

June 9, 2008

VIA OVERNIGHT DELIVERY AND ELECTRONIC MAIL

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
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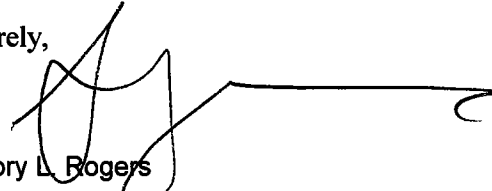
Re: DOCKET NO. UT-030388: Comments of Level 3 Communications, LLC and
360networks (USA) inc.

Dear Ms. Washburn:

Enclosed for filing in the above-referenced proceeding, on behalf of Level 3 Communications, LLC and 360networks (USA) inc. please find enclosed an original and twelve (12) copies of their joint comments. Also included is a CD-ROM with electronic copies of this filing in both .pdf and .doc formats.

This filing was also submitted to the Records Office via e-mail. Should you have any questions or concerns with this filing please do not hesitate to contact me.

Sincerely,



Gregory L. Rogers

Counsel for Level 3 Communications LLC

Enclosure

cc: Michel Singer Nelson, 360networks

**COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC AND 360NETWORKS (USA) INC. CONCERNING THE CONTINUED MONITORING OF QWEST CORPORATION'S WHOLESALE SERVICE PROVISION TO COMPETITIVE PROVIDERS INCLUDING THE MAINTENANCE OF A SGAT;
DOCKET NO. UT-030388**

Level 3 Communications, LLC (“Level 3”) and 360networks (USA) inc. (“Joint CLECs”) hereby submit the following comments in Docket No. UT-030388 to urge the continued role of the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in monitoring Qwest Corporation’s (“Qwest”) provision of wholesale services as a Bell Operating Company (“BOC”) and an incumbent local exchange carrier (“ILEC”) pursuant to The Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (“The Act”).

I. Introduction

The Joint CLECs anticipate that the WUTC’s scheduled review of Qwest’s Performance Assurance Plan (“QPAP”) and more generally, its role as a BOC wholesale service provider in this docket will trigger requests from Qwest for considerably diminished oversight by the WUTC. Through these comments the Joint CLECs raise their concern that Qwest may seek to eliminate its Statement of Generally Available Terms and Conditions (“SGAT”) in Washington as it has done recently in other states in its BOC territory and urge the Commission to resist such entreaties.¹ In other states in its

¹ See e.g. *In the Matter of Level 3 Communications, LLC’s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions of Interconnection with Qwest Corporation*, Docket No. D2005.12.174, Order

territory, Qwest has been advocating that it has no legal or equitable obligation to continue to offer and maintain a current SGAT. These arguments are flawed. There has been no compelling change in the law or the marketplace that would merit such a dramatic shift in the WUTC's established oversight process concerning Qwest's SGAT, QPAP, and Performance Indicator Definitions ("PIDs") at this time. A continued effort to advance the benefits of an effective competitive telecommunications marketplace requires the maintenance and availability of a current SGAT and effective service quality standards in Washington.

II. Qwest May Not Unilaterally Withdraw Its SGAT

A principle point of Qwest's advocacy in Washington and elsewhere in its fourteen state territory has been to reduce or eliminate the role of regulators in overseeing their wholesale business operations with an eye toward allowing Qwest to operate in a "more commercial" environment. The primary thrust of Qwest's efforts to avoid continued maintenance of a current wholesale tariff or SGAT in other states has been that the law does not require the maintenance of a wholesale tariff. Therefore, Qwest argues, it may unilaterally withdraw its SGAT at any time without Commission approval. In advancing these arguments however, Qwest typically cites no authority in support of this

No. 6715a, Order Granting Motion to Withdraw Petition for Arbitration and to Opt into Qwest's "SGAT" (Mt. PSC August 1, 2007)("Montana SGAT Order"); *In the Matter of the Petition of Qwest Corporation for a Variance from the Requirement to Maintain a Tariff for the Resale and Wholesale Services it Provides to Other Telecommunications Carriers, Pursuant to 4 CCR 723-2-2502(C)(V), 2504(I), 2506(A) Through (D)(I) and (E) and 2585(A)*; Docket No. 07V-171T; Decision No. C07-1095 (Co. PUC Nov. 28, 2007) ("Colorado SGAT Order"); *In re Withdrawal of Qwest Corporation's Statement of Generally Available Terms and Conditions, Petition of Qwest Corporation*; Case No. QWE-T-08-04 (Filed Id. PUC May 2, 2008).

position but instead simply relies on overly broad claims that competitive market forces are such that they should be allowed to provide themselves with such relief. When other state commissions have considered Qwest's position, they have consistently found that Qwest is not empowered to take such unilateral actions and that the maintenance of the SGAT remains an important baseline offering for interconnecting CLECs.²

Section 252(f) of The Act allows Qwest to satisfy its obligations under Section 251 and accompanying regulations by filing a SGAT setting forth terms and conditions offered to competitors within the state. Once Qwest chooses to offer a SGAT, as it has in Washington, and the Commission has adopted and relied upon it, Qwest may not withdraw the SGAT without Commission approval, however. Further, in ruling on such a request, the Commission is entitled to require Qwest to continue to offer an updated SGAT, with all of its attendant benefits for competition.

