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Arizona Corporation Commission
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IN THE MATTER OF U S WEST) DOCKET NO. T-00000A-97-0238
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271)
OF THE TELECOMMUNICATIONS)
ACT OF 1996)

**COVAD COMMUNICATIONS COMPANY'S BRIEF ON INTERCONNECTION
AND COLLOCATION IMPASSE ISSUES**

Covad Communications Company ("Covad") respectfully submits this brief on the interconnection and collocation impasse issues:

INTRODUCTION

Throughout the workshops addressing Checklist Item 1 (interconnection and collocation), Qwest Corporation ("Qwest") assiduously refused to amend its SGAT to take pro-competitive, pro-entry positions in several key areas. Indeed, even after a thorough development of the record on these issues, Qwest continued to limit unlawfully the forms of collocation, assess improper charges, limit CLEC collocation requests, elongate improperly the interval for collocation, as well as to engage in other prohibited practices.

Qwest's SGAT, and the positions it took in the workshops, belie Qwest's supposed "pro-competitive" commitments. Indeed, Qwest's SGAT, taken together with its refusal to remedy ongoing performance deficiencies, plainly reflects a desire to

prevent the development of a competitive xDSL market in Arizona. Qwest thus has not met its burden to show that its practices and proposed SGAT comply with state and federal law. This Commission, therefore, should not approve Qwest's § 271 application.

ARGUMENT

I. Qwest Bears The Burden Of Demonstrating That It Has Met The Requirements For § 271 Approval.

Section 271 of the Telecommunications Act of 1996 (the "Act") requires Qwest to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."¹ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point . . . that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."²

Collocation is one method of interconnection.³ Under the Act, therefore, incumbent LECs must:

[P]rovide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.⁴

¹ 47 U.S.C. § 271(c)(2)(B)(i); see also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-978 and 95-198 (1996), ¶ 173 ("Local Competition Order").

² 47 U.S.C. § 251(c)(2)(B), (C), (D).

³ See 47 U.S.C. § 251(c)(6).

⁴ 47 U.S.C. § 251(c)(6).

The FCC has issued orders and promulgated rules that define just, reasonable, and nondiscriminatory collocation.⁵ Meeting these requirements is an "essential prerequisite to demonstrating compliance with item 1 of the competitive checklist."⁶

Qwest bears "the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied."⁷ "[T]he ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application."⁸ Qwest thus must prove that it complies with state and federal laws on interconnection and collocation before the Commission may grant its § 271 application.

II. Qwest Has Failed To Meet Its Burden Of Proving That It Has Satisfied The Requirements For § 271 Approval.

A. The Definition of Shared Physical Collocation Improperly Omits Shared Cageless Collocation (SGAT § 8.1.1.4; AIL 1-67).

"Shared cage[d] and cageless collocation arrangements must be part of an incumbent LEC's physical collocation offerings."⁹ Further, "[i]ncumbent LECs must allow competitors to collocate in any unused space in the incumbent LEC's premises, without requiring the construction of a cage or similar structure"¹⁰ In stark contrast to these unambiguous requirements, Qwest's SGAT permits only "[s]hared [*c*]aged [*p*]hysical [*c*]ollocation," but not shared cageless physical collocation. SGAT § 8.1.1.4 (emphasis added).¹¹

In an astounding leap of logic, Qwest argues that the FCC does not require shared cageless physical collocation, because it only established specific rules for shared caged

⁵ See, e.g., 47 C.F.R. §§ 321, 323.

⁶ *In the Matter of Application by SBC Communications Inc.*, Mem. Op. and Order, 15 FCC Rcd. 18354 ¶ 64 (2000) ("SBC 271 Order").

⁷ *In the Matter of Application of BellSouth Corporation*, Mem. Op. and Order, 13 FCC Rcd. 539 ¶ 37 (1997) ("BellSouth 271 Order").

⁸ *Id.*

⁹ SBC 271 Order, ¶ 80.

¹⁰ 47 C.F.R. § 51.323(k)(2).

¹¹ SGAT § 8.1.1.4 also improperly prohibits shared virtual collocation. Because, to date, Qwest has made no showing that shared virtual collocation is not technically feasible, it must provide it.

physical collocation.¹² Qwest's reliance on § 51.323(k)(1) is without basis. Less than one year ago, "the Commission revised its collocation rules to require incumbent LECs to include shared cage[d] and cageless collocation arrangements as part of their physical collocation offerings."¹³ Section (k)(1) thus does not relieve Qwest of its unqualified obligation under (k)(2) to provide cageless collocation in any unused space.

