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September 21, 2000

Arizona Corporation Commission  
DOCKETED

e-spire Communications, Inc.:  
US West 271 Compliance  
Docket No. T-00000A-97-0238

SEP 21 2000



To The Commission:

Enclosed are an original and ten (10) copies of e-spire Communication's testimony of David M. Kaufman for the First Amended Set of Workshops on Advanced Services (UNE-Combinations).

Sincerely,

Michael W. Patten

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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MWP/djj  
Enclosures

*Copies mailed to all participants of this Docket*

**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

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

Docket No. T-00000A-97-238

**TESTIMONY OF  
DAVID M. KAUFMAN  
ON BEHALF OF  
e-spire COMMUNICATIONS, INC.**

**September 21, 2000**

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**271 WORKSHOP  
– UNE-COMBINATIONS –**

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1 As a result of Qwest's refusal to convert special access circuits, e-spire engaged in  
2 discussions with Qwest regarding the reasons for Qwest's refusal. Qwest's refusal  
3 apparently is founded on two issues: (i) an alleged "co-mingling" of circuits and  
4 (ii) e-spire's failure to negotiate an amendment to the existing interconnection agreement  
5 between e-spire and Qwest. The barriers created by Qwest were confirmed to e-spire in  
6 an August 30, 2000 letter from Qwest to J. Scott Nicholls, e-spire's Director of Carrier  
7 Relations and attached hereto as *Attachment A*. In that letter, Qwest states in pertinent  
8 part:

9 Paragraph 28 in the FCC's 00-183 Order rejected the  
10 suggestion to eliminate the prohibition on co-mingling  
11 concern over potential bypass of special access services.  
12 Qwest will re-groom upon request and with the agreement  
13 from e-spire that each circuit rolled will be done so at a  
14 charge.

15 Unless Qwest changes its position, which appears to be potentially codified in the  
16 proposed Arizona SGAT provisions on UNE-Combinations, Qwest is not meeting its  
17 obligations under Section 271.

18 **A. Co-Mingling**

19 Qwest apparently believes that the FCC statements about co-mingling allow  
20 Qwest to charge e-spire for re-grooming and rolling DS-1 circuits from aggregated DS-3  
21 circuits. e-spire believes that the Qwest position is without basis and is merely a barrier  
22 to entry. Each of the DS-1 circuits for which e-spire has requested conversion, in fact,  
23 meet the eligibility requirements of the FCC's *Supplemental Order Clarification*. Indeed,  
24 e-spire believes there is no lawful reason to delay or deny the requested conversions of its  
25 special access circuits to UNE-Combination pricing.

26 In general, the DS-1 circuit from e-spire's customer to Qwest's central office  
27 facility constitutes the local loop portion of the UNE-Combination (the EEL). The  
28 second element of the EEL – the multiplexing – is accomplished at Qwest's central office  
29 which converts the DS-1 circuit to a DS-3 circuit. The third and final element of the EEL

1 is the interoffice transport component, which connects Qwest's central office facility to  
2 e-spire's facility via a DS-3 circuit. In addition to DS-1 loops, a portion of this DS-3  
3 circuit also may be used to transport switched access traffic to and from e-spire's  
4 customers not served via dedicated facilities, 911 access to emergency calling traffic, 711  
5 access to telecommunications relay services traffic for hearing-impaired customers,  
6 operator services traffic, and/or SS7 signaling traffic.

7 Through bandwidth optimization, e-spire continues to engineer, design and deploy  
8 an efficient network and reduce network costs in order to provide cost-effective  
9 connections to existing and new customers. The aggregation of EEL-eligible special  
10 access circuits onto a high-capacity DS-3 transport facility that also carries ancillary  
11 services (such as 911 access) in no way bars the eligibility of the special access circuits  
12 for conversion to an EEL at UNE pricing under the FCC's *Supplemental Order*  
13 *Clarification*. This is not a case of proscribed "co-mingling." e-spire has not requested to  
14 co-mingle DS-1 loops that meet the standards set forth in option three of the  
15 *Supplemental Order Clarification* with those that do not. Each DS-1 loop combined on a  
16 DS-3 circuit meets the EEL eligibility criteria. Rather, e-spire is simply using the excess  
17 capacity on its DS-3 circuits to optimize the capacity and performance of its network and  
18 also to serve the critical needs of its customers. This also serves the public interest.

