

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

|                            |   |                          |
|----------------------------|---|--------------------------|
| WASHINGTON UTILITIES AND   | ) |                          |
| TRANSPORTATION COMMISSION, | ) | DOCKET NO. UT-011329     |
|                            | ) |                          |
| Complainant,               | ) |                          |
|                            | ) |                          |
| v.                         | ) | FIFTH SUPPLEMENTAL ORDER |
|                            | ) | APPROVING AND ADOPTING   |
| QWEST CORPORATION,         | ) | SETTLEMENT AGREEMENT     |
|                            | ) |                          |
| Respondent.                | ) |                          |
| .....                      | ) |                          |

**I. SYNOPSIS**

1 This Order resolves a complaint brought by the Washington Utilities and Transportation Commission (Commission) through its Staff against Qwest Corporation (Qwest). The complaint alleges that Qwest's Centrex Customer Loyalty Program (CCLP) violated certain statutes and Commission rules. The Commission approves and adopts the Settlement Agreement reached by Commission Staff and Qwest. In doing so, the Commission penalizes Qwest \$150,000 because it failed to file an amendment to a customer's contract that gave the customer service credits under Qwest's unpublished CCLP.

**II. MEMORANDUM**

2 **Parties.** Shannon E. Smith, Assistant Attorney General, represents the staff of the Washington Utilities and Transportation Commission (Commission Staff). Lisa Anderl and Adam Sherr, attorneys, Seattle, represent Qwest. Robert Cromwell, Assistant Attorney General, represents Public Counsel. David Rice, attorney, Miller Nash LLP, Seattle, represents MetroNet Services Corporation (MetroNet).

3 **Procedural History.** On September 27, 2001, the Commission filed a complaint against Qwest alleging violations of certain statutes and Commission rules in connection with Qwest's Centrex Customer Loyalty Program (CCLP). Among other things, the complaint alleges that Qwest developed the CCLP before or during October 1999 to provide certain customers of Qwest's Centrex Prime, Centrex Plus, Centron, and Centron XL (Centrex) services with a service credit. Qwest initiated the CCLP to retain customers who were large users of Centrex service. Qwest provided the service credit to at least one Washington customer. Qwest gave the CCLP credit retroactive to January 1999, and during all or a portion of years 2000 and 2001.

4 The Commission convened a prehearing conference on October 22, 2001 before Administrative Law Judge (ALJ) Karen M. Caillé. Among other things, the Commission established a procedural schedule, invoked the discovery rule (WAC 480-09-480), and entered a Protective Order (December 18, 2001). In addition, pursuant to Staff's request and Qwest's stipulation, the Commission admitted into the record as Exhibit 1 and Exhibit 1-C an exhibit designated as Exhibit 511C in Dockets UT-003022/003040 (SGAT/271). Exhibit 511C is Qwest's response to Record Request #4 in the SGAT/271 proceeding, and provides information about the CCLP.

5 **Settlement Agreement:** On January 25, 2002, prior to the filing of any testimony in this proceeding, Qwest and Commission Staff filed a proposed Settlement Agreement that would resolve all contested issues raised by the complaint. On March 5, 2002, the Commission convened a hearing before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner Patrick Oshie, and ALJ Karen M. Caillé. The Commission heard testimony from a two witnesses representing Commission Staff and Qwest.

6 The testimony establishes that during the SGAT/271 proceeding while reviewing Qwest responses to data requests, Commission Staff discovered apparent violations of the Commission rules and Washington statutes in connection with Qwest's CCLP. The Commission filed this complaint and ordered a complete investigation into the allegations in the complaint. The investigation revealed that Qwest offered and provided to the State Department of Information Services (DIS), unpublished service credits under the CCLP. Qwest acknowledges that the offer made to DIS should have been filed with the Commission as an amendment to its contract with DIS. Qwest represents that the occurrence was a singular incident, unknown to the policy and law division until it was revealed in discovery in the SGAT/271 proceeding. Qwest subsequently filed the amendment with the Commission on June 6, 2001. Exhibit 1 and Exhibit 1-C contain information about Qwest's CCLP.

