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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

INITIAL COMMENTS OF
RHYTHMS LINKS INC.
REGARDING CHECKLIST
ITEMS 1, 11 AND 14

Pursuant to the Administrative Law Judge's June 12, 2000 Procedural Order, Rhythms Links Inc. ("Rhythms") respectfully submits the following comments regarding Qwest Communications Inc.'s ("Qwest") compliance with its obligations under the requirements of Section 271 of the Telecommunications Act of 1996 with respect to checklist item number 1.¹ Rhythms believes that Qwest is deficient in meeting several of its obligations under the Act.

¹ 47 U.S.C. § 271 (1996) ("theAct").

INTERCONNECTION AND COLLOCATION

1
2 “The provision of collocation is an essential prerequisite to demonstrating compliance with
3 item 1 of the competitive checklist,”² because collocation is “an essential means of allowing
4 competitive LECs to interconnect” with the ILEC’s network.³ To establish that it has met this
5 checklist item, Qwest must demonstrate that collocation is provided under terms that are “just,
6 reasonable, and nondiscriminatory” in accordance with section 251(c)(2)(D) of the Act. To do so,
7 Qwest must show that it provides “concrete and specific” collocation intervals and other
8 sufficiently definite terms and conditions in a “legally binding document.”⁴ Qwest proposes to
9 meet these obligations through the commitments undertaken in its Statement of Generally
10 Available Terms (“SGAT”). But only a concrete and specific legal obligation can ensure “that the
11 BOCs have taken real, significant, and irreversible steps to open their markets.”⁵

12
13
14 As discussed below, Qwest has failed to meet its burden in proving its compliance with
15 § 271 regarding interconnection and collocation in the following respects:

- 16 ■ Qwest unlawfully discriminates in provisioning collocations in a timely manner and in defined
17 intervals;
- 18 ■ Qwest’s *SGAT* imposes impermissible performance standards on CLECs’ collocated
19 equipment;
- 20 ■ Qwest unlawfully threatens to prohibit and disconnect CLEC-to-CLEC cross-connects
21 necessary for interconnection; and
22

23
24 ² *Application by Bell Atlantic New York for Authorization under Section 271 of the*
25 *Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Doc.
26 No. 99-295, Memorandum Opinion and Order, FCC 99-404 (released December 22, 1999) (“*Bell Atlantic New York Order*”), ¶ 66.

³ *BellSouth Louisiana Order* ¶¶ 61 & 66; *Ameritech Michigan Order* ¶ 110.

⁴ *BellSouth Louisiana Order* ¶¶ 66, 70 & 71.

⁵ *Ameritech Michigan Order* ¶ 18.

1 ▪ Qwest unlawfully limits collocation to its central offices.

2 A. Collocation Provisioning Intervals.

3 1. **Vague and Ambiguous Terms in the SGAT Do Not Ensure that Collocation**
4 **Will Be Provided on Just, Reasonable and Nondiscriminatory Terms and**
5 **Conditions.**

6 Since the Federal Communications Commission's *Advanced Services Order*,⁶ Qwest has
7 agreed, albeit reluctantly, to collocation provisioning intervals in its interconnection agreements
8 and its *SGAT*. However, for aspects of collocation provisioning that the *Advanced Services Order*
9 did not address directly, Qwest continues to maintain that it has the discretion to alter the intervals
10 on an individual case basis. As a result, the provisioning intervals set out by Qwest are nothing
11 but targets for performance that are met haphazardly.

12 For example, in Section 8.4.3.2, Qwest commits to an interval of 90 days to complete the
13 building of a physical collocation. However, in Section 8.4.3.2 of Qwest's *SGAT*, Qwest provides
14 itself with an exception to the collocation interval: "Due to variables in equipment and scope of
15 the work to be performed, *additional time* may be required for implementation of the structure
16 required to support the Collocation request."⁷ This section has the effect of negating the
17 provisioning intervals stated in other sections, because it places no limitation on Qwest's exercise
18 of discretion to extend the interval. Without any limit on the discretion of Qwest, the committed
19 intervals are unenforceable and essentially meaningless. Unless the *SGAT* is limited to "concrete
20 intervals are unenforceable and essentially meaningless. Unless the *SGAT* is limited to "concrete
21 intervals are unenforceable and essentially meaningless. Unless the *SGAT* is limited to "concrete
22 intervals are unenforceable and essentially meaningless. Unless the *SGAT* is limited to "concrete
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25 ⁶ *In re Deployment of Wireline Service Offering Advanced Telecommunications Capability*,
26 CC Docket No. 98-14, First Report & Order and Further Notice of Proposed Rulemaking (Rel.
 Mar. 31, 1999) ("*Advanced Services Order*").

