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BEFORE THE ARIZONA CORPORATION COMMISSION

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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 THE HEARING DIVISION'S ORDER
ON QWEST'S COMPLIANCE WITH CHECKLIST ITEM NO. 5**

Arizona Corporation Commission
DOCKETED

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INTRODUCTION

Qwest Corporation (“Qwest”) hereby provides its Comments to the Hearing Division’s Order on Qwest’s Compliance with Checklist Item No. 5 (“Comments”). Qwest is asking for clarification that the repeated requirement to “provide” electronics on unbundled dedicated interoffice transport (“UDIT”) requires Qwest provide available electronics, and does not require Qwest to add or upgrade electronics. Qwest asked for this clarification before the Hearing Division, but the requirement was repeated in the Hearing Division’s Order without explanation. For that reason, Qwest will repeat its arguments and authorities on the issue of adding or upgrading electronics.

The law could not be more clear that Qwest is not obligated to add electronics to UDIT. The FCC has expressly addressed this issue in its recent opinion on Verizon’s 271 application for Pennsylvania.¹ The FCC disagreed with CLECs that claimed that Verizon’s policy of not adding electronics expressly violated the Commission’s unbundling rules.² The FCC held that “**we decline to find that these allegations warrant a finding of checklist non-compliance.**”³

Qwest respectfully requests that the Hearing Division Order be clarified to clearly indicate that Qwest is not required to add or upgrade electronics on UDIT, but that Qwest will provide all existing electronics on either end of dedicated transport if the electronics are currently available.

¹ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, CC Docket No. 01-138, ¶¶ 91-92 (Sept. 19, 2001) (“*Verizon Pennsylvania Order*”).

² *Id.*

³ *Id.*

COMMENTS

I. FIRST IMPASSE ISSUE: REGENERATION CHARGES.

The Hearing Division has recommended adoption of the Staff recommendation on this issue. The Staff has recommended that Qwest be allowed to charge for regeneration, but that to charge for regeneration, Qwest must file a plan detailing how it will authenticate that it is complying with the collocation safeguards set forth in the FCC's *Advanced Services Fourth Report and Order*. The Staff recommends that the Commission should review Qwest's plan prior to issuing its final determination regarding Qwest's compliance with Section 271.

Qwest is not challenging the recommendation that, to charge for regeneration, Qwest must file a plan detailing how it will authenticate that it is complying with the collocation safeguards set forth in the FCC's *Advanced Services Fourth Report and Order*. Qwest asks for revision of the recommendation that the Commission should review Qwest's plan prior to issuing its final determination regarding Qwest's compliance with Section 271. Instead, Qwest will commit that it will not impose separate charges for regeneration until it has filed its plan with the Commission, and the Commission has approved the plan.

II. SECOND IMPASSE ISSUE: DISTINCTION BETWEEN UDIT AND EUDIT.

The Hearing Division has recommended adoption of the Staff recommendation that Qwest eliminate the distinction between UDIT and EUDIT. Qwest will eliminate the distinction between UDIT and EUDIT, but doing so will necessitate that Qwest file a revised rate for UDIT in the pending cost docket, and that such rate be considered in the next phase of the cost docket.

However, Qwest asks for clarification that the requirement to "provide" electronics on unbundled dedicated interoffice transport ("UDIT") requires Qwest provide available electronics, and does not require Qwest to add or upgrade electronics. Qwest's request for clarification

relates to the following sentence in paragraph 47 of the Hearing Division Order: “Further, pursuant to the *UNE Remand Order*, Qwest shall provide all technically feasible capacity-related services, included these provided by electronics that are necessary components of the functionality of capacity-related services and are used to originate and terminate telecommunications services.” Qwest asks for clarification because the word “provide” could be interpreted in different ways.

The most reasonable interpretation, which is consistent with the law, is that Qwest must include existing electronics as part of the dedicated transport facility request. Qwest has been very clear since the date of its May brief filed with the Commission on Checklist Items 2, 5 & 6 that it agrees to provide existing electronics at either end of dedicated transport as part of the overall request:

A sub-issue of the obligation to build issue is whether Qwest is required to add or upgrade electronics for the purpose of providing dedicated transport. For UDIT, if electronics are currently available, Qwest includes the existing electronics as part of the overall facility request. For EUDIT at the Qwest wire center, Qwest includes the existing electronics as part of the overall facility request if the electronics are currently available. Additionally, in a recent change in position for EUDIT at the CLEC wire center, Qwest now includes the existing electronics as part of the overall facility request if the electronics are currently available.⁴

Therefore, Qwest has clearly agreed that it will provide the existing electronics at either end of dedicated transport as part of the overall facility request if the electronics are currently available.

However, one of Qwest’s concerns is that the word “provide” is ambiguous enough that it could also be interpreted to mean that Qwest is required to add or upgrade electronics that are not existing and available.⁵ Qwest has not agree to build electronics where they don’t exist:

⁴ *Qwest’s Legal Brief Regarding Disputed Issues: Checklist Item 2 (UNEs), Checklist Item 5 (Transport), and Checklist Item 6 (Switching), May 18, 2001, pp. 11-12.*

⁵ Qwest’s TELRIC cost studies do not capture the cost of adding new facilities to the network.

