

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 QWEST'S DEMONSTRATION
OF COMPLIANCE WITH THE HEARING
COMMISSIONER'S RESOLUTION OF IMPASSE
ISSUES RELATING TO VOLUMES VA AND VIA**

Mailed Date: February 1, 2002

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I. STATEMENT

A. This order addresses the sufficiency of Qwest Corporation's ("Qwest") actions to demonstrate its compliance with my decisions to resolve the impasse issues brought before me in Volumes VA and VIA of Staff's Reports in this investigation.

B. The impasse issues for Volume VA were resolved by Decision Nos. R01-1141, November 6, 2001, and R01-1253-I, December 7, 2001.

C. The impasse issues for Volume VIA were resolved by Decision Nos. R01-1193, November 20, 2001, and R01-1283-I, December 17, 2001.

D. In order to demonstrate its compliance with the resolution of the impasse issues specified in the above-referenced decisions and other previous impasse issue resolution decisions, Qwest filed revisions to its Statement of Generally Available Terms and Conditions ("SGAT") on June 29, September 19, October 29, November 30, and December 21, 2001.

E. This order will not recount the discussions or positions of the parties related to the impasse issues. Rather, it will focus solely on the sufficiency of Qwest's compliance demonstrations with respect to the resolution of the issues.

II. FINDINGS

With respect to the impasse issues that required SGAT modifications contained in Volume VA regarding Checklist Items Nos. 2, 4, and 11, I find as follows:

1. Issue LSPLIT-2: Whether Qwest is required to offer its retail DSL service on a stand-alone basis when a CLEC provides voice service over UNE-P.

a. Qwest made the required SGAT modification in the November 30, 2001, SGAT revision to reflect that Qwest must continue offering retail customers its retail DSL offering when a competitive local exchange carrier ("CLEC") provides voice service over UNE-P, and it was carried forward to the December 21, 2001, version.¹

b. This is sufficient for compliance with § 271.

2. Issue NID-1: Whether Qwest is required to make the NID available to CLECs on a stand-alone basis when Qwest owns the inside wire beyond the terminal.

a. Qwest made the required SGAT modification by deleting the sentence as recommended by Staff, in § 9.5.1 in the October 29, 2001, SGAT revision and the deletion was carried forward to the December 21, 2001, version.

¹ SGAT Revs. 11/30/01 and 12/21/01 at § 9.23.3.11.7.

b. This is sufficient for compliance with § 271.

3. Issue Loop-1: Loop conversions over IDLC.

a. On November 30, 2001, Qwest filed updated performance data regarding loops provisioned over Integrated Digital Loop Carrier ("IDLC").² The data confirms that Qwest continues to perform in a satisfactory manner in this regard.

b. At the December 12, 2001, status conference, no participant expressed a need to comment further on Qwest's updated performance data concerning loops provisioned over IDLC.³

c. This issue is now closed.

4. Issue Loop-9(c), Loop-31(a), and Loop-31(b): Qwest's obligation to build loop facilities for CLECs and Qwest's held order policy related to CLEC requests.

a. Qwest made the required SGAT modification to reflect that Qwest will assess whether to build for CLECs in the same manner that it assesses whether to build for itself in the September 19, 2001, SGAT revision, and it was carried forward to the December 21, 2001, version.⁴

b. This is sufficient for compliance with § 271.

² *Qwest's Filing Regarding Loops Provisioned on Integrated Digital Loop Carrier*, November 30, 2001, at Exhibit 1.

³ Decision No. R01-1295-I at page 10.

⁴ SGAT Revs. 9/19/01 and 12/21/01 at § 9.19.

5. Issue Loop-10(b): Loop conditioning charge refund.

a. Qwest made the approved SGAT modifications to reflect that CLECs may be entitled to a credit under certain conditions (failure to perform in a workmanlike or timely manner), and that issues associated with fault or credit will be resolved in the context of a billing dispute.⁵ The modifications were finalized in the December 21, 2001, SGAT modification.

b. This is sufficient for compliance with § 271.

