

ORIGINAL



0000022908

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

WILLIAM A. MUNDELL
COMMISSIONER
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

JUL 19 2001

2001 JUL 19 P 4: 17

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY	
-------------	--

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

QWEST CORPORATION'S COMMENTS TO STAFF'S DRAFT EMERGING SERVICES

REPORT ISSUED ON JULY 9, 2001

Qwest Corporation hereby provides its comments to the Arizona Corporation Commission Staff's (Staff's) draft Report issued on July 9, 2001 concerning Emerging Services (Report). Emerging services are comprised of subloop unbundling, line sharing, packet switching and dark fiber. The FCC did not originally require ILECs such as Qwest to unbundle emerging services; however, the FCC imposed these unbundling requirements in its UNE Remand and Line Sharing Orders issued in late 1999. As a result, Qwest suggested and participated in two weeks of emerging services workshops in Arizona.

Qwest commends the Staff for its hard work in generating and issuing the Report. Qwest does not seek to convince the Staff to reverse course on any issue; instead Qwest seeks minor clarification of two issues and concedes one issue that it won. As to dark fiber and packet switching, Qwest does not seek any modification to the Report. As to subloop unbundling, Qwest seeks clarification of the amount of time it has to verify

ownership of intrabuilding facilities in MTEs so as to create consistency across its 14-state region. As to line sharing, Qwest agrees to provide additional data testing, testing the Staff concluded Qwest was not required to provide. Finally, Qwest wants to clarify that it must offer its stand-alone DSL service to customers only when the CLEC provides voice service over UNE-P.

Attached to these comments is a modified SGAT that comports with all recommended changes in the Report as clarified below. Qwest asks the Staff to, therefore, formally find that Qwest meets its emerging services obligations under the Act subject to successful passage of the ongoing OSS Test.

I. BACKGROUND

Qwest and a number of CLECs participated in two weeks of emerging services workshops in Arizona. Substantial progress was made resolving a number of key issues. Nonetheless, several impasse issues remained principally around subloop unbundling. The Staff Report decided these issues in an even-handed manner; therefore, Qwest does not seek to convince the Staff to change course on any issue. Instead, it simply seeks minor clarification on two issues and concedes one issue that the Report decided in Qwest's favor. Each of these issues will be discussed below.

II. LINE SHARING

DISPUTED ISSUE NO. 1: Whether Qwest is Obligated to Provide xDSL When no Longer Providing Voice.

This issue concerns Qwest's obligation to continue providing DSL service to end user customers when the customer changes voice providers. As the Staff Report correctly

summarizes, AT&T expressed concern that some customers may elect to keep Qwest as their voice provider (even though they would rather be serviced by a different voice provider) in order to keep Qwest as their DSL provider.¹ AT&T therefore argued that “[c]ustomers should have the option to maintain Megabit or to switch to an alternative DSL provider.”²

The FCC has made very plain, not once but twice, that ILECs such as Qwest do not have to offer DSL, a competitive service, on a stand-alone basis. *Line Sharing Reconsideration Order* ¶ 26 (ILEC is not required to provide xDSL service when it is no longer the voice provider). The FCC left no room for doubt on this issue:

We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL services in the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement.

Line Sharing Reconsideration Order ¶ 16. This pronouncement confirmed what the FCC had already made clear in its Texas 271 decision.³

¹ Report at ¶ 158.

² *Id.*

³ There, the FCC held in its Texas decision that an ILEC such as Qwest has no obligation to provide UNE-P Combinations with xDSL data service. Specifically, the FCC held:

. . . Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the *Line Sharing Order*, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes. Furthermore, as described above, the UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with SWBT's combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner. In sum, we do not find this conduct discriminatory.

SBC Texas Order ¶ 330.

Despite the clear line of legal authority, the Staff agreed with AT&T that “Qwest’s policy decision is a barrier to entry and anticompetitive.”⁴ The Staff, therefore recommended that “Qwest be required to revise its SGAT to permit its Megabit or DSL customers to change to a CLEC for local voice service through a line sharing arrangement.”⁵

In the spirit of cooperation, Qwest has decided that it will not challenge this recommendation. Qwest will enable CLECs to provide their customers with Qwest's DSL service when a customer changes voice carriers to an UNE-P provider. Moreover, although the concern raised by CLECs involved instances when Qwest was already the data provider, Qwest will also enable CLECs to provide Qwest's DSL service to new customers being served by an UNE-P provider.

