

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UX 27

In the Matter of)	
)	
QWEST CORPORATION)	ORDER
)	
Petition to Exempt from Regulation)	
Directory Assistance and Related Services.)	

DISPOSITION: APPLICATION DENIED IN PART, GRANTED IN PART

On February 1, 2002, Qwest Corporation (Qwest) filed a petition to exempt from regulation local directory assistance (DA), national DA, and Complete-a-Call Service. The matter was taken to the March 21, 2002, Public Meeting, and Commission Staff prepared a report for that meeting.

Staff's report recommended that the Commission suspend and further investigate Qwest's petition. Staff pointed out that because Qwest's directory assistance and related services are nonbasic services under ORS 759.410, they are price capped at their current rates. Staff reasoned that Qwest intends to raise the rates for these services if its petition is successful. Staff recommended that the Commission approve Qwest's petition with the following conditions:

- First, Qwest must continue to provide its DA database at nondiscriminatory rates, terms, and conditions to competing firms operating in Oregon. Currently, Qwest is the incumbent telecommunications provider to nearly 70 percent of customers in Oregon and is the only source of the information necessary to provide DA service. By making it a condition that Qwest continue its present practice of offering its DA database at nondiscriminatory rates, terms, and conditions, the public is protected because the condition addresses one of the potential barriers to entry into the DA market.
- Second, Qwest must retain its 411 regulated service and not decrease its quality of service. This condition would protect the public interest in several ways. It would protect consumers from the typical price increase that has occurred where Qwest has been allowed to deregulate. It would address the

fact that the 411 access is a barrier to entry and thus encourage competition by removing that advantage.

- Third, Qwest must continue its current policy of not billing certifiably impaired customers. This condition simply continues Qwest's current practices and ensures that the public interest is being served by not penalizing customers who do not have alternatives to DA. Requiring that the customers be certified as impaired protects Qwest from potential fraud.
- Fourth, Qwest must provide all customers with a Commission approved written notice of any changes at least one month prior to the changes. This condition ensures that the public interest is served by giving customers notice that will allow them to make informed decisions.
- Fifth, Qwest must transfer the assets and expenses associated with the nonregulated DA to nonregulated accounts. This condition is necessary to ensure the appropriate accounting treatment for exempt DA services.

Staff recommended that the Commission should grant Qwest's petition for exemption of its Complete-A-Call service, because price and service competition does exist for that service. Staff argued for one condition, that the caller be informed before each offer of Complete-A-Call and before any charges apply to the cost of the service. Staff argued that this condition is necessary to protect the public interest.

At the Public Meeting, the Commission adopted Staff's report and voted to suspend and investigate Qwest's petition in its entirety.

A prehearing conference was held on April 23, 2002. At the conference, Staff requested that five public comment hearings be held on Qwest's petition. On April 30, 2002, Staff modified its request to three hearings and submitted a written motion to hold hearings. Qwest opposed Staff's request and the Administrative Law Judge (ALJ) ruled in favor of Staff. Public comment hearings were held in Portland, Bend, and Eugene, in June, July, and August, respectively. At the Portland and Eugene hearings, one person representing an organization spoke in favor of opening markets to competition. No one else attended the hearings.

A second prehearing conference was held on May 16, 2002, to set a schedule for the docket. Parties agreed to hold an evidentiary hearing on September 26 and 27, 2002. The Commission received and granted petitions to intervene from Metro One Telecommunications, Inc. (Metro One); Citizens' Utility Board (CUB); and Verizon Northwest, Inc. (Verizon).

On May 3, 2002, Metro One moved to postpone or continue the hearing on the ground that the Federal Communications Commission (FCC) had pending a related proposed rulemaking proceeding. Qwest opposed Metro One's motion on several grounds by reply filed May 21, 2002. On May 23, 2002, the ALJ denied Metro One's motion.

All parties save Verizon submitted testimony. Metro One was the only party wishing cross examination of a testifying witness. On September 27, 2002, Metro One agreed to take the witness's deposition in lieu of live cross examination, and the hearing was canceled. Parties submitted posthearing briefs.

Description of Qwest's DA services. Qwest describes DA in its Exchange and Network Services tariff, PUC Oregon No. 29, Section 6, Sheets 23 through 29 (§6.2.4) as a service "for the purpose of aiding customers in obtaining listings information." Traditional or local DA provides telephone numbers within Oregon. A customer dials 411 or 1 + (any instate area code) + 555-1212. A Qwest subscriber receives two calls per month free and then pays \$.50 per call. During each call, a customer can ask for two telephone numbers and/or addresses within Oregon. Customers with verified special needs are not charged for any calls.