Qwest also has not demonstrated that shared cageless collocation is not technically feasible.¹⁴ To the contrary, Qwest's sole objection to providing shared cageless collocation is the changes it would have to make to its operational support systems:

We have a bona fide request process. So far we've received no request for this where the sharing of cageless would require systems development for Qwest in terms of billing systems for the collocation space as well as operation systems that are used to track the terminations for the CLECs that would be sharing that space. Currently there are no methods and procedures in place to do that. So it is appropriate that if there is interest in it and someone wants us to develop those capabilities, that that be done under a bona fide request process . . . if it's something that's being requested that you want us to change billing systems or operation systems, that's kind of a different thing for us to take care of.¹⁵

Qwest's objection thus demonstrates that shared cageless collocation, as well as the method by which such collocation may be accomplished, are technically feasible.

Significantly, it is clear that Qwest's concern is driven by the perceived cost of implementing the changes necessary to make shared cageless collocation a standard product offering. Simply put, Qwest is willing to provide shared cageless collocation pursuant to a bona fide request, which entails less work and therefore comes at a decreased cost to Qwest,

¹² TR 1415, 8-11 (Bumgarner) (*citing* 47 C.F.R. § 51.323(k)(1)).

¹³ *SBC 271 Order* ¶ 64.

¹⁴ *See, e.g.*, TR 1414, 22-25 (Zulevic).

¹⁵ TR 1415, 11-21; 1417, 7-10 (Bumgarner).

rather than undertaking at this juncture a modification to its OSS systems.¹⁶ Such cost-based concerns are without any legal merit.¹⁷

Moreover, Qwest should permit shared cageless collocation because it is efficient. As Covad pointed out:

One of the main reasons that Covad chose to go with cageless collocation predominantly was to make the best possible use of the available space in the central office environment. It would only make sense to me that we would be able to avail ourselves to the extent that we have an additional relay rack available to share, that we should be able to avail ourselves of the opportunity to share that with another carrier, again looking at the best possible use of the available space in the central office environment.¹⁸

The ability to share cageless collocation arrangements thus is crucial to efficient use of space at any Qwest premise, as well as to the efficient deployment of a new entrant's network. To allow Qwest to provide only shared caged collocation would result in duplication of CLEC facilities and supporting infrastructure. To prevent this inefficiency, the SGAT must be modified to provide for shared cageless physical collocation.

B. Qwest Improperly Prohibits Remote Virtual Collocation (SGAT §§ 8.1.1.8, 8.2.7.1, 8.2.7.2 & 8.4.6; AIL 1-68).

A CLEC is entitled to "any technically feasible method of obtaining interconnection," including "physical collocation and virtual collocation at the premises of an incumbent LEC."¹⁹ Yet, the SGAT states that remote collocation only "allows CLECs to *physically* collocate equipment in or adjacent to a Qwest Remote Premises. . . ." SGAT § 8.1.1.8 (emphasis added). By including "physically," Qwest prohibits remote virtual collocation.

¹⁶ See TR 1415, 8-21 (Bumgarner).

¹⁷ *Local Competition Order* ¶¶ 198, 199 ("the term 'technically feasible' refers solely to technical or operational concerns, rather than economic, space or site considerations The 1996 Telecommunications Act bars consideration of costs in determining technically feasible points of interconnection or access.").

¹⁸ TR 1414, 12-20 (Zulevic).

¹⁹ 47 C.F.R. § 51.321(a), (b)(1), 323(a).

Because Qwest has not demonstrated that remote virtual collocation is not "technically feasible," the FCC rules require Qwest to provide it.²⁰

Public policy and common sense likewise dictate this result. First, no CLEC is in the financial position to collocate DSLAMs at a sufficient number of remote terminals to offer a viable competitive service. Qwest enjoys considerable economies in deploying remote DSLAMs that CLECs do not possess, which poses a considerable and sustainable competitive problem. Those economies derive from the ubiquitous nature of Qwest's incumbent LEC network – a level of ubiquity no CLEC possesses.

Second, remotely deploying a DSLAM causes significant waste. For example, if a CLEC is required to collocate a DSLAM in a remote terminal, as Qwest currently requires, that CLEC has the ability to serve approximately 2,000 loops. However, because remote deployed DSLAMs serve, on average, only 400 loops,²¹ a tremendous amount of capacity is wasted – and at a significant cost to the CLEC.

