

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE)
IMPLEMENTATION OF THE FEDERAL) DOCKET NO. UT-033025
COMMUNICATIONS COMMISSION'S)
TRIENNIAL REVIEW ORDER)
)

AT&T'S COMMENTS CONCERNING DISCOVERY

AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TGC Oregon (collectively "AT&T") submit comments in response to the Notice of Opportunity to File Comments Concerning Discovery Questions and Form of Protective Order issued by Administrative Law Judge ("ALJ") Ann E. Rendahl.

1. Introduction

On September 30, 2003, the ALJ set a deadline of October 3, 2003 for parties to file comments on discovery. Because AT&T has only had a short period of time to evaluate draft discovery questions and draft this response, the following comments are preliminary. AT&T reserves the right to amend and/or supplement these responses.

2. General Comments on Appropriate Scope of Discovery

AT&T has reviewed the template discovery questions prepared by the NARUC Triennial Review Implementation Project ("TRIP"), Qwest's draft discovery questions, and the CLEC Coalition Response submitted to the Texas Commission. Based on its

review of these draft discovery requests, AT&T respectfully proposes the following guidelines or principles limiting the scope of discovery in this matter:

a. As an initial matter, ILECs should be required to identify the geographic areas in which they are seeking to overturn the FCC's national finding of impairment for mass market switching, loops and transport in the manner ordered by the ALJ in the Notice of Deadline to File Petitions, issued on September 30, 2003.

Discovery should, in turn, be limited to the relevant market identified by the ILECs.

b. All discovery should relate to the tests and factors identified in the FCC's Triennial Review Order ("TRO"). *See generally* TRO at ¶¶495-520.

c. The Commission should limit ILEC requests for the number of in-service CLEC local telecommunications lines to UNE-L and UNE-P mass market Business and Residence lines.

d. Discovery on switching issues should be limited to the "mass market," as that term is defined in the FCC's TRO.¹ Relevant mass market information should be limited to the type, location and capacity of mass market switches.² The Commission should not allow discovery on enterprise customer information in the mass

¹ The FCC found that "[m]ass market customers consist of residential customers and very small business customers," TRO at ¶ 127, and include "analog voice customers that purchase only a limited number of POTS lines and can only be economically served via DSO loops." *Id.* at ¶ 497. The FCC left it to the states to determine the "appropriate cut-off for multi-line DSO customers as part of its granular review." *Id.* Therefore, as part of the economic and operational analysis that the Commission will conduct, it must investigate and determine what will be the "cut-off" or limit on the number of DSO lines that a CLEC may serve at a location and still be entitled to obtain unbundled local switching from an ILEC. With respect to the specific line limit, the FCC found that the appropriate cut-off point for multi-line DSO customers, "may be the point where it makes economic sense for a multi-line customer to be served by a DS1 loop." TRO at ¶ 497.

² Since the appropriate crossover point will not be established until later in the proceeding, discovery on business mass market issues should be limited to 1-3 voec grade equivalent lines.

market switching proceeding, with the exception of asking whether or not a CLEC uses certain switches for enterprise customers.

e. With respect to loop and transport issues, an ILEC should, as a preliminary matter, be required to identify the particular customer-specific locations (for high capacity loops) or routes (for transport) for which the ILEC seeks to overcome the national finding of impairment in the manner ordered by the ALJ in the Notice of Deadline to File Petitions, issued on September 30, 2003. TRO at ¶¶ 311, 324-325. Discovery should be limited to the specific customer locations or routes identified by the ILEC.

f. Discovery on transport should be limited to ILEC-to-ILEC transport issues.

g. Questions concerning services or modes of delivery, including wireless and Voice Over Internet (“VOIP”) are not relevant to this analysis.

h. The Commission’s impairment analysis should focus on the current state of competition in the market. As such, discovery should be limited to contemporary facts and recent history. The Commission should reject discovery questions concerning future plans, strategies, or anticipated results.

