



0000109928

RECEIVED

2003 MAY -2 P 4: 09

AZ CORP COMMISSION  
DOCUMENT CONTROL

1 **LEWIS**  
2 AND  
3 **ROCA**  
4 LLP  
5 **LAWYERS**

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 **WILLIAM A. MUNDELL**  
8 **Chairman**

9 **JAMES M. IRVIN**  
10 **Commissioner**

11 **MARC SPITZER**  
12 **Commissioner**

Arizona Corporation Commission

**DOCKETED**

MAY 02 2002

DOCKETED BY	<i>nae</i>
-------------	------------

13 )  
14 **IN THE MATTER OF U S WEST** )  
15 **COMMUNICATIONS, INC.'S** )  
16 **COMPLIANCE WITH § 271 OF THE** )  
17 **TELECOMMUNICATIONS ACT OF** )  
18 **1996** )

**Docket No. T-00000A-97-0238**

---

19 **WORLDCOM'S RESPONSE TO MOTION TO STRIKE**

---

20 WorldCom, Inc., on behalf of its regulated subsidiaries ("WorldCom")  
21 responds to Qwest's Motion to Strike WorldCom's Supplement to its Response to Qwest's  
22 Comments on the Recommended Opinion and Order (the "Supplement"). The  
23 Supplement provides the Arizona Corporation Commission ("Commission") with  
24 Performance Assurance Plan ("PAP") recommendations from four (4) other states.  
25  
26

1 Qwest's motion seeks to prevent Commission consideration of these recommendations.

2 Qwest's motion should be denied for the following reasons.

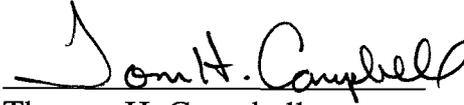
3  
4 First, as even Qwest notes, WorldCom's filing was not a "response" to Qwest's  
5 exceptions but a supplementation providing public documents from other states as a  
6 convenience to the Commission. WorldCom is surprised by Qwest's motion to strike  
7 because Qwest did precisely the same thing in this docket. On February 22, 2002, Qwest  
8 filed a "Notice of Supplemental Authority Relating to its Exceptions to the Administrative  
9 Law Judge's Recommended Order." A copy of that filing is attached as **Exhibit A**. In  
10 that filing, Qwest stated that it wanted to bring to the Commission's attention a recent FCC  
11 order.  
12

13  
14 Second, it should be noted that Qwest has maintained in the wholesale price docket  
15 (Docket No. T-00000A-00-0194) that the Commission should waive application of A.A.C.  
16 R14-3-110(B) in complex cases. Attached as **Exhibit B** is that Qwest filing. Qwest's  
17 response to the exceptions in the wholesale pricing case was a point by point, detailed  
18 argument in response to arguments made in the other parties' exceptions. Even under  
19 those circumstances, Qwest maintained that such response should be allowed and a waiver  
20 of A.A.C. R14-3-110(B) granted because of the complexity and importance of the case.  
21 Without agreeing to the merits of Qwest's argument in a situation in which a detailed  
22 argumentative response to exceptions is filed, certainly Qwest's arguments about the need  
23 for a complete record in a complex case supports a mere supplementation of the record in  
24 this complex 271 case.  
25  
26

1 WorldCom respectfully requests that Qwest's motion to strike be denied.

2 RESPECTFULLY submitted this 2<sup>nd</sup> day of May, 2002.

3 LEWIS AND ROCA LLP

4  
5 

6 Thomas H. Campbell  
7 40 N. Central Avenue  
8 Phoenix, Arizona 85007  
9 Telephone (602) 262-5723

10 - AND -

11 Thomas F. Dixon  
12 WorldCom, Inc.  
13 707 - 17<sup>th</sup> Street, #3900  
14 Denver, Colorado 80202  
15 Telephone: (303) 390-6206

16 Attorneys for WorldCom, Inc.

17  
18 ORIGINAL and ten (10) copies of the foregoing  
19 filed this 2<sup>nd</sup> day of May, 2002 with:

20 Arizona Corporation Commission  
21 Docket Control - Utilities Division  
22 1200 W. Washington Street  
23 Phoenix, Arizona 85007

24 COPY of the foregoing hand-delivered this  
25 2<sup>nd</sup> day of May, 2002 to:

26 Maureen Scott  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

1 Jane Rodda, Administrative Law Judge  
Arizona Corporation Commission  
2 1200 W. Washington Street  
Phoenix, Arizona 85007

3 Ernest Johnson, Director  
4 Utilities Division  
Arizona Corporation Commission  
5 1200 W. Washington Street  
Phoenix, Arizona 85007

6 COPY of the foregoing mailed this 2<sup>nd</sup>  
7 day of May, 2002 to:

8 Lyndon J. Godfrey, Vice President  
Government Affairs  
9 AT&T Communications of the  
Mountain States  
10 111 West Monroe, Suite 1201  
Phoenix, Arizona 85003

11 Scott Wakefield  
12 Residential Utility Consumer Office  
2828 N. Central Avenue  
13 Phoenix, Arizona 85004

14 Mark Dioguardi  
Tiffany and Bosco PA  
15 500 Dial Tower  
1850 N. Central Avenue  
16 Phoenix, Arizona 85004

17 Richard M. Rindler  
Swidler & Berlin  
18 3000 K. Street, N.W., Suite 300  
Washington, DC 20007

19 Maureen Arnold  
20 US West Communications, Inc.  
3033 N. Third Street  
21 Room 1010  
Phoenix, Arizona 85012

22 Jeffrey W. Crockett  
23 Snell & Wilmer  
One Arizona Center  
24 400 E. Van Buren  
Phoenix, Arizona 85004-0001

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

- 1 Richard P. Kolb, Vice President  
Regulatory Affairs  
2 OnePoint Communications  
Two Conway Park  
3 150 Field Drive, Suite 300  
Lake Forest, Illinois 60045
- 4 Andrew O. Isar  
5 TRI  
4312 92<sup>nd</sup> Avenue N.W.  
6 Gig Harbor, Washington 98335
- 7 Eric S. Heath  
Sprint Communications Company L.P.  
8 100 Spear Street, Suite 930  
San Francisco, CA 94105
- 9 Steven J. Duffy  
10 Ridge & Isaacson P.C.  
3101 N. Central Ave., Suite 1090  
11 Phoenix, Arizona 85012-1638
- 12 Timothy Berg  
Fennemore, Craig, P.C.  
13 3003 N. Central Av., Suite 2600  
Phoenix, Arizona 85012-3913
- 14 Andrew Crain  
15 Qwest  
1801 California St., Suite. 5100  
16 Denver, Colorado 80202
- 17 Joan S. Burke  
Osborn & Maledon  
18 2929 N. Central Ave., 21<sup>st</sup> Floor  
Phoenix, Arizona 85067-6379
- 19 Richard S. Wolters  
20 AT&T & TCG  
1875 Lawrence St., Suite 1575  
21 Denver, Colorado 80202
- 22 Michael M. Grant  
Todd C. Wiley  
23 Gallagher & Kennedy  
2575 E. Camelback Road  
24 Phoenix, AZ 85016-4240

25

26

- 1 Raymond S. Heyman  
Michael Patten
- 2 Roshka Heyman & DeWulf  
Two Arizona Center
- 3 400 Fifth St., Suite 1000  
Phoenix, Arizona 85004
- 4
- 5 Diane Bacon, Legislative Director  
Communications Workers of America  
5818 North 7<sup>th</sup> St., Suite 206
- 6 Phoenix, Arizona 85014-5811
- 7
- 8 Bradley Carroll, Esq.  
Cox Arizona Telcom, L.L.C.  
1550 West Deer Valley Road  
Phoenix, Arizona 85027
- 9
- 10 Joyce Hundley  
United States Department of Justice Antitrust Division  
1401 H Street, N.W., Suite 8000
- 11 Washington, D.C. 20530
- 12
- 13 Daniel Waggoner  
Davis Wright Tremaine  
2600 Century Square  
15011 Fourth Avenue  
Seattle, Washington 98101-1688
- 14
- 15
- 16 Alaine Miller  
NextLink Communications, Inc.  
500 108<sup>th</sup> Avenue NE, Suite 2200  
Bellevue, Washington 98004
- 17
- 18 Mark N. Rogers  
Excell Agent Services, LLC  
2175 W. 14<sup>th</sup> Street  
Tempe, Arizona 85281
- 19
- 20 Traci Grundon  
Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue  
Portland, Oregon 97201
- 21
- 22
- 23 Mark P. Trinchero  
Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue, Suite 2300  
Portland, Oregon 97201
- 24
- 25
- 26

