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

AT&T'S RESPONSE TO QWEST'S "COMPLIANCE" FILING

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Oregon and TCG Seattle ("AT&T") hereby respond to Qwest Corporation's ("Qwest"), f/k/a U S WEST Communications, Inc.'s, so-called "compliance" filing. While the Washington Utilities and Transportation Commission ("Commission") may allow Qwest the FCC-granted interim relief until Washington's collocation rule, WAC 480-120-560, becomes effective, as a practical matter, the Washington rule will be effective before Qwest's FCC filing. Thus, AT&T recommends that Qwest withdraw this filing and file a Washington compliant document or re-file this document in a form that is actually compliant with the limited waiver the FCC granted Qwest.

As to Qwest's arguments (that it intends to reargue in the future), AT&T notes that Qwest should not be granted the numerous opportunities it seeks to extend the important collocation installation intervals found in either the FCC's rules or this Commission's recently adopted rule. As grounds therefor, AT&T states as follows:

INTRODUCTION

Qwest entitles its recent filing a "compliance" filing and claims that it is not seeking differing intervals "here." Nonetheless, Qwest proceeds to argue in favor of longer intervals by employing brash and misleading claims of lacking dispute[1] and asserting the need for extended intervals in certain instances that are completely unsupported by the evidence to date in this proceeding. While AT&T fully intends to address Qwest's future claims, whenever Qwest decides to officially present them in this forum, AT&T must, nevertheless, address the misleading assertions made in the "compliance" filing today.

DISCUSSION

Several statements made in the compliance filing cause concern in primarily three ways. They are: (1) statements creating the implication that the FCC allowed Qwest to unilaterally demand forecasting as a prerequisite to meeting the 90 day interval; (2) incorrect assertions that all ill-defined "major structure modifications" take longer than 150 days; and (3) overstated allegations that both adjacent and certain remote collocation are impossible to complete within the 90 day interval. Before addressing these areas of concern, however, it is important to clearly understand the FCC's pronouncements relevant to Qwest's filing. Thus, AT&T will address those first and then discuss the three areas identified above.

[1] Qwest's Compliance Filing at p. 5, lns. 16-17 and p. 7, ln. 1.

I. THE FCC'S PRONOUNCMENTS DO NOT SUPPORT QWEST'S POSITIONS AIMED AT GENERALLY AVOIDING THE 90 DAY STANDARD PHYSICAL COLLOCATION INTERVALS.

"In a physical collocation arrangement, a competitor leases space at an incumbent LEC's premises for its equipment."[2] The FCC's recent order determined, among other things, that:

> an incumbent LEC should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premise and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval.[3]

This statement and its meaning are fairly straightforward; only two circumstances should relieve an incumbent from meeting the 90-day interval where space is available: (a) a state commission's different intervals or (b) a mutual agreement between the competitive local exchange carrier ("CLEC") and the incumbent. The FCC did not perceive the 90-day standard interval as imposing an undue hardship on incumbents; rather, the FCC stated:

> [b]ased on the record before us, we believe … that a maximum 90 calendar day interval will give an incumbent LEC ample time to provision most, if not all, physical collocation arrangements. We recognize, of course, that many incumbent LECs will have to improve their collocation provisioning performance significantly in order to meet this interval. Significant improvement is needed, however, only where incumbent LECs have taken insufficient steps to ensure the adequacy of their collocation provisioning processes. … Incumbents already have extensive experience with handling large numbers of collocation applications on an ongoing basis. This experience should enable them to upgrade their internal

[2] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CC Docket Nos. 98-147 & 96-98, FCC 00-297 (Released Aug. 10, 2000) at 7, ¶ 9 [hereinafter "FCC Reconsideration Order"].
[3] Id. at 16, ¶ 27.

> controls, methods, and procedures to the extent necessary to provision all, or virtually all, physical collocation arrangements in no more than 90 calendar days.[4]

In fact, the FCC found that intervals significantly longer than 90 days would generally impede the CLEC's ability to compete effectively.[5] To that end, the FCC amended its rules to state:

> [a]n incumbent LEC must offer to provide and provide all forms of physical collocation (i.e., caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

47 C.F.R. § 51.323(l). Ultimately, then, there are three general exceptions to the 90-day interval: (a) state deadlines; (b) mutually agreed to deadlines between CLEC and ILEC; and (d) lack of space in the premises.

On November 7, 2000, the FCC issued its Memorandum Opinion and Order ("Memorandum") in response to Qwest's, among others', requests for a waiver of the imposition of the 90 day intervals pending the FCC's consideration of Qwest's, and others' reconsideration petitions. In its Memorandum, the FCC clarified that "an incumbent LEC *need not file SGAT or tariff amendments* pursuant to the Collocation Reconsideration Order in states that have affirmatively established such standards on either an interim or permanent basis."[6] The FCC also clarified that:

> The Collocation Reconsideration Order *does not permit an incumbent LEC to set unilaterally different standards* by incorporating time periods of its own choosing into its SGATs and tariffs and having those standards take effect through inaction by the state commission. Indeed, such an

[4] Id. at 17, ¶ 28.
[5] Id. at 18, ¶ 29.
[6] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, CC Docket No. 98-147, DA 00-2528 (Released Nov. 7, 2000) at 3, ¶ 5 (emphasis added)[hereinafter "Memorandum"].

> approach would eviscerate the Commission's intent in the Collocation Reconsideration Order to establish national standards applicable *except* where specifically modified through interconnection agreement negotiations or deliberative processes of a state commission.[7]

Although Qwest wanted to unilaterally alter the intervals in its SGAT and was denied the option, Qwest continues in its efforts to do just that by, among other things, creating unapproved exceptions in its SGAT as to when it will and will not meet the 90-day interval.[8] Such unilateral declarations were not approved by the FCC in its consideration of Qwest's waiver, and should, therefore, not be allowed to go into effect even on an interim basis. That is, SGAT § 8.4 in its entirety was not approved by the FCC, rather the intervals identified in paragraphs 18 and 19 of the FCC's order were allowed to take interim effect. Nothing else should be subsumed or tacitly accepted in any alleged "compliance" filing.

In addition to addressing unilateral action, the FCC also clarified that its waiver limited Qwest to:

> increase the provisioning interval for a proposed physical collocation arrangement no more than 60 calendar days in the event a competitive LEC fails to timely and accurately forecast the arrangement … . We expect Qwest to use its best efforts to minimize any such increases … .[9]

Qwest, therefore, was given no more than an additional 60 days for provisioning unforecasted requests, and it was further expected to minimize that time period.

In short, what Qwest has done is chip away at its obligation to meet the FCC's 90 day interval by creating exception after exception. For example, Qwest demands that the CLECs provide very specific forecasts, demanding much of the same detailed

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[7] Id. at 4, ¶ 7 (emphasis added).
[8] *See e.g.,* SGAT § 8.4.3.4 (unilaterally altering intervals based on forecasts) and § 8.4.5.1(demanding negotiated intervals for all adjacent collocation arrangements).
[9] Memorandum at 9, ¶ 19.

information found in an application, before Qwest will agree to meet the 90 day interval.[10] Thus, even where space is available and Qwest could otherwise meet the interval, it—nevertheless—refuses to do so and gives itself another two months to provision the collocation request by demanding a "pre-application" a/k/a forecast 60 days in advance of the actual order, or finding that no such pre-application forecast was provided, Qwest gives itself a 120 day installation interval.[11] Rather than truly provisioning collocation requests in 90 days, Qwest wants 150 days or five months warning to provide the forecasted collocation space, and curiously, it will provision the unforecasted collocation space in four months or 120 days. In either case, this is simply an outrageous amount of time, particularly in the case of cageless physical collocation requests where appropriate space is readily available whether forecasted or not. Moreover, it appears that Qwest is doing little else than arbitrarily lopping off 30 days, of the 60 additional days, to minimize the extended time frames for unforecasted collocation requests. There is no reason that Qwest should not be required to meet the 90 day provisioning interval where space is available; the FCC certainly did not preclude such action, and in fact, admonished Qwest to "use best efforts to minimize increases."[12] Because the FCC did not specifically approve of the detailed forecasts that Qwest demands in its SGAT, and because Qwest is not exactly complying with the FCC's orders, this Commission should, if it determines that such filing is appropriate under the circumstances, order Qwest to re-submit its filing after it conforms such filing to the FCC's order.

