

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of US West) Application No. C-1830
Communications, Inc., Denver,)
Colorado, filing its notice of)
intention to file its Section) SECTIONS 251(c)(3) AND 252(d)(1)
271(c) application with the) SATISFIED
FCC and request for the)
Commission to verify US West)
compliance with Section 271(c).) Entered: September 19, 2001

BY THE COMMISSION:

1. In November 1998, US West Communications, Inc., now known as Qwest Corporation (Qwest), presented its initial Section 271 application to this Commission and introduced evidence attempting to demonstrate its compliance with each item on the 271(c)(2)(B) checklist.

2. On April 9, 1999, the Commission issued its first decision in the application after a week long hearing and found that Qwest "complies with checklist items 3, 7, 8, 9, 10, 11, 12 and 14. (Commission's Section 271 Order (April 9, 1999) at pp. 4-5.) After a second hearing, on May 10, 2000, the Commission made a preliminary finding that Qwest was in compliance with checklist item 1, but had not yet met their burden for compliance with checklist items 4, 5, and 6.

3. On July 9, 2001, Qwest again came before the Commission for hearing. This time, Qwest sought a Commission finding that it had satisfied, subject to the successful completion of the Regional Oversight Committee Operations Support Systems (ROC OSS) Test, its non-checklist obligations to provide unbundled network element combinations and emerging services as required by Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996 (the Act).

O P I N I O N A N D F I N D I N G S

3. The FCC did not originally require incumbent local exchange carriers (ILECs) such as Qwest to unbundle emerging services. As a result, Qwest's unbundled network element (UNE) combinations and emerging services obligations have arisen in the past 18 months primarily as a result of the FCC's *UNE Remand Order* in CC Docket No. 96-98 and the *Line Sharing Order* in CC Docket Nos. 98-147 and 96-98.¹ The *Line Sharing Order*, as its name implies,

¹ Third Interconnection Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, (November 5, 1999) (Third Interconnection Order or UNE Remand Order); Third Report and Order in CC Docket No. 98-147, Fourth Report and

added a requirement for line sharing, and the *UNE Remand Order* added requirements for UNE combinations, subloop unbundling, access to dark fiber, and in limited circumstances, unbundled packet switching.

4. Checklist Item 2 of Section 271 of the Act requires that Qwest provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." The FCC established the legal framework for evaluating checklist items in its Second Bell South Louisiana Order. To determine whether Qwest is "providing" each checklist item, Qwest must demonstrate (I) "that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item;" and (ii) "that it is currently furnishing, or is ready to furnish the checklist item in the quantities that competitor may reasonably demand and at an acceptable level of quality." The FCC has noted that it will consider the testing results to determine whether a checklist item has been met in situations where no commercial usage exists.²

5. On May 22, 2001, pursuant to previous Commission order, Qwest filed its third amended statement of generally available terms (SGAT) in Application No. C-2537, pursuant to section 252(f) of the Act.³ As the Commission's review is ongoing, it took no formal action to approve or reject Qwest's latest SGAT, and thus it became effective on July 21, 2001. Because the SGAT has taken effect, Qwest is legally obligated to provide UNEs and emerging services pursuant to the terms and conditions of the SGAT. Section 9 of the SGAT contains the terms and conditions, rate elements, ordering process and maintenance information for each of the revised list of FCC UNEs in § 9.1; subloops in § 9.3; line sharing in § 9.4⁴; dark fiber in § 9.7; packet switching in § 9.20 and UNE Combinations in § 9.1.2 and 9.23.

6. The Commission finds that the provisions of the SGAT confirm Qwest's concrete and specific legal obligation to provide the

Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

² Application of BellSouth Corp., BellSouth Telecom, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order (rel. October 13, 1998) ¶ 54.

³ In The Matter Of Qwest Corporation Seeking Approval Of Its Revised Statement Of Generally Available Terms (SGAT) Pursuant To Section 252(F) Of The 1996 Telecommunications Act, App. No. C-2537 (May 22, 2001)

⁴ The related requirements of line splitting and loop splitting can be found in SGAT §§ 9.21 and 9.24 respectively.

services required by the UNE Remand Order and Sections 251(c)((3) and 252(d)(1). Similarly, with respect to all Unbundled Network Element Combinations and Emerging Services, the Commission finds that the SGAT provides that Qwest will provide access in a nondiscriminatory manner. The Commission further finds that Qwest is also a party to existing interconnection agreements which also establish concrete and specific legal obligations to provide access to at least some UNE Combinations⁵ and Emerging Services.⁶

7. There are two types of UNE Combinations, the first being the Unbundled Network Element Platform (UNE-P) and the other Enhanced Extended Link (EEL), also referred to as enhanced extended loop. The SGAT also provides competitive local exchange carriers (CLECs) with access to combinations of UNEs (SGAT § 9.23).

8. UNE-P is service provided to both residential and business customers. A UNE-P service is delivered directly to the CLEC's end-user customer. UNE-P may be defined as access to dial-tone-based local access services provided in the form of combined unbundled network elements. UNE-P includes a loop, a switch port and switching functionality, shared transport and access to vertical switch features. UNE-P also includes access to Qwest's directory assistance, operator services, E911/911 service and white pages directory listings.