Third, physically collocating DSLAMs in Qwest's remote terminals would materially delay a requesting carrier's timely entry into the local market or alternatively delay expansion of an existing carrier's line sharing service offerings.²² In fact, the FCC recognizes that collocation of a DSLAM in a remote terminal is an inherently time consuming process.²³ Further delays would be incurred while the CLEC attempted to secure

²⁰ 47 C.F.R. § 51.321(a).

²¹ See Initial Comments of Covad Communications Company Regarding Emerging Services.

²² See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd. 3696, ¶ 361 (1999) ("UNE Remand Order").

²³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26, ¶ 13 (2001) ("Line Sharing Reconsideration Order").

necessary access to rights-of-way, zoning, and power supply that may be needed in certain instances.²⁴

Covad identified a technically feasible and cost-efficient method by which remote terminal collocation may be effectuated. Specifically, Covad suggested that Qwest permit CLECs to virtually collocate at remote terminals on a "DSL line card by DSL line card" basis.²⁵ Virtual collocation on this basis would permit multiple CLECs to use a single DSLAM to provide xDSL services to the same 400 loops, without the loss of extra capacity or at an undue cost to the CLECs.²⁶ Qwest refused to agree to that proposal. In so doing, Qwest erected a significant barrier to market entry and effectively stymied the development of a competitive xDSL market in Arizona. This Commission should prevent Qwest from strangling competition in Arizona, and require Qwest to permit remote virtual collocation.

C. Adherence To Original Collocation Application Date (SGAT § 8.2.1.11, AIL 1-70).

Covad accepts Qwest's language in SGAT § 8.2.1.11 regarding adherence to the original collocation application date.

D. Qwest May Not Assess A Channel Regeneration Charge Unless CLECs Deliberately Design Their Network To Require It (SGAT § 8.3.1.9; AIL 1-71).

The FCC has stated that "... we require the LEC to provide the repeaters needed [for regeneration] without imposing any additional costs on the interconnectors."²⁷ Yet, the SGAT states that a channel regeneration charge is "[r]equired when the distance from the

²⁴ See *UNE Remand Order* at ¶¶ 213 and 364. In addition, Qwest's Rights of Way Agreement also threatens to remove the Commission's oversight on Qwest's management of rights of way disputes. Qwest has proposed mandatory alternative dispute resolution to resolve such disputes. The results of those proceedings may never become public—which means that this Commission may never know how or why a CLEC may not have been able to obtain rights of way to serve a particular town or neighborhood.

²⁵ TR 1429, 14-25; 1430, 4-6; 1431, 1-21 (Zulevic).

²⁶ *Id.*; see also *Line Sharing Reconsideration Order*, ¶ 13.

²⁷ *In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection*, Second Report and Order, 12 FCC Red. 18730 ¶ 110 (1997) ("*Collocation Order*").

leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration." SGAT § 8.3.1.9. This charge is an "additional cost" and therefore prohibited.

Qwest nonetheless believes that CLECs should pay for regeneration because they "have an opportunity to review the planned space allocation and, if available, could request an alternative location."²⁸ In fact, CLECs have no real control over where they are placed in the central office – and thus no way to affect whether regeneration is necessary – because "the collocation site was selected by Qwest."²⁹ Moreover, the collocation site selected by Qwest regularly ignores best engineering practices and, instead, more often reflects "the business needs and decisions of Qwest."³⁰ Thus:

CLECs, in many cases, are already incurring a lot of additional costs for cabling, transmission cabling, power cabling . . . in conjunction with establishing a collocation. And then to further burden the CLEC with having to pay for the regeneration costs when it does happen . . . is totally unreasonable.³¹

Qwest responds with the argument that the *Collocation Order's* prohibition of regeneration charges was overturned by the Eighth Circuit in the *Iowa Utilities Board v. FCC* case.³² The Eighth Circuit's decision, however, involved rules that did not address channel regeneration.³³

Qwest also argues that the *Collocation Order* only "required that LECs allow for a physical collocation arrangement that does not require repeaters."³⁴ Qwest contends it has satisfied this obligation by providing a service that requires no repeater.³⁵

²⁸ Rebuttal Testimony of M. Bumgarner, Feb. 19, 2001 (WA), p. 65 ("Bumgarner Reb.").

²⁹ TR 1488, 18-19 (Wilson).

³⁰ TR 1489, 8-12 (Zulevic).

³¹ TR 1489, 12-19 (Zulevic).

³² TR 1487, 8-21 (Bumgarner); Bumgarner Reb., p. 65 (citing *Iowa Utilities Board v. FCC*, 219 F.3d, 744, 765 (D.C. Cir. 2000)).