Qwest does not agree to add electronics or upgrade electronics for UDIT or EUDIT. This position is consistent with the FCC's unwillingness to impose on ILECs an obligation to construct new facilities for the provision of unbundled transport.⁶

Qwest requests that the Commission's Order clearly articulate that while Qwest is required to provide existing electronics on the CLEC end of dedicated transport, it is not required to add or upgrade electronics.

A. The FCC has clearly stated that incumbent LECs are not required to construct dedicated transport for CLECs.

When the FCC issued its first order implementing the Act it made clear that an incumbent's obligation to unbundle dedicated transport applies only where interoffice facilities exist:

[W]e conclude that an incumbent LEC must provide unbundled access to interoffice facilities between its end offices, and between any of its switching offices and a new entrant's switching office, *where such interoffice facilities exist.*

* * * *

Rural Telephone Coalition contends that incumbent LECs should not be required to construct new facilities to accommodate new entrants. We have considered the economic impact of our rules in this section on small incumbent LECs. In this section, for example, *we expressly limit the provision of unbundled interoffice facilities to existing incumbent LEC facilities.*⁷

⁶ *Qwest's Legal Brief Regarding Disputed Issues: Checklist Item 2 (UNEs), Checklist Item 5 (Transport), and Checklist Item 6 (Switching), May 18, 2001, pp. 11-12.*

⁷ *First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 at ¶¶ 443, 451 (Aug. 8, 1996) ("*Local Competition Order*"). AT&T has suggested that this ruling is limited to rural LECs only. However, the FCC was clear that its pronouncement applies to all incumbent LECs.

In the November 1999 *UNE Remand Order*, the FCC made this point again, even more emphatically:

Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, *the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use.* Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, *we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.*⁸

Qwest already agrees that it will activate the electronics if the electronics are already in place on the fiber but simply have not been turned on. Qwest agrees in SGAT Section 9.1.2.1.2 to perform incremental facility work and identifies what falls under the heading of incremental facility work.⁹ However, adding or upgrading electronics at a CLEC's request does not constitute incremental facility work, but constitutes an expensive requirement to construct or build transport facilities for CLECs. Qwest's TELRIC cost studies do not capture the cost of adding new electronics..

The addition of electronics can mean anything from a multiplexing unit to a digital cross connect device. In the case of placing an FLM-150 multiplexer, the actual material and placement costs are \$36,880 per node, and two nodes are required to establish new bandwidth capability. This assumes that all supporting framework and power are in place in the central

⁸ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696, ¶ 324 (Nov. 5, 1999) (emphasis added) ("*UNE Remand Order*").

office; otherwise the cost could be even higher. The recent installation of a Titan 5500 digital cross connect at Qwest's Columbine central office in Colorado cost \$1,237,053. In installations such as this, floor space must be acquired, infrastructure evaluated, and power needs assessed. The process can take four to five months to complete. Therefore, the addition of electronics at the CLEC's wire center is distinguished from incremental facility work (e.g. adding a card, placing a drop etc.) due to the significant cost and logistics issues involved. Therefore, Qwest cannot be compelled to add or upgrade electronics, in light of the FCC's unwillingness to impose on Incumbent LECs an obligation to construct new facilities for the provision of unbundled transport.

B. The FCC's recent Verizon Pennsylvania order soundly rejects the contention that Qwest must add electronics to make additional capacity available.

At the time that briefs were filed in Arizona on this topic, the FCC had not directly addressed, in the context of a Section 271 application, this issue of adding electronics or other equipment that are not present on a line. Last month the FCC directly addressed this very issue and decided it in favor of Qwest's position.¹⁰ In the *Verizon Pennsylvania Order*, several competing carriers alleged that: "Verizon refuses to provide high capacity loops as unbundled network elements unless all necessary equipment and electronics are present on the line and at the customer's premises."¹¹ Verizon responded that "its policy is to provide unbundled high capacity loops when all facilities, including central office and end-user equipment and

⁹ SGAT § 9.1.2.1.2 expressly clarifies that incremental facility work does not include the upgrade of electronics.

¹⁰ *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, CC Docket No. 01-138, ¶¶ 91-92 (Sept. 19, 2001) ("Verizon Pennsylvania Order").

