

Decision No. R01-1094-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996.

**ORDER REGARDING MOTIONS TO MODIFY
DECISION NO. R01-1015**

Mailed Date: October 26, 2001

I. STATEMENT

A. On September 27, 2001, the Commission mailed Decision No. R01-1015 Resolution of Volume IIIA Impasse Issues. AT&T Communications of the Mountain States, Inc. ("AT&T"), and Covad, respectively, filed motions to modify the Volume IIIA order. The motions to modify are dealt with together here.

B. Covad's motion to modify Decision No. R01-1015 is granted in part and denied in part. AT&T's motion to modify is denied. Where applicable, the respective motions to modify are denied principally for reasons stated in the original orders; areas that require further comment follow.¹

¹ The impasse issues on which a modification was requested but no additional comment is required are PS-3 (Unbundled Packet Switching when a Remote competitive local exchange carrier ("CLEC") DSLAM is "Economically Infeasible") and LS-18 (Line-Sharing Over Fiber-Fed Loops).

II. FINDINGS

PS-2: Spare Cooper Loops (Statement of Generally Accepted Terms and Conditions § 9.20.2.1.2).

1. Covad argues that parity of service is not the only limit the Federal Communications Commission ("FCC") has set on the spare copper exception under 47 C.F.R. § 51.319(c)(5). Rather, Covad argues the spare copper must be able to support the xDSL services the requesting carrier seeks to offer. Therefore, Covad requests me to clarify that, "if a CLEC seeks to offer an xDSL service to a customer, and existing copper does not support that xDSL service, the 'spare copper' exclusion to the packet-switching element of SGAT § 9.20.2.1.3 does not apply."²

2. Covad has previously recognized--as has the FCC--that the issue often boils down to one of parity.³ Indeed, Covad requested additional language that would state "there are no spare copper loops available capable of supporting the xDSL services the requesting carrier seeks to offer, or capable of *permitting the CLEC to provide the same level of quality advanced services to its customer as the incumbent LEC.*"

² Covad's Comments on Resolution of IIIA Issues at 2.

³ "Thus, the determinative question with respect to whether § 9.20.2.1.2 is one of parity: can the CLEC provide the same level of service over home run copper as Qwest Corporation can from its remote terminal." Covad Comments on Staff's Draft Volume IIIA Report at 3, citing *Kansas/Oklahoma 271 Order* at n. 741.

(proposed additional language emphasized). The Order approves of Qwest Corporation's ("Qwest") Statement of Generally Accepted Terms and Conditions ("SGAT") § 9.20.2.1.2. This section recites the FCC's spare copper loop exception verbatim. Indeed, if existing spare copper does not exist that would support whatever level of xDSL service a carrier seeks to offer, this condition of the unbundling exemption will be satisfied. The order, in part, found Covad's proposed language to be "unnecessary" because it would be superfluous. The superfluity remains, and no modification is warranted.

PS-4: Competitive Local Exchange Carrier DSL Line Cards in Qwest's Remote DSLAMS (SGAT § 9.20.2.1.3).

1. Covad submits that the Hearing Commissioner made a legally impermissible assumption, *i.e.*, that "Congress has indicated an immediate preference for CLEC facilities ownership rather than facilities-based competition via UNE leasing."⁴

2. Decision No. R01-1015 did not rest upon a blanket interpretation of the Telecommunications Act as mandating or promoting "an immediate preference for CLEC facilities ownership." The decision did, however, rest upon very plain and very clear legal requirements. Unbundled packet switching is not available unless the four conditions of 47 C.F.R. § 51.319(c)(5) are met. The FCC and this Commission (under the

⁴ Covad's Comments on Resolution of IIIA Issues at 6.

authority granted to it in § 251(d)(3) of the 1996 Act) have not yet mandated the use of DSL line cards in remote DSLAMs.

3. The Volume IIIA Impasse Issue Order declined to extend the unbundling requirement for line cards in remote DSLAMs absent an FCC mandate. See Decision No. R01-1015 at p. 17. I again so decline.

LS-15: Data Continuity Test (SGAT §§ 9.4.4.1.4.1 and 9.4.6.3.3).

Covad correctly points out that the conclusion under this section in the order contradicts the discussion. The conclusion (*i.e.*, that Qwest not be required to perform data continuity testing) should be disregarded and the discussion section still controls. Qwest should incorporate Washington SGAT §§ 9.4.4.1.4.1 and 9.4.6.3.3 into the Colorado SGAT, as agreed by the parties, and Qwest shall perform data continuity testing in accordance with those SGAT provisions.

SB-17: Local Service Requests to Order Subloops (SGAT §§ 9.3.3 and 9.3.5).

1. AT&T submits that, subsequent to the closure of this issue in Colorado, Qwest has undermined its original arguments for the necessity of the Local Service Request ("LSR") process in other proceedings. AT&T emphasized that it is not opposed to providing an LSR for subloop elements in general, but is opposed to providing an LSR for on-premises wiring when a number is not ported.

2. AT&T's motion fails, despite Qwest's representations on the issue in other fora.

3. While the order emphasized that Qwest cannot overly-burden the ordering party in the LSR process, Qwest must be allowed to implement a procedure that ensures it will be able to monitor its proprietary interests (in this case, Qwest-owned internal wiring). As such, the Volume IIIA Order found that the interests of the parties would be balanced, and the costs to the competitive local exchange carriers ("CLECs") minimized, through Qwest's adoption of additional SGAT language in accordance with the recommendation of the Staff and the Multi-state Facilitator. The LSR is still the best vehicle to ensure that Qwest is able to update and maintain its records (if, for example, an AT&T customer eventually ports to Qwest) and bill CLECs for the use of the internal wiring in a timely fashion.

4. AT&T reiterates that Qwest's current LSR process would impose substantial costs upon CLECs. AT&T is particularly concerned about the need for personnel manually to report the building address to Qwest and to state whether the CLEC would be running the jumper. In most instances, and as agreed to by the parties in their briefs on Issue SB-16 and its progeny, the CLEC will be running the jumper unless it specifically requests Qwest

to do so. Qwest's LSR Requirements should be modified to incorporate this as a default provision.⁵

5. Otherwise, I still do not find that the systems costs incurred by CLECs will deter them from, or frustrate their access to customers in Multi-Tenant Environments. Under one of AT&T's proposed solutions (*i.e.*, the submission of aggregated data on a daily basis), it is foreseeable that CLECs would still incur systems costs. In addition, this proposal (as well as AT&T's alternate proposal requiring Qwest to create an automated system) would shift the burden almost entirely to Qwest. AT&T has not convinced me that the original resolution of this issue should be changed.

III. ORDER

A. It is Ordered That:

1. AT&T Communications of the Mountain States, Inc.'s request to modify Decision No. R01-1015 is denied.

2. Covad's request to modify is granted in part and denied in part, consistent with the discussion above.

3. This Order is effective immediately on its Mailed Date.

⁵ Arguably, this requirement was superfluous. Under the LSR Requirements submitted by AT&T, CLECs must provide Qwest with the Cable and Pair information if they want Qwest to run the jumper. If this is not provided on the LSR, Qwest may assume that the CLEC is running the jumper.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

Hearing Commissioner

ATTEST: A TRUE COPY

Bruce N. Smith
Director

E:\ARCHILLEUS\DOCKET\1997\97I-198TVol_IIIA_FINAL_APPENDIX
B_R01-1094-I.DOC

See AT&T's Proposed Modifications to Volume IIIA Impasse Issues Order,
Attachment C.