The recommended decision, however, is not clear on one point – whether Qwest must provide DSL service irrespective of how the CLEC provides the voice service. Qwest asserts that the Staff could not have meant to extend this obligation to customers served over stand-alone unbundled loops because that would cause Qwest substantial process and billing problems. Qwest cannot provide DSL for a CLEC end-user customer when the CLEC service is provided by an unbundled loop arrangement because Qwest cannot identify or bill for the service when the telephone number does not reside in the Qwest systems. Further, there are some limitations in how Qwest may offer the service. For example, Qwest must allow the CLEC to be the primary contact point for the end-user customer. In order to make this happen, Qwest will provide its DSL service via

⁴ Report at ¶ 160.

⁵ Report at ¶ 163.

resale, at the full retail rate. The specifics of how Qwest will comply with the Staff's recommendation is as follows:

- Qwest will enable a CLEC to provide Qwest's DSL to an end-user customer via resale at 100% of the retail rate when service is provided by the CLEC to that end user over UNE P.
- Qwest will enable this arrangement for both existing and new customers (e.g., a customer who had not previously subscribed to Qwest's DSL.)
- In both instances identified above, Qwest will not have a direct relationship with the end-user customer. Qwest will bill the CLEC and the CLEC will bill its end-user customer for the DSL service.

This offering satisfies both the letter and spirit of the recommended decision. The Staff Report stated that Qwest must provide DSL services with CLECs "through a line sharing arrangement." That is what Qwest is proposing. Moreover, the CLECs were principally concerned about situations where they would provide voice services as an UNE-P provider. That is, again, what Qwest is agreeing to do. Thus, the clarification Qwest seeks here is that Staff only intended to apply this decision to situations where CLECs provide voice service to customers through UNE-P.

Qwest does not believe that this offering needs to be incorporated into the SGAT. Qwest agrees to work with CLECs to modify the transition matrix in ongoing industry meetings concerning line sharing and line splitting. Recall that the transition matrix spells out each carriers responsibilities when a customer changes either voice or data

providers.⁶ With this policy change, Qwest should be found in full compliance with its line sharing obligations.

DISPUTED ISSUE NO. 2: Whether Qwest Must Provide Additional Testing for CLECs.

This issue concerns whether Qwest must perform a data continuity test for line sharing orders. Covad claimed, without citation to any authority, that Qwest must provide data testing.⁷ Qwest claimed otherwise, citing to the fact that SBC did not perform a data continuity test yet had its §271 applications for Kansas and Oklahoma approved and that the FCC has made clear that Qwest's sole obligation is to provide CLECs access to the loop facility so that they can test for themselves.⁸

The Staff agreed that Qwest "is complying with the FCC obligations regarding testing. Qwest is currently offering CLECs access to the loop facility so that they can do further testing themselves. 47 CFR §51.319(h)(7)(I); *Line Sharing Order* ¶118; *Line Sharing Reconsideration Order* ¶27."⁹

Despite the fact that Qwest won this issue and despite the fact that no commission has ordered Qwest to provide such data continuity testing, Qwest has decided that it will provide such testing to CLECs. In Washington on July 13, 2001, Qwest and Covad negotiated consensus SGAT language on this issue. The SGAT language reads:

9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops as part of basic installation. Testing will be done in such a way as to ensure circuit integrity from the central office Demarcation Point to the MDF.

9.4.6.3.3 Qwest will test for electrical faults (e.g. opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. Testing will be done in such a way as to ensure circuit integrity from the central

⁶See Workshop Exhibit 5 Qwest 20.

⁷Report at ¶ 164.

⁸Report at ¶¶ 164-65.

⁹Report at ¶ 166.

office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g. opens, shorts, and/or foreign voltage) in Qwest's network, Qwest will assess CLEC the TIC Charge.

Qwest did clarify that it can begin offering such testing capability on September 15, 2001.

This offering clearly goes beyond Qwest's legal obligations, and shows that Qwest remains prepared to discuss issues irrespective of how they are resolved in workshops. It also shows that Qwest is committed to providing quality service to CLECs. The Staff should adopt this consensus SGAT language.

