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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Verizon's Objection, Protest and Request for Investigation in Response to Qwest's Recent Filing of its Revised Access Service Tariff Sheets 13, 13.1, and 16	Docket No. 08-2430-01 QWEST'S COMMENTS IN RESPONSE TO VERIZON'S NOVEMBER 26, 2008 OBJECTIONS

Pursuant to the Commission's Interim Scheduling Order of February 18, 2009, Qwest Corporation ("Qwest") files its comments in response to the objections filed by MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") on or about November 26, 2008 to Qwest's revisions to its Utah Access Service Tariff to establish a usage floor for terminating Switched Access Feature Group D traffic lacking sufficient information to determine jurisdiction.[1] Qwest urges the Commission to approve the tariff with the modifications that Qwest is willing to make and that are described here.

BACKGROUND AND GENERAL DISCUSSION

On October 30 and November 21, 2008, Qwest filed revisions to its Utah Access Service Tariff to establish a usage floor for terminating Switched Access Feature Group D traffic lacking

[1] The Commission's website references the filing date of Verizon's objections as December 1, 2008 (the Monday after the Thanksgiving weekend). However, Verizon's objections are dated November 26, 2008 (the day before Thanksgiving), so Qwest will refer to the objections as Verizon's November 26, 2008 objections.

sufficient information to determine jurisdiction.[2] Feature Group D is a signaling protocol that has been in place for many years and is used by companies to route, jurisdictionalize and rate calls. The protocol is generally very effective. In fact, in a study that Qwest conducted on IXC-bound traffic that its end-users originated, 100 percent of interexchange traffic contained adequate information to allow a terminating carrier to determine the appropriate jurisdiction of a call.[3]

Despite the effectiveness of Feature Group D signaling, all local carriers receive some Feature Group D traffic that does not contain the needed information to determine the jurisdiction of a call. The percentage of traffic that lacks such information varies greatly between interexchange carriers (IXCs) ranging from nearly zero to very significant percentages. Such differences cannot be explained by differences in traffic types or limitations of technology and is more likely due to either intentional arbitrage or inadvertent error in the manner in which the IXC delivers traffic.

All local exchange carriers contain provisions in their switched access tariffs to address this unidentified traffic. Under Qwest's prior tariff, if an interexchange carrier delivered unidentified Feature Group D, Qwest allocated the jurisdiction of such calls based on allocations provided by the IXC which can be modified by the IXC on a quarterly basis. Accordingly, Qwest allocated jurisdiction of this unidentified traffic based on the IXC's self-reported percent interstate usage (PIU). If the carrier reported 80 percent PIU, then Qwest charged 80 percent of the unidentified traffic at the interstate rate and 20 percent at the intrastate rate. Some IXCs do

[2] Qwest's October 30th filing set a 7% PIU floor. Its amended November 21st filing set a 5% PIU floor and added dispute resolution language.

[3] The study showed that of more than 68 million minutes of use ("MOUs"), no MOUs (0 MOUs) lacked originating information.

not self report. In that instance, prior tariffs assumed that the unidentified traffic was evenly split as 50 percent interstate/50 percent intrastate.

The current method creates an incentive for arbitrage. Intrastate access rates are generally higher than interstate rates. Thus, an IXC has an incentive to have as much traffic as possible rated at interstate rates.

In certain circumstances, Qwest has identified IXCs that have abnormally high amounts of unidentified Feature Group D. In order to address this problem and to prevent it from occurring in the future, Qwest has followed the lead of Verizon, the lone objector here, as well as other carriers like AT&T, by filing modifications to 11 of its tariffs to address this issue.

