

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
PETITION OF AMIGO.NET FOR) CC Docket No. 00-220
DECLARATORY RULING REGARDING)
THE EFFECT OF SECTIONS 253 AND 257)
OF THE TELECOMMUNICATIONS ACT)
OF 1996 ON AN AGREEMENT FOR MULTI-)
USE NETWORK: INFRASTRUCTURE)
DEVELOPMENT, STATEWIDE)
TELECOMMUNICATIONS SERVICE)
AGGREGATION, AND NETWORK)
MANAGEMENT)

OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) hereby files its Opposition to the above-captioned Petition for Declaratory Ruling and Injunction Pending Ruling (“Petition”) filed on July 5, 2000 by a company called Amigo.Net.¹ In essence, Amigo.Net demands that the Federal Communications Commission (“Commission”) intervene in the telecommunications procurement process of the State of Colorado and rule that it is unlawful, under federal law, for the State of Colorado to: 1) Request and receive volume discounts in its procurement of telecommunications products; and 2) Conduct telecommunications procurement in a manner which increases the possibility that rural Americans will receive access to advanced telecommunications products and services.

Amigo.Net’s legal basis for this unusual request is Section 253 of the Communications Act, especially Section 253(d), which authorizes the Commission to preempt any “statute, regulation or legal requirement” which the Commission finds to contravene the pro-competitive

¹ *Public Notice, Pleading Cycle Established for Comments on Amigo.Net’s Petition for Declaratory Ruling*, CC Docket No. 00-220, DA 00-2625, rel. Nov. 20, 2000.

thrust of the 1996 Act by restricting the provision of a telecommunications service. Relying on the Commission's 1999 *Memorandum Opinion and Order* addressing a Minnesota decision to award exclusive freeway rights-of-way access to a single entity, Amigo.Net argues that a state must conduct its telecommunications procurement subject to federal supervision in much the same manner as it conducts its regulation of the telecommunications industry.² Namely, Amigo.Net proclaims that the State of Colorado, as a customer of telecommunications products and services, is in exactly the same position as is the State of Colorado when it exercises its governmental authority and sits as regulator.

There is absolutely no support for this position. So long as it does not impose some governmental requirement on telecommunications providers which may inhibit the State of Colorado's ability to provide services, the State is free to conduct its own internal procurement of telecommunications products and services in any manner consistent with Colorado law. Section 253 gives Amigo.Net the right to provide telecommunications services to the public without undue interference by the State of Colorado. Section 253 does not give Amigo.Net the right to provide telecommunications services to the State of Colorado, with a federal guaranty of this right.

As an initial matter, Amigo.Net is incorrect in its assertion that the Colorado Aggregated Network Access Points ("ANAP") agreement and the attendant circumstances are similar to the State of Minnesota's Petition for Declaratory Ruling³ that the Commission addressed in the *Minnesota MO&O*. The Minnesota contract dealt with the exclusive access to freeway rights-of-

² See Petition at 9. *And see, In the Matter of The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way, Memorandum Opinion and Order*, 14 FCC Rcd. 21697 (1999) ("*Minnesota MO&O*").

³ Petition at 10.

way by a single telecommunications provider.⁴ In the Minnesota case the Commission concluded that Section 253 was applicable because “Minnesota is not merely acquiring fiber optic capacity for its own use; it is providing a private party with exclusive physical access to the freeway rights-of-way.”⁵ The Commission went on to state that “[t]his situation is very different from a traditional government procurement of telecommunications facilities or services.”⁶ In the instant case this is exactly what is occurring. That is, the State of Colorado is purchasing telecommunications services – there is no implication that Amigo.Net or any other provider will be prohibited from providing telecommunications to any other customer as a result of the State of Colorado’s agreement. As such, Section 253 does not apply. Amigo.Net has simply manufactured an imaginary statutory right out of thin air. Section 253 does not give Amigo.Net the ability to demand that the Commission award the Colorado telecommunications contract, about which it complains to Amigo.Net, nor does it have the ability to empower this Commission to enjoin the State of Colorado from procuring telecommunications products and services.

We assume that the State of Colorado will provide additional details as may be necessary or appropriate in this proceeding. Additional facts are really not necessary or relevant, as Amigo.Net has put forth an utterly erroneous legal position. However, for the sake of a more accurate record, we take this opportunity to describe briefly, and more accurately, the Colorado procurement in question.

