

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UX 29

In the Matter of)
)
QWEST CORPORATION) RULING
)
Petition to Exempt from Regulation)
Qwest's Switched Business Services.)

**DISPOSITION: REQUEST FOR ACCESS LINE INFORMATION
FOR FACILITIES-BASED CLECS DENIED;
SCHEDULE MODIFIED**

By letter of August 5, 2005, Qwest asked for “the underlying raw data for the ten (10) CLECs who reported non-zero data for facilities based access lines,” which had been submitted to the Commission Staff and aggregated to mask the identities and information of individual CLECs. The letter, however, gave no explanation as to *why* such information on a disaggregated basis would better enable Qwest to present its case for exemption of its switched business services from regulation.

On August 12, 2005, Staff filed a Response to Qwest's Request for Access Line Information for Facilities-Based CLECs, citing the lengthy negotiations and discussions that took place in the preparation of the CLEC Survey, which recognized the sensitive nature of the inquiry.¹ Staff further noted that there had been considerable discussion about the need to “mask” data and the expectations of secrecy upon which CLECs—including non-parties—had relied; i.e., that disaggregated data would only be seen by members of the Commission Staff. Staff also questioned the benefits of disaggregated data to Qwest and stated its concerns about the permissibility of such disclosure.²

CLECs Beaver Creek Cooperative Telephone Company (letter of August 18, 2005); XO Communications, PriorityOne and Time Warner (letter of August 19, 2005); Electric Lightwave (letter of August 15, 2005) and Eastern Oregon Telecom (letter of September 8, 2005) voiced their objections to the release of the data.

¹ See, e.g., Ruling of March 15, 2005, including VoIP data in survey over the objections of Covad Communications Company.

² Staff Response, pp. 2-5.

On August 17, 2005, Qwest filed a Response to Staff's Objections, claiming that the information it sought would be useful, that the protective orders were sufficient and that the CLECs were on notice that the information might be made available to Qwest. Qwest also found Staff's suggestions that Qwest would use such information to its advantage in negotiations with CLECs "insulting and utterly without any basis or evidence."³ In further opposition to CLEC objections to the release of disaggregated data, Qwest noted in its September 19, 2005, Response to CLECs that they could only speculate as to potential harm, that disclosure would be extremely limited due to the nature of the protective orders which the ALJ had issued and that none of the recipients were involved in sales work.⁴

Discussion. ORS 759.030(4)(a) requires the Commission to consider "The extent to which services are available from alternative providers in the relevant market." The number of CLEC facilities-based access lines is relevant to that consideration and, accordingly, that information was included in the Bench Request.

At no time, however, has Qwest offered any reasons or propounded any theory that would demonstrate why disaggregated data would be more persuasive than "services are available from alternative providers" than aggregated data. Indeed, the opposite might be true: an aggregate number represents a monolithic competitive presence rather than a fragmented one. Thus, there is no demonstrated benefit to Qwest in propounding its case that can be derived from obtaining disaggregated data, and Qwest is in no way prejudiced in the presentation of its case by not having access to the disaggregated data.

By contrast, there is significant possible harm to both the CLECs and to the Commission if the Request were to be granted. CLECs are concerned not only that Qwest might misuse their sensitive data, but that other CLECs would use such data to their commercial advantage. To give Qwest the disaggregated data over the objections of the CLECs who had cooperated with the Commission's request would be to give them a rather dubious "reward" for their compliance and might discourage such cooperation with the Commission's requests in the future. The level of trust between the carriers and the Commission would be diminished, and the Commission would find its task of gathering information without the use of coercion to be ever more difficult. Accordingly, Qwest's request for disaggregated data regarding CLEC facilities-based access lines is denied.

By letter of September 19, 2005, Qwest asked that it be granted a seven-day extension of time in which to file rebuttal testimony, currently scheduled for Friday, September 30, 2005, to Friday, October 7, 2005, but maintain the current hearing schedule. In response to other parties' concerns regarding the discovery schedule, Qwest has offered to respond to their requests within five days instead of the usual ten provided

³ Qwest also had sought a subpoena to obtain data from CLEC "K." The request for the issuance of the subpoena was denied by the ALJ at the September 7, 2005, prehearing conference. *See* UX 29 Prehearing Conference Report issued September 9, 2005.

⁴ Qwest Response, pp. 2-4.

for under OAR 860-014-0070, so that parties would still receive their responses as if the due date were September 30, 2005, and thus not be harmed by Qwest's extension.

Discussion. Good cause having been demonstrated by Qwest, the request for extension of time in which to file rebuttal testimony is hereby extended to October 7, 2005. Qwest shall answer data requests within five Commission business days from the date of service.

RULING

Qwest's Request for Access Line Information for Facilities-Based CLECs is DENIED.

Qwest's Request for a seven-day Extension of Date to File Rebuttal Testimony is GRANTED.

Qwest shall answer data requests within five Commission business days from the date of service.

Dated at Salem, Oregon, this 20th day of September, 2005.

Allan J. Arlow
Administrative Law Judge

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