

ENTERED SEP 25 2000

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 808
CP 413
CP 544

In the Matter of the Application of QWEST)
CORPORATION, formerly known as U S WEST)
COMMUNICATIONS, INC., for a Certificate of) ORDER
Authority to Provide Telecommunications)
Service in Oregon and Classification as a)
Competitive Provider.)

DISPOSITION: CP 808 APPLICATION GRANTED;
CP 413 CERTIFICATE OF AUTHORITY CANCELED;
CP 544 CERTIFICATE OF AUTHORITY CANCELED.

Note: By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

The Application

On May 10, 2000, U S WEST Communications, Inc., (Applicant) filed with the Commission an application for certification to provide telecommunications service in Oregon as a competitive provider. On June 30, 2000, Applicant's parent corporation merged with Qwest Communications International, Inc., with the surviving entity now known as Qwest Communications International, Inc. Subsequently, by letter dated July 7, 2000, Applicant indicated that the company name was changed from U S WEST Communications, Inc., to Qwest Corporation. From this time forward, Applicant will be known as Qwest Corporation.

Applicant seeks to provide intraexchange (local exchange) telecommunications service in areas coextensive with all local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order. Applicant also seeks to provide interexchange telecommunications service in those same exchanges noted above.

Applicant is a telecommunications utility. Pursuant to ORS 759.025, applicant currently has authority as a telecommunications utility to provide switched and private line local exchange service in its own 64 exchanges. Applicant also has authority, as a utility to provide switched (long distance toll) and private line interexchange, intraLATA

telecommunications service statewide. *See* Order No. 86-1237, docket UM 70. Applicant has authority to provide, as a competitive provider, intraexchange switched and nonswitched private line service (dedicated transmission service) in Oregon in all exchanges of Verizon Northwest, Incorporated (Verizon), formerly GTE Northwest Incorporated, United Telephone Company of the Northwest Incorporated dba Sprint (United), and Beaver Creek Cooperative Telephone Company. *See* Order No. 98-255, docket CP 413, and Order No. 99-030, docket CP 544.

This order will combine all of the intraexchange and interexchange authority currently held by Applicant. The affected orders are Order No. 98-255, docket CP 413 and Order No. 99-030, docket CP 544. The authority, obligations, and conditions in those orders will be reissued under the current docket. The previous certificates will be canceled with the issuance of the order in the current docket. All authority issued under those orders will now be under the current certificate along with the authority now being considered in this docket.

Applicant is affiliated with U S WEST Long Distance, Inc. U S WEST Long Distance has authority as a competitive provider of interexchange telecommunications service statewide in Oregon. *See* Order No. 98-365, docket CP 327. Controlling interest in Qwest and U S WEST Long Distance is held by Qwest Communications International, Inc. That certificate of authority is not affected by this order.

Applicant, Qwest Corporation, is currently the largest telecommunications utility operating in Oregon. Further, Applicant is currently the Primary Toll Carrier (PTC) in its own exchanges and throughout the state, except for the local exchanges of Verizon and United. A PTC is the default toll carrier for intraLATA telecommunications.

Applicant proposes to provide intraexchange (local exchange) switched service (i.e., local dial tone), and non-switched, private line (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order. Applicant will operate as a reseller and as a facilities-based provider of local exchange service. Applicant may purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers.

Applicant also proposes to provide interexchange switched and private line (dedicated transmission service) service within all exchanges of the telecommunications utilities and cooperative corporation listed in Appendices A and B to this order. Applicant may purchase unbundled network elements (building blocks), as well as finished services for resale, from other certified carriers. Applicant will also operate as a facilities based provider of interexchange telecommunications service. For the time being, Applicant is restricted to IntraLATA service.

Operator services are part of switched telecommunications service. Applicant will directly provide operator services as defined in OAR 860-032-0001. Applicant will

also be an ‘operator service provider’ as defined in ORS 759.690(1)(d). Commission rule OAR 860-032-0007 and Oregon statute ORS 759.690 establish conditions regarding provision of operator services.