In October 1999, the State of Colorado released a Request for Proposals (“RFP”) for a Statewide Telecommunications infrastructure. The offerors were expected to develop partnerships for a comprehensive statewide bid response. Requirements included connecting 70

⁴ *Minnesota MO&O*, 14 FCC Rcd. at 21700-01 ¶ 5.

⁵ *Id.* at 21707-08 ¶ 19.

⁶ *Id.*

ANAPs including all county seats over high-speed asynchronous transfer mode (“ATM”) facilities. The new statewide network will help Colorado bridge the digital divide between rural and urban communities and will be a key tool in fostering economic development.

There were six respondents to the RFP including:

- AT&T Corp.
- ICG/Lucent/Vanion/Power Company Consortium
- Colorado Access Networks (Rural Electric Cooperative)
- MCI/Worldcom
- Adesta/MFS/Lucent/REAs
- U S WEST (QWEST) and the independent LECs

On April 17, 2000 the State of Colorado awarded U S WEST (now Qwest) a \$37 million ten-year contract to build a digital voice, data and video network that will provide high-speed links to state offices and schools in all 64 counties across Colorado. Qwest was selected as the Multi-Use Network (“MNT”) provider because of its experience in building and managing statewide networks and because Qwest offered the “best cost” solution.

The new Colorado high-speed digital network being built by Qwest and several independent telephone companies (CenturyTel, Citizens Communications, Phillips County Rural Telephone Company and Eastern Slope Telephone Company) over the next three years will provide a fiber optics-based public network that will benefit all citizens of Colorado. The completed MNT will be monitored and managed by Qwest which will be acting as the prime contractor.

The MNT is the private portion of the public network connecting all state government offices and educational institutions across the State. Through the public/private partnership,

many rural communities will have access, for the first time, to advanced high-speed broadband services for a variety of multi-use applications including distance learning, telemedicine, electronic commerce, Internet access, and teleworking.

Postalized rates were not offered to the State. Qwest and the independent LEC partners will charge the State of Colorado monthly ANAP fees which range in price from \$2,500 per month to \$30,000 per month depending on the county seat location. For this rate, a minimum of 20Mbps of ATM and/or Frame Relay high-speed bandwidth will be reserved on the public network for the State. The State will not pay any backhaul mileage components for ATM service within 15-miles of the serving Central Office (in the county) or for Frame Relay within 30-miles of the serving Central Office. Pricing will be at FCC #5 Tariff rates for Qwest and at NECA Tariff rates for the independent telephone companies.

Private sector business and the general public also benefit by being able to connect to the ANAP with no backhaul mileage components within the service umbrellas of 15 and 30 miles for ATM and Frame Relay service respectively.

Qwest is currently in Phase 1 of the MNT implementation and the project is progressing on target. Qwest and the independent partners plan to have 43 of the 70 ANAPs installed and operational before June 30, 2001. The first round of State sites will convert onto the MNT network beginning in December, 2000. The State anticipates a significant cost savings over current payments.

A companion piece to the MNT strategic plan relates to community access grants for rural-only communities to resolve last-mile problems (also known as Beanpole Bill). The State has awarded roughly \$4.8 million to rural communities in 2000 to develop local ANAPs that will connect to the State ANAP. The local ANAPs will be implemented independent of the MNT.

Beanpole communities have awarded contracts to Lucent, AT&T, South East Power Company, and Colorado Access Networks to date.

In other words, the procurement in question is an utterly normal procurement, with a state attempting to obtain the best price for the best service. In this case, the State is also attuned to the needs of its rural residents, although even here, as is noted above, the facts are not exactly as Amigo.Net has stated them. But our basic point is very simple. Amigo.Net, even if all of its factual assertions are taken as true, has not set forth a predicate for Commission action. Section 253(d) is simply not a device by which to subject state procurement practices to the jurisdiction of this Commission.

The Amigo.Net Petition should be dismissed.

Respectfully submitted,

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December 4, 2000

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a copy of the **OPPOSITION** to be served, via hand delivery, upon the persons (marked with an asterisk) listed on the attached service list and 3) a copy of the **OPPOSITION** to be served via First Class United States Mail, postage prepaid, upon the other party listed on the attached service list.

Richard Grozier
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