

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

In the Matter of the Petition of)	DOCKET NO. UT-030614
)	
QWEST CORPORATION)	ORDER NO. 16
)	
For Competitive Classification of)	
Basic Business Exchange)	ORDER DENYING JOINT MOTION
Telecommunications Services)	
.....)	

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, Washington, represents Qwest. Jonathan C. Thompson, assistant Attorney General, represents Commission Staff. Simon ffitich, 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, Washington, 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 June 30, 2003, the Commission entered Order No. 06 in this proceeding. Order No. 6 required Competitive Local Exchange Carriers (CLECs) in the state of Washington to provide data about local exchange service to businesses that they provide in Washington. On July 22, 2003, in Order No. 08, the Commission clarified that the CLEC data should exclude digital services,

since Qwest's petition applies only to analog business services. The Commission ordered Commission Staff to ascertain the accuracy of CLEC data submitted pursuant to Order No. 06, to assure that the CLECs did exclude digital services.

4 Commission Staff received responses to Order No. 06 from 27 CLECs, including those who are parties to this proceeding – AT&T, MCI, Integra and ATG. The data is classified as highly confidential. Staff aggregated it to protect the identity and confidentiality of the CLECs. The data appears in aggregated form in exhibits 203C, 204C and 205C in this proceeding. These exhibits are sponsored by Staff witness Thomas L. Wilson, Jr. and have not yet been admitted in evidence. Later in the proceeding, the Commission granted Public Counsel an opportunity to review the highly confidential CLEC data.

5 The parties have presented evidence and completed cross-examination in this case for all witnesses but Mr. Wilson, and possibly Public Counsel witness Susan Baldwin. The final day scheduled for hearing is October 21, 2003. The Commission must enter an order in this case by December 4, 2003.

6 MCI, Integra and ATG have filed revised highly confidential data pursuant to Order No. 06. Commission Staff and Public Counsel have reviewed the revised data.

7 **Joint Motion.** On October 8, 2003, WeBTEC, ATG, Integra and MCI (moving parties) filed a joint motion to require Commission Staff to Re-Survey and Recompile the CLEC data.

8 The moving parties claim that confusion and miscommunication have occurred between Staff and the 27 CLECs who originally responded to the Commission's Order No. 06. The moving parties, except WeBTEC, offer affidavits from their employees who were responsible for responding to Order No. 06. These affidavits state that the employees responsible included both digital and analog services in their responses and that Commission Staff did not contact them to ascertain whether their responses contained combined data. MCI, Integra and ATG have filed revised highly confidential data which differs from their original filing because the revised data excludes some lines and services on the basis that they are digital rather than analog.

- 9 Public Counsel and the Department of Defense did not join in the motion, but filed separate pleadings agreeing with the moving parties' position. Public Counsel states that his expert, Ms. Susan Baldwin, reviewed the revised data provided by ATG, Integra and MCI. Her conclusion, contained in a confidential attachment to Public Counsel's pleading, purports to show that the new data renders suspect Staff's prior aggregation of the CLEC data and would increase Qwest's market share calculation. Public Counsel urges that the Commission order a complete re-survey of CLECs. Public Counsel also suggests a series of questions that might be asked to obtain more accurate information.
- 10 Staff responds that Mr. Wilson ascertained that all the CLECs who responded to Order No. 08, except for CLECs that were parties to this case, had provided data only with regard to analog services. Staff also contends that Mr. Wilson instructed CLECs to remove even analog services if they were provided over digital equipment. Both Qwest and Staff point out that WeBTEC, one of the joint movants, raised the issue early on in the proceeding of the need to be sure that CLECs excluded digital services from their line counts. Order No. 8, entered on July 22, 2003, clearly established that all CLECs should include only analog services in the data they submitted to Staff and that Staff should ascertain that only analog services were included in CLEC data. On this basis, Qwest and Staff argue that it is disingenuous for the CLECs to contend at this late date that there has been confusion about what types of services should have been included in data submitted to Staff. To the extent there was a miscount, the revised filings of the CLEC parties have corrected the problem. Staff points out that Mr. Wilson recalculated his aggregation results based on the revised filings and that the revisions result in less than a 1% increase in Qwest's market share.
- 11 Qwest suggests that the Commission direct those CLEC parties who revised their line counts so late in the proceeding to provide additional information supporting the changes. Qwest also seeks an opportunity to review the CLEC responses on a confidential basis, along with other parties, before the Commission determines whether to accept or reject the revised submissions.
- 12 **Discussion.** The Commission rejects the joint CLECs' motion for a re-survey of all CLECs who responded to Order No. 06. The Commission also rejects the request to disregard the results of the prior survey and aggregation. Based on Mr. Wilson's statements, it appears that he contacted all the CLEC respondents,

except the CLEC parties to the proceeding, to obtain accurate data about competition. The CLEC parties had ample notification that digital services were not part of this petition and that their line counts submitted to Staff should exclude digital services. Furthermore, Staff and Public Counsel have had an opportunity to study the revisions made by the CLEC parties and revise their own conclusions accordingly.¹ Even though Staff and Public Counsel may have differences of opinion about the impact of the revisions, each has provided information sufficient to assist the Commission in reaching a decision without the need for a complete, and needless to say, very time-consuming, survey of all 27 CLECs that originally responded to Order No. 06. Except as to specific, highly confidential numbers, the parties will have an opportunity to cross-examine Mr. Wilson, and possibly Ms. Baldwin, about the methodology they used to reach their conclusions.

13 The Commission recognizes that the lateness of the revisions makes it impossible for the parties to cross-examine the CLEC parties about them. However, it would be beneficial for the record to require ATG, MCI and Integra to provide to the Commission and the parties by October 17, 2003, answers to the following:

- A description of all criteria regarding analog and digital services that you applied when originally replying to Order No. 06;
- A description of all criteria regarding analog and digital services that you applied when revising the data you supplied in response to Order No. 6.

Since this information is not number-specific, it is not confidential.

ORDER

14 IT IS ORDERED That the Joint Motion to Require Staff to Re-Survey and Recompile CLEC Data, or to Disregard Results of Previous CLEC Survey and Data Compilation, is denied. It is further ordered that the CLEC parties to this proceeding, except AT&T, must provide further information to the Commission

¹ See confidential and highly confidential attachments to Staff and Public Counsel responses to joint motion.

and parties about criteria they used both in responding to the original data request and in providing revised responses.

DATED at Olympia, Washington and effective this 14th day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge