

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

In the Matter of the Petition of	)	DOCKET NO. UT-030614
	)	
QWEST CORPORATION	)	ORDER NO. 14
	)	
For Competitive Classification of	)	
Basic Business Exchange	)	ORDER GRANTING PUBLIC
Telecommunications Services	)	COUNSEL MOTION TO COMPEL
.....	)	

1 **Proceeding.** Docket No. UT-030614 involves a petition filed by Qwest Corporation (Qwest), for competitive classification of basic business exchange telecommunications services pursuant to RCW 80.36.330.

2 **Appearances.** Lisa Anderl, attorney, Seattle, represents Qwest. Jonathan C. Thompson, assistant Attorney General, represents Commission Staff. Simon ffitch, assistant Attorney General, represents Public Counsel Section of the Office of Attorney General. Letty S. D. Friesen, attorney, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Seattle and TCG Oregon (AT&T). Karen J. Johnson, attorney, Beaverton, Oregon, represents Integra Telecom of Washington, Inc. (Integra). Michel Singer-Nelson, attorney, Denver, Colorado, represents WorldCom/MCI. Lisa Rackner and Arthur A. Butler, attorneys, Seattle, represent Washington Electronic Business and Telecommunications Coalition (WeBTEC). Stephen S. Melnikoff, attorney, Arlington, Virginia, represents the United States Department of Defense and all other Federal Executive Agencies (DOD/FEA). Richard H. Levin represents Advanced TelCom, Inc. (ATG).

3 **Background.** On August 22, 2003, Public Counsel filed a Motion to Compel Response to Public Counsel Data Request No. 03-022. By this motion, Public Counsel seeks to obtain from Qwest the quantity of business access lines and business customers that Qwest has signed up for in-region interLATA distance service for each month starting with January 2003.

4 Commission Staff filed a response stating that they took no position on the motion.

5 Qwest filed a response opposing the motion.

6 **Discussion.** Public Counsel files its motion pursuant to WAC 480-09-480(7). Public Counsel's motion requests information about the number of business lines Qwest has signed up for in-region interLATA service since January of this year pursuant to Qwest's newly acquired Section 271 authority to market and provide long distance services within the state of Washington. Public Counsel contends that since Qwest can now offer its business customers a comprehensive package of telecommunications services, such information is relevant to the issue of Qwest's ability to dominate the local market and is reasonably likely to lead to the discovery of admissible evidence. Public Counsel asserts that since the request is limited to 2003 data it is not unduly burdensome.

7 Qwest responds that this case is about competitive classification of local business service. Information about interLATA service is so far beyond the scope of the proceeding as to be irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Qwest points out that interLATA long distance service is provided by a separate Qwest affiliate, whose success in obtaining customers cannot relate to Qwest's alleged domination of the local market.

8 Qwest also contends that the Commission's rules preclude service of discovery requests on non-parties to an adjudicative proceeding. WAC 480-09-480(6)(a)(iii) and 6(a)(v). Qwest argues that Public Counsel's data request, although directed to Qwest, actually seeks information from a non-party, the Qwest affiliate that provides long distance service. Since Qwest itself has not relied on the information Public Counsel seeks, there is no reason to grant a request to review the underlying data to test the veracity of Qwest's representations about it.

9 **Decision.** The Commission's rule on discovery states that a party may request information that appears "reasonably calculated to lead to the discovery of admissible evidence." WAC 480-09-480 6(a)(vi). The statutory provision

governing the requests for competitive classification of telecommunications services states that the Commission must consider several factors, including: “(d) other indicators of market power, which *may* include market share, growth in market share, ease of entry and the affiliation of providers of services.” RCW 80.36.330 (1)(d) (emphasis added).

10 The governing statute gives the Commission discretion to consider “other indicators of market power.” The Commission may consider factors beyond those set forth in the statute. Even though Qwest’s application relates to local business service, the fact that Qwest may also provide interLATA business service may, arguably, relate to the issue of Qwest’s market power. Information about Qwest’s provision of interLATA business service may lead to admissible evidence.

11 Qwest’s argument that the discovery request is improperly directed to a non-party is not persuasive. The discovery request is directed to Qwest. Qwest does not assert that it does not have the information or is unable to provide it. Nor does Qwest otherwise assert that providing the information would be burdensome.

12 For these reasons, Public Counsel’s motion is granted and Qwest must supply the information requested within five business days of this order.

**ORDER**

13 THE COMMISSION ORDERS That Qwest must respond to Public Counsel’s Data Request No. 22 (PC DR 03-22) within five business days of this order.

DATED at Olympia, Washington, and effective this 29th day of August, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE  
Administrative Law Judge