

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 9, 2001

REGULAR _____ CONSENT X EFFECTIVE DATE October 21, 2001

DATE: October 2, 2001

TO: Phil Nyegaard

FROM: Dave Booth

SUBJECT: QWEST CORPORATION: (Docket No. UM 973) Requests approval to replace the company's Statement of Generally Available Terms (SGAT).

SUMMARY RECOMMENDATION:

The Commission should allow Qwest Corporation's (Qwest's) amended statement of generally available terms (SGAT), filed August 21, 2001, to go into effect without approval.

DISCUSSION:

On April 24, 2000, Qwest filed an SGAT pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act). The Commission allowed Qwest's SGAT to take effect without approval and subject to investigation. See Order No. 00-327¹. On November 22, 2000, the company filed a first amendment to its SGAT. The Commission allowed the first amendment to take effect without approval and subject to investigation. See Order No. 01-122. On June 12, 2001, Qwest filed a second amendment to its SGAT. The Commission allowed the second amendment to take effect without approval and subject to investigation. See Order No. 01-721. On August 21, 2001, Qwest filed a third amendment to its SGAT. The Commission must decide the status of this latest version of Qwest's SGAT pursuant to Section 252(f) of the Act and Commission rules.

¹ The Commission issued Order No. 00-327 in docket UM 973, a proceeding established to investigate Qwest's SGAT. The Commission determined that, for now, it will consider the SGAT in docket UM 823. The latter proceeding is an ongoing investigation of Qwest's compliance with Section 271 requirements for entry into the in-region, interLATA, toll market. Qwest is placing considerable reliance on its SGAT to demonstrate compliance. Once the Commission determines in docket UM 823 that Qwest has satisfied Section 271 requirements, the Commission will continue to investigate the SGAT in docket UM 973 before giving final approval.

Federal Law. Section 252(f) of the Act states:

“(1) IN GENERAL. - A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of Section 251² and the regulations thereunder and the standards applicable to that section.

(2) STATE COMMISSION REVIEW. – A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in Section 253³, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) SCHEDULE FOR REVIEW. – The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission -

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) AUTHORITY TO CONTINUE REVIEW. – Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) DUTY TO NEGOTIATE NOT AFFECTED. – The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.”

In summary, Section 252(f) gives the Commission three procedural options:

(1) It can complete its review within 60 days, and determine whether the SGAT complies with both federal and state law. (2) It can ask QWEST to agree to an extension of the 60-day review period in order to allow sufficient time to complete its review and reach a determination. (3) It can allow the SGAT to go into effect, without approval or rejection, and continue to review the SGAT after it is in effect.

² Section 251 deals with the obligations of telecommunications carriers, including additional obligations of the incumbent local exchange carriers to provide their competitors with access to unbundled network elements, collocation, and wholesale discounts on retail services.

³ Section 253 deals with removal of barriers to entry.

Commission Rules. OAR 860-016-0040 sets forth the Commission's process for SGAT filings. The rule echoes Section 252(f) of the Act. OAR 860-016-0040(1) provides that persons may file comments concerning an SGAT within 30 days of the date it is filed. OAR 860-016-0040(2) states that the Commission will review the SGAT filing within 60 days, and "either reject it or permit it to go into effect." The rule goes on to say that the submitting carrier can extend the review period beyond 60 days by agreeing to a time extension. In addition, the rule provides that the Commission "can continue to review the statement after it has gone into effect."

The Commission posted the August 21, 2001, version of Qwest's SGAT on the Commission's web site for comment. As of the date of this memorandum, no party had filed comments specifically in response to Qwest's filing. However, Qwest's SGAT has received considerable comment in docket UM 823. Parties to that docket have completed four workshops, largely focused on SGAT provisions.

Comments of Qwest. In the notice that Qwest provided with its August 21, 2001, filing, the company requested the Commission "allow this newly revised version of the SGAT to go into effect as soon as possible, but in any event no later than 60 days after filing, consistent with 47 U.S.C. § 252(f)(3)(B)." At page two of the notice, Qwest describes its filing as follows:

Once again, this updated SGAT represents the most up-to-date version of the document incorporating revisions and proposed revisions to the document resulting from extensive negotiations and numerous workshops that have been held. Due to the on-going nature of these proceedings, the SGAT is a living document, subject to revision and further revision. As such, Qwest continues to anticipate making further update filings in this docket as warranted. This updated SGAT, however, provides a useful baseline document for the parties to frame their further negotiations and to inform this Commission's future proceedings relating to the SGAT.

Comments of Staff. Qwest's August 21, 2001, SGAT is a work-in-progress and is not ready for Commission approval. Qwest concedes that its latest version of the SGAT will undergo additional changes, and that the Commission can expect further amendments. As with past SGAT filings, Staff recommends that the Commission allow the latest version to take effect without approval. To comply with deadline in Section 252(f)(3) of the Act, the Commission must act within 60 days of the filing, in this case by October 20, 2001. Allowing the SGAT into effect will not prejudice the position of competitive local exchange carriers (CLECs). CLECs will still be able to negotiate interconnection agreements with Qwest regardless of the availability of an SGAT.

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STAFF RECOMMENDATIONS:

The Commission should allow Qwest's amended statement of generally available terms (SGAT), filed August 21, 2001, to go into effect without approval pursuant to Section 252(f) of the Act and OAR 860-016-0040.