

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Qwest Corporation's
Application for Commission Review
of TELRIC Rates Pursuant to
47 U.S.C. § 251

FIRST PREHEARING ORDER

This matter came on for a prehearing conference before Administrative Law Judges Kathleen D. Sheehy and Steve M. Mihalchick at the Offices of the Minnesota Public Utilities Commission, 121 Seventh Place East, St. Paul, Minnesota, on November 13, 2006.

Joan Peterson, Qwest Corporation (Qwest) Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402; and Eric F. Swanson, Winthrop & Weinstine, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402-4629, appeared for Qwest.

Dan Lipschultz, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129, appeared for Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; DIECA Communications, Inc., d/b/a Covad Communications Company; TDS Metrocom; NorthStar Access, LLC; Otter Tail Telecom, Inc.; and XO Communications of Minnesota, Inc. (CLEC Coalition).

Dennis Ahlers, Eschelon Telecom, Inc. (Eschelon), 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, appeared for Eschelon.

Joy Gullikson, Onvoy, Inc. (Onvoy), 300 S. Highway 169, Suite 700, Minneapolis, MN 55426, appeared for Onvoy.

Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department).

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. The original parties to this matter were Qwest and the Department. At the prehearing conference, the oral motions to intervene of the CLEC Coalition, Eschelon, and Onvoy were granted without objection.

2. Other persons wishing to intervene must file a written petition to intervene, pursuant to Minn. R. 1400.6200, subp. 1, by December 11, 2006. The petition shall be served upon the Administrative Law Judge, all existing parties, and the Minnesota Public Utilities Commission. Any objection to a petition to intervene shall be filed within seven days of service of the petition. Any persons petitioning to intervene after December 11, 2006, may be restricted as to the scope of their participation. Any person who is allowed to intervene after the date of this Order shall be bound by the terms of this Order.

3. Members of the public need not become formal parties to participate in the hearing. Members of the public may offer evidence, attend the hearing, file written comments, and request the opportunity for oral argument.¹ But any person desiring to become a formal party must file a petition to intervene as described above.

ISSUES

4. In this matter, Qwest proposes to change its rates for collocation (both recurring and nonrecurring charges) and to change the rates and/or structure for nonrecurring charges for other § 251 elements. It also proposes to establish individual case basis (ICB) pricing for certain § 251 elements. Attachment 3 to Qwest's application is a summary of the proposed rates.

5. During the prehearing conference, two questions arose about the rates at issue: First, how can one easily determine how Qwest's current rates correspond to the restructured proposed rates; and second, what if anything does Qwest intend to charge for certain elements that do not appear to be included in the list of proposed rates? To clarify these issues, Qwest should produce a new version of Attachment 3 and call it a "Cost Comparison Spreadsheet" or something similar. The intervenors need to specify which elements they have questions about and provide them to Qwest, so that these elements can be incorporated into the spreadsheet. Qwest should then identify, for all the elements identified on Attachment 3 and all of the questioned elements (1) what Qwest's current charge is for each element; and (2) what, if anything, it proposes to charge for the elements identified by the intervenors, including information sufficient to determine whether this is a new charge or part of a new charge within the scope of this proceeding, a current charge previously authorized by the Commission, a charge from Qwest's tariff, etc. Qwest should also remove the elements that the Commission declined to review in this proceeding pertaining to DS1 and DS3 loops.

¹ Minn. R. 1400.6200, subp. 5; Minn. R. 7812.1700, subp. 10.

6. The intervenors should identify and provide the list of questioned elements to Qwest by December 6, 2006; Qwest should file the Cost Comparison Spreadsheet by December 22, 2006.

SCHEDULE

7. The following schedule is adopted:

- Qwest files Direct Testimony. January 19, 2007
- All Intervenors file Direct Testimony. April 20, 2007
- All Parties file Rebuttal Testimony May 18, 2007
- All Parties file Surrebuttal Testimony. June 15, 2007
- Evidentiary Hearing, beginning at 9:30 a.m. in the June 26-29, 2007
Commission Offices at 121 Seventh Place East,
Suite 350, St. Paul, Minnesota.

8. Briefing deadlines and a date for the Report and Recommendation will be set at the conclusion of the hearing.

PROCEDURE

9. The Rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

FILING OF DOCUMENTS

10. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

11. All documents filed, including prefiled testimony, **but excluding information requests and responses**, shall be filed as follows:

- a. Before the Report of the Administrative Law Judges is issued, one copy shall be filed with each Administrative Law Judge.
- b. After the Administrative Law Judges' Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

- c. One copy of all documents shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy, where possible, shall also be sent by e-mail to persons whose e-mail address is provided on the service list. The Office of Administrative Hearings will revise the list as necessary. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.
- d. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed to the Office of Administrative Hearings and delivered to the Executive Secretary of the Commission. Filings with the Administrative Law Judges may be accomplished by email, sent to Kathleen.Sheehy@state.mn.us and Steve.Mihalchick@state.mn.us. Any filing sent by email will be followed by a hard copy mailed that day.
- e. Proof of service shall be filed with each filed document or within three business days thereafter.
- f. An electronic copy of prefiled testimony shall be served on the other parties and the court reporter by 3:00 p.m. on the day it is due.

12. One copy of any document or information filed with or supplied to the Commission or the Commission staff shall be served on every party.

DISCOVERY

13. A party may serve requests for information on any other party. All requests for information shall be made electronically, and unless the parties agree otherwise, shall be followed with a hard copy sent by regular U.S. mail to the person from whom the information is sought, with a copy of the request mailed to all parties of record. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, a party shall send the request by hard copy only. Requests shall be sent to the person designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a state holiday is considered received on the next business day.

14. The party responding to the information request shall provide the information requested to all parties within eight business days after receipt of the request, unless the requesting party agrees to provide additional time. A business day does not include weekend days and state holidays. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period.

15. Responses to information requests shall be made electronically, and unless the parties agree otherwise, shall be followed with a hard copy of the response sent by regular U.S. mail or other delivery service. To the extent that a response

includes material designated as Trade Secret or Nonpublic, the responding party shall send the response by hard copy only but should ensure delivery by the due date. Any response received before 4:30 p.m. on a business day is considered to be received on the same day.

16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service, so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the due date. Responding parties may utilize CDs to convey large volumes of data. There shall be a continuing obligation to update and supplement information responses.

17. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judges upon motion of a party. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference with the Administrative Law Judges and affected parties, unless the Administrative Law Judge requires other procedures.

18. Information requests directed to Qwest should be directed to: Dianne.Barthel@qwest.com.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

19. All testimony other than cross-examination shall be prefiled. Prefiled testimony shall be marked and offered with exhibit numbers. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for good cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judges and the parties by email no later than three days before the evidentiary hearing starts.

20. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal or surrebuttal testimony and exhibits.

21. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: Qwest first, then the CLEC Coalition, Eschelon, Onvoy, and the Department.

EXAMINATION OF WITNESSES

22. Witnesses shall be allowed ten minutes to summarize their prefiled testimony.

23. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

24. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states by motion its objection with particularity to the Administrative Law Judges and serves a copy of such objections on the Commission and all other parties **by June 19, 2006**. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated this 22nd day of November, 2006.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge