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Via Overnight Delivery

Arizona Corporation Commission
Docket Control-Utilities Division
1200 West Washington Street
Phoenix, Arizona 85007-2996

RE: U S WEST § 271 Application
Docket No. T-00000B-97-0238

To the Commission:

Enclosed are the original and ten copies of AT&T and TCG Phoenix's Supplemental Comments, and an unexecuted Verification of Ken Wilson. An executed Verification will be filed under separate cover.

Yours truly,

Donald R. Finch

Enclosures
cc: Service List

This supplementation is insufficient, however, for Qwest to satisfy its legal obligations on this issue.

A. Qwest should be required to own splitters and make them available on a line-at-a-time basis.

AT&T demonstrated in its initial comments relating to this workshop that Qwest is obligated to own splitters and make them available on a line-at-a-time basis. See AT&T Comments at pp. 26-32. As represented by Ms. Stewart's affidavit, Qwest refuses to do so. There is no legitimate technical or operational justification for Qwest's refusal.

Qwest does not dispute that it is technically feasible for UNE-P loops to be conditioned by the addition of a splitter so that a UNE-P CLEC could use those loops to provide not only voice but also data. When a CLEC purchases the unbundled loop, either individually or as part of the UNE-Platform, the CLEC acquires the right to the *entire* loop, which includes both the portion used to provide voice service and the portion capable of providing advanced services. The FCC's rules expressly state that the purchase of a UNE includes "all of the unbundled network element's features, functions, and capabilities," and that the ILEC must allow the acquiring CLEC "to provide any telecommunications service that can be offered by means of that network element."¹ A line splitter is properly considered part of the unbundled loop because it plainly constitutes "attached electronics" inserted on the loop to provide CLECs the ability to take advantage of the full functions, features, and capabilities of the loop.² As such, it must be furnished by the ILEC if so requested by the CLEC.

¹ 47 C.F.R. § 51.307(c); See also Local Competition Order at ¶s 258, 260, 268.

² UNE Remand Order, at ¶ 175.

Nor may Qwest oppose provision of the splitter on the ground that it constitutes advanced services equipment, which it may generally not own. Unlike a DSLAM, which is used exclusively for the provision of advanced services, a splitter is a passive piece of equipment that – like the loop itself – is necessary to enable a carrier to provide both data and voice services on the same loop. As such, the FCC has already concluded that stand-alone voice splitters are not used exclusively to provide advanced services, and may be owned by the ILEC.³ Accordingly, such line splitters cannot fall into the category of advanced services equipment. Additionally, the provision of line-at-a-time splitters is consistent with the requirement that ILECs must provision UNEs in a manner that makes them useful to the CLEC.⁴ In the context of the unbundled loop, it is the splitter that allows the CLEC to use the high frequency functionality of the loop.

The addition of a standalone splitter to the loop is also akin to the conditioning of loops for DSL service, which the ILEC is required to do.⁵ Adding a splitter to a loop involves procedures that are analogous, in all relevant technical respects, to the adding or removing of other loop electronics (such as bridge taps or load coils) that ILECs routinely provide and are obligated to provide as part of loop conditioning.⁶ The splitter, therefore, is not a network element in its own right, but an optional functionality of the loop element that is necessary to provide voice service when a customer requests advanced

³ See, Memorandum Opinion and Order, Applications of Ameritech Corp., Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, FCC CC Dkt. No. 98-141, 14 FCC Rcd 14,712 ¶ 365 & fn. 682 (“SBC Merger Order”) & App. C. at § I(3)(d) (“SBC Ameritech Merger Conditions”), app. pend. sub. nom. Telecommunications Resellers Ass’n v. FCC, Case No. 99-1441 (D.C. Cir.).

⁴ Local Competition Order, at ¶¶ 265, 268 (“ . . . to the extent PacTel’s argument suggests that the 1996 Act does not require unbundled network elements to be provisioned in a way that would make them useful, we find that its statutory interpretation is inconsistent with the statute’s goal of providing new entrants with realistic means for competing against incumbents.”)

⁵ UNE Remand Order, ¶s 172-79; Line Sharing Order, ¶ 83.

⁶ Id.

data services on the same line, the very pro-competitive configuration the FCC found necessary to support competition in the Line Sharing Order.

The FCC's Texas 271 Order does not in any way alter the conclusion that the ILEC should be required to own the splitter and provide it on a line-at-a-time basis. In that Order, the FCC noted that it had not yet exercised its rulemaking authority to require ILECs to provide access to splitters, and therefore would not require SWB as a condition of obtaining 271 approval, to provide access to splitters.⁷ The FCC specifically declined to comment on the requirement that an ILEC provide access to an ILEC-owned splitter on the grounds that it was considering this issue in response to AT&T's petition for reconsideration of the UNE Remand Order.⁸ The FCC decision with regard to SWB's application on this issue was set at a particular point in time. As all participants know, the law is constantly evolving in this area. The FCC intends to address this ILEC obligation again in its reconsideration of the UNE Remand Order. The SWB decision is thus not dispositive of what the FCC may decide at the point in time when Qwest is before the FCC with its application for Section 271 relief.

Nor should the FCC's decision to not yet rule on a requirement that ILECs provide access to ILEC-owned splitters in its review of the SWB Section 271 Application deter the Arizona Commission from imposing such a requirement on Qwest. As noted above, existing federal law provides sufficient support for the Commission to require Qwest to offer this option to CLECs. Nevertheless, it is clear that the Commission is free to establish additional procompetitive requirements consistent with the national framework established by the Act, and the FCC's implementing rules and orders, under

⁷ Texas 271 Order, ¶ 328.

⁸ Id.

its own authority. For example, Section 251(d)(3) of the Act allows state commissions to enforce regulations, orders or policies that “establish access and interconnection obligations of local exchange carriers.”⁹

In sum, Qwest can only fulfill its legal obligation to provide access to all of the features, functionalities and capabilities of the loop if it owns and deploys the splitter.

B. Access to Qwest – owned splitters is also in the public interest.

Deployment of Qwest-owned splitters on a line-at-a-time basis will also serve to advance competition for DSL service and bundles of voice and data service, and as such, is very much in the public interest. As AT&T discussed in its initial comments relating to this workshop, there are several significant benefits to Qwest providing access to splitters on a line-at-a-time basis. When data CLECs share an ILEC-owned splitter, switching a voice customer’s data provider among such providers is much simpler and conserves valuable resources.

When changing a customer’s data provider in the line-at-a-time option, the only re-wiring that needs to occur is replacement of the cross-connect between the frame appearance of the high frequency output of the splitter and the original data provider’s POT bay frame appearance with a cross-connect from the same splitter frame appearance to the frame appearance of the new data provider’s POT Bay. In such a case, the connection of the outside plant facility to the ILEC-owned splitter and the connection of the voice output from the ILEC-owned splitter to the switch remain in place. By contrast, when splitters are owned by individual data CLECs and not shared, additional rewiring

⁹ 47 U.S.C. § 251(d)(3)

and resources are required and the voice service must be disconnected unless the ILEC takes the additional steps and time required for back tapping.

Access to Qwest owned splitters on a line-at-a-time basis also yields benefits when a customer terminates individual services, allows for efficient usage of splitters and racks within central offices where space is already scarce, and promotes competition among data CLECs because voice providers and ISPs encounter fewer barriers to switching from one provider to another.

Requiring Qwest to deploy splitters on a line-at-a-time basis also promotes the ability of CLECs to offer a bundle of voice and data service in competition with Qwest. One of the procompetitive aspects of UNE-P is that it allows a voice CLEC to enter the market and compete with Qwest without having to obtain collocation space. Access to Qwest-owned splitters on a line-at-a-time basis eliminates the need for UNE-P providers to secure collocation arrangements, and thus provides similar benefits to the expansion of DSL with UNE-P. For example, by having access to splitters, UNE-P providers can effectively partner with any data CLEC that has deployed a DSLAM in the central office, and are not limited to those that have already deployed their own splitters or lack space for additional splitters. By making it less difficult for UNE-P providers to access the high frequency portion of the loop, this impediment to competition may be avoided.

C. The Texas Public Utilities Commission recently confirmed that the Act and the FCC Rules require ILECs to supply splitters.

The merits of AT&T's arguments on this point are confirmed by a recent decision issued by arbitrators appointed by the Texas Public Utilities Commission. The Texas PUC arbitrators' decision, citing prior rulings of the FCC, acknowledged that a CLEC purchasing UNEs or combinations of UNEs is entitled to "all capabilities of the loop

including the low and high-frequency spectrum portions of the loop . . .”¹⁰ The decision also emphasized the FCC’s prior rulings that ILECs must afford CLECs access to “all of the UNE’s features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element, specifically including DSL services. The decision further found (1) that “excluding the splitter from the definition of the loop would limit its functionality,” (2) that “it is technically feasible for SWBT to furnish and install splitters to [enable CLECs to] gain access to the high frequency portion of the loop when purchased in combination with a switch port,” and (3) that it is “inaccurate from a technical standpoint to analogize splitters to DSLAMs.”¹¹

Finally, the Texas decision noted that SWB’s effort to require LECs to collocate in order to gain access to the high-frequency portion of the loop “(1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction and splitter installation; and (3) unnecessarily wastes central office and frame space.”¹² Thus, the arbitrators found that SWB’s approach “significantly prohibits UNE-P providers from achieving commercial volumes.”¹³ Conversely, they found that requiring the ILEC to provide the splitter not only advances competition but also “promotes more rapid deployment of advanced

¹⁰ Arbitration Award, Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, Docket No. 22315 (September 13, 2000) at 15.