19 Qwest apparently believes that the aggregation of various types of traffic over the  
20 same high-capacity transport facility justifies its refusal of e-spire's request for  
21 conversion of special access circuits to EELs. For example, according to Qwest's  
22 apparent interpretation and application of the FCC's rules and orders, if only one DS-1  
23 circuit on a DS-3 circuit is used to carry 911 access to emergency calling, the *entire* DS-3  
24 circuit is ineligible for EEL rates. That argument is neither lawful nor practical. The  
25 FCC did not pronounce a bar against conversion of special access circuits that are carried  
26 over high-capacity transport with other types of circuits, such as 911 access to emergency

1 calling. Indeed, the DS-3 circuit itself is often a “virtual” circuit provisioned over OC-48  
2 or higher transport which is divided up for various users and traffic types. It is cost  
3 prohibitive to require a local carrier to deploy what amounts to an additional transport  
4 network in order to separate dedicated end-user traffic from ancillary traffic.  
5 Nevertheless, the practical effect of Qwest’s position would require the deployment of  
6 exactly this form of cost-prohibitive and inefficient network design and prevent CLECs  
7 from using the excess capacity on DS-3 or high-capacity circuit for additional  
8 functionality. It also would prevent consumers from enjoying less expensive advanced  
9 services over those circuits.

10 e-spire does not claim that the *entire* DS-3 transport facility should be converted to  
11 UNE pricing. Rather, it is e-spire’s position that only the special access portion of the  
12 DS-3 transport facility constitutes the interoffice transport elements of the EEL and,  
13 therefore, should be subject to conversion to UNE pricing. e-spire will continue to pay  
14 applicable retail rates for those circuits that are not converted to EELs. Using a pricing-  
15 and-billing methodology known as “ratcheting,” Qwest can charge different rates for  
16 dissimilar types of traffic sent over the same DS-3 circuit. Often a DS-1 circuit becomes  
17 part of a DS-3 circuit that, in turn, may become part of a larger OC-48 (or higher) circuit.  
18 e-spire believes that, regardless of the multiplexing involved, the special access traffic  
19 that e-spire has requested to be converted can be distinguished, or from a billing  
20 perspective “ratcheted,” from other traffic carried over the DS-3 and OC-48 circuits.

21 e-spire believes it properly has certified that the special access circuits it has  
22 requested be converted to EELs are used to provide a significant amount of local  
23 exchange traffic to customers. Pursuant to the FCC’s *UNE Remand Order*, *UNE Remand*  
24 *Supplemental Order* (FCC 99-370 (released Nov. 24, 1999)) and *Supplemental Order*  
25 *Clarification*, Qwest should have immediately converted the designated e-spire special  
26 access circuits to EELs that are subject to the less-costly UNE pricing. Because Qwest

1 refused e-spire's request (particularly in light of Qwest's capability to separate special  
2 access traffic from switched access traffic over its DS-3 circuit for the purpose of  
3 segregated pricing), it has failed to meet its Section 271 obligations regarding UNE-  
4 Combinations.

5         Although Qwest claims its SGAT tracks the FCC's June 2, 2000 *Supplemental*  
6 *Order Clarification*, e-spire's experience indicates that Qwest's interpretation of those  
7 provisions is improper, acts as a barrier to entry and violates public policy, particularly  
8 with respect to using a 911 circuit as a shield to converting other special access circuits.  
9 Until Qwest converts e-spire's special access circuits in Arizona and confirms that it will  
10 not interpret the SGAT provisions to impose the same restrictions Qwest has imposed on  
11 e-spire for special access circuit conversions, Qwest has not met its Section 271  
12 obligations concerning UNE-Combinations.

13         **B. Interconnection Amendment Requirement**

14         Although it does not appear from Ms. Stewart's Supplemental Affidavit that  
15 Qwest will require an interconnection agreement amendment in order to convert special  
16 access circuits to UNE-Combinations, Qwest has imposed such a requirement on e-spire.  
17 As such, that requirement acts as a barrier to entry because it delays the conversion  
18 process due to the need to negotiate an amendment and obtain Commission approval of  
19 the amendment. Given the FCC's orders, such an amendment is unnecessary. e-spire  
20 believes that a simple ordering process should be sufficient for such conversions.