i. Revenues subject to discovery should be limited to relevant services for the mass market. The FCC identified certain revenues as relevant to this analysis (including retail prices charged to residential customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance,

local number portability and data). TRO at ¶519. The FCC did not identify video, Internet service providers and international calling as revenues relevant to this analysis.

j. Discovery on CLEC costs should be limited to UNE-L costs for the mass market. UNE-P, uncollectibles and OSS costs are irrelevant to this case. Likewise, profitability and financial results are irrelevant to this analysis and should not be the subject of discovery.

k. The Commission should reject discovery concerning rate plans and retail marketing plans.

l. Under no circumstances should CLECs be required to produce network maps or diagrams. In addition, requests that seek specific facility location information, such as V&H coordinates, street address, etc, compromise the security and competitive integrity of a CLEC's network. AT&T understands that, if an enterprise loop or transport case is brought, customer-specific and route-specific information for the specific locations and routes that are at issue may be relevant. If such a case is brought, AT&T will work with the parties to devise a means to produce relevant location and route specific data in a manner that will address these security and competitive concerns.

m. Requests that seek information by MSA, LATA, etc. fail to recognize that CLECs may not retain information at that level. CLECs should have the flexibility to produce information in the manner it is retained. CLECs should not be required to conduct special studies or otherwise alter the manner in which data is retained.

3. TRIP Discovery Questions.

Based upon a very preliminary review, if the TRIP questions directed at the CLECs are properly scoped in accordance with the above principles, AT&T believes that those questions represent a good starting point for discovery to be issued to the CLECs for the 9 month cases. As for the discovery directed at the ILECs, which appears to be much more extensive, some streamlining may be required. AT&T would note that there are additional areas of inquiry that were not addressed by the TRIP questions. AT&T has attached some recommended additional questions to these comments as Exhibit A.

In addition, as the parties continue to examine the TRO Order and progress in the proceeding, additional discovery will likely be necessary. While the Commission should not limit a party's right to engage in discovery, the Commission should monitor discovery to ensure that it does not become burdensome and to ensure that it is consistent with the principles articulated

AT&T did not examine the questions for the 90-day case and has no specific comments on the TRIP discovery for that case, at this time.

4. Qwest's Draft Discovery Questions

Based on the foregoing limitations, the Commission should reject the following discovery questions proposed by Qwest³ as irrelevant, overbroad and/or vague:

³ See Qwest's "Discovery Requests for Triennial Review Proceedings."

1-3, 4,5, 7-9, 11-16, 17-20-23, 26-28, 29-31, 32-34, 37, 41-46, 48-51, 52, 53-61, 65 and 66-79.

AT&T believes that the following questions proposed by Qwest may be valid, with modifications consistent with the above principles:

4, 6, 13-14, 17-18, 21, 26, 28, 31, 48-50, 51, 53, 65.

Questions 66-79 would only be relevant if an ILEC challenges specific loop or transport routes. These questions should then be limited to the specific locations and routes at issue and should be otherwise modified to be consistent with the above principles, to be unobjectionable.

5. Discovery Response Deadlines

AT&T requests that the Commission extend the regular deadlines for responses to discovery requests. AT&T believes Qwest may suggest a 10-day response timeframe for discovery. This is simply unworkable. AT&T will be responding to discovery in fifty states and will need additional time to respond to discovery requests in Washington.

6. Submission of AT&T's Draft Discovery Questions

AT&T has attached additional proposed discovery questions as Exhibit A to this response.

7. Submission of AT&T's Proposed Protective Order

AT&T has attached its proposed protective order as Exhibit B to this response. AT&T and Qwest have been in discussions regarding AT&T's proposed revisions to

Qwest's proposed protective order. We are still exchanging language, but AT&T believes that we are very close to agreement. If AT&T and Qwest reach agreement prior to the Prehearing Conference on October 9, 2003, we will circulate a revised protective order to the service list.

Respectfully submitted this 3rd day of October, 2003.

**AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC., AND AT&T
LOCAL SERVICES ON BEHALF OF TCG
SEATTLE AND TCG OREGON**

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