A customer dials national DA by using the same access numbers. This service also provides customers with up to two telephone numbers and/or addresses outside Oregon for \$.85 per call. There is no free call allowance for national DA.

Complete-a-Call and Business Complete-a-Call are services available only with local DA. These services allow the customer calling Qwest's local DA service to be connected to the local, intraLATA long distance, or toll free number requested. These services cost \$.35 per completed call, paid either by the customer making the DA call or, with Business Complete-a-Call, by the business to which the customer is connected.

Findings of Fact. These findings are based on the preponderance of evidence in the record.

Most Qwest customers in Oregon do not use Qwest's DA services in any given month. In 2001, 93 percent of Qwest customers made no calls to Qwest DA in any given month. Of the 7 percent making calls in any month, 42 percent made only one DA call, and 16 percent made only two calls per month. About 85 percent of DA calls are made to obtain business telephone numbers. Finally, Qwest's DA service revenues constitute less than 1 percent of its intrastate revenues.

In the period between 1990 and 2001, Qwest's local and national Oregon directory assistance volume has declined steeply.

The following alternatives exist to Qwest's DA services:

A. Interexchange carriers (IXCs): All Qwest local exchange customers have access to their presubscribed interLATA long distance carrier to obtain DA services. Customers gain access to their presubscribed IXC by dialing 00 or 1 + 555-1212. Customers can then request either a local or nonlocal telephone number. AT&T has promoted its 00 Info offering heavily, and other IXCs like WorldCom and Sprint also offer DA services. At least four IXCs compete against Qwest for DA services. IXCs

and CLECs have competitive choices from which to purchase or self provide their DA services.

B. Dial around carriers: Every customer in Oregon can choose not to use the DA services of their local or presubscribed long distance carriers by using a dial around service. The customer dials an access code like 10-10, followed by carrier specific digits to reach an alternative DA provider. There are many carriers, including AT&T (10-10-ATT-00) and WorldCom (10-10-9000) providing dial around DA service. Qwest customers can reach AT&T DA services in four ways: (1) through 00; (2) 1 + (out of state area code) + 555-1212; (3) the 10-10 dial around options; and (4) an 800 number (800-CALL-ATT).

C. Print directories: Every Oregon customer can obtain listing information through print directories, including those published by Verizon, RTD (now WorldPages), Alltel Publishing, and QwestDex. These are all free to telephone service subscribers. About 98 percent of Qwest's Oregon customers have print directories available at home.

Print directories list, in addition to telephone numbers, government and business categories. They also provide product and service information on those entries (such as days and hours of operation, lists of products and services, alternative telephone numbers, rate/price information, etc.). Customers use print directories far more often to obtain directory information than any other source. According to the National Economics Research Associates, Inc. (NERA), study that Qwest submitted, 91 percent of Qwest's Oregon customers have used the white pages, 94 percent have used the yellow pages, and customers use print directories 73 percent of the time to obtain directory listings. Further, again according to the NERA study, 90 percent of consumers use print directories for information each month; 34 percent use the Internet; 29 percent use Qwest directory services, and 14 percent use wireless mobile telephone DA services.

D. Wireless DA: Wireless subscribership has grown fast in the past eight years. In Oregon, there are at least 1.27 million wireless service subscribers as of mid 2001, and the number continues to grow. FCC data for June 2001 shows that five wireless network operators and three wireless resellers serve Oregon with more than 10,000 wireless subscribers each.

Many wireless carriers offer DA in Oregon, including Verizon, AT&T, T-mobile (formerly VoiceStream), Nextel, Sprint, Cricket, and Qwest. Many of these carriers offer a number of product enhancements not currently available from wireline providers, such as road directions, movie listings, weather reports, sport scores, and category searches. Metro One, an intervenor in this docket, has specialized in the market niche of serving wireless carriers with its wholesale DA offerings, including enhanced DA services. Other wholesale DA providers also serve retail wireless carriers in Oregon.

Not every Qwest customer in Oregon has access to wireless DA service, as they do with local exchange service, interexchange carriers, dial around services, and print directories. Most adults in Oregon have access to wireless DA, however.

E. Internet DA: This service is largely free and is available to any Oregon resident with Internet access at home or at work. The following statistics come from Qwest's NERA survey. In 2001, 71.8 percent of households in the Portland Metropolitan Statistical Area (MSA) owned personal computers, and 57.1 percent of adults in the Portland MSA had Internet access. About 66 percent of the respondents in Qwest's Oregon service area have Internet access at home and 44 percent of all respondents have used the Internet to obtain directory information.

