

Direct Testimony of William R. Easton  
April 30, 2009  
Docket No. 08-2430-01  
Exhibit WRE 1.3

**Minnesota Public Utilities Commission**  
*Staff Briefing Paper*

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Meeting Date: **February 12, 2009.** ..... \* **Agenda Item #**

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Companies: Qwest Corporation

Docket No. **P-421/AM-08-1351;**  
**In the Matter of a Change in the Terms of Qwest's Access Service Tariff**  
**Regarding Jurisdictional Report Requirements**

Issues: Should the Commission suspend or modify Qwest's Access Service Tariff filing?

Staff: Kevin O'Grady..... 612-201-2218

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***Relevant Documents***

Qwest's Access Service Tariff Filing. .... November 10, 2008  
Comments: Sprint. .... December 10, 2008  
Comments: Verizon..... December 10, 2008  
Comments: AT&T..... December 10, 2008  
Comments: DOC. .... December 10, 2008  
Replies: Qwest..... January 9, 2009  
Replies: Sprint. .... January 9, 2009  
Replies: Verizon..... January 9, 2009  
Replies: DOC..... January 9, 2009

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## ***Procedural Background***

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**On November 10, 2008**, Qwest filed a significant change in terms to its Access Service Tariff to establish an interstate usage threshold for Switched Access Feature Group D terminating traffic that does not contain sufficient call detail to determine jurisdiction.

**On December 10, 2008**, in response to a request by the Commission, comments were filed by Sprint, Verizon, AT&T and DOC.

**On January 9, 2009**, the Commission received reply comments from Qwest, Sprint, Verizon and DOC.

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## ***Introduction***

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Feature Group D (FGD) service is a switched access service that Qwest makes available to interexchange carriers (IXCs) such as Sprint, AT&T and Verizon. This service allows IXCs to terminate long distance calls to Qwest's end-users. Typically, the IXCs provide Qwest with sufficient calling party information so that Qwest may determine whether the calls are inter- or intrastate in nature, thus allowing Qwest to appropriately bill for terminating the calls. Generally, intrastate calls are charged a higher rate than interstate calls.

Some FGD traffic terminated by Qwest does not contain sufficient calling party information to allow Qwest to determine whether the call falls within the intra- or interstate jurisdiction. The absence of such information for any given call may or may not be intentional, due either to error or to intentional arbitrage activity. To the extent that the amount of intrastate traffic is understated, Qwest receives less compensation than it is entitled to.

## *Positions of the Parties*

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### *Qwest Position:*

All local exchange carriers (LECs) contain provisions in their switched access tariffs to address unidentified traffic. Under Qwest's prior tariff, if an interexchange carrier delivered unidentified Feature Group D traffic, Qwest allocated the jurisdiction of such calls based on allocations provided by the IXC which can be modified by the IXC on a quarterly basis. Accordingly, Qwest allocated jurisdiction of this unidentified traffic based on the IXC's self-reported percent interstate usage (PIU). If the carrier reported 80 percent PIU, then Qwest charged 80 percent of the unidentified traffic at the interstate rate and 20 percent at the intrastate rate. Some IXCs do not self report. In that instance, prior tariffs assumed that the unidentified traffic was evenly split at 50 percent interstate/50 percent intrastate.

This method creates an incentive for arbitrage. Intrastate access rates are generally higher than interstate rates. Thus, an IXC has an incentive to have as much traffic as possible rated at interstate rates. In certain circumstances, Qwest has identified IXCs that have abnormally high amounts of unidentified Feature Group D traffic. In order to address this problem and to prevent it from occurring in the future, Qwest has followed the lead of Verizon, AT&T and Embarq by filing modifications to its tariff to address this issue. Consistent with other carriers, Qwest is now introducing a threshold for unidentified Feature Group D terminating traffic.

Qwest proposes, for each FGD customer, to establish a Percentage Interstate Usage (PIU) factor based on historical call data. And, further:

Terminating FGD traffic that does not contain sufficient call detail to identify the jurisdiction (unidentified traffic) will be assigned jurisdiction as follows:

The first 6% of unidentified terminating traffic will continue to be jurisdictionally assigned based on the carrier's PIU report or, if the carrier has not filed a PIU report, a PIU of 50 (50% interstate – 50% intrastate) will be assigned ....

