

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order

Docket No. UT-033044

**QWEST'S MOTION TO STRIKE AT&T TESTIMONY REGARDING ELECTRONIC LOOP PROVISIONING**

*I* Qwest Corporation (“Qwest”) hereby moves to strike the portions of AT&T witness Robert V. Falcone’s January 23, 2004 Direct Testimony that are addressed to “electronic loop provisioning” (or “ELP”).<sup>1</sup> Mr. Falcone spends over one-third of his batch hot cut testimony advocating a loop unbundling proposal that he concedes the FCC explicitly rejected.<sup>2</sup> The Triennial Review Order specifically declined to have state commissions consider ELP as part of their nine-month cases,<sup>3</sup> and AT&T’s attempt to reintroduce these excluded issues through Mr. Falcone’s testimony is improper.

<sup>1</sup> Direct Testimony of Robert V. Falcone filed on Behalf of AT&T Communications of the Pacific Northwest, Inc. and TCG (Collectively “AT&T”), *In the Matter of the Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order*, Docket No. UT-033044, filed January 23, 2004, (“Falcone Direct”). In particular, Qwest seeks to strike page 2, line 21 through page 3, line 2 (from “and describes” through the end of the paragraph); page 3, lines 12-14 (from “Finally” through the end of the paragraph); page 38, line 8 through page 59, line 4 in its entirety; and the first two paragraphs of Exhibit RVF-16.

<sup>2</sup> See Falcone Direct at 57:1-5 (“In response to AT&T’s advocacy regarding electronic loop provisioning to the FCC, the RBOCs complained that ELP would cost hundreds of millions of dollars and take years to implement — and the FCC did not adopt [AT&T’s] approach.”) (capitalization altered); *id.* at 54 n.53 (conceding that “the FCC has not yet adopted and required the implementation of AT&T’s Electronic Loop Provisioning architecture”) (italics omitted).

<sup>3</sup> Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶ 491 (2003) (“*Triennial Review Order*”).

## BACKGROUND

2 As the FCC explained,<sup>4</sup> and as Mr. Falcone agrees,<sup>5</sup> AT&T’s “electronic loop provisioning” proposal seeks to have incumbent LECs such as Qwest “packetize” their networks from end-to-end. The proposal would require Qwest to make massive upgrades to its outside loop plant and central office equipment (or simply replace that plant and equipment outright) in order to carry *all* calls — voice as well as data — in a packet-switched protocol instead of the circuit-switched protocol used today.<sup>6</sup> Qwest would be required to disconnect all of its feeder facilities from its circuit switches and reconnect them to new ATM-protocol “gateways,” which would in turn connect to all CLEC switches as well as back to Qwest’s own equipment. Although AT&T’s proposal has never been tested or proved workable on any large scale, the theory behind this hypothetical network architecture is to enable voice traffic from a given customer to be packet switched to a CLEC’s network without physically connecting the customer’s loop to that CLEC’s switch.

3 AT&T presented this same proposal to the FCC in the proceedings leading up to the Triennial Review Order. The FCC rejected it in the plainest terms possible. The FCC noted that “the evidence in the record suggests that an ELP process, to be effective, would require significant and costly upgrades to the existing local network at both the remote terminal and central office.”<sup>7</sup> The FCC credited an estimate that “to ‘packetize’ the entire public switched telephone network for both voice and data traffic” would cost “more than \$100 billion.”<sup>8</sup> In addition, the FCC credited arguments that “AT&T’s proposal would entail a fundamental change in the manner in which local switches are provided and would require dramatic and extensive alterations to the overall architecture

---

<sup>4</sup> See *Triennial Review Order* ¶ 491 (“AT&T’s ELP proposal proposes to ‘packetize’ the entire public switched telephone network for both voice and data traffic . . .”).

<sup>5</sup> See Falcone Direct at page 49, line 11 (“Under ELP . . . equipment would be deployed or upgraded to digitize and packetize *all* traffic, not just the traffic in the high-frequency portion of the loop, as with the ILECs’ current NGDLC architecture.”) (emphasis in original).

<sup>6</sup> See *id.* at page 49, line 5 (conceding that ELP would require upgrades to “ILEC outside loop plant, ILEC central offices, and equipment used by all local carriers . . . that choose to use a traditional circuit-switched network to carry voice traffic”).

<sup>7</sup> *Triennial Review Order* ¶ 491.

