

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Request for Competitive Classification
of Basic Business Exchange Telecommunications
Services

Docket No. UT-030614

QWEST CORPORATION'S ANSWER
TO PUBLIC COUNSEL'S MOTION
TO COMPEL

Qwest Corporation ("QC") hereby files this answer to Public Counsel's August 20, 2003 motion to compel a response to Data Request No. PC 03-022. The Commission should deny Public Counsel's motion. The data request in issue is not reasonably calculated to lead to the discovery of admissible evidence and seeks data from a non-party to this proceeding.¹

Not reasonably calculated to lead to the discovery of admissible evidence. While Public Counsel is correct that irrelevance is not, on its own, an appropriate basis for objecting to a data request, an objection is appropriate if the subject matter of the information or documents being sought is so far beyond the scope of the instant proceeding that the data is not reasonably calculated to lead to the discovery of admissible evidence. WAC 480-09-480(6)(a)(vi).² This is just such a case.

¹ In its July 25, 2003 response to Public Counsel, QC also objected on the basis that the data request was overly broad and unduly burdensome. Upon further investigation, and without waiving its other objections, QC withdraws those objections at this time.

² Subsection (6)(a)(vi) provides in relevant part that "[i]t is not grounds for objection that the information sought will be inadmissible at the hearing, *if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*" (emphasis added)

1 Public Counsel's request seeks data regarding the number of "Qwest" local exchange
2 business customers who have added "Qwest" long distance service since January 2003. QC is not
3 seeking competitive classification of interexchange services, and this is not data relied upon by QC in
4 its petition or its testimony. Public Counsel offers only the following explanation of why this data is
5 critical to this case in its view. "Any information pertaining to Qwest's success in obtaining *long*
6 *distance customers* in a post-271 environment would shed light on Qwest's ability to dominate the
7 *local market* in Washington." *Motion to Compel, at 2 (emphasis added).*

8 With all due respect, this argument makes little sense. Public Counsel offers no explanation as
9 to how or why QC's affiliate's success in obtaining interLATA long distance customers relates to
10 QC's alleged dominion over the local exchange market. QLDC and QC are two separate companies
11 providing two different services altogether. Interestingly, Public Counsel does not ask for data
12 showing whether QC's access line count has grown or shrunk since 271 authority was granted to
13 QC's parent. That question – but not PC 03-022 – would appear to address the nexus Public
14 Counsel suggests in its motion to compel. Whether Qwest Corporation's affiliate has signed up one or
15 one million interLATA long distance customers is absolutely irrelevant to this case and such data is not
16 reasonably calculated to lead to the discovery of admissible evidence.

17 *Public Counsel is seeking data from a non-party.* Under the Commission's procedural
18 rules, written data requests may only be served on other parties to an adjudicative proceeding. *See,*
19 *e.g.,* WAC 480-09-480(6)(a)(iii) and 6(a)(v) (discussing a *party's* role in receiving or responding to
20 written data requests). While styled as a data request from Public Counsel to QC, PC 03-022 in
21 actuality represents an impermissible data request to QLDC, QC's affiliate. Service on QC of a data
22 request seeking information held by an affiliate might be appropriate in the event that QC relied on that
23 or similar data in its petition or testimony. In such a case, it might be reasonable for another party to
24 seek underlying data in order to test the veracity of QC's representations or conclusions. But, that is
25 not the case here. QC's petition for competitive classification does not rely in any way on QLDC's
26 market share in the interexchange market or otherwise on the role of interLATA service. For the

1 reasons discussed above, Public Counsel has failed to draw a specific connection between the data it
2 is seeking and the issues in this case. Its vague allusion to “market power” is insufficient and, as such,
3 QC should not be compelled to research and produce data held by its affiliate, QLDC.

4 Based on the foregoing, QC respectfully requests that Public Counsel’s motion to compel be
5 denied.

6 Dated this 26th day of August, 2003.

7 Qwest Corporation

8
9
10

Lisa A. Anderl, WSBA No. 13236
Adam L. Sherr, WSBA No. 25291
11 Qwest
1600 7th Avenue, Room 3206
12 Seattle, WA 98191
Phone: (206) 398-2500
13
14
15
16
17
18
19
20
21
22
23
24
25
26