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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  
SECTION 271 OF THE 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

**INITIAL COMMENTS OF RHYTHMS LINKS,  
INC., REGARDING CHECKLIST ITEM NO. 1**

**I. INTRODUCTION**

Pursuant to the schedule established by the Administrative Law Judge on August 24, 2000, Rhythms Links Inc. ("Rhythms") respectfully submits the following comments regarding Qwest Corporation's ("Qwest") compliance with its obligations under the requirements of Section 271 of the Telecommunications Act of 1996 with respect to checklist item number 1.<sup>1</sup> Rhythms believes that Qwest is deficient in meeting several of its obligations under the Act.

<sup>1</sup> 47 USC § 271 (1996) (the "Act").

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2 **II. INTERCONNECTION AND COLLOCATION**

3 “The provision of collocation is an essential prerequisite to demonstrating compliance  
4 with item 1 of the competitive checklist,”<sup>2</sup> because collocation is “an essential means of allowing  
5 competitive LECs to interconnect” with the ILEC’s network.<sup>3</sup> To establish that it has met this  
6 checklist item, Qwest must demonstrate that collocation is provided under terms that are “just,  
7 reasonable, and nondiscriminatory” in accordance with section 251(c)(2)(D) of the Act. To do  
8 so, Qwest must show that it provides “concrete and specific” collocation intervals and other  
9 sufficiently definite terms and conditions in a “legally binding document.”<sup>4</sup> Qwest proposes to  
10 meet these obligations through the commitments undertaken in its Statement of Generally  
11 Available Terms (“SGAT”). But only a concrete and specific legal obligation can ensure “that  
12 the BOCs have taken real, significant, and irreversible steps to open their markets.”<sup>5</sup>

13 As discussed below, Qwest has failed to meet its burden in proving its compliance with  
14 § 271 regarding interconnection and collocation in the following respects:

- 15 ● Qwest unlawfully discriminates in provisioning collocations in a timely manner  
and in defined intervals;
  - 16 ● Qwest’s *SGAT* imposes impermissible performance standards on CLECs’ collo-  
cated equipment;
  - 17 ● Qwest unlawfully threatens to prohibit and disconnect CLEC-to-CLEC cross-  
18 connects necessary for interconnection; and
  - 19 ● Qwest unlawfully limits collocation to its Central Offices.
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21 <sup>2</sup> *Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to*  
22 *Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and  
Order, FCC 99-404 (released December 22, 1999) (“*Bell Atlantic New York Order*”), ¶ 66.

23 <sup>3</sup> *BellSouth Louisiana Order* ¶¶ 61 & 55; *Ameritech Michigan Order* ¶ 110.

24 <sup>4</sup> *BellSouth Order* ¶ 66, 70 & 71.

25 <sup>5</sup> *Ameritech Michigan Order* ¶ 18.

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**A. COLLOCATION PROVISIONING INTERVALS.**  
**1. VAGUE AND AMBIGUOUS TERMS IN THE SGAT DO NOT ENSURE THE COLLOCATION WILL BE PROVIDED ON JUST, REASONABLE AND NONDISCRIMINATORY TERMS AND CONDITIONS.**

Since the Federal Communications Commission’s *Advanced Services Order*,<sup>6</sup> Qwest has agreed, albeit reluctantly, to collocation provisioning intervals in its interconnection agreements and its *SGAT*. However, for aspects of collocation provisioning that the *Advanced Services Order* did not directly address, Qwest continues to maintain that it has the discretion to alter the intervals on an individual case basis. As a result, the provisioning intervals set out by Qwest are nothing but performance targets that are haphazardly met.

For example, in Section 8.4.3.2, Qwest commits to an interval of 90 days to complete the building of a physical collocation. However, in Section 8.4.3.2 of Qwest’s *SGAT*, Qwest provides itself with an exception to the collocation interval: “Due to variables in equipment and scope of the work to be performed, *additional time* may be required for implementation of the structure required to support the Collocation request.”<sup>7</sup> This section has the effect of negating the provisioning intervals stated in other sections, because it places no limitation on Qwest’s exercise of discretion to extend the interval. Without any limit on Qwest’s discretion, the committed intervals are unenforceable and essentially meaningless. Unless the *SGAT* is limited to “concrete and specific” established deadlines, the CLEC cannot be assured it will be provided collocation at just, reasonable and nondiscriminatory terms.

Notably, in the state of Utah, state law requires a 45-day interval for collocation provisioning. In Rhythms’ experience and in reports Qwest has made to the Utah PSC, Rhythms has

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<sup>6</sup> *In re Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-14, First Report & Order and Further Notice of Proposed Rulemaking (Rel. Mar. 31, 1999) (“*Advanced Services Order*”).

<sup>7</sup> *SGAT* at § 8.4.3.2 (emphasis added).

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2 found that Qwest has been able to meet that interval. Moreover, Qwest agreed to shorten collo-  
3 cation provisioning interval to 45 days for certain CLECs, including Rhythms, that reached a  
4 settlement in proceedings that reviewed Qwest's now-completed merger with U S WEST. It is  
5 not clear why such an interval should not apply across Qwest's region. The 90-day interval was  
6 originally mandated as a *maximum* amount of time for collocation provisioning; Qwest has used  
7 that number as not only a maximum, but also a minimum. As Qwest itself states, it has had more  
8 than two years' experience in collocation provisioning, and indisputably have improved its  
9 internal processes. CLECs should be able to benefit from those improvements. Rhythms recom-  
10 mends that a 45-day collocation interval apply to collocation provisioning.

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12 **2. THE ABSENCE OF PROVISIONING INTERVALS FOR ESSENTIAL COMPONENTS OF**  
13 **COLLOCATION UNREASONABLY DELAYS CLEC MARKET ENTRY.**

14 In cases where the FCC or state commissions have not imposed provisioning intervals  
15 addressing particular collocation work, Qwest has simply treated it as though there is no  
16 requirement to perform in a timely manner. This is particularly anti-competitive in circum-  
17 stances when delay may disable the CLEC collocation and thus hamper market entry, for  
18 example, when (1) Qwest fails to provide timely and accurate Alternate Point of Termination-  
19 Connecting Facility Assignment data (APOT-CFA) and (2) when Qwest does not commit to a  
20 reasonable interval for provisioning additional TIE cables when a CLEC collocation is reaching  
21 cable exhaust.

22 First, Qwest must be required to provide a concrete, enforceable interval for providing  
23 accurate APOT-CFA information, instead of being allowed impose the current inefficient and  
24 serial process. APOT-CFA is simply the information that tells a CLEC where on the Qwest  
25 frame it is assigned. This information is essential to a CLEC being able to place any kind of  
26 order—e.g., for transport and other UNEs. The current process for ordering a collocation is set

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2     forth in the *SGAT*: the CLEC submits a collocation application to Qwest. Qwest requires ten  
3     (10) days to conduct a feasibility study (which determines whether space, power, and termi-  
4     nations on the frame are available), twenty-five (25) days to transmit a collocation price quote,  
5     and then ninety (90) days after the CLEC pays a 50 percent down-payment (45 days for a cage-  
6     less collocation) before Qwest will perform the collocation construction and turn the space over  
7     to the CLEC.

8             The perception, however, that a CLEC can be ready for service in 65 days is deceiving.  
9     A CLEC cannot provide service from a collocation until it has interoffice transport from the  
10    collocation. And it is not allowed to order interoffice transport by Qwest until it has accurate  
11    APOT-CFA information from Qwest. Qwest, for no apparent reason, refuses to provide the form  
12    containing APOT-CFA identifying the location of CLEC's DS0, DS1 and DS3 terminations on  
13    the Qwest intermediate frame, until the end of the collocation provisioning process. For many  
14    CLECs, the APOT-CFA is not provided until as late as one day before the collocation is ready  
15    for service. Therefore, there is further lengthy delay between the actual delivery date of the  
16    collocation space by Qwest and the date that the CLEC has interoffice transport that allows it to  
17    bring the collocation arrangement on line.

18            Moreover, the APOT-CFA information provided by Qwest is often incorrect. This is  
19    especially damaging to CLECs because when service is provisioned to the incorrect APOT-CFA,  
20    it is hard to detect; therefore, CLECs cannot properly set customer expectations of when they  
21    will be provided service. The inability of Qwest to provide timely, accurate APOT-CFA is a sig-  
22    nificant barrier to entry. It slows down a facilities-based network build and thwarts competition.

