

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of)	DOCKET NO. UT-991358
)	
U S WEST, INC., and QWEST)	
COMMUNICATIONS)	THIRTEENTH SUPPLEMENTAL
INTERNATIONAL, INC.)	ORDER
)	
For an Order Disclaiming Jurisdiction, or)	PREHEARING CONFERENCE
in the Alternative, Approving the U S)	ORDER
WEST, INC., - QWEST)	
COMMUNICATIONS)	NOTICE OF HEARING
INTERNATIONAL, INC. Merger)	(Set for Monday, June 7, 2004)
.....)	

1 **Proceeding:** Docket No. UT-991358 is a docket in which the Commission approved the merger of Qwest with U S WEST. The resulting entity, Qwest, now petitions for termination or modification of its Service Quality Protection Plan, an element of the Commission’s Merger approval.

2 **Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on March 10, 2004, before Administrative Law Judge C. Robert Wallis.

3 **Appearances.** Lisa A. Anderl and Adam Sherr, attorneys, Seattle, appeared for petitioner Qwest. Christopher Swanson, assistant attorney general, Olympia, appeared for Commission Staff. Simon ffitich, assistant attorney general, Seattle, appeared as Public Counsel. Karen Frame, senior counsel, Denver, CO, appeared for intervenor Covad. John O’Rourke, program coordinator, appeared on behalf of petitioner for intervention Citizens Utility Alliance of Washington. In addition, MCI and WashPIRG stated their desire to become “interested persons” to follow the docket.

4 Contact information provided at the conference for the parties' representatives is
attached to this order as Appendix A.

5 **Dated contact information; opportunity to participate.** Commission Staff noted
that the contact information for some of the participants in the original
proceeding in this docket has become dated, and agreed to provide updated
information to the Commission for such parties no later than close of business on
Wednesday, March 17, 2004. The updated information is attached to this order
as Appendix B. This order will be served on any representative with updated
information, along with a copy of the original notice of prehearing conference.
Any party that is so served, who desires to participate in the consideration of
Qwest's petition, may gain party status by notifying the Commission within ten
calendar days after service of this order.

6 **Non-appearing parties to be declared in default.** The notice of hearing
convening the prehearing conference stated, in paragraph eight, that any party
not appearing at the prehearing conference could be held in default. To clarify
the identities of parties who must be served, the Commission will enter an order
of default as specified in RCW 34.05.440 and WAC 480-07-450, after the
expiration of time for parties whose contact information changed since the earlier
phase of this docket to declare their intention to participate. Default in this
context merely means that a defaulted party may not participate in this phase of
the docket without showing cause why it was unable to participate at the
conference or after notice, and why it should be allowed to do so.

7 **Petition for Intervention.** The Commission received a request for intervention
from Citizens Utility Alliance of Washington, based in Spokane. Qwest objected
to the petition, arguing that the group's participation would duplicate the
participation of public counsel and would cause unnecessary duplication of
effort and evidence. Ruling that the Alliance is a separate entity and has a
different purpose and constituency from those of Public Counsel, and accepting

Mr. O'Rourke's commitment to coordinate its participation with public counsel and other parties of allied interests, the presiding officer denied the objection and allowed the intervention.

8 **Protective order.** The parties acknowledged that the need for a protective order pursuant to RCW 34.05.446 and RCW 80.04.095 was likely, but not certain. They also acknowledged the prior entry of a protective order in this docket (the First Supplemental Order). The parties also recognized that the terms of that order were determined some time ago and that it might not comport with the Commission rules that became effective on January 1, 2004.

9 The presiding officer determined that the original protective order remains in effect.¹ The First Supplemental Order will govern the handling of documents containing information designated as confidential within the meaning of the term in RCW 80.04.095 and RCW 42.30.130(q). The parties agreed to review the order and are free to propose amendments as required; the Commission may also amend the order based on its view of current circumstances and current needs.

10 **PARTIES PLEASE NOTE:** Documents containing material designated as confidential must be handled according to the requirements of the Commission's procedural rules. *See, WAC 480-07-160 and -423.*

11 **Discovery; expedited response time ordered.** Parties may desire to engage in discovery of information in the proceeding. The Commission invoked the discovery rule in this docket in the Prehearing Conference Order entered September 29, 1999. This order reaffirms that determination. In light of the time frame adopted for the proceeding, Public Counsel and Commission Staff asked

¹ The order was modified by the Sixth Supplemental Order to make provision for highly confidential materials. No need has been demonstrated for such protection, and the order is deemed in applicable to this phase of the proceeding.

that the Commission establish a response time of seven business days. Qwest responded that it would do its best to meet that time frame, but it could not commit to doing so in every instance.