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

1 Gena Doyscher  
Global Crossing Local Services, Inc.  
2 1221 Nicollet Mall  
Minneapolis, Minnesota 55403-2420

3 Penny Bewick  
4 New Edge Networks, Inc.  
P.O. Box 5159  
5 Vancouver, WA 98668

6 Jon Loehman  
Managing Director-Regulatory  
7 SBC Telecom, Inc.  
5800 Northwest Parkway  
8 Suite 135, Room I.S. 40  
San Antonio, TX 78249

9 M. Andrew Andrade  
10 5261 S. Quebec St., Suite 150  
Greenwood Village, CO 80111

11 Karen Clauson  
12 Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Ave., South, Suite 1200  
13 Minneapolis MN 55402

14 Megan Doberneck  
Covad Communications Company  
15 7901 Lowry Boulevard  
Denver, CO 80230

16 Brian Thomas  
17 Vice President Regulatory – West  
Time Warner Telecom, Inc.  
18 520 S.W. 6<sup>th</sup> Ave., Suite 300  
Portland, Oregon 97204

19 Andrea P. Harris  
20 Senior Manager, Regulatory  
Allegiance Telecom, Inc. of Arizona  
21 2101 Webster, Suite 1580  
Oakland, CA 94612

22  
23  
24 *Betty J. Griffin*  
25 \_\_\_\_\_  
26

**EXHIBIT A**

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S NOTICE OF SUPPLEMENTAL AUTHORITY  
RELATING TO ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S RECOMMENDED ORDER IN CONNECTION WITH CHECKLIST  
ITEM 1**

In connection with its Exceptions to the Administrative Law Judge's Recommended Order Regarding Qwest's Compliance with Checklist Item 1, filed December 17, 2001, Qwest Corporation ("Qwest") submits this Notice of Supplemental Authority. The Notice brings to the Commission's attention a recent order from the FCC issued in *In the Matter of Net2000 Communications, Inc. v. Verizon-Washington, D.C., Inc.*<sup>1</sup> The order, a copy of which accompanies this notice, bears directly on Issue No. 10 and whether it is appropriate to impose proportional pricing, or ratcheting, for commingled traffic.

---

<sup>1</sup> Memorandum Opinion and Order, *In the Matter of Net2000 Communications, Inc. v. Verizon - Washington, D.C., Inc.*, File No. EB-00-018, FCC 01-381 (rel. Jan. 9, 2002).

In the *Net2000* order, issued January 9, 2002, the FCC ruled that pricing based on ratcheting would violate the commingling prohibition within Option 3 of its *Supplemental Order Clarification*.<sup>2</sup> Accordingly, the FCC held that Verizon did not violate the Communications Act of 1934 or FCC rules by denying Net2000's requests to convert special access circuits to enhanced extended links ("EELs"). In the course of its opinion, the FCC explained:

Net2000 argues that whether circuits are used for "a significant amount of local exchange service" and therefore qualify for conversion to EEL should be judged on an "end-user-by-end-user basis." It should not matter, Net2000 contends, whether a dedicated DS1 between the CLEC's office and the customer's premises that is used to provide local exchange service is carried on a multiplexed DS3 transport channel that includes other DS1s used for other services. It proposes that DS3 circuits derived from both EEL-eligible and non-EEL-eligible DS1 circuits be priced utilizing "ratcheting," similar to mixed use DS3 circuits carrying both special access and switched access DS1s, so that proportionate unbundled network element rates would apply to the converted DS1s and proportionate special access rates would apply to the non-converted DS1s. The arguments made by Net2000, however, ignore the specific language of Option 3. There is no provision anywhere in the *Supplemental Order Clarification*, or in prior orders for "ratcheting." The language of Option 3 clearly and specifically requires that "[w]hen a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet [the substantial local exchange service use] criteria." There is no ambiguity in this language. Although Net2000 argues that it would be better if CLECs were permitted to convert only the parts of their DS3s that are used to provide local exchange service and to continue to obtain the remaining parts of the DS3s by tariff, this clearly is not permitted under our rules.<sup>3</sup>

---

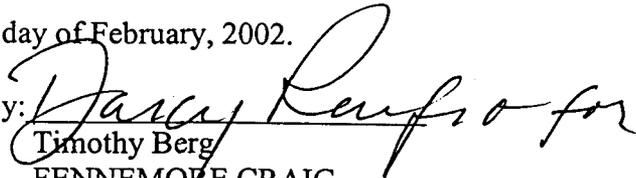
<sup>2</sup> Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 ¶22(3) at 13-14 (rel. June 2, 2000) ("*Supplemental Order Clarification*").

<sup>3</sup> *Id.* ¶ 28, at 9-10 (citations omitted).

Thus, the FCC has explicitly rejected the type of proportional pricing scheme endorsed in the Administrative Law Judge's Recommended Order.

Respectfully submitted this 22nd day of February, 2002.

By:

  
Timothy Berg

FENNEMORE CRAIG  
3003 North Central, Suite 2600  
Phoenix, Arizona 85012

John Munn  
QWEST CORPORATION  
1801 California Street, Suite 4900  
Denver, CO 80202  
(303) 672-2709

John Devaney  
PERKINS COIE LLP  
607 Fourteenth Street, N.W.  
Suite 800  
Washington, D.C. 20005-2011

*Attorneys for Qwest Corporation*

**ORIGINAL +10 copies filed this 22nd day  
of February, 2002, with:**

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ

**COPY of the foregoing delivered this day to:**

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

Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

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

Caroline Butler  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

**COPY of the foregoing mailed this day to:**

Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Thomas Campbell  
LEWIS & ROCA  
40 N. Central Avenue  
Phoenix, AZ 85004

Joan S. Burke  
OSBORN MALEDON, P.A.  
2929 N. Central Ave., 21<sup>st</sup> Floor  
PO Box 36379  
Phoenix, AZ 85067-6379

Thomas F. Dixon  
WORLD COM, INC.  
707 N. 17<sup>th</sup> Street #3900  
Denver, CO 80202

Scott S. Wakefield  
RUCO  
2828 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004

Michael M. Grant  
Todd C. Wiley  
GALLAGHER & KENNEDY  
2575 E. Camelback Road  
Phoenix, AZ 85016-9225

Michael Patten  
ROSHKA, HEYMAN & DEWULF  
400 E. Van Buren, Ste. 900  
Phoenix, AZ 85004-3906

Bradley S. Carroll  
COX COMMUNICATIONS  
20402 North 29<sup>th</sup> Avenue  
Phoenix, AZ 85027-3148

Daniel Waggoner  
DAVIS, WRIGHT & TREMAINE  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101

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

Gregory Hoffman  
AT&T  
795 Folsom Street, Room 2159  
San Francisco, CA 94107-1243

David Kaufman  
E.SPIRE COMMUNICATIONS, INC.  
343 W. Manhattan Street  
Santa Fe, NM 87501

Alaine Miller  
XO COMMUNICATIONS, INC.  
500 108<sup>th</sup> Ave. NE, Ste. 2200  
Bellevue, WA 98004

Diane Bacon, Legislative Director  
COMMUNICATIONS WORKERS OF AMERICA  
5818 N. 7<sup>th</sup> St., Ste. 206  
Phoenix, AZ 85014-5811

Philip A. Doherty  
545 S. Prospect Street, Ste. 22  
Burlington, VT

W. Hagood Bellinger  
5312 Trowbridge Drive  
Dunwoody, GA 30338

Joyce Hundley  
U.S. DEPARTMENT OF JUSTICE  
Antitrust Division  
1401 H Street N.W. #8000  
Washington, DC 20530

Andrew O. Isar  
TELECOMMUNICATIONS RESELLERS ASSOC.  
4312 92<sup>nd</sup> Avenue, NW  
Gig Harbor, WA 98335

Raymond S. Heyman  
ROSHKA, HEYMAN & DEWULF  
400 N. Van Buren, Ste. 800  
Phoenix, AZ 85004-3906

Thomas L. Mumaw  
SNELL & WILMER  
One Arizona Center  
Phoenix, AZ 85004-0001

Charles Kallenbach  
AMERICAN COMMUNICATIONS SVCS, INC.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Gena Doyscher  
GLOBAL CROSSING SERVICES, INC.  
1221 Nicollet Mall  
Minneapolis, MN 55403-2420

