

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	
U S WEST Communications, Inc.’s)	Docket No. UT-003022
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	
_____)	
)	
In the Matter of U S WEST Communications,)	Docket No. UT-003040
Inc.’s Statement of Generally Available)	
Terms Pursuant to Section 252(f) of the)	JOINT CLEC COMMENTS ON
Telecommunications Act of 1996)	INITIAL ORDERS
_____)	

XO Washington, Inc. (“XO”), Focal Communications Corporation of Washington (“Focal”), Electric Lightwave, Inc. (“ELI”), and Advanced TelCom Group, Inc. (“ATG”) (collectively “Joint CLECs”) provide the following comments on the Initial Orders Finding Noncompliance in the areas of Interconnection, Number Portability and Resale and on Collocation Issues in the above referenced proceeding. The Joint CLECs believe that the Initial Orders generally have accurately summarized the proceedings to date and have proposed the appropriate resolution of disputed issues. The Joint CLECs propose only the following modifications: (1) clarification and consideration of the resolution of compensation obligations for interconnection facilities to address all facilities used to provide interconnection, not just Expanded Interconnection Channel Termination (“EICT”); and (2) consideration of collocation issues that were not incorporated into the issues matrix, including grooming cost recovery, limitations on quotes when entrance facilities are not available, and Qwest’s failure to include agreed language changes into its Statement of Generally Available Terms (“SGAT”). In

addition, ATG concurs in the comments of MetroNet Services Corporation (“MetroNet”) on per location pricing for Centrex services.

DISCUSSION

A. Compensation for Interconnection Facilities

Paragraphs 71-82 of the February 23 Initial Order address the interconnection compensation issue of “Collocation facilities on Qwest’s side of the POI – Rate elements for Entrance facilities (Issue WA-I-6).” The Order correctly summarizes the Joint CLECs’ position in paragraphs 75-79 but does not resolve these issues in the Discussion and Decision paragraphs 80-82. Rather, the Discussion and Decision are limited to the Expanded Interconnection Channel Termination (“EICT”), which is only one element among several collocation elements used to provide interconnection.

Interconnection provides a path between the CLEC switch and the Qwest switch for the exchange of telecommunications traffic. *See* SGAT § 7.1.1. Consistent with industry practice, Qwest’s SGAT establishes three methods the Parties may use to construct this path: (1) use facilities provided primarily by Qwest; (2) use facilities provided primarily by the CLEC, including collocation in the Qwest wire center; and (3) use facilities constructed by both companies to a negotiated meet point. SGAT § 7.1.2; Ex. 325 (XO Anderson Response) at 6-9. The SGAT further provides that the interconnecting companies will share the costs of interconnection facilities provided by Qwest, and the SGAT effectively requires the companies to share the costs of interconnection facilities when using a meet point because each company must bear the costs of the facilities it constructs to the meet point. SGAT §§ 7.1.2.1, 7.1.2.3 & 7.3.1.1;

see id. § 7.3.2 (cost sharing for Direct Trunked Transport). The SGAT, however, provides for no cost sharing for interconnection facilities the CLEC provides (other than Direct Trunked Transport), including facilities in the CLEC switching center and facilities the CLEC provides via collocation in the Qwest wire center. SGAT § 7.3.1.2.

The issue, therefore, is the extent to which Qwest should share the CLEC's costs to provide interconnection facilities. Kaylene Anderson listed the collocation elements used to provide interconnection, including collocation entrance facilities and EICTs. Ex. 325 (XO Anderson Response) at 8. These elements provide the comparable functionality of Qwest's Interconnection Entrance Facilities in the Qwest Wire Center. *Id.* Ms. Anderson further testified that Qwest's Interconnection Entrance Facilities are comparable to the facilities the CLEC must construct in its own switching center. *Id.* at 7. Accordingly, the Joint CLECs recommended that Qwest be required to share the costs of these collocation elements and CLEC switching center "entrance facility" costs to the same extent that Qwest has agreed to share the costs of the Qwest Interconnection Entrance Facilities.

