

September 11, 2003

VIA US MAIL AND EMAIL

Ms. Carol J. Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Re: In the Matter of the Implementation of the Federal Communications
Commission's Triennial Review Order
WUTC Docket No. UT-033025

Dear Ms. Washburn:

In response to the WUTC's Notice Inviting Comments Concerning Process for Implementing FCC Triennial Review Order ("TRO"), dated August 22, 2003, WeBTEC offers the following comments:

1. Who bears the burden of going forward and the burden of proof regarding the various issues identified in the FCC's order, i.e., should the Commission initiate the proceedings, or is it more appropriate for an ILEC or CLEC to initiate a proceeding?

WeBTEC Response: In general, the party seeking to rebut the findings or presumptions in the TRO should bear the burden of initiating a proceeding and the burden of proof. Thus, with respect to the 9 month proceedings, an ILEC should file a petition demonstrating that a particular loop or transport route meets the criteria set forth in the TRO. However, the Commission should set a cut-off date by which an ILEC must file such a petition. If no ILEC petition is filed for a particular loop or transport route by that cut-off date, the Commission should uphold the presumption in the TRO. With respect to the 90 day proceeding, the Commission should initiate the proceeding on its own motion because of the extremely short time period allowed by the FCC. If no CLEC comes forward to rebut the presumption of no impairment for enterprise switching, the Commission should uphold the presumption.

2. How does the Commission's review of the FCC's Order affect ongoing proceedings before the Commission, e.g., issues pending in Dockets UT-003002/003040, UT-023003, UT-011219 and UT-030614?

WeBTEC Response: WeBTEC is an active party only to Dockets Nos. UT-023003 and UT-030614, and, therefore, will comment only with respect to those dockets.

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With respect to Docket No. UT-023003, the Commission may want to consider allowing the filing of additional evidence regarding cost of capital and accelerated depreciation issues; otherwise, WeBTEC does not believe that any changes need to be made in the proceeding.

The largest impact of the TRO proceedings is with respect to Docket No. UT-030614. The essence of Qwest's and the Staff's cases is their contention that the UNEs necessary to provide business local exchange services (i.e., loops and switching) are presently readily available throughout the state and will continue to be so. Accordingly, they contend that Qwest has no significant captive customer base. The determinations required in the TRO proceedings could significantly undermine the basis for the Qwest/Staff case in some parts of or throughout Qwest's service territory. Moreover, the evidence that will be developed in the TRO impairment proceedings will be highly relevant to a proper evaluation of whether effective competition exists for Qwest's business local exchange services. Given the current statutory deadline for Commission action on Qwest's petition, WeBTEC submits that the Commission should deny the petition and direct Qwest to refile it following resolution of the TRO proceedings.

2a. Should the Commission consolidate proceedings, or hold certain proceedings in abeyance pending resolution of issues arising from the FCC's Order?

WeBTEC Response: WeBTEC does not believe it is necessary or appropriate to consolidate the TRO proceedings with any of the referenced proceedings. As indicated above, WeBTEC believes that UT-030614 should be denied and Qwest directed to refile its petition after completion of the TRO proceedings. Because of the statutory deadline applicable to the Qwest petition, it would not be appropriate to hold that proceeding in abeyance.

2b. Should the Commission import evidence from these or other proceedings to a new docket addressing the various issues identified in the FCC's Order?

WeBTEC Response: Only evidence that is relevant and up-to-date should be imported into TRO proceedings from other dockets. WeBTEC does not believe that such evidence exists in any other pending proceeding. However, the evidence developed in the TRO proceedings may well be relevant to the issues to be addressed in UT-030614. As indicated above, WeBTEC believes that the Commission should deny Qwest's petition for competitive classification of business local exchange services statewide pending in that case and direct it to refile the petition after completion of the TRO impairment analyses. The information regarding impairment, including evidence of retail and wholesale provisions of services on a loop and transport route specific basis and the future availability of UNEs to provide local exchange services would be highly relevant to that petition.

3. Should the Commission address issues affecting Verizon and Qwest in separate proceedings or in one generic proceeding addressing all companies?

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WeBTEC Response: The TRO proceedings should include all ILECs in the state for which impairment analyses need to be conducted. While there might be separate 90 day and 9 month generic proceedings, the Commission should be prepared to make separate determinations about the size of geographic markets and loop and transport route specific impairment determinations.

3a. If no party files a petition concerning a particular ILEC, should the Commission initiate a proceeding or wait for a party to file a petition?

WeBTEC Response: See response to Question 1 above.

4. What hearing format should the Commission adopt for the various issues identified in the FCC's Order, i.e., a paper process, workshop, or hearing process?


WeBTEC Response: The proceedings should be conducted as adjudicative proceedings with full rights of cross-examination and discovery.

5. Should the Commission coordinate any of the proceedings arising from the FCC's Order with other states in Qwest's region?

WeBTEC Response: Because many of the attorneys, witnesses, and experts of the interested parties will be participating in TRO proceedings in multiple states, the Commission should coordinate the *schedule* of the Washington proceedings with those being conducted in the other states. Otherwise, because of the granular (i.e., locality specific) nature of the majority of the inquiries required under the TRO, it would not be appropriate to coordinate or combine the Washington proceedings with those being conducted in other states. However, because "hot cut processes" issues likely will cut across state lines, it might be appropriate to coordinate with other states on those issues.

Respectfully Submitted,

ATER WYNNE LLP


Arthur A. Butler

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cc: Ann Rendahl, ALJ (via email)
Bob Wallis (via email)
Parties of Record UT-003022/003040 (via email)
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