Directory look up is the third largest use of the Internet, and Qwest's NERA study of Oregon DA users found that 34 percent of customers use the Internet to obtain directory information. There are at least 20 Internet DA providers, including Switchboard.com (viewed more than 1 billion times annually), Whitepages.com, infoUSA.com, bigbook.com, Verizon's SuperPages.com, USSearch.com, 411locate.com, 555.1212.com, and others. These Internet providers can be found through search engines like Alta Vista, GoTo, Excite, Yahoo, and others.

In addition to their free listing information, many Internet DA providers offer advanced or enhanced DA services and extensive search and information options, including maps, driving directions, neighborhood information, telephone numbers and addresses of neighbors, reverse look up, and email addresses. Other Internet DA features that are not currently available from telephonic DA include the ability to search and receive information in the requestor's native language, dynamic multiple category searches, website addresses, cross searches, and hot links to requested products and services or to related websites.

F. Calling cards, credit cards, CD-ROM directories:¹ A variety of other DA services is available to Oregon as well, including CD-ROM directory services, which provide capabilities like those of Internet providers. Many directories offer sophisticated directory information including multiple listings by category, locale, and other

¹ Qwest argues that this category should include payphones as well. According to Qwest, payphone DA services are relevant competitors because the same competitors who provide DA services to payphone users can rapidly use their DA capacity to serve conventional wireline telephone DA customers. We do not find payphones a reasonable alternative to local carrier DA service, because to use a payphone one must travel to the payphone. We view competition, in other words, from the point of view of the consumer, not the market position of the competitor. We consider that alternatives to local carrier DA service must be usable from the residence or place of work.

Staff argues that credit or calling cards should not be considered as alternatives because AT&T's calling card information service costs \$4.99 per inquiry. In Staff's view, this is not a reasonable alternative to other forms of DA service. We include these options in our discussion, because they are usable from residence or place of work, although their high price makes them the least preferred of the alternatives to handset provided DA.

information, and the ability to export information to a spreadsheet to allow numerous category searches.

Each alternative source of DA information listed above provides the same kind of information. At a minimum, each provides a telephone number; many sources provide other information as well. The cost of the alternatives runs from free, for print directories and most of the Internet DA services, to \$1.99 for AT&T 00 Info to \$4.99 for credit card DA. Most wireline and wireless DA providers price their DA services from \$.65 to \$1.25. AT&T and WorldCom price their DA services higher than that but also bundle attributes into their offerings (such as call completion) to increase their value.

In the states where Qwest has been allowed to deregulate its DA services, the free call allowance has been eliminated for local DA and the price has risen universally to \$1.25 per call.

Applicable Law

ORS 759.030 provides in relevant part:

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(2) Upon petition by any interested party and following notice and investigation, the commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that price or service competition exists, or that such services can be demonstrated by the petitioner or the commission to be subject to competition, or that the public interest no longer requires full regulation thereof. The commission may attach reasonable conditions to such exemption and may amend or revoke any such order as provided in ORS 756.568.

(3) Upon petition by any telecommunications utility, and after notice and hearing, the commission shall exempt a telecommunications service from regulation under the following conditions:

(a) Price and service competition exist.

(b) A service which is deregulated under this subsection may be regulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest.

(4) Prior to making the findings required by subsections (2) and (3) of this section, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

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See also OAR 860-032-0025.

Position of the Parties. To find that price and service competition exist, the Commission must consider the four factors set out in ORS 759.030(4). In the following, we set out the parties' positions on these factors.

1. The extent to which services are available from alternative providers in the relevant market. According to *Qwest*, the relevant market for purposes of determining whether competition exists includes all providers who give telephone number listing information for the state of Oregon: traditional wireline telephone carriers (local exchange carriers, competitive providers, IXCs, payphone providers, and/or dial around DA providers), wireless carriers, Internet providers, or print directories and CD-ROMs. There are at least 50 alternative DA providers offering services to Oregon customers today: 13 long distance carriers, six dial around options, six wireless providers, four print directories, two calling/credit card companies, and 21 Internet providers. Qwest's largest competitors are the two largest long distance carriers in the country, and they have access to 100 percent of customers in Oregon.

Qwest believes that broader market boundaries are economically preferable to narrow market boundaries in this case. Qwest argues that market demand elasticities, the potential for substitution of alternatives to Qwest's DA services, and entry conditions should all be taken into account in determining the definition of the relevant market.

Qwest argues that the information from all these sources is essentially comparable, functionally equivalent, and substitutable. Despite a wide range of prices, from free to \$1.99, and some product differentiation, Qwest argues that the providers of all of these DA options effectively compete against each other. Moreover, Qwest argues that the relevant market is national in scope.

