

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03M-078T

IN THE MATTER OF THE FILING OF QWEST CORPORATION'S STATEMENT OF
GENERALLY AVAILABLE TERMS AND CONDITIONS.

**ORDER ALLOWING REVISIONS TO STATEMENT OF
GENERALLY AVAILABLE TERMS AND CONDITIONS
TO TAKE EFFECT, IN PART,
AND REJECTING REVISIONS, IN PART**

Mailed Date: May 5, 2003

Adopted Date: April 23, 2003

I. BY THE COMMISSION

A. Statement

1. On March 4, 2003, Qwest Corporation (Qwest) filed its Notice of Filing Ninth Revised Statement of Generally Available Terms and Conditions and Motion for Approval. By this filing, Qwest requests Commission approval of a number of changes to its Statement of Generally Available Terms and Conditions (SGAT). AT&T Communications of the Mountain States, Inc. and WorldCom, Inc., on April 11, 2003, filed their Joint Response in Partial Opposition to Qwest's Motion for Approval of revisions to the SGAT (Joint Response). Qwest submitted its Reply to the Joint Response on April 21, 2003.¹

2. Now being duly advised, we reject certain portions of the Ninth Revised SGAT. Additionally, as provided by separate order, we will conduct a hearing regarding the rate for Enhanced Extended Loop proposed in the Ninth Revised SGAT.² Except for these portions of

¹ Qwest's Motion for Leave to File a Reply and Request to Waive Response Time is granted.

² The proposed EEL rate will still be allowed to become effective pending the hearing on the matter in accordance with 47 U.S.C. § 252(f).

Qwest's proposals, the Ninth Revised SGAT will be allowed to become effective without further investigation or hearings. That is, at this time the Commission does not intend to conduct further hearings or investigation on other portions of the Ninth Revised SGAT. Qwest is directed to file an Advice Letter changing its Colorado PUC Tariff No.22 to make the tariff consistent with the proposed Ninth Revised SGAT as modified by this order. That Advice Letter shall be filed within 30 days of the effective date of this decision with no less than one days notice to the Commission.

3. Qwest filed its Ninth Revised SGAT pursuant to the provisions of 47 U.S.C. § 252(f). In general, § 252(f)(3) provides that when a proposed SGAT is filed with a state commission, that commission shall, not later than 60 days after such submission, complete a review of the SGAT, or permit the SGAT to take effect. Section 252(f)(4) provides that a state commission may continue to review a filed SGAT that has been permitted to take effect, and may approve or disapprove the filed SGAT.

4. Qwest's Ninth Revised SGAT proposes numerous changes to the currently effective SGAT. The Joint Response objects only to certain of the proposed revisions. First, the Joint Response protests the new rate for EEL Channel Performance. According to the Joint Response, the Commission, in Docket No. 99A-577T, only recently ruled that no rate element was necessary for EELs. *See* Decision No. C02-409. The new proposed rate for EEL Channel Performance is inconsistent with the Commission's recent decision. Qwest replies that the Commission's prior decision that no rate element was necessary for EELs simply meant that the rate for EELs should be the same as the rate for Unbundled Dedicated Interoffice Transport (UDIT).

5. We agree with the Joint Respondents that Decision No. C02-409 is not clear that the intended EEL rate should be the same as the UDIT rate. Because of this confusion, we will conduct a hearing in a separate docket on the EEL rate proposed in the Ninth Revised SGAT. Consistent with the provisions of § 252(f), Qwest's proposal will be permitted to take effect pending that hearing. Because we are not now approving the price for EELs, we may order Qwest to make refunds if we eventually determine that the rate for EELs should be less than that established in the Ninth Revised SGAT.

6. Second, the Joint Response objects to Qwest's proposal to set the reciprocal compensation rate for traffic to Internet Service Providers (ISP) at \$0.00. Generally, the Joint Response suggests that this suggestion is inconsistent with FCC directives regarding reciprocal compensation for ISP traffic. We disagree. Qwest's Reply correctly points out that the FCC has not preempted state commission actions setting compensation rates for ISP traffic lower than the transitional rates established by the FCC. Moreover, Qwest points out that the Colorado Commission in various rulings in 2000 and 2001 has already ruled that the reciprocal compensation rate for ISP traffic should be \$0.00. Thus, the Ninth Revised SGAT is consistent with prior Commission determinations on the issue. We reject the Joint Response arguments on this matter.

