BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996	)	Docket No. UT-003022
In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	)	Docket No. UT-003040

AT&T'S RESPONSE IN OPPOSITION TO QWEST'S MOTION FOR RECONSIDERATION OF THE 15TH SUPPLEMENTAL ORDER

AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit this Response in Opposition to Qwest's Motion for Reconsideration of the 15th Supplemental Order. As grounds therefore, AT&T states as follows:

INTRODUCTION

If a consumer places a banana, a pretzel and a steak in his basket, would it be fair for the market to charge the consumer three times the price of the steak simply because the consumer enjoys the convenience of carrying the other items in the same basket? The obvious answer is "no," it is inequitable to charge the consumer for more than he receives. Likewise, would it be fair to demand that if the consumer wants to purchase these seemingly unrelated items at their appropriate individual prices, he must use separate baskets for each item? Again, the obvious answer is "no," it would be

inefficient and wasteful for the consumer to carry more baskets than necessary simply for the convenience of paying the appropriate price for the individual items.

Competitive local exchange carriers ("CLECs") should be treated no differently than this hypothetical consumer. In fact, Qwest has conceded that CLECs may use—for example—the DS-3 facility or "basket" to carrier interconnection trunks, UNE trunks[1] and special access trunks. Just like the grocery shopper, CLECs too should pay the appropriate price for each item they purchase from Qwest. This is what AT&T means when it employs the term "ratching." AT&T is not asking to commingle local and long distance traffic using the same trunk; AT&T is not asking to pay less than it should for the items it purchases.[2] In contrast, Qwest is asking that CLECs pay more than they should either through the inefficiencies of having to carry and buy more "baskets" than they need or by paying disproportionately for the highest priced item they need. If nothing else, simple fairness suggests Qwest's proposal should be rejected.

DISCUSSION

There are at least two fundamental flaws in Qwest's Motion for Reconsideration. They are: (1) contrary to Qwest's claim, the Federal Communications Commission ("FCC") has not prohibited what AT&T requests and the Washington Commission adopts; and (2) again, contrary to Qwest's claim, the Washington ALJ's decision in regard to the efficient use of interconnection trunks and access to UNEs is consistent with other State Commissions' decisions and the adoption of such a proposal will not harm Universal Service Funding ("USF").

[1] "UNE," as you know, means unbundled network elements. "UNE trunks" in this context means the trunks CLECs employ to access UNEs.
[2] 6/23/00 WA Tr. at pp. 617, ln. 19 – 618, ln. 20.

I. The Washington Commission's 15th Supplemental Order is Consistent with the FCC's Decisions and the Telecommunications Act of 1996 ("Act").

In its Motion, Qwest argues that the FCC's Supplemental Orders expressly prohibit the "ratcheting" proposed by AT&T. Qwest further claims that the *ex parte* submission made by WorldCom addressed this very proposal, which the FCC allegedly rejected. Qwest is simply wrong. To put forward its argument, Qwest attempts to extend the FCC's rulings beyond their clear and unambiguous scope.

On its face, the *Supplemental Order*[3] and *Supplemental Order Clarification*[4] are limited to commingling of access traffic/long distance on unbundled network elements/loops. Paragraph 2 in the *Supplemental Order* describes the FCC's concern; it plainly states:

> In the *Third Report and Order*, we explained that incumbent LECs routinely provide the functional equivalent of combinations of unbundled loop and transport network elements (also referred to as the enhanced extended link) through their special access offerings. Because section 51.315(b) of the Commission's rules precludes the incumbent LECs from separating loop and transport elements that are currently combined, we stated that a requesting carrier could obtain these combinations at unbundled network element prices. At the same time, we stated our concern that allowing requesting carriers to use loop-transport combinations solely to provide exchange access service to a customer, without providing local exchange service, could have significant policy ramifications because unbundled network elements are often priced lower than tariffed special access services. Because of concerns that universal service could be harmed if we were to allow interexchange carriers (IXCs) to use the incumbent's network without paying their assigned share of the incumbent's costs normally recovered through access charges, we agreed that we should further explore these considerations, recognizing that full implementation of access charge and universal service reform was still pending.

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[3] *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 99-370 (Rel. Nov. 24, 2000) [hereinafter "***Supplemental Order***"].

[4] *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183 (Rel. June 2, 2000) [hereinafter "***Supplemental Order Clarification***"].

To address this concern, the FCC stated that interexchange carriers ("IXCs") may not convert special access services to combinations of unbundled loops and transport network elements, until resolution of the Fourth FNPRM.[5] The FCC further stated that this limitation would not apply if an IXC used combinations of unbundled loop and transport network elements to provide a significant amount of local exchange services, in addition to exchange access service, to a particular customer.[6] This determination was confirmed in the *Supplemental Order Clarification.*[7]

The *Supplemental Order* does not address spare trunks used exclusively to provide local interconnection service as AT&T proposed. Instead, the *Supplemental Order* only addressed incumbent local exchange carriers' ("ILECs") concerns that IXCs might use their right to obtain UNEs as a vehicle to convert dedicated access lines to UNEs and thus pay less than they should for access lines.