Andrea Harris, Senior Manager  
ALLEGIANCE TELECOM INC OF ARIZONA  
2101 Webster, Ste. 1580  
Oakland, CA 94612

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

Kevin Chapman  
SBC TELECOM, INC.  
300 Convent Street, Room 13-Q-40  
San Antonio, TX 78205

M. Andrew Andrade  
TESS COMMUNICATIONS, INC.  
5261 S. Quebec Street, Ste. 150  
Greenwood Village, CO 80111

Richard Sampson  
Z-TEL COMMUNICATIONS, INC.  
601 S. Harbour Island, Ste. 220  
Tampa, FL 33602

Megan Doberneck  
COVAD COMMUNICATIONS COMPANY  
7901 Lowry Boulevard  
Denver, CO 80230

Richard P. Kolb  
Vice President of Regulatory Affairs  
ONE POINT COMMUNICATIONS  
Two Conway Park  
150 Field Drive, Ste. 300  
Lake Forest, IL 60045

Janet Napolitano, Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
1275 West Washington  
Phoenix, AZ 85007

Steven J. Duffy  
RIDGE & ISAACSON, P.C.  
3101 North Central Ave., Ste. 1090  
Phoenix, AZ 85012

Dane Poole - McBride

PHX/1273995.1/67817.150

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Net2000 Communications, Inc.,	)	
Complainant,	)	File No. EB-00-018
	)	
v.	)	
	)	
Verizon - Washington, D.C., Inc.	)	
Verizon - Maryland, Inc., and	)	
Verizon - Virginia, Inc.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2001

Released: January 9, 2002

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny a complaint filed by Net2000 Communications Services, Inc. ("Net2000") against Verizon - Washington, D.C., Inc., Verizon - Maryland, Inc. and Verizon - Virginia, Inc. (collectively, "Verizon" or "Defendants") pursuant to section 208 of the Communications Act of 1934, as amended ("Act").<sup>1</sup> As more specifically detailed below, we find that Verizon did not violate the Act or our rules by denying Net2000's requests for the conversion of certain special access circuits to enhanced extended links ("EELs").

II. BACKGROUND

A. The Parties

2. Net2000 is a competitive local exchange carrier ("CLEC") that provides local exchange, exchange access, and interexchange telephone services within the service areas of the Defendants and other local exchange carriers.<sup>2</sup> The Defendants are corporate subsidiaries of Verizon Communications Inc.<sup>3</sup> Each is a common carrier that maintains its headquarters in and provides local exchange telephone services to the public within the state indicated by its name.<sup>4</sup> The Defendants are also incumbent local

<sup>1</sup> 47 U.S.C. § 208.

<sup>2</sup> *Net2000 Communications v. Verizon - Washington, D.C.*, Formal Complaint, File No. EB-00-018, at ¶¶ 4-5 (filed Nov. 6, 2000) ("Complaint"); *Net2000 Communications v. Verizon - Washington, D.C.*, Joint Statement of the Parties, File No. EB-00-MD-018, at ¶ 1 (filed Dec. 7, 2000) ("Joint Statement").

<sup>3</sup> *Net2000 Communications v. Verizon - Washington, D.C.*, Answer, File No. EB-00-018, at ¶ 6 (filed Nov. 22, 2000) ("Answer").

<sup>4</sup> Complaint at ¶ 6.

exchange carriers ("ILECs") within the meaning of Section 251(h) of the Act.<sup>5</sup>

**B. The Right of CLECs to Have Special Access Circuits Obtained from ILECs Converted or Re-Priced as Unbundled Network Elements**

3. Our rules implementing Section 251(c)(3) of the Act<sup>6</sup> require ILECs, upon request, to "convert" or re-price certain special access circuits into a combination of unbundled network elements called an "enhanced extended link" or "EEL." While not an unbundled network element itself, an EEL is comprised of an unbundled loop (including multiplexing/concentration equipment) and unbundled dedicated transport.<sup>7</sup> The conversion of existing tariffed special access circuits to EELs will, in many cases, significantly reduce the CLEC's expense and commensurately decrease the ILEC's income for those facilities.<sup>8</sup>

4. The Complaint before us concerns Net2000's efforts to have its special access circuits converted to EELs and Verizon's responses to those efforts. The facts underlying Net2000's Complaint are largely undisputed.<sup>9</sup> On the other hand, the parties substantially dispute the applicable rules used to convert special access circuits to EELs. Consequently, a brief review of the statute and the relevant Commission orders is necessary to understand the positions and actions of the parties with respect to the EEL conversion requests at issue.

5. In our First Report and Order in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* ("Local Competition Order"),<sup>10</sup> we prescribed rules to implement section 251(c)(3) and specified that local loops<sup>11</sup> and interoffice transmission facilities<sup>12</sup> were among the "network elements" that ILECs were required to provide to requesting carriers on an unbundled basis. We also stated in section 51.315(b) that "an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."<sup>13</sup> The implementation of section 51.315(b) was

---

<sup>5</sup> 47 U.S.C. § 251(h). See Joint Statement at ¶2.

<sup>6</sup> See generally, 47 C.F.R. §§ 51.305 - .321. Section 251(c)(3) of the Act provides that ILECs have:

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.

<sup>7</sup> See *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3906-3910, ¶¶ 474-482 (1999) ("UNE Remand").

<sup>8</sup> 47 U.S.C. § 252(d)(1)(cost determined without reference to rate of return or other rate-based proceeding).

<sup>9</sup> Letter from Roderick A. Mette, Attorney, Market Disputes Resolution Division, Enforcement Bureau to the parties counsel (dated Dec. 15, 2000) (memorializing the oral rulings and agreements made in the initial status conference held on December 11, 2000 in File No. EB-00-MD-018).

<sup>10</sup> 11 FCC Rcd 15, 499 (1996).

<sup>11</sup> 47 C.F.R. § 51.319(a).

<sup>12</sup> 47 C.F.R. § 51.319(d).

<sup>13</sup> 47 C.F.R. § 51.315(b).

stayed and the rule was subsequently vacated by the Eighth Circuit in *Iowa Utilities Board v. FCC*.<sup>14</sup> The United States Supreme Court reversed in *AT&T Corp. v. Iowa Utilities Board*, thus reinstating section 51.315(b) of our rules.<sup>15</sup> The Supreme Court, however, also determined that the Commission did not apply the appropriate criteria, in accordance with section 251(d)(2) of the Act,<sup>16</sup> in specifying in section 51.319 the minimum “network elements” that must be provided to requesting carriers by ILECs. It therefore vacated section 51.319 and remanded this issue to the Commission for its reevaluation using appropriate criteria.<sup>17</sup>

6. On remand, we issued the *UNE Remand Order* and reinstated section 51.315(b). There we concluded that ILECs were required to provide requesting carriers access to combinations of loops and dedicated transport network elements that are currently combined and purchased through special access tariffs, and moreover, “requesting carriers [were] entitled to obtain such existing loop-transport combinations at unbundled network element prices.”<sup>18</sup>

7. Shortly after the *UNE Remand Order* was released, however, we issued an order supplementing that decision<sup>19</sup> to respond to serious policy concerns relating to the potential for ILECs to be required to re-price a large part of their exchange access facilities at the much lower “unbundled network element” rates.<sup>20</sup> The Commission modified the *UNE Remand Order* to provide that, pending consideration and resolution of these policy concerns in the pending Fourth Further Notice of Proposed Rulemaking,<sup>21</sup> “interexchange carriers (“IXCs”) may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties).” The Commission emphasized, however, that “[t]his constraint does not apply if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.”<sup>22</sup>

8. We also stated that it would “not be necessary for incumbent LECs and requesting carriers to undertake an auditing process to monitor whether or not requesting carriers are using unbundled network access solely to provide exchange access service.”<sup>23</sup> Rather, we stated that an ILEC must allow requesting carriers to “self-certify that they are providing a significant amount of local

---

<sup>14</sup> 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *rev'd in part and aff'd in part*, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366 (1999), *on remand*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), *cert. granted sub nom.*, *Verizon Communications, Inc. v. FCC*, 121 S.Ct. 877 (2001).

<sup>15</sup> *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 393-95.

<sup>16</sup> 47 U.S.C. § 251(d).

<sup>17</sup> *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 386-92.

<sup>18</sup> *UNE Remand Order*, 15 FCC Rcd 3696, 3909, ¶ 480.

<sup>19</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1760 (1999) (“*Supplemental Order*”).

