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**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation into
U S WEST Communications, Inc.'s
Compliance with § 271 of those
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

**QWEST'S PETITION FOR
RECONSIDERATION OF THE
24TH SUPPLEMENTAL ORDER**

Qwest Corporation (“Qwest”) hereby seeks reconsideration of one issue in the Commission’s 24th Supplemental Order (“24th Order”). Qwest respectfully requests that the Commission reverse its decision on issue WA-EEL-1/4, in which the Commission refused to apply the FCC’s local use restriction to new enhanced extended loops (“EELs”). The Commission decided the issue against Qwest based on a “previous Commission arbitration order, *Sprint/US WEST Arbitration, UT-003006, 5th Suppl. Order*, which rejected Qwest restrictions on combinations of UNEs for CLECs.” 24th Order at ¶20. The Sprint Arbitration Order, however, has no applicability to this issue. Moreover, the FCC’s decision on the subject is unequivocal, and requires a conclusion that the local use restriction applies to both new EELs and conversion of existing private lines to EELs.

This is second time that Qwest has briefed this particular issue before the Commission. This issue is also briefed in response to the 20th Supplemental Order in Workshop 4 (“20th Order”), where the

QWEST'S PETITION FOR
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1 Administrative Law Judge also found that dark fiber EELs are not subject to the FCC's local use
2 restriction based on the same Sprint Arbitration Order.¹ Qwest stated as follows in its Comments to the
3 20th Order:²

4 The Initial Order did not answer the specific question raised by AT&T,
5 but instead found that this SGAT provision conflicts with an earlier
6 Commission decision requiring Qwest to combine UNEs in any manner
7 technically feasible in conformance with Rule 315(c).³ Qwest does
8 provide UNE combinations in conformance with Rule 315(c). The FCC,
9 however, found that a loop transport combination must carry a significant
10 amount of local exchange traffic in order to be a UNE at all.⁴ As stated
11 above, the FCC has precluded, at this time, the ability of carriers to
12 obtain loop-transport combinations unless that combination would be
13 used to provide a "significant amount of local exchange service."⁵

14 Thus, the FCC completed a necessary and impair analysis on dedicated transport/loop combinations that
15 carry local traffic. The FCC did not "fully focus, however, on application of the 'impair' standard to the
16 exchange access market."⁶ The exchange access market "occupies a different legal category from the
17 market for telephone exchange services."⁷ The FCC concluded that it never completed a necessary and
18 impair analysis – a prerequisite to an unbundling obligation – on network elements for use within the
19 exchange access arena.⁸ Thus, the Commission is effectively ordering Qwest to unbundle elements
20 without the FCC or it having completed the required Section 251(d) analysis. The United States
21 Supreme Court vacated the FCC's list of UNEs for failure to complete this exact work.⁹

22 The purpose of unbundled network elements is to allow competitors to lease portions of Qwest's
23 network to carry *local* traffic on behalf of its customers. Without the local use restriction, Qwest expects
24 that CLECs will begin to order all new special access circuits (which are designed to carry non-local
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¹ See 20th Order at ¶¶140-45.

² Qwest December 14, 2001 Comments at pp. 21-24, challenging issue WA-DF2.

³ 20th Order at ¶142.

⁴ 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, 15 FCC Rcd 9587 ¶¶8-22 (June 2, 2000) ("Supplemental Order").

⁵ *Id.* at ¶¶21-22.

⁶ FCC's Order at ¶13.

⁷ *Id.* at ¶14.

⁸ *Id.*

⁹ See *AT&T Corporation, et al. v. Iowa Utilities Board, et al.*, 525 U.S. 366, 119 S. Ct. 721 (1999).

1 traffic) as EELs. This is exactly what the FCC sought to prevent in its Supplemental Order through
2 creation of the local use restriction.

3 Rather than brief the issue again here,¹⁰ Qwest simply informs the Commission that the same issue
4 is briefed, and set for oral argument on January 10, 2001. Qwest will argue the issue at that time, and
5 Qwest asks that the Commission consider that argument as well as this petition for reconsideration.

6 RESPECTFULLY SUBMITTED this 31st day of December, 2001.

7 QWEST

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22 ¹⁰ Qwest incorporates by reference all aspects of its December 14, 2001 Comments in response to the 20th Order on
23 this issue (Qwest Comments at pp. 21-24, WA-DF2), as well as its August 23, 2001 Comments in response to the 13th
24 Supplemental Order (Qwest Comments at pp. 26-34, EEL 1-4).