7. Third, the Joint Response objects to Qwest's proposal to change the service interval tables for 2/4 Wire Analog (Voice Grade) (Exhibit C, § 1.0(a)), and DS-1 Capable Loops, and DS-1 Capable Feeder Loop (Exhibit C, § 1.0(d)). The Joint Response contends that Qwest's revisions are inconsistent with the Commission's Wholesale Service Quality Rules, 4 CCR 723-43-6. In response, Qwest argues that its proposals are consistent with the rules. The service intervals in the rules, Qwest contends, commence from the Firm Order Commitment date,

instead of the application date; the service intervals in the Ninth Revised SGAT commence from the application date. However, when one accounts for the different commencement dates, Qwest argues, the proposed service intervals in the Ninth Revised SGAT are consistent with the Commission's rules.

8. We agree with the Joint Response that the disputed proposed changes to the service intervals in the Ninth Revised SGAT should be rejected. First, it appears that, in some instances, the proposed service intervals are inconsistent with the Commission's Wholesale Service Quality Rules to the detriment of Competitive Local Exchange Carriers. Second, proposing changes to service intervals in this manner (*i.e.* through unilateral revisions of the SGAT) is inconsistent with the SGAT itself. Specifically, the Colorado Performance Assurance Plan (CPAP) (Exhibit K to the existing SGAT) establishes a six month review process to consider refinements and additions to, or deletions from the Performance Indicator Definitions. Revised service intervals that affect specific PIDS should be raised and considered in the CPAP six month review process before proposing them to the Commission. Therefore, we reject the service interval tables for 2/4 Wire Analog (Voice Grade) (Exhibit C, § 1.0(a)), and DS-1 Capable Loops, and DS-1 Capable Feeder Loop (Exhibit C, § 1.0(d)) proposed in the Ninth Revised SGAT. We direct Qwest to file revisions to its SGAT reflecting our rejection of the above-referenced sections of its SGAT. That filing shall be made within 30 days of the effective date of this order upon one days notice to the Commission.

9. Finally, the Joint Response objects to apparent revisions to the Change Management Process for Local Service suggested in the Ninth Revised SGAT. The Change Management Process (CMP) is set forth in Exhibit G of the SGAT. The Joint Response objects to two apparent proposed modifications to Exhibit G: (1) modifying § 2.4.1 to delete references

to the CMP Product/Process Manager; and (2) deleting footnotes from the bottom of every page which define “OSS Interface” and the terms “include” and “including.” However, in its Reply to the Joint Response, Qwest states that, in both cases, the material was inadvertently deleted from the filing with the Commission. Qwest states that it will reinsert the language to address both concerns in the Joint Response.

10. In light of Qwest’s representations no further investigation is required. We direct Qwest to file revisions to its SGAT reinserting the language relating to the CMP cited in the Joint Response. That filing shall be made within 30 days of the effective date of this order.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to File a Reply and Request for Waiver of Response Time by Qwest Corporation is granted.

2. Except as discussed above, the Ninth Revised SGAT filed by Qwest Corporation on March 4, 2003 shall be allowed to take effect without further investigation.³

3. The service interval tables for 2/4 Wire Analog (Voice Grade) (Exhibit C, § 1.0(a)), and DS-1 Capable Loops, and DS-1 Capable Feeder Loop (Exhibit C, § 1.0(d)) proposed in the Ninth Revised SGAT are rejected. Within 30 days of the effective date of this order, Qwest Corporation shall file revisions to its Colorado PUC Tariff No. 22 reflecting this determination. That filing shall be made upon no less than one days notice to the Commission.

³ We allow these revisions to the SGAT to become effective by operation of law. Therefore, the Commission has not “approved” these revisions, nor have we determined that these revisions are lawful under §§ 251 and 252 of the Telecommunications Act of 1996.

4. Within 30 days of the effective date of this order and on no less than one days notice to the Commission, Qwest Corporation shall file revisions to its Colorado PUC Tariff No. 22 reinserting the language relating to the Change Management Process consistent with the above discussion.

5. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
APRIL 23, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN GREGORY E. SOPKIN'S
SPECIAL CONCURRENCE TO FOLLOW.