

Decision No. R01-1095-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 SUBLOOP
ISSUES SB-16 AND SB-21**

Mailed Date: October 26, 2001

I. INTRODUCTION

A. This order addresses the remaining subloop issues from Workshop III of the § 271 collaborative process. On September 27, 2001, I issued Decision No. R01-1015, which resolved, in part, issues pertaining to emerging services under checklist item 2. With regard to issues SB-16 and SB-21, I found that there was a lack of an adequate record in Colorado. This combined with apparent confusion amongst the parties about the specific issues which remained at impasse. To resolve the issues surrounding subloop access at Multi-Tenant Environment ("MTE") terminals,¹ the IIIA Order directed Qwest Corporation

¹ *In the Matter of the Investigation into U S West Communications, Inc.'s Compliance with § 271(C) of the Telecommunications Act of 1996, Docket No. 97I-198T, Volume IIIA Impasse Issues Order (Mailed Date September 27, 2001) [hereinafter IIIA Order], at pp. 28-29.*

("Qwest") and AT&T Communications of the Mountain States, Inc. ("AT&T"), to attempt to resolve the following issues:

1. Whether Qwest's Standard MTE Access Protocol limits the competitive local exchange carriers' ("CLECs") ability to access the Network Interface Device ("NID"). (Statement of Generally Accepted Terms and Conditions ("SGAT") § 9.3.5.4.5.1).

2. Whether a period of 45 days to rearrange the MTE Terminal when no space is available is warranted. (SGAT §§ 9.3.3.6, 9.3.3.7).

3. Whether Qwest or CLECs should run the jumpers at the MTE Terminal to complete the circuit. (SGAT § 9.3.5.4.5).

B. If the parties remained at impasse on any of these issues, the IIIA Order directed them to file supplemental briefs, proposed SGAT language, and MTE Access Protocol for resolution under a baseball-style arbitration.²

C. On October 11, 2001, AT&T and Qwest filed briefs directed towards the first issue -- Qwest's Standard MTE Access Protocol. The parties reached consensus on the other two

² As I indicated in the IIIA Order, I will recommend which language Qwest should adopt, *in whole*, that most reasonably takes into account the following factors. First, whether Qwest is using its control over on-premises wiring to frustrate competitive access in multi-tenant buildings. Second, whether the terms will protect Qwest's property rights (particularly if they are analogous to those that a neutral landlord or building owner would impose). The purpose of the baseball-style arbitration approach is to encourage the parties fully to evaluate their positions and moderate toward a reasonable solution.

issues, and the SGAT has been modified to reflect these agreements.

D. First, Qwest has added language from the Washington state SGAT which allows CLECs to access MTE terminals without collocation and to use temporary wiring methods for 90 days. This, in combination with SGAT § 9.3.3.7.1 (which gives Qwest 45 days to rearrange the terminal), affords CLECs the access they need when no space is available in an MTE Terminal. Second, the parties agreed that the CLEC would determine which company will run the jumpers in the MTE Terminal.³ As I find these agreements to be reasonable, these issues are now closed.

II. ISSUE REMAINING IN DISPUTE: WHETHER QWEST'S STANDARD MTE ACCESS PROTOCOL LIMITS THE CLECS' ABILITY TO ACCESS THE NID

Party Positions

Qwest:

Qwest has listed the four issues which AT&T has apparently briefed in Washington, concerning the MTE Access Protocol:

(1) CLECs should be required to pay when space is unavailable and Qwest must retrofit an MTE Terminal.

³ This was originally impasse Issue SB-21.

(2) An Individual Case Basis interval is appropriate for determining how to access unique MTE terminals not already covered by the Access Protocol.

(3) Contrary to AT&T's argument, the Access Protocol does not require the use of 25-pair increments.

(4) Whether CLECs must submit a Local Service Request ("LSR") and whether they must inventory facilities before accessing subloop elements. As the IIIA Order has resolved these issues, Qwest recognizes that these issues are moot.

AT&T:

In addition to pointing out two typographical errors, AT&T has raised five issues and has proposed modifications to the Access Protocol:

(1) AT&T objects to Qwest's usage and definition of Minimum Point of Entry ("MPOE"), Network Interface Device ("NID"), and MTE Terminals.

(2) While AT&T recognizes that the LSR requirement has been upheld by the Hearing Commissioner, AT&T requests that several changes should be made to the Standard Access Protocol in order to make it consistent with the SGAT.

(3) Alternate language regarding installations pursuant to the National Electric Code ("NEC") and National Electric Safety Code ("NESC") should be incorporated

into the Access Protocol. Neither code addresses "line protection of Qwest facilities." AT&T's proposed language states that "CLECs will perform any installation pursuant to the NEC and NESC."

(4) Additional language to clarify the procedures relating to the attachment of conduit to closures should be incorporated into the Access Protocol. For example, the Access Protocol should indicate that CLECs should use knockouts in closures "when they are accessible."

(5) In the Access Protocol, CLEC access to the protector field is only being given in 25-pair increments. This has the potential to be discriminatory if, for example, AT&T wished to access only two tie down terminals. Access should be given when there is space available.

Conclusion:

1. I adopt AT&T's proposed MTE Access Protocol, and direct its inclusion to resolve impasse issue SB-16.

2. AT&T's proposed MTE Access Protocol is reasonable. Qwest should incorporate AT&T's redlined version of the Access Protocol.