6. Issue Loop-10(c): Deloading of loops for data use.

a. Qwest made the required SGAT modification to reference the Commission rule regarding minimum voice grade performance standards in the December 21, 2001, SGAT revision.⁶

b. This is sufficient for compliance with § 271.

7. Issues Loop-14(a) and Loop-24(b): Access by CLECs to Qwest's Loop Facilities Assignment and Control System database.

a. Qwest made the required SGAT modification to include the SGAT language proposed by the Multistate Facilitator

⁵ SGAT Rev. 12/21/01 at § 9.2.2.4.

⁶ *Id.*

and ordered by the hearing commissioner regarding loops served over IDLC in the December 21, 2001, SGAT revision.⁷

b. This is sufficient for compliance with § 271.

8. Issues Loop-34 (1), Loop-34 (2), and Loop-34 (3): Spectrum management.

a. The required SGAT modifications to reflect that there is a reciprocal obligation to report spectral mask information and to protect confidential or proprietary information was made in the November 30, 2001, SGAT revision and they were carried forward to the December 21, 2001, version.⁸

b. The required SGAT modification to incorporate Qwest's spectrum management policy by including the modified Multistate Facilitator's recommended SGAT language was included in the November 30, 2001, SGAT revision and was carried forward to the December 21, 2001, version.⁹

c. These SGAT modifications are sufficient for compliance with § 271.

9. Issue Loop-36: Standard loop provisioning intervals.

a. The required SGAT modifications to reflect standard provisioning intervals as specified by Commission

⁷ SGAT Rev. 12/21/01 at § 9.2.2.2.1.1.

⁸ SGAT Revs. 11/30/01 and 12/21/01 at § 9.2.6.2.

⁹ *Id.* at § 9.2.6.4.

Rules, where applicable, were included in the November 30, 2001, SGAT revision and were clarified with respect to Exhibit C, § 1.0(a), in the December 21, 2001, SGAT revision.¹⁰

b. This is sufficient for compliance with § 271.

10. Issue Loop-37: Redesignation of Interoffice Facilities.

a. Qwest made the required SGAT modification to reflect that it will not redesignate interoffice facilities for itself, subject to an exception for circumstances of national security or public health and policy, in the November 30, 2001, SGAT revision and it was carried forward to the December 21, 2001, version.¹¹

b. This is sufficient for compliance with § 271.

11. Issue LNP-1: Coordination of conversions.

a. Qwest modified its SGAT to reflect its current policy concerning CLEC reporting of delays and Qwest's obligations associated therewith. The changes were included in the December 21, 2001, SGAT revision.¹²

¹⁰ SGAT Rev. 11/30/01 at Exhibit C, §§ 1.0(a), 1.0(b), 1.0(d), 1.0(f), and 1.0(h); SGAT Rev. 12/21/01 at Exhibit C, § 1.0(a), n. 1.

¹¹ SGAT Revs. 11/30/01 and 12/21/01 at § 9.2.2.1.

¹² SGAT Rev. 12/21/01 at § 10.2.5.3.1.

b. There was a previous lack of clarity and consistency between the provisions of the SGAT regarding the coordination and notifications associated with LNP conversions and those contained in the internal Qwest policy on the same topic that was being discussed in the change management process ("CMP") forum. The resulting confusion about what the SGAT required and what Qwest would commit to do in this regard led to my earlier direction in Decision No. R01-1253-I at page 9.

c. Section 10.2.5.3.1 of the December 21, 2001, SGAT revision finally describes in clear and understandable terms what the respective responsibilities and obligations of the parties are with respect to this issue.¹³

d. I find the proposed SGAT language in § 10.2.5.3.1 to be both reasonable and acceptable. My modified resolution of this issue in Decision No. R01-1253-I at page 9 should be ignored. Further, Qwest should revise its policy that is being discussed in the Change Management process to be consistent with the approved SGAT language.

e. The SGAT modifications are sufficient for compliance with § 271.

¹³ Such clarity would have been more helpful in the first instance.