Unidentified traffic in excess of the 6% floor will be designated intrastate traffic and charged at Qwest's current Minnesota rates.

**AT&T Position:**

AT&T does not oppose Qwest's filing as long as Qwest modifies it to address three main concerns. First, AT&T argues that the tariff, as filed, makes no provision for dispute resolution. AT&T offers language to this effect. Second, AT&T argues that the tariff does not define what constitutes "insufficient call detail." AT&T believes this is critical information and here, too, it offers language to modify the tariff. Third, AT&T holds that the 6 percent threshold is too low and proposes that the threshold be raised to 7 percent.

**Verizon Position:**

Verizon recommends that the Commission suspend Qwest's tariff, investigate it and allow Qwest and interested carriers to seek a negotiated resolution. Verizon notes that the Iowa Utilities Board ordered just such a process be implemented for a similar filing by Qwest in Iowa. Verizon also noted that the state commissions of Nebraska, Colorado and Oregon suspended similar tariffs filed by Qwest.

Verizon raised concerns with the lack of dispute resolution language, the lack of definition of "sufficient call detail" and with the PIU threshold of 6 percent. Verizon holds that failure to address these issues could result in another form of arbitrage, one perpetrated against IXCs, with the bias toward the understatement of lower-rate interstate traffic.

**Sprint Position:**

Sprint opposes Qwest's filing. Qwest's proposed tariff revisions would allow it to ignore an IXC's PIU report, the method that has been recognized as the proper method for determining the jurisdiction of unidentified traffic, in exchange for a wholly arbitrary method designed to ensure that Qwest's charges for unidentified traffic always favor Qwest.

There is nothing in Qwest's filing to provide a basis for concluding that such arbitrage is actually a significant problem, or that Qwest's revisions will result in more accurate identification of traffic. Qwest's tariff already includes a mechanism for Qwest to challenge any PIU it has reason to question. Qwest's new revisions simply ensure that the charges to an IXC are the highest possible by likely overstating the amount of intrastate traffic.

**DOC Position:**

DOC, referencing an incentive IXCs may have to overstate interstate traffic usage or to remove or fail to provide calling party information, generally supports Qwest's filing, although it makes recommendations for several modifications. DOC recommends that Qwest:

- (i) include the language proposed by AT&T addressing dispute resolution (language Qwest has subsequently agreed to),
- (ii) include a definition of "sufficient call detail" that "itemizes the specific data included with Feature Group D traffic that Qwest relies upon to make its jurisdictional determination," and
- (iii) file quarterly reports for two years to reflect the impact of the change on intrastate minutes of use, interstate minutes of use, and the resultant revenue impacts in Minnesota (a term subsequently agreed to by Qwest).

DOC supports Qwest's threshold of 6 percent, but encourages the Commission to hear parties presenting factual information to support other threshold levels, either within this docket or in the future in the form of a complaint.

**Qwest's Revised Tariff:**

In its reply comments of January 9, 2008, Qwest agreed to modify its tariff to include the dispute resolution language suggested by AT&T. Qwest also agreed to file quarterly reports for two years as recommended by DOC.

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***Staff Analysis***

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Pursuant to Qwest's AFOR Plan (approved by the Commission in Docket 05-1081 on December 23, 2005) Qwest's tariff filing takes effect 20 days after the date of filing. However, the AFOR Plan makes provision for the filing of comments by interested parties and states that the "Commission may suspend a rate change for good cause pending a PUC determination." (AFOR Plan IV.B.1.b). The parties to the docket provide comments making recommendations ranging from suspension of Qwest's tariff to approval with modifications. The parties' comments raise

six main issues.

**Negotiation Option:** Verizon has recommended that the Commission suspend the tariff for a period to allow Qwest and interested parties to seek a negotiated resolution. That option, clearly, remains open to the Commission.