9. The SGAT § 9.1.2 provides that Qwest will provide access to UNE-P combinations in a nondiscriminatory manner. Additionally, Section 9.11.2.1 provides for access to vertical switch features which a CLEC may order with UNE-P Combination service.⁷

10. Qwest presented actual performance data on its performance providing UNE-P. This data shows that Qwest is installing, provisioning and repairing these items in a timely fashion. As of March 31, 2001, Qwest provided approximately 767 UNE-P- plain old telephone service (POTS) combinations to four CLECs in Nebraska. The data demonstrated that Qwest met 343 out of 344 such orders over the past months with an average interval of three days or less. The data presented also demonstrated that these items, as delivered to CLECs, are of substantially the same or better quality than Qwest provides to itself. Finally, the data further showed that in the most recent four months Qwest met its installation commitments 100 percent of the time.

⁵ See the NT&T interconnection agreement.

⁶ See the Cox interconnection agreement.

⁷ *BellSouth Louisiana 271 Second Order* at ¶¶ 219-20. (ILEC must meet the following requests for vertical "[A] BOC must activate any vertical feature or combination of vertical features requested by a competing carrier features: unless . . . (it) is not technically feasible.")

11. An EEL is a combination of an unbundled loop and unbundled dedicated interoffice transport used by CLECs to serve customers in one wire center via collocation in another wire center. In SGAT § 9.23, Qwest offers two flavors of EEL: (1) Point-to-Point EEL (an unbundled loop connected directly to unbundled dedicated interoffice transport), and (2) Multiplexed EEL (central office based multiplexing equipment connected to dedicated interoffice transport).

12. Although no CLECs in Nebraska have requested EELs, Qwest has demonstrated in other states within its service areas that it is ready and able to furnish EELs to CLECs at acceptable levels of quality and in quantities that competitors may reasonably demand. For example, in March and April of 2001, Qwest provisioned 102 EELs region-wide. Qwest provisioned 99 percent of these EELs on time showing it can provision such services in a timely manner. The Commission finds that Qwest is ready to furnish, EEL and EEL combination services in quantities that CLECs may reasonably demand and at an acceptable level of quality.

13. The Commission finds that Qwest demonstrated its concrete and specific legal obligations to provide UNE combinations in Nebraska. This legal obligation comes in two forms: (1) business arrangements negotiated with CLECs, and (2) Qwest's SGAT in section 9.1.2 and 9.23.

14. With further respect to UNEs combinations, the Commission finds that Qwest's UNE-P performance results in Nebraska demonstrate that Qwest consistently provides nondiscriminatory UNE-P combinations for CLECs as compared to Qwest's retail results.

15. "Emerging Services" refers to a family of relatively recent unbundling requirements created by the FCC in its *UNE Remand* and *Line Sharing Orders*. The specific services involved are line sharing, subloop unbundling, packet switching and dark fiber. These requirements are primarily directed toward fostering competition in the high-speed digital subscriber line (DSL) market that has developed since the Act's adoption.

16. On December 9, 1999, the FCC released an Order (the *Line Sharing Order*⁸) amending its unbundling rules to require ILECs to provide unbundled access to the high frequency portion of copper loops in certain situations. The unbundling of the high frequency portion of the loop enables a CLEC to offer DSL over that portion

⁸ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) ("Line Sharing Order").

of the loop at the same time Qwest is using the low frequency portion of the loop to provide voice service. This joint use of copper loops by both CLECs and ILECs is commonly referred to as line sharing.

17. The Commission finds that Qwest demonstrated its concrete and specific legal obligations to provide line sharing in Nebraska. This legal obligation comes in two forms: (1) business arrangements negotiated with CLECs, and (2) Qwest's SGAT in Section 9.4.

18. The performance data submitted by Qwest demonstrated that in Nebraska, Qwest has installed 46 line sharing collocations in several central offices to accommodate line sharing. Currently, Qwest has not received any order for line sharing in Nebraska. Regional data submitted at the hearing demonstrates that since December 2000, Qwest has provisioned 6,786 line sharing orders in its region. For the 6,184 orders not requiring a dispatch, Qwest met approximately 95 percent of its provisioning commitments in an average of about 5.0 days. Nonetheless, 447 of the line sharing orders required a dispatch within a Metropolitan Statistical Area (MSA). For these orders, Qwest met its installation commitments 90 percent of the time, with an average installation time of 6.2 days. In both situations this is substantially faster than Qwest provides similar service for its retail operation. On the retail side the average interval is in excess of 10 days.

19. The Commission finds that Qwest is currently ready to furnish line sharing services in quantities that CLECs may reasonably demand and at an acceptable level of quality. The Commission finds Qwest is currently meeting its line sharing obligations.

20. In the *UNE Remand Order*, the FCC determined that ILECs must provide unbundled access to the constituent facilities making up the loop, known as "subloops."⁹ Subloop unbundling allows CLECs to obtain a piece of the unbundled loop rather than the entire loop. Generally, there are two types of subloop offerings. The first type is when a carrier serves a multiple-tenant environment (MTE) and the carrier gets intrabuilding cable. The second type is when CLECs request a subloop at a detached terminal.

