

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 23, 2003**

REGULAR **CONSENT** **EFFECTIVE DATE** October 5, 2003

DATE: September 10, 2003

TO: Lee Sparling

FROM: Tom Harris through Dave Booth and Phil Nyegaard

SUBJECT: QWEST CORPORATION: (Docket No. UM 973) Requests approval of the Statement of Generally Available Terms and Conditions (SGAT), Eleventh Revision, filed August 6, 2003.

STAFF RECOMMENDATION:

The Commission should allow Qwest Corporation's (Qwest's) amended statement of generally available terms (SGAT), Eleventh Revision, filed August 6, 2003, to go into effect without approval and subject to investigation.

DISCUSSION:

The most recent filing by Qwest Corporation, on August 6, 2003, of its Statement of Generally Available Terms and Conditions (SGAT) is the thirteenth in a series of such filings. In April 2000 Qwest filed a SGAT pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act). The SGAT is an offer by Qwest to competitive local exchange carriers (CLECs) of terms, conditions and prices for interconnection, collocation, unbundled network elements, and telecommunications services for resale. The Commission allowed Qwest's SGAT to take effect without approval and subject to investigation. See Order No. 00-327¹. From November 2000 to June 2003 Qwest filed eleven amendments to its SGAT. The Commission allowed those amendments to take effect without approval and subject to investigation. See Order Nos. 01-122, 01-721, 01-878, 01-1050, 02-145, 02-315, 02-731, 03-074, 03-150, 03-189, and 03-410.

¹ The Commission issued Order No. 00-327 in docket UM 973, a proceeding established to investigate Qwest's SGAT. The Commission decided that initially it would review the SGAT in docket UM 823. The latter proceeding was the investigation of Qwest's compliance with Section 271 requirements for entry into the in-region, interLATA toll market. In docket UM 823 the Commission determined that Qwest satisfied Section 271 requirements. Now the Commission will continue to investigate the SGAT in docket UM 973 before giving final approval.

On August 6, 2003, Qwest filed a Notice of Updated Statement of Generally Available Terms and Conditions [Eleventh Revision] (the Notice), along with an updated Exhibit A Eleventh Revision for the SGAT². In this filing the only substantive changes are in Exhibit A, which contains all the prices for the SGAT.

The company filed the revised Exhibit A along with a black-lined version of Exhibit A. Qwest did not submit a black-lined version of the SGAT or any of the other exhibits to the SGAT, because they contain no substantive changes. 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.

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 251³ 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 253⁴, 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.

² Qwest identified this version of the SGAT as the “Eleventh Revision”, even though this is the twelfth set of amendments the company has filed.

³ 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.

⁴ Section 253 deals with removal of barriers to entry.

(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.

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 6, 2003 version of Qwest's SGAT on the Commission's web site for comment. Qwest's SGAT was the subject of considerable debate in docket UM 823, and parties to that docket completed five workshops, largely focused on SGAT provisions.

Comments of Qwest. In the Notice, which Qwest provided with the August 6, 2003 filing, the company requested that the Commission allow this newly revised version of the SGAT to go into effect within 60 days, that is before October 5, 2003, which is the time limit allowed by 47 U.S.C. § 252(f)(3).

Qwest made revisions in Exhibit A, section 7.7, to clarify that pricing for Internet Service Provider (ISP) traffic will continue until June 13, 2006. This revision reflects the

Commission's decision in Order No. 03-410. Qwest eliminated recurring and non-recurring charges for Channel Performance (i.e., Channel Regeneration) shown in section 9.6.7. Qwest eliminated recurring and non-recurring charges for Operational Support System (OSS) functions, shown in section 12.0. The Commission is currently reviewing charges for OSS functions in docket UM 1025, and Qwest will not charge for those elements until the Commission approves rates for them in UM 1025.

Qwest also made housekeeping changes. Qwest stated that effective August 1, 2003, it eliminated the charges described above for existing interconnection agreements.

Comments of Staff. The price changes shown in Exhibit A are all decreases. Like previous SGATs filed in Oregon, the August 6, 2003, SGAT is a work-in-progress and is not ready for Commission approval. Staff believes that this latest version of the SGAT will undergo additional changes, and that the Commission can expect further amendments.

In 2002 the Commission concluded docket UM 823, a proceeding during which Qwest modified its SGAT extensively. In docket UM 973 the Commission will continue investigating Qwest's SGAT. Rates or prices for interconnection, collocation, unbundled network elements (UNEs), wholesale discounts applied to resold services, and ancillary services are part of the SGAT and are listed in Exhibit A to the SGAT. Costs and prices for Qwest UNEs are the subject of docket UM 1025. Moreover, the Commission has not started reviewing costs and prices for collocation in Qwest's central offices. Collocation costs and prices could be investigated in UM 973 or in another docket.

The Commission deferred some issues, which were raised in docket UM 823, to docket UM 973 because those issues were not germane to Section 271 requirements, the focus of UM 823. One example: In the Workshop 1 Findings and Recommendation Report of the Commission, under Issue 13-5, the Commission determined that the issue of "Hidden Costs" of Interconnection was not a Section 271 matter. The Commission stated that AT&T and WorldCom will have another opportunity to present their views on that matter in docket UM 973.

A second example: In the Workshop 4, Part 1 Findings and Recommendation Report, under Issue LSPLIT-1 (a line splitting issue), the Commission stated, "Although we do not consider it [the LSPLIT-1 issue] here, AT&T and WorldCom may still raise this issue in the context of the UM 973 proceeding."

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It should not be construed that the Commission is approving Qwest's rates here, or even considering them to be "default" rates. Staff has not reviewed the proposed rate changes (docket UM 1025, regarding prices for Qwest UNEs, will continue for many months), and as with past SGAT filings, staff recommends the Commission allow the latest version to take effect without approval. To comply with the 60 day deadline in Section 252(f)(3) of the Act, the Commission must act by October 5, 2003. Allowing the SGAT into effect will not prejudice the position of competitive local exchange carriers (CLECs). CLECs will be able to negotiate interconnection agreements with Qwest regardless of the availability of a SGAT.

PROPOSED COMMISSION MOTION:

Qwest Corporation's Statement of Generally Available Terms and Conditions (Eleventh Revision), filed on August 6, 2003, be allowed to go into effect without approval and subject to investigation in Docket UM 973, pursuant to Section 252(f) of the Telecommunications Act of 1996 and OAR 860-016-0040.