B. With respect to the impasse issues that required SGAT modifications contained in Volume VIA regarding the general terms and conditions of the SGAT, I find as follows:

12. Issue G-52: Duration of "Pick and Choose" Provisions.

a. Qwest made the approved SGAT modification to § 1.8.1 to reflect the decision of the hearing commissioner regarding the determination of expiration dates of pick and choose provisions. The modification was included in the November 30, 2001, SGAT revision and was carried forward to the December 21, 2001, version.

b. This is sufficient for compliance with § 271.

13. Issues G-23 and G-25: Conflicts between the SGAT and other documents.

a. Qwest made the required modification to SGAT § 2.3.1 to delete the dispute resolution process that called for the establishment of an interim operating agreement. The deletion was made in the November 30, 2001, SGAT revision and the deletion was carried forward to the December 21, 2001, version.

b. This is sufficient for compliance with § 271.

14. Issue G-24: Implementing Changes in Legal Requirements.

a. Qwest made the required modification to SGAT § 2.2 to remove the provisions regarding the establishment of an interim operating agreement in the November 30, 2001, SGAT revision and the deletion was carried forward to the December 21, 2001, version.

b. This is sufficient for compliance with § 271.

15. Issue G-27: "Legitimately Related" terms under Pick and Choose.

a. Qwest made the required modifications to the definition of the term "Legitimately Related" in § 4.0 of the November 30, 2001, SGAT revision and they were carried forward to the December 21, 2001, version.

b. This is sufficient for compliance with § 271.

16. Issue G-35: Limitation of Liability Provisions.

a. Qwest made the required modifications to SGAT § 5.8.1 (to reflect that there is no limitation on the amount of damages under the CPAP) and § 5.8.4 (to reflect that Qwest's liability should not be limited in instances of gross negligence or intentional misconduct) in the November 30, 2001, SGAT revision and they were carried forward to the December 21, 2001, version.

b. This is sufficient for compliance with § 271.

17. Issue G-10: Whether the Indemnification Provisions of the SGAT are Reasonable and Proper.

a. Qwest made the required modification to SGAT § 5.9.1.1 to incorporate AT&T Communications of the Mountain States, Inc.'s proposed indemnification language in the November 30, 2001, SGAT revision and it was carried forward to the December 21, 2001, version.

b. Qwest made the required modification to SGAT § 5.9.1.2 to include exceptions for intentional or grossly negligent conduct in the December 21, 2001, SGAT revision.

c. These modifications are sufficient for compliance with § 271.

18. Issue G-38: SGAT Validity Following the Sale of Qwest Exchanges.

a. Qwest made the required SGAT modification to include a new subparagraph § 5.12.2 that incorporates the language proposed by the Multistate Facilitator which I had previously approved.¹⁴ The modification was made in the November 30, 2001, SGAT revision and was carried forward to the December 21, 2001, version.

¹⁴ Decision No. R01-1193 at pages 28 and 29.

b. This is sufficient for compliance with § 271.

19. Issue G-8: Use of and Access to Confidential CLEC Forecasting Data.

a. Qwest made the required modifications regarding the use of and access to individual CLEC forecasting data in the November 30, 2001, SGAT revision and they were carried forward to the December 21, 2001, version.¹⁵

b. This is sufficient for compliance with § 271.

20. Issue CM-1 Through CM-18: Change Management Process.

a. By previous decision, I noted that Qwest's CMP was not yet ripe for impasse resolution, even though it is a prerequisite to § 271 approval.¹⁶

b. Should the CMP remain incomplete or reach a defined set of impasse terms, then the participants may want to petition the Commission for resolution.¹⁷

c. In the order issuing from the December 12, 2001, status conference, I noted that to date, Qwest has filed, and parties have commented on, two status reports on the change management redesign process. Qwest believes that there are no

¹⁵ SGAT Revs. 11/30/01 and 12/21/01 at §§ 5.16.3 and 5.16.9.1.1.

¹⁶ Decision No. R01-1193 at page 36.

