

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7486-6]

Proposed Administrative Past Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Ohio Drum Superfund Site, Cleveland, OH**AGENCY:** Environmental Protection Agency.**ACTION:** Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Ohio Drum Superfund Site ("the Site") in Cleveland, Ohio, with four companies: United States Steel, United States Gypsum, Waterlox Coatings Corporation, and Youngstown Barrel & Drum Company ("the settling parties"). The settlement requires United States Steel to pay \$60,000.00 to the Hazardous Substance Superfund. United States Gypsum will pay \$40,000.00 to the Hazardous Substance Superfund. Waterlox Coatings Corporation will pay \$5000.00 to the Hazardous Substance Superfund. Youngstown Barrel & Drum Company will pay \$25,000.00 to the Hazardous Substance Superfund.

Under the terms of the settlement, the settling parties agree to pay their respective settlement amounts. In exchange for their payments, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through February 1, 2003. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by any person at the Site through February 1, 2003.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before May 23, 2003.

ADDRESSES: Comments should reference the Ohio Drum Superfund Site, Cleveland, Ohio, and EPA Docket No. V-W-03-C-738, and should be addressed to Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C-14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Cleveland Public Library, Cleveland, Ohio. The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C-14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 353-9538.

FOR FURTHER INFORMATION CONTACT: Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C-14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 353-9538.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: April 3, 2003.

William E. Munro,

Director, Superfund Division.

[FR Doc. 03-10068 Filed 4-22-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03-11; FCC 03-81]

Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Qwest Communications International, Inc. for authorization to provide in-region, interLATA services in New Mexico, Oregon and South Dakota. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry, and fully opened its local exchange markets to competition.

DATES: Effective date April 25, 2003.

FOR FURTHER INFORMATION CONTACT:

Kimberly Cook, Attorney-Advisor, Wireline Competition Bureau, at (202) 418-7532 or via the Internet at kcook@fcc.gov. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03-11, FCC 03-81, adopted April 15, 2003 and released April 15, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. It is also available on the Commission's website at http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/qwest_nm_or_sd/welcome.html.

Synopsis of the Order

1. *History of the Application.* On January 15, 2003, Qwest filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of New Mexico, Oregon and South Dakota.

2. *The State Commissions' Evaluation.* The New Mexico Public Regulation Commission, Public Utility Commission of Oregon and the South Dakota Public Utilities Commission (State Commissions) following an extensive review process, advised the Commission that Qwest met the checklist requirements of section 271 and has taken the statutory steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Qwest's in-region, interLATA entry in their evaluations.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Qwest's application on February 20, 2003 in which it recommended approval of the application subject to the Commission satisfying itself regarding Qwest's compliance with Track A in New Mexico. The Department of Justice

further noted that Qwest should clarify its position concerning several complaints of WorldCom concerning Qwest's operations support systems (OSS) and that the Commission should carefully review that response.

Primary Issues in Dispute

4. *Compliance with Section 271(c)(1)(A)*. Based on the record, the Commission finds that Qwest satisfies the requirements of section 271(c)(1)(A) in New Mexico, Oregon and South Dakota based on the interconnection agreements it has implemented with competing carriers in those states. The Oregon and South Dakota Commissions found that Qwest satisfies the requirements of Track A in these states. The New Mexico Commission found that Qwest complied with Track A for business subscribers, but deferred the issue of Qwest's compliance with Track A for residential customers to the Commission.

5. The record shows that Qwest relies on interconnection agreements with AT&T Broadband Phone of Oregon, AT&T Corp. (fka TCG-Oregon), Black Hills FiberCom, Brooks Fiber of New Mexico, Cricket Communications, Eastern Oregon Telecom, McLeodUSA, Northern Valley Communications, and Time Warner Telecom of New Mexico in support of its Track A showing for these three states.

6. The Commission finds that, in New Mexico, Cricket Communications, a PCS provider, serves more than a *de minimis* number of residential users over its own facilities and, for purposes of section 271 compliance represents an actual commercial alternative to Qwest for residential telephone exchange services. The Commission determines that Cricket Communications' residential broadband PCS offering in New Mexico is a "telephone exchange service" for purposes of Track A. The Commission further concludes that the evidence submitted by Qwest adequately demonstrates that more than a *de minimis* number of Cricket customers use their service in lieu of wireline telephone service. The evidence shows that Cricket's marketing efforts stress that its product is a substitute for residential local telephone service. In addition, the Commission concludes that Qwest's survey demonstrates that Cricket customers use Cricket service in lieu of wireline telephone service. The Commission finds that the survey was random, and contains statistical analysis of sufficient quality to allow the Commission to rely on it for the purpose of showing compliance with Track A.

7. *Checklist Item 2—Unbundled Network Elements*. Based on the record,

the Commission finds that Qwest has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

8. The Commission concludes that Qwest meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), Qwest provides access that enables competing carriers to perform the functions in substantially the same time and manner as Qwest or, if there is not an appropriate retail analogue in Qwest's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

9. Pursuant to this checklist item, Qwest must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements, and demonstrate that it does not separate already combined elements, except at the specific request of a competing carrier. Based on the evidence in the record, and upon Qwest's legal obligations under interconnection agreements, Qwest demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

10. The Commission finds that Qwest's UNE rates in New Mexico, Oregon and South Dakota are just, reasonable, and nondiscriminatory as required by section 252(d)(1). Thus, Qwest's UNE rates in New Mexico, Oregon and South Dakota satisfy checklist item 2. The State Commissions concluded that Qwest's UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that a reasonable

application of TELRIC principles would produce."

