APPENDIX B
VOLUME IIA

Decision No. R01-990-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 NOS. R01-846 AND R01-848

Mailed Date: September 27, 2001

I. STATEMENT

A. On August 16, 2001, the Commission mailed Decision No. R01-846 Resolution of Volume IVA Impasse Issues. One day later, on August 17, 2001, the Commission mailed Decision No. R01-848 Resolution of Volume IIA Impasse Issues. AT&T Communications of the Mountain States, Inc. ("AT&T"), filed a motion to modify the Volume IVA order. Qwest Corporation ("Qwest"), AT&T/WorldCom ("Joint Movants") and Covad, respectively, filed motions to modify the Volume IIA order. Both sets of motions to modify are dealt with together here.

B. The motions to modify Decision Nos. R01-846 and R01-848 are denied. The respective motions are denied principally

for reasons stated in the original orders; areas that require further comment follow.[1]

II. FINDINGS

A. 1-012(B): Entrance Facility Interconnection

1. The Joint Movants seek reversal of any endorsement of Qwest's "entrance facilities" method of interconnection.

2. Qwest's entrance facility requirement allows competitive local exchange carriers ("CLECs") to choose their point of interconnection ("POI"). Nothing in the definition of an "entrance facility" precludes a CLEC from designating a POI at any location, and using an entrance facility from that POI to connect with Qwest's wire center. The definition of an "entrance facility" should not, and indeed cannot, supersede the right of a CLEC to designate its desired, technically feasible, POI. I reiterate that Statement of Generally Accepted Terms and Conditions ("SGAT") § 7.1.2(4) allows for interconnection through any "technically feasible methods of interconnection." *See* Decision No. R01-848 ¶ II.C.i.a., at p. 28. Therefore, I fail to understand how the entrance facility "requirement" inhibits the ability, or increases the cost, of a CLEC to

[1] The impasse issues on which a modification was requested but no additional comment is required are: 11-71; CL2-15; and UNE-C-19. I stand by my original resolution of those issues.

interconnect. The "entrance facility" option in § 7.1.2.1 appears to be a standard offer interconnection method. It does not preclude other "technically feasible" methods of interconnection.

3. The pricing of the entrance facility interconnection belongs in the 98A-577T docket.

B. 1-012(C): Expanded Interconnection Channel Termination Charges

1. Joint Movants disagree with my resolution of issue 1-012(C) allowing Qwest to charge for the expanded interconnection channel termination ("EICT"), in SGAT §§ 7.1.2.2 and 7.3.1.2. Joint Movants claim that their position on EICT is misstated, and – apparently – that this misstatement lead to an incorrect resolution of the issue.

2. To the extent I misstated the Joint Movants' position, I apologize. This does not provide a basis to reverse the resolution of the impasse issue, however. The original resolution of 1-012(c) stands.

C. 1-012(D): Meet Points for Unbundled Network Element Access

1. Joint Movants object to the resolution that Qwest is not obligated to ratchet down rates when commingled traffic occurs over mid-span meet arrangements. Joint Movants argue that allowing Qwest to recover special access-tariffed rates for unbundled network element ("UNE") access amounts to an over-

recovery for Qwest. Joint Movants' preferred alternative **is for rates to ratchet down to UNE rates for channels they use for local traffic**, rather than the higher Special Access rate.

2. I decline to make such a modification. For one, there is no record on the metering and information costs that ratcheting would entail. Furthermore, rate ratcheting introduces another layer of complexity that – here, the record is equivocal – does not appear warranted.

D. 1-114: Forecasting Interconnection

1. Joint Movants disagree with the impasse resolution of forecasting and deposits.

2. Qwest must establish SGAT terms for both "forecasted" and "non-forecasted" interconnection, in other words both shorter and longer interconnection intervals.

3. Neither party has any contractual obligations to the other based on a "forecast" alone. The parties must establish mutual obligations to each other before an enforceable contractual obligation exists. Qwest is not obligated in any way to prepare for CLEC interconnection prior to a contractual relationship with the CLEC. Correspondingly, once a CLEC does contractually bind itself by ordering a forecasted or unforecasted trunk, then Qwest is obligated to deliver.

4. The Joint Movants' complaint here, if I understand it, seems more anticipatory than real. First, Joint Movants do not want a deposit requirement.

5. The "unforecasted" trunk offering may partially address Joint Movants' concern. In exchange for not having to forecast trunk-build needs, the CLEC must endure both a longer time interval for Qwest to complete the buildout and a built-in premium in Qwest's price to account for the risk of loss.[2]

6. I further instructed Qwest to come up with a forecasted trunk offering. This option, if selected by a CLEC, would require a deposit, thus mitigating Qwest's risk of loss from an unnecessary build. However, the forecasted offering, though more costly to the CLEC up-front because of the deposit, would also involve shorter time frames for completion of the build.

7. I therefore decline to modify the original resolution of this issue.[3] It seems to me that resolution of this issue gives CLECs what they most need: time-definite deadlines for trunk buildout completion. How Qwest recovers its costs for that buildout, which would include a premium for the

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[2] The actual pricing, of course, will come out of Docket No. 99A-577T.

[3] Though I take the gentle chiding by Joint Movants about my pedantry about contract terms in due course, *see* Joint Movants Motion at 8, I still fail to see how this is an impasse issue at all. Trunk forecasting and deposit requirements can be resolved through innumerable different terms and arrangements, each reflecting a particular point on a *continuum*.

risk of loss, either through a deposit or an increased back-end charge on all trunks is negotiable.