[10] Compare SGAT § 8.4.1.4 (outlining the information demanded in a forecast) and § 8.4.1.5 (outlining the information that constitutes an application).
[11] *See* Qwest Compliance Filing Attachment B.
[12] Memorandum at 9, ¶ 19.

II. QWEST ERRONEOUSLY IMPLIES THAT THE FCC ALLOWS INCUMBENTS, WITHOUT MORE, TO DEMAND FORECASTS AS A PRECONDITION TO ANY OBLIGATION TO COMPLY WITH THE STANDARD 90-DAY INTERVAL.

In its filing, Qwest implies, by omission of a critical portion of the quote, that the FCC allows an incumbent LEC to unilaterally require a CLEC to forecast its physical collocation demands as a precondition to receiving the standard intervals.[13] What the FCC actually said was:

> [a]n incumbent LEC also may require a competitive LEC to forecast its physical collocation demands. *Absent state action requiring forecasting*, a requesting carriers failure to submit a timely forecast *will not* relieve the incumbent LEC of its obligation to comply with the time limits set forth in this section. Similarly, an incumbent LEC may penalize an inaccurate collocation forecast by lengthening a collocation interval only if the state commission affirmatively authorizes such action.[14]

Qwest follows its slanted forecast assertion with the statement that the FCC's interim standards for Qwest include a forecasting obligation as a precondition to receiving the 90-day interval. Three things are important to remember in relation to the relief that Qwest obtained from the FCC. First, the FCC provided Qwest with only a temporary conditional waiver in the absence of state rules. Second, the FCC did not contemplate that Qwest had failed to obtain the necessary approval for forecasting as a precondition to meeting all the required intervals from this Commission. Examination of the FCC's Memorandum makes clear that such unilateral action is contrary to the FCC's intent.[15]

Third and finally, the Washington Commission has recently adopted a collocation rule that will supplant the FCC's rules. Here, the State's rule envisions a forecast for

[13] Qwest Compliance Filing at 3, ln. 8.
[14] FCC Reconsideration Order at 22, ¶ 39.
[15] *See supra* footnote 7.

"space" in order to obtain a 45-day installation interval.[16] Under the Washington rule, should the competitor fail to forecast the needed space, Qwest must comply with the 90-day interval. Moreover, and contrary to Qwest's demands in its SGAT, the Washington rule does not require that competitors provide "application-type" forecasts in order to receive the 90-day standard interval. Clearly, the FCC anticipated that its rules would govern only in the absence of state rules. Thus, Washington's rule governs.

Given that Qwest suggested it would comply with the Washington rule,[17] the issue here is really one of timing. That is, Qwest's FCC "compliance" filing won't become effective (January 21, 2000) before the Washington rule is effective (December 31, 2000). And, as quoted above, the FCC has clarified that such FCC compliance filings are unnecessary where states have affirmatively developed their own rules.[18] Thus, Qwest ought to be making a Washington "compliance" filing and not an FCC filing. As a consequence, AT&T recommends that the Commission order Qwest to withdraw the FCC compliance filing and submit a Washington specific filing.

III. QWEST INCORRECTLY CLAIMS THAT ALL ILL-DEFINED "MAJOR INFRASTRUCTURE MODIFICATIONS" REQUIRE INSTALLATION INTERVALS LONGER THE 150 DAYS, AND THAT IT SHOULD, THEREFORE, BE GRANTED A BLANKET WAIVER OF THE INSTALLATION INTERVALS FOR SUCH MODIFICATIONS.

In its compliance filing, Qwest defines "major infrastructure modifications" as those modifications that "*include* the addition of (a) DC Power Plants; (b) AC Standby Generators; (c) HVAC; and (d) Space Conditioning."[19] Frankly, it is hard to imagine a

[16] WAC 480-120-560(3)(b).
[17] Compliance filing at 1, ln.14 (explaining Qwest's intent to make a filing compliant with the Washington rules as soon as they become effective).
[18] *See supra* footnote 6.
[19] Compliance Filing at 5, ln. 1 (emphasis added).

broader definition. To adopt such a proposal would be nothing short of giving Qwest *carte blanche* to call every space adjustment a "major infrastructure modification." In fact, examples abound wherein it should take Qwest significantly less than five months (150 days) to modify or "recondition" space to accommodate a collocation request; removing obsolete equipment is but one. Certainly, the FCC has already rejected the claim Qwest is making here when it said the 90 day interval applies whether the space is conditioned or not.[20]

