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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF IPUC RESPONSE TO
FCC ORDER ON REVIEW OF SECTION 251
UNBUNDLING OBLIGATIONS OF
INCUMBENT LOCAL EXCHANGE
CARRIERS (CC DOCKET NO. 01-338)**

Case No. GNR-T-03-23

**MOTION TO POSTPONE MASS
MARKET SWITCHING CASE AND
CLOSE DOCKET**

**NINE-MONTH REVIEW OF ECONOMIC
AND OPERATIONAL IMPAIRMENT
REGARDING ACCESS TO SPECIFIC UNES**

I. MOTION

Qwest Corporation (“Qwest”) hereby requests that the Idaho Public Utilities Commission (the “Commission”) enter an order postponing its inquiry into issues related to Qwest’s obligation to provide unbundled switching for mass market customers (the “Inquiry”).

Accordingly, Qwest requests that the Commission close this docket or, alternatively, that the

Commission defer indefinitely any action herein. Qwest asks that the Commission select one of these alternatives subject to Qwest's right to refile or reinstate the Inquiry at a future time. Thus, Qwest moves the Commission to vacate: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, subject to Qwest's right to move forward with the Inquiry in the future.

II. DISCUSSION

A. Grounds for Motion

1. Qwest submits that competition for local exchange in Idaho is vigorous and meaningful and maintains that switching for mass market customers should not be subject to the unbundling obligations of Section 251 of the Telecommunications Act. This competition notwithstanding, however, Qwest has determined that it is not prudent or practical at this time for it to continue to prosecute the issues associated with the Inquiry or to ask the Commission to devote its scarce resources to the Inquiry. The reasons Qwest has reached these conclusions are four fold:

(a) Qwest has decided to pursue unbundled switching cases for mass market customers in only those states where it clearly meets the triggers for elimination of the unbundling obligation as set by the FCC in the Triennial Review Order.¹ Based upon the information in Qwest's records, the Company cannot verify unequivocally that the three switch trigger is met in Idaho.

(b) As the mass market switching proceedings in Qwest's 14-state region have unfolded, it has become clear that Qwest underestimated the resources required to prosecute 14

¹ In those states where the triggers are met, Qwest also will be presenting other evidence relating to economics, competition, and operational matters in the market demonstrating that switching for mass market customers should not be unbundled.

separate state actions simultaneously. Moreover, Qwest has received voluminous discovery requests from out-of-region states with respect to its out-of-region business, and Qwest had not anticipated discovery of this magnitude.

(c) Qwest quite simply is presently resource-constrained, a fact well-known to the Commission and the general public. Accordingly, Qwest must choose and prioritize carefully where it litigates issues, including the Inquiry. With this backdrop and in view of the other forces at play and described above, Qwest has decided that proceeding at this time with the Inquiry is not in its immediate financial interests.

(d) It is well-known that many parties have appealed the Order, that these appeals have been consolidated in the United States Circuit Court of Appeals for the D.C. Circuit and that the D.C. Circuit has ordered the appeals be briefed and argued on an expedited basis. While these facts do not necessarily indicate anything about the timing and substance of the D.C. Circuit's rulings, many observers believe there is a significant possibility that the FCC's rulings in the Order will be reversed and remanded to the FCC for further proceedings before that agency. This possibility, in and of itself, would not militate in favor of a deferral of the Inquiry, and Qwest will pursue mass market switching cases in many of its other in-region states; however, when considered in combination with the foregoing factors, Qwest has concluded that the Inquiry should not take place at the present time.

2. For the above and foregoing reasons, considered together, Qwest has determined not to proceed with the Inquiry at this time and with similar proceedings in the states of Montana, Wyoming and South Dakota. Qwest's decision at this time to request postponement of its nine-month mass market switching case will allow it and other parties to focus their resources

on other states so that those cases can be completed within the nine-month period required by the TRO.

3. Qwest is simultaneously filing a similar motion with the state commissions of the aforementioned states asking them to postpone their investigation of issues related to mass market switching impairment and, without prejudice, to close their dockets related to that issue. However, because of the degree of competition in Idaho, Qwest reserves its ability under the Order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching.

B. Batch Hot Cut Issues

On October 31, 2003, Qwest (on behalf of AT&T and MCI) filed a joint proposal of a process and framework to address the batch hot cut issue.² On November 12, 2003, consistent with its obligations under the joint proposal, Qwest filed its proposal for a region-wide batch loop conversion process,³ wherein Qwest, among other things, summarized its proposal regarding implementation of a process for batch hot cuts. On November 4, 2003, the Commission issued an order approving the joint motion of Qwest, AT&T and MCI, agreeing to participate in the multi-state forum process related to batch hot cut issues and likewise adopting the procedural schedule proposed for batch hot cut testimony proposed by Qwest, MCI, and AT&T.