⁷ *SGAT* at § 8.4.3.2 (emphasis added).

1 and specific” established deadlines, the CLEC cannot be assured it will be provided collocation at
2 “just, reasonable and nondiscriminatory” terms.⁸

3 Notably, in the state of Utah, state law requires a 45-day interval for collocation
4 provisioning. In Rhythms’ experience and in reports Qwest has made to the Utah PSC, Rhythms
5 has found that Qwest has been able to meet that interval. Moreover, Qwest agreed to shorten
6 collocation provisioning interval to 45 days for certain CLECs, including Rhythms, that reached a
7 settlement in proceedings that reviewed Qwest’s now-completed merger with U S West. It is not
8 clear why such an interval should not apply across Qwest’s region. The 90-day interval was
9 originally mandated as a *maximum* amount of time for collocation provisioning; Qwest has used
10 that number as a minimum. As Qwest itself states, Qwest has had more than two years experience
11 in collocation provisioning and indisputably has improved its internal processes. CLECs should
12 be able to benefit from those improvements. Rhythms recommends that a 45-day collocation
13 interval apply to collocation provisioning.
14
15

16 **2. The Absence of Provisioning Intervals for Essential Components of**
17 **Collocations Unreasonably Delays CLEC Market Entry.**

18 In cases where the FCC or state commissions have not imposed provisioning intervals
19 addressing particular collocation work, Qwest has simply treated it as though there is no
20 requirement to perform in a timely manner. This is particularly anticompetitive in circumstances
21 when delay may disable the CLEC collocation or delays market entry, for example, when (1)
22 Qwest fails to provide timely and accurate Alternate Point of Termination-Connecting Facility
23
24
25

26 ⁸ See *Ameritech Michigan Order* at ¶ 100 and *BellSouth Louisiana Order* at ¶ 61.

1 Assignment data (APOT-CFA) and (2) when Qwest does not commit to a reasonable interval for
2 provisioning additional TIE cables when a CLEC collocation is reaching cable exhaust.

3 First, Qwest must be required to provide a concrete, enforceable interval for providing
4 accurate APOT-CFA information, instead of being allowed impose the current inefficient and
5 serial process. APOT-CFA is simply the information that tells CLECs where on the Qwest frame
6 their cable is assigned. This information is essential to a CLEC being able to place any kind of
7 order—e.g., for transport and other UNEs. The current process for ordering a collocation is set
8 forth in the *SGAT*: the CLEC submits a collocation application to Qwest. Qwest requires ten (10)
9 days to conduct a feasibility study (which determines whether space, power, and terminations on
10 the frame are available), twenty-five (25) days to transmit a collocation price quote, and then 90
11 days after the CLEC pays a 50% down payment (45 days for a cageless collocation) before Qwest
12 will perform the collocation construction and turn the space over to the CLEC.

13
14
15 The perception, however, that a CLEC can be ready for service in 125 days is deceiving.
16 A CLEC cannot provide service from a collocation until it has interoffice transport from the
17 collocation. And it is not allowed to order interoffice transport by Qwest until it has accurate
18 APOT-CFA information from Qwest. Qwest, for no apparent reason, refuses to provide the form
19 containing APOT-CFA identifying the location of CLEC's DS0, DS1 and DS3 terminations on the
20 Qwest intermediate frame, until the end of the collocation provisioning process. For many
21 CLECs, the APOT-CFA is not provided until as late as one day before the collocation is ready for
22 service. Therefore, there is further lengthy delay between the actual delivery date of the
23 collocation space by Qwest and the date that the CLEC has interoffice transport that allows it to
24 bring the collocation arrangement on line.
25
26

1 Moreover, the APOT-CFA information provided by Qwest is often incorrect. This is
2 especially damaging to CLECs because when service is provisioned to the incorrect APOT-CFA,
3 it is hard to detect; therefore, CLECs cannot properly set customer expectations of when they will
4 be provided service. The inability of Qwest to provide timely, accurate APOT-CFA is a
5 significant barrier to entry. It slows down a facilities-based network build and thwarts
6 competition.
7

