BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996	Docket No. UT-003022
In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	Docket No. UT-003040 **QWEST'S RESPONSE TO XO'S MOTION TO ADMIT NEW EXHIBITS AND FOR ADDITIONAL PROCEEDINGS ON COLLOCATION**

INTRODUCTION

Qwest Corporation ("Qwest"), formerly U S WEST Communications, Inc., submits this brief to the Washington Utilities and Transportation Commission ("Commission") in response to XO's Motion to Admit New Exhibits and For Additional Proceedings on Collocation after the close of the record. Qwest respectfully opposes this motion for two reasons: first, the record has been closed, a decision is imminent, and reopening the record for additional admission of evidence (including rebuttal evidence), comment, and briefing would unnecessarily delay the process; and second, as will be discussed in more detail below, these proposed additional exhibits do not contain any "new" information of substance, particularly in the context of satisfaction of Section 271.

ARGUMENT

A. XO Has Not Met the Legal Standard for Reopening the Record

With respect to the first issue, Qwest submits that in the context of the rapidly changing world of telecommunications, there will *always* be "new" materials concerning the relationship between CLECs and ILECs, whether it be in the form of additional products, procedures, responses to FCC or court decisions, advances in technology, etc. This simply is not a subject area where the technical and legal issues could ever be expected to remain static any time in the foreseeable future. At some point, the record has to close, comments have to be finalized, and final positions taken. That time occurred before these exhibits were ever in issue.

More importantly, in its motion, XO has not offered any substantive reason to justify the admission of the relevant exhibits. Washington courts have held that the reopening of a case for additional evidence, although within the discretion of the judge, must be based on an analysis of whether prejudice results to the complaining party.[1] In fact, exhibits are inadmissible in the absence of a proper foundation justifying the admission of the exhibits.[2] XO has not made any showing of prejudice nor laid any foundation for the admission of the exhibits. A ruling as to whether to admit new evidence should be predicated on an assessment of whether a substantial right of the requesting party would be affected. [3] That is simply not the case here.

B. Changes in Routine Policies and Procedures Do Not Constitute Section 271 Compliance Issues

At best, the materials that XO wants to admit after the close of the record are nothing more than routine policies and procedures that one would expect to be disseminated on a fairly regular basis, particularly in situations which involve rapidly evolving economic circumstances

[1] See *State v. M*iles, 168 Wash. 654, 13 P.2d 48 (1932).
[2] See *City of Seattle v. Heath*, 10 Wash.App. 949, 953, 520 P.2d 1392, 1395 (Wash App. 1974).
[3] See *Washington Rules of Evidence,* ER 103.

and technologies. Specifically, these documents (which are on their face essentially the initial proposals of Qwest) address issues associated with the economic downturn facing many CLECs, and in particular, the consequences that the declining fortunes of some CLECs will have on both Qwest and other CLECs in terms of allocation of collocation space and resources. Clearly, this particular circumstance was never envisioned by either Qwest or the CLECs at the time interconnection agreements were negotiated, and the exhibits in question simply fills a void in the relationship of the parties that obviously needs to be addressed in some fashion.

Qwest has held discussions with over a dozen CLECs seeking procedures for the cancellation and or decommissioning (termination) of collocation space . At risk are nearly 700 collocation sites representing $400 million of CLEC investment. These policies and procedures are intended to clarify the requirements committed to by Qwest in the current SGAT language and address the void contained in individual interconnection agreements. The related policy regarding "Collocation Change of Responsibility" was developed in direct response to CLECs request for this capability. In general terms, this policy allows a CLEC to negotiate transfer of ownership of a collocation to another CLEC, relieving the initial CLEC of ongoing financial liabilities. Qwest is under no obligation to offer this product capability but has responded to fill this stated need.

XO has not even suggested, much less established, that these documents somehow constitute new evidence that has a determining impact on the issues before the Washington Commission. At best, what these documents represent is part of Qwest's overall efforts to address changes in circumstances for matters not spelled out in interconnection agreements or the SGAT. Even assuming that CLECs took issue with the merits of the process for managing changed circumstances, that does not affect Qwest's ability to meet the requirements of Section

271 generally, and certainly not specifically in the context of Checklist Item 1 dealing with collocation.