- 12 On reflection, we believe it better to establish seven business days as the default response time for parties to meet. Doing so provides added incentive to meet the necessary time frame, yet it does not foreclose longer responses, so long as the process regarding such responses set forth in WAC 480-07-405(7) is followed. Not only is the expected level of discovery relatively low, but parties stated that they have already engaged in discovery on related issues.
- 13 **Hearing structure.** Commission Staff, supported by Public Counsel, suggested a modified procedure for conducting the hearing in this proceeding. Under this proposal, the parties would not file testimony in advance of the hearing, but would file memoranda, similar to the Staff memos used in conjunction with the Commission's open meeting process, and at the hearing would offer one witness to answer questions about the document. Qwest stated a preference for the procedure used in recent years (the "modified Oregon plan," in which testimony is prefiled and all cross-examination is conducted during a single hearing). Qwest indicated that it would accept the proposal, provided that it were allowed at least three witnesses.
- 14 **Hearing schedule.** The parties agreed on tentative schedules under both structural proposals. This order accepts the proposed "informal" schedule, with no prefiled testimony, subject to some clarification.
- 15 Any filed documents will be offered into evidence and must be admissible as evidence. Parties must submit with their statements any documentary evidence (such as statistical tables or other supporting documentation) on which they intend to rely, in the form of exhibits. A time is designated for submission of documents that parties may use during cross-examination.

- 16 A party may offer no more than three witnesses in support of its proposal, absent a showing of need resulting in a ruling allowing an additional witness. The filed statements must clearly identify which portions and associated documents will be supported and by which witnesses. Every documentary exhibit must be supported by a witness's statement as to its accuracy, in the same manner as testimony and documentary evidence in other proceedings. The parties will be allowed limited direct examination of each witness to provide any necessary context as a predicate for cross-examination.
- 17 The parties may participate in making oral opening and closing statements, not to exceed 30 minutes total, for opening and for closing statements. Qwest is allowed 15 minutes and Staff, Public Counsel, and the Alliance allowed 15 minutes, to be divided among them as they shall determine or, in the absence of determination, as the bench directs. Covad, if it desires, may participate in argument with the party or parties with whom its interests ally. Parties may make closing statements of the same length and under the same strictures as noted for opening statements.
- 18 **Statements of Position and of Authorities.** Parties will submit statements of position and of authorities within 14 days after the close of the hearing. The statements of position should contain the party's position on the issues raised in the hearing, but need not contain argument. Each statement of authorities should contain a statement of legal principle and the proper citation to each authority supporting the party's legal position on each of the issues and a statement of each fact necessary to be found to sustain the party's position, along with a specific citation to the record, i.e., the transcript of testimony or documents received in evidence, to support such a finding. The statements may be combined in a single document.
- 19 **Oral argument.** Parties may present oral argument at the time designated in the schedule.

20 **Hearing for members of the public.** Public Counsel requested the Commission schedule a session that is set aside to receive testimony from members of the public. He suggested a preference that the hearing be held in an evening in the Seattle area during the week of the evidentiary hearings, but accepted the possibility of a session in Olympia in the evening of a day for which hearing is scheduled.

21 We understand Public counsel's concern. Members of the public may be very concerned about service quality, which appears to be the issue underlying this provision. That issue was of great significance in the Company's principal general rate case of the late 1990s. Here, however, the issue does not appear to be whether service quality must be maintained, but whether one mechanism for incenting service quality should be modified or terminated. The effect on consumers' service quality thus appears to be more attenuated than would be the effect of a requested rate increase on a consumer's bill.

22 Unlike the situation in a general rate case, where allowing a requested a rate increase would affect every customer in a defined manner for an indefinite period in the future, the results here are not likely to fall within the financial definition of a general rate case at all at the customer level and the results would have effect for at most two years. Considering the significance of the decision on consumers, the burdens of arrangements, the schedule on which the issues will be heard, and the uncertain response of the public to the opportunity to testify, we deny Public Counsel's request for a hearing session devoted to receipt of testimony by members of the public who may appear.

23 However, we recognize that service quality is an issue that does affect consumers, and we recognize that this proceeding is one in which innovative processes are being explored. We also recognize that at least two parties have direct contact with consumers—The Alliance and Public Counsel. We have already acknowledged that WashPIRG is also monitoring the proceeding and

understand that Public Counsel is in communication with that group. Public Counsel will receive all written comments from the public that are addressed either to public counsel or to the Commission. We think it appropriate to consider allowing the two parties to present a limited number of members of the public, who will testify to their perspectives as consumers on the actual issues of the proceeding as defined in the parties' submissions. Under terms of the agreed order of the proceedings, they already have the opportunity to present such information and to identify up to a total of three witnesses.

