

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST COMMUNICATIONS CORPORATION	DOCKET NOS. TCU-03-13 WRU-03-48-419
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ORDER APPROVING AMENDMENT TO APPROVED APPLICATION

(Issued November 29, 2004)

PROCEDURAL HISTORY

On August 4, 2003, Qwest Communications Corporation (QCC) filed with the Utilities Board (Board) an application for a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange telecommunications service in Iowa outside of the areas currently being served by its affiliate, Qwest Corporation (Qwest). The application was identified as Docket No. TCU-03-13.

On September 16, 2003, the Board granted QCC's application, subject to (1) a commitment to support a 2-PIC methodology for dialing parity and (2) approval of tariffs reflecting the prices, terms, and conditions of QCC's local exchange service in Iowa. QCC was directed to give notice to all affected carriers at the time it files proposed tariffs with the Board and to file maps designating its exchange boundaries pursuant to Iowa Code § 476.29(4) and 199 IAC 22.20(3). QCC subsequently stated it will support 2-PIC methodology, but has not yet filed proposed tariffs or maps.

On April 6, 2004, QCC filed a request to amend its approved application to reflect a change in QCC's requested service area. QCC seeks to expand its previously-designated service area to include the entire state of Iowa, including areas served by Qwest. QCC states that its technical, financial, and managerial qualifications submitted in its initial application have not changed.

On April 29, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to QCC's application, identifying two issues. The first issue is whether an affiliate of the incumbent local exchange carrier (ILEC) may be granted a certificate of public convenience and necessity to provide local service as a competitive local exchange carrier (CLEC) in the same geographic area as its affiliated ILEC. The second issue is whether it is consistent with the public interest for an affiliate of an ILEC to provide local exchange telecommunications service within the same geographic area as its affiliated ILEC, where both are wholly-owned subsidiaries of the same holding company.

On June 11, 2004, the Iowa Association of Municipal Utilities (IAMU) filed a joinder in support of Consumer Advocate's objection to QCC's amendment and a motion to intervene. IAMU states that it concurs with Consumer Advocate on all points. IAMU asks that the Board deny QCC's request and conclude that competition between affiliates is not effective competition.

On June 30, 2004, after other pleadings and responses were filed, the Board issued an order docketing QCC's request to amend its approved application as a formal proceeding and granting IAMU's petition to intervene.

Pursuant to the procedural schedule established in this docket, QCC filed direct testimony on July 26, 2004. Consumer Advocate filed rebuttal testimony on August 16, 2004. QCC filed reply testimony on August 30, 2004. IAMU did not file prepared testimony.

A hearing for the purpose of receiving the pre-filed testimony and cross-examination of witnesses was held on September 28, 2004. On October 8, 2004, QCC, Consumer Advocate, and IAMU filed post-hearing briefs.

DISCUSSION

Pursuant to Iowa Code § 476.29, a utility must have a certificate of public convenience and necessity issued by the Board before furnishing land-line local telephone service. Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest.

In granting QCC's original application for certification outside of Qwest's service territory, the Board found that QCC possesses the necessary technical, financial, and managerial abilities to provide local exchange service and that it was in

the public interest to approve the application. QCC states that its technical, financial, and managerial qualifications submitted in the original application have not changed.

The issue now before the Board is whether it is in the public interest to approve QCC's amendment and modify its intended service area to include exchanges served by Qwest. QCC states in its application that without certification to provide local exchange service in Qwest service areas, it cannot compete for or serve customers who desire service within one or more of Iowa's largest cities. QCC's principal target market, at this time is medium and large business and government customers. (Tr. 15, 74.) QCC asserts that an increasing number of requests for proposals require that the responding entity be able to provide services through a single contracting and customer relationship and not deliver the requested services through different entities, billing mechanisms, or affiliates. (Tr. 74, 96.) To be able to provide local service as part of the "one-stop shopping" QCC's target customers are seeking, QCC needs certification in Qwest territory. (Tr. 15-16, 23.)

