

QWEST CORPORATION

STATE: Washington
DOCKET NO: UT-073034
CASE DESCRIPTION: In the Matter of the Petition of Qwest Corporation for Commission Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions
INTERVENOR: Bench Requests
REQUEST NO: BCH 02-004

REQUEST:

(a) If a competitive local exchange carrier (CLEC) seeks to enter into an interconnection agreement with Qwest in Washington State, what options does Qwest make available to the CLEC?

(b) May a CLEC adopt the Statement of Generally Available Terms (SGAT) approved by the Commission on June 25, 2002, with subsequent modifications to Exhibits A, B, and K?

(c) Has Qwest sought approval from the Commission to modify its SGAT since June 25, 2002, not including modifications to exhibits to the SGAT?

RESPONSE:

(a) Qwest provides CLECs with several options. Qwest makes available a 'template' interconnection agreement ("Template Agreement") which CLECs can execute as their interconnection agreement. If the template agreement does not quite meet all of a CLECs business needs, it constitutes Qwest's initial offer for the subsequent negotiations, and, if necessary, arbitrations, of interconnection agreements which are ultimately submitted to the Commission for approval. In addition, Qwest makes available for opt-in existing agreements of other carriers that have been recently negotiated or arbitrated.

(b) No. After May 2005, Qwest no longer offered the 2002 SGAT to CLECs as a baseline interconnection agreement template. Since that time, Qwest has entered into interconnection agreements with 28 CLECs in Washington, all of which were reviewed and approved by the Commission pursuant to Section 252. Of these 28 agreements, 2 were negotiated, 2 were adoptions of agreements other than the Template Agreement, 19 were adoptions of the Template Agreement and 2 were arbitrated agreements.

(c) No, but Qwest believes that an explanation of the events leading to Qwest's current use of the Template Agreement are in order to aid the Commission's understanding of Qwest's current interconnection agreement negotiations process.

The legal requirements established for Regional Bell Operating Companies ("RBOC") to obtain entry to offer interLATA toll services are identified in CFR 47 USC 271 (c). Under those requirements, there are two options that RBOCs may utilize to provide proof that it meets the requirements in each state. To summarize, the RBOC meets requirements if it:

Subparagraph (A) - "has entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange services (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers."

or:

Subparagraph (B) - "a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f)."

At the time Qwest began its effort to obtain 271 relief, not every state clearly had a CLEC operating under an Interconnection Agreement ("ICA") meeting subparagraph (A) requirements nor was it clear what the complete requirements of the 14 point checklist entailed. Therefore, Qwest elected to obtain state approval using a collaborative workshop process to explore and resolve literally hundreds of issues relating to specific provisions of Qwest's proposed SGAT. At the time, the SGAT was the document that provided a single, common vehicle for these collaborative workshops with CLECs and Commissions to assure Qwest's agreements met the checklist requirements. Qwest filed its original SGAT on March 22, 2000 and, as a result of the collaborative workshop process, eight revisions were made to the Washington SGAT as a whole. These revisions were filed on June 29, 2001; September 21, 2001; January 29, 2002; April 15, 2002; April 19, 2002; May 24, 2002; June 11, 2002 and June 25, 2002.

In February 2003 the FCC adopted the order commonly known as the Triennial Review Order ("TRO") (CC Docket Nos. 01-338, 96-98 and 98-147) which was released on August 21, 2003. The TRO substantially altered Qwest's obligations under Section 251 of the Act to offer unbundled network elements. As a result, Qwest filed a TRO-compliant SGAT with the Washington Commission on February 27, 2004.

The TRO was appealed by a number of parties, and the case was heard by the United States Court of Appeals for the District of Columbia. On March 2, 2004 the Court decided United States Telecom Association v. Federal Communications Commission and the United States of America. (*USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (effective June 16, 2004) commonly known as the "USTA II Decision". In that decision, the DC Circuit Court vacated the Triennial Review Order in part and remanded it in part.

The FCC subsequently issued Interim Rules in its Order and Notice of Proposed Rulemaking *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338 (effective September 13, 2004) ("Interim Rules").

Because of the multiple appeals of this order and apparent changes that were going to be required by the Court and subsequent FCC orders, representatives from several state utility commissions expressed concern that, in light of these developments, it did not seem efficient to review the TRO-compliant SGAT Qwest had filed. Qwest agreed and withdrew the filing on March 11, 2004.

In the meantime, however, because many of the 251 obligations had changed, Qwest proceeded to make changes to the Interconnection Agreement it offered to CLECs in order to be compliant with those changes. The underlying Interconnection Agreement document, which was based upon the language from the SGATs, became known as the "Template Agreement." The Template Agreement is Qwest's starting point for negotiations with CLECs. This document not only reflects the current state of the law, but it was also modified to be more consistent in its language across the 14 states. This was done at the encouragement of CLECs who operated in multiple states and Qwest operations people applying contractual requirements who all desired more consistency. In those instances where there was a specific state Commission order issued that created substantive deviation from language and intent of other states, Qwest preserved that modification as part of the Template Agreement offer.

Qwest now has Interconnection Agreements with many CLECs in Washington, all of which were reviewed and approved by the Commission under Section 252. The existence of these agreements is an indisputable fact that Qwest meets the requirements of Section 271, (c)(A) of the Act. Qwest does not believe that the Act requires both an SGAT and the existence of multiple interconnect agreements.

Through the Template Agreement (and the Interconnection Agreements noted above) Qwest continues to meet its obligations under Section 251. If any CLEC feels that Qwest is denying them required services as part of the Template Agreement offer and resulting negotiations, they may request the Commission arbitrate those disputed terms. In addition, Qwest meets its obligations to provide the checklist services required by Section 271, through these agreements in combination with the commercial agreements (i.e., QPP and QLSP) Qwest has made available to CLECs.

Finally, the Commission continues to maintain its authority to serve as arbitrator and to render the final decisions on disputed interconnection agreement terms and conditions between Qwest and CLECs. The Commission also maintains its authority to reject any agreement or amendment filed with it if a) it is found to discriminate against a telecommunications carrier not a party to the agreement, b) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity or, c) the agreement does not meet the requirements of section 251.

Respondent: Mark Reynolds
Carolyn Hammack