

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET NO. UT-033044
)	
QWEST CORPORATION)	ORDER NO. 06
)	
To Initiate a Mass-Market)	ORDER GRANTING SPRINT'S
Switching and Dedicated Transport)	MOTION TO WITHDRAW;
Case Pursuant to the Triennial)	CLARIFYING ORDER NO. 01
Review Order)	
.....)	

1 **Synopsis.** *In this Order, the Commission grants Sprint's Motion to Withdraw as a party to the proceeding. The Commission also clarifies the intent of paragraph 11 of Order No. 01, allowing all parties to file testimony and exhibits in Round 2 in response to any affirmative case presented in Round 1. The Commission also allows any party to file rebuttal testimony and exhibits in Round 3, but requires such rebuttal testimony and exhibits to be in direct response to filings made in Round 2, and limits each witness's rebuttal testimony to 20 pages, except for good cause shown.*

2 **Nature of the Proceeding:** This proceeding addresses a petition filed by Qwest Corporation (Qwest) seeking review of the findings of the Federal Communications Commission (FCC) in its Triennial Review Order concerning impairment to competitors without unbundled access to mass-market switching and dedicated transport.

3 **Procedural History.** On August 21, 2003, the FCC released its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, also known as the Triennial Review Order, in CC Docket Nos. 01-338, 96-98, and 98-147. On August 22, 2003, the Washington Utilities and Transportation Commission (Commission) issued a notice in Docket No. UT-033025 requesting comments concerning implementation on the Triennial Review Order from interested persons.

4 The Commission held a prehearing conference in Docket No. UT-033025 on September 26, 2003, to establish a procedural schedule for proceedings arising from the FCC's Triennial Review Order. Sprint Communications Company, L.P

(Sprint) entered an appearance at the prehearing conference and requested party status.

- 5 In Order No. 01 in Docket No. UT-033025, the Commission required all persons interested in challenging the FCC's national finding of no impairment for enterprise market switching to file a petition by October 3, 2003. No person filed such a petition. The Commission also required all persons interested in challenging the FCC's national finding of impairment for mass-market switching, dedicated transport, and DS1, DS3, and dark fiber loops to file a petition with the Commission by October 10, 2003.
- 6 On October 10, 2003, Qwest Corporation (Qwest) filed a petition with the Commission in Docket No. UT-033044 to initiate a review of the FCC's findings concerning mass-market switching and dedicated transport. No other person or company filed a petition with the Commission concerning mass-market switching, dedicated transport, or loops.
- 7 On October 13, 2003, the Commission held a prehearing conference in this docket. Sprint entered an appearance at the conference and requested intervention as a party in the docket. Order No. 01 in this proceeding, a prehearing conference order, established the procedural schedule for the proceeding, including issuance of bench requests and filing dates for testimony and exhibits.
- 8 On November 4, 2003, Sprint filed with the Commission a motion to withdraw as a party to the proceeding requesting treatment instead as an interested person. On November 13, 2003, the Commission issued a notice to all parties providing an opportunity to respond to Sprint's motion by November 21, 2003. Only Commission Staff filed a response, stating no objection to Sprint's motion.
- 9 On November 19, 2003, Commission Staff filed with the Commission a Motion for Clarification of Prehearing Conference Order. That same day, the Commission issued a notice to all parties providing an opportunity to respond to Staff's motion for clarification and make any additional requests for clarification of Order No. 01 by November 21, 2003. Advanced TelCom, Inc., Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., Global Crossing Local Services, Inc., McLeodUSA Telecommunications, Inc., Pac-West

Telecomm, Inc., Time Warner Telecom of Washington, LLC, and XO Washington, Inc. (collectively Joint CLECs) and 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 responses to Staff's motion.

