

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	
U S WEST Communications, Inc.'s)	Docket No. UT-003022
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	
_____)	
)	
In the Matter of U S WEST Communications,)	Docket No. UT-003040
Inc.'s Statement of Generally Available)	
Terms Pursuant to Section 252(f) of the)	ELI AND XO RESPONSE TO
Telecommunications Act of 1996)	QWEST MOTION FOR
_____)	RECONSIDERATION OF
)	WORKSHOP 2 ORDER

Electric Lightwave, Inc. (“ELI”) and XO Washington, Inc. (“XO”) provide the following response to the Petition (“Petition”) of Qwest Corporation (“Qwest”) for reconsideration of the Fifteenth Supplemental Order (“Order”) resolving impasse issues arising from the interconnection, collocation, local number portability, and resale provisions in the Statement of Generally Available Terms (“SGAT”). The Commission should deny Qwest’s Petition to reconsider the Order requirement that Qwest charge CLECs proportional pricing for proportional use of facilities used to provide both interconnection and special access services.¹

DISCUSSION

“The issue in dispute here is whether a CLEC using an entrance facility both for interconnection and for private line/special access service should pay the higher private line/special access rate for the entire facility or a proportional rate based on the relative use of the facility for the two purposes.” Order ¶ 14. The Commission found that “[t]he record shows no technical impediment to the use of a

¹ ELI and XO take no position on the other issue Qwest raised in its Petition, *i.e.*, the “decision that

single entrance facility for interconnection and private lines, and that proportional pricing of this facility is fair and reasonable.” *Id.* ¶ 18. Qwest’s proposal to use private line/special access rates for these multiple use facilities, on the other hand, “would require a CLEC to choose between its right to interconnect at any technically feasible location and its right to obtain facilities at TELRIC rates.” *Id.* The Commission decision requiring proportional pricing is correct and appropriate.

Qwest disagrees and “believes that the decision to allow proportional pricing is inconsistent with the FCC rulings on this very issue.” Petition at 3. Qwest’s belief is unfounded. The FCC order to which Qwest refers has provisionally prohibited connecting *loops or loop-transport combinations* – *i.e.*, specific unbundled network elements (“UNEs”) – with tariffed special access services. *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, Supplemental Order Clarification ¶ 28 (June 2, 2000) (emphasis added). The FCC did not address, much less apply this prohibition to, the use of the same facilities to provide both *interconnection* and special access services. Interconnection facilities are not “loops or loop-transport combinations.” Even Qwest has established separate “products” for interconnection, including Local Interconnection Service (“LIS”) trunks and entrance facilities. *See* SGAT § 7.3.1 & 2. Nothing in the FCC’s orders, therefore, precludes the Commission from requiring Qwest to permit CLECs to use, and pay proportional rates for, the same facilities for both interconnection and private line/special access services.²

[Qwest] must tariff (or file in the SGAT) its Centrex Prime pricing.” Petition at 1.

² As XO and ELI also have explained in their brief and comments following Workshop 3, moreover, the FCC’s prohibition on *connecting* loops/loop-transport combinations with special access services is distinct from using the same facilities for both UNEs and special access services. Using a DS-3 circuit (with a capacity of 28 DS-1 circuits) to provision 14 DS-1 UNEs and 14 DS-1 special access circuits, for example, does not involve any *connection* of the UNEs with the special access circuits. Rather, the

Qwest further claims that “[t]he other state commissions to consider this issue have agreed with Qwest.” Petition at 4. Again, Qwest overstates the facts. While the commission in Qwest’s home state of Colorado agreed with Qwest, the Facilitator’s Report to the seven state commissions participating in the multi-state review of Qwest’s compliance with Section 271 is only a *recommended* resolution of this issue.³ To date, none of those state commissions has adopted that recommendation. Perhaps more to the point, the Commission’s obligation is to interpret the law, make factual determinations, and serve the public interest in Washington, not simply to defer to the Colorado or other state commission. In addition to erroneously interpreting the FCC’s order (as discussed above), the Colorado Commission’s decision appears to have been based on its concern with “forc[ing] Qwest to provide services at potentially undercompensatory levels.” Petition, Exhibit A at 19-20. The Commission has yet to establish rates for LIS entrance facilities and the rates that Qwest currently charges for these facilities are Qwest’s proposed rates, which presumably Qwest believes are fully compensatory. The Colorado Commission’s concerns thus are inapplicable in Washington.

Finally, Qwest contends that the Commission’s decision “will require Qwest to undergo a time consuming and expensive exercise” to implement proportional pricing. Qwest fails to identify the “exercise” required, much less cite any record evidence that this “exercise” would be either time consuming or expensive. Qwest proposed the use of the same facilities for both interconnection and special access services, and presumably Qwest intends to keep track of which portion of those facilities

UNEs and special access DS-1 circuits are running side by side over the same DS-3 facility, and contrary to Qwest’s interpretation, the FCC’s Order did not prohibit such joint use or proportional pricing of facilities.

³ Qwest fails to identify the other three of the alleged “11 other jurisdictions that have rejected” proportional pricing, Petition at 5, and ELI and XO are not aware of state commission decisions on this issue in any jurisdiction other than Colorado in which Qwest operates as an ILEC.

is used for each type of service, given that interconnection facilities carry local traffic while special access circuits carry toll traffic. The only “exercise” required will be to bill the CLEC separately for each portion of the joint use facilities, and nothing in the record demonstrates that such an “exercise” will be time consuming or expensive.

CONCLUSION

The Commission, therefore, should deny Qwest’s motion to reconsider the requirement in the Order that Qwest provision interconnection and special access services on the same Qwest facilities and price those facilities in proportion to the percentage of the facilities used to provide each type of service.

DATED this 10th day of September, 2001.

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