

workshops. The Commission should refuse to approve, or for purposes of Section 271 permit Qwest to rely on, the SGAT until these provisions are revised to be in full compliance with those requirements.

DISCUSSION

A. Qwest Is Not Entitled to Grooming Costs Without a Case-by-Case Factual Demonstration to the Commission. (SGAT § 8.2.1.14).

The Commission's collocation rule requires Qwest to remove inactive or underutilized equipment at Qwest's expense. WAC 480-120-560. SGAT Section 8.2.1.14 incorporates that requirement. This section also provides, however, that "[t]he cost of grooming circuits to vacate the equipment shall be borne by CLEC." The Commission has declined to require CLECs generally to pay grooming costs when it previously addressed this issue. Rather, the Commission determined that the record in that case did "not explicitly" support such a claim for cost recovery," but that Qwest "should be allowed to make a factual demonstration in support of its claim for cost recovery on a case-by-case basis." *In re MFS, TCG & ELI Arbitrations with US WEST*, Docket Nos. UT-960323, UT-960326 & UT-960337, Commission Decision at 20 (Sept. 11, 1998).

Qwest presented no evidence in this proceeding on any costs it incurs to groom circuits when removing inactive or underutilized equipment to make space available for collocation, much less a demonstration that CLECs should be responsible for such costs in all cases. The SGAT thus unlawfully seeks grooming cost recovery without the case-by-case factual demonstration the Commission has previously required. Accordingly, this SGAT provision should be modified to comply with the Commission's order. Joint CLECs propose that the

following language be substituted for the last sentence in section 8.2.1.14.1:

If Qwest seeks to recover from CLEC any costs Qwest incurs to groom circuits to vacate the equipment, Qwest must petition the Commission and make a sufficient factual demonstration on a case-by-case basis. Qwest shall not refuse to undertake or otherwise delay grooming circuits to vacate the equipment pending the filing or Commission determination of such a petition.

B. Qwest Unlawfully Proposes to Reserve Central Office Space on Terms More Favorable Than the Terms Offered CLECs. (SGAT § 8.4.1.7).

The FCC permits Qwest and other incumbent local exchange companies (“ILECs”) to “retain a limited amount of floor space for its own specific future uses, provided however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use.” 47 C.F.R. § 51.323(f)(4). Qwest’s proposed SGAT governs collocation space reservation and it imposes terms on CLECs seeking to reserve collocation space that are far less favorable than the terms on which Qwest reserves such space for itself. *Compare* SGAT § 8.2.1.16 *with* SGAT § 8.4.1.7. Qwest essentially requires the CLEC to pay 50% of the total nonrecurring charges the CLEC would pay if it were actually ordering collocation simply to reserve space, subject to partial refund if the CLEC cancels the reservation. Qwest, however, produced no evidence that it incurs such costs when reserving central office space for itself, nor does the SGAT require Qwest to incur such costs to reserve space. SGAT § 8.4.1.7, therefore, violates FCC Rule 323(f)(4).

Qwest contends that its proposal permits CLECs to pre-order collocation. While some CLECs may be interested in such an option, pre-ordering is not equivalent to – and is far more

onerous than – reserving central office space. Qwest also claims that it is seeking to prevent CLECs from warehousing space in a Qwest central office in an effort to prevent other CLECs from collocating there. The FCC rule authorizes Qwest to “impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers,” 47 C.F.R.

§ 51.323(f)(6), but Qwest proposes to use a sledge hammer to swat a fly. Qwest produced no evidence that CLEC warehousing of collocation space was a problem in Washington, much less that a requirement to pay thousands of dollars in non-recurring charges is required to prevent any such abuses. Particularly at this stage of the development of local exchange competition, CLECs are far more concerned with Qwest’s anticompetitive actions than CLEC efforts to thwart the ability of other CLECs to enter the market.

CLECs proposed during the multi-state workshops that a CLEC be permitted to reserve collocation space for the same amount of time that Qwest may reserve such space, for which the CLEC would pay Qwest for administration costs plus the monthly recurring charges for floor space rental. At approximately \$3 per square foot per month, a CLEC is unlikely to reserve a significant amount of space to preclude other competitors, rather than for its own future use in serving customers. CLECs further suggested that CLEC reservations of space be considered a right of first refusal. If collocation space is exhausted in a central office after the CLEC has reserved space and Qwest receives a collocation application from another CLEC, the CLEC with the reserved space would be required either to submit its own application to build out the reserved space or to release the space to the other CLEC. Again, such a requirement would minimize warehousing of collocation space by CLECs without imposing enormous and

unjustified financial penalties. Multi-state Workshop 1 Tr. at 278-324 (Jan. 17, 2001).

Qwest, however, has not accepted the CLEC proposal and effectively refuses to permit CLECs to reserve central office space on terms comparable to the terms under which Qwest reserves such space for itself. Accordingly, the Commission should refuse to approve sections 8.4.1.7 and 8.2.1.16 or authorize Qwest to reserve any central office space for itself or any other carrier until Qwest either accepts the CLEC proposal for reserving space or proposes an alternative that is acceptable to all parties.

C. Qwest May Not Limit Each CLEC's Collocation Applications to Five Per Week. (SGAT § 8.4.1.8).

The Commission's collocation rule establishes intervals for collocation order processing and provisioning and includes no restrictions on the number of collocation orders a CLEC may submit to Qwest at any one time. WAC 480-120-560. Qwest, however, proposes to limit the applicability of these intervals to a maximum of five collocation orders per week per state, with six or more orders being processed and provisioned on an individually negotiated basis. SGAT § 8.4.1.8 also appears to authorize Qwest to reject more than five orders per week "depending on the volume of Applications pending from other CLECs." These requirements are inconsistent with, and precluded by, both the Commission's rule and 47 C.F.R. § 51.323.

Qwest nevertheless asserts that it may impose reasonable limits on the number of collocation applications a CLEC submits at any one time to enable Qwest to manage its workload. Qwest, however, produced no evidence that it self-imposes similar limits on its own central office construction or that Qwest lacked the resources to process and provision more than five collocation applications per CLEC per week. Indeed, under Qwest's proposal, it could be

required to process 10 orders if those orders were from two CLECs in a given week, but Qwest could refuse to process those same 10 orders if they were submitted by a single CLEC. The forecasting process, moreover, is designed to give Qwest more than adequate notice of each CLEC's plans to order collocation sufficiently in advance for Qwest to have the requisite resources available.

The Commission, therefore, should require that Qwest delete SGAT § 8.4.1.8 as unlawful under both state and federal law.

D. Qwest May Not Deny Physical Collocation Based on a Lack of Entrance Facilities. (SGAT § 8.4.3.2).

The Act, FCC rule, and Commission collocation rule permit Qwest to deny physical collocation in a particular premise if Qwest “demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.” 47 U.S.C. § 251(c)(6); 47 C.F.R. § 51.321(e); WAC 480-120-560. Qwest proposes to provide a quote in response to a request for physical collocation only “[i]f Collocation entrance facilities and space are available.” SGAT § 8.4.3.2. Nothing in federal or state law permits Qwest to deny physical collocation due to lack of entrance facilities. Even the SGAT provision governing when Qwest may deny collocation requests authorizes such denial only “due to the legitimate lack of sufficient space in a Qwest Premises for placement of CLEC’s equipment.” SGAT § 8.2.1.10. Entrance facilities, like DC power or space conditioning, can be and is constructed when insufficient facilities exist. Indeed, Qwest represented in the context of Express Fiber entrance facilities that it would construct additional conduit capacity if necessary to accommodate a CLEC’s request for such facilities.

The Commission, therefore, should reject as inconsistent with federal and state law Qwest's proposal for authority to deny collocation based on a lack of entrance facilities. The Commission should require Qwest to modify the first sentence of SGAT § 8.4.3.2 by deleting the phrase "Collocation entrance facilities and" and substituting "is" for "are." If construction of additional entrance facility capacity would threaten Qwest's ability to provision collocation within the applicable intervals, Qwest should add entrance facilities to the list of major infrastructure modifications that may require Qwest to seek a waiver from the Commission to obtain an extended interval under SGAT § 8.4.3.4.5 & 6.

E. Construction of Cable Racking for CLEC-to-CLEC Connections Does Not Require 90 Days. (SGAT § 8.4.7).

The parties have resolved most of the issues raised in the context of CLEC-to-CLEC Connections. The outstanding issue on which the Joint CLECs take a position is the applicable intervals for providing a quote and provisioning a CLEC-to-CLEC Connection requiring the construction of new cable rack. Qwest proposes the same intervals under these circumstances as those applicable to a complete collocation application. Qwest produced no evidence, and cannot credibly claim, that preparing a quote for and constructing cable rack takes the same amount of time as preparing a quote for and constructing a cage enclosure (including cable racking), entrance facilities, dc power, terminations, and other requested collocation elements. In the multi-state workshops, Ken Wilson on behalf of AT&T proposed significantly shorter intervals as all that should be required for quoting and installing cable racking based on his expertise. Qwest rejected that proposal, preferring its own proposal because of its uniformity and consistency with intervals for other forms of collocation. Multi-state Ex. WS1-ATT-KLW-12;

Multi-state Workshop 1 Tr. at 455-61 (Jan. 17, 2001).

Mr. Wilson's proposal includes far more reasonable intervals for the limited undertaking that CLECs are requesting of Qwest. Accordingly, the Commission should require Qwest to provide a quote for any new cable racking needed to provision a requested CLEC-to-CLEC Connection within 10 days of receipt of a complete collocation application and to complete construction of the cable racking within 25 days of CLEC acceptance of the quote.

F. Qwest Should Reinstate Language Revisions to Which the Parties Agreed But Which Are Not Reflected in the Latest SGAT.

Finally, the most recent SGAT provisions on collocation dated February 6, 2001, omit some of the language changes to which the parties agreed during the workshops. These revisions should be reinstated and include the following:

8.2.3.12 – add “to construct the cage enclosure” at the end of the second sentence.

8.2.4.7 – replace the word “its” with “Qwest’s” (first instance) and “CLEC’s” (second instance).

8.3.1.11.1.2 – add the following sentence at the end of this subsection: “When CLEC provides and installs the tie cables, blocks, and terminations on the ICDF, no Collocation Termination rates will apply.”

8.4.7.1.1 – in the third sentence, delete the phrase “To retain its place in the Collocation queue for the requested Premises.”

CONCLUSION

Certain provisions of Qwest's SGAT governing collocation are unreasonable and inconsistent with federal and Washington law by (1) requiring CLECs to pay grooming costs in

all instances in which Qwest must remove inactive and underutilized equipment to make space available for collocation; (2) permitting Qwest to reserve space on more favorable terms than CLECs may reserve space; (3) limiting CLEC collocation applications to five per week; (4) authorizing Qwest effectively to deny physical collocation due to lack of entrance facilities; (5) authorizing excessive intervals to quote and construct cable racking for CLEC-to-CLEC Connections; and (6) by failing to include language to which the parties agreed during the workshops. The Commission, therefore, should reject these SGAT provisions, and should refuse to permit Qwest to rely on the SGAT to demonstrate compliance with Section 271, until Qwest modifies the SGAT to comply with state and federal legal requirements.

DATED this 16th day of February, 2001.

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