¹¹ *Verizon Pennsylvania Order*, at ¶ 91 (emphasis added).

electronics, are currently available.”¹² The FCC disagreed with commenters that claimed that Verizon’s policies and practices expressly violated the Commission’s unbundling rules.¹³ The FCC held that “we decline to find that these allegations warrant a finding of checklist non-compliance.”¹⁴

Qwest’s policies are even more favorable to CLECs than Verizon’s policies. Therefore, Qwest’s policies of not adding or upgrading electronics does not warrant a finding of checklist non-compliance. The FCC notes that when line cards have not been deployed, but space exists for them in the multiplexers at the central office and end-user premises, Verizon will order and place the line cards in order to make capacity available to provision the high capacity loop.¹⁵ In it SGAT § 9.1.2.1.2, Qwest agrees to do the same thing as Verizon: adding a card to existing equipment (subscriber loop carrier systems) at the central office or remote locations. The FCC also notes that Verizon will perform cross-connection work between the multiplexers and the copper or fiber facility running to the end user.¹⁶ Qwest also agrees to do this in SGAT § 9.1.2.1.2: adding central office tie pairs. Qwest goes further than what the FCC notes for Verizon, and in addition to the two functions specifically discussed above, Qwest also agrees that the following also constitute incremental facility work which Qwest will perform for CLECs: conditioning, placing a drop, adding a network interface device, and adding field cross jumpers.¹⁷

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 91.

¹⁶ *Id.*

¹⁷ SGAT § 9.1.2.1.2.

Therefore, this should be a very straight-forward decision for the Commission. The FCC, one month ago, confirmed that the policy used by Qwest regarding adding or upgrading electronics does not “violate the Commission’s unbundling rules” and does not “warrant a finding of checklist non-compliance.”¹⁸ The Commission should reach a consistent finding in this Section 271 proceeding.

C. Other states agree that Qwest is not required to add or upgrade electronics.

The Colorado Hearing Commissioner and the Multistate Facilitator agree that Qwest is not required to add electronics to dark fiber. The Colorado Hearing Commissioner agreed with Qwest that the Act and FCC rules require Qwest to provide *dark*, not lit, fiber and that the addition of electronics impermissibly exceeds the bounds of a modification necessary for access to UNEs:

Here, the unbundled network element is dark fiber, *not* lit fiber. It is a subtle, yet critical distinction. I agree with Qwest that the addition of electronics to dark fiber means that dark fiber is no longer being offered. This goes beyond a mere modification to provide access to an unbundled element. *In essence, the addition of electronics to unlit fiber constitutes the construction of a new, 'functional' dedicated transport facility, which is plainly prohibited by the UNE Remand Order.* Additionally, Staff has found that adding electronics at the termination locations of dark fiber can be a time consuming and expensive process. Therefore, AT&T's argument falls outside the scope of the FCC's requirement for modifications to LEC facilities. *Just as there is no obligation upon Qwest to build dark fiber in the first instance, there is no obligation to add electronics to the segment once it is built.*¹⁹

In the Multistate workshop, adding electronics to dark fiber was considered under the umbrella of the obligation to build section. The Multistate Facilitator held that Qwest is not required to add or install electronics on dark fiber:

¹⁸ *Id.* at ¶ 92.

¹⁹ Colorado Decision No. R01-846 at 12 (emphasis added and in original).

AT&T's brief expressly argued that failing to require Qwest to install electronics to light dark fiber would allow Qwest to retain the fiber solely for its own use. This argument ignores the self-evident point that AT&T can gain access to the dark fiber, and install its own electronics, using its rights of access to Qwest's poles, ducts, conduits, and rights of way. * * * [T]here is no basis for concluding that CLEC's cannot make such installations in a way that gives them a meaningful opportunity to compete with Qwest.²⁰

D. The FCC does not require the installation of electronics.

The FCC has not instituted a requirement that incumbent LECs add electronics for dedicated transport facilities. The FCC has, of course, imposed on incumbent LECs an obligation to unbundle dark fiber.²¹ But neither the *UNE Remand Order* nor any subsequent FCC decision states that the incumbent LEC must also provide the electronics at the CLEC end of the fiber or add or upgrade electronics.²² In fact, the FCC has stated that **the obligation to add electronics belongs to the CLEC** leasing the fiber.²³ Additionally, such a requirement would be contrary to the FCC's explicit refusal to impose an obligation to build in the transport context.

CONCLUSION

Because the law is clear that Qwest is not obligated to add or upgrade electronics for UDIT, the Commission should clarify that the requirement in paragraph 47 of the Hearing Division Order to "provide" electronics on unbundled dedicated interoffice transport ("UDIT")

²⁰ Multistate Report at pp.25-26; *see also id.* at pp.78-79.

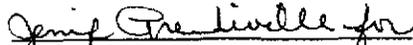
²¹ *Id.* at ¶¶325-26.

²² *Cf. Id.* at n.292. The FCC has mentioned the provision of electronics in the transport context. *See UNE Remand Order* ¶ 323; *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297, 15 FCC Rcd 17806 ¶ 120 (rel. Aug. 10, 2000). However, the FCC has never stated or required that an ILEC must provide electronics *at a CLEC wire center*.

requires Qwest provide available electronics, and does not require Qwest to add or upgrade electronics.

Dated this 9th of November, 2001.

Respectfully submitted,


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²³ *Id.* at n.292. ("The [carrier] leasing the fiber is expected to put its own electronics and signals on the fiber.") (quoting definition of dark fiber in Newton's Telecom Dictionary, 14th ed.).

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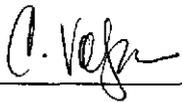
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