<sup>8</sup> *Id.*

of every incumbent LEC local telephone network.”<sup>9</sup> Finally, the FCC concluded that ELP simply had not been proven workable: “[T]he record in this proceeding does not support a determination that electronic provisioning is currently feasible.”<sup>10</sup>

4 For all these reasons, the FCC “decline[d] to require ELP at this time.”<sup>11</sup> The FCC also rejected AT&T’s related “impairment” argument, which suggested “that unbundled switching for voice-grade loops is essential until incumbent LECs offer an electronic loop provisioning (“ELP”) method of transferring large volumes of local customers in the mass market from one carrier to another.”<sup>12</sup> Instead, the FCC directed state commissions to adopt batch hot cut processes that retain the manual cutovers contained in the existing hot cut process, but realize “efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis.”<sup>13</sup> The FCC made clear that adoption of such a process could “mitigate” the “loop access barriers contained in the record,”<sup>14</sup> even though it was fully aware that this batch hot cut process would still have a manual form of loop provisioning at its core.

5 AT&T filed the testimony of Robert Falcone on Hot Cut and Batch Migration Processes on January 23. The testimony proffers the very same impairment argument (and the very same non-solution) that the FCC rejected. Mr. Falcone argues that this Commission should find “impairment” so long as Qwest uses *any* type of hot cut process — even if it adopts exactly the kind of batch hot cut process the *Triennial Review Order* contemplates.<sup>15</sup> He then spends twenty pages arguing that the Commission should adopt the same electronic loop provisioning proposal that the *Triennial Review Order* rejected.<sup>16</sup> Mr. Falcone concedes, as he must, that “the FCC did not adopt [AT&T’s]

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* ¶ 488 n.1517.

<sup>11</sup> *Id.* ¶ 491.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 489.

<sup>14</sup> *Id.* ¶ 487.

<sup>15</sup> See Falcone Direct at page 59 (“Even the best manual processes that could be operationalized today, including batch migration processes, cannot satisfy the requirements needed to eliminate the CLECs’ operational impairment in attempting to compete for mass-market customers.”).

<sup>16</sup> See *id.* at pages 38-59.

approach”<sup>17</sup> and “has not . . . required the implementation of AT&T’s Electronic Loop Provisioning architecture.”<sup>18</sup> Yet he nevertheless suggests that the same FCC order that explicitly *rejects* ELP somehow also *authorizes* state commissions to adopt whatever cures for “impairment” they happen to see fit — including the very same ELP proposal the FCC specifically refused to require.<sup>19</sup>

## DISCUSSION

6 As Mr. Falcone himself is forced to concede, the identified portions of AT&T’s testimony proffer exactly the same electronic loop provisioning arguments that the FCC unambiguously rejected. AT&T presented the same impairment theory and ELP proposal to the FCC that it is presenting here, and the FCC explicitly “decline[d] to require ELP at this time.”<sup>20</sup>

7 The *Triennial Review Order* expressly finds that “the record in this proceeding does not support a determination that electronic provisioning is currently feasible,”<sup>21</sup> and notes that “an ELP process . . . would require significant and costly upgrades to the existing local network,” crediting estimates that it would cost over \$100 billion to implement nationwide.<sup>22</sup> Far from implying that state commissions must find impairment in their nine-month cases unless they adopt electronic loop provisioning (as Mr. Falcone suggests), the *Triennial Review Order* specifically *rejected* that argument, and instead directed state commissions to adopt batch hot cut processes in their nine-month cases that would continue to rely on the manual transfer of loops.<sup>23</sup> AT&T’s testimony completely disregards the *Triennial Review Order*’s instructions for the nine-month cases and asks the state commissions to spend their time on an inquiry the *TRO* specifically rejected. It should therefore be stricken from the

---

<sup>17</sup> *Id.* at page 57 (“In response to AT&T’s advocacy regarding electronic loop provisioning to the FCC, the RBOCs complained that ELP would cost hundreds of millions of dollars and take years to implement — and the FCC did not adopt [AT&T’s] approach.”) (capitalization altered).

<sup>18</sup> *Id.* at page 58 n.53.

<sup>19</sup> *Id.*

<sup>20</sup> *Triennial Review Order* ¶ 491.

<sup>21</sup> *Id.* ¶ 488 n.1517.

<sup>22</sup> *Id.* ¶ 491.

<sup>23</sup> *Id.* ¶ 488.

record.

8 The ALJs hearing the Oregon *TRO* cases have already rejected AT&T's attempt to ignore the *TRO* and inject its ELP proposal back into these dockets. When AT&T proposed an issues list in Oregon that included a question asking whether "electronic loop provisioning [can] obviate the need for a hot cut process,"<sup>24</sup> the ALJs specifically directed AT&T to remove it. Electronic loop provisioning, they held, was "beyond the specific areas of inquiry set forth in the *TRO*."<sup>25</sup> In the words of the presiding Judge:

Issue 29, for example, regarding electronic loop provisioning, there's a very specific discussion by the FCC on that [in the *TRO*], where they decline to address that at this point in time. And I don't see, given the extensive amount of work, we're going to have to do in the next nine months, how the Oregon Commission can possibly deal with that issue in the context of this proceeding.<sup>26</sup>

9 Given the *Triennial Review Order*'s unambiguous holdings with respect to ELP, the ALJs' ruling was exactly right. This Commission should rule the same and strike the identified portions of Mr. Falcone's testimony.

