

Management on Compliance with Applicable Requirements of Section 272 of the Telecommunications Act of 1996 (“KPMG Report”) and associated supplemental testimony. AT&T will not reargue its positions, but enclosed is a recent order from the Administrative Law Judge (“ALJ”) in Minnesota that addresses many of these same issues. AT&T requests that the Commission reconsider its decision in light of that order and adopt the Minnesota ALJ’s findings, conclusions, and recommendations.

Consistent with prior Commission decisions, moreover, the Commission should condition any conclusion that Qwest has satisfied its legal obligations on an evaluation of Qwest’s *performance* of those legal obligations. Specifically, the Commission should modify its Order to make any conclusion that Qwest has complied with Section 272 subject to Qwest’s demonstration that it is providing exchange access services to competitors that is equal in quality to the exchange access services Qwest provides to itself and its section 272 affiliate.

Section 272 provides that a Bell operating company (“BOC”) “shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.”¹ The FCC has concluded that such a request “includes, but is not limited to, initial installation requests, subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of these services.”² The FCC “also conclude[d] that the BOCs must make available to unaffiliated entities information regarding the service intervals in which the

¹ 47 U.S.C. § 272(e)(1).

² *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934*, as amended, CC Docket No. 96-149, First Report and Order, FCC 96-489 (rel. Dec. 24, 1996) (“*Non-Accounting Safeguards Order*”) ¶ 239.

BOCs provide service to themselves or their affiliates.”³ In addition, “regardless of the procedures that a BOC employs to process service orders from unaffiliated entities, it must be able to demonstrate that those procedures meet the statutory standard.”⁴

The Commission has consistently concluded throughout this proceeding that it will undertake an inquiry into Qwest’s actual service provisioning, separate from the review of Qwest’s Statement of Generally Available Terms (“SGAT”) and other legal obligations. That inquiry should include whether Qwest Corporation (the “BOC”) is providing nondiscriminatory access services to itself (as an intraLATA toll provider) and to its section 272 affiliate, Qwest Communications Corporation (“QCC”). Qwest has not even attempted to provide the information required by the Act and the FCC to demonstrate that the BOC is providing, and will continue to provide, nondiscriminatory telephone exchange access to itself, its 272 affiliate, and unaffiliated long distance carriers.

QCC, as the fourth largest long distance carrier in the country, currently obtains access services from the BOC. Yet, neither Qwest’s monthly performance data nor any other evidence that Qwest has provided in this proceeding demonstrates that the BOC provides exchange access services to the section 272 affiliate within a period no longer than the period that the BOC provides the same or comparable services to unaffiliated carriers. Indeed, as the Commission is aware through its evaluation of Qwest’s Performance Assurance Plan (“QPAP”), Qwest has steadfastly refused (and continues to refuse) separately to report *any* switched access provisioning data. Qwest thus has not provided any evidence to demonstrate that its provisioning of exchange access services is

³ *Id.* ¶ 242.

⁴ *Id.* ¶ 241.

consistent with section 272(e)(1). The Commission should not find that Qwest has satisfied the requirements of section 272 until Qwest demonstrates that it is providing nondiscriminatory exchange access service.

The Commission, therefore, should grant AT&T's Motion and should modify the Order (1) to adopt the Minnesota ALJ's findings, conclusions, and recommendations and (2) to condition any conclusion that Qwest is, or likely will be, in compliance with Section 272 on Qwest's demonstration that it is actually providing nondiscriminatory exchange access services to both affiliated and nonaffiliated interexchange carriers.

B. The Commission Should Reconsider Its Conclusions On Issue WA-SB 3: Intervals For Determining Facility Ownership and Issue No. WA-SB 4/5: LSRS for Ordering Subloop, or Request for Waiver

Issue WA-SB3: Intervals for Determining Facility Ownership

In the Commission's Twentieth Supplemental Order: Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A and Section 272,⁵ the Commission summarized the significant policy precedent articulated by the Federal Communications Commission ("FCC") on why CLECs should be allowed efficient access to the NID.^{6 7} The FCC has also indicated that "there is evidence...that incumbent LECs in many instances are using their control over on-premises wiring to obstruct or delay competitive access."⁸ The FCC also determined

⁵ rel. November 14, 2002.

⁶ *Id.* at ¶279.

⁷ The parameters of AT&T's access the NID is precisely what is contemplated in Qwest SGAT §9.3.

⁸ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, et.al.*, WT Docket No. 99-217, CC Docket No. 96-98, CC Docket No. 88-57, FCC 00-366 (rel. October 25, 2000) at ¶50.

that “(i)n the absence of effective regulation, (ILECs) have the ability and incentive to deny reasonable access to these facilities to competing carriers.”⁹

As indicated in AT&T’s brief and in the record, AT&T believes that in the aggregate, the parameters that Qwest established for access, through process and procedure, have denied reasonable access to the NID in order for AT&T to capture the internal customer premises wiring.

In the Commission’s initial order, the Commission agreed with AT&T and ordered Qwest to “revise its SGAT to remove the restrictions on CLEC connection to Qwest NIDs. The intervals in sections 9.3.3.5 and 9.3.5.4.1 of the SGAT (relating to the time Qwest can withhold provisioning to check if it owns the internal customer premises wiring and to build an inventory) must be shortened to two (2) business days (or be eliminated).”¹⁰

The Commission’s initial approach to this issue was almost analogous to that taken by Arizona Staff in its recently filed Final Report on Qwest’s compliance with Line Splitting and Network Interface Device requirements.¹¹ Arizona Staff indicated it was “concerned that Qwest gives itself an inordinate amount of time to determine whether the MTE NID is a ‘terminal’ as opposed to whether Qwest owns the inside wire. The consequence of this is that the CLEC is delayed in gaining access to the MTE NID because Qwest has apparently has maintained poor records of its facilities. CLECs’ access should not be deterred for such reasons. In addition, the delay that Qwest seeks to impose could be used by Qwest personnel to persuade the MTE owner not to use the

⁹ *Id.* at ¶6.

¹⁰ *Commission’s Initial Order* at ¶280.

¹¹ *See Findings of Fact and Conclusions of Law on Qwest’s Compliance with Line Splitting and Network Interface Devices (NIDs) Requirements* (rel. Feb. 12, 2002).

CLEC's services."¹² For these reasons, staff recommended that §9.3.5.4.1. be modified to read as follows:

CLEC shall notify its account manager at Qwest in writing, including via e-mail, of its intention to provide access to Customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to five (5) calendar days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event that there has been a previous determination of on-premises wiring ownership in the same MTE, Qwest shall provide such notification with two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the Customer side of terminal, the preceding five (5) day period shall be reduced to two (2) calendar Days from Qwest's receipt of such claim.¹³

The Commission provided additional grounds on why the Qwest provisioning process is inappropriate in its Twenty-Eighth Supplemental Order: Commission Order Addressing Workshop Four Issues: Checklist Item No.4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272. The Commission correctly indicated that the time provisioning found in SGAT section §9.3.5.4.1 and 9.3.3.5. require up to 15 calendar days.¹⁴ However, WAC 480-120-051 requires local exchange companies to complete installation of 90% of applications for up to five residential or business primary exchange access customers access lines in any exchange within five (5) business days.¹⁵ Accordingly, under Qwest's current provisioning process articulated in the SGAT, the CLECs would not be able to adhere to WAC 480-120-051.

However, instead of upholding its recommendation in the *Initial Order* for a two business day interval requirement, the Commission implied that because the inventory

¹² *Id.* at p. 34. (Excerpt attached as Exhibit A).

¹³ *Id.* at p.34-35.

¹⁴ *Commission's Twenty-Eighth Supplemental Order* at §97.

interval may have been deleted by an agreement of the parties, the remaining intervals may be acceptable.¹⁶ First, it is important to note that the elimination of the five day interval for Qwest inventorying, was not only the agreement of the parties (the current language in appears ambiguous as it mandates a five day interval but then exempts it¹⁷), but, more importantly, the Commission in its Initial Order (and affirmed in its Twenty Eighth Order¹⁸) indicated “under no circumstances should a CLEC be required to wait 5 business days while Qwest updates its inside wire inventory.”¹⁹

Furthermore, as AT&T explained in the proceeding, there is no reason why AT&T cannot serve its customer **while** Qwest is busy determining if it owns the inside wire. As the only issue of the inside wire determination is if AT&T will have to pay Qwest for that wiring pursuant to §9.3.6.4.2., proscribing such a lengthy interval hardly provides the “effective regulation (to counter)...the (ILEC’s) ability and incentive to deny reasonable access to these facilities to competing carriers.”²⁰ Now, under the Commission’s new mandate, AT&T will have to wait upwards of ten days to access its customer just to determine if Qwest claims it owns the inside wire. As Qwest has plenty of incentive to utilize the ten days to attempt to market the customers at the MTE, there is no compelling reason why Qwest should be given ten days to determine if it owns the last hundred or so feet of wiring in a building when facilities based competition is at stake.

¹⁵ *Id.* at ¶98.

¹⁶ *Id.* at ¶99.

¹⁷ See Qwest SGAT Third Revision at §9.3.3.5.

¹⁸ See *Id.* at ¶1.

¹⁹ *Commission’s Initial Order* at ¶297.

²⁰ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, et.al.*, WT Docket No. 99-217, CC Docket No. 96-98, CC Docket No. 88-57, FCC 00-366 (rel. October 25, 2000) at ¶50.

AT&T is especially puzzled by this change in position in consideration of WAC 480-120-051, which mandates the CLEC to provide service within five days of placing the order. AT&T's provisioning is controlled by demand with installs being conducted forthwith.²¹ Accordingly, if a customer requests service at an MTE that has not been previously served, many times there is no way that AT&T can comply with WAC 480-120-051 and the interval provisions of the SGAT and must violate either/or. AT&T should not have to be placed in that position when there little rational basis for requiring such a lengthy interval. Accordingly, this Commission should reinstate its position in the Twentieth Supplemental Order or at least follow the decision of the Arizona Staff in making the maximum interval five days.

If the Commission does not decide to change the intervals as suggested by AT&T, AT&T would request a waiver of WAC 480-120-051 in MTE settings as it will not be able to comply with that rule and the SGAT provisioning interval.

Issue WA-SB 4/5: LSRs for Ordering Subloops

In the Commission's Initial Order, the Commission indicated that AT&T's capturing of the inside wire need not require an LSR, but instead have the CLEC report to Qwest the wiring captured.²² The Commission then reversed that position in the interest of uniformity in its Twenty Eighth Supplemental Order.²³ However, the Commission indicated that the process must be automated.²⁴

²¹ Even if this were not the case, contrary to the Commission's suggestion for the parties to work ownership issues in advance of installation, it is anticompetitive to require AT&T to provide essentially marketing information to Qwest far in advance of installation in light of the FCC's and AT&T's evidence of utilization of this information to impede CLEC penetration into the market.

²² See *Commission's Twenty-Eighth Supplemental Order* at ¶100.

²³ *Id.*

²⁴ *Id.*

In reversing its Initial Order, the Commission only focused exclusively on AT&T's issue of the manual vs. automated LSR process.²⁵ While AT&T believes that an automated LSR process is less prejudicial to the CLEC than a manual one, even an automated process should not be required in light of the record in this proceeding. As AT&T reminded this Commission in the proceeding, other states required LSRs for subloop orders without a complete record in this proceeding. It was only when the issue was fully explored in Washington through a detailed record that it could be established that Qwest had no need to require an LSR.²⁶ AT&T urges the Commission to review the entire record in this proceeding, as summarized in AT&T's brief.²⁷ AT&T believes that the record establishes an absolute lack of need for an LSR for capturing the inside wire. That fact combined with the astronomical cost and significant processes for creating an LSR for capturing the inside wire violate the relevant FCC Orders on the matter. Accordingly, AT&T would request that this Commission reconsider the need for an LSR to capture the inside wire.

²⁵ Due to a lack of time for the proceeding, AT&T's presentation on this matter was limited to under five minutes.

²⁶ See *AT&T's Brief on Disputed Issues Relating to Emerging Services (Workshop IV)*, Docket No. UT-003022, Docket No. UT-003040 (September 21, 2001) at p. 13-18.

²⁷ *Id.*

Respectfully submitted this 21st day of March 2002.

**AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC. AND
AT&T LOCAL SERVICES ON
BEHALF OF TCG SEATTLE AND TCG
OREGON**

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