¹⁷ *Id.* at page 37.

issues at this time that have reached impasse in the redesign process. If this does happen in the future, the parties can implement the dispute resolution process as set out in the CMP, which includes the possibility of bringing these issues to the Commission for decision.¹⁸

d. It is Qwest's position that it can file an application with the Federal Communications Commission with just the systems redesign done and not the product and process. At the status conference, the CLECs agreed that there are currently no CMP impasse issues for the Commission to decide.¹⁹

e. Whether CMP needs to be complete for systems alone or more broadly to meet § 271 requirements is a matter for later argument.²⁰

f. In the November 30, 2001, SGAT revision, Qwest included SGAT language in § 12.2.6 regarding change management and a separate Exhibit G detailing the "Change Management Process (CMP) for Local Services."²¹ In its December 21, 2001, SGAT filing, Qwest did not propose any changes to the CMP and asserted its belief that the CMP

¹⁸ Decision No. R01-1295-I at page 3.

¹⁹ *Id.*

²⁰ *Id.* at page 4.

²¹ SGAT Rev. 11/30/01 at § 12.2.6 and Exhibit G.

contained in the November 30, 2001, SGAT fully satisfies the requirements of § 271.²²

g. I reiterate my earlier position that whether CMP needs to be complete for systems alone or more broadly to meet § 271 requirements is a matter for later argument.

h. Therefore, I hereby find that Qwest's CMP is closed for the purposes of this order and for Volume VIA of Commission Staff Reports in this investigation. I will rule on the adequacy and sufficiency of Qwest's CMP for § 271 purposes in a subsequent order.

21. Issue G-11: The Propriety of the BFR, SRP, and ICB Processes.

a. Qwest made the required SGAT modification to incorporate the language of the Multistate Facilitator into the BFR process section of the SGAT in the November 30, 2001, SGAT revision and it was carried forward to the December 21, 2001, version.²³

b. This is sufficient for compliance with § 271.

²² *Qwest Corporation's Filing of Updated Statement of Generally Available Terms*, December 21, 2001, at page 3.

²³ SGAT Revs. 11/30/01 and 12/21/01 at § 17.15.

22. Issue G-51: Scope of the SGAT Audit Provisions.

a. Qwest made the required SGAT modification to incorporate the audit language proposed by the Multistate Facilitator, and endorsed by Staff, in the November 30, 2001, SGAT revision and it was carried forward to the December 21, 2001, version.²⁴

b. This is sufficient for compliance with § 271.

III. CONCLUSIONS

A. Qwest has demonstrated satisfactorily its implementation of the ordered resolution of the impasse issues associated with the line splitting and access to NIDs portions of Checklist Item No. 2 as they relate to Volume VA and Workshop 5. Based upon this demonstration, combined with Commission Staff Report Volumes V and VA, the absence of remaining impasse issues, and the consensus reached in Workshop 5, I conclude that Qwest is in compliance with the line splitting and access to NIDs portions of Checklist Item No. 2 with respect to the non-pricing terms and conditions of Qwest's SGAT. Having previously concluded that Qwest is in compliance with the emerging services portion of Checklist Item No. 2 (Workshop 3)²⁵ and the portions

²⁴ SGAT Revs. 11/30/01 and 12/21/01 at § 18.3.1.

²⁵ Decision No. R02-3-I at page 24.

of Checklist Item No. 2 that were dealt with in Workshop 4,²⁶ I now conclude that Qwest is in compliance with Checklist Item No. 2 with respect to the non-pricing terms and conditions of Qwest's SGAT.

B. Qwest has demonstrated satisfactorily its implementation of the ordered resolution of the impasse issues associated with Checklist Item No. 4 as they relate to Staff Report Volume VA. Based upon this demonstration, combined with Commission Staff Report Volumes V and VA, the absence of remaining impasse issues, and the consensus reached in Workshop 5, I conclude that Qwest is in compliance with Checklist Item No. 4 with respect to the non-pricing terms and conditions of Qwest's SGAT.

C. Qwest has demonstrated satisfactorily its implementation of the ordered resolution of the impasse issue associated with Checklist Item No. 11 as it relates to Staff Report Volume VA. Based upon this demonstration, combined with Commission Staff Report Volumes V and VA, the absence of remaining impasse issues, and the consensus reached in Workshop 5, I conclude that Qwest is in compliance with Checklist Item No. 11 with respect to the non-pricing terms and conditions of Qwest's SGAT.