7 Under the terms and conditions of the Settlement Agreement, admitted into the record as Exhibit 2 and attached to this Order as Appendix A, if approved by the Commission:

- Qwest will comply with all Commission rules and Washington statutes.
- Qwest will dismiss any employee who willfully violates Commission rules and Washington statutes.
- Qwest will discipline or dismiss any remaining employee who made a decision to intentionally not file the Customer Loyalty Program contract provision.
- Qwest will make a company-wide announcement that discloses the allegations in this complaint, the Commission's finding that the company violated the law, and

the Commission's fine of \$100,000 for Qwest's provision of a discount without filing its terms with the Commission. The announcement will specify that the complaint alleged an *intentional* failure to file, that such conduct is not acceptable to Qwest and is a violation of company policy, that the responsible employees no longer work for Qwest, and that any such conduct in the future will result in appropriate disciplinary action, including dismissal.

- Qwest will require the business unit officer responsible for this service to specifically disclose the behavior associated with this complaint to all his or her employees, and to reinforce the message described above.
- The Commission will find that Qwest violated *RCW 80.36.150*, *RCW 80.36.170*, *RCW 80.36.180*, and *WAC 480-80-330*. The violations of *RCW 80.36.170* and *80.36.180* are the result of Qwest's failure to file the amendment to the contract.
- The Commission will impose a total penalty against Qwest of \$150,000, for violation of *RCW 80.36.150*, *RCW 80.36.170*, *RCW 80.36.180*, and *WAC 480-80-330*. Of the \$150,000 penalty amount, \$100,000 would be ordered due and payable 15 days after the Commission issues its order. The remaining \$50,000 penalty amount would be suspended for one year and mitigated to zero at that time if:
  - Qwest certifies that its offering and provision of Centrex services is and has been during the previous year in compliance with the statutes and rules that are the subject of this proceeding, and
  - Staff has made no other allegations of violations relating to Qwest's Centrex services.

8 Commission Staff and Qwest ask the Commission to approve the Settlement Agreement. Public Counsel and MetroNet do not oppose the Settlement Agreement.

### III. DISCUSSION AND DECISION

9 Based on our review of the Settlement Agreement and the record developed in this proceeding, we find that the issues are adequately addressed and resolved by the terms of the Settlement Agreement. We find that the Settlement Agreement is consistent with the public interest, and that it should be approved and adopted as a full and final resolution of all the issues pending in Docket No. UT-011329.

10 In accepting and adopting this settlement, the Commission finds that the result is consistent with the public interest and that it saves time, effort and expense for the Commission, the company, and the intervenors. Acceptance of the settlement, however, is done without the detailed examination and the close study of partisan arguments on

contested issues that produces informed decisions on each litigated issue. The Commission therefore observes, consistent with similar observations in other proceedings, that this Order does not constitute a ruling on any underlying issue that might have been litigated.

11 Accordingly, the Commission accepts and adopts the Settlement Agreement as its resolution of the issues in this proceeding.

#### IV. FINDINGS OF FACT

12 Having discussed above all matters material to our decision, and having stated our findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 13 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunication companies.
- 14 (2) Qwest Corporation is registered as a telecommunications company providing service within the state of Washington as a public service company.
- 15 (3) On January 25, 2002, Commission Staff and Quest filed a Settlement Agreement with the Commission requesting approval of the Agreement.

#### V. CONCLUSIONS OF LAW

16 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 17 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. *RCW 80.01.040.*
- 18 (2) Qwest Corporation is a public service company as defined in *RCW 80.04.010.*
- 19 (3) The Settlement Agreement as contained in Appendix A fully and fairly resolves the issues in dispute in this proceeding and is consistent with the public interest.

*RCW 80.01.040.*

- 20 (4) The Commission should retain jurisdiction over the subject matter of and the parties to this proceeding to effectuate the provisions of this Order.

**VI. ORDER**

THE COMMISSION ORDERS That:

- 21 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to these proceedings;
- 22 (2) The Settlement Agreement (Appendix A to this Order) is approved, adopted, and made part of this Order;
- 23 (3) The complaint in this matter is hereby dismissed without prejudice and this docket is closed.

24 THE COMMISSION ORDERS FURTHER That it retains jurisdiction over the subject matter and the Parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this \_\_\_\_\_ day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**