Consumer Advocate and IAMU object to QCC's proposal. Consumer Advocate and IAMU articulate their objections in various ways, but generally share the following concerns about approving the amendment: competition between affiliates is not true, "arms length," or effective competition (Tr. 131-32; IAMU's "Joinder in Support of the Objection of the Office of Consumer Advocate" p. 2., June 11, 2004); any loss of customers by Qwest to QCC would reflect a migration policy of the consolidated entity accomplished through a joint marketing program

which does not distinguish between regulated and non-regulated operations (Tr. 54-57, 132-33); it is likely that customers will not recognize the risk of being migrated from the regulated entity to the unregulated entity (Tr. 133-34, 143-45, 189; Consumer Advocate's Post-Hearing Brief, pp. 16-17); approving the amendment would allow Qwest to circumvent rate regulation of local exchange service simply by providing that service through QCC (Tr. 35-36, 132, 188; Consumer Advocate's Post-Hearing Brief, p. 11); and such "self-deregulation" would be accomplished without the Board making a finding of effective competition, as required by the established statutory deregulation scheme. (Consumer Advocate's Post-Hearing Brief, pp. 11-12; IAMU's Post-Hearing Brief, pp. 1-2.)

The Board has considered these objections, but finds that approving QCC's amendment is in the public interest. The Board will approve QCC's amendment to its application for a certificate of public convenience and necessity, as further described in this order.

In making this public interest finding, the Board is not accepting or endorsing the idea that offering customers another choice from a provider affiliated with an incumbent necessarily promotes the creation of a healthy competitive marketplace. However, because it is possible in this particular case that one particular segment of the market will be better served by allowing QCC to compete for "one-stop" customers, the Board finds it in the public interest to allow QCC to provide service in Qwest exchanges. As for the concerns raised by Consumer Advocate and IAMU, it

appears Iowa law contains sufficient safeguards to constrain the potential hazards of allowing QCC to enter Qwest exchanges as a competitive local exchange provider.

Iowa Code § 476.100 governs the relationships between local exchange carriers and other providers of telecommunications services. Section 476.100 provides that a local exchange carrier shall not do any of the following:

1. Discriminate against another provider of communications services by refusing or delaying access to the local exchange carrier's services.
2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates . . .
3. Degrade the quality of access or service provided to another provider of communications services.
4. Fail to disclose in a timely manner . . . all information reasonably necessary for the design of network interface equipment, network interface services, or software that will meet the specifications of the local exchange carrier's local exchange network.
5. Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider.
6. Use basic exchange service rates, directly or indirectly, to subsidize or offset the costs of other products or services offered by the local exchange carrier.
7. Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

QCC testified that it does not have its own facilities sufficient to provide local telecommunications service in Qwest territory in Iowa. (Tr. 14.) Thus, QCC will be in

the same position as any other competitive local exchange carrier seeking to interconnect with Qwest and obtain unbundled network elements (UNEs) and other products and services. Under § 476.100, Qwest will not be able to treat its affiliate QCC any better than a non-affiliated competitive local exchange carrier.

The Board will rely in part on existing affiliate reporting requirements to monitor contractual and other activity between Qwest and QCC to determine whether Qwest is discriminating in favor of its affiliate. Iowa Code §§ 476.74 (1) – (3) provide that contracts or arrangements between a public utility and an affiliate providing for the furnishing or exchanging of goods and services; for the purchase, sale, lease, or exchange of property; or for the loan of money or extension or renewal of any loan shall be filed annually with the Board. Paragraph 199 IAC 31.3(1)"a" requires public utilities to file, on an annual basis, summaries of each new or revised contract, arrangement, or other similar transaction between the public utility and its affiliate.

While these annual filings remain useful to the Board, they may not provide enough information as often as the Board will need it to monitor situations involving an ILEC and an affiliated CLEC serving in the same area. Therefore, the Board will commence a rule making to consider rules that will require the filing of all commercial agreements between an ILEC and an affiliated CLEC, including, but not limited to, agreements not otherwise included in and filed with the interconnection agreement between the parties. The proposed rules will require that these agreements must be filed with the Board as they are made.