III. SUBLOOP UNBUNDLING

Subloop unbundling constituted the most contentious of the emerging services. The parties reached impasse, rather than consensus, on a number of issues. Staff decided these issues, some for and some against Qwest. Despite that, again, in the spirit of compromise and finality, Qwest will not seek reversal of any issue. Qwest only seeks minor clarification of one issue.

DISPUTED ISSUE NO. 3: Whether Qwest Must Determine Whether it Owns the Intrabuilding Cable (or Inside Wire) Before a CLEC May Access Subloop Elements? If so, Whether Qwest's Processes for Determining Such Ownership Are Appropriate.

In most instances involving subloop unbundling, there is no question that CLECs are accessing Qwest facilities. In multiple tenant environments (MTEs), however, there is no such clarity. When CLECs such as Cox or AT&T want access to the facilities inside an MTE, such as riser cable from one floor to another, there are circumstances when it is owned by Qwest and circumstances when it is owned by the building owner. In many instances, there is no readily apparent method to ascertain who owns the

facilities. In those instances, the FCC has stated and Qwest has agreed that it will provide ownership information to CLECs upon request.

Qwest sought 10 calendar days to make such a determination per FCC order. AT&T thought that the FCC's 10-day rule could delay its ability to enter the MTE and begin providing service.¹⁰ Thus, AT&T proposed that it be able to obtain direct access to facilities without contacting Qwest if the MTE owner claimed ownership over the facilities.¹¹

The FCC, again, has made very plain that ILECs such as Qwest have 10 days to make a determination of whether they, or the landlord, own the facilities. Specifically, in the *MTE Order*, the FCC held that the ILEC has up to 10 business days to determine ownership of the intrabuilding cable.¹² Qwest committed to 10 calendar days – less than the amount of time it is entitled to by law. In addition, Qwest repeatedly clarified in the workshop that it would complete this step in less time if possible. Thus, Qwest is entitled to this ten-day period as a matter of law. It should also be noted that, in the Colorado follow-up workshop on emerging services the week of April 16, 2001, AT&T proposed language giving Qwest 10 days to perform the first ownership inquiry.¹³

¹⁰ Report at ¶ 195.

¹¹ Report at ¶ 196.

¹² First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 96-98 & 88-57, FCC 00-366 (Rel. October 25, 2000) ("*MTE Order*") ¶ 56.

¹³ AT&T proposed SGAT, filed April 19, 2001 in the Colorado workshop, section 9.3.8.2 ("Qwest shall reply to such MTE Ownership Request within (a) ten (10) days, if CLEC's request is the first request for access at such MTE ").

On this issue, the Staff found middle ground finding that “AT&T makes a valid argument that determining ownership should only take a nominal time period after the issue has already been raised by another CLEC at the same MTE.”¹⁴ Similarly, the Staff found that “where . . . a CLEC obtains reliable information from the MTE owner that it owns the on-premises wiring, and the CLEC provides such information to Qwest, the full 10 day period should not be required by Qwest.” The Staff recommended, therefore, that Qwest have 3 days, not 10 in these two scenarios.

The Facilitator overseeing the 7-State process found likewise and proposed specific SGAT language to accommodate this concern. The 7-State Facilitator, however, did not provide for a 3-day interval for both stated exceptions; instead, he allowed 2 days and 5 days respectively. Qwest asks the Staff to modify its decision to conform with the 7-State Report so Qwest will have a uniform process that it can apply and implement region wide. This will help Qwest to train its people, to implement the policy, and to provide better, more consistent service to CLECs. Moreover, given that the FCC’s recent decision that allowed 10 business days to determine facility ownership, this slight change (one of works to the CLECs advantage and one to Qwest’s advantage) is certainly consistent with existing law on the subject. Thus, Qwest recommends inclusion of the following SGAT language at the end of SGAT § 9.3.5.4.1:

In the event that there has been a previous determination of on-premises wiring ownership at the same MTE, Qwest shall provide such notification within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the customer side of the terminal, the preceding ten (10) day period shall be reduced to five (5) calendar days from Qwest’s receipt of such claim.

¹⁴ Report at ¶197.

This language comes directly from the 7-State Report and has been included in the SGATs of all seven states. With this change, the Staff should find that Qwest has satisfied its subloop requirements set forth in the Report.

IV. CONCLUSION

Qwest, again, commends the Staff for its hard work in completing this Emerging Services Report. Qwest adopts the spirit of every decision in the Report. Nonetheless, Qwest seeks clarification of two issues and concedes one issue that it won in the Report. Qwest asks the Staff to recommend that, with the changes to the SGAT a copy of which will be provided soon, that Qwest is in full compliance with all of its emerging services obligations subject to successful passage of the Arizona OSS Test.