23            There is a simple, efficient solution to this problem, that is, to require Qwest to imple-  
24    ment a parallel processing scheme for collocation construction and transport processing. Qwest  
25    should not only order but also reserve the terminations at the frame at the time that it conducts  
26    the Feasibility Study to prevent any changes in the CFA during collocation construction. This

**INITIAL COMMENTS OF RHYTHMS LINKS, INC.,  
REGARDING CHECKLIST ITEM NO. 1 - PAGE 5**

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would enable Qwest to deliver the APOT-CFA information to the CLEC considerably earlier. There is no benefit in Qwest waiting until the day before the collocation is ready to turn over this information, unless the goal is to delay market entry by competitors.

Second, Qwest must commit to a concrete, enforceable interval for provisioning additional TIE cables. TIE cables are the DSO terminations that connect a collocating CLEC's equipment to the frame in the Qwest central office. Typically, CLECs order a large number of TIE cables in the initial collocation application, however, given the rapid growth of competition, it is difficult to judge when those cables will be exhausted by serving an overabundance of customers from that collocation. As a result, CLECs have a relatively short period of time in some collocations to anticipate cable exhaust and to order additional TIE pairs. As it currently stands, there is no provisioning interval contained in the SGAT or interconnection agreements that require Qwest to provide additional cable pairs. Qwest therefore maintains that the 90-day collocation construction interval obtains. Clearly, however, TIE cable pair additions do not require a work effort remotely similar to building a whole new collocation cage. And a 90-day interval may leave some CLECs in jeopardy of having to refuse any additional customers in a particular central office collocation until the new cables are added. It is unjust and unreasonable for Qwest not to commit to a reasonable interval for provisioning additional TIE cables to a collocation. Rhythms recommends a 30-day interval for provisioning additional TIE cables.

**B. QWEST'S ARBITRARY EQUIPMENT PERFORMANCE STANDARDS VIOLATE THE FCC'S ADVANCED SERVICES ORDER.**

Although in its testimony Qwest states to the contrary, the SGAT is replete with instances where it requires that collocating CLECs abide by standards and requirements in excess of those required by the FCC's *Advanced Services Order*. See Affidavit of Thomas Freeberg, Qwest, at 28. Moreover, Qwest requires collocated CLEC equipment to meet requirements in "Qwest technical publications," "Qwest Wire Center environmental and transmission standards," and

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other discretionary requirements, all of which are unspecified and undisclosed in the *SGAT*.<sup>8</sup> Qwest has not demonstrated that these technical requirements are applied in a nondiscriminatory manner and that they cannot be unlawfully changed at Qwest’s whim to deny placement of CLEC equipment.

The FCC has plainly determined that the only safety limitation that incumbents can place on the type of equipment collocated is that the equipment be Network Equipment Building System (“NEBS”) Level 1 compliant.<sup>9</sup> In examining whether it should also require higher levels of NEBS compliance, the FCC concluded, “NEBS requirements that address reliability of equipment, rather than safety, should not be used as grounds to deny collocation of competitive LEC equipment.”<sup>10</sup> Moreover, the FCC ordered “that, although an incumbent LEC may require competitive LEC equipment to satisfy NEBS safety standards, the incumbent may not impose safety requirements that are more stringent than the safety requirements it imposes on its own equipment that it locates in its premises.”<sup>11</sup>

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<sup>8</sup> *SGAT* at §§ 8.2.1.8, 8.2.2.5, 8.2.3.9 and 8.2.3.12.

<sup>9</sup> *Advanced Services Order* at ¶ 35 ([W]e agree with commenters that NEBS Level 1 safety requirements are generally sufficient to protect competitive and incumbent LEC equipment from harm. NEBS safety requirements, originally developed by the Bell Operating Companies’ own research arm, are generally used by incumbent LECs for their own central office equipment, so we conclude that NEBS adequately address the safety concerns raised by the incumbent LECs when competitors introduce their own equipment into incumbent LECs central offices.”).

<sup>10</sup> *Advanced Services Order* at ¶ 35.

<sup>11</sup> *Id.* at ¶ 36. The FCC further concluded, “that an incumbent LEC that denies collocation of a competitor’s equipment, citing safety standards, must provide to the competitive LEC within five business days a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor’s equipment fails to meet. *Id.* Qwest’s *SGAT* contains no such requirement.

