

Whether AT&T's switches serve a comparable geographic area as Qwest's tandem switches has been the subject of negotiations between the parties, has been the subject of direct and answer testimony, and has been the subject of discovery in this proceeding. AT&T provides excerpts separately below.

Issue 3 – Tandem Switch Definition and Factual Determination about AT&T's Switches

The language AT&T added to the contract to address this issue¹ is the following:

For purposes of this Agreement, AT&T's [TCG's] switches in the State are Tandem Office Switches.

A. Negotiations over Tandem Switch Comparable Geography

Qwest and AT&T have negotiated Section 7, Interconnection, of the Proposed Interconnection Agreement for almost a year. One of the issues has always been the factual determination of whether AT&T's switches in a state are tandems for reciprocal compensation. Some history from the negotiations may be helpful on this point:

- The parties met on November 19 and 20, 2002, in person in Denver to discuss Section 7, Interconnection. One of the topics the parties discussed was including affirmative language in the interconnection agreement stating that AT&T's switches in the state are tandems for purposes of reciprocal compensation. During this meeting, Qwest asserted that it did not want an express statement in the contract because it would then be subject to adoption by other CLECs under Section 252(i) of the Act, without those CLECs having demonstrated that their switches meet the tandem switch definition.
- Shortly after this meeting, an individual from Qwest sent to David Talbott Qwest's proposal on what a comparable geographic test should be for CLEC tandem switches.²
- On March 10, 2003, AT&T's Michael Hydock sent a revised Section 7 draft to Qwest. In Section 7.3.4.1.2 of that draft AT&T proposed the following language, "AT&T [TCG] switches in the State meet the definition for Tandem Office

¹ Order No. 4, Arbitrator's Report at 8, ¶ 15.

² E-mail message dated December 10, 2003, from Laura Stolper, Qwest, to David Talbott, AT&T.

Switches, unless Qwest demonstrates they do not, pursuant to applicable FCC rules and orders.”³

- Subsequent to this draft, AT&T conceded to Qwest’s pick and choose concern over affirmative language in the interconnection agreement that states AT&T’s switches are tandems. However, AT&T never conceded that this factual determination was not an issue. In fact, AT&T continued through June 2003 to try to reach agreement with Qwest on criteria for determining when a CLEC switch is a tandem switch for purposes of reciprocal compensation.
- On or before May 14, 2003, AT&T told Qwest that if the parties could not agree that AT&T’s switches in a state are tandems, then that issue would be arbitrated.⁴
- On June 6, 2003, Michael Hydock sent Qwest a proposed document entitled “Agreement Regarding Tandem Switch Treatment”. The purpose of sending this document to Qwest was to gain Qwest’s agreement that AT&T’s switches in Minnesota are tandem switches in advance of the Minnesota hearing. Moreover, it is the format AT&T intended to use for all states. Qwest rejected this proposal.⁵

B. Testimony filed in this and other Proceedings

With these negotiations as a backdrop, AT&T entered into the initial Minnesota arbitration and every subsequent arbitration (Colorado, Arizona and Washington, thus far) with the understanding that the tandem definition issue had two components: (i) the language for the contract and (ii) the factual determination that AT&T’s switches in the state meet that definition. Moreover, in Washington, AT&T squarely addressed the factual determination in testimony. Mr. Talbott’s testimony deals with both components of Issue 3.⁶

For example, Mr. Talbott’s direct testimony in this proceeding asks, and responds to, the following specific questions about the geographic coverage of AT&T’s switches:

³ E-mail message dated March 10, 2003, from Michael Hydock, AT&T, to Kathleen Salverda, Qwest. Attached to the e-mail was a full draft of Section 7 of the proposed interconnection agreement.

⁴ E-mail message exchange dated May 14, 2003, between Michael Hydock and David Talbott, both of AT&T. In the exchange, Mr. Hydock confirms for Mr. Talbott that he as told Qwest that unless AT&T’s switches are pre-certified as tandems, the issue will be arbitrated.

⁵ E-mail dated June 6, 2003, from Michael Hydock of AT&T to Kathleen Salverda of Qwest, including the proposed Agreement Regarding Tandem Switch Treatment.

⁶ Exhibit 31, Direct Testimony of David L. Talbott, filed September 25, 2003, pp 2-12. Exhibit 36, Rebuttal Testimony of David L. Talbott, filed October 10, 2003, pp. 2-17.

- ARE AT&T'S SWITCHES IN WASHINGTON CAPABLE OF SERVING A GEOGRAPHIC AREA COMPARABLE TO QWEST'S TANDEM SWITCHES?
- HAVE YOU PREPARED ANY DOCUMENTATION THAT SUPPORTS YOUR CLAIM THAT THESE SWITCHES COVER A GEOGRAPHIC AREA COMPARABLE TO THE AREA COVERED BY QWEST'S SWITCHES?

In response to the second question cited above, part of Mr. Talbott's answer expressly states:

The Commission should affirm that AT&T Communications and TCG are entitled to receive the tandem rate for terminating Qwest's traffic.⁷

Mr. Talbott's answer testimony in this proceeding further asks, and responds to, the following specific question:

- WHY DOES AT&T CLAIM ITS SWITCHES ARE CAPABLE OF SERVING A COMPARABLE GEOGRAPHIC AREA?