<sup>20</sup> *Id.* at 1761, ¶ 4.

<sup>21</sup> In the *Supplemental Order*, we also expanded the scope of the Fourth Further Notice of Proposed Rulemaking to seek comments “on whether there is any basis in the statute or our rules which incumbent LECs could decline to provide combinations of loops and transport network elements at unbundled network element prices.” *Id.* at 1762, ¶ 6.

<sup>22</sup> *Id.* at 1760, ¶ 2.

<sup>23</sup> *Id.* at 1763, ¶ 6 n.9.

exchange service," in order that their ability to convert their facilities to combinations of unbundled loops and transport network elements "will not be delayed."<sup>24</sup>

9. Thereafter, the Commission, on June 2, 2000, released a *Supplemental Order Clarification*.<sup>25</sup> This order was adopted by the Commission in response to a joint submission by several ILECs and CLECs requesting that the Commission "clarify the *Supplemental Order* regarding the minimum amount of local service a requesting carrier must provide in order to convert special access services to combinations of unbundled loop and dedicated transport network elements."<sup>26</sup> We defined more precisely the "significant amount of local exchange service" threshold for circuit conversion by adopting three "safe harbor" scenarios that a circuit must meet to be eligible for EEL conversion.<sup>27</sup> The first two prescribed safe-harbor options are applicable to carriers whose operations are collocated in at least one ILEC central office. The third option applies to requesting carriers, such as Net2000, whose operations are not collocated at ILEC offices. Besides the significant amount of local exchange traffic requirement, the third option had two additional requirements: (1) when a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet these requirements; and (2) the loop-transport combination must not be connected to the incumbent ILEC's tariffed services.<sup>28</sup>

10. The Commission reiterated that ILECs "must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled elements."<sup>29</sup> Although the procedures specified in the *Supplemental Order* did not permit ILECs to conduct audits to verify that the requesting carriers complied with the local exchange usage requirements, the Commission determined that, in light of its action to continue the temporary constraints on usage, it should permit the ILECs to conduct limited audits for this purpose, but only subsequent to the processing of the requesting carriers' conversion orders.<sup>30</sup>

### C. Net2000's Conversion Requests and Verizon's Responses Thereto

11. In the instant matter, Net2000 made written requests for the conversion of its special access circuits to EELs subsequent to the *UNE Remand Order*. These requests were interspersed among the other subsequent relevant orders. The first such request was made on March 23, 2000. Net2000 requested that Verizon convert 24 DS1 special access circuits in the District of Columbia to EELs.<sup>31</sup> In an accompanying letter, Net2000 certified that the circuits provided "a significant amount of local exchange service to the particular customers served by those facilities."<sup>32</sup> Verizon subsequently rejected Net2000's

<sup>24</sup> *Id.*

<sup>25</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("*Supplemental Order Clarification*").

<sup>26</sup> *Id.* at 9591, ¶ 6. The need to modify the *Supplemental Order* also became evident upon consideration of the significant issues that were raised in comments in the expanded Fourth Further Notice of Proposed Rulemaking and the additional time that would be needed to resolve these issues. *Id.* at 9592-9598, ¶¶ 8-20.

<sup>27</sup> *Id.* at 9598, ¶ 21.

<sup>28</sup> *Id.* at 9599-9600, ¶ 22.

<sup>29</sup> *Id.* at 9602-03, ¶ 29.

<sup>30</sup> *Id.* at 9602-04, ¶¶ 29-32.

<sup>31</sup> Twenty-five circuits were specified in the March 23, 2000 conversion request; however, one of the requested circuits belonged to another carrier. Complaint, ¶ 13, Ex. 6.

<sup>32</sup> Complaint, Ex. 1.

conversion request because, according to Verizon, it failed to conform to the Commission's requirements.<sup>33</sup>

12. On May 9, 2000, Net2000 sent its second conversion request letter to Verizon. In this letter, Net2000 requested that *all* of its special access circuits be converted to EELs, retroactively to the effective date of the *UNE Remand Order*, February 17, 2000.<sup>34</sup> Net2000 again "self-certified that Net2000's special access circuits [were] used to provide a significant amount of local exchange service to the particular customers served by those facilities."<sup>35</sup> Verizon rejected the conversion request again stating that it was defective.<sup>36</sup>

13. On October 17, 2000, Net2000 sent another letter to Verizon, in which Net2000 made its third request for the conversion of its circuits.<sup>37</sup> This letter was in response to Verizon's objections that the May 9, 2000 conversion request was invalid, in part, because Net2000 had not specified the circuits to be converted. With this conversion request, Net2000 provided a list, specifically identifying the circuits subject to the conversion request. Net2000 stated that this list comprised all of its circuits in service. Net2000 with that request also confirmed the self-certification contained in its prior May 9, 2000 letter.<sup>38</sup>

14. Verizon responded on October 20, 2000,<sup>39</sup> stating that it would begin to process this latest conversion request and that the circuits that are converted would be re-priced retroactively from the first day of the month following the date of the request, in this case November 1, 2000. Verizon, however, did not complete its processing of Net2000's October 17, 2000 conversion request until December 1, 2000 – after the complaint and answer were filed in this proceeding.<sup>40</sup>

---

<sup>33</sup> Answer at ¶ 14, Attachment A, ¶¶ 4-6 (Verizon's account manager, responsible for Net2000's account, in meetings held on March 29, 2000 and April 10, 2000 orally responded to the conversion request. In these meetings, and in a prior meeting held on March 14, 2000, she informed Net2000 that Verizon did not believe that that Net2000's conversion request was in conformity with the Commission's requirements. She stated that the FCC required the conversion of only circuits terminating in collocated arrangements and that the FCC prohibited the commingling of tariffed service with unbundled elements. She also advised Net2000 that, before it would process conversion orders, Net2000 was required to execute an amendment to its existing interconnection agreement with Verizon.)

<sup>34</sup> Complaint at ¶ 15.

<sup>35</sup> *Id.*, Ex. 2.

<sup>36</sup> Answer, ¶ 16, Attachment A, ¶ 6 (There was no immediate written response by Verizon to this request. Verizon and Net2000 personnel, however, did participate in several meetings and conference calls subsequently, in which Net2000 was informed of the reasons why Verizon believed that Net2000's conversion requests were defective.)

<sup>37</sup> Complaint, ¶ 18, Ex. 7.

<sup>38</sup> *Id.*, Ex. 6.

<sup>39</sup> *Id.*, Ex. 8.

<sup>40</sup> *Net2000 Communications v. Verizon – Washington, D.C.*, Initial Brief of Net2000, File No. EB-00-018, Ex. 1, Letter from Susan Fox of Verizon to Anthony Hansel of Net2000 (dated Dec. 1, 2000). (The conversion of two DS3s was denied because they were switched access rather than special access circuits. Conversion of 17 DS1s was denied because the requested circuits were connected to tariffed switched access circuits, and the conversions of 53 DS1 circuits and 1 DS3 circuit were denied because these circuits did not meet the definition of EEL. That is, the identified circuits consisted of two channel terminations connecting two end user premises to the same Verizon wire center. Finally, 33 of the requested DS1 circuits either could not be located on Verizon's billing record or the circuits had previously been disconnected.)

Verizon reported that the conversion of the circuits it deemed eligible would result in a reduction of Net2000's monthly charges from \$323,301.02 to \$250,592.25 for the converted circuits. Because some of the eligible circuits

(continued...)

15. On December 15, 2000, Net2000 sent its fourth letter and requested the conversion of additional DS3 circuits, containing some of the previously requested DS1 circuits for which conversion had been denied by Verizon on the grounds that they were commingled with prohibited tariffed services. It also submitted a list for conversion of additional circuits currently in service that were omitted from the conversion list attached to its October 17, 2000 letter. Net2000 confirmed its May 9, 2000 self-certification that all of its special access circuits were "used to provide a significant amount of local exchange service to the particular customers served by those facilities in accord with the orders of the Federal Communications Commission." With respect to the additional circuits requested in the letter, Net2000 stated that "these special access circuits are used to provide a significant amount of local exchange service to the particular customers served by those facilities in accord with option 3 of the FCC *Supplemental Order Clarification*."<sup>41</sup>

16. Verizon reported by letter of March 15, 2001 that it had completed processing of Net2000's December 15, 2000 conversion request as well as the supplemental circuit data that Net2000 provided pursuant to its October 17, 2000 request for circuits in the District of Columbia, Maryland, Virginia, New Jersey and Pennsylvania. Some DS1s, however, were rejected because, according to Verizon, they violated our "co-mingling" prohibition.<sup>42</sup>

#### D. Pleadings and Procedural History

17. Net2000's Complaint was filed on November 6, 2000. It sets forth three counts. In Count I, Net2000 contends that Verizon's failure to accept Net2000's self-certifications and refusal to convert special access circuits requested by Net2000 in compliance with our applicable orders constituted an "unjust and unreasonable practice under section 201(b) of the Communications Act, 47 U.S.C. § 201(b). In Count II, Net2000 charges that Verizon's attempts to conduct an alleged pre-conversion audit of Net2000's conversion requests constitutes an unlawful use restriction in violation of Section 251(c) of the Act and our rules and order thereunder. In Count III, Net2000 contends that Verizon's failure to allow

---

(...continued from previous page)

had been purchased pursuant to the term plan provisions in Verizon's tariffs, however, the conversions would result in one-time termination liability and minimum period charges of \$974,376.42.)