## Attachment A

*August 30, 2000*

Mr. J. Scott Nicholls  
Director of Carrier Relations  
e.spire Communications, Inc.  
12975 Worldgate Drive, 6<sup>th</sup> Floor  
Herndon, VA 20170

Scott,

The following is a summary of the issues we discussed during our call on August 24, 2000. First and foremost, I wanted to thank you for your time and let you know that I am committed to you as a customer and look forward to meeting and working with you in the future. During our meeting, Qwest committed to respond to the following issues:

- Citing of the FCC's 00-183 decision on co-mingling
- Conversion requirements as they pertain to the list of 103 circuits
- Conversion processes being used to convert the four circuits that qualify
- Spreadsheet submittal rather than separate service order for conversions
- Updated escalation list

### **Co-Mingling of Circuits –**

Attached to this document, you will find a portion of FCC 00-183. Paragraph 28 in the FCC's 00-183 Order rejected the suggestion to eliminate the prohibition on co-mingling due to concern over potential bypass of special access services. Qwest will re-groom upon request and with the agreement from e.spire that each circuit rolled will be done so at a charge.

### **Conversion Requirements –**

It is imperative that e.spire immediately negotiate an amendment to their existing Interconnection Agreement in those states where they are contemplating any UNE conversion activity. In addition to the amendment, e.spire must submit a letter to Qwest self-certifying that local exchange services are being provided over the UNE "C" circuits. E.spire must also choose from one of the options below, prior to submitting any order. Each of these circuits will have to meet the requirements of "no co-mingling" prior to submittal.

#### *Option 1*

***CO-PROVIDER must certify to Qwest that it is the exclusive provider of an end user's local exchange service and that the loop transport combination originates at a customer's premises and that it must terminate at CO-PROVIDER's collocation arrangement in at least one Qwest central office. This condition, or option, does not allow loop-transport combinations to be connected to Qwest's tariffed services.***

### **Option 2**

CO-PROVIDER must certify that it provides local exchange and exchange access service to the end user customer's premises and handles at least one-third (1/3) of the end user customer's local traffic measured as a percent of total end user customer local dial tone lines; and for DS1 level circuits and above, at least fifty percent (50%) of the activated channels on the loop portion of the loop and transport combination have at least five percent (5%) local voice traffic individually; and the entire loop facility has at least ten percent (10%) local voice traffic; and the loop/transport combination originates at a customer's premises and terminates at CO-PROVIDER's collocation arrangement in at least one Qwest central office; and if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria outlined in this paragraph. (For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria outlined in this paragraph in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment). This condition, or option, does not allow loop-transport combinations to be connected to Qwest's tariffed services.

### **Option 3**

For the conversion of services to combinations of unbundled network elements, CO-PROVIDER must certify that at least fifty percent (50%) of the activated channels on a circuit are used to provide originating and terminating local dial tone service and at least fifty percent (50%) of the traffic on each of these local dial tone channels is local voice traffic (measured based on the incumbent's local exchange calling area); and the entire loop facility has at least thirty-three percent (33%) local voice traffic; and if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria. For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria as outlined in this paragraph in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment. This condition, or option, does not allow loop-transport combinations to be connected to Qwest's tariffed services. Under this option, collocation is not required. Under this option, CO-PROVIDER does not need to provide a defined portion of the end user's local service, but the active channels on any loop-transport combinations, and the entire facility, must carry the amount of local exchange traffic specified in this option.

#### *Conversion Processes –*

- Signing of the UNE C amendment.
  - Certification Letter signed.
  - Pre Qualification of circuits to be converted.
1. Option choice made per circuit.

## 2. Co-Mingling Prohibition

- Grooming if co-mingling exists.
- LSR issuance

### **Service Order vs. Spreadsheets –**

To date, Qwest continues to work through the processes and cost issues associated with processing orders in this manner. We will continue to work with e.spire to identify and negotiate aspects of this proposal in the future.

### **Regional Commitment Plan / Sonet Ring Service Partnership Program –**

E.spire is currently on a RCP program. An immediate saving can be received by increasing the commitment level on this plan without extending the timeframe. Of course, expanding your RCP will enable you to avoid the administrative work needed to regroom your circuits, amend your contracts and submit UNE-C conversion orders (or manage a spreadsheet process). We would like to have further discussions about this and the SRS Partnership Program at our next meeting.

### **Revised Escalation List –**

#### **Wholesale Emerging and Diversified Markets Escalation List – August 2000**

<u>Account Manager</u> Robyn White Pager	801-239-5512 800-946-4646 Pin # 1453467
<u>Senior Account Manager</u> Keiko Pettey Pager	801-239-4059 800-946-4646 Pin # 1489812
<u>General Manager</u> Dennis Pappas Pager	303-896-7072 800-946-4646 Pin #1457321
<u>Vice President</u> Judy Tinkham Pager	612-663-3013 877-251-3851
<u>President</u> Greg Casey	303-992-2787

Sincerely,

Dennis Pappas  
Qwest, General Manager - Central Region