Respectfully submitted this 19th day of July, 2001.



Timothy Berg
FENNEMORE CRAIG, P.C.
3003 North Central
Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5421
(602) 916-5999 (fax)

Charles W. Steese
QWEST CORPORATION
1081 California Street
Suit 4900
Denver, CO 80202
Telephone: (303) 672-2709

Kara M Sacilotto
PERKINS COIE LLP
607 Fourteenth Street, N.W.,
Suite 800
Washington, D.C. 20005-2011
Telephone: (202) 654-1633

ORIGINAL AND 10 of the foregoing
filed this 19th day of July, 2001 with:

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

ONE COPY of the foregoing
hand-delivered this 19th day
of July, 2001 to:

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

ONE COPY of the foregoing
mailed and this 19th of
July, 2001 to:

Steven H. Kukta
Darren S. Weingard
Sprint Communications Company, LP
1850 Gateway Drive, 7th floor
San Mateo, CA 94404-2567

Thomas Campbell
Lewis & Roca
40 N. Central Ave.
Phoenix, AZ 85004

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
Karen L. Clausen
MCI Telecommunications Corp.
707 17th Street # 3900
Denver, CO 80202

Scott S. Wakefield
Residential Utility Consumer Office
2828 North Central Ave., Suite 1200
Phoenix, AZ 85004

Michael M. Grant
Todd C. Wiley
Gallagher & Kennedy
2575 E. Camelback Rd.
Phoenix, AZ 85016-9225

Michael Patten
Roshka Heyman & DeWulf
400 North Fifth St., Ste. 1000
Phoenix, AZ 85004-3906

Bradley Carroll, Esq.
Cox Arizona Telcom, LLC
1550 West Deer Valley Rd.
Phoenix, AZ 85027

Daniel Waggoner
Davis, Wright & Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Traci Grundon
Davis Wright & Tremaine
1300 S.W. Fifth Avenue
Portland, OR 97201

Richard S. Wolters
Maria Arias-Chapleau
AT&T Law Department
1875 Lawrence Street # 1575
Denver, CO 80202

David Kaufman
e.spire Communications, Inc.
343 W. Manhattan Street
Santa Fe, NM 87501

Alaine Miller
NEXTLINK Communications, Inc.
500 108th Ave. NE, Suite 2200
Bellevue, WA 98004

Diane Bacon, Legislative Director
Communications Workers of America
5818 N. 7th St., Suite 206
Phoenix, Arizona 85014-5811

Philip A. Doherty
545 South Prospect Street, Suite 22
Burlington, VT 05401

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Joyce Hundley
U.S. Dept. of Justice
Antitrust Division
1401 H Street, NW, # 8000
Washington, DC 20530

Andrew O. Isar
Telecommunications Resellers Association
4312 92nd Ave., NW
Gig Harbor, WA 98335

Raymond S. Heyman
Randall H. Warner
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004-3906
Douglas Hsiao

Rhythms Links, Inc.
6933 Revere Parkway
Englewood, CO 80112

Mark Dioguardi
Tiffany and Bosco, PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, AZ 85004

Thomas L. Mumaw
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85004-0001

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, Maryland

Patricia Van Midde
Assistant Vice President
AT&T
111 West Monroe
Suite 1201
Phoenix, AZ 85003

Gena Doyscher
Global Crossing Services, Inc.
1221 Nicollet Mall
Minneapolis, MN 55403-2420

Karen L. Clauson
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
Minneapolis, MN 55402

Mark N. Rogers
Excell Agent Services, LLC
2175 W. 14th Street
Tempe, AZ 85281

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbor Island Blvd.
Tampa, FL 33602

Jonathan E. Curtis
Michael B. Hazzard
Kelly Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

J. David Tate
Senior Counsel
SBC Telecom, Inc.
5800 Northeast Parkway, Suite 125
San Antonio, Texas 78249

M. Andrew Andrade
Tess Communications, Inc.
5261 S. Quebec Street Ste. 150
Greenwood Village, CO 80111

K. Megan Doberneck, Esq.
Covad Communications
4250 Burton Street
Santa Clara, CA 95054



PHX/DPOOLE/1206362.1/67817.150