Consistent with other carriers, Qwest is now introducing a “floor” for unidentified Feature Group D terminating traffic. This floor is designed to deal with situations where an IXC inadvertently or intentionally attempts to avoid paying appropriate intrastate access rates by delivering traffic without identifying information. Minutes of traffic up to the floor will be charged per the current tariff (no change), unidentified minutes in excess of the floor will be charged at the intrastate rate. The floor percentage is calculated by dividing unidentified traffic by total traffic – both identified and unidentified. For example, if the floor is 5 percent, up to and including 5 percent of total traffic which is unidentified will be assigned to the appropriate jurisdiction based on the IXC’s self-reported PIU, or divided equally (50/50) between the state and interstate jurisdictions if the IXC has not filed a PIU report (which is no change to the current process). Unidentified traffic in excess of the 5 percent floor will be charged at Qwest’s Utah intrastate rate.

Qwest is not alone in addressing this issue through tariffs of this type. For example, Verizon imposes PIU floors in 18 state tariffs, including four states within Qwest's territory.[4] Likewise, another large carrier, AT&T, has tariffs in nine states which apply a PIU floor .[5] The only appreciable difference between Qwest's tariff and Verizon/AT&T is the PIU floor level – which is appropriate to the extent traffic characteristics vary from state to state and carrier to carrier. All of Verizon's tariffs have an initial 7 percent floor + 2 percent grace.[6] (If the IXC exceeds 9 percent, it is charged intrastate rates beginning at the 7 percent floor.) AT&T's tariffs vary, with 7 percent being its lowest.[7]

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[4] Verizon has PIU floors in Arizona, California, Connecticut, Idaho, Delaware, Florida, Illinois, Maryland, North Carolina, Nevada, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington and West Virginia. Four of these states (Arizona, Idaho, Oregon and Washington) are within Qwest's 14 state territory.

[5] AT&T has PIU floors in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

[6] Verizon California Inc., Arizona Access Service at 6.5.5; Verizon California Inc., California Access Service Tariff, Cal. P.U.C. No. C-1 at C.10; Verizon New York Inc., Connecticut Access Tariff No. 8 at 2.3.10; Verizon Delaware LLC, Delaware Access Tariff P.S.C.-Del.-No. 35 at 2.3.10; Verizon Florida LLC, Facilities For Intrastate Access Tariff at 6.3.3; Verizon Northwest Inc., Idaho Facilities For Intrastate Access, I.P.U.C. Price List No. 2 at 4.3.3; Verizon North Inc., Illinois Facilities For Intrastate Access, III. C.C. No. 10 at 4.3.3; Verizon Maryland Inc., Maryland Access Service Tariff, P.S.C.-Md.-No. 217 at 2.3.14; Verizon South Inc. d/b/a Verizon North Carolina, North Carolina Access Service Tariff - NCUC No. 1 at 6.5.5; Verizon California Inc. d/b/a Verizon Nevada, Nevada Access Service P.U.C.N. at 6.5.5.(H); Verizon New York Inc., New York Access Service, PSC NY No. 11, at 2.3.10(A); Verizon Northwest Inc., Oregon Facilities For Intrastate Access, P.U.C. OR. No. 12 at 4.3.3(A); Verizon Pennsylvania Inc., Pennsylvania Access Service Pa. P.U.C.-No. 302 at 2.3.14; Verizon New England Inc., Rhode Island Access Services Tariff, PUC RI No. 20 at 2.5.10; Verizon South Inc. d/b/a Verizon South Carolina, South Carolina Access Service Tariff at 6.5.5; Verizon Virginia Inc., Virginia Access Service Tariff, S.C.C.-Va.-No. 217 at 2.3.10; Verizon Northwest Inc., Washington Facilities For Intrastate Access, WN U-16 at 4.3.3; Verizon West Virginia Inc., West Virginia Access Service Tariff, P.S.C.-W.Va.-No. 217 at 2.3.10.

Verizon may apply a different floor in certain states and for certain customers. Its Arizona and Nevada tariffs (page 180.1) include the following language that allows them to change the floor on a quarterly or per customer basis:

> The Company may recalculate the overall customer average "floor" quarterly. In addition, subsequent reviews or audits of specific customer usage may result in a new "floor" for that customer.

