BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE	)	
IMPLEMENTATION OF THE FEDERAL	)	DOCKET NO. UT-033025
COMMUNICATIONS COMMISSION'S	)	
TRIENNIAL REVIEW ORDER	)	**AT&T's COMMENTS**

AT&T Communications of the Pacific Northwest, Inc., AT&T Local Services on behalf of TCG Seattle; and TCG Oregon (collectively "AT&T") submit comments in response to questions posed by the Washington Utilities and Transportation Commission ("Commission") in its Notice dated August 22, 2003, in the above captioned docket.

1. Who bears the burden of going forward and the burden of proof regarding the various issues identified in the FCC's order, i.e., should the Commission initiate the proceedings, or is it more appropriate for an ILEC or CLEC to initiate a proceeding?

Although the FCC did not adopt a burden of proof approach in conducting its analysis,[1] the test it has imposed on the states requires the proper application of burden of proof. Because the FCC made national findings with respect to impairment, the party seeking to overturn those findings must bear the burden of proof. Therefore, to the extent any CLEC party challenges the national finding of non-impairment with respect to DS1 and higher switching (the "90-day proceeding"), that CLEC should bear the burden of proof. Similarly, to the extent any ILEC seeks to overturn the national findings of impairment for mass market switching, loops and transport, that ILEC should bear the burden of proof.

The Commission should not start a 90-day proceeding or a 9-month proceeding on loop or transport issues unless a party files with the Commission seeking to overturn the national finding. The nature of this proceeding requires that, as a first step, ILECs identify the customer

[1] FCC Order, ¶ 92.

locations (for loops) and transport routes that they believe meet the FCC's test for "de-listing."[2] The Commission should establish minimum rules of good faith pleading the ILEC must satisfy to identify loop locations and transport routes it proposes be de-listed. In this regard, the ILECs should be required to list only those customer locations/routes for which it has information that at least two non-ILEC providers serve a customer location (for loops) or that there are the *same* two collocated carriers at each end of a central office pair. Otherwise, ILECs could challenge every customer loop location and transport route regardless of the likelihood the triggers would be met, and the Commission conceivably could be obliged to rule for every loop location and route in Washington. Given the strict time constraints associated with the loop/transport proceedings, a minimum pleading requirement for ILEC de-listing requests is vital to the Commission's and the parties' ability to conduct these proceedings on the schedule mandated by the FCC's Order.

Because it appears that the Commission may need to conduct the 9-month mass-market switching proceeding even in the absence of an ILEC petition, the Commission may wish to initiate that case itself.

2. How does the Commission's review of the FCC's Order affect ongoing proceedings before the Commission, e.g., issues pending in Dockets UT-003022/003040, UT-023003, UT-011219, UT-030614?

As a general matter, there will likely be changes necessary to SGAT and interconnection agreements following the Commission's conclusion of its Triennial Review work. However,

[2] *See* FCC Order, ¶ 417 ("Unbundled DS1, DS3, and dark fiber transport will remain available in all locations until the state commission determines that unbundled transport at particular capacities in specific locations is no longer required. States that conduct this review *need only address routes for which there is relevant evidence in the proceeding that the route satisfies one of the triggers or the potential deployment analysis* specified in this Part." (emphasis supplied) and ¶ 339 (similar language regarding loop analysis).

most agreements contain a change of law provision to deal with these changes and in the absence of such a provision, the FCC Order provides guidance on the timeframe for effectuating such changes.[3] At this point in time, AT&T believes that it is preferable to move forward to conclude all outstanding dockets in the most expeditious manner allowed by the Commission's calendar. Once changes in law are effective in Washington following the conclusion of the Triennial Review work, those changes can be incorporated into agreements in effect in the state.

The one exception to this rule might be for Docket UT-030614. Since Qwest's case for competitive classification of its business services is dependent, in large part, on the competition provided in the state through UNE-P, the Commission may wish to wait to make a determination in that case until it has finally decided whether UNE-P will continue to be available as a competitive alternative in the state.

a. Should the Commission consolidate proceedings, or hold certain proceedings in abeyance pending resolution of issues arising from the FCC's Order?

AT&T does not believe that any proceedings should be combined with the Triennial Review proceedings in the state.

b. Should the Commission import evidence from these or other proceedings to a new docket addressing the various issues identified in the FCC's Order?

Once any necessary changes in law have occurred in Washington following the conclusion of the Triennial Review proceedings, any relevant evidence from other dockets may be imported into any arbitration or other change of law proceedings seeking to effectuate the Triennial rulings, subject to the confidentiality protections provided for in the Triennial Review cases.

[3] FCC Order, ¶¶ 700-706.

3. Should the Commission address issues affecting Verizon and Qwest in separate proceedings or in one generic proceeding addressing all companies?

Given the volume and substance of issues that the Commission must decide within 90-day and 9-month windows of time, the Commission should determine issues binding upon both Verizon and Qwest in one proceeding. This will help to conserve the resources of all parties, including the Commission and its Staff.

a. If no party files a petition concerning a particular ILEC should the Commission initiate a proceeding or wait for a party to file a petition?

Again, the Commission should await a petition for the 90-day switching case, and the loop and transport cases. However, if one is initiated, all ILECs serving that particular market, route or location should be bound by the Commission decision.

4. What hearing format should the Commission adopt for the various issues identified in the FCC's Order, i.e., a paper process, workshop, or hearing process?

Given the complexity of the issues involved, AT&T believes that a hearing process will be necessary to fully air the issues among all interested parties. Within that process, however, the Commission may wish to consider the use of subject matter panels of witnesses.

5. Should the Commission coordinate any of the proceedings arising from the FCC's Order with other states in Qwest's region?

It is feasible that the Commission may be able to coordinate any proceedings relating to the determination of an appropriate bulk hot cut process with other Qwest states, given that Qwest's OSS are similar across its region, and have lent themselves previously to regional proceedings. However, the Commission must still review the cost and performance for such a process on a state specific basis. AT&T does not envision issues in either the 90-day or 9-month switching and loop and transport proceedings lending themselves well to a multi-state process. However, it

would be appropriate for all of the commissions in Qwest's region to work together to coordinate the scheduling of the 9-month process.

Respectfully submitted this 10th day of September, 2003.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

By:

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Mary B. Tribby
Letty S.D. Friesen
Rebecca DeCook
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202
(303) 298-6475 (Tel)
(303) 298-6301 (Fax)