The Commission served notice of the application on the Commission’s telecommunications mailing list on June 12, 2000. The Commission did not receive any protests. However, on June 30, 2000, the Commission received a joint request from 14 affected small local exchange companies and cooperative corporations (Small Companies) to be made a party to this proceeding.¹ On July 14, 2000, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for processing this docket. The ALJ set a procedural schedule. On August 3, 2000, the Commission Staff (Staff) distributed a proposed order for review by the parties. On August 18, 2000, Qwest and the Small Companies filed exceptions to the proposed order. On August 28, 2000, Staff distributed a revised proposed order.

The Commission has reviewed the proposed order, the exceptions, and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

FINDINGS AND CONCLUSIONS

Applicable Law

Applications to provide telecommunications service and for classification as a competitive telecommunications service provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation * * * shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

* * * * *

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. * * * For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are

¹ The small local exchange companies are Scio Mutual Telephone, Helix Telephone, Stayton Telephone, Pioneer Telephone Cooperative, Oregon Telephone Corp., Gervais Telephone Cooperative, Trans-Cascades Telephone, Clear Creek Mutual Telephone, Nehalem Tel & Tel, Molalla Communications Co., Monroe Telephone, Mt. Angel Telephone Company, Cascade Utilities, and Canby Telephone Association.

reasonably available alternatives, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which 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.

Applications to provide local exchange (intraexchange) telecommunications service are reviewed pursuant to ORS 759.050, the “competitive zone law.” Under ORS 759.050(2)(a), the Commission may:

Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

- (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
- (B) The effect on competition in the local exchange telecommunications service area.
- (C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.
- (D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone * * * at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the certificate holder fails to comply with the terms and conditions of the certificate.

Designation as a Competitive Provider

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations, listed in Appendices A and B, provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

Applicant is classified as a competitive telecommunications service provider for the services it offers pursuant to this order. The commission recognizes that Applicant also operates as a telecommunications utility in certain exchanges in this state. With respect to services Applicant offers as a competitive provider pursuant to this order, Applicant is not required to file rate schedules under ORS 759.175 or charge the rates that Applicant files with the Commission as a telecommunications utility.

Conditions of the Certificate

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to the following: OAR 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0045, 860-032-0060, 860-032-0090, and 860-032-0095. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers or competitive local exchange carriers (CLECs) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149, and certified two CLECs to provide switched local exchange services in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.² In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since Applicant proposes to offer local exchange service, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, Applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers, and cooperative corporations that have been issued a certificate of authority by the Commission.
2. Whenever Applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, Applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate in (i.e., receive money from) pooling

² Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

arrangements established under the OCAP or any successor plan unless authorized by the Commission.

3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.
4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of their services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.
5. Applicant shall not take any action that impairs the ability of other certified telecommunications utilities, competitive providers, or cooperative corporations to meet service standards specified by the Commission.
6. At the request of the Commission, Applicant shall conduct and submit to the Commission traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.
7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
8. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.

9. Applicant shall comply with universal service requirements as determined by the Commission.
10. Any obligation regarding interconnection between Applicant and the telecommunications utilities or cooperative corporations listed in the Appendices to this order shall be governed by provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Unless otherwise addressed by an applicable interconnection agreement, Order No. 96-021, as otherwise modified by the Commission, will govern the interconnection obligations between such parties for the provision of switched local services.
11. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.
12. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310, 756.320, and 756.350 and OAR 860-032-0008, 860-032-0080, 860-032-0090, and 860-032-0095. By November 1, of each year, the Commission will set the fee level that is to be based on gross retail intrastate revenues for the following calendar year. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
13. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall be responsible to ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each paying retail subscriber at a rate that is set annually by the Commission.

Since Applicant, Qwest Corporation, is a telecommunications utility, but will operate as a competitive provider in the exchanges listed in the appendices, Applicant will be required to comply with the following conditions:

14. Applicant shall keep separate accounts for its regulated utility services and its competitive provider services. Applicant shall comply with OAR 860-027-0052, regarding allocation of costs and revenues. Further, applicant shall file with the Commission an updated cost allocation manual, as required by OAR 860-027-0052(9).
15. Applicant shall continue as to act as the Primary Toll Carrier for the local exchange customers of the incumbent companies in the exchanges of the

incumbent companies listed in the appendices. Applicant shall have authority to provide intraLATA toll services as a competitive provider for customers of any CLEC, including itself, within those same exchanges. This order will not authorize any change to Applicant's status outside those exchanges.