[7] BellSouth Telecommunications, Inc. Alabama, Alabama Access Services Tariff at E.2.3.10; BellSouth Telecommunications, Inc. Florida, Florida Access Services Tariff at E.2.3.14; BellSouth Telecommunications, Inc. Georgia, Georgia Access Services Tariff at E.2.3.14; BellSouth Telecommunications, Inc. Kentucky, Kentucky Access Services Tariff, PSC KY Tariff 2E, at E.2.3.14; BellSouth Telecommunications, Inc. Louisiana, Louisiana Access Services Tariff at E2.3.14; BellSouth Telecommunications, Inc. Mississippi, Mississippi Access Services Tariff at E.2.3.14; BellSouth Telecommunications, Inc. North Carolina, North Carolina Access Services Tariff at E.2.3.14; BellSouth Telecommunications, Inc. South Carolina, South Carolina Access Services Tariff at E.2.3.14;

Finally, Qwest has filed similar changes to 11 of its access tariffs around its 14-state region. Thus far, the tariff has gone into effect in Minnesota, Arizona, North Dakota and Idaho. Most recently, the Minnesota Public Utilities Commission accepted the Minnesota Commission Staff's recommendation to approve Qwest's proposed changes with a few minor modifications to which Qwest agreed.[8]

RESPONSE TO VERIZON'S OBJECTIONS

I. Qwest believes its proposed 5 percent floor is appropriate and, if anything, too high

It is clear that despite objections about "implementation," Verizon's main concern here is with respect to Qwest's 5 percent PIU floor, as Verizon believes this percentage is too low. However, if anything, Qwest's proposed 5 percent floor is appropriate and, if anything, too high.

Qwest developed that figure based on historical amounts of Feature Group D traffic that it has terminated in Utah without identifying information. Qwest could justify a much lower floor. Qwest conducted a study of traffic originated by our own end users which was then delivered to an IXC for termination to determine the amount of Feature Group D traffic without jurisdictional information and identified no traffic that failed to contain identifying information. Furthermore, most IXCs will not be impacted at all because they currently terminate much less

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BellSouth Telecommunications, Inc. Tennessee, Tennessee Access Services Tariff at E.2.3.14. (Each of these BellSouth Companies are affiliated with AT&T).

[8] Specifically, at its February 12, 2008 open meeting, the Minnesota Commission orally approved Qwest's access service tariff establishing a PIU floor for indeterminate Feature Group D terminating traffic by approving Qwest's proposed 6% floor. The only conditions to such approval (to which Qwest had agreed) were that Qwest add certain dispute resolution language that AT&T had proposed and the Commission Staff's proposed definition of "sufficient call detail" ("Traffic for which the originating number information lacks a valid Charge Party Number (ChPN) or Calling Party Number (CPN).") and that Qwest submit quarterly reporting for two years.

The Minnesota Commission has yet to issue its order, but Qwest will provide this Commission with a copy of the order as soon as it becomes available. However, the Minnesota Commission has posted the Decision (Approved, as Modified) on its website. See http://www.puc.state.mn.us/PUC/aboutus/commission-actions/new-decisions/20090212_DCN. Qwest also submits a copy of Staff's recommendations as Exhibit A.

than 5 percent unidentified traffic.[9] The 5 percent floor therefore represents a compromise by Qwest which allows IXCs to terminate a reasonable amount of unidentified traffic while providing an incentive for them to eliminate that problem if an IXC terminates more unidentified traffic than is the average.[10]

II. <u>Qwest has already added additional dispute resolution language</u>

In its November 26th objections, Verizon also objected to Qwest's tariff changes on grounds that it was not clear to Verizon how the new jurisdictional reporting mechanism in the tariff would be implemented. For example, Verizon argued in its objections that it was not clear "what mechanism would be in place to enable carriers to resolve questions over the 'sufficiency of call originating information,'" or "how any disputes would be resolved before Qwest automatically assigns a jurisdictional factor pursuant to its tariff revisions."