Moreover, both the FCC's rules and the Washington Commission's rule contemplate the need for ILECs to obtain longer intervals when necessary. To that end, both sets of rules provide an opportunity for the state commission to grant longer intervals upon a proper showing of need.[21] And the Washington Commission took it a step further, as noted in its order adopting the collocation rule, where it expressly rejected an identical claim made by Verizon and Qwest when they were seeking a blanket exception to the intervals in cases they deemed "extraordinary circumstances."[22]

In reality, Qwest has all the relief opportunities it needs should it encounter a genuine inability to meet the collocation intervals. It is doubtful that many CLECs would insist that Qwest meet such intervals where it is truly impossible to do so, and even if a CLEC did behave in such a manner, Qwest has all the recourse it needs in this Commission's waiver rules.

[20] *See infra* footnote 3.
[21] 47 C.F.R. § 51.323(l); General Order No. R-475 at 6, ¶ 27 (citing WAC 480-120-011).
[22] General Order No. R-475 at 4, ¶ 17; General Order No. R-475 at 5-6, ¶¶ 26 & 27.

IV. AS WITH ITS CLAIMS REGARDING "MAJOR INFRASTRUCTURE MODIFICATIONS," QWEST OVERSTATES THE INSTALLATION INTERVALS FOR ADJACENT COLLOCATION AND REMOTE COLLOCATION IN THE HOPES OF AGAIN ACQUIRING A BLANKET WAIVER FROM THE COMMISSION'S RULE.

Qwest claims in its compliance filing that it will seek two "limited" exceptions to the 90-day installation interval.[23] Those exceptions are: (1) "where the CLEC's collocation application requires Qwest or the CLEC to construct new space to accommodate adjacent collocation; and (2) where the CLEC seeks remote collocation and Qwest must obtain new rights of way to complete the collocation."[24] Curiously, its SGAT (WA Exhibit 295 in the § 271 proceeding) makes all installation intervals for adjacent collocation subject to negotiation,[25] and—likewise—the SGAT is silent on the intervals for obtaining remote collocation. While Qwest claims that such instances are "rare," it would appear to be so since it has yet to provide evidence of even a single instance wherein additional rights of way were necessary in remote collocation or an adjacent structure had to be built.

To start, one must recall that the FCC has clearly stated that where space is legitimately exhausted, the 90-day intervals are subject to change.[26] This would hold true for adjacent and remote collocation spaces as well as other premises. On the other hand, where adjacent or remote space is available without the need for substantial construction, the FCC has determined that the 90-day intervals apply.

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[23] Compliance Filing at 6, ln. 17.
[24] Id.
[25] SGAT § 8.4.5 "Ordering Adjacent Collocation" note also that Qwest's Compliance filing Attachment B is silent on provisioning intervals for remote and adjacent collocation.
[26] 47 C.F.R. § 51.323(l).

Here again, Qwest has taken extreme examples and attempted to create a blanket waiver. Not all adjacent structures, even if constructed from the ground up, would require months more time than the 90-day interval would allow for Qwest or the CLEC to build such a structure. Clear examples are CEVs and environmental huts, either of which can serve as adjacent or remote collocation sites. AT&T maintains that Qwest already has all the relief opportunities it would need in these "rare" instances. For example, should the type of adjacent structure that needs to be constructed warrant more than the 90-day interval, Qwest can seek agreement from the CLEC or the Commission. Likewise, if a real right-of-way issue exists, then Qwest can seek the necessary relief.

CONCLUSION

For the foregoing reasons, AT&T requests that the Commission instruct Qwest to withdraw its compliance filing and order Qwest to re-file a document that is consistent with the Washington Commission's collocation rule. In the alternative, Qwest should clarify its current filing to expressly provide for remote and adjacent collocation intervals within the interim time frames allowed by the FCC, and the required "forecasts" should mirror those expected by the Washington Commission, not those currently under dispute in the § 271 proceeding. With respect to granting Qwest additional exceptions to the collocation installation intervals discussed in the compliance filing, AT&T requests that the Commission consider—whenever the time is ripe for such consideration—that Qwest already has sufficient mechanisms at its disposal to obtain relief from the intervals in those "rare" cases that they are needed.

Respectfully submitted this 12th day of December, 2000.

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

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