8. Finally, the Joint Movants' complaint that Qwest does not meet its contractual obligations is not germane to this exercise of setting contract terms. If Qwest breaches its obligation to deliver trunk groups, then that is an issue that the performance assurance plan ("PAP") or a complaint docket should remediate. Joint Movants (or any CLEC) may also bring forward their commercial experience with Qwest in Colorado at the Second Technical Workshop to be held in November.

E. 1-118: Interconnection Trunks Greater Than 50 Miles

1. The Joint Movants request that the resolution allowing conversion of trunks over 50 miles to mid span meet arrangements, be reversed.

2. Qwest is not required to build out its network to accommodate CLEC interconnection. To the extent that the interconnection facilities effectively extend Qwest's facilities and vice versa, the parties are free to negotiate terms regarding the cost of those facilities. Beyond that, the current Qwest term is acceptable and meets all requirements of applicable law and regulation.

F. 1-32: Standard Offering for Shared Cageless Collocations

1. Covad points out that the Staff recommendation and order lack a discussion of whether shared cageless collocation is technically feasible.

2. Technical feasibility is irrelevant regarding whether Qwest is obligated to offer shared cageless collocation. *See* 47 U.S.C. § 251(c)(6) ("The duty to provide...for physical collocation of equipment *necessary* for interconnection or access to unbundled network elements...") (emphasis added).

G. 1-97: Collocation Forecasting and 90-Day Default Interval Exceptions

1. Qwest submits that the order is based upon several incorrect factual assumptions which ignore agreements reached in the Regional Oversight Committee performance measurement workshops. These assumptions include: (1) that Qwest would not have an incentive to prepare for a collocation application based on a forecast alone; (2) the CLECs will be "penalized for under-forecasting; and (3) CLECs still have some incentive to voluntarily provide forecasts.

2. Each of the alleged deficiencies is dealt with in order. Following the unnecessary expenditure of $300 million in unused facilities constructed based on forecasts with no contractual obligation, a rational, economic entity would have a reduced incentive to prepare for collocation based on forecasts

alone. The difference between a "penalty" and a "reward" is merely a matter of perspective. CLECs have *some* incentive voluntarily to provide collocation forecasts. The incentive may not be sufficient to overcome other considerations, but such is life where trade-offs must be made. Finally, given the CLECs' positions before the Commission, it is not clear that any stipulation as to collocation intervals exists, much less one binding on the Colorado Commission.

H. 1-105: Method of Procedure Requirements and Qwest Internal Inconsistencies

1. Covad seeks a clarification that a Method of Procedure ("MOP") can only be required to ensure network and personnel safety. Covad also argues that the PAP and/or a breach of contract claim do not provide adequate remedies where Qwest's use of external documents breach the SGAT or a relevent interconnection agreement.

2. The MOP serves the purpose of ensuring network and personnel safety *in the Central Office.* Therefore, I will not limit when a MOP can be required.

3. As in other markets, a breach of contractual obligations should be dealt with according to the tenets of contract law. I find no evidence in the record indicating that the telecommunications industry is so unique as to require a

different set of rules.[4] The alleged "flaws" of contract law are endemic to all legal obligations which must be enforced after the fact of breach.

4. The PAP represents an optional regulatory shortcut to the normal breach of contract legal proceedings. However, I decline to further extend the regulatory arm into what is properly evolving into a deregulated and competitive market.

I. 14-02: Application of Service Credits and Penalties to Resold Services

1. Joint Movants contend that the order improperly assumes that Qwest's wholesale service is of equal quality as to Qwest's subsidiaries and retail customers. Joint Movants also object to the order's reference to the PAP.

2. The assumption regarding the incumbent local exchange carrier's wholesale service quality was made for the purpose of discussion. Whether or not Qwest provides such equality of service, as legally obligated, is not relevant to Impasse Issue 14-02.

3. The resolution of Impasse Issue 14-02 does not strictly rely on the provisions of the forthcoming performance assurance plan. To the extent the PAP is relevant here, it is

[4] I doubt in fact that any industry could make a compelling argument for full exclusion from contract law.

so in a generic sense, as the mechanism for ensuring SGAT compliance.

J. CL2-5c: Retail Service Quality Standards

1. AT&T argues, among other things, that it is inappropriate to discuss the PAP as if it has been finalized.

2. As in Impasse Issue 14-02, the reference to the PAP in a generic sense is appropriate.[5]

K. UNE-C-4(b): Finished Services

1. AT&T points out that the commingling prohibition does not extend to all UNEs and the order should be clarified.

2. The SGAT should reflect that UNEs can be directly connected to finished services, unless it is expressly prohibited by existing rules. The SGAT language will encompass any possible changes that are made to the "existing rules" by the Federal Communications Commission in the immediate future or what constitutes a "finished service" by Qwest.[6]

L. TR-2: Distinction Between Unbundled Dedicated Interoffice Transport and Extended Unbundled Dedicated Interoffice Transport

1. AT&T submits that electronics must be provided by Qwest at the CLEC end of dedicated transport, under the UNE Remand Order.

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[5] No additional comment is required for the remainder of this issue.

[6] In addition, footnote 29 of Decision No. R01-846 and its incorporating language is irrelevant and should no longer be considered part of the order.

2. Qwest is obligated only to make existing electronics available to CLECs as part of unbundled dedicated transport.

III. ORDER

A. It is Ordered That:

1. All requests to modify Decision Nos. R01-846 and R01-848 are denied.

2. This Order is effective on its Mailed Date.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

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Hearing Commissioner

ATTEST: A TRUE COPY

Bruce N. Smith
Director

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