It is surprising that Verizon would object to this issue given that Qwest had already added language which is substantively similar to that in Verizon's tariff in Qwest's November 21, 2008 tariff filing that addresses this issue. Indeed, as Verizon well knows from its involvement in similar matters in other states (including Minnesota, Oregon, Nebraska, Iowa and South Dakota), Qwest has either already added language in subsequent tariff filings or agreed to add language to

[9] Qwest has agreed to provide a study of two months of Utah-specific data of Utah IXCs that Qwest performed to analyze unidentified traffic to the Commission and the DPU, as well as to Verizon (once a protective order has been issued).

[10] Substantively, the tariff will not cause any carrier to pay more for switched access, except to the extent that a carrier provides a significant volume of unidentified Feature Group D terminating traffic. For carriers that properly and accurately report PIU to Qwest, and do not deliver any unidentified traffic, those carriers will not pay more to terminate interexchange traffic to Qwest local exchanges. For carriers that deliver traffic that contains more than 5 percent unidentified traffic, Qwest will assess intrastate charges to the unidentified traffic.

Moreover, carriers that deliver unidentified traffic cannot reliably assert that the traffic is subject to interstate rates. Moreover, unidentified traffic exposes Qwest to the risk of intercarrier compensation claims from other carriers. The only way Verizon can truthfully claim that it faces increased costs as a result of the Catalog Change is if Verizon admits that more than five percent of the traffic Verizon delivers to Qwest is unidentified. The Commission should be reluctant to insulate carriers from intrastate switched access charges for unidentified traffic, particularly in such high volumes.

tariffs not yet modified in order to address situations where an IXC disputes application of the intrastate rate to calls that are in fact interstate or international. Specifically, Qwest has already added the language to its pending Utah tariff that the Minnesota Commission Staff proposed and which is identical to Verizon's own tariff. A revised tariff page showing the changed language is attached as Exhibit B (at Section 2.3.10.B.2.c).

III. <u>Verizon's claim it does not understand how Qwest will apply the tariff is meritless</u>

Verizon also makes a further surprising claim that "it is not clear how the new jurisdictional reporting mechanism will be implemented – for example, how Qwest would determine whether traffic has or 'lacks sufficient originating information,' . . ." Verizon's arguments cannot be taken seriously. Verizon knows full well how the standard applies.

To determine the jurisdiction of a call, Qwest compares the originating number information with the terminating number information. If the originating number information lacks a valid Charge Number (CN) or Calling Party Number (CPN), Qwest terms the jurisdiction as unidentified. Qwest's current tariff applies the same standard in determining traffic that will be jurisdictionalized according to the IXC's reported PIU. In fact, Qwest's current language is functionally identical to language that Verizon has in effect in 18 states.[11] Moreover, Qwest has agreed to add the language that the Minnesota Staff proposed and that the Minnesota Commission recently approved to its Utah (and other) tariffs. (See Exhibit B at Section 2.3.10.A.) This language goes far beyond Verizon's own tariff language. In fact, Qwest provided the proposed language to Verizon in a January 19th email, but after repeated requests, Qwest still has never received an acknowledgement from Verizon.

[11] *See* tariffs cited in footnote 6 above.

IV. Verizon's claim about increased revenues is speculative, and is in IXCs' control

Finally, Verizon suggests that Qwest's tariff will result in a higher percentage of traffic being billed at intrastate rates. However, not only is such an argument speculative, but whether or not Qwest realizes increased revenue associated with this tariff change will depend solely on whether or not the amount of unidentified traffic will change once the incentive to mask the jurisdiction of that traffic disappears. As such, this is all in IXCs' (and Verizon's) control.

CONCLUSION

Qwest has addressed all of the substantive issues that Verizon raised in its November 26, 2008 objections and has either adopted additional language to remedy any concerns or has demonstrated that Verizon's objections have no merit. Qwest reserves its right to respond to any additional comments or objections that Verizon may file in the future.

For the reasons set forth above, Qwest's proposed tariff change will prevent IXCs from avoiding appropriate intrastate access charges. Qwest respectfully requests that the Commission approve Qwest's tariff with the modifications to which it has agreed.

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Respectfully submitted,

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