The February 23 Initial Order in paragraph 80 appears to attempt to address this issue but incorrectly states that the function of the EICT "is to carry traffic from the CLEC collocation POI to Qwest's switch." The EICT provides only "that portion of the physical facility between Collocated equipment and Qwest's equipment located elsewhere within the Qwest building" – in other words, from the collocation space to Qwest's switch. SGAT § 7.3.1.2.1. The EICT does not include the physical facility between the collocation space and the Collocation Point of Interconnection, which is defined as "the point outside Qwest's Wire Center where the CLEC's

fiber facility meets Qwest's Fiber Entrance Facility." SGAT § 4.12(a); *accord* Tr. at 2030-31. Collocation Fiber Entrance Facilities, not the EICT, "provide the connectivity between the CLEC's collocated equipment within the Qwest Wire Center and a Collocation Point of Interconnection (C-POI) outside the Qwest Wire Center." SGAT § 8.2.4.2. Nor does the EICT include equipment the CLEC has collocated in that space to terminate the fiber and, if necessary, multiplex the signal transmitted over that fiber. *See* Ex. 325 (XO Anderson Response) at 8 (listing collocation elements).

By resolving only the issue of the EICT, the Order does not resolve the issue of compensation for the interconnection facilities the CLEC provides in the Qwest Wire Center from the C-POI up to and inside the CLEC's collocation space or the other facilities the CLEC provides in its own switching center. The Order thus effectively permits Qwest to deny the CLEC any cost recovery for Qwest's use of these shared facilities. If the intent of the Initial Order was to require that neither Party pay the other for the interconnection facilities within the CLEC switching center or Qwest wire center, the Order does not reflect that intent. Using the rationale in paragraphs 80-82, the Order would reflect that intent if it were revised to prohibit Qwest from charging the CLEC for the EICT *or for any other collocation elements used for interconnection* because Qwest does not pay the CLEC for any of the interconnection facilities the CLEC provides in its switching center. Such a resolution would further require that Qwest not charge the CLEC for Interconnection Entrance Facilities, which are comparable to the functionality the CLEC provides in its switching center and which the SGAT does not permit the CLEC to charge Qwest.

The Joint CLECs do not recommend that resolution for two reasons. First, requiring each Party to pay for the facilities in its own office assumes that the traffic exchanged between the carriers is in balance – if each company pays its own costs for constructing half the facilities, each company is effectively paying 50% of the cost of jointly used facilities. The traffic the Parties exchange, however, may not be in balance and one company may be using (and should be responsible for the costs of) more than half of the joint facilities. Indeed, one reason the SGAT provides interconnection options other than construction of facilities to a meet point is the need to accommodate the possibility or probability that the traffic exchanged will not be in balance. Having one Party or the other construct most of the interconnection facilities and bill the other Party for its share of those costs facilitates cost sharing on something other than a 50% basis.

The Joint CLECs also have a second, practical reason for not recommending the elimination of charges for Interconnection Entrance Facilities and collocation elements used for interconnection. The administrative costs required to identify and apportion collocation element costs may not be justified in light of the collocation rates the Commission has established in Docket No. UT-003013, which are roughly comparable to Qwest's rates for Interconnection Entrance Facilities. Under these circumstances, the rates for Interconnection Entrance Facilities would be an acceptable surrogate for the costs of providing interconnection through collocation. Authorizing the CLEC to charge Qwest for an Interconnection Entrance Facility when the CLEC is providing the interconnection facilities through collocation would impose less of an administrative burden on both Parties than requiring identification and elimination of the collocation charges for those facilities used for interconnection.

Rather than eliminating charges for Interconnection Entrance Facilities and collocation elements used for interconnection, therefore, the Joint CLECs recommend that the Initial Order be revised to direct Qwest to pay its proportionate share of those charges as applied to facilities in both the Qwest wire center and the CLEC switching center:

- (1) When Qwest provides Interconnection Entrance Facilities: The Parties should assume that the CLEC incurs the same costs to provide the same functionality in its switching center. 47 C.F.R. § 51.711. Each Party would pay the other for an Interconnection Entrance Facility at the rates in Exhibit A in proportion to the amount of traffic each carrier delivers to the other over those facilities for termination, as currently provided in SGAT § 7.3.1.1.3.1.
- (2) When the Parties Interconnect Through Collocation: The Parties should assume that the CLEC is providing two Interconnection Entrance Facilities – one in its own switching center and one in the Qwest wire center. Qwest would pay the CLEC for these Entrance Facilities at the rates in Exhibit A in proportion to the amount of traffic Qwest delivers to the CLEC for termination, as currently provided in SGAT § 7.3.1.1.3.1.

The Order should continue to require Qwest to remove the charge for the EICT because the functionality of that element is included in an Interconnection Entrance Facility, which would represent all of the interconnection facilities each Party provides in the CLEC switching center or Qwest wire center.