10 As noted above, Mr. Falcone is forced to concede that, while AT&T presented its ELP proposal to the FCC, "the FCC did not adopt [AT&T's] approach," and in fact "the FCC has not . . . required the implementation of AT&T's Electronic Loop Provisioning architecture."<sup>27</sup> Mr. Falcone nevertheless suggests that the *Triennial Review Order* gives state commissions unbounded remedial authority to adopt whatever "mitigating measure[s]" they see fit to address whatever impairments they identify — even measures like ELP that the FCC has specifically rejected.<sup>28</sup> The Commission should reject this argument as well.

---

<sup>24</sup> Letter from Steven H. Weigler, AT&T, to Samuel J. Petrillo, ALJ, *et al.*, Docket UM 1100, at Attachment A, page 4, ¶ 29 (Or. Pub. Util. Comm'n Oct. 13, 2003).

<sup>25</sup> Transcript of Prehearing Conference, *Investigation To Determine, Pursuant to Order of the Federal Communications Commission, Whether Impairment Exists in Particular Markets If Local Circuit Switching for Mass Market Customers Is No Longer Available As an Unbundled Network Element*, Docket UM 1100, at 6:8-9 (Or. Pub. Util. Comm'n Oct. 15, 2003).

<sup>26</sup> *Id.* at page 6, lines 12-18.

<sup>27</sup> *Id.* at page 58 n.53.

<sup>28</sup> *Id.* (citing *Triennial Review Order* ¶ 486).

11 It is nonsense to suggest that the same FCC order that explicitly rejects ELP as unworkable, unproven, and prohibitively expensive somehow also authorizes state commissions to require that very same thing. More generally, AT&T's suggestion that the *Triennial Review Order* gave state commissions plenary authority to adopt whatever remedial measures they see fit is incorrect. The only paragraph of the *Triennial Review Order* that AT&T cites for this proposition says just the opposite: "In this section, we ask state commissions to take *certain* actions designed to alleviate impairment in the markets over which they exercise jurisdiction."<sup>29</sup> And the next paragraphs specify exactly what those "certain" actions are. The FCC "conclude[s] that the loop access barriers contained in the record may be mitigated through the creation of a batch cut process," and accordingly orders that "State commissions must approve, within nine months of the effective date of this Order, a batch cut migration process to be implemented by incumbent LECs that will address the costs and timeliness of the hot cut process."<sup>30</sup> Nothing in the *Triennial Review Order* gives the states a roving mandate to ferret out and fix alleged impairments, let alone permits them to disregard the one remedy the FCC specifies in favor of another that the FCC specifically rejected.

12 Again, AT&T's argument has already been rejected elsewhere. In Oregon, AT&T sought to expand that docket's issues list to include a question asking generically what remedial actions that state's commission might take to alleviate impairments, citing the same (inapposite) part of the *Triennial Review Order* that it cites here. The ALJs rejected AT&T's request as contrary to the *Order*: "The inquiry posed in Paragraphs 460 and 486 requires States to take *certain* actions to alleviate impairment in markets, *but does not give them authority to consider issues or adopt remedial obligations beyond those specified by the FCC.*"<sup>31</sup> The ALJs correctly acknowledged that the "certain actions" the FCC specified all relate to the adoption of a batch hot cut process.<sup>32</sup> This

<sup>29</sup> *Triennial Review Order* ¶ 486 (emphasis added).

<sup>30</sup> *Id.* ¶¶ 487-88.

<sup>31</sup> Ruling, *Investigation To Determine, Pursuant to Order of the Federal Communications Commission, Whether Impairment Exists in Particular Markets If Local Circuit Switching for Mass Market Customers Is No Longer Available As an Unbundled Network Element*, Docket UM 1100, at 2 (Or. Pub. Util. Comm'n Nov. 14, 2003) (emphasis added).

<sup>32</sup> *Id.* (noting that the *Triennial Review Order* paragraph authorizing states to take "certain" remedial actions "immediately precedes the FCC's discussion of the batch hot cut process that the States must approve within nine months of the effective date of the TRO").

Commission should likewise reject AT&T's arguments.

### CONCLUSION

13 AT&T's attempt to ignore the *Triennial Review Order*'s explicit rejection of its electronic loop provisioning proposal and smuggle ELP back into the nine-month cases is improper. Qwest respectfully asks the Commission to strike the portions of Mr. Falcone's January 23 testimony identified in footnote 1 from the record.

DATED this 6th day of February, 2004

QWEST

---

Lisa A. Anderl, WSBA #13236  
Adam L. Sherr, WSBA #25291  
1600 7<sup>th</sup> Avenue, Room 3206  
Seattle, WA 98191  
Phone: (206) 398-2500