21. The Commission finds that Qwest demonstrated its concrete and specific legal obligations to provide access to subloops in Nebraska. This legal obligation comes in two forms: (1) business arrangements negotiated with CLECs, and (2) Qwest's SGAT at section 9.3 contains an explicit subloop offering and thereby creates a

⁹ See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3791 ¶ 209 (1999) (*UNE Remand Order*).

binding legal obligation for Qwest to provide CLECs access to sub-loops in Nebraska.

22. The evidence submitted at the hearing demonstrated that Qwest is able to offer subloops (assuming facilities are available) in all parts of its Nebraska service territory. Qwest has negotiated a detailed MTE Access Protocol with CLECs that will govern the processes and procedures that CLECs use to access MTE terminals. The testimony at the hearing showed that this is where Qwest and the CLECs expect substantial volumes of subloop orders.

23. The Commission finds that Qwest is currently ready to furnish subloop unbundling services in quantities that CLECs may reasonably demand and at an acceptable level of quality. The Commission finds that Qwest currently meets its subloop obligations.

24. Packet switching, a new type of switching, is necessary for a carrier to provide DSL service. Packet switching is the "function of routing individual data units . . . based on address or other routing information contained in the packets."¹⁰ This facilitates DSL transmission. The FCC does not require ILECs to unbundle packet switching except in extremely limited circumstances.¹¹ An ILEC's obligation to unbundle packet switching is limited to those cases in which it has deployed a digital subscriber line access multiplexer (DSLAM) in a remote terminal¹² and four conditions are met.

25. The Commission finds that Qwest is contractually committed to unbundle its packet switching pursuant to the four conditions set forth in the UNE Remand Order. The Commission further finds that Qwest's SGAT \$ 9.20 contains Qwest's unbundled packet product offering.

26. The Commission finds that Qwest is currently ready to furnish packet switching services in quantities that CLECs may reasonably demand and at an acceptable level of quality. The Commission finds that Qwest meets its packet switching obligations.

27. Dark Fiber is fiber optic cable that Qwest has in its inventory, but has not yet attached to electronics to make it work. When electronics are added to fiber it is referred to as "lit" fiber; the fiber is "dark" when the electronics are absent. The FCC's *UNE Remand Order* identified dark fiber as a new UNE. The FCC

¹⁰ *UNE Remand Order*, 15 FCC Rcd at 3834 ¶ 304.

¹¹ *Id.* at 3835 ¶ 306.

¹² *Id.* at 3838 ¶ 313 ("[The] incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.").

required the unbundling of dark fiber both in the loop plant and interoffice facilities.

28. The Commission finds that Qwest makes both dark fiber loops and dark fiber interoffice transport available to CLECs. Prior to the UNE Remand Order, Qwest had a binding obligation to provide access to dark fiber in numerous interconnection agreements. Additionally, Qwest's SGAT at Section 9.7.1 includes a legally-binding obligation to provide access to unbundled dark fiber.

29. The Commission finds that Qwest has demonstrated that it will provide CLECs with access to dark fiber pursuant to the *UNE Remand Order* in all parts of its Nebraska service territory (assuming facilities are available). The Commission finds that Qwest is currently ready to furnish dark fiber to CLECs at an acceptable level of quality. The Commission finds that Qwest meets its dark fiber obligations.

30. In conclusion, the Commission finds that, through the SGAT and Commission-approved interconnection agreements, Qwest has demonstrated that it has a concrete and specific legal obligation to provide the services required by the *UNE Remand Order* and Sections 251(c)(3) and 252(d)(1). The Commission further finds that Qwest also presented adequate evidence that the ROC developed performance metrics performance indicator detail (PIDs) track how Qwest provides and repairs UNE Combinations and Emerging Services.¹³ The Commission also finds that Qwest presented adequate audited performance data demonstrating that it provides CLECs with access to UNE-P and line sharing at an acceptable level of quality and in a prompt, efficient and non-discriminatory basis.¹⁴

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that subject to successful completion of the ROC OSS Test, Qwest is in compliance with its non-checklist obligations to provide unbundled network element combinations and emerging services as required by Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996.

¹³ All emerging services except unbundled packet switching have their own group of disaggregated performance metrics. The ROC decided that packet switching would not generate sufficient volumes to justify performance tracking.

¹⁴ Nebraska CLECs have not yet requested access to any of the remaining services - EEL, dark fiber, and subloop unbundling; therefore, no performance data was provided. Although the same is true for line sharing, at the time of the hearing Qwest had substantial line sharing data outside of Nebraska and presented its outstanding regional line sharing performance.

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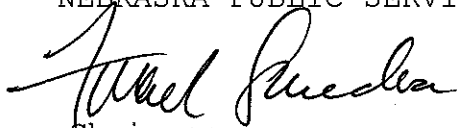
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MADE AND ENTERED at Lincoln, Nebraska, this 19th day of September, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman

ATTEST:



Executive Director

//s//Frank E. Landis