Public Interest

In Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service. In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general.

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's Findings of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4-6, and the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C). The Commission takes official notice of the record in dockets UM 381, CP 1, CP 14, and CP 15.³

Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Qwest Corporation to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B, as described in the application. Further, it is in the public interest to grant the application of Qwest Corporation to provide interexchange telecommunications service in the same exchanges as described in the application.

This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251, 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

Competitive Zones

All the exchanges of the telecommunications utilities and cooperative corporations listed in the Appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

Pricing Flexibility

³ Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

Cooperative telephone companies are generally not regulated by the Commission for local exchange services, and therefore already have pricing flexibility for local exchange service. Telecommunications utilities which are exempt under ORS 759.040 from the provisions of ORS 759.180 to 759.190 already have pricing flexibility for local exchange service. This order has no effect on any ORS 759.040 exemption. However, if one of those telecommunications utilities loses its ORS 759.040 exemption from provisions of ORS 759.180 to 759.190, for any reason, it will automatically become eligible for an exemption under ORS 759.050(5)(a) to (d), as described below.

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the same time the Commission granted the certificate of authority. Therefore, the telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order.

With regard to the general factual conclusions relevant to this proceeding and intraexchange, switched telecommunications service, the Commission adopts the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) to (d). The telecommunications utilities listed in Appendix A, will gain pricing flexibility for intraexchange, switched service on an exchange-by-exchange basis under ORS 759.050(5) if:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service;
2. The telecommunications utility files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff; and
3. Staff notifies the Commission that a mutual exchange of traffic exists between the telecommunications utility and an authorized CLEC, including but not limited to, Applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

(a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between the telecommunications utility and the CLEC within the telecommunications utility's exchange.

(b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., a CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC orders and receives one service, at a wholesale rate, from the

telecommunications utility for resale pursuant to a certificate granted under ORS 759.050.

ORDER

IT IS ORDERED that:

1. The application of Qwest Corporation, formerly known as U S WEST Communications, Inc., to provide intraexchange switched service and dedicated transmission service, and to provide interexchange switched (toll) and dedicated transmission service, as described in the application, is in the public interest and is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service in those same exchanges.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251 or 252) with regard to the telecommunications utilities and cooperative corporations listed in appendices to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

7. Pursuant to ORS 759.050(2)(c), Applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.
8. The authority, obligations, and conditions to provide competitive switched and nonswitched intraexchange and interexchange telecommunication service in the exchanges of Verizon Northwest, Incorporated, formerly GTE Northwest and United Telephone Company of the Northwest, in Order No. 98-255, docket CP 413 are adopted and reissued by this order.
9. The authority, obligations, and conditions to provide competitive switched and nonswitched intraexchange and interexchange telecommunication service in the exchange of Beaver Creek Telephone Cooperative in Order No. 99-030, docket CP 544 are adopted and reissued by this order.
10. The certificates of authority issued pursuant to Order No. 98-255, docket CP 413 and Order No. 99-030, docket CP 544, are canceled.

Made, entered, and effective _____.

William G. Warren
Director
Utility Program

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.

APPENDIX A

CP 808

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS
UTILITIES LISTED BELOW

Telecommunications Utilities Not Exempt Pursuant to ORS 759.040

CenturyTel of Oregon, Inc.

Telecommunications Utilities Exempt Pursuant to ORS 759.040

Asotin Telephone Company
Cascade Utilities, Inc.
Citizens Telecommunications Company of Oregon
Eagle Telephone System, Inc.
Helix Telephone Company
Home Telephone Company
Humboldt Telephone Company
Midvale Telephone Exchange
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telephone & Telegraph Co.
North-State Telephone Company
Oregon Telephone Corporation
Oregon-Idaho Utilities, Inc.
People's Telephone Company
Pine Telephone System, Inc.
Roome Telecommunications, Inc.
Trans-Cascade Telephone Company

APPENDIX B

CP 808

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE
CORPORATIONS LISTED BELOW

Canby Telephone Association
Clear Creek Mutual Telephone
Colton Telephone Company
Gervais Telephone Company
Molalla Telephone Company
Monitor Cooperative Telephone Co.
Pioneer Telephone Cooperative
Scio Mutual Telephone Association
St. Paul Cooperative Telephone Association
Stayton Cooperative Telephone Co.