

APPENDIX 4 [Service Date July 15, 2002]

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	DOCKET NO. UT-003022
)	
U S WEST COMMUNICATIONS, INC.'s)	
)	
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	DOCKET NO. UT-003040
.....)	
)	
In the Matter of)	
)	
U S WEST COMMUNICATIONS, INC.'s)	40 th SUPPLEMENTAL ORDER
)	DENYING PETITION FOR
)	RECONSIDERATION
Statement of Generally Available Terms)	
Pursuant to Section 252(f) of the)	
Telecommunications Act of 1996)	
)	
.....)	

I. SYNOPSIS

1 *The Commission denies AT&T's and Covad's petition for reconsideration of the Commission's 39th Supplemental Order. There is no merit in delaying the Commission's evaluation of Qwest's section 271 application to the FCC in order to conduct additional investigations or to await the outcome of federal or congressional investigations.*

II. BACKGROUND AND PROCEDURAL HISTORY

2 On July 1, 2002, the Commission entered its 39th Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest (39th Supplemental Order). The 39th Supplemental Order was the Commission's final order in its review of the compliance of Qwest Corporation (Qwest), formerly known as U S WEST

Communications, Inc. (U S WEST),¹ with the requirements of section 271 of the Telecommunications Act of 1996 (the Act),² and of Qwest’s Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act. In the 39th *Supplemental Order*, the Commission found that Qwest has satisfied all of the requirements under section 271 of the Telecommunications Act, including the requirement in section 271(d)(3)(C) that an application pursuant to section 271 is “consistent with the public interest, convenience and necessity.”

3 On July 12, 2002, AT&T Communications of the Pacific Northwest, Inc., AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively AT&T), and Covad Communications Company (Covad) filed a petition for reconsideration of the 39th *Supplemental Order* pursuant to WAC 480-09-810. Specifically, AT&T and Covad assert that the Commission should withdraw its favorable recommendation of Qwest’s application to the FCC in light of events occurring since the Commission entered the 39th *Supplemental Order*, i.e., a criminal investigation of Qwest by the United States Attorney’s Office, an investigation by the House Energy and Commerce Committee concerning Qwest’s accounting practices, and the Arizona Commission’s suspension of its section 271 proceeding based on these events and the concern over agreements between Qwest and CLECs that were not filed with state commissions.

III. DISCUSSION

4 This Commission’s consolidated proceeding to review Qwest’s compliance with section 271 and review the provisions of Qwest’s SGAT primarily addressed the question of whether Qwest has taken the necessary steps to open its local exchange market to competition. One of the issues the Commission considered in answering that question was whether an application by Qwest is in the public interest. As we stated in our analysis of the public interest issue, the FCC looks to whether the local market is open to competition, whether there is sufficient assurance that the local market will remain open to competition after a section 271 application is granted, and finally, whether any “other relevant factors exist that would frustrate the

¹ After this proceeding began, U S WEST merged and has become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this Order.

² Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

congressional intent that markets be open.” 39th Supplemental Order, ¶¶230, 232, quoting *Georgia/Louisiana II Order*, ¶71.³

5 AT&T and Covad base their petition for reconsideration on the last prong of the public interest test, and assert that the pending criminal investigation, the congressional investigation, and the agreements between Qwest and CLECs that have not been filed with state commissions are “highly relevant to the section 271 inquiry,” and that the Commission should withdraw its favorable recommendation to the FCC. The question, however, is not whether the events or allegations are relevant to the section 271 inquiry generally, but whether they are relevant to the third prong, i.e., whether they would frustrate the congressional intent that the markets be open.

6 The U.S. Attorney’s Office has not sought or obtained an indictment as a result of its investigation into Qwest’s business practices. In fact, very little is known about this investigation. A criminal investigation concerning Qwest’s accounting practices, and a congressional investigation into the same matter are not relevant to the question of whether Qwest’s local markets are open to competition, or will remain open to competition. We do not condone any improper accounting practices by Qwest or any other corporation. We do not believe that investigations into such practices, however, are a proper basis for delaying or suspending this state’s evaluation of Qwest’s application to the FCC. If the investigations demonstrate that Qwest has acted improperly, penalties can be imposed to address any improprieties.

7 The agreements between Qwest and CLECs that had not been filed with state commissions could be relevant to whether the congressional intent that local markets be open would be frustrated, but no party has made a sufficient showing or demonstration that the agreements have had such an effect. In our 39th Supplemental Order, we found that no party “made no showing or demonstration that interconnection agreements should have been filed or are discriminatory, or that this Commission should delay or cease our review of Qwest’s compliance with the requirements of section 271.” 39th Supplemental Order, ¶293. We stated that “This Commission will not presume that the agreements are invalid or unlawful.” *Id.* We further stated in the order that the Commission would establish a docket to allow

³ *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, Memorandum Opinion and Order, CC Docket No. 02-35, FCC 02-147 (rel. May 15, 2002) (*Georgia/Louisiana II Order*).

Qwest to continue to file any unfiled agreements or amendments to interconnection agreements, and would discuss how the Commission would address the agreements within that docket. *Id.*, ¶295.

8 AT&T and Covad have not provided any additional evidence or argument in their petition for reconsideration that persuades us to modify our determination in the 39th *Supplemental Order*. Qwest has filed the agreements at issue with the Commission, and has agreed to continue to do so. If after considering a complaint by a third-party or upon the Commission’s own motion concerning these agreements, the Commission determines that Qwest has violated federal or state law, then the Commission can and will impose appropriate penalties. This issue is also properly before the FCC. Qwest has filed a petition for declaratory ruling with the FCC concerning the applicability of the 90-day pre-approval process under section 252 concerning these agreements.

9 Finally, as we stated above, the focus of our investigation is whether Qwest has taken the necessary steps to open its local exchange market to competition. We have found that Qwest has opened its market to competition. We are not persuaded, after considering the allegations of the parties, that the unfiled agreements have affected whether the local market is open to competition. If Qwest does discriminate against CLECs in the future, that treatment will come to light through the QPAP and could allow the FCC to withdraw any 271 authority granted to Qwest. That possibility should be sufficient deterrent to any discriminatory behavior by Qwest.

10 It must be remembered that this Commission’s role in the section 271 process is to consult with the FCC to “verify the compliance of the Bell operating company with the requirements of [section 271] (c).” 47 U.S.C § 271(2)(B). We take this role very seriously, and believe that we have verified Qwest’s compliance with the requirements of section 271 through the intensive workshop and hearing process of more than two years. That process involved gathering extensive evidence, allowing the parties to file extensive pleadings and briefs on all issues, and entering numerous orders, including orders on reconsideration, on the section 271 requirements. AT&T and Covad have not presented any new evidence or arguments that persuade us to modify our determination in the 39th *Supplemental Order* that Qwest has met the requirements of section 271. We deny AT&T and Covad’s petition for reconsideration.

IV. ORDER

11 IT IS ORDERED That the petition for reconsideration of the 39th *Supplemental Order* filed by AT&T and Covad is denied.

DATED at Olympia, Washington and effective this 15th day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner