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VIA HAND DELIVERY

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

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Re: U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1993, Docket No. T-00000A-97-0238

To Whom It May Concern:

Enclosed for filing in the above matter are the original and ten copies of the Rebuttal Affidavit of Karen A. Stewart. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Timothy Berg

TB/dp
Enclosure

cc: All parties of record

PHX/DPOOLE/1113178.1/67817.150

BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF QWEST)
CORPORATION'S COMPLIANCE WITH) DOCKET NO. T-00000B-97-0238
§ 271 OF THE TELECOMMUNICATIONS)
ACT OF 1996)
_____)

CHECKLIST ITEM 2 LINE SPLITTING

REBUTTAL AFFIDAVIT OF

KAREN A. STEWART

QWEST CORPORATION

OCTOBER 6, 2000

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I. Identification of Affiant

My name is Karen A. Stewart. I am a Director in the Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. Policy and Law organization.¹

My office is located at 421 SW Oak Street, Portland, Oregon. I filed an affidavit on March 25, 1999 providing direct testimony in this docket. In addition, I filed a supplemental affidavit on July 21, 2000.

II. Purpose of Rebuttal Affidavit

The purpose of my rebuttal testimony is to reply to the comments of AT&T and TCG Phoenix (AT&T) filed on September 29, 2000 on line splitting for UNE-P lines.

III. UNE-P Line Splitting

In its comments filed on September 29, 2000 AT&T raised three separate issues in regards to Qwest's line splitting offering. First, AT&T requested Qwest be obligated to own POTS splitters; second, that Qwest be required to provide its retail xDSL product, i.e., MegaBit Service, on UNE-P lines and; third, general comments on the scenario matrix.

The first two issues have already been identified as open issues between the parties in my UNE-P line splitting reply testimony filed on September 21, 2000. In these comments, I will use the same issue number and add the third as UNE-PLS-6.

¹ Qwest Corporation is the successor to U S WEST communications, Inc. Qwest filed an Authority to Transact Business application with the Commission on July 6, 2000. That application is pending. Nevertheless, given that Qwest's principal place of business is in Colorado, and that the name change is effective there, this pleading has been filed under the name of Qwest.

UNE-P-LS-4. AT&T believes it should be able to order a UNE-P configuration and have access to a Qwest owned splitter.²

As stated in my line sharing reply testimony filed on August 30, 2000 and my UNE-P line splitting direct testimony, there is absolutely no legal basis for AT&T's claim that it should be allowed access to Qwest-owned splitters. In its Texas 271 opinion, the FCC specifically rejected AT&T's claims. As I have noted in previous testimony, and AT&T in its comments, this exact AT&T request was rejected by the FCC in the Texas 271 order. Specifically the FCC stated:

326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.³ AT&T alleges that this is "the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive."⁴ Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop.⁵ AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.⁶

327. **We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P.** The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, **and incumbent LECs therefore have no current obligation to make the splitter available.**⁷ As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity."⁸ We separately determined that the DSLAM is a component of the packet

² AT&T Comments at page 20.

³ See AT&T Texas II Pfau/Chambers Decl. at paras. 40-42; see also IP Communications at 12, 14.

⁴ AT&T Texas II Pfau/Chambers Decl. at para. 41.

⁵

Texas II Pfau/Chambers Decl. at paras. 40-42.

⁶ AT&T Texas II Pfau/Chambers Decl. at para. 40.

⁷ See 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

⁸ *UNE Remand Order*, 15 FCC Rcd at 3776, para. 175.

switching unbundled network element.⁹ We observed that “DSLAM equipment sometimes includes a splitter” and that, “[i]f not, a separate splitter device separates voice and data traffic.”¹⁰ **We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element.** That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding. (emphasis added)

328. **The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters.** . (emphasis added)

Indeed, AT&T admits that Qwest does not have a 271 obligation to provide CLECs with POTS splitters. Despite the incorrect and misleading AT&T opening statement, “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”, further in its own comments, **AT&T states** the true bottom line on this issue for this 271 proceeding:

“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.”¹¹

This is a direct quote from the AT&T comments on page 4, at approximately lines 10-13.

⁹ *UNE Remand Order*, 15 FCC Rcd at 3833, paras. 302-303.

¹⁰ *UNE Remand Order*, 15 FCC Rcd at 3833, para. 303.

¹¹ Texas 271 Order, ¶ 328.

By AT&T's own admission, Qwest does not have a 271 obligation to provide access to POTS splitters. Therefore, in this 271 proceeding, at this time, this issue is clearly beyond the scope of a 271 docket.

I also note that AT&T in its comments implied that the FCC in the UNE Remand Order at paragraph 175 had determined that the POTS splitter was contained within the "attached electronics" that Qwest is obligated to provide with an unbundled loop¹². Again this is incorrect and misleading. As quoted above in the Texas 271 order, the FCC stated: **"We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element"**.

Qwest also disputes the AT&T assertion that adding a POTS splitter is analogous "in all relevant technical respects" to loop conditioning.¹³ The adding or removing of load coils that happens in the outside plant involves cooper loops, as does the installing of POTS splitters, but that's about what they share in a technical respect. The two do not even share common wiring techniques, they are two very different and separate procedures. The "reverent technical aspects" of owning, installing, inventorying and maintaining of POTS splitters in a central office far out weight any minor correlation, as it relates to technical issues, AT&T may be attempting to draw in its comments.

¹² AT&T at page 2.

¹³ AT&T at page 3.

AT&T further attempts to cloud the issue by implying that only by requiring Qwest to own POTS splitters can a UNE-P CLEC avoid having to purchase collocation space.¹⁴ Again, this is incorrect. Qwest has never stated or required that the voice CLEC is the only one who can own and install the POTS splitter. Qwest has simply stated that the voice CLEC (who is ordering the UNE-P) must tell Qwest how and where they want the unbundled loop portion routed in the office to reach a POTS splitter. If Qwest has been unclear that the voice CLEC can make arrangements to partner with a DLEC to provide the POTS splitter, it will modify its SGAT to be perfectly clear on this issue. Moreover, the providing of xDSL service to a UNE-P line requires the collocation of DSLAM equipment, regardless of who provides the splitter.

AT&T also brings to the Commission's attention a Texas Arbitration decision.¹⁵ Qwest would note for the record that this decision appears to be based on material facts that are different than the facts in Arizona. In this Texas decision, the reason Southwestern Bell Telephone Company (SWBT) was required to provide POTS splitters to CLECs for UNE-P lines was because they were providing POTS splitters for DLECs in line sharing. The arbitrator stated:

The Arbitrators agree with AT&T that it is discriminatory for SWBT to provide the splitter in a line sharing context while not providing the splitter in a line splitting context.¹⁶

¹⁴ AT&T at page 6

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

¹⁶ Arbitration Award, Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, Docket No. 22315 (September 13, 2000) at page 21.

The Qwest SGAT Line Sharing section, specifically at 9.4.2.1.3, states that the splitter must be provided by the CLEC for line sharing. Therefore, Qwest does not have the same potential "discriminatory" problem that SWBT faced in Texas, because it has the same splitter requirements for both products.

There is no question that this issue is not appropriate for this proceeding, and Qwest suggests that further discussion of the issue will not be productive.

UNE-P-LS-5. The CLECs request that Qwest be required to provide is retail xDSL product, i.e., MegaBit Service on UNE-P lines.

As with line at a time access to POTs splitters, this exact issue was reviewed by the FCC in its Texas 271 order. Specifically, the FCC stated:

Other Issues. We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P. (fn omitted) Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. . . **In sum, we do not find this conduct discriminatory.**¹⁷

Qwest is under no obligation to provide its retail version of a xDSL service, i.e. MegaBit, to CLECs using UNE-P arrangements. Moreover, a CLEC does not need Qwest's xDSL service in order to provide DSL service to its end user customers. Even if the CLEC does not have DSL capability, by using line splitting, it can partner with another CLEC/DLEC to offer DSL service.

¹⁷ Texas Order at 330.

Qwest disagrees with the AT&T statement that the only reason Qwest would not provide MegaBit is to discourage its current customers from seeking a different voice provider.¹⁸ This is not correct. Qwest has made the business decision to not provide MegaBit service for a variety of reasons. For example, the Qwest provisioning, billing and maintenance procedures are based on Qwest having the underlying voice services, including the phone number which is used for most MegaBit tracking, billing, loop qualification, and repair purposes. In some unbundled loop applications, Qwest may not even know or track the telephone number-loop assignment combination in its provisioning systems.

In addition, Qwest would potentially be required to negotiate contracts, to include terms, conditions, and billing and collection arrangements with an extremely large number of CLECs. Qwest has simply determined that it can best use its limited resources to meet the needs for its current voice customers prior to expanding its business to serve other CLECs' customers.

As shown above, Qwest does not have a 271 obligation to provide its retail MegaBit service on UNE-P lines. This issue is clearly beyond the scope of a 271 docket. As demonstrated by the extensive schedule of workshops, the review of FCC 271 requirements is complex and time consuming. It is simply unreasonable to ask the parties to go beyond the scope of the required 271 issues in this docket.

UNE-P-LS-6 - Transition Scenario Matrix Review

¹⁸ AT&T at page 8

The Transition Scenario Matrix, provided to the parties on September 11, 2000, per the request of the Advanced Service workshop participants, was the then current working document of the joint CLEC/Qwest line sharing sub-team. This scenario matrix reflected the line sharing transition scenarios initially prioritized by the CLECs on the sub-team with Qwest.

This document is a "living" document subject to additions such as those presented by AT&T at the Arizona workshop. The AT&T recommended additions have been added to the Transition Scenario Matrix as line splitting scenarios and will be prioritized and developed by the joint CLEC/Qwest team, in a manner similar to the successful process used for the line sharing scenarios. AT&T, as is any CLEC, is welcome to join the CLEC/Qwest joint sub-team, which meets on a regular basis, twice a month.

In the following section I will respond to the AT&T observations about various scenarios.

Item 7 in Transition Scenario Matrix describes the scenario where line sharing is in place (based on the definition of line sharing where Qwest provides voice and CLEC provides data) and end user disconnects the Qwest voice service. This scenario is intended to reflect a process that allows a CLEC (same or different DLEC) to be able to continue providing data to the end user as an unbundled loop upon disconnect of the line sharing arrangement. As noted by AT&T, this is not an exact UNE-P scenario because there is no longer Qwest provided voice. In working with the DLECs in this

application, DLECs thought it was reasonable to disconnect because they would probably use a different equipment configuration to serve a customer when the DLEC had access to the whole unbundled loop.

However, in the scenario where the Qwest voice is converted to CLEC provided UNE-P voice, Qwest believes the new voice CLEC, (who is in fact purchasing the entire unbundled loop) is responsible for determining the end user customer's desires for its data service. As Qwest stated in the Arizona workshop, the CLEC will know from the customer service record that there is line sharing on the line, so in the pre-order process they will have a "heads up" to address this with the end user customer. The CLEC, with a proper Letter of Authorization (LOA) is required to give Qwest a service order that tells Qwest what to do with the line sharing arrangement; whether to take it down or leave it in place and convert it to a line splitting arrangement. If Qwest were to leave the "line sharing" arrangement in place, there may be as many CLECs who are concerned because they want access to the whole loop (at the time of conversion) to provide the end user customer a package of voice and data services.

Qwest is committed to working with the CLEC/DLEC community as part of the Transition Scenario Matrix sub-team to determine what is the most reasonable process given all the factors.

In response to the AT&T concern on the loss and completion report processes, current daily loss and completion reporting was developed using a manual process where the Qwest Interconnect Service Center sends the loss report to the CLECs via an

electronic mail report. This manual process will continue until the end of 1st quarter 2001, when system enhancements are available to transmit loss reports automatically to the CLECs, similar to existing unbundled loop loss and completion reporting.

Regarding Item 3 & 3A, the matrix reflects the high-level work activities for each group (end user, Qwest, DLEC, etc). These particular processes cannot be categorized identically, because as the matrix reflects, the key driver is the entity with the LOA from the end user that controls the conversion. Each CLEC's internal process steps would need to be similar to provide an identical customer experience to the end user customer, assuming that is what AT&T is defining as nondiscriminatory access.

The Item 8 and Item 11 scenarios identified by AT&T, are scenarios that are currently being worked on by the sub-team. If AT&T has specific concerns about how these scenarios are developed they are invited to join the sub-team. However, the question of non-discriminatory access may be perceived differently by different CLECs/DLECs based on their own business model.

Qwest acknowledges that it will provide non-discriminatory access to unbundled network elements on rates, terms and conditions that are non-discriminatory, just and reasonable. Further, the access provided to that element, will be equal between all CLECs requesting access to that element; and where technically feasible, the access and unbundled network element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself. However, in those situations where Qwest does not provide access to network elements to itself, Qwest

will provide access in a manner that provides CLECs with a meaningful opportunity to compete.

Qwest believes it will be most effective to have the interested CLECs and DLECs working with the Qwest sub-team to work on the detail of the nondiscriminatory processes that have and will continue to be established as there is more experience in this new environment. The relevance of the matrix, and the sub-teams work to the 271 workshop, is to acknowledge that Qwest and the CLECs understand the need for nondiscriminatory processes and are working together to create solutions to the different ordering possibilities.

IV. Conclusion

My rebuttal testimony confirms Qwest meets the requirements in the Act and the related FCC orders to provide line splitting on UNE-P lines.

This concludes my affidavit.