III. This Commission Relied on Qwest's SGAT As A Key Component in Its Section 271/272 Review and Relief Recommendation

During Qwest's Section 271 approval process in Washington, the WUTC and the Federal Communications Commission ("FCC") expressly reviewed and relied upon Qwest's SGAT and its offerings therein in recommending approval of Qwest's application.³ Given the significant financial and competitive gains by Qwest since it received Section 271 relief, it should not, having now received those benefits, back away

² See Montana SGAT Order; Colorado SGAT Order

³ See *In the Matter of the Application by Qwest Communications Int'l, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Before the Federal Communications Commission, WC Docket No. 02-314, Memorandum Opinion and Order (December 23, 2002).

from the commitments it previously made to this Commission and Qwest's competitors. Even though an approved SGAT was not an absolute legal requirement to gaining Section 271 relief, once Qwest offered to make it available and it has been relied upon, Qwest should not be allowed to unilaterally withdraw it. At the very least, such a proposed action must be subject to a full and fair review by the Commission and affected parties.

IV. Commission Oversight Remains Critical

The SGAT enhances and eases competition. The benefits realized from Commission oversight that ensures compliance with Federal Act and state law are significant. Having a standard, Commission-approved SGAT which eliminates significant transaction costs that are incurred in negotiating and potentially arbitrating an ICA with Qwest is critical to competitors both small and large. These benefits would not exist under a regime that only allowed for either a "commercial template agreement" or adoption of another carrier's negotiated interconnection agreement. Once Qwest decided to offer its SGAT and at least partially rely upon it for Section 271 relief, the Commission gained the authority to require Qwest to continue to maintain an updated SGAT available for opt-in in Washington to further the goals of competition in the telecommunications market.

Qwest may argue that a SGAT is not necessary any longer because CLECs can simply opt into other carriers' interconnection agreements ("ICAs") if they want a more expedient way to establish interconnection than negotiation and arbitration. Such an argument fails to acknowledge the unique business needs of different CLECs, however.

If Qwest were allowed to avoid Commission review and approval of its wholesale offerings, Qwest would be free to change terms and conditions as it sees fit, and leave CLECs that may not desire the terms of another carrier's ICA with a "take it or leave it" choice. Qwest's wholesale offerings that are made available and subject to the SGAT and attendant WUTC oversight promote competition and ultimately save resources of all interested parties, including the WUTC. Qwest continues to control bottleneck interconnection facilities and it must not be allowed to exert a stranglehold over smaller competitors that do not always have the resources to arbitrate an ICA with the BOC when they seek to offer competitive services.

Competitive carriers should continue to have the ability to participate in the effort to maintain a current and valid SGAT. Industry participation in the Commission process ensures the SGAT is not only available to all competitors but that it has undergone an acceptable measure of regulatory scrutiny. This is an established process in Washington and there have been no compelling legal or market changes that merit a fundamental shift in the WUTC's process at this point in time.⁴ A "commercial template" drafted and controlled by Qwest would not provide the same baseline starting point to ICA negotiations than a SGAT does nor could CLECs confidently rely upon a document that is under the unfettered control of Qwest for opt-in purposes. Discontinuing the practice of maintaining a current SGAT would have the undesirable consequence of handicapping CLECs during ICA negotiations and increasing the likelihood and scale of ICA arbitrations.

⁴ See Docket Nos. UT-043007, UT-043119.

V. Conclusion

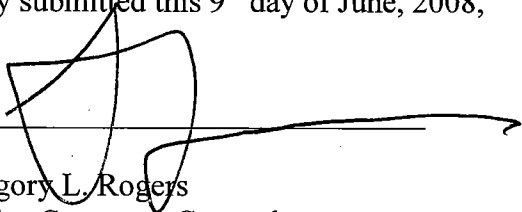
As the WUTC undertakes its scheduled review of the QPAP prior to its expiration, the Joint CLECs emphasize the value of maintaining Commission oversight of Qwest's wholesale offerings to competitive carriers in Washington. Allowing Qwest to eliminate its SGAT would position them to be able to exercise unchecked leverage on competitive carriers that rely on fair, non-discriminatory access to ILEC interconnection for their services. Having offered and relied on the SGAT as a component of its Section 271 relief, Qwest should not be allowed to renege on its obligation to maintain a publicly available, Commission-approved set of wholesale terms and conditions that CLECs may opt into or rely upon as a starting point in their effort to obtain fair and non-discriminatory interconnection that supports their unique business needs.

Respectfully submitted this 9th day of June, 2008,

By: _____

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