11. The Commission finds that rates in the three states satisfied a benchmark analysis with rates in Colorado, demonstrating that Qwest's New Mexico, Oregon and South Dakota UNE rates fall within a range of rates that a reasonable application of TELRIC would produce. The Commission also rejects arguments by a party that Qwest relied on rates in Oregon that (1) were based on old data, and (2) might be in effect only temporarily since they could be increased in a state commission proceeding that was pending. Thus, the Commission concludes that Qwest's UNE rates in New Mexico, Oregon and South Dakota satisfy the requirements of checklist item 2.

Other Checklist Items

12. *Checklist Item 1—Interconnection*. Based on the evidence in the record, the Commission finds that Qwest demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2), and as specified in section 271 and applied in the Commission's prior orders.

13. Qwest also demonstrates that its collocation offerings in New Mexico, Oregon and South Dakota satisfy the requirements of sections 251 and 271 of the Act. Qwest demonstrates that it offers interconnection in New Mexico, Oregon and South Dakota to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

14. *Checklist Item 4—Unbundled Local Loops*. The Commission concludes that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Qwest's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, high-capacity loops, as well as our review of Qwest's processes for hot cut provisioning, and line sharing and line splitting.

15. *Checklist Item 5—Unbundled Transport*. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." The Commission concludes, based upon the evidence in the record, that Qwest demonstrates that it provides unbundled local transport in compliance with the requirements of checklist item 5.

16. *Checklist Item 7—911/E911 Access & Directory Assistance/Operator Services*. Section 271(c)(2)(B)(vii)(I), (II),

and (III) require a BOC to provide nondiscriminatory access to "911 and E911 services," "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to * * * operator services, directory assistance, and directory listing with no unreasonable dialing delays." Based on the evidence in the record, the Commission concludes that Qwest offers nondiscriminatory access to its 911-E911 databases, operator services (OS), and directory assistance (DA).

17. *Checklist Items 3, 6, 8, 9, 10, 11, 12, 13 and 14.* An applicant under section 271 must demonstrate that it complies with item 3 (poles, ducts, and conduits), item 6 (unbundled local switching), item 8 (white pages), item 9 (numbering administration), item 10 (data bases and signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Qwest demonstrates that it is in compliance with checklist items 3, 6, 8, 9, 10, 11, 12, 13 and 14 in New Mexico, Oregon and South Dakota. The State Commissions also concluded that Qwest complies with the requirements of each of these checklist items.

Other Statutory Requirements

18. *Section 272 Compliance.* Qwest provides evidence that it maintains the same structural separation and nondiscrimination safeguards in New Mexico, Oregon and South Dakota as it does in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming where Qwest has already received section 271 authority. Based on the record before us, we conclude that Qwest has demonstrated that it will comply with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the

competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

20. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission concludes that Qwest's entry into the long distance market will benefit consumers and competition.

21. The Commission also finds that the performance monitoring and enforcement mechanisms developed in New Mexico, Oregon and South Dakota, in combination with other factors, provide meaningful assurance that Qwest continue to satisfy the requirements of section 271 after entering the long distance market.

22. Notwithstanding its concern about discrimination with respect to interconnection agreements and potential violations of the Act as a result, the Commission finds that Qwest's previous failure to file certain interconnection agreements with the application states does not warrant a denial of this application. The Commission concludes that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements. Based on the limited circumstances established in the record, the Commission does not find that the allegations concerning Qwest's compliance with section 271 relate to openness of the local telecommunications markets to competition. Instead, it defers any enforcement action pending the Enforcement Bureau's investigation of the matter.

23. The Commission concludes that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in New Mexico, Oregon and South Dakota's local exchange market have been removed, and that the local exchange market is open to competition.

24. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the State

Commissions, we will closely monitor Qwest's post-approval compliance to ensure that Qwest does not "cease[]" to meet the conditions required for [section 271] approval." We stand ready to exercise our various statutory enforcement powers quickly and decisively if there is evidence that market opening conditions have not been sustained.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-10001 Filed 4-22-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011776-123.

Title: Asia North American Eastbound Rate Agreement.

Parties: American President Lines, Ltd., and APL Co. Pte Ltd. (as one party).

Hapag-Lloyd Container Linie GmbH.
Kawasaki Kisen Kaisha, Ltd.
AP Moller-Maersk Sea-Land.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line Limited.

P&O Nedlloyd B.V.

P&O Nedlloyd Limited.

Synopsis: The modification extends the suspension of the agreement for an additional six months through November 1, 2003, and is effective upon filing.

Agreement No.: 011591-003.

Title: EUKOR/WWL Space Charter Agreement.

Parties: EUKOR Car Carriers, Inc., Wallenius Wilhelmsen Lines AS.

Synopsis: The modification adds the westbound trade from U.S. Atlantic, Gulf and Pacific Coast ports and inland and coastal points to all ports in Japan and Korea and inland and coastal points, and removes the annual limitation on tonnage to be chartered to either party.

By Order of the Federal Maritime Commission.