8 There is a simple, efficient solution to this problem, that is, to require Qwest to implement
9 a parallel processing scheme for collocation construction and transport processing. Qwest should
10 not only order but also reserve the terminations at the frame at the time that it conducts the
11 feasibility study to prevent any changes in the CFA during collocation construction. This would
12 enable Qwest to deliver the APOT-CFA information to the CLEC considerably earlier. There is
13 no benefit in Qwest waiting until the day before the collocation ready for service date to turn over
14 this information, unless the goal is to delay market entry by competitors.
15

16 Second, Qwest must commit to a concrete, enforceable interval for provisioning additional
17 TIE cables. TIE cables are the DSO terminations that connect a collocating CLEC's equipment to
18 the frame in the Qwest central office. Typically, CLECs order a large number of TIE cables in the
19 initial collocation application, however, given the rapid growth of competition, it is difficult to
20 judge when those cables will be exhausted by serving an overabundance of customers from that
21 collocation. As a result, CLECs have a relatively short period of time in some collocations to
22 anticipate cable exhaust and to order additional TIE pairs. As it currently stands, there is no
23 provisioning interval contained in the SGAT or interconnection agreements that require Qwest to
24 provide additional cable pairs. Qwest therefore maintains that the 90-day collocation construction
25
26

1 interval obtains. Clearly, however, TIE cable pair additions do not require a work effort remotely
2 similar to building a whole new collocation cage. And a 90-day interval may leave some CLECs
3 in jeopardy of having to refuse any additional customers in a particular central office collocation
4 until the new cables are added. It is unjust and unreasonable for Qwest not to commit to a
5 reasonable interval for provisioning additional TIE cables to a collocation. Rhythms
6 recommends a 30-day interval for provisioning additional TIE cables.
7

8 **B. Qwest's Arbitrary Equipment Performance Standards Violate the FCC's *Advanced***
9 ***Services Order.***

10 Although in its testimony Qwest states to the contrary, the *SGAT* is replete with instances
11 where it requires that collocating CLECs abide by standards and requirements in excess of those
12 required by the FCC's *Advanced Services Order*. See Affidavit of Thomas Freeberg, Qwest, at
13 28. Moreover, Qwest requires collocated CLEC equipment to meet requirements in "Qwest
14 technical publications," "Qwest Wire Center environmental and transmission standards," and
15 other discretionary requirements, all of which are unspecified and undisclosed in the *SGAT*.⁹
16 Qwest has not demonstrated that these technical requirements are applied in a nondiscriminatory
17 manner and that they cannot be unlawfully changed at Qwest's whim to deny placement of CLEC
18 equipment.
19

20 The FCC has plainly determined that the only safety limitation that incumbents can place
21 on the type of equipment collocated is that the equipment be Network Equipment Building
22

23
24
25 ⁹ *SGAT* at §§ 8.2.1.8, 8.2.2.5, 8.2.3.9 and 8.2.3.12.
26

1 System (“NEBS”) Level 1 compliant.¹⁰ In examining whether it should also require higher levels
2 of NEBS compliance, the FCC concluded, “NEBS requirements that address reliability of
3 equipment, rather than safety, should not be used as grounds to deny collocation of competitive
4 LEC equipment.”¹¹ Moreover, the FCC ordered “that, although an incumbent LEC may require
5 competitive LEC equipment to satisfy NEBS safety standards, the incumbent may not impose
6 safety requirements that are more stringent than the safety requirements it imposes on its own
7 equipment that it locates in its premises.”¹²

9 Qwest’s *SGAT* does not make any definitive statement on how it intends to enforce NEBS
10 requirements for CLEC equipment. Its terms are anything but “concrete and specific.”¹³ The
11 *SGAT* does not confine Qwest to application of NEBS Level 1 safety standards, but allows Qwest
12 to improperly deny collocation based on reliability or performance standards. For example,
13 throughout sections 8.2.1.8, 8.2.2.5, 8.2.3.9, 8.2.3.10, and 8.2.3.12, Qwest preserves its right to
14 deny collocations or collocated equipment based on noncompliance with any generic “NEBS
15 standards,” suggesting that Qwest will be allowed to enforce NEBS Level 2 or 3 compliance in
16 direct contravention of the *Advanced Services Order*. This is no small matter because essentially
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20 ¹⁰ *Advanced Services Order* at ¶ 35 (“[W]e agree with commenters that NEBS Level 1 safety
21 requirements are generally sufficient to protect competitive and incumbent LEC equipment from
22 harm. NEBS safety requirements, originally developed by the Bell Operating Companies’ own
research arm, are generally used by incumbent LECs for their own central office equipment, so we
conclude that NEBS adequately address the safety concerns raised by the incumbent LECs when
competitors introduce their own equipment into incumbent LECs central offices.”).