<sup>41</sup> Initial Brief of Net2000, Ex. 2, Letter from Anthony Hansel of Net2000 to Deborah Kugelman of Verizon (dated Dec. 15, 2000).

<sup>42</sup> *Net2000 Communications v. Verizon - Washington, D.C.*, Reply Brief of the Verizon Telephone Companies, File No. EB-00-018, Ex. A., Letter from Susan Fox of Verizon to Anthony Hansel of Net 2000 (dated Mar. 15, 2001). Verizon reported that, based on its review, 48 of the requested DS3 circuits and 579 of the requested DS1 circuits were eligible for conversion, while it refused or was unable to convert 412 of the requested DS1 circuits and 6 of the requested DS3 circuits. Verizon's major reason for denial of conversion, in the case of 309 DS1 circuits, was that conversion was not permitted by the Commission's "co-mingling" prohibition under Option 3 (*i.e.*, the requested DS1 circuits were multiplexed onto tariffed DS3 circuits that Net2000 did not request to be converted). Verizon stated that it was prepared to convert 10 of the 18 DS3 circuits requested and 222 of the 309 DS1 circuits requested in the supplement to Net2000's October 17, 2000 request. Four DS3s duplicated circuits that had previously been requested for conversion and 4 of the requested DS3s could not be located in Verizon's billing records. 87 of the DS1s were rejected because Verizon believed that they violated our "co-mingling" prohibition under Option 3 because they were derived from DS3s that still would be provided under tariff.

With respect to the additional circuits requested to be converted on December 15, 2000, Verizon agreed that 180 of the 264 DS1 circuits and 16 of the 17 DS3 circuits were eligible for conversion. Seventy-two of the DS1 circuits were rejected because Verizon believed that they violated our "co-mingling" prohibition under Option 3. The remaining DS1 circuits were rejected because the circuits identified either had been disconnected, were not found in Verizon's billing records or were being billed to a customer other than Net2000. Verizon denied conversion of one DS3 circuit because it consisted of only a channel termination without transport and therefore did not meet the definition of EEL.

conversion of special access circuits to EELs is a violation of the cancellation and reconfiguration provisions of Verizon's special access tariff, and as such, violates section 203(a) and (c) of the Act. Further, Net2000 contends, Verizon has unlawfully imposed a prohibition on the transport of tariffed and unbundled network element ("UNE") traffic over a shared DS3 circuits, and by failing to include and describe this practice in its effective special access tariff, Verizon is operating in violation of Section 203(a) and (c) of the Act.

### III. DISCUSSION

#### A. Verizon Did Not Violate Section 201(b) and Section 251(c) of the Act and Our Orders by Refusing to Convert Net2000's Designated Special Access Circuits to EELs Despite Net2000's Self-Certification

18. Count I of Net2000's complaint asserts that Verizon's refusal to convert promptly Net2000's designated special access circuits to EELs was an unjust and unreasonable practice in violation of section 201(b) of the Act and of our Orders. Net2000 contends that once it had certified to Verizon that the requested circuits carried a "significant amount of local exchange service traffic,"<sup>43</sup> Verizon was obligated to convert those circuits to EELs. Verizon was not permitted, according to Net2000, to challenge that self-certification prior to conversion. We disagree with Net2000's characterization of Verizon's actions. Although an ILEC may not question, prior to conversion, the requesting carrier's self-certification of the substantial use of the circuits for local exchange service, ILECs are not required to convert circuits when the requested circuits do not on their face meet the other requirements specified for conversion.

19. Net2000 made three conversion requests prior to the filing of its complaint and one further conversion request, following up on its prior requests, after the complaint had been filed, but before the close of the record in this proceeding. In the case of each request, Net2000 claims that Verizon conducted a pre-conversion audit prohibited by the Commission's rules and refused to convert certain designated circuits as a result.<sup>44</sup> We disagree and believe that the record reflects that Verizon did not audit Net2000's certification claims regarding its carriage of a significant amount of local exchange traffic over the circuits in question. Rather, Verizon accepted Net2000's certification, but refused to convert circuits that it believed did not meet the criteria for conversion prescribed by our rules.

20. Verizon refused to process Net2000's March 23, 2000 conversion request because it believed that at that time we required conversion only of circuits that terminate in collocation arrangements.<sup>45</sup> Thus, Verizon's refusal to convert the requested circuits requested did not result from its refusal to accept Net2000 self-certification that the requested circuits were used for "a significant amount of local exchange traffic." Instead, the request was denied because in Verizon's view, the conversion request did not, on its face, meet the Commission's requirements for conversion. While we disagree with Verizon's interpretation of our requirements, as set forth below, we find that the March 23 requests contained other defects that justified Verizon's denial of Net2000's requests.<sup>46</sup>

21. Consistent with its treatment of Net2000's March 23 requests, Verizon did not process Net2000's May 9, 2000 conversion request because it believed at that time that the applicable Commission orders only permitted conversion of circuits that terminated in collocated arrangements.<sup>47</sup>

<sup>43</sup> Complaint at ¶¶ 26-28.

<sup>44</sup> Initial Brief of Net2000 at 6.

<sup>45</sup> Verizon Reply Brief at 4.

<sup>46</sup> See *infra* ¶ 33.

<sup>47</sup> *Id.*

Nevertheless we find that Verizon was justified in denying this request because of Net2000's failure to specify the circuits to be converted. In any case, Verizon did not reject or ignore this request because of its refusal to accept Net2000's self-certification.

22. Verizon did proceed to process Net2000's October 17, 2000 and December 15, 2000 requests. During the course of processing, it discovered that some of the circuits requested for conversion were no longer in service, could not be located in Verizon's records, or did not comprise EELs. In some cases, it was discovered that the DS1 circuits requested for conversion were multiplexed onto DS3 circuits that would continue to be provided via tariff and Verizon refused to convert these circuits because it believed that this would violate the Commission's prohibition against co-mingling under Option 3 of EELs with tariffed services. Verizon, however, had not refused to convert any circuits because it failed to accept Net2000's certification that the circuits were used to provide a significant amount of local exchange services.

23. Our orders require that "once a requesting carrier certifies that it is providing a significant amount of local exchange service," an ILEC must begin processing the requests without delay.<sup>48</sup> We conclude, however, that while an ILEC may not question the requesting carrier's self-certification of substantial use for local exchange service, the ILEC is not required to convert circuits when in fact they do not meet the other requirements specified for conversion by the Commission. Accordingly, Net2000 has failed to support the contention that Verizon refused to accept Net2000's self-certification in violation of the Act or our rules. Because Net2000 has failed to demonstrate that Verizon conducted a pre-conversion audit in contradiction of our rules, Net2000's second count relating to the alleged audit of Net2000's conversion requests is also denied.

**B. Verizon Did Not Refuse to Convert Special Access Circuits to EELs That Met Our Requirements for Conversion In Violation of The Act and Our Rules**

24. As discussed above, an ILEC may refuse to convert a designated special access circuit so long as it fails to satisfy our criteria for conversion. Net2000 contends however that Verizon violated the Act and our rules by improperly refusing to convert EEL-eligible circuits. Verizon refused to convert the designated special access circuits because (1) the circuits did not terminate in a collocation space, (2) all the DS1s multiplexed onto the DS3s do not satisfy the EEL conversion criteria, and (3) a loop/transport combination cannot be combined with an access service. Net2000 alleges that none of these reasons for denial was lawful. We deny Net2000's claims that Verizon's refusal to convert the designated special access circuits violated our rules and will address each issue separately below.