- 10 **A. Sprint's Motion.** Sprint requests permission to withdraw as a party to the proceeding, but wishes to remain as an interested person in the docket. Sprint explains that it has limited resources to use in Washington state given the nationwide scope of the implementation of the Triennial Review Order. Due to the limitation in the Commission's protective order in this proceeding, Order No. 02, on the number and character of in-house experts that may review highly confidential information, Sprint's ability to participate in the docket is further limited, as Sprint is uses only in-house experts.
- 11 **Discussion and Decision.** As a party to the proceeding, Sprint was served with bench requests issued by the Commission on October 21 and 22, 2003. As a competitive local exchange carrier (CLEC), Sprint was served on October 23, 2003, with Order No. 03, Order Requesting Disclosure of Information, in which the questions mirror those asked in the bench requests issued to parties. Sprint answered Bench Requests 32 – 38 on October 30, 2003. On November 17, 2003, Sprint responded to the questions posed to CLECs in Order No. 03, including questions that mirror Bench Requests 32-38.
- 12 As no party objects to Sprint's withdrawal from the proceeding, Sprint has submitted responses to the questions posed in Order No. 03, and no party would appear to be prejudiced by granting Sprint's motion, Sprint's motion to withdraw is granted. Sprint will be included on the Commission's list of interested persons for this docket.
- 13 **B. Commission Staff's Motion for Clarification of Order No. 01.** Commission Staff seeks clarification of paragraph 11 of Order No. 01 in this proceeding, an order following the October 13, 2003, prehearing conference. Specifically, Staff seeks clarification of the scope of responsive testimony Staff may file in Round 2, due on January 30, 2004. Staff seeks clarification of whether it may respond to or comment on in Round 2 the proposals of other parties presented in Round 1 on the issues of market definition and the DS0 cut off level, should Staff not file an

affirmative case on those issues. Staff states that it would not present new evidence of its own on the issues in its Round 2 filing.

14 The Joint CLECs support Staff's request for clarification "as consistent with Commission practice and the spirit of the . . . Order." *Joint CLEC Response at 1.* The Joint CLECs request that the Commission clarify the Order "to provide that any party that does not intend to make its own proposal for market definition and/or a DS0/DS1 cross-over point need not file direct testimony on one or both of these issues, but may respond to other parties' proposals as part of any response testimony." *Id.*

15 AT&T supports Staff's request for clarification. AT&T further requests that "1) any party may file testimony in Round 2 responding to any issue raised by Qwest or any other party in Round 1, and 2) any party may file rebuttal testimony in Round 3, without leave of the Commission, so long as such rebuttal testimony relates to any issue that was addressed in testimony for the first time in Round 2." *AT&T's Response at 3.*

16 **Discussion and Decision.** Paragraph 11 of Order No. 01 provides, in part:

Qwest must file its primary case in the first round, while other parties may elect to present evidence in response to Qwest's primary case on trigger and potential deployment analyses in the second filing round. All parties filing testimony and exhibits must address the issues of market definition and the DS0 cut off level in the first round. **To the extent that a party presents evidence in the second round that requires rebuttal testimony and exhibits, the party requesting the opportunity to file rebuttal testimony must file a motion with the Commission by the close of business on February 10, 2004, demonstrating good cause for filing a third round of testimony and exhibits.**

Emphasis in original. The Commission's intent in paragraph 11 of the Order was to provide for two rounds of simultaneous filings and a third round for cause, given the tight schedule in this proceeding. In order to effectively address the issues of market definition and the DS0/DS1 cut off level, the Commission required all parties to address the issue in the first round. This procedural schedule was discussed during the October 13, 2003, prehearing conference.

- 17 The parties now request that the Commission allow for a more traditional process in which Qwest files its initial case, all other parties respond, and Qwest files rebuttal testimony. The time between the second and third filing dates is only three weeks, and the time between the third round and the first day of hearing is only ten days. This schedule will not allow the Commission or other parties to adequately review a large amount of rebuttal testimony and exhibits prior to hearing.
- 18 Parties who do not intend to file an affirmative case on the issues of triggers and potential deployment analyses, market definition, or DS0/DS1 level cut off in the first filing round should be allowed to file responsive testimony in Round 2. In addition, parties should have an opportunity to respond to testimony and exhibits presented for the first time in Round 2. The Commission is concerned, however, about the amount of rebuttal testimony and exhibits that parties may file in the third round if no limitation is placed on rebuttal filings.
- 19 The Commission clarifies paragraph 11 of Order No. 01 as follows: The Commission encourages all parties to present an affirmative case on the issues of market definition and the proper DS0/DS1 cut off level in Round 1. All parties presenting an affirmative case on the issues of triggers and potential deployment analyses, market definition, or DS0/DS1 cut off level must file testimony and supporting exhibits in Round 1, due on December 19, 2003. Any party responding to testimony and exhibits filed in Round 1 may file responsive testimony in Round 2, due on January 30, 2003. Any party may file rebuttal testimony in Round 3, although all testimony and exhibits filed in Round 3 must be in direct response to testimony and exhibits filed in Round 2, or the testimony and exhibits may be stricken. In addition, each witness's testimony filed in Round 3 must be limited to no more than 20 pages, except for good cause shown.

DATED at Olympia, Washington, and effective this 24th day of November, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge