- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of QWEST CORPORATION for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND TCG UTAH	DOCKET NO. 04-049-09 ORDER DENYING MOTION FOR RECONSIDERATION

ISSUED: June 28, 2004

By The Commission:

On May 20, 2004, we issued an Arbitration Report and Order in which we resolved disputed items relating to interconnection agreements between Qwest Corporation (Qwest) and AT&T Communications of the Mountain States, Inc. and TCG Utah (collectively ATT). On June 10, 2004, Qwest filed a Motion for Reconsideration of our May 20, 2004, Report and Order. Qwest seeks reconsideration of three issues: 1. Our determination that Qwest has the burden to show that it is necessary for ATT to unload traffic from Qwest's tandem switch and establish trunk groups to the Qwest end office(s) when there is a DS-1 level of traffic between ATT's switch the Qwest end office(s) (Issue 14); 2. Our determination that Qwest is required to pay ATT reciprocal compensation when Qwest network originated traffic travels over Private Line Facilities, obtained by ATT from Qwest, to terminate on ATT's network (Issues 15 and 16); and 3. Our determination of when a charge or rate is interim until we review and approve an unagreed to charge or rate (Issue 35). On June 21, AT&T filed its Opposition to Qwest's Motion for Reconsideration.

Issue 14. Burden to establish when end office direct trunking is required.

Qwest argues that the Commission should reconsider its conclusion that Qwest has the burden of establishing that traffic volumes at Qwest's tandem switch(es) require ATT to set up direct trunking to Qwest's end office(s). Qwest notes that the Commissions approved Qwest's suggested language in the past SGAT proceeding, but

the Commission did not explain why we did not use Qwest's suggested language in this proceeding, using, instead, ATT's language. ATT responds to Qwest's argument by arguing that the Commission's resolution and rationale are consistent with 47 C.F.R. §51.305(a)(2) and the FCC's *Local Competition Order* ¶203 language (that the incumbent LEC "must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access." *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*)).

We agree with Qwest that tandem traffic volumes can be such that interconnection and traffic exchanged at the tandem presents problems and a CLEC may be required to deload traffic from a tandem switch and use direct trunking to end office switch(es). The difficulty we face is that when the disputed issues is raised in this docket, evidence was not presented in this docket to clearly show that traffic levels at the Qwest tandem are or could be such that Qwest's network's integrity is adversely affected. We concluded, that for our role to arbitrate the parties' dispute in this docket, consistent with the FCC's rules and orders, evidence must be presented that, when these interconnection agreements will be in effect, such conditions exist or can exist with the traffic carried by Qwest's tandem switches. With no clear evidence concerning the impact on Qwest's network integrity from these interconnection agreements, we can not conclude that Qwest has meet its clearly stated *Local Competition Order* ¶203 burden to support Qwest's proposed language. Qwest presented no clear evidence concerning existing or expected tandem traffic levels that would support Qwest's alternative language. The Division of Public Utilities' (DPU's) testimony noted problems and amelioration with past, 1996-1997, tandem traffic levels, but did not provide information on existing or future levels; i.e., that the problem continues. The DPU's testimony can be read to conclude that there is no current problem with tandem traffic, that past activities have resolved the past's problems and ameliorative steps are only needed if the problem resurfaces. Our resolution in no way was intended to preclude interconnection agreement language that could address future, potential tandem traffic levels that may require end office direct trunking. Language certainly can be included in the parties' interconnection agreements that the CLEC may be required to use the end office direct trunking approach if

tandem traffic warrants, but the burden is on Qwest, not the CLEC, to show that the tandem traffic levels adversely impact Qwest's network. We do not change our conclusion that Qwest's proposed language incorrectly places the burden on the CLEC, rather than on Qwest to establish the need to use direct trunking to end office switches.

Issues Nos. 15 and 16. Payment of reciprocal compensation for Private Line Facilities used to exchange local exchange traffic.

Qwest asks the Commission to reconsider our conclusion that if Qwest network originated and ATT network terminated local exchange traffic is transported on private line circuits ATT obtains from Qwest through Qwest's PLTS offering, Qwest has a reciprocal compensation obligation to ATT. First, Qwest claims that our resolution violates the FCC's *TRO,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt, No. 01-338, 96-98, 98-147, FCC 03-36 (rel. Aug. 21, 2003)(*TRO),* by requiring Qwest to "ratchet" its tariffed price for a PLTS facility. Our decision does not require Qwest to "ratchet." "Ratcheting is a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate." *TRO, supra,* at fn. 1785. The FCC expressed its concern and its rationale on why the FCC declined to require ratcheting because of the potential impact on modifying incumbent LECs' billing systems and operational procedures to implement additional, new blended rates for facilities and services which are already set up in an incumbent LEC's billing system. *See, TRO, supra,* at ¶580 ("[W]e do not require incumbent LECs to 'ratchet' individual facilities. Thus, we do not require incumbent LECs to implement any changes to their billing or other systems necessary to bill a single circuit at multiple rates . . . in order to charge competitive LECs a single, blended rate." and fn. 1793 ("We note that some parties contend that any Commission rule requiring ratcheting would necessitate substantial modifications to incumbent LEC billing systems and operational procedures.").

Our decision does not require Qwest to modify it billing system to bill ATT a new, blended rate for a PLTS that ATT may order from Qwest. Indeed, we assumed that Qwest would continue to charge ATT Qwest's full

tariffed rate for any PLTS that ATT may obtain from Qwest. Our decision resolved only the dispute between Qwest and ATT concerning Qwest's position that it did not need to pay ATT reciprocal compensation if ATT terminates Qwest network originated local exchange traffic through transport of the traffic on an 'idle' PLTS circuit. We concluded, contrary to Qwest's position, that Qwest does have a reciprocal compensation obligation. Nor did we identify the specific amount of the reciprocal compensation that Qwest would owe. The record evidence did not provide information permitting us to set the specific level for such compensation; we could only provide general direction on how the parties should go about determining the reciprocal compensation amount.

We did not order that Qwest bill ATT a new, blended rate for the PLTS to implement our resolution of whether a reciprocal compensation existed. We did not direct how Qwest is to pay that reciprocal compensation obligation, we left that to the parties' resolution. If the import of Qwest's argument on reconsideration is that Qwest's billing system is incapable of billing ATT the tariffed rate for the PLTS and also providing ATT credit or an off-set for the value of consideration provided by ATT (the value of the reciprocal compensation owed for use of ATT's facility) at the same time, so be it. We did not attempt to delve into the capabilities of or how Qwest's billing systems should accommodate or reflect compensation (whether by payment, reflection of off-setting obligations or the provision of in-kind services) received from CLECs. Qwest's argument on reconsideration ignores ATT's willingness to have Qwest bill ATT for the full tariff rate applicable for a PLTS and ATT's subsequent, separate billing of Qwest for the reciprocal compensation obligation based on the proportionate use of the PLTS circuits that may be used to transport local exchange traffic. Since we have not required Qwest to alter its billing systems or charge a blended rate, nor have we set the specific reciprocal compensation amount to be paid by Qwest, Qwest's ratcheting argument is wrong.

Additionally, Qwest argues that our resolution violates the terms of its FCC interstate services tariff; action which is beyond our authority and violates the filed rate doctrine. We agree with Qwest that there is language in Qwest's FCC filed tariff which Qwest contends precludes apportioning. We have considerable pause on the continuing efficacy and substantive merit for Qwest's position when it is compared with the FCC's recent *TRO*

determination, and underlying rationale, to remove restrictions on CLECs combining, mixing or otherwise using telecommunications service UNEs, with other services and functionalities, regardless of their source, as CLECs compete in telecommunications markets. E.g.,

> "We conclude that the Act does not prohibit the commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. . . . We agree with . . . others that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them either to operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to choose between using UNEs and using more expensive special access services to serve their customers. Thus, we find that a restriction on commingling would constitute an 'unjust and unreasonable practice' under 201 of the Act, as well as an 'undue and unreasonable prejudice or advantage' under section 202 of the Act. Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3). Incumbent LECs place no such restriction on themselves for providing service to any customers by requiring, for example, two circuits to accommodate telecommunications traffic from a single customer . . . . For these reasons, we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations. [Footnoting in support of its reasoning the following:] A number of parties persuade us that a commingling restriction, combined with the reduced unbundling obligations, would raise the costs of competitive LECs. [Restriction] forces needless inefficiencies on competitors . . . [and] inefficient network architectures. . . [at Fn. 1788, and that restriction] deprives CLECs of obtaining the same network efficiencies as the ILEC enjoys because the ILEC can place any traffic on any facility to maximize efficiency [at Fn 1791].

TRO, supra, at ¶581 (emphasis supplied). As we have noted, Qwest's federal tariff appears to preclude a 'ratcheting' type of billing for a shared use facility. We have not required that Qwest ratchet its charges to ATT; we did not prevent Qwest from charging ATT the existing, unaltered, unblended PLTS rate. In light of the FCC's rationale and determination that it no longer permits incumbent local exchange carriers' policies or practices to force competitive carriers to undertake inefficient network uses or architectures by requiring duplicative network facilities or precluding efficient use of idle network facilities, Qwest's argument concerning tariff language, which hinders ATT's efficient use of ATT's network facilities to terminate Qwest originated traffic, is unpersuasive to have us change our earlier resolution.

Issue 35. Interim rates.

Qwest asks us to reconsider our direction to use ATT's proposed language for Section 22.4 of the

proposed interconnection agreements. Qwest's argument on reconsideration is based on an overly broad application and unwarranted interpretation of our resolution. Qwest claims that our original resolution will permit this Commission to alter rates, charges or prices in Exhibit A which are beyond our authority and jurisdiction. We must first point out that we have no idea what the specific rates, prices, or charges may be that are to be contained in Exhibit A. No party ever presented an Exhibit A to the Commission. Nor did any party provide any information on or identification of what, if any, specific rates, prices or charges, that may be on Exhibit A, upon which the parties have failed to reach mutual agreement. Hence, we were asked to resolve the dispute in a vacuum; having no specific information on what specifics items the parties have included or will place in Exhibit A or upon which prices the parties have failed to reach agreement. As such, we noted that the dispute appears to be a matter of semantics. That, under Section 252(c), we are to "establish any rates for interconnection, services or network elements" upon which the parties have failed to reach mutual agreement. That is the intent of our original resolution and direction to use ATT's proposed language. We assume that Exhibit A of the parties' interconnection agreements will set forth the "rates for interconnection, services, or network elements" required under Section 252(c). If the parties have included or plan to include rate items on Exhibit A beyond those we are required to set and approve pursuant to Section 252, we have no intent to reach those that are beyond our authority or jurisdiction. We are not persuaded by Qwest's argument on reconsideration, given the information that we have on the specifics of Exhibit A's contents, that we should alter our choice of ATT's proposed language. From our original resolution and denial of Qwest's request for reconsideration on this issue here, we do not intend to preclude Qwest from making any future argument that application of ATT's proposed language to a specific rate or price that may later be found on Exhibit A, or a Commission undertaking to review for possible modification a specific rate or price, is beyond the Commission's authority or jurisdiction.

CONCLUSION

The Administrative Law Judge recommends that the Commission deny Qwest's Motion for Reconsideration.

Dated this 28th day of June, 2004.

/s/ Sandy Mooy,
Administrative Law Judge

Based on the Administrative Law Judge's discussion of the issues raised in Qwest's Motion for Reconsideration and conclusions made therein, we adopt his recommendation and will deny the motion.

Wherefore, it is hereby ORDERED that Qwest's Motion for Reconsideration, filed June 10, 2004, is denied.

DATED at Salt Lake City, Utah, this 28th day of June, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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