In Mr. Talbott's answer testimony, he responds to the question of how the Commission should resolve Issue 3 as follows:

The Commission should adopt AT&T's proposed definition of tandem office switch in Section 4 of the agreement because it is consistent with and conforms the language in the Parties' interconnection agreement to the FCC's interpretation of Federal Rule 47 C.F.R. § 51.711(a)(3). *The Commission should also find that based on the evidence submitted, AT&T's and TCG's switches are capable of serving areas comparable to Qwest's tandems and AT&T and TCG are entitled to receive the tandem rate for terminating Qwest's traffic.*⁸

Mr. Talbott included AT&T Exhibits DLT-2 through 5 with his Washington direct testimony. In addition, Mr. Talbott included AT&T Exhibits DLT-7 and 8 with his answer testimony. These exhibits provide extensive factual information about the

⁷ Exhibit 31, Talbott Direct Testimony, p 11.

⁸ Exhibit 36, Talbott Rebuttal Testimony, p. 17 (emphasis added).

number of switches AT&T and TCG have in the State and the geographic coverage of those switches such that they are comparable to Qwest's tandems. Mr. Talbott also provides information in these exhibits about the geographic coverage of the Qwest tandems for comparison purposes. The exhibits also provide overviews of the Qwest network architecture and the AT&T network architecture. The purpose of including all this information in this proceeding is to have the Commission resolve the factual issue of whether AT&T's switches meet the definition of a tandem switch for purposes of reciprocal compensation. AT&T made that express statement in both its direct and answer testimony. There can be no question that Qwest and the Arbitrator have been on notice from the beginning that AT&T seeks resolution of this issue in this proceeding and that Qwest has had ample opportunity to respond.

C. Opportunity for Discovery

Not only did Qwest have the benefit of AT&T's direct and answer testimony in this case, Qwest propounded extensive discovery relating to AT&T's switches and the manner in which AT&T determines that its switches meet the definition of tandem switches. Qwest's First Set of Data Requests and Requests for Production of Documents dated October 3, 2003 include the following inquiries:

Qwest 01-012: Referencing the Direct Testimony of David L. Talbott the Exhibit DLT-3, for each switch identified in Exhibit DLT-3, identify each rate center to which AT&T has provisioned facilities (including via UNE facilities) to provide local exchange service from the AT&T switch.

Qwest 01-013: Referencing the Direct Testimony of David L. Talbott and the Exhibit DLT-4, for each switch identified in Exhibit DLT-4, identify each rate center to which AT&T has provisioned facilities (including via UNE facilities) to provide local exchange service from the AT&T switch.

Qwest 01-014: Please identify the ACNAs (Access Customer Name Abbreviations) associated with (a) TCG Seattle and (b) AT&T in Washington.

Qwest 01-015: For the AT&T and TCG switches listed in the AT&T Exhibit DLT-3 and DLT-4 attached to the Direct Testimony of David L. Talbott, please identify each AT&T and TCG CLLI (or POI location) in Qwest's territory which is connected to each AT&T or TCG switch.

Qwest 01-016: Please confirm that AT&T and TCG trunk groups to Qwest end offices traverse the POI locations and not the switch CLLIs specified in AT&T Exhibit DLT-5 attached to the Direct Testimony of David L. Talbott.

Qwest 01-017: Is AT&T currently being billed reciprocal compensation by Qwest or any other carrier for local call that AT&T customers originate from UNE-P stations to Qwest customers or other LEC customers? If so, please identify all carriers that are billing AT&T reciprocal compensation for such calls.

Qwest 01-018: Is it AT&T's position that all of the traffic AT&T customers originate over UNE-P stations is local voice traffic? If so, please describe the support for this position and provide all comments that support or refute this position.

Qwest 01-019: Referencing the Direct Testimony of David L. Talbott, does AT&T contend that it pays Qwest for unbundled local switching used to terminate calls from Qwest customers or CLEC customers to AT&T customers? If so, please describe the support for this contention and produce all documents that support or refute this contention.

Qwest 01-020: Referencing Exhibit DLT-3 to the Direct Testimony of David Talbott, describe specifically the criteria Mr. Talbott applied to determine whether to shade in an area on the map presented in Exhibit DLT-2 (sic).

Qwest 01-021: Referencing Exhibit DLT-4 to the Direct Testimony of David Talbott, describe specifically the criteria Mr. Talbott applied to determine whether to shade in an area on the map presented in Exhibit DLT-3 (sic).

Qwest 01-022: Referencing Exhibits DLT-2 (sic)(AT&T Communications Switches Serving Colorado (sic)) and DLT-3 (sic)(TCG Switches Serving Colorado(sic)), do AT&T and TCG provide dialtone from their switches to at least one AT&T or TCG retail customer in each of the shaded areas? Please explain your response.

Qwest 01-023: Referencing Exhibits DLT- (AT&T Communications Switches Serving Colorado) and DLT-4 (TCG Switches Serving Colorado), do AT&T and TCG provide dialtone to an AT&T or TC retail customer from their switches to each of the shaded areas using fiber optic SONET-based rings or microwave radio-based transport? Please explain your response.

Qwest 01-024: Identify all circumstances under which a CLEC's switch would not qualify as a tandem switch under AT&T's proposed definition of a tandem switch.

Qwest's extensive discovery further demonstrates that any of Qwest's arguments about prejudice or the issue not properly before the Commission are simply wrong. Qwest has had every opportunity in this proceeding through direct testimony, answer testimony and discovery to probe into the factual question of whether AT&T's switches are tandems for purposes of reciprocal compensation. Thus, the issue is squarely before the Commission and it should be resolved.