³³ *Iowa Utilities Board*, 219 F.3d at 765.

³⁴ Bumgarner Reb., at 64.

³⁵ *Id.*

As an initial matter, this service is no service at all, because the non-regenerated channel termination contains no signal level guarantee. Rather, the signal level guarantee is available only where the signal has been regenerated.³⁶ Thus, because Qwest's purported *Collocation Order*-compliant service does not guarantee the opportunity to compete in a meaningful manner, Qwest has failed to comply with its obligations under the Act.

More importantly, the FCC stated that "repeaters should not be needed," because LECs can and should design collocation space in a manner that does not require regeneration.³⁷ Qwest itself recognizes this obligation by committing at other paragraphs in the SGAT to efficient engineering.³⁸ The SGAT thus should be modified to eliminate the assessment of a channel regeneration charge, except in the sole circumstance where a CLEC makes a deliberate decision to design its network in a way that requires regeneration.

E. Collocation Space Reservation (SGAT §§ 8.4.1.7 & 8.4.1.7.3, AIL 1-73).

Covad accepts Qwest's language in SGAT §§ 8.4.1.7 and 8.4.1.7.3 regarding collocation space reservation.

F. Qwest May Not Limit The Number Of Collocation Requests By A CLEC (SGAT § 8.4.1.9; AIL 1-74).

Pursuant to SGAT § 8.4.1.9, Qwest proposes to limit the number of collocation applications a CLEC may submit to "a maximum of five (5) Collocation Applications per CLEC per week per state," with six or more orders being processed and provisioned on an individually negotiated basis. SGAT § 8.4.1.9 also appears to authorize Qwest to reject more than five orders per week "depending on the volume of Applications pending from other

³⁶ *Id.*

³⁷ *Collocation Order* ¶ 117.

³⁸ TR 1489, 20-21 (Bumgarner).

CLECs.” These requirements are inconsistent with 47 C.F.R. § 51.323, which makes no reference to any limitation on the number of collocation applications a CLEC may submit.

Qwest nevertheless asserts that it may impose “reasonable” limits on the number of collocation applications a CLEC submits at any one time “to balance our workload.”³⁹ In other words, SGAT § 8.4.1.9 purportedly reflects Qwest’s belief that it may consider volumes of collocation orders and, accordingly, unilaterally cap the number of collocation orders submitted.⁴⁰ Qwest, however, submitted no evidence that it self-imposes similar limits on its own central office construction or that it lacks the resources to process and provision more than five collocation applications per CLEC per week.⁴¹ To the contrary, Qwest provided only anecdotal evidence regarding CLEC applications, and stated that there’s “no set number” of applications it can process; rather “[w]e just base it on the volumes we’ve seen I can’t just spit a number out for you.”⁴²

The illogic of Qwest’s position is self evident: under Qwest’s proposal, it could be required to process 10 orders if those orders were from two CLECs in a given week, but Qwest could refuse to process those same ten orders if they were submitted by a single CLEC. Qwest’s argument is further undermined by the forecast requirement contained in the SGAT, which purportedly is designed to give Qwest adequate notice of each CLEC’s plans to order collocation sufficiently in advance for Qwest to have the necessary level of resources available. Accordingly, the Commission should require that Qwest delete SGAT § 8.4.1.9 as unlawful under controlling law.

³⁹ TR 1560, 24-25; 1561, 1-3 (Bumgarner).

⁴⁰ TR 1561, 13-18 (Bumgarner).

⁴¹ Qwest’s anecdotal evidence is undermined by its position in other § 271 proceedings. In Oregon, for example, Qwest agreed to the following language:

If a CLEC submits ten or more application within a ten day period, Qwest intervals for collocation will be increased by ten days for every ten or fraction thereof additional applications.

⁴² TR 1564, 9-12 (Weidenbach).

G. Qwest May Not Condition The Provisioning Of A Collocation Space For Which No Infrastructure Is Required On the Submission of a Forecast (SGAT §§ 8.4.2.4.3, 8.4.2.4.4, 8.4.3.4.3, 8.4.3.4.4, 8.4.4.4.3 & 8.4.4.4.4; AIL 1-75).