Specifically, XO points to nothing in any of these documents that contradicts provisions in the SGAT, much less provisions that are essential for purposes of Section 271 approval. Viewed in the light most unfavorable to Qwest, the most that can be said is that CLECs object to what they will assert is Qwest's efforts to impose unilateral changes on them. While Qwest does not agree that this issue is relevant for Section 271 approval generally, it also notes that the fundamental premise on which any argument objecting to promulgation of policies rests – supposedly unchecked unilateral authority of Qwest -- is simply incorrect.

C. Numerous Safeguards in the Change Management Process and the SGAT Itself Guard Against Any Concerns XO May Have Concerning Qwest's Unilateral Authority to Alter the Legal Relationship of the Parties

In the first instance, Qwest has repeatedly stated that nothing in any of its policies or procedures, whether existing or to be issued in the future, is intended to, or even can, contradict explicit provisions in the SGAT or Interconnection Agreements with CLECs.[4] Indeed, Section 2.3 of the SGAT explicitly recognizes this fact.

Any suggestion by XO that Qwest is somehow asserting unchecked unilateral authority is even further refuted, however, by two other procedural safeguards. The first is the change management process itself. As Mr. William Campbell testified on behalf of Qwest during this workshop, Qwest is diligently working on a change management process that will ensure that the CLECs have an opportunity to voice objections and offer suggestions in these kind of situations.[5] Assuming for purposes of discussion that CLECs object to the substance of what is contained in

[4] Qwest does concede that some of the wording in the XO documents may have been poorly chosen.
[5] One could argue that the documents at issue could have made this process more clear to CLECs by referencing its existence, but even assuming that were correct, this oversight does not change the underlying policy itself, on which CLECs can, and do, rely to work out their differences with Qwest in precisely these sorts of situations.

the XO exhibits, procedures currently exist within Qwest to address any concerns XO may have relative to the substance of the exhibits.[6] Frankly, Qwest does not dispute XO's implicit argument that the wording of these documents is, in places, poorly chosen. What it does dispute, however, is that any concerns along these lines could not have been worked out through the change management process.

Finally, even assuming for purposes of discussion that Qwest and XO could not have worked out any differences they may have had with respect to such documents through the change management process, XO would still have open to it the dispute resolution provisions contained in its Interconnection Agreement and the SGAT itself. The fact that such disputes may occur, however, does not mean that Qwest somehow has failed to comply with Section 271.

CONCLUSION

Qwest respectfully opposes XO's Motion to Admit New Evidence and for Additional Proceedings on Collocation. Qwest submits that in the context of the rapidly changing world of telecommunications, there will *always* be "new" materials concerning the relationship between CLECs and ILECs, and that at some point, the record has to close, comments have to be finalized, and final positions taken. In addition, the materials that XO wants to admit after the close of the record are nothing more than routine policies and procedures that do not constitute Section 271 compliance issues. Furthermore, nothing in any of Qwest's policies or procedures, whether existing or to be issued in the future, is intended nor designed to contradict explicit provisions in the SGAT or Interconnection Agreements with CLECs. Any concern over claims of unchecked unilateral authority is further refuted by two additional procedural safeguards: the

[6] While Qwest appreciates the fact that XO only recently received these proposed new policies, it does not appreciate the fact that rather than attempting to work through any concerns it may have had with regard to their substance, XO simply assumed that any differences of opinion concerning these policies would be irreconcilable, and used this as an opportunity to reargue its case in the Workshop proceedings.

change management process; and, the dispute resolution provisions contained in XO's Interconnection Agreement and the SGAT itself. For these reasons, Qwest respectfully requests this Commission to deny XO's Motion to Admit New Exhibits and for Additional Proceedings on Collocation.

Respectfully submitted this 6th day of March, 2001.

Qwest Corporation

/s/ Charles W. Steese

_____

Charles W. Steese
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2709