**1. ILECs Were Required to Convert Special Access Circuits That Did Not Terminate In Collocation Arrangements**

25. Verizon argues that the conversion of special access circuits to EELs that do not terminate in collocated arrangements was not required by the Commission in its *UNE Remand Order* or in its *Supplemental Order*. It contends that this was not required until the Commission issued its *Supplemental Order Clarification*, which set forth "safe-harbor option 3, as a basis for which non-collocated carriers are permitted to request the conversion of their special access circuits."<sup>49</sup> Verizon relies principally on the following language from the *UNE Remand Order*:

In particular, any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, as discussed above. Moreover, to

<sup>48</sup> *Id* at 9603, ¶ 30.

<sup>49</sup> Reply Brief of Verizon at 4; Answer at Part III, 13-14.

the extent those unbundled network elements are already combined as a special access circuit, the incumbent may not separate them under rule 51.315(b), which was reinstated by the Supreme Court. In such situations, it would be impermissible for an incumbent LEC to require that a requesting carrier provided a certain amount of local service over such facilities.<sup>50</sup>

26. Although the language quoted above specifically addressed the situation of collocated carriers, we did not state or imply that only collocated carriers had a right to use unbundled network elements or convert special access circuits to EELs. Indeed, following the paragraph relied upon by Verizon, we specifically clarified “that interexchange carriers are entitled to use unbundled dedicated transport from their POP to a serving wire center in order to provide local telephone exchange service.”<sup>51</sup> This language recognizes the viability of a conversion to an EEL in a non-collocation network configuration. Also, as Verizon points out, our *Supplemental Order* specifically modified paragraph 486 in the *UNE Remand Order*, to the extent that that paragraph would have allowed collocated carriers to convert their special access circuits to EELs without any restrictions requiring local exchange service use.<sup>52</sup> However, the language in the *Supplemental Order* permitting the conversion of special access to EELs for use “to provide a significant amount of local exchange service” clearly applies to both collocated and non-collocated situations.<sup>53</sup>

27. Finally, we note that Verizon does not dispute that the term “significant amount of local exchange service” in safe-harbor Option 3 relates to non-collocated circuits. Since nothing in the *Supplemental Order Clarification* suggest that the Commission intended to make a change in any collocation requirement, we find this to be further evidence that special access circuits that did not terminate in collocation arrangements were eligible for conversion to EELs.

**2. All Individual DS1 Circuits Multiplexed Onto DS3 Circuits Must Meet the Applicable Local Exchange Service Use Criteria to Have DS3s Converted to EELs**

28. Net2000 argues that whether circuits are used for “a significant amount of local exchange service” and therefore qualify for conversion to EEL should be judged on an “end-user-by-end-user basis.” It should not matter, Net2000 contends, whether a dedicated DS1 between the CLEC’s office and the customer’s premises that is used to provide local exchange service is carried on a multiplexed DS3 transport channel that includes other DS1s used for other services.<sup>54</sup> It proposes that DS3 circuits derived from both EEL-eligible and non-EEL-eligible DS1 circuits be priced utilizing “ratcheting,” similar to mixed use DS3 circuits carrying both special access and switched access DS1s,<sup>55</sup> so that proportionate unbundled network element rates would apply to the converted DS1s and proportionate special access rates would apply to the non-converted DS1s.<sup>56</sup> The arguments made by Net2000, however, ignore the specific language of Option 3. There is no provision anywhere in the *Supplemental Order Clarification*, or in prior orders for “ratcheting.” The language of Option 3 clearly and specifically requires that “[w]hen a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of

<sup>50</sup> *UNE Remand Order*, 15 FCC Rcd at 3912, ¶ 486.

<sup>51</sup> *Id.*, 15 FCC Rcd at 3919, ¶ 488.

<sup>52</sup> *Supplemental Order, supra.*, 15 FCC Rcd at 1761, ¶ 4.

<sup>53</sup> *Id.*, 15 FCC Rcd at 1762, ¶ 5.

<sup>54</sup> Initial Brief of Net2000 at 9-12.

<sup>55</sup> See Verizon, Tariff F.C.C. No. 1, Page 316.29.1, § 7.2.14(C)(1)(e).

<sup>56</sup> Initial Brief of Net2000 at 14.

the individual DS1 circuits must meet [the substantial local exchange service use] criteria.”<sup>57</sup> There is no ambiguity in this language. Although Net2000 argues that it would be better if CLECs were permitted to convert only the parts of their DS3s that are used to provide local exchange service and to continue to obtain the remaining parts of the DS3s by tariff, this clearly is not permitted under our rules.

### 3. The Commission’s Rules prohibit the “Co-mingling” or Combining of Unbundled Network Elements with Access Services on the Same Facilities

29. As described above, for a DS3 circuit to meet the conversion criteria under Option 3 of the *Supplemental Order Clarification*, all of its derived DS1 circuits must meet the prescribed “significant local exchange service” criteria. In addition, we specified that, “[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC’s tariffed services.”<sup>58</sup> This restriction prevents Net2000, for example, from converting a DS1 special access circuit from its customer’s premises and terminating at a local Verizon switching center, which is connected to a mixed use DS3 facility between the Verizon switching center and a Net2000 operating office. In that case, Net2000 must continue to obtain the DS3 circuit under tariff because the DS3 circuit contains exchange access, interstate or other traffic that does not qualify as “significant local exchange service” use under the prescribed criteria. Accordingly, Net2000 is prevented from converting not only the mixed use DS3 but also any DS1 circuits connected to the tariffed DS3.

30. Net2000 argues that the prohibition against co-mingling “applies to the connection of converted circuits to tariffed circuits and not to the provisioning of EEL-eligible circuits over the same facilities also used to support additional services.” “Any other interpretation,” Net2000 contends, “renders the Commission’s option to convert multiplexed circuits at non-collocated arrangements meaningless, since a carrier would be forced to convert *each* and *every* DS1 circuit riding a DS3 circuit in every instance.”<sup>59</sup> Net2000 again makes policy arguments that, whatever their merits, are inconsistent with the actual language of the rule in effect at the time of its requests, as clarified in Option 3. The criteria prescribed in the Commission’s *Supplemental Order Clarification* under Option 3 without ambiguity prohibit the conversion of DS3s carrying mixed traffic and also prohibit the conversion of otherwise EEL-eligible circuits which connect to non-eligible DS3.<sup>60</sup> The Commission, moreover, in its *Supplemental Order Clarification* specifically refused to modify these restrictions. At paragraph 28, we stated:

We further reject the suggestion that we eliminate the prohibition on “co-mingling” (*i.e.*, combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXC’s solely or primarily to bypass special access services.”<sup>61</sup>

### 4. Converted Circuits Need Not Be Re-Priced Retroactive to the Date of the *UNE Remand Order*

31. Net2000 contends that all of its existing special access circuits should be converted to EEL pricing, effective February 17, 2000, which is the effective date of our *UNE Remand Order*.<sup>62</sup>

<sup>57</sup> *Supplemental Order*, 15 FCC Rcd at 9599, ¶ 22.

<sup>58</sup> *Supplemental Order*, 15 FCC Rcd at 9599, ¶ 22.

<sup>59</sup> Initial Brief of Net2000 at 12.

<sup>60</sup> *Supplemental Order Clarification*, 15 FCC Rcd at 9599-9600, ¶ 22.

<sup>61</sup> *Id.* at 9606, ¶ 28.

<sup>62</sup> Complaint at Legal Analysis ¶ 20.

Verizon has taken the position that it will make the re-pricing effective on the first day of the month following the date of each valid conversion request by Verizon. In this regard, Verizon rejected the March 23, 2000 and May 9, 2000 requests as invalid, because of lack of collocation, specificity, and improper co-mingling. It accepted Net2000's request as valid and agreed to re-pricing eligible requested circuits, as of November 1, 2000 for the circuits requested on October 17, 2000 and the additional circuits supplementing the October 17, 2000 request. It has also agreed to re-price the circuits requested on December 15, 2000, effective January 1, 2001.<sup>63</sup>

32. There is no basis for Net2000's claim that all of its special access circuits should be re-priced from the effective date of the *UNE Remand Order*. The *UNE Remand Order* did not automatically convert all eligible special access circuits to EELs on the effective date of that order. We held that, in accordance with section 251(c)(3) of the Act and section 51.315(b) of the Rules, the ILECs had a duty to provide such conversion to a "requesting telecommunications carrier." Accordingly, ILECs were under no obligation to provide conversions unless and until such conversions were requested. Verizon's proposal to make the conversions effective on the first day of the month after they are requested is reasonable and in accord with the requirements of the Act and our orders.