Although the FCC temporarily has permitted Qwest to condition the interval for collocation on the submission of a CLEC forecast⁴³ and to provide for “either a 45-day or a 90-day provisioning interval when the requesting carrier has provided a collocation forecast to Qwest,”⁴⁴ it is equally clear that this Commission is not bound by the FCC’s interim rulings. To the contrary, “[a]bsent state action requiring forecasts, a requesting carrier’s failure to submit a timely forecast will not relieve an incumbent LEC of its obligation to comply with” the 45- and 90-day intervals established in the *Order on Reconsideration*.⁴⁵

Here, the Commission should find that Qwest may not appropriately condition the interval for the provisioning of collocation space requiring no infrastructure on the submission of a CLEC forecast. As Qwest explained in its pre-filed testimony, Qwest is “adamant about the use of collocation forecasts because, in some instances, Qwest must complete major structural changes in order to provision the requested collocation.”⁴⁶ Where no infrastructure is required for a particular unforecasted collocation space, however, the purportedly determinative fact giving rise to Qwest’s “adamance” does not exist. Consequently, it is clear that Qwest’s decision to condition the collocation interval on the submission of a forecast in this context is simply an effort to elongate its provisioning interval by making CLECs “preorder” collocation. No matter how desirable this result might be to Qwest, it is plainly prohibited by federal law. For the reasons stated above, this Commission should (1) deny Qwest’s request to make its collocation interval contingent upon the submission of a forecast and (2) reject any SGAT language requiring such a submission.

⁴³ *In the Matter of Deployment of Wireline Services*, CC Docket No. 98-147, Mem. Op. and Order (2000).

⁴⁴ *In the Matter of Deployment of Wireline Services*, 2000 FCC LEXIS 5944 ¶ 19 (2000).

⁴⁵ *Order on Reconsideration and Second Further Notice*, CC Docket Nos. 98-147 and 96-98, FCC 00-297 (Aug. 2000) (“*Order on Reconsideration*”).

⁴⁶ Supplemental Rebuttal Affidavit of Margaret S. Bumgarner, Jan. 9, 2001 (CO), p. 5.

H. Qwest Has Failed To Prove That It Currently Complies With Its Interconnection and Collocation Obligations Under Section 271.

Throughout the § 271 proceedings on interconnection and collocation, Qwest has focused exclusively on the terms and conditions relating to interconnection and collocation contained in the SGAT in support of its argument that it has met its burden of proof under § 271. Qwest's SGAT, however, is only one aspect of satisfying the competitive checklist. Rather, it is an absolute prerequisite to the satisfaction of the § 271 competitive checklist that Qwest demonstrate that it is currently complying with its obligations under the Act.⁴⁷

Qwest has failed to satisfy this burden of proof. For example, during the February workshop on interconnection and collocation, AT&T introduced into evidence 2 ATT 20, which is a document entitled "Qwest Collocation Policies and Performance Requirement 2001 Update." As Covad pointed out, the "Update" (and notice documents similar to it) permit Qwest "to substantially alter the terms and conditions of the SGAT as well as the interconnection agreement"⁴⁸ between Qwest and a CLEC. As a consequence, Qwest is able, with a simple "Update," to unilaterally stymie competition:

[Covad] has an issue right now having to do with our ability to provision additional capacity within our existing collocation arrangements. This is adding capacity which in no way threatens to cause any network harms. It in no way causes any safety issues. These are in most cases very similar to work that I did as a central office technician when I worked at Qwest without having to provide a method of procedure in order to do it.

Not only is having to provide a method of procedure [like that contained in the Update] for this type of work in my opinion unnecessary, it also greatly delays our ability to provide additional capacity in that it often takes a week to two weeks in order to locate the proper person to sign the method of procedure and then get it back and post it and then actually be able to complete the work.⁴⁹

⁴⁷ *Application by Bell Atlantic New York Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Mem. Op. and Order, FCC 99-404 (1999), ¶ 37.

⁴⁸ TR 1619, 19-21 (Zulevic).

⁴⁹ TR 1619, 22-25 and 1620, 1-14 (Zulevic).

Because Qwest's pattern and practice of conducting its business outside the scope of the relevant SGAT and interconnection agreement permits it to unilaterally impose an anti-competitive burden on CLECs, this Commission should recommend the denial of Qwest's application until the time such conduct ceases.

III. CONCLUSION

Qwest's interconnection and collocation provisions are insufficient to spur competitive entry into Arizona. Without competitive entry, Arizona citizens will be denied the key benefits of competitive choice – higher quality of service and lower prices. Covad respectfully urges the Commission to take the appropriate and necessary steps in this proceeding to provide Arizona citizens with that option.

Covad also encourages this Commission to withhold § 271 approval until Qwest corrects the serious and on-going performance problems identified by Covad. Until such problems are completely and finally corrected, significant barriers to market entry by CLECs will continue to exist.

Dated this 28th day of March, 2001.

Respectfully submitted,

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