

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
QWEST CORPORATION
For Competitive Classification of
Basic Business Exchange
Telecommunications Services

DOCKET NO. UT-030614
PUBLIC COUNSEL RESPONSE TO
JOINT MOTION TO REQUIRE RE-
SURVEY

I. INTRODUCTION

Pursuant to the Notice of October 8, 2003, the Public Counsel Section of the Washington Attorney General (Public Counsel) submits the following response in support of the Joint Motion to Require Staff to Re-Survey and Recompile CLEC Data.

Public Counsel concurs in the assessment of the joint movants that there appears to have been confusion and misunderstanding between CLECs and Staff in the preparation and collection of responses to Order No. 06, specifically with regard to the distinction between analog and digital services. The testimony at the hearing sessions to date, and the declarations filed in support of the motion, raise questions about the reliability of the CLEC data as a basis for evaluating market share or other statutory factors.

II. DISCUSSION

A. A Review Of The Supplemental CLEC Data Casts Doubt On The Reliability Of The CLEC Data Already In Evidence.

Public Counsel's witness Susan Baldwin has reviewed the supplemental data filed by MCI, Integra, and ATG subsequent to the first week of hearing, in response to Order No. 06. Ms. Baldwin concludes that the responses raise serious question about the reliability of various aspects of the CLEC data, including the quantity of lines, the location of lines in different

geographic markets in Washington and the different product markets in the state. Ms. Baldwin's attached declaration and highly confidential exhibit detail her summary of the new data and her conclusions. Ms. Baldwin's ultimate conclusion is that the Commission should not rely on the CLEC data for the purpose of assessing the merits of Qwest's petition.

By supporting the motion, Public Counsel does not in any way concede that Qwest's definition of the market as an analog services market is valid. On the contrary, Public Counsel believes that the market definition used by Qwest, and supported by Staff, is indefensible, and that the petition should be denied on that basis, among others. Our point here is that, even if the Commission chooses to accept the premise of an analog-only market, it now appears the current raw CLEC data, and testimony and exhibits based on that data, do not provide a reliable picture of that hypothetical market.¹

B. The CLECs Should Be Re-surveyed.

The best resolution to this problem would be a re-survey. Public Counsel recommends that the Commission essentially replicate the process used with Order No. 06, with special clarifying questions issued to CLECs and responses provided to Staff. Staff and Public Counsel would then be able to review the responsive data and determine whether to file supplemental testimony or amended exhibits to reflect the new data.

The re-survey should ensure that the CLECs provide information according to the same definition of analog service which Qwest applies to its own services, to ensure comparability

¹ Public Counsel also does not suggest that the Commission could or should redefine the market in this proceeding as combination of both analog and digital services. To this extent, Public Counsel does not concur in joint movants' statement that "this case should include both Qwest's analog and digital voice services which are part of that market," Joint Motion at 4, if that statement is meant to suggest that such a result is an alternative available to the Commission in this case. Qwest has not petitioned for such a classification, nor offered supporting evidence. There has not been any notice that such a market is at issue, nor an opportunity to do discovery, prepare testimony, or conduct cross-examination on such a combined market. In addition, there is neither adequate nor reliable evidence in the record to establish the scope or nature of such a business market. There is no basis either legally or factually for the Commission to grant a broader classification than that requested in Qwest's petition.

between the Qwest and CLEC data. In essence, the process would ask CLECs to revise their previous data responses to Order No. 06 to ensure that only analog services were reported. The basic questions to be answered are:

- Do you have any services for business customers that are strictly analog services?
- If yes, what are the services?
- How many access lines and customers are associated with those services, and where are they located?
- How are those services provisioned?

Public Counsel suggests that, for clarification, the following statement be included in the re-survey:

For purposes of your response, a service is analog if it is analog as delivered by your company to the customer premises, regardless of whether mode of transmission is digital or analog.

C. If The CLECs Are Not Re-surveyed, The Current CLEC Data Should Not Be Considered By The Commission In This Docket.

In the event that the Commission decides not to order a re-survey, Public Counsel agrees with joint movants that the Commission should make a finding that the CLEC data produced to date is unreliable and will not form a basis for decision in this case.

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III. CONCLUSION

For the foregoing reasons, Public Counsel supports joint movants' request that the Commission order a resurvey, or in the alternative, find that the CLEC data is not sufficiently reliable to provide support for Qwest's petition in this docket.

Respectfully submitted, this 10th day of October, 2003.

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