#### 5. Summary – Verizon Did Not Unlawfully Refuse to Comply With Net2000's Requests to Convert Special Access Circuits to EELs

33. Net2000 has not shown that Verizon has refused to convert any circuits requested by it that met the criteria for conversion prescribed by the Commission. We conclude that Verizon should not have rejected Net2000's March 23, 2000 conversion request on the grounds that only circuits terminating in collocated arrangements were eligible for conversion. We conclude, however, that the requested circuits were, in any event, ineligible for conversion because those circuits were subject to the significant amount of local exchange service requirement articulated in our *Supplemental Order*<sup>64</sup> and more precisely addressed under Option 3 of our *Supplemental Order Clarification*.<sup>65</sup> Thus Net2000's March 23, 2000 request for conversion of circuits under the identical scenario described in Option 3 but in conflict with that Option's co-mingling restriction was inappropriate.<sup>66</sup> Net2000's May 9, 2000 request was defective because there was no identification of the circuits requested for conversion. Furthermore, Net2000's request for conversion of all of its special access circuits was also inappropriate for the reasons stated above concerning their March 23, 2000 request. In the case of Net2000's subsequent conversion requests on October 17, 2000 and December 15, 2000, Verizon was justified in denying conversion for the requested circuits which, on their face, violated the Commission's co-mingling prohibition under Option 3 or did not meet the definition of an EEL.

34. We note, however, that the re-pricing of none of the circuits requested by Net2000 had been implemented when the record closed in this proceeding. Verizon in its letters of December 1, 2000 and March 15, 2001, reporting on its processing of Net2000's requests, stated that it would proceed to implement the re-pricing of eligible circuits only after Net2000 had notified it to proceed and Net2000 had executed an amendment to its interconnection agreement with Verizon containing terms governing the provision of EELs.<sup>67</sup>

<sup>63</sup> Reply Brief of Verizon at 6.

<sup>64</sup> *Supplemental Order*, 15 FCC Rcd at 1762, ¶ 5.

<sup>65</sup> *Supplemental Order Clarification*, 15 FCC Rcd at 9599-9600, ¶ 22.

<sup>66</sup> Although we do not grant Net2000's complaint under Option 3, parties are still able to file a waiver request as specified in the *Supplemental Order Clarification*. *Id.* at 9600, ¶ 28.

<sup>67</sup> Initial Brief of Net2000 at Ex. 1; Reply Brief of Verizon at Attachment A.

35. We conclude that it was reasonable for Verizon to request that Net2000 confirm that it wished to go ahead with the conversions before implementation. Verizon had calculated that the conversions requested by Net2000 would result in relatively large termination liability and minimum period charges as a result of conversion of special access circuits being provided in accordance with Verizon's term tariff offering. Net2000 should be given the opportunity to cancel or modify its request to avoid or minimize such charges.<sup>68</sup>

36. With respect to the need for the execution of an amendment to the interconnection agreement between the parties, Verizon contends that without such an amendment it would have no vehicle to provide or bill for the non-tariffed loop/transport combinations.<sup>69</sup> Net2000 contends, on the other hand, that an amendment is unnecessary because "the existing agreements already provide for access to UNE combinations, of which the EEL is an example."<sup>70</sup> Net2000, moreover, has objected to the amendments proposed by Verizon because it believes that this language will lessen its flexibility in acquiring facilities from Verizon.<sup>71</sup> The record in this proceeding does not permit us to determine whether an amendment to the parties' existing interconnection agreement is necessary for the implementation of Net2000's conversion requests or whether the amendments proposed by Verizon are appropriate for this purpose. Although Verizon's proposed amendments are attached to its Answer in this proceeding, the existing interconnection agreement is not part of the record. Verizon's attorney had advised the Commission staff in the initial status conference, herein, that we would not be required to rule on this issue in this proceeding.<sup>72</sup> Unfortunately, the parties, apparently, have not yet agreed upon whether and how their interconnection agreement should be revised. In this regard, each party blames the other for their failure to reach an agreement.<sup>73</sup>

37. Verizon is required by our *UNE Remand Order, Supplemental Order and Supplemental Order Clarification* to promptly implement the conversion of eligible special access circuits to EELs upon request.<sup>74</sup> Although an applicable governing interconnection agreement is required for Verizon to bill for any converted EELs, Verizon is not permitted to require CLECs to execute unneeded amendments

---

<sup>68</sup> *Net2000 Communications v. Verizon - Washington, D.C.*, Reply Brief of Verizon, File No. EB-00-018, Attachment A (March 30, 2001)(Letter from Susan Fox of Verizon to Anthony Hansel of Net2000, dated March 15, 2001 (Verizon calculated that the conversion of eligible circuits in the Supplemental October 17, 2000 request would result in a reduction of monthly charges from \$103,733 to \$75,595, but also would result in one-time termination liability and minimum period charges of \$407,198. Conversion of the additional circuits deemed eligible that were requested on December 15, 2000 would result in a reduction of monthly charges from \$90,070 to \$67,731, but would result in one-time termination liability and minimum period charges of \$377,138. Verizon stated that the effective date of the re-pricing for the circuits in the supplement to the October 17, 2000 request would be November 1, 2000 and the effective date of the conversions requested on December 15, 2000 would be January 1, 2001.); *Net2000 Communications v. Verizon - Washington, D.C.*, Initial Brief of Net2000, File No. EB-00-018, Ex. 1 (Letter from Susan Fox of Verizon to Anthony Hansel of Net2000 (dated Dec. 1, 2000). (Verizon reported that the conversion of the circuits it deemed eligible would result in a reduction of Net2000's monthly charges from \$323,301.02 to \$250,592.25 for the converted circuits. Because some of the eligible circuits had been purchased pursuant to the term plan provisions in Verizon's tariffs, however, the conversions would result in one-time termination liability and minimum period charges of \$974,376.42.)

<sup>69</sup> Reply Brief of Verizon at 7.

<sup>70</sup> Reply Brief of Net2000 at 5.

<sup>71</sup> December 15, 2000 Staff Letter, *supra.* at 2.

<sup>72</sup> *Id.*

<sup>73</sup> Reply Brief of Verizon at 7 and Reply Brief of Net 2000 at 5.

<sup>74</sup> See, e.g., *UNE Remand Order*, 15 FCC Rcd 3696, 3909, ¶ 480; *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9604, ¶ 33.

or amendments with unfavorable terms as a condition to the conversion of their special access circuits to EELs.<sup>75</sup>

38. We note that the dispute between the parties on the need for the execution of amendments to their interconnection agreement has not, so far, delayed the implementation of the conversion the circuits requested by Net2000. In this regard, Verizon has reasonably sought Net2000 confirmation before it proceeds with the conversions, in any event. Net2000 has not yet, as far as we are aware, confirmed its conversion request. Accordingly, even assuming that Verizon has proposed an unneeded requirement that Net2000 execute an amendment to their agreement as a means to restrict or delay the conversion of Net2000's special access circuits to EELs, such violation has not yet occurred and we need not rule on this issue now.

**C. Verizon Did Not Violate Section 203(a) and 203(c) of the Act By Failing to Convert Special Access Circuits to EELs, Retroactively to the Effective Date of Our *UNE Remand Order* or by Failing to Provide in its Special Access Tariffs That Tariffed and UNE Traffic May Not Be Transported Over a Shared DS3 Circuits**

39. In the Third Count of its Complaint, Net2000 contends that Verizon violated Section 203(a) of the Act by failing to convert special access circuits to EELs, retroactively to the effective date of the Commission's *Third Report and Order*, and "unlawfully imposing a prohibition on the transport of tariffed and UNE traffic over a shared DS3 circuit that is not set forth in Verizon's tariffs."<sup>76</sup>

40. Net2000's section 203 claims in its complaint are difficult to follow. Net2000 fails to explain why it is necessary for Verizon to incorporate the rights and obligations for conversion of special access circuits in its tariffs. In any event, as we have concluded above, Verizon is not obligated by the applicable Commission orders to convert special access circuits to EELs retroactively to the effective date of the *Third Report and Order* or to permit the transport of tariffed and UNE traffic over a shared DS3 circuits. We therefore conclude that Net2000 has failed prove any section 203 violations on the part of Verizon.