According to Qwest, more than 50 competitive providers offer DA services to Oregon customers today. Some of these providers serve all of Oregon. None of these providers is regulated. Qwest argues that it is unimportant that certain

DA providers do not serve all segments of the relevant market. There is, according to Qwest, no statutory requirement that every competitor must offer its services to every customer, customer group, or geographic location. Qwest argues that it has shown that every Oregon customer has multiple sources available to obtain listings, however.

Metro One contends that Qwest has misidentified the relevant market in its petition. The relevant market, according to Metro One, is local wireline DA. Frost & Sullivan, the independent consulting firm on which Metro one relies here and before the Federal Communications Commission (FCC), segments the DA market into local DA services and national/long distance DA services. With regard to the local wireline DA market, Frost & Sullivan conclude “that for the next few years, wireline providers will continue to experience an increase in their demand for minutes and revenues.” According to Frost & Sullivan, this increase is due to the following factors:

- Convenience of wireline service
- Development and marketing of new products by service providers
- Overwhelming number of households and businesses whose primary telecommunications method is wireline service
- Users’ uncertainty of whether or not the call is free
- Listings are updated on a daily basis, as opposed to the annual updates of print directories

With respect to wireless DA services, Metro One argues that these are available only from wireless telephones, and consumers are not able to choose a DA service other than that provided by their presubscribed wireless carrier. Once a consumer subscribes to a wireless carrier such as Qwest Wireless, the consumer can access only Qwest Wireless’s DA service. Metro One argues that Qwest’s petition is, at best, premature. According to Metro One, Qwest controls the wireline local DA market, which is the relevant market, and will continue to do so for a number of years.

Staff defines the relevant market for DA services as DA service offered over a wireline telephone to all customers in areas of Oregon where Qwest provides local phone service. Staff argues that Qwest overstates the level of competition by defining the market and the relevant products too broadly. Qwest tries to argue that its DA services are “for the purpose of aiding customers in obtaining listings information,” and also argues that the relevant market is made up of all providers who provide telephone listing services in the state of Oregon.

According to Staff, DA services are properly defined as “the provision, via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number.” Staff argues that Qwest’s case looks much weaker when one accepts Staff’s definition of the service in question and of the relevant market.

In determining the extent to which services are available from alternative providers in the relevant market, Staff contends that only relevant products should be analyzed. In this case, according to Staff, those are products that are directly comparable as well as reasonable substitutes that are readily available. Staff argues that Qwest has included far too many alternative providers. This argument is developed in the following section.

2. The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.

Qwest argues that its competitors provide comparable, functionally equivalent, or substitutable DA services in that customers can use any of the DA services in the six categories set out in the Findings of Fact to obtain the directory listings information. *Qwest* argues that these alternative services are functionally equivalent although provided through different media. Dialing a telephone number on a wireline or wireless telephone or typing a few keystrokes and/or clicking a mouse or opening a print directory also yield comparable information. *Qwest* argues that the services provided by the telephonic DA providers are functionally identical in that all are reached by dialing numbers on a telephone set. Not all these options are identical, *Qwest* contends, but all are comparable, functionally equivalent, or substitutable, especially given that the Internet services and print directories are free.

At a minimum, *Qwest* notes that all the competing DA services provide a telephone number and address. Staff argues that *Qwest*'s Complete-a-Call service should be deregulated because it is functionally equivalent to other options. That is, customers have the choice to use the Complete-a-Call service or dial the number themselves. However, *Qwest* contends, the same is true of dialing 00, 1010, 9000, or using a directory or an Internet service provider. *Qwest* argues that these services are all functionally equivalent.

Qwest further maintains that its competitors provide these services at comparable rates, terms, and conditions. *Qwest* argues that DA services are now driven by competitive forces to differentiate their offerings and to establish attractive prices to maintain customer loyalty. The majority of non Internet DA providers price their DA services in the \$.65 to \$1.25 range, *Qwest* notes. AT&T and WorldCom typically price their DA services higher than the services of their competitors but they also bundle attributes, such as call completion, into their offerings to increase the value of their service. Wireless companies also package call completion into their standard DA services.

In addition to call completion, DA service providers differentiate their services in terms of the frequency with which the database is updated. One customer may prefer AT&T's DA service at a price higher than *Qwest*'s, because the customer will have access to a live operator or have more current listings data. Another customer may use an Internet source, knowing that listings may not be completely up to date but

knowing that the inquiry is free. The customer in either instance has made a price/value decision and chosen an available DA alternative other than Qwest.