By filing this Motion, Qwest has decided not to seek relief at this time from its current obligation to provide unbundled switching for mass market customers in Idaho. Thus, there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes.

² Joint Proposal For the Process and Framework To Be Used to Address the Batch Hot Cut Requirements of the FCC's Triennial Review Order, October 31, 2003.

³ Qwest's Proposal For Region wide Batch Loop Conversion Process, November 12, 2003.

This issue was recently addressed by an ALJ in Washington. Several weeks ago, after Verizon decided not to seek mass market switching relief in Washington, the ALJ requested comments on whether it was necessary for the Washington commission to conduct a batch hot cut analysis of Verizon. Verizon, MCI, and commission staff filed comments agreeing that “the requirement for states to approve and implement a batch-cut process for ILECs is an integral part of the mass-market switching analysis” under TRO, but also concluding that “there is no obligation for ILECs or the Commission to develop a batch-cut process unless the ILEC files a petition with the Commission contesting the FCC’s findings of impairment for mass-market switching.”⁴ On November 19, 2003, the ALJ agreed, declining “to initiate further proceedings at this time to address development of a batch-cut process for ILECs other than Qwest.”⁵ A copy of the ALJ’s decision in Washington is attached hereto as Exhibit A.

By filing this motion, Qwest hereby withdraws its request for mass market switching relief, thus placing it in the same posture as Verizon in Washington. Thus, as the ALJ concluded in Washington, there is no need for the Commission to proceed with the batch hot cut issue and all filing dates and hearings related to that issue should be vacated.

That said, Qwest remains committed to the batch hot cut forum and, even though no further action should be taken on that issue in Idaho, Qwest has no objection to Commission Staff monitoring and otherwise participating in the batch hot cut forum.

C. Scope of Motion

This Motion relates only to issues related to mass market switching impairment (including batch hot cut issues). Nothing herein should be construed as Qwest’s agreement to forego or otherwise discontinue action to implement any other aspects of the TRO. In a technical

⁴ Order Declining to Initiate Proceedings to Address ILEC Batch Cut Processes; Closing Docket (Order No. 3), Docket No. UT-033025, Washington Utilities and Transportation Commission (November 19, 2003) ¶ 7.

⁵ *Id.* ¶ 14.

sense, Qwest believes it has the unilateral right to withdraw its case that is the subject of the Inquiry because, in the absence of such a case, the status quo favors the CLECs. That having been said, Qwest believes that since the Commission has opened the Inquiry and initiated proceedings, it is appropriate to request an order from the Commission memorializing the dismissal or deferral of the Inquiry. Furthermore, since no party has filed testimony or formalized its advocacy, there can be no prejudice flowing from Qwest's decision.

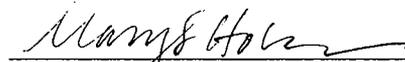
III. CONCLUSION AND CONTACT WITH OTHER PARTIES

Qwest therefore moves this commission to postpone the current proceedings relating to switching for mass market customers by vacating: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, all without prejudice to the ability of Qwest to re-open for a determination on the merits.

Qwest has contacted counsel for AT&T and MCI regarding its request, and AT&T and MCI have represented that that they have no objection to vacating these proceedings consistent with the request contained in the immediately preceding paragraph.

Respectfully submitted this 11th day of December, 2003.

Qwest Corporation



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EXHIBIT A
to Motion to Postpone Mass Market Switching Case and Close Docket

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

)	
In the Matter of the Implementation of)	DOCKET NO. UT-033025
the Federal Communications)	
Commission's Triennial Review Order)	ORDER NO. 03
)	
)	ORDER DECLINING TO
)	INITIATE PROCEEDINGS TO
)	ADDRESS ILEC BATCH CUT
)	PROCESSES; CLOSING DOCKET
.....)	

- 1 **Nature of the Proceeding:** The Washington Utilities and Transportation Commission (Commission) initiated this proceeding to implement the provisions of the Federal Communications Commission's (FCC) Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, also known as the Triennial Review Order, released on August 21, 2003, in CC Docket Nos. 01-338, 96-98, and 98-147.

- 2 **Procedural History:** The Commission initiated this proceeding on August 22, 2003, by issuing a notice requesting comments from all interested persons concerning the process for implementing the FCC's Order in Washington state. The Commission established the docket to scope and implement the Commission's response to the Triennial Review Order. The Commission received responses from nine telecommunications companies, Commission Staff and Public Counsel.

- 3 The Commission convened prehearing conferences in this docket on September 26, 2003, and October 13, 2003. At these prehearing conferences, the Commission, with the assistance of the parties to this proceeding, established a procedural schedule for proceedings arising from the FCC's Triennial Review Order. In Order No. 01, the first prehearing conference order in this proceeding, the Commission required all persons interested in challenging the FCC's national finding of no impairment for enterprise market switching to file a petition by October 3, 2003. The Commission also required all persons interested in challenging the FCC's national finding of impairment for mass-market switching,

dedicated transport, and DS1, DS3, and dark fiber loops to file a petition with the Commission by October 10, 2003.