The Initial Order also does not address cost sharing for nonrecurring charges associated

with provisioning interconnection facilities. The SGAT currently provides for no cost sharing for nonrecurring charges, authorizing the Party who provides the facility to impose a full nonrecurring charge on the other Party. SGAT § 7.3.3.1. No principled reason exists for permitting the facility provider to charge a full nonrecurring charge while sharing the recurring charges. Accordingly, the Initial Order should be amended to direct Qwest to modify its SGAT to share these costs, just as it shares the other costs of interconnection facilities.

B. Collocation.

The Joint CLECs do not take issue with the resolution of any of the issues addressed in the Eleventh Supplemental Order. That order, however, does not include all disputed issues. Rather, that Order appears to address issues only if they were included on the issues list compiled during the workshops. Unfortunately, the parties were unable to conclude discussion of collocation issues within the scheduled workshops and thus relied on subsequent workshops in other states. As a result, the issues list was never finalized, and it fails to identify three issues arising out of the workshops that the Joint CLECs discussed in their post-workshop brief. Each of those issues is summarized below, and the Joint CLECs request that the Commission address and resolve these issues consistent with the Joint CLECs' recommendations.

1. Recovery of Grooming Costs

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 but also provides 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. The Commission determined 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).

The SGAT unlawfully requires the CLEC to pay grooming costs without the case-by-case factual demonstration the Commission has previously required. This issue was discussed at length during the November 28, 2000 workshop session and was declared at impasse. Tr. at 1895-1906. Accordingly, the Thirteenth Supplemental Order should address this impasse issue and should require Qwest to modify its SGAT to comply with the Commission’s order. The 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 and CLEC disputes the level of, or CLEC’s liability for, those costs, in whole or in part, Qwest must petition the Commission to require CLEC to pay those costs and must 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.

2. Restrictions on Quotes When Entrance Facilities Unavailable.

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, or refuse to provide a quote for, 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 are 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. Multistate Jan. 16, 2001 Tr. at 99-102.

Qwest has never explained the inconsistency between SGAT § 8.4.3.2 and § 8.2.1.10 or provided any justification for refusing to provide a collocation quote for physical collocation when entrance facilities allegedly are not available. The parties agreed to language modifications in SGAT § 8.2.1.10 related to this issue, Tr. at 1869-70, but Qwest did not modify § 8.4.3.2 to be consistent with these modifications. The Thirteenth Supplemental Order, therefore, should be amended to require Qwest to make these SGAT provisions consistent by modifying the first sentence of SGAT § 8.4.3.2 to delete 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.

3. Failure to Include Agreed Language Changes.

The most recent SGAT dated March 20, 2001, omits 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. (*See* Tr. at 1994-2001 & 2012; Multistate Dec. 19, 2000 Tr. at 271-72 (relevant pages attached).)

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.” (*See* Tr. at 2060-63; Multistate Dec. 20, 2000 Tr. at 63-64 (relevant pages attached).)

8.4.7.1.1 – in the third sentence, delete the phrase “To retain its place in the Collocation queue for the requested Premises.” (Tr. at 2356-57.)

C. Centrex Per Location Pricing.

ATG, as a reseller of Qwest local exchange service as well as a facilities-based provider, concurs in the comments filed by MetroNet on the issue of per location pricing for Centrex services. The Telecommunications Act of 1996 contemplates multiple forms of entry into monopoly local exchange markets, including through resale of the incumbent’s retail services. Per location pricing serves only to thwart the ability of resellers to aggregate customers at different locations in order to obtain volume discounts. If resale is to have any chance of being a viable option for providing consumers with alternative sources of local telecommunications services, the Commission must prohibit per location pricing of both features and station lines as an unreasonable restriction on resale. Accordingly, ATG joins MetroNet in recommending that the February 23 Initial Order be modified to preclude Qwest from engaging in such pricing of its Centrex services.

CONCLUSION

The Joint CLECs appreciate Commission Staff's efforts to prepare thorough and appropriate Initial Orders and propose only that the orders be modified as described above.

DATED this 20th day of April, 2001.

DAVIS WRIGHT TREMAINE LLP
Attorneys for XO Washington, Inc., Focal
Communications Corporation of Washington,
Electric Lightwave, Inc., and Advanced TelCom
Group, Inc.

By _____

Gregory J. Kopta
WSBA No. 20519