

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Phyllis Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest's Wholesale Service
Quality Standards

ISSUE DATE: December 8, 2003

DOCKET NO. P-421/AM-00-849

ORDER AFFIRMING PRIOR ORDER

PROCEDURAL HISTORY

On July 3, 2003, the Commission issued its ORDER ADOPTING WHOLESALE SERVICE QUALITY STANDARDS. The Order establishes standards for gauging the quality of the services and elements that Qwest Corporation (Qwest) provides to competitive local exchange carriers (CLECs), and directs Qwest to make certain payments if it fails to meet these standards.

On September 17, 2003, the Commission issued its ORDER DENYING RECONSIDERATION AND STAY of its July 3, 2003 Order.

On September 22, 2003, Eschelon Telecom, Inc. (Eschelon) stated that Qwest had declined to acknowledge Eschelon's adoption of the wholesale service quality standards into its interconnection agreement. Eschelon asked the Commission to enforce its July 3, 2003 Order.

On October 10, 2003, a coalition of CLECs¹ stated that Qwest had declined to acknowledge their adoption of the wholesale service quality standards into their respective interconnection agreements. The CLECs asked the Commission to enforce its Order and to adopt contingency plans to take effect in the event that the July 3, 2003 Order is stayed.²

The matter came before the Commission on November 13, 2003.

¹ The Coalition consists of McLeodUSA, Inc.; NorthStar Access LLC; Otter Tail Telecom, LLC; US Link, Inc.; and VAL-ED Joint Venture LLP d/b/a 702 Communications.

² The Commission has approved the contingency language in a separate docket. See *In the Matter of the Petition of AT&T Communications of the Midwest, Inc., for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 421/IC-03-759 ORDER RESOLVING ARBITRATION ISSUES AND REQUIRING FILED INTERCONNECTION AGREEMENT (November 18, 2003) at 37-38, 41-42.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

Eschelon and the CLEC Coalition argued that Qwest has failed to comply with the Commission's July 3, 2003 Order. Qwest has declined to sign amended interconnection agreements provided by the CLECs and has offered no assurance that it will either conform its service quality to the levels specified in the Order or make the payments set forth for noncompliance. Consequently, Qwest's noncompliance harms the interests of Eschelon and the CLEC Coalition.

Qwest argued that the Commission's July 3, 2003 Order is illegal and should not be enforced. Qwest noted that it had asked the Minnesota Court of Appeals to review that Order and to stay the Order's effect in the meantime. Qwest anticipated that the court would rule on the stay request soon, and asked the Commission to await that decision.³

II. Commission Action

The Commission's Order of July 3, 2003 concludes with the statement "This Order shall become effective immediately." Neither this Commission nor any court has stayed or otherwise altered the Commission's Order. The Order therefore remains in full force and effect and Qwest is legally obligated to comply.

ORDER

1. The Commission's July 3, 2003 ORDER ADOPTING WHOLESALE SERVICE QUALITY STANDARDS remains in full force and effect.
2. Qwest shall comply with the July 3, 2003 Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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³ Following the hearing, the Court of Appeals denied without prejudice Qwest's request for stay. *In the Matter of Qwest's Wholesale Service Quality Standards*, Docket No. A03-1409 ORDER (November 19, 2003).