23 ¹¹ *Advanced Services Order* at ¶ 35.

24 ¹² *Id.* at ¶ 36. The FCC further concluded, “that an incumbent LEC that denies collocation
25 of a competitor’s equipment, citing safety standards, must provide to the competitive LEC within
five business days a list of all equipment that the incumbent LEC locates within the premises in
question, together with an affidavit attesting that all of that equipment meets or exceeds the safety
standard that the incumbent LEC contends the competitor’s equipment fails to meet. *Id.* Qwest’s
26 *SGAT* contains no such requirement.

¹³ *See Ameritech Michigan Order* at ¶ 110.

1 Qwest can put a CLEC out of service throughout the entire Qwest region based on its own
2 judgment that the CLEC is not in compliance.

3 The Commission should require Qwest to specify that collocation may be denied only
4 based on application of NEBS Level 1 safety standards. Further, Qwest must be required to
5 disclose and specifically describe the standards to which it holds collocating CLECs and those
6 standards must be incorporated in the *SGAT*. And if Qwest intends to deny collocation based on
7 those measures or attempts to remove equipment allegedly not in compliance, it must comply with
8 the FCC's requirements to demonstrate that the standard is required for safety reasons, and that
9 the requirement is applied in a nondiscriminatory manner. The *SGAT* lacks such a defined
10 process of dispute resolution that will allow an orderly, just and reasonable determination of
11 compliance with NEBS Level 1 and other safety standards.
12

13 Rhythms would recommend that the *SGAT* be supplemented with a defined process that
14 would, at a minimum, require Qwest to provide written notice of a safety issue to the CLEC,
15 which notice would include a statement of the safety issue, the NEBS standard implicated, and the
16 nondiscriminatory application of the standard to Qwest itself. Furthermore, if Qwest intends to
17 remove, prohibit, or disable equipment in a CLEC's collocation arrangement, it should be
18 required to petition the Arizona Corporation Commission to get approval to take such action,
19 unless there is an hazardous condition that threatens an imminent threat to safety or network
20 integrity.
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1 **C. Qwest Must Allow CLEC to CLEC Cross-Connects Necessary for Interconnection**
2 **and Collocation.**

3 Rhythms strenuously disagrees with the Qwest position that it has no legal obligation to
4 provide CLEC-to-CLEC cross-connects. CLEC-to-CLEC cross-connects are necessary for
5 CLECs to interconnect collocations in order to deliver telecommunications traffic to one another.
6 In Rhythms' case, the only reason that Rhythms found it necessary to interconnect with a
7 competitive interoffice transport provider was because the performance by Qwest in providing
8 transport was so dismal that it was preventing Rhythms from market entry. A cross-connect is not
9 only a sensible means to interconnect CLECs, it is plainly the only feasible means to do so.

10
11 Qwest has committed in its Comments to maintain the status quo until September, 2000,
12 pending FCC action on remand. And the *SGAT* reflects this resolution. Rhythms reserves its
13 right to contest this issue and this checklist item if and when Qwest changes its policy and/or
14 *SGAT* regarding the ability of CLECs to obtain cross-connects to other CLECs in the central
15 office.
16

17 **D. Qwest Unlawfully Limits Collocations to its Central Office Facilities.**

18 In section 8.1.1 of the *SGAT*, Qwest states that collocation is limited to "Qwest's Wire
19 Center." Rhythms disagrees with this characterization and the language in the *SGAT*. However,
20 because, as Rhythms understands it, collocation in other Qwest facilities will be an issue
21 addressed in other workshops, including the emerging services workshop, Rhythms will defer its
22 comments on this issue.
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1 CONCLUSION

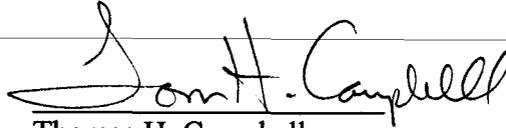
2 In conclusion, Rhythms submits that Qwest has not demonstrated that it provides just,
3 reasonable, and nondiscriminatory access to interconnection and collocation. Therefore, its
4 application should be denied.

5 DATED this 3rd day of August, 2000.

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