In support of its position that the DA services market is competitive, Qwest notes that it has experienced significant declines in DA volumes and market shares. Qwest's call volumes have decreased significantly between 1990 and 2001, at a time when the overall DA market in the United States has been growing. This market, Qwest contends, was projected to nearly double from 1996 to 2004, especially because of dynamic growth due to alternative technologies like wireless telephones and the Internet.²

Qwest also argues that the NERA report, which it submitted as Qwest Exhibit 16, analyzed the economically appropriate application of Oregon's criteria for exempting services from regulation and the DA market in general in Oregon. Based on that research and on an Oregon specific DA market study, NERA came to several conclusions: DA services and functionally equivalent substitutes are available from many providers in Qwest's service territory in Oregon; the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions; and there are no substantive barriers to entry.

According to Qwest, NERA found that competition from the alternative providers in the relevant market constrains all providers' ability to raise prices above competitive levels. NERA also found that many alternative providers offer enhanced and extensive DA services and search and information options, and that the steep decline in Qwest's DA call volumes shows that Qwest has experienced losses due to competition.

Qwest states that after Commission Staff raised concerns about the lack of an Oregon specific market survey, Qwest commissioned Dr. Harold Ware, who had conducted the NERA study, to design and conduct an Oregon specific study. This Oregon market survey was administered by a survey research firm to obtain data about DA use from a random sample of 250 Qwest customers in Qwest's Oregon service territory. NERA determined that virtually all Qwest's customers in Oregon use substitutes for Qwest's DA services and that far more customers use options like print directories, the Internet, and competing traditional telephone DA services than use Qwest's DA service. According to the Ware study, at least 94 percent of customers in Qwest's service territory have used print directories, as compared to about 68 percent who have used wireline telephone DA services and 44 percent who have used the Internet to obtain directory information.

² Qwest notes that it is difficult to obtain definitive market share information because competitors do not release competitive information. Based on a variety of ways to calculate market share estimates, Qwest conservatively estimates that its current market share in the retail wireline DA market is less than 50 percent and probably much less than that. Qwest had a 100 percent, or nearly that, market share of all DA calls a few years ago, before competition developed. We note that market share estimates in this docket range from 6 percent to over 90 percent. We conclude that this information is subject to interpretation and make our decision on other grounds.

NERA also found that competitive DA options are growing. An index of this growth is the fact that between 1995 and 2001, Qwest's access lines increased but the volume of DA calls decreased over the same period. NERA concluded that Qwest's share of the relevant market (all the various DA options) is only about 6 percent. Again according to NERA, Qwest's share of traditional telephone directory inquiries (wireline, wireless, and payphone) is about 38 percent.

Qwest also argues that the sharp decline in its DA volumes and revenues in Oregon over the past decade, when there has been significant growth in the overall DA market, and in the information market in general, shows that there is service competition in the DA market in Oregon. Qwest argues that DA service prices in Oregon range from free for print directories and most Internet services to \$1.99 for premium services such as AT&T 00 Info, so there is price competition.

Qwest argues that the range of prices for DA services is not relevant to its case. There is no requirement, Qwest contends, that prices must be the same to have a service deregulated. Second, Qwest notes that varying prices are not atypical of a competitive market. All alternative information offerings are sets or bundles of characteristics that include various factors like a variety of price and service features and different usage requirements affecting convenience, cost of use (including value of time), and the like. If the prices did not differ, Qwest argues, the services would not be effective competitors with each other. The issue, according to Qwest, is not what consumers in this circumstance would choose given the various offerings but what they would choose in response to changes in prices and service features. Even if one excludes potential alternatives from the definition of relevant market, Qwest contends, the existence of those alternatives constrains behavior of the other firms.

Staff argues that we should consider only products available in the relevant market (wireline DA services). In this case, those products are the ones that are directly comparable as well as reasonable substitutes that are readily available. *Staff* contends that many of the alternatives Qwest relies on are not functionally equivalent to Qwest's DA service or are not available at comparable prices. Print directories, wireless DA, and Internet services are all imperfect non wireline substitutes for Qwest's DA service. Print is less convenient than wireline DA, *Staff* argues, and one can look up only numbers that are included in the directory for the local area covered by that directory.

Staff considers wireless options imperfect because the customer needs additional equipment and service in addition to their wireline telephone service to take advantage of these alternatives. Wireless coverage is not universal in all areas of Oregon, moreover. The Internet options are imperfect substitutes, *Staff* maintains, because they require additional equipment, computer knowledge, and can take more time than Qwest's DA service. Qwest has suggested that DA service at payphones is an alternative to Qwest's DA service. Payphone DA service is an imperfect wireline substitute because a person would not typically travel to a payphone to gain access to DA service. Qwest has also suggested that XO Communications is an alternative to Qwest's DA service.

