

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into	)	DOCKET NO. UT-003022
	)	
U S WEST COMMUNICATIONS, INC.'s	)	
<sup>1</sup>	)	
	)	DOCKET NO. UT-003040
Compliance With Section 271 of the	)	
Telecommunications Act of 1996	)	
.....	)	44 <sup>TH</sup> SUPPLEMENTAL ORDER;
	)	DENYING AT&T'S MOTION
In the Matter of	)	TO REOPEN THE
	)	PROCEEDING AND
U S WEST COMMUNICATIONS, INC.'s	)	SUPPLEMENT THE RECORD
	)	
Statement of Generally Available Terms	)	
Pursuant to Section 252(f) of the	)	
Telecommunications Act of 1996	)	
.....	)	

**I. SYNOPSIS**

1 *In this Order, the Washington Utilities and Transportation Commission denies AT&T's motion to reopen the proceeding and supplement the record. Neither the Act nor the FCC requires that this Commission reopen the proceeding. Further, at this time, reopening the proceeding would be a waste of administrative resources, if all fourteen states in Qwest's region—or even just our state—were to consider an issue that will soon be directly before the FCC.*

**II. MEMORANDUM**

2 **Procedural Background.** On September 10, 2002, Qwest Corporation (Qwest) withdrew its pending applications before the Federal Communications Commission

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<sup>1</sup> 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.

(FCC) for authorization under section 271 of the Telecommunications Act of 1996<sup>2</sup> to provide in-region interLATA service in Washington and eight other states. Qwest withdrew its applications because of concerns that its long distance affiliate, Qwest Communications Corporation (QCC) did not meet the requirement under section 272(b)(2) to maintain its books, records, and accounts in accordance with generally accepted accounting practices (GAAP). In a letter filed with the Washington Utilities and Transportation Commission (Commission) on September 16, 2002, Qwest stated that it planned to file supplemental applications for all nine states with the FCC by the end of September, and to create a “new long distance affiliate that will not have the financial accounting issues that the FCC questioned.”

3 On September 18, 2002, AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively AT&T) filed with the Commission a Motion to Reopen and Supplement the Record. In its motion, AT&T asks that the Commission reopen the record in this proceeding and require Qwest to supplement the record with evidence demonstrating that Qwest and its new long distance affiliate are in compliance with section 272.

4 On September 20, 2002, Qwest filed with the Commission its Opposition to AT&T’s Motion to Reopen and Supplement the Record. On September 23, 2002, the Public Counsel Section of the Attorney General’s Office filed with the Commission its Response to AT&T Motion to Reopen.

5 **AT&T’s Motion.** AT&T asserts that the FCC is required to consult with state commissions on any application, citing section 271(d)(2)(B). AT&T further asserts that the FCC requires states to develop a comprehensive, factual record concerning Bell Operating Company (BOC) compliance with section 271. AT&T asserts that when a BOC files a subsequent application, the states should submit a factual record demonstrating that the BOC has corrected the problems in the previous application.

6 AT&T asserts that the FCC can no longer give any weight to this Commission’s prior determination on Qwest’s compliance with section 272 of the Act. Because of the new facts, i.e., Qwest’s withdrawal of its applications and creation of a new long distance affiliate, AT&T asserts that the Commission should reopen the record, take new evidence and compile a new record to support Qwest’s application before Qwest

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

files its supplemental application with the FCC. AT&T requests that the Commission order Qwest to file testimony concerning its efforts to create a new long distance affiliate and allow other parties an opportunity to respond before making a new recommendation to the FCC.

7 **Qwest's Response.** Qwest asserts that there is no legal basis for the Commission to reopen the proceeding and that multiple state commission reviews of the same issue before the FCC would be a waste of administrative resources. Qwest asks that the Commission deny AT&T's motion.

8 Qwest asserts that state commissions have no statutory duty to review Qwest's compliance with section 272. Qwest asserts that section 271(d)(2)(B) limits state commission review to questions about BOC compliance with section 271(c). Qwest asserts that section 271(c) addresses issues of local competition, i.e., the fourteen point competitive checklist and the Track A and B requirements, but does not include compliance with section 272.

9 Countering AT&T's argument that the FCC requires states to develop a comprehensive factual record for subsequent BOC applications under section 271, Qwest argues that the FCC has determined that when a BOC application is withdrawn and promptly refiled, states need not to develop a factual record to support the subsequent BOC application. Further, Qwest asserts that the issue of whether its new long distance affiliate, Qwest LD Corporation, will comply with section 272 is properly a question for the FCC, as the issue is not state-specific and will be the same in each of the fourteen states in Qwest's region.

10 **Public Counsel's Response.** Public Counsel supports AT&T's motion to reopen the proceedings. Public Counsel asserts that the Commission's responsibilities for verifying Qwest's compliance with the Act extend to any new application. Public Counsel recommends that if the Commission reopens the proceeding, the proceeding should not be limited to a review of section 272 issues. Public Counsel urges the Commission to initiate an investigation into whether Qwest's failure to file certain agreements with the Commission bears on whether a section 271 application would be in the public interest.

11 **Discussion and Decision.** This Commission reviewed Qwest's compliance with section 272 of the Act during our section 271 proceeding, as have other state

commissions in Qwest's fourteen-state region. Based on evidence presented during the fourth workshop and in hearings before the Commission, we determined that Qwest had complied with the requirements of section 272. Despite Qwest's apparent interest in having the Commission review its compliance with section 272, Qwest now asserts that the scope of state commission review under section 271(d)(2)(B) is limited to the 14-point competitive checklist and the Track A and B requirements. Under the plain language of the statute, section 271(d)(2)(B), it does appear that a state commission's duty is limited to reviewing BOC compliance with the requirements of section 271(c). Every state conducting a review of Qwest's compliance with section 271, however, has addressed the issue of compliance with section 272.

12 Although the scope of the mandate for state consultation with the FCC is not entirely clear, the FCC has previously provided that state commissions need not conduct further evidentiary proceedings concerning applications that are withdrawn and promptly refiled.<sup>3</sup> The FCC has given state commissions no indication that it wants additional state review into this matter.

13 Further, the issue in Qwest's supplemental application before the FCC will be whether Qwest's new long distance affiliate complies with the requirements of section 272. As Qwest notes, that issue would be the same in each of the fourteen states in which Qwest operates, and does not merit investigation by each state. Judicial economy requires that this issue be reviewed only by the FCC, not by fourteen individual states.

14 Based on the foregoing discussion, we deny AT&T's motion to reopen the proceedings and supplement the record. Neither the Act nor the FCC requires this Commission to reopen the proceeding, and doing so is not in the interest of judicial economy.

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<sup>3</sup> *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, ¶16 (rel. June 30, 2000).

**II. ORDER**

15 IT IS ORDERED That AT&T's Motion to Reopen and Supplement the Record is denied.

DATED at Olympia, Washington and effective this \_\_\_\_\_ day of September, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**