- 4 No person or corporation filed a petition on October 3, 2003, challenging the FCC's enterprise market switching findings. On October 10, 2003, Qwest Corporation (Qwest) filed a petition with the Commission in Docket No. UT-033044 to initiate a review of the FCC's findings concerning mass-market switching and dedicated transport. No other person or company filed a petition with the Commission concerning mass-market switching, dedicated transport, or loops.
- 5 In paragraph 8 of Order No. 01, the Commission noted a disagreement between the parties concerning a requirement in the Triennial Review Order that state commissions approve a batch hot cut migration (batch-cut) process for incumbent local exchange companies (ILECs) to address impairment in mass-market switching caused by existing ILEC hot cut processes. Specifically, the parties disagreed about the obligations of state commissions and ILECs operating in Washington state to develop a batch-cut process within the state of Washington. The Commission will address the development and implementation of a batch-cut process for Qwest in Docket No. UT-033044.
- 6 On October 14, 2003, the Commission issued a notice to all parties and interested persons requesting comments by October 21, 2003, concerning the obligations under the Triennial Review Order of the Commission and ILECs, other than Qwest, operating in Washington state to initiate development of a batch-cut process within the state of Washington.
- 7 **Batch Cut Migration Process.** On October 21, 2003, Verizon Northwest Inc. (Verizon), MCI, Inc. (MCI), Covad Communications Company (Covad), United Telephone Company of the Northwest d/b/a Sprint (Sprint), and Commission Staff filed comments with the Commission. Verizon, MCI, and Staff assert that the requirement for states to approve and implement a batch-cut process for ILECs is an integral part of the mass-market switching analysis in the Triennial Review Order. These companies also assert that there is no obligation for ILECs or the Commission to develop a batch-cut process unless the ILEC files a petition with the Commission contesting the FCC's findings of impairment for mass-market switching.

- 8 Sprint asserts that its current processes are sufficient and that a batch-cut process is not necessary because the company does not provide UNE-P to any competitive local exchange carrier (CLEC) and provisions only low levels of UNE loops. Covad argues that the Commission should examine the effect of hot cuts on line splitting when examining an ILEC's hot cut processes.
- 9 **Discussion.** The FCC finds that CLECs are impaired without access to unbundled local circuit switching for mass-market customers. *Triennial Review Order*, ¶459. The FCC makes this finding "based on evidence in our record regarding the economic and operational barriers caused by the cut over [or hot cut] process." *Id.* The Triennial Review Order describes a hot cut as "a process requiring incumbent LEC technicians to disconnect manually the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch." *Triennial Review Order*, n.1293.
- 10 Specifically, the FCC requires that "state commissions, must, within nine months from the effective date of the Order, approve and implement a batch-cut process that will render the hot cut process more efficient and reduce per-line hot cut costs." *Triennial Review Order*, ¶¶ 423, 460. In the alternative, state commissions must make detailed findings by geographic market to support a conclusion that current hot cut processes do not create impairment and that a batch cut process is unnecessary. *Id.*
- 11 It is not clear from the text of the Order whether the state commission approval of a batch-cut process is independent of or an integral part of the state commission's market-by-market analysis of CLEC impairment without unbundled mass-market switching. The final rules adopted in the Order, however, include state commission review of an ILEC batch-cut process as a part of the state commission's impairment analysis. *See 47 C.F.R. §51.319(d)(2)(ii)*. Under these final rules, state commissions need only conduct a batch-cut analysis for an ILEC if a state commission is conducting an impairment analysis of unbundled mass-market switching provided by the ILEC.
- 12 Verizon and MCI assert that Verizon need not develop a batch-cut process because Verizon has not filed a petition with the Commission to initiate a

proceeding. The Triennial Review Order is silent concerning how state commission proceedings should be initiated. While the Commission is not precluded from initiating a Triennial Review Order proceeding on its own motion, the Commission chose to require parties to petition the Commission to initiate proceedings.

- 13 Sprint asserts that a review of its hot cut process is unnecessary, and MCI asserts that such a review is not presently necessary for Verizon. No party or interested party requests that the Commission initiate a mass-market switching proceeding involving Verizon or the other ILECs operating in Washington state.
- 14 Based upon the comments filed and the discussion above, the Commission declines to initiate further proceedings at this time to address development of a batch-cut process for ILECs other than Qwest.
- 15 **Closure of the Docket.** As there are no issues remaining for the Commission to resolve in this docket, Docket No. UT-033025 is now closed.

Dated at Olympia, Washington, and effective this 19th day of November, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2003, I served **MOTION TO POSTPONE MASS MARKET SWITCHING CASE AND CLOSE DOCKET** as follows:

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