**Is The Tariff Change Warranted?:** Sprint maintains its opposition to Qwest's filing arguing that Qwest's concessions regarding dispute resolution and quarterly filings do not go far enough. Sprint holds that there is no evidence in the record indicating there is a problem warranting the tariff change, that the existing practice of relying solely on each IXC's PIU factor is sufficient. Staff grants that there is little evidence in the current docket that there is a problem. However, staff agrees with DOC that there exists an incentive for IXCs to understate intrastate traffic. Staff believes that if there is indeed no excessive amount of improperly identified traffic, then Qwest's tariff would have no controlling effect. That is, the PIU factor for each IXC would control the jurisdictional identification just as it does today. As such, Qwest's tariff only comes to bear in situations where there is some excessive unidentified traffic, precisely when it is needed to discourage that excessive level.

**Appropriate Threshold:** The record in the docket indicates that the practice of setting a traffic threshold is common in the industry, and the record indicates that Qwest's 6 percent falls with the range of thresholds set in other jurisdictions. Staff is not wedded to the 6 percent level (the 7 percent proposed by AT&T may not be inappropriate). Rather, staff believes that 6 percent is a reasonable figure given the present record, and that if further evidence suggests otherwise the Commission may modify the tariff at some future date.

**Dispute Resolution:** Staff's comfort with the 6 percent threshold is increased by Qwest's agreement to adopt dispute resolution language proposed by AT&T, stating:

In the event that the Company applies the intrastate terminating access rate to calls without sufficient call detail as provided in this tariff, the customer will have the opportunity to request backup documentation regarding the Company's basis for such application, and further request that the Company change the application of the intrastate access rate upon a showing of why the intrastate rate should not be applied.

This language provides IXCs with some recourse in the event the threshold is breached.

**Quarterly Reports:** DOC, in its initial comments, recommended that Qwest be required to file quarterly reports "to reflect the impact of the change on intrastate minutes of use, interstate minutes of use, and the resultant revenue impacts in Minnesota, for two years." Qwest has

agreed to that recommendation.

**Defining “Sufficient Call Detail”:** AT&T proposes the following language be added to the tariff to better clarify the term “sufficient call detail.”

Insufficient call detail shall be either no detail or detail that deprives the Company from identifying the actual, *bona fide*, NPA-NXX associated with the call(s).

DOC supports the idea of more clearly defining “sufficient call detail.” Staff, too, supports the inclusion of a more clear definition of “sufficient call detail.” Without such clarity Qwest’s tariff may prove to be a source of ongoing uncertainty and debate.

In its reply comments Qwest stated that:

To determine the jurisdiction of a call, Qwest compares the originating number information with the terminating number information. If the originating number information lacks a valid Charge Party Number (ChPN) or Calling Party Number (CPN), we term the jurisdiction as unidentified. Qwest’s current tariff applies the same standard in determining traffic that will be jurisdictionalized according to the IXC’s reported PIU. [p.6]

In light of Qwest’s statement, staff suggests alternative language to clarify “sufficient call detail:”

Traffic without sufficient call detail shall be that traffic for which the originating number information lacks a valid Charge Party Number (ChPN) or Calling Party Number (CPN).



**Commission Options:**

- I. Suspend Qwest's tariff.
- II. Suspend Qwest's tariff and direct the parties to negotiate tariff terms. Direct the parties to inform the Commission of their negotiation progress within 45 days.
- III. Suspend Qwest's tariff and refer the matter to the Office of Administrative Hearings for the development of a factual record.
- IV. Approve Qwest's filing as submitted (and modified in its reply comments).
- V. Approve Qwest's filing as submitted (and modified in its reply comments) conditioned upon the inclusion of AT&T's (OR Staff's) recommended language defining "sufficient call detail."
- VI. Approve Qwest's filing as submitted (and modified in its reply comments) conditioned upon setting the call threshold at 7 percent.
- VII. Approve Qwest's filing as submitted (and modified in its reply comments) conditioned upon the inclusion of AT&T's (OR Staff's) recommended language defining "sufficient call detail" AND setting the call threshold at 7 percent.

Staff recommends option V. Staff believes that Qwest's tariff (with suitable modifications) is a reasonable response to legitimate concerns regarding unidentified traffic. Parties with concerns regarding Qwest's 6 percent threshold may address those concerns in the future through a complaint process.