However, Staff notes that XO Communications serves only business customers in the Portland area. Therefore, it is an alternative only for a portion of Qwest's customers.

According to Staff, the only comparable substitutes to Qwest's DA services in the relevant market are dial around and long distance carrier providers of DA service. Print directories, wireless DA service, and Internet DA service are only imperfect substitutes. Staff argues that calling and credit card options are substitutes to telephone service, not to DA service, and are therefore not comparable.

The alternative providers offering functionally equivalent or substitutable services include dial around and long distance carrier providers, who charge from \$0.65 to \$1.99 per call. Staff argues that consumer preference plays a role in whether a free call is comparable to a charge of \$1.99. However, Staff argues that on the evidence, alternative providers in the relevant market do not offer comparable DA service at comparable rates. In addition, according to Staff, the alternative providers do not offer a comparable service because they bundle their services or provide service only to a limited segment of the market.

CUB argues that none of the purported alternatives to Qwest's DA service provide a true competitive alternative to Qwest's regulated service, which is quick, efficient, familiar, and effective. CUB argues that it is difficult to access other DA services than Qwest's, primarily because of low consumer awareness. Qwest also argues that the other services Qwest names do not provide the same accurate information as Qwest's DA service and that those alternative services often cannot be accessed at a price similar to Qwest's.

CUB maintains that Qwest's long time monopoly on DA services has given Qwest an advantage in the market that shows particularly in terms of consumer awareness. In its informal survey, CUB found that the people it asked about DA named 411 or 555-1212 as the means to acquire telephone numbers. CUB points out that both numbers lead the consumer directly to Qwest. The print directory is a first line of inquiry, but if the number there is out of date, consumers will dial either 411 or 555-1212. The people CUB surveyed indicated that they knew alternatives exist but are unclear on how to access them and see no reason to, since Qwest's DA service is easy to use and reasonably priced.

CUB tried out the various alternatives Qwest mentioned in its testimony, with poor results. For long distance DA, for instance, CUB tried 00 or 1+ [out of state area code]+555-1212. CUB found that these alternatives led it back to Qwest national DA. CUB also tried out the online alternatives Qwest mentioned. CUB found that even with a 56K modem, the Internet DA sites were slow to load and many were not up to date. CUB maintains that it is much quicker to dial 411.

CUB also tried out the dial around services that Qwest mentioned in its testimony, and found that prices for DA ranged from \$.99 to \$2.49 per call. CUB

concludes that it is not in the best interest of consumers to allow Qwest to deregulate its service.

3. Barriers to Entry. *Qwest* argues that there are no barriers to entry in the DA services market. *Qwest* contends that its DA database is not a barrier to entry, because there are regulatory protections and market pressures to ensure that competitors have nondiscriminatory access to the database, and the need to purchase other inputs (labor, computers, other call center investments) has not deterred entry. As to the argument that *Qwest* DA services should not be deregulated because *Qwest* has the 411 dialing code, *Qwest* points out that there is ample competition for DA services in Oregon despite the 411 dialing code. Second, *Qwest* argues that 12 of the 13 states other than Oregon in which *Qwest* offers telephone service have found its DA services subject to competition or have deregulated its DA services despite the 411 dialing code. Third, *Qwest* points out that the FCC is currently conducting a rulemaking on this issue and will decide what, if anything, should be done with the 411 code. *Qwest* has already made a commitment to comply with any federal requirements that may arise from the FCC's rulemaking proceeding.

Metro One contends that only the incumbent local exchange carriers (ILECs), *Qwest* and Verizon, have the competitive advantage of deriving call volume and income from both wireline and wireless subscribers using its wireline DA operations. *Qwest's* wireless affiliate sells DA service to the wireless public but uses the same operators and DA database that *Qwest's* wireline service uses. *Qwest* promotes this competitive advantage by advertising to its customers that it can receive "Every Line" service by making *Qwest* its wireline and wireless provider and have only one phone number, one bill, and one presubscribed DA provider.

Metro One contends that the same conclusion obtains when one analyzes the state of competition from the perspective of functional equivalence and barriers to entry. *Qwest's* DA service is the most accessible and best known DA service in its service territory. No other provider has the competitive advantage of the familiarity and abbreviation of 411 or 555-1212. *Metro One* argues that as long as *Qwest* has its monopoly over 411 and 555-1212, there will be no functionally equivalent available products at comparable rates, terms, and conditions that would allow a competitor to compete on equal footing in the local wireline DA market in Oregon.