- 24 Subject to the opportunity of all parties to consider the matter and to speak for or against it, we would consider a timely request to increase the number of witnesses allowed for Public Counsel and the Alliance to present nonduplicative and relevant information to the record about consumer experiences and sentiment.
- 25 While we deny the request for a "traditional" open public hearing to hear public comment, we believe that this approach will allow the opportunity for a focused presentation of relevant and nonduplicative consumer sentiment and experiences through witnesses clearly sponsored by a party. We will work with the parties to schedule any such witnesses at a time convenient for their appearance.
- 26 **Company-provided notice.** Public Counsel asked that the Commission direct Qwest to provide notice of its petition, analogous to the manner in which a utility company must provide notice of a general rate filing. He argued that the effect of the proposal is substantial according to the Company's calculations, and that notice and opportunity to be heard should be extended to the public in this proceeding. Qwest opposed the motion, arguing that there is no law or rule that mandates the notice. Qwest cited the expense and effort necessary to provide such a notice as a barrier to doing so.

27 We rule that no individual consumer notice need be provided. The proposal does not involve a change in the Company's tariffs or its recurring charges, and does not restrict access to services, which takes it outside the purview of WAC 480-120-194. While the total amount in question is substantial by relation to an individual residential telephone bill, the amount in question does not reach an annual figure that would meet the tests in WAC 480-07-505 for a general rate case. Moreover, it is not an ongoing matter, but would mean a potential effective increase in telephone bills (by reducing or eliminating the credits provided under the SQPP) by a small, undefined, and temporary amount. The proposal does not rise to a level of consumer financial effect that meets the tests set out for individual consumer notices in WAC 480-120-194.

28 We do believe, however, and hereby order, that the Company must take steps to provide notice at least as extensive as provided in WAC 480-120-193, including the provision of web, telephone, and mail access to information that must include its current proposal, the existing SQPP, and the potential range of financial effects on individual consumers.

29 **Procedural schedule. ALL PARTIES PLEASE TAKE NOTICE** That the following procedural schedule is adopted:

Commission Staff, Public Counsel, and intervenor answering statements	April 14, 2004
Qwest responding rebuttal statement	May 19, 2004
Final submissions and documents for use on cross-examination	June 2, 2004
Hearing	June 7, 2004, beginning at 9:30 a.m., continuing to June 8, if needed

Simultaneous statements of
position and of authorities

June 18, 2004

Oral argument

June 25, 2004, at 1:30 p.m.

The hearing and oral argument will take place in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations, by calling [Kippi Walker at 360-664-1139] or [Margret Kaech at 360-664-1140], no later than noon on June 3, 2004.

- 30 **Document preparation and filing requirements.** Parties must file with the Commission an original plus eight (8) copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 31 All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's Records Center at the above street address. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 32 An electronic copy of all filings must be provided by e-mail delivery to records@wutc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or an IBM-formatted compact disk including the filed document(s). The Commission asks that parties furnish electronic copies in .pdf (Adobe Acrobat)

format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. Parties must organize and identify electronic files as specified in WAC 480-07-140(5).

33 **Electronic filing.** Parties may not file documents electronically with the Commission in this proceeding. However, with the permission of the administrative law judge and pursuant to WAC 480-07-145(6), parties may provide courtesy copies by electronic delivery of documents to the Commission and gain a one-day extension of the paper-filing requirement. If, at any time during this proceeding, parties are authorized to do so pursuant to WAC 480-07-145(6), the parties must submit the document no later than 3 p.m. of the original deadline to records@wutc.wa.gov, and file an original, plus eight (8) copies, of the document with the Commission by the following business day.

34 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 19th day of March, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

APPENDIX A				
PARTIES' REPRESENTATIVES DOCKET NO. UT-991358				
PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Qwest Corporation	Lisa A. Anderl 1600 7 th Avenue, Room 3206 Seattle, WA 98191	(206) 345-1574	(206) 343-4040	Lisa.Anderl@qwest.com
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Covad Communications Company	Karen Shoresman Frame Senior Counsel 7901 Lowry Boulevard Denver, CO 80230	(720) 208-1069	(720) 208-3350	kframe@covad.com
Citizens Utility Alliance of Washington	John O'Rourke Program Coordinator 212 W 2 nd Avenue, Suite 100 Spokane, WA 99201	(509) 744-3370 Ext. 247	(509) 744-3374	orourke@snapwa.org
Public Counsel	Simon ffitich Public Counsel Section Office of Attorney General 900 Fourth Avenue, Suite 2000 Seattle, WA 98164-1012	(206) 464-7744	(206) 389-2058	simonf@atg.wa.gov
Commission Staff	Christopher Swanson Assistant Attorney General 1400 S. Evergreen Park Dr S.W. P.O. Box 40128 Olympia, WA 98504	(360) 664-1220	(360) 586-5522	cswanson@wutc.wa.gov

APPENDIX B

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Representing Northwest Payphone, Covad and MetroNet

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² Mr. Pregelman indicated at the time of the prehearing conference that WashPIRG would prefer to be an interested docket follower rather than to participate as an intervenor.