

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
2000 Biennial Regulatory Review --)
Comprehensive Review of the)
Accounting Requirements and) CC Docket No. 00-199
ARMIS Reporting Requirements for)
Incumbent Local Exchange Carriers:)
Phase 2 and Phase 3)

REPLY COMMENTS OF QWEST CORPORATION

Qwest Corporation (“Qwest”), through counsel and pursuant to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“Notice”),¹ hereby submits its reply to comments in Phase 3 of the Commission’s comprehensive review of accounting and reporting requirements under Section 11 of the Act.²

I. INTRODUCTION

In its Notice the Commission refers to Phase 3 as the “long term transition to deregulation” and asks for comment on what “roadmap” it should follow in deregulating accounting and reporting requirements.³ Specifically, the Commission asks for comment on

¹ In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00-199, Notice of Proposed Rulemaking, FCC 00-364, rel. Oct. 18, 2000. Order extending comment and reply dates, DA 01-57, rel. Jan. 10, 2001.

² 47 U.S.C. § 161.

³ Notice ¶ 89.

whether there are threshold “triggers” that, if reached, will permit it to eliminate or significantly modify existing regulation of incumbent local exchange carriers (“ILEC”).⁴

In responding to the Commission’s Notice, numerous non-ILECs argue that existing ILEC accounting and reporting requirements must be maintained until ILECs are found to be non-dominant providers.⁵ GSA goes so far as to assert that: “As long as an ILEC remains dominant in the provision of any essential interstate or intrastate service, uniform and accurate accounting and reporting requirements will remain necessary.”⁶ The Commission should reject the “non-dominant” arguments of GSA and others as lacking in merit. These parties ignore the explicit language of Section 11 which establishes a statutory presumption that regulation is not necessary, and a statutory command that regulations be eliminated which are not proven to be still necessary.⁷ The question of whether an ILEC is a dominant provider of certain services is not relevant, in and of itself, to determining if all existing accounting and reporting requirements are necessary for the Commission to perform its statutory duties under the Act.⁸

⁴ Id.

⁵ The General Services Administration (“GSA”) at 4; Public Service Commission of Wisconsin at 9-10; Ohio Consumers’ Counsel and the National Association of State Utility Consumer Advocates (“Ohio”) at 4-6; Sprint Corporation at 2.

⁶ GSA at 4. If this standard were applied, numerous providers not now subject to the Commission’s Part 32 rules, such as AT&T, would be governed by the same onerous rules as the ILECs.

⁷ Section 11 of the Act contains two sections. The first directs the Commission to review all existing regulations and “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” The second section requires that the “Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.” 47 U.S.C. § 161.

⁸ GSA and Ohio also address the issue of asymmetrical regulation. While Qwest will