Staff argues that the potential barriers to entry include legal barriers, the existence of superior resources, and the existence of economies of scale. *Staff* opposes *Qwest's* position that the 411 access code is irrelevant because there is competition despite the code. *Staff* argues that *Qwest's* 411 database and access code do create a barrier to entry because they constitute superior resources. In *Qwest's* service territory, *Qwest* controls the 411 access number as well as 555-1212 in its service areas for wireline DA access unless the caller is using a telephone where another carrier provides local service. The exclusive use of these short and easy to remember numbers gives *Qwest* a competitive advantage that it has acquired because of its status as a regulated

service provider. Staff argues that the control of Qwest's 411 database also presents a potential barrier to entry for competitors.

4. Other factors. Market power. Qwest further argues that from an economic perspective, it does not have market power in the DA market. A significant number of Oregon customers opt for DA sources other than Qwest at prices both higher and lower than the average rate per Qwest local DA call. Qwest argues that it is clear from the wide range of DA options that there is price constraining competition in Oregon.

Qwest also notes that there is no such thing as perfect competition, and deregulation does not always mean that prices will decrease from current levels. In fact, Qwest argues that regulation itself has created a barrier to entry by requiring Qwest to provide free calls. Qwest quotes from the decision of the Iowa Utilities Board order issued February 23, 2001, in Docket No. INU-00-3, which deregulated local DA service in Iowa, at 3-4):

The Board finds that market forces should be sufficient to assure just and reasonable rates without the Board setting those rates. The rates are not the only consideration in this service. It is important to note that deregulation does not automatically correspond to lower prices. Many of the directory assistance service offerings of competitors provide additional options to consumers, including call completion, yellow pages searches, reverse searches, etc. The Board, as well as Consumer Advocate, can only speculate as to what deregulating local directory assistance service will do to the market or rates. Evidence presented in this proceeding has shown that Qwest call volumes for this currently regulated service have been dropping, even though most of the comparable services are more expensive. The competitive market should be allowed to provide differing services, at differing rates, so that consumers may choose among the offerings.

Staff maintains that a market analysis helps demonstrate the extent to which DA services are available from alternative providers. Staff calculated Qwest's market share of DA services using Qwest's own billing records, and came up with the result that Qwest has a market share of 94 percent. Using other inputs, Staff concluded that Qwest enjoys a market share of 74 percent in the relevant market. Staff argues that Qwest has and is using market power related to its DA services, evidenced by the fact that Qwest charges a multiple of the long run incremental cost of DA service and still remains the largest provider of the service.

Public Interest. *Qwest* also argues that the public interest no longer requires full regulation of Qwest's DA services. Competition fosters innovation and the creation of new and better services with more features and options. Other carriers

provide the same type of service, Qwest contends, so there is no public interest reason that Qwest should continue to be regulated. The current scenario ensures that regulation is based on the type of carrier involved (ILEC v. other carriers) rather than on the type of service provided. Qwest argues that this distinction is without meaning.

Qwest agrees to certain of the conditions Staff wishes to impose should its petition be successful, such as continuing to provide its competitors nondiscriminatory access to its DA databases, continuing to provide free calls to customers with certified physical or functional disabilities, and transferring its assets and expenses for DA services from regulated accounts to nonregulated accounts and implementing cost tracking mechanisms and filing updates with the Commission. The other two conditions Staff proposes, however, are not acceptable to Qwest.

Staff argues that granting Qwest's petition would run counter to the public interest because DA services are an integral part of basic local exchange service. Although the majority of Qwest customers do not use service in a given month, DA service is still integral to local service. Frequency of use is not a criterion, according to Staff. For instance, Staff argues, the vast majority of subscribers do not use the 911 service frequently, but it is an integral part of basic local exchange service.

Staff argues further that granting Qwest's petition would likely result in increased price and less choice for Oregon consumers. In the six states where Qwest has had its DA services deregulated, Staff notes that Qwest has increased the price it charges for local and national DA services to \$1.25 a call with no free call allowance. According to Staff, Qwest increased its price for local and national DA services to \$1.25 regardless of the state or year the services were deregulated (Nebraska in 1986, Southern Idaho in 1989, Wyoming in 1995, South Dakota in 1999, Colorado in 2000, and Iowa in 2002). If the Commission exempts Qwest's DA services in Oregon, Staff maintains that the Commission could expect Qwest to eliminate the two free calls and charge \$1.25 a call here as well.

If the Commission chooses to exempt Qwest's DA services in Oregon, Staff argues further that customers would likely have less choice regarding their DA service. If Qwest's DA services were exempted from Commission regulation, Qwest could bundle Complete-a-Call with its DA service. Staff argues that the bundling of Complete-a-Call with Qwest's DA service is not in the public interest because Complete-a-Call is currently available in Oregon at a regulated price. The bundling of Qwest's existing DA service in Oregon with Complete-a-Call merely takes away customer choice as to whether to pay an additional amount for the Complete-a-Call service and is therefore not in the public interest. In fact, only 8 percent of Oregonians who dialed Qwest's DA service opted for the Complete-a-Call option.