#### IV. CONCLUSIONS

41. In light of all the forgoing, we conclude that Verizon did not conduct pre-conversion audits of Net2000's conversion requests in violation of the *Supplemental Order and Supplemental Order Clarification* in violation of section 201(b) of the Act. We conclude further that Verizon did not unlawfully refuse to convert eligible special access circuits to EELs in violation of section 251(c) of the Act and the Commission's rules and orders implementing that section and that Verizon did not violate sections 203(a) and (c) of the Act by failing to allow conversion of special access circuits to EELs or by prohibiting the transport of tariffed and UNE traffic over shared DS3 circuits.

#### V. ORDERING CLAUSE

42. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, 208, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 208, 251 and Sections 0.111 and 0.311 of the Commissions Rules, 47 C.F.R. §§ 0.111 and 0.311 that the formal complaint of Net2000 Communications Services, Inc. against Verizon – Washington, D.C., Inc., Verizon – Maryland, Inc. and Verizon – Virginia, Inc. IS DENIED.

<sup>75</sup> Given that the parties' interconnection agreement already contains language for the provision of UNE combinations and that EELs are such combinations, we suspect that no ammendment would be necessary for the conversion of qualifying special access circuits to EELs.

<sup>76</sup> Complaint at ¶¶ 31-33, Legal Analysis, ¶¶ 20-23.

43. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

PHX/1274001.1/67817.150

**EXHIBIT B**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF THE GENERIC  
INVESTIGATION INTO U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH CERTAIN WHOLESALE PRICING  
REQUIREMENTS FOR UNBUNDLED  
NETWORK ELEMENTS AND RESALE  
DISCOUNTS.

DOCKET NO. T-00000A-00-0194

**QWEST CORPORATION'S RESPONSE TO AT&T'S MOTION TO STRIKE**

Qwest Corporation ("Qwest") hereby responds to the motion of AT&T of the Mountain States, Inc. ("AT&T") to strike Qwest's response to the exceptions filed by other parties in this docket, or alternatively, to permit AT&T to file its own response to Qwest's exceptions. The Arizona Corporation Commission ("Commission") should deny AT&T's motion to strike but grant its alternative request to file a response.

Because this Commission would benefit from having more rather than less information on which to base its decisions in this complex proceeding, Qwest has no objection to allowing any party to respond to the exceptions filed by Qwest (or any other party). Citing A.A.C. R14-3-110(B), however, AT&T argues that the Commission does not customarily permit replies to exceptions. But A.A.C. R14-3-110 should be applied consistently with the Commission's best interests, and the Commission may waive the application of that provision for good cause. A.A.C. R14-3-101(B). There is plainly good cause exists for such waiver here. This docket, which arises pursuant to the

Telecommunications Act of 1996 (the “Act”), is so broad and so complex that additional briefing beyond the initial exceptions is necessary to enable the Commission to make a fully informed decision.

The Commission promulgated A.A.C. R14-3-110 in 1975, decades before the adoption of the Act and the Commission rules addressing competitive telecommunications service, interconnection and unbundling, and arbitration and mediation under the Act. When viewed as a whole, many of the rules set forth in Article 1, Chapter 3, Title 14 of the Arizona Administrative Code appear designed for the processing of less complicated administrative proceedings (e.g., issues related to the provisions of service, construction agreement, individual consumer complaints, etc.).

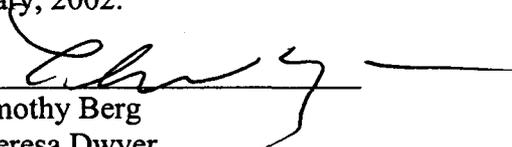
In contrast, this proceeding requires the Commission to set over 583 prices for interconnection and unbundled network elements, as required under the Act and the FCC’s implementing rules. It resulted in a two-week hearing with 20 witnesses, 135 exhibits, and countless disputes about the proper application of the governing methodology: “total element long-run incremental cost,” or TELRIC. In these circumstances, the Commission would derive clear benefits from a full and fair airing of the issues by the parties to this proceeding.

Clearly, the complexity of this docket merits a waiver of the application of A.A.C. R14-3-110(B). Additionally, permitting the filing of additional briefing on significant issues is consistent with past Commission practice. In the original generic cost docket, the parties filed additional comments in the form of legal memoranda, letters, supplemental citations of authority, etc. between the issuance of the proposed order and

the adoption of the final Commission decision. See generally, 1996 Consolidated Cost Docket, Docket Nos. U-3021-96-448, et al.

Based on the foregoing, Qwest requests that the Hearing Division deny AT&T's motion to strike, but permit the filing of additional responses to other parties' exceptions, as AT&T alternatively suggests.

Respectfully submitted this 11<sup>th</sup> day of January, 2002.

By: 

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

Roy Hoffinger  
Wendy Moser  
QWEST CORPORATION

John M. Devaney  
Norton Cutler  
PERKINS COIE LLP  
*Attorneys for Qwest Corporation*

**ORIGINAL and 10 copies of the foregoing hand-delivered for filing this 11<sup>th</sup> day of January, 2002 to:**

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

**COPY of the foregoing hand-delivered this day to:**

Maureen Scott  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

Lyn Farmer, Chief Arbitrator  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ 85007

**COPY of the foregoing mailed this day to:**

Steven J. Duffy  
RIDGE & ISAACSON, P.C.  
3101 North Central Avenue, Ste. 1090  
Phoenix, Arizona 85012-2638

Richard S. Wolters  
M. Singer-Nelson  
AT&T  
1875 Lawrence Street, Room 1575  
Denver, CO 80202-1847

Allen Wong  
AT&T  
1875 Lawrence Street, Room 1575  
Denver, CO 80202-1847

Michael W. Patten  
ROSHKA HEYMAN & DEWULF  
400 North Fifth St., Ste. 1000  
Phoenix, AZ 85004-3906

Michael Grant  
Todd C. Wiley  
GALLAGHER & KENNEDY  
2575 E. Camelback Rd.  
Phoenix, AZ 85016-9225

Thomas H. Campbell  
LEWIS & ROCA  
40 N. Central Avenue  
Phoenix, AZ 85007

Brian S. Thomas  
TIME WARNER TELECOM  
520 SW Sixth Ave., Suite 300  
Portland, OR 97204-1522

Thomas F. Dixon  
WORLD COM  
707 17<sup>th</sup> Street  
Denver, CO 80202

Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Scott S. Wakefield  
RUCO  
2828 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004

Ray Heyman  
ROSHKA HEYMAN & DeWULF  
400 North 5<sup>th</sup> Street, Suite 1000  
Phoenix, AZ 85004

Rex M. Knowles  
XO Communications, Inc.  
111 E. Broadway, Suite 1000  
Salt Lake City, UT 84111

Megan Doberneck  
COVAD COMMUNICATIONS COMPANY  
7901 Lowry Boulevard  
Denver, Colorado 80230

Robert S. Tanner  
DAVIS WRIGHT TREMAINE LLP  
17203 N. 42nd Street  
Phoenix, AZ 85032

Greg Kopta  
DAVIS WRIGHT TREMAINE LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Mary S. Steele  
DAVIS WRIGHT TREMAINE, LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Dennis Ahlers  
Senior Attorney  
ESCHELON TELECOM, INC.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402

Steve Sager, Esq.  
MCLEODUSA TELECOMMUNICATIONS SERVICE, INC.  
215 South State Street, 10<sup>th</sup> Floor  
Salt Lake City, Utah 84111

Marti Allbright, Esq., Esq.  
MPOWER COMMUNICATIONS CORPORATION  
5711 South Benton Circle  
Littleton, CO 80123

Penny Bewick  
NEW EDGE NETWORKS  
PO Box 5159  
3000 Columbia House Blvd.  
Vancouver, Washington 98668

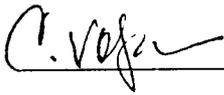
Michael B. Hazzard  
KELLEY DRYE AND WARREN  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036

Janet Livengood  
Z-TEL COMMUNICATIONS, INC.  
601 South Harbour Island  
Suite 220  
Tampa, Florida 33602

Andrea Harris  
ALLEGIANCE TELECOM  
2101 Webster  
Suite 1580  
Oakland, CA 94612

Traci Grundon  
DAVIS, WRIGHT TREMAINE, LLP  
1300 S. W. Fifth Avenue  
Portland, OR 97201

Joan Burke  
OSBORN MALEDON  
2929 N. Central Avenue  
Phoenix, AZ 85012

  
\_\_\_\_\_

PHX/TDWYER/1259578.2/67817.240