The Board anticipates that reviewing the information contained in the commercial agreements will allow it to compare the prices an ILEC charges to non-affiliated CLECs for products and services with the prices the ILEC charges to an affiliated CLEC for the same products and services. This inquiry will allow the Board to make a preliminary determination of whether the ILEC is discriminating in favor of its affiliate. Such discrimination could violate Iowa Code § 476.100 and jeopardize the affiliated CLEC's certification.

Further, information the Board will receive through the current affiliate reports and the commercial agreement reporting requirement that will be proposed in the rule making should be supplemented with additional information regarding the affiliated ILEC-CLEC relationship. Therefore, the Board anticipates that the proposed rules will also require ILECs and CLECs to report the following information to the Board on an annual basis:

1. Local numbers ported by the ILEC to non-affiliated CLECs.
2. Local numbers ported by the ILEC to its affiliated CLEC.
3. UNE-Ls provided by the ILEC to non-affiliated CLECs.
4. UNE-Ls provided by the ILEC to its affiliated CLEC.
5. UNE-Ps (or equivalent) provided by the ILEC to non-affiliated CLECs.
6. UNE-Ps (or equivalent) provided by the ILEC to its affiliated CLEC.
7. Resale access lines provided by the ILEC to non-affiliated CLECs.
8. Resale access lines provided by the ILEC to its affiliated CLEC.
9. Central office collocation sites provided by the ILEC to non-affiliated CLECs.

10. Central office collocation sites provided by the ILEC to its affiliated CLEC.

The information on this list was proposed by Consumer Advocate (Tr. 134). With this information, the Board would be better able to identify any potentially anticompetitive behaviors resulting from allowing an ILEC and its affiliated CLEC to provide service in the same area.

One other affiliate-related issue concerns the potential for customer confusion. IAMU and Consumer Advocate argue that the lines between the different Qwest corporate entities have been blurred to the point where customers do not know which entity provides a particular service (Tr. 54-57, 132-33, 143-45, 189-90; Consumer Advocate's Post-Hearing Brief, pp. 9-10, 16-17; IAMU's Post-Hearing Brief, pp. 2-3) and that such blurring of the lines could expose customers to the risk of losing the protections that come with buying a regulated service.

In its brief (QCC's Post-Hearing Brief, pp. 7-8), QCC agreed to adopt the disclosure procedure used in North Dakota to address this issue. Under that procedure, QCC agrees to communicate to residential and small business customers Qwest's basic regulated 1FR and 1FB rates, as applicable, when any residential or small business customer calls to order local telephone service in areas served by both QCC and Qwest as local service providers. The Board will accept QCC's offer and include that requirement in its order as a condition of QCC's certificate.

Finally, throughout these proceedings there was discussion concerning QCC's role in any future determination of "effective competition" in deregulation proceedings

pursuant to § 476.1D. Because the Board has ample authority to determine how each provider's presence in a market will be counted for purposes of determining whether there is effective competition, it is not necessary to make any statements about this issue in this order.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The "Amendment to Application for Certificate of Public Convenience and Necessity" filed by Qwest Communications Corporation on April 6, 2004, is granted, subject to the requirements that follow.
2. The Board will issue a certificate of public convenience and necessity allowing Qwest Communications Corporation to provide local exchange service throughout the entire state of Iowa, including both within and outside of the service territory of Qwest Corporation, upon approval of tariffs reflecting the prices, terms, and conditions of local exchange service in Iowa.
3. At the time Qwest Communications Corporation files proposed tariffs with the Board, it must give notice to all affected carriers.
4. Before offering local exchange services, Qwest Communications Corporation shall file with the Board appropriate maps that designate its exchange boundaries, pursuant to Iowa Code § 476.29(4) and 199 IAC 22.20(3).
5. Qwest Communications Corporation shall adopt and implement in its Iowa operations the disclosure provision it agreed to in proceedings before the North

Dakota Public Service Commission that communicates to residential and small business customers Qwest Corporation's basic regulated 1FR and 1FB rates, as applicable, when any residential or small business customer calls to order local telephone service in areas served by both QCC and Qwest as local service providers.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of November, 2004.