Staff argues that Qwest has not provided any evidence that its price increases for DA services in other states have been offset by customer benefits such as higher quality service or a higher level of innovation. Granting Qwest's petition in

the absence of such evidence would not be in the public interest. Staff believes that exempting Qwest's DA service could also harm the public interest, because if the Commission were to determine that Qwest's DA services were exempt, Qwest could reduce its quality of service or abandon the service, allowing Qwest to increase the prices for its DA service while also allowing it the possibility of lowering service quality.

Finally, Staff submits that although Qwest's petition to exempt its DA services does not meet the statutory requirements of ORS 759.030(2) or 759.030(3), Staff's proposed conditions would allow the Commission to approve the exemption and still protect the public interest.

Overall, Staff argues that Qwest has not met the standards for mandatory exemption under ORS 759.030(3), because although service competition exists to some extent, price competition does not exist. Staff reasons that price competition for DA will not constrain Qwest's prices for its DA services. According to Staff, evidence shows that existing prices for Qwest's DA service are priced above cost. Every state that has deregulated has seen price increases to \$1.25 and none of the deregulated DA services includes any free call allowances. Staff argues that such uniform and stable price increases are not typical of a competitive market and suggest that a competitive market does not exist to protect consumers. Without sufficient price competition, it is not in the public interest to deregulate Qwest's DA services, according to Staff.

Discussion and Resolution. We consider Qwest's application first under ORS 759.030(3), under which we must grant exemption for the service in question if price and service competition exist.

Parties have presented a wealth of information in this docket. Our first task is to determine the relevant market for purposes of considering Qwest's application, and to filter the information presented in terms of that market. We believe first that the relevant market for Qwest's local and national DA service is the geographical territory Qwest serves.

Second, we believe the relevant market is as Staff defines it: DA service offered over a wireline telephone to all customers in areas of Oregon where Qwest provides local phone service. We adopt Staff's definition of DA service as "the provision, via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number." Staff's definition implies that the DA information is provided via a telephone handset and excludes other media such as print or computer based media or wireless telephones. While Qwest argues that wireless radio services are a significant competitor, we note that the Legislature specifically excludes such providers as telecommunications competitive providers (ORS 759.005 (2)(g)). We find that this is the relevant market because DA services provided over a wireline handset are equivalent in convenience and accessibility.

With this definition in mind, we next consider alternative providers. Our definition of the relevant market and of the service means that information provided via media other than the telephone line are not part of our choice set. The only alternative providers to consider are those that can be reached via the telephone handset: a customer's long distance carrier or a dial around option. These alternative providers offer DA services for \$.65 to \$1.99 per call.

The prices these alternative providers charge for their service indicate that price constraining competition does not exist in the relevant market. Although Qwest has argued that it is not possible to separate the price and service terms of competition, because consumers may be willing to pay higher prices for bundled services or more up to date data, we are not convinced by that argument. We view these prices, together with the fact that Qwest has raised its prices to \$1.25 per call with no free call allowance in the states where DA service has been deregulated, to demonstrate that price competition does not exist in the relevant market.

Qwest contends that competitive markets do not necessarily result in price decreases. However, we do not believe that the Legislature intended to adopt a regulatory scheme that results in increasing prices to customers above what would be considered fair and reasonable under cost regulation.

Because we conclude that price competition does not exist in the relevant market, we need not explore whether service competition exists. This ends our inquiry under ORS 759.030(3). Qwest has not made the case that we must deregulate its DA services.

ORS 759.030(2) gives us the option of granting Qwest's petition if price or service competition exists, if the service is subject to competition, or if it is no longer in the public interest to regulate the service. We make no finding about service competition or about whether DA service is subject to competition. Instead, we exercise our discretion in this case to deny Qwest's petition under ORS 759.030(2) as well. We do not believe it is in the public interest to deregulate a service for which the prices will almost certainly go up, with no offsetting benefit to customers.

We agree with Staff that price and service competition exist for Qwest's Complete-a-Call service and therefore grant the petition as to that service, with the condition Staff proposed.

ORDER

IT IS ORDERED that:

1. Qwest's petition to exempt its local and national DA services from regulation is denied.
2. Qwest's petition to exempt its Complete-a-Call service from regulation is granted, upon condition that the caller be informed of the cost of the service before each offer of Complete-A-Call and before any charges apply.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.