3. Upon making necessary changes to the Access Protocol described below, I will recommend to the Commission that it certify Qwest's compliance with § 271 checklist item 2 regarding emerging services.

Discussion

Each issue raised by AT&T is taken in turn below:

a. Definitional Issues

(1) AT&T first objects to Qwest's use of the MPOE. Although the MPOE is often the demarcation point (*i.e.*, that point on the loop where the telephone company's control of the wire ceases and the subscriber or landlord's control of the wire begins), the Federal Communications Commission ("FCC") has clearly stated that the demarcation point is *not always* located at the MPOE.⁴

(2) Qwest's definition of the MPOE as "[t]he closest physical point to where the distribution facilities cross the property line or the closest practical point to where distribution facilities enter a MTE building"⁵ could lead to confusion or abuse, particularly because Qwest separates its subloop elements into distribution, feeder, and intrabuilding cable.⁶ Although Qwest appears to recognize that the MPOE "may also be" the demarcation point, AT&T's revised definition more closely conforms to the *UNE Remand Order* and is relatively straightforward.

⁴ See *UNE Remand Order* at ¶ 169.

⁵ Qwest Access Protocol at pg. 28.

⁶ SGAT § 9.3.1.2

(3) AT&T concedes that Qwest's definition of the MTE Terminal is acceptable,⁷ but argues that Qwest's use of the NID contradicts the *UNE Remand Order*. Again, AT&T's proposed language more closely conforms with (or mirrors) the *UNE Remand Order* and should be adopted. For example, Qwest's Option 1 "MTE NID" is mystifying.⁸ Under Qwest's definition of a MTE Terminal, Qwest owns the wire on both sides of the building terminal.⁹ Yet, under the "MTE NID" definition, which is also an "MTE Terminal," the MTE NID is the "terminal that is simultaneously the MPOE and the network demarcation point where Qwest's ownership and control ends and the property owner's ownership and control begins." As AT&T points out, this appears to be a reference to the demarcation point. And, as stated above, the MPOE is not always the demarcation point, nor is the demarcation point always located at the NID.¹⁰ For clarity's sake, striking this language and replacing the Qwest NID

⁷ See Qwest Access Protocol at pg. 28, which defines the MTE Terminal as a "Qwest owned building terminal that is physically attached to the inside or outside of a MTE building and the distribution facilities on both sides of the terminal are owned and controlled by Qwest."

⁸ *Id.* at pg. 8.

⁹ *Id.* at pg. 28.

¹⁰ *UNE Remand Order* at ¶ 169: "In multiunit premises, there may be either a single demarcation point for the entire building or separate demarcation points for each tenant, located at any of several locations, depending on the date the inside wire was installed, the local carrier's reasonable and nondiscriminatory practices, and the property owner's preferences. This, depending on the circumstances, the demarcation point may be located either at the NID, outside the NID, or inside the NID."

definition with the FCC's NID definition are sensible modifications to the Access Protocol.

b. LSR Issues

A submitted LSR is a precondition for CLEC access to a Qwest MTE Terminal, so AT&T's clarifying language (as it relates to SGAT § 9.3.5.4.7) should be inserted into the Access Protocol. As AT&T points out, once this is implemented, the reference to the LSR on page 7 of the Qwest Access Protocol is superfluous and should be stricken.

c. National Electric Code and National Electric Safety Code Issues

AT&T submits that the NEC and NESC do not contain sections that directly address "line protection of Qwest facilities." However, AT&T's proposed language does ensure that CLECs will be required to "perform any installation pursuant to the NEC and NESC." This language will encompass the requirements of both codes and protects Qwest's proprietary interests.

d. Conduit Issues

AT&T's proposed language on page 7 ensures CLEC access when existing knockouts are not accessible. Obviously, because CLECs are allowed to make an opening with a standard sized hole-punch if closures "are not equipped with knockouts," this option should also be available if there are

knockouts that are inaccessible. This does not create an additional burden for Qwest.

e. 25-Pair Cable Increment Requirement

The parties dispute whether the Access Protocol requires the use of 25-pair cable into the terminal. Regardless, the adoption of AT&T's language strikes this clause from the Access Protocol¹¹ and is acceptable, as it promotes efficient use of available capacity.

f. Option 4 and SPOI Issues

As AT&T points out, Qwest appears to have made "typographical errors" which omit references to the access protocol to be utilized for Cable and Wire Service Termination Policy Option 4 and access to a SPOI once capacity has been exhausted. AT&T's proposed language clarifies these procedures, although it should be emphasized that CLEC access to the on-premises wiring using "any technically feasible means" is subject to the other provisions of the Access Protocol and the SGAT.

¹¹ AT&T's proposed language strikes the sentence: "In such case, for example, if the splice chamber allows splice strips (i.e., modular connectors) for 25 pair cable increments, CLEC access will be granted in 25-pair increments as spare capacity exists."

III. ORDER

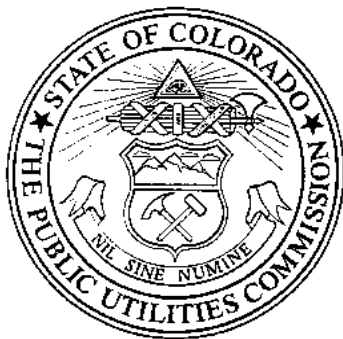
A. It is Ordered That:

1. Qwest shall file AT&T Communications of the Mountain States, Inc.'s Multi-Tenant Environment Access Protocol language in order to comply with checklist item 2 of § 271.

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

(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