In addition, nothing in the *Supplemental Order Clarification* altered the FCC's fundamental ruling in the *Supplemental Order*. Rather, in the *Supplemental Order Clarification*, the Commission adopted a definition of "a significant amount of local service" that was proposed jointly by the largest ILECs and four CLECs.[8] That definition limits the use of loop-transport combinations, or EELs, to three "options" that the Commission found "presented a reasonable compromise proposal under which it may be determined that a requesting carrier has taken affirmative steps to provide local exchange service to a particular end user and is not seeking to use unbundled loop-transport

[5] *Id*. at ¶ 4.
[6] *Id*. at ¶ 5.
[7] *Supplemental Order Clarification* at ¶ 8.
[8] *Supplemental Order Clarification* at ¶ 21.

combinations solely to bypass tariffed special access service."[9] Each of the options limits the use of unbundled network elements to carry tariffed access services.

Furthermore, Qwest cites to paragraph 28 of the *Supplemental Order Clarification* to support its argument. Paragraph 28 provides as follows:

> 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 IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudge any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

This paragraph of the FCC's Order does not in any way address the proposal at issue here. Therefore, Qwest's Motion should be rejected as contrary to the Act and FCC Orders regarding interconnection and access to UNEs. To the extent individual trunks on a DS3 facility, which also carry special access trunks, are being used for local interconnection purposes, the Act requires that the interconnection trunks be priced appropriately.

II. The Washington ALJ's Decision Regarding the Efficient Use of Trunk Facilities and Access to UNEs is Consistent with Other State Commissions and Such Decision does Not Harm USF.

In its Motion Qwest claims that "Colorado, Oregon and [the] Multi-State" proceedings have all considered the same issue and "have agreed with Qwest's position."[10] In addition, Qwest further confuses the issue by suggesting that the universal service subsidy is in jeopardy by adopting the Washington Commission's proposal.[11]

[9] *Id*.
[10] Qwest Motion at p. 4.
[11] *Id*.

Turning to the first issue, every single Commission (or Facilitator in the case of the Multi-State), with the exception of Colorado,[12] agrees with the Washington ALJ's decision that CLECs should be able to use the spare trunks found on the DS3 or special access type facilities for interconnection.[13] Likewise, each Commission and the Facilitator has determined that interconnection trunks may be used for access to UNEs.[14] The question, then, is how must CLECs pay for such usage. Decisions on this point vary and because of the apparent confusion of this issue with the commingling issue, either the FCC or the various states will have to re-visit and resolve the real issue.

From a technical standpoint, what AT&T proposes is as follows. AT&T would purchase, as it typically does, a DS3 facility from Qwest. A DS3 facility contains 28 DS1 trunks.[15] Some of the DS1 trunks would be designated as carrying special access (long distance) traffic and some would be designated as carrying local traffic (interconnection trunks). Still others might be designated as being used to access UNEs. Qwest would know which trunks are which and no traffic that should be routed over the local traffic trunk could traverse the special access trunks. Furthermore, AT&T would pay for the DS1 trunks according to their designations.[16] Thus, the DS1s designated for interconnection would be paid for using TELRIC rates, the DS1s designated for special access would be paid for using the access rates, and the DS1s used to access UNEs would be paid for using TELRIC rates.

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[12] Because the Colorado Reports in question suffer from some significant procedural and substantive problems, other Commissions would be wise not to rely on such reports.
[13] *See e.g.*, Multi-State Facilitator's Second Report Workshop One at p. 36; Arizona Final Report on Interconnection and Collocation at p. 51, ¶ 303; and Oregon Workshop 2 Report at p. 7.
[14] *Id.*
[15] 6/23/00 WA Tr. at pp. 617, ln. 23.
[16] *Id.* at p. 617, lns. 24-25.

Because the DS1s designated for special access or long distance would be specifically identified and billed according to required access rates, USF funding would remain intact. CLECs as IXCs would be paying the appropriate amount for continued support of USF. Thus, Qwest's attempt to suggest that under the 15th Supplemental Order the "sky is falling" with respect to USF because Qwest cannot over-bill the CLECs is nothing more than a red herring. USF should be funded appropriately and Qwest should not enjoy a windfall on the backs of its local competitors simply because Qwest may overcharge for the DS1 channels contained in the DS3 facility. CLECs need and deserve to employ DS3 facilities efficiently both from an economic and technical perspective.

Because the FCC has not determined this issue and regardless of what any other state has done to date, Washington's decision in its 15th Supplemental Order is appropriate and fair. In fact, Washington's well-reasoned decision should form the basis for the FCC's ultimate determination of this issue and other states' as well.

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Washington Commission deny Qwest's Motion for Reconsideration as inconsistent with the law and fundamental fairness.

Submitted this 10th day of September, 2001.

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