²⁶ Id. at page 25.

D. With the possible exception of Qwest's CMP, Qwest otherwise has demonstrated satisfactorily its implementation of the ordered resolution of the impasse issues associated with the general terms and conditions of Qwest's SGAT as they relate to other checklist items and as reported in Volume VIA. Based upon this demonstration, combined with Commission Staff Report Volumes VI and VIA, the absence of remaining impasse issues, and the consensus reached in Workshop 6, I conclude that the non-pricing general terms and conditions of Qwest's SGAT (with the possible exception of the CMP) are in compliance with § 271.

E. With regard to Qwest's CMP, the issue of whether CMP needs to be complete for systems alone or more broadly to meet § 271 requirements is a matter for later argument. Qwest's CMP is closed for the purposes of this order and Volume VIA of Commission Staff Reports in this investigation. I will rule on the adequacy and sufficiency of Qwest's CMP for § 271 purposes in a subsequent order.

F. Any recommendations of compliance with a § 271 checklist item are subject to modification by the results of the region-wide Operations Support Systems test currently underway under the auspices of the Qwest Regional Oversight Committee. Similarly, actual commercial experience in Colorado will inform the Commission's recommendations.

IV. ORDER

A. IT IS ORDERED THAT:

1. Commission Staff Report Volumes V and VA, along with the resolution of the impasse issues, Qwest Corporation's demonstrated implementation of that resolution, the absence of remaining impasse issues, and the consensus reached in Workshop 5 establish Qwest Corporation's compliance with the line splitting and access to NIDs portions of Checklist Item No. 2 with respect to the non-pricing terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions. Having previously established its compliance with the portions of Checklist Item No. 2 with respect to the non-pricing terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions that were dealt with in Workshop 3 (emerging services) and Workshop 4, the Hearing Commissioner now recommends that the Colorado Commission certify Qwest Corporation's compliance with Checklist Item No. 2 with respect to the non-pricing terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions and make a favorable recommendation of the same to the Federal Communications Commission.

2. Commission Staff Report Volumes V and VA, along with the resolution of the impasse issues, Qwest Corporation's demonstrated implementation of that resolution, the absence of

remaining impasse issues, and the consensus reached in Workshop 5 establish Qwest Corporation's compliance with Checklist Item No. 4 with respect to the non-pricing terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions. The Hearing Commissioner recommends that the Colorado Commission certify that compliance and make a favorable recommendation of the same to the Federal Communications Commission.

3. Commission Staff Report Volumes V and VA, along with the resolution of the impasse issues, Qwest Corporation's demonstrated implementation of that resolution, the absence of remaining impasse issues, and the consensus reached in Workshop 5 establish Qwest Corporation's compliance with Checklist Item No. 11 with respect to the non-pricing terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions. The Hearing Commissioner recommends that the Colorado Commission certify that compliance and make a favorable recommendation of the same to the Federal Communications Commission.

4. With the possible exception of Qwest Corporation's Change Management Process, Commission Staff Report Volumes VI and VIA, along with the resolution of the impasse issues, Qwest Corporation's demonstrated implementation of that resolution, the absence of remaining impasse issues, and the

consensus reached in Workshop 6 otherwise establish that the non-pricing general terms and conditions of Qwest Corporation's Statement of Generally Accepted Terms and Conditions as they relate to other checklist items are in compliance with § 271. The Hearing Commissioner recommends that the Colorado Commission certify that compliance and make a favorable recommendation, as may be appropriate, to the Federal Communications Commission.

5. With regard to Qwest Corporation's Change Management Process, its compliance with § 271 requirements is a matter for later argument. Qwest Corporation's Change Management Process is closed for the purposes of Staff Report Volume VIA impasse issue resolution and implementation. The Hearing Commissioner will rule on the adequacy and sufficiency of Qwest Corporation's Change Management Process for § 271 purposes in a subsequent order and will make a recommendation to the Colorado Commission at that time.

**B. THIS ORDER IS EFFECTIVE IMMEDIATELY UPON ITS
MAILED DATE.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Hearing Commissioner