**INITIAL COMMENTS OF RHYTHMS LINKS, INC.,  
REGARDING CHECKLIST ITEM NO. 1 - PAGE 7**

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Qwest's *SGAT* does not make any definitive statement on how it intends to enforce NEBS requirements for CLEC equipment. Its terms are anything but "concrete and specific."<sup>12</sup> The *SGAT* does not confine Qwest to application of NEBS Level 1 safety standards, but allows Qwest to improperly deny collocation based on reliability or performance standards. For example, throughout sections 8.2.1.8, 8.2.2.5, 8.2.3.9, 8.2.3.10, and 8.2.3.12, Qwest preserves its right to deny collocations or collocated equipment based on noncompliance with any generic "NEBS standards," suggesting that Qwest will be allowed to enforce NEBS Level 2 or 3 compliance in direct contravention to the *Advanced Services Order*. This is no small matter because essentially Qwest can put a CLEC out of service throughout the entire Qwest region based on its own judgment that the CLEC is not in compliance.

The Commission should require Qwest to specify that collocation may be denied only based on application of NEBS Level 1 safety standards. Further, Qwest must be required to disclose and specifically describe the standards to which it holds collocating CLECs and those standards must be incorporated in the *SGAT*. And if Qwest intends to deny collocation based on those measures or attempts to remove equipment allegedly not in compliance, it must comply with the FCC's requirements to demonstrate that the standard is required for safety reasons, and that the requirement is applied in a nondiscriminatory manner. The *SGAT* lacks such a defined process of dispute resolution that will allow an orderly, just and reasonable determination of compliance with NEBS Level 1 and other safety standards.

Rhythms would recommend that the *SGAT* be supplemented with a defined process that would, at a minimum, require Qwest to provide written notice of a safety issue to the CLEC, which notice would include a statement of the safety issue, the NEBS standard implicated, and the nondiscriminatory application of the standard to Qwest itself; furthermore, if Qwest intends

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<sup>12</sup> See *Ameritech Michigan Order* at ¶ 110.



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to remove, prohibit, or disable equipment in a CLEC's collocation arrangement, it should be required to petition the Commission to get approval to take such action, unless there is an hazardous condition that threatens an imminent threat to safety or network integrity.

**C. QWEST MUST ALLOW CLEC-TO-CLEC CROSS-CONNECTS NECESSARY FOR INTERCONNECTION AND COLLOCATION.**

Rhythms strenuously disagrees with the Qwest position that it has no legal obligation to provide CLEC-to-CLEC cross-connects. CLEC-to-CLEC cross-connects are necessary for CLECs to interconnect collocations in order to deliver telecommunications traffic to one another. In Rhythms' case, the only reason that Rhythms found it necessary to interconnect with a competitive interoffice transport provider was because the performance by Qwest in providing transport was so dismal that it was preventing Rhythms from market entry. A cross-connect is not only a sensible means to interconnect CLECs, it is plainly the only feasible means to do so.

Qwest has committed in its Comments to maintain the *status quo* until September 2000, pending FCC action on remand. And the *SGAT* reflects this resolution. Rhythms reserves its right to contest this issue and this checklist item if and when Qwest changes its policy and/or *SGAT* regarding the ability of CLECs to obtain cross-connects to other CLECs in the central office.

**D. QWEST UNLAWFULLY LIMITS COLLOCATION TO ITS CENTRAL OFFICE FACILITIES.**

In section 8.1.1 of the *SGAT*, Qwest states that collocation is limited to "Qwest's Wire Center." Rhythms disagrees with this characterization and the language in the *SGAT*. However, because, as Rhythms understands it, collocation in other Qwest facilities will be an issue addressed in other workshops, including the emerging services workshop, Rhythms will defer its comments on this issue.

**III. CONCLUSION**

**INITIAL COMMENTS OF RHYTHMS LINKS, INC.,  
REGARDING CHECKLIST ITEM NO. 1 - PAGE 9**

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In conclusion, Rhythms submits that Qwest has not demonstrated that it provides just, reasonable, and nondiscriminatory access to interconnection and collocation. Therefore, its application should be denied.

DATED this 10<sup>th</sup> day of November 2000.

ATER WYNNE LLP

By: \_\_\_\_\_  
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