



To best of the Alliance's knowledge the other parties to this proceeding have access to the requested reports, presumably through other proceedings that have been a part of this merger docket.

3. On or about April 8, 2004 the Alliance received Qwest's objection to Alliance DR2. A true copy of Qwest's objection is attached as Exhibit 2.

4. The Alliance and Qwest have tried to resolve this dispute informally but Qwest continues to affirm its objection.

### **STATEMENT OF ISSUES**

5. This is a dispute pertaining to a discovery request propounded to Qwest from the Alliance. WAC 480-07-400 (4) states what data is discoverable:

Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to a data request on grounds that information sought appears to be inadmissible at the hearing, if the information sought appears to be reasonably calculated to lead to discovery of admissible evidence....

### **DISCUSSION**

6. This is an action in which Qwest is seeking to terminate the Service Quality Performance Program (SQPP) that it agreed to as part of the settlement agreement authorizing the merger of Qwest and U.S. West. The quarterly investment reports the Alliance asks for in DR2 reflect Qwest's level of investment in its Washington service network and are compiled and submitted to the Commission in accordance with the investment commitment the company made as a condition of the same merger. Qwest's level of investment is relevant to whether Qwest's petition in this case should be granted because service quality is substantially affected by investment. For example, if the reports asked for in DR2 reflect a drop in investment, then we think there is a convincing argument that Qwest's petition be denied and that the SQPP remain as an incentive to Qwest to maintain adequate service quality. So too,

there may also be other data in the reports, related to investment, which could be relevant to Qwest's Petition.

7. The Commission has recognized that investment is directly related to service quality. The Commission's Tenth Supplemental Order in the 1997 "make whole" US West rate case, states in part:

The Company must also recognize its own obligation to make investment in the State. During the period of AFOR regulation in the early 1990's, the Company earned and kept millions of dollars more than its authorized return, yet during that period was reducing its investment in the State. Some of the Company's present service problems appear to stem from its failure to invest sufficient capital or human resources.

One of the Commission's greatest concerns is that the Company provide top-quality service to the residential and small business customers who presently have almost no alternative service providers. It is essential that the Company meet its obligation under the law to provide adequate service. As Staff witness Blackmon pointed out, more than anything else, that means making the investments in capital and personnel necessary to make service available. ...Tenth Supplemental Order, UT-970766, January 15, 1998, page 11 (emphasis in original, footnotes omitted).

8. The Commission raised this issue again, later in the same order, stating: "Mr. Blackmon was accurate, we believe, in noting that service quality is in large measure a function of decisions about investment and staffing that are made in the Company at the highest levels."

Id. at 26

9. Investment becomes even more relevant in this case given some of allegations on service quality Qwest asserts in its petition. Qwest claims that because service quality is improving the SQPP is no longer needed. Qwest's alleges in Paragraph 7 of its petition:

In light of Qwest's exceptional performance record, Qwest believes that the continuation of such credit obligations serves no useful purpose.

Paragraph 10 of the Petition cites Qwest's, "exemplary performance over the life of the SQPP." We think investment levels are directly relevant to challenging these allegations,

especially in light of the Commission quotes above that recognize investment as directly related to service quality.

10. The Alliance is not alone in thinking that Qwest investment is important to this case. Both Commission staff (staff) and Public Counsel, through their expert witnesses, discuss network investment extensively in their statements filed in this case.

11. Staff states in paragraph 27 of its statement submitted in this case (redacted version, page 14):

We do not take issue with the proposition that service quality has improved, and we are cautiously optimistic that the improvements will be sustained. However, the future is hardly assured. Apart from the regulatory oversight and incentive mechanisms adopted by the Commission and other regulators, the single most important factor in Qwest's service quality improvements arguably was its increased investment in the network immediately after the merger in 2000. Qwest spent a lot of money fixing the network, and service quality improved. However, Qwest's investment has dropped dramatically in the last two years. In 2002 and 2003, Qwest's network investment levels were 24 to 40 percent below what U S WEST had invested in the years before the merger. Staff Exhibit 2 shows the investment levels for Qwest since 1997.

12. Staff also states in paragraph 29 (redacted version, page 15):

Taken together, the sharp decline in investment and the continued financial pressures of the parent company should give the Commission serious concern about Qwest's argument that the SQPP is redundant. To accept that argument would read far too much into the company's recent improvements in service quality. We believe that the risk of deteriorating service quality is significant and that the likelihood of a service meltdown is even greater if the SQPP is terminated.

13. Public Counsel also weighs in on the issue of service quality and investment in its memorandum submitted in this case (redacted version, page 11):

The investment data reflected in Public Counsel's Confidential Attachment B shows a fairly significant [BEGIN CONFIDENTIAL] \*\*\*\*\* [END CONFIDENTIAL] trend in Qwest's capital investment in Washington, as measured on a per-access line basis, and raises the possibility that this could lead to deterioration in Qwest's service quality. For this reason, it would be most prudent to allow the SQPP to remain in effect for two more years, rather than granting Qwest's petition for early termination.

## CONCLUSION

14. Given the statements put forth by Public Counsel and Staff on the relevancy of the investment reports, the pronouncements the Commission has made finding a direct link between investment and service quality, and Qwest allegations of “exceptional performance” as a reason to terminate the SQPP, the information requested in DR2 is clearly relevant to this case. In addition, every party to this proceeding has access to the reports but the Alliance. The Alliance asks the Commission to grant its motion to compel and asks the Commission to order Qwest to comply with Alliance DR2.

15. I certify that the facts asserted herein are true and correct to the best of my belief.

Dated this 26<sup>th</sup> day of April 2004.

Respectfully submitted,

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John O'Rourke, Program Coordinator  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record in these proceedings by mailing a copy properly addressed with first class postage prepaid.

Dated this 26th of April 2004.

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