¹¹ Id. at 17-19.

¹² Id. at 19.

¹³ Id.

services to a broader cross section of consumers, as required by Section 706” of the Act.¹⁴

D. Qwest should not be allowed to disconnect existing Megabit Service for end-users who switch to a CLEC voice provider.

Ms. Stewart’s Second Supplemental affidavit confirms a policy decision that Qwest revealed during the Emerging Services Workshop that greatly concerns AT&T. Qwest has made a policy decision to disconnect Megabit service from a customer that decides to change to a CLEC for local voice service.

End users in many areas can subscribe to Megabit DSL service from Qwest. Qwest already has hundreds of thousands of Megabit customers and is adding thousands every week. Qwest has more DSL lines than any other ILEC. Qwest has decided to terminate Megabit service if a customer switches local carriers. In doing so, Qwest has decided to walk away from a lucrative business on a loop that has already been conditioned for DSL and a customer that has already been provisioned and put into service. Qwest justifies this position, not with technical reasons, but simply by stating that it is not required to do so based on the FCC’s preliminary determination in the SWB Texas 271 proceeding. The Arizona Commission is not required to reach the same conclusion. In fact, such finding is contrary to the Act, FCC rules and Arizona law that prohibit barriers to entry into the local exchange market.

The *only* reason for Qwest to make this policy decision is to discourage its current monopoly-based customers from switching their local service to a competing local exchange carrier. This Qwest policy is a clear barrier to entry and is anticompetitive.

¹⁴ Id.

Customers with Megabit will be reluctant to switch local providers, knowing that their Megabit service will be terminated. To avoid this barrier, customers should have the option to maintain Megabit or to switch to an alternative DSL provider. The choice of having Megabit should not be eliminated.

II. Comments on the Transition Scenario Matrix

AT&T's and TCG Phoenix's comments submitted on August 21, 2000, AT&T generally observed that Qwest's SGAT does not provide the detail necessary to confirm that all of Qwest's essential processes for advanced services meet the requirements of the Act and the FCC's rules. In the Emerging Services Workshop held September 5 and 6, 2000, AT&T, Qwest and other parties discussed the absence of details specifically related to the transition of end users to and from various voice and data line-sharing and line-splitting alternatives. Qwest's principal response was that many processes continued to be in development. Although AT&T appreciates that Qwest's processes may not yet be finalized, AT&T believes that until such processes have been finalized in sufficient detail Qwest cannot be deemed to have met its requirements under the Act or FCC Rules.

In the Emerging Services Workshop, Qwest disclosed that representatives of Qwest and certain DLECs who were parties to the Interim Line Sharing Agreement dated April 24, 2000 had been meeting to develop the Transition Scenario Matrix, among other things. These transition scenarios listed in the matrix were meant to anticipate, in outline form, the possible transition scenarios implicated under the Interim Line Sharing Agreement. AT&T understands that the Transition Scenario Matrix is a work in progress and that Qwest and certain DLECs intend to hold additional meetings.

AT&T has not participated in these Qwest-DLEC meetings. Accordingly, AT&T cannot comment with full authority on whether all possible transition scenarios implicated under the Line Sharing Agreement have been incorporated in the Transition Scenario Matrix. Further, as AT&T demonstrated in the Emerging Services Workshop, the Line Sharing Agreement does not implicate all potential transition scenarios permitted under the SGAT or, more broadly, under the Act and applicable FCC rules. Accordingly, the Transition Matrix does not adequately address all potential mechanisms needed for all common transition scenarios.

In the Emerging Services Workshop, AT&T presented a non-exclusive and non-exhaustive list of additional transition scenarios. That list was entered into the record as an AT&T exhibit. In that list, AT&T demonstrated that Qwest has failed to develop numerous, important processes. As a general observation, AT&T insists that Qwest develop an enhanced transition matrix reflecting the transitions represented by AT&T's list as well as additional likely transition scenarios. AT&T expressly reserves the right to continue to comment on Qwest's developing processes as well as additional processes developed as a consequence of these workshops.

AT&T has several observations about the Transition Scenario Matrix. Initially, and perhaps most significantly, Qwest's refuses to include in its matrix any transition scenario in which a carrier other than Qwest provides voice services and Qwest provides it ADSL Megabit Services. As discussed above, Qwest has stated firmly on the record that it has made a "business decision" not to provide MegaBit ADSL service where Qwest is not also the voice provider. See Second Supplemental Affidavit of Karen A. Stewart, September 21, 2000, pp. 11-12. AT&T has addressed Qwest's anti-competitive

refusal above. Because Qwest must provide its MegaBit service in conjunction with other voice providers, Qwest must develop transition scenarios that involve these situations.

Second, during the Emerging Services Workshop, Qwest made numerous disturbing suggestions that in the event an end user transitions from Qwest as a voice provider (and a CLEC as a data provider) to another CLEC as a voice provider, Qwest will “disconnect” all services including the existing CLEC’s data providers service. Indeed Item 7 of the Transition Scenario matrix makes clear that Qwest intends to disconnect data service when voice service is transferred to another CLEC. Essentially, Qwest disclaimed any responsibility for ensuring that the end user’s existing data service not go out of service, ignoring the fact that it would be *Qwest’s* affirmative action resulting in such loss of service. Qwest also ignores that it is technically feasible for the voice providers to be changed without disturbing existing data providers. Qwest reasoned that it was the CLEC’s concern to arrange for the proper transition and that it had no proper role in managing this transition. Qwest’s approach is arrogant and irresponsible. The most conservative, pro-end user approach would be to allow existing data service to continue without interruption. Qwest needs to ensure that appropriate procedures are adopted, if not in the Transition Scenarios Matrix, in some other suitable procedure manual. In addition, the SGAT should be amended to assure CLECs that data service would not be dropped.

Next, AT&T observes that all Qwest responsibilities to provide loss and completion reports are noted as “under development.” AT&T, the CLECs and

Commission need, at a minimum, some general description of Qwest's intended, fully developed loss and completion report process.

In addition, Items 3 and 3A in the Transition Scenario Matrix describe situations in which an end user decides to transfer data service from the existing CLEC data provider. Item 3 describes the transfer from one CLEC data provider to another. Item 3A describes the transfer from a CLEC data provider to Qwest Megabit service. Qwest processes to transfer the end user in these scenarios should be identical. The matrix, however, doesn't reveal the specific procedures Qwest follows to process under Item 3A (CLEC data provider to Qwest data provider). A complete and appropriate inquiry into these two processes would reveal whether Qwest is fulfilling its obligations to provide nondiscriminatory access.

Item 8 describes a scenario in which an end user changes its phone number. This Item suggests that an end user is required to advise the DLEC that it has changed its email. After the end user notifications, under Item 8, the DLEC must initiate an LSR advising of number change. AT&T believes that this arrangement creates a materially different obligation on DLECs that Qwest itself enjoys under similar circumstances. Qwest should ensure that this procedure is congruent with the same procedures Qwest benefits from when an end user changes its phone number.

Item 11 describes a number of scenarios in which existing lines have load coils. It is unclear how Qwest's proposals here synchronize with its general obligations under the SGAT to condition loops or perform other work.

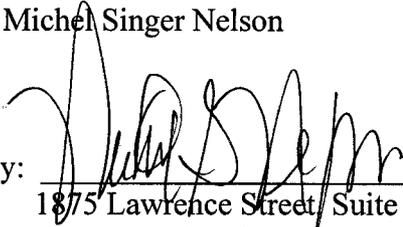
III. Conclusion

Qwest must amend its SGAT proposal relating to line sharing consistent with AT&T's comments here. In addition, more work needs to be done with the Transition Scenario Matrix to ensure that all necessary possibilities are addressed and the Act and the FCC rules are followed. Qwest cannot be found to have satisfied its Section 271 obligations unless the recommended changes are made and the noted voids are filled.

Dated this 29th day of September 2000.

**AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC.**

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SUBSCRIBED AND SWORN TO before me this ___ day of September, 2000 by Kenneth L. Wilson, who certifies that the foregoing is true and correct to best of he knowledge and belief.

Witness my hand and official seal.

Notary Public

My commission expires:

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T and TCG Phoenix's Supplemental Comments regarding Docket No. T-00000A-97-0238, were sent via overnight delivery this 29th day of September, 2000, to:

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and that a copy of the foregoing was sent via overnight delivery this 29th day of September, 2000 to the following:

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