLC, WorldCom, Inc., and XO Washington, Inc.

Conclusion

Staff recommends that the Commission suspend the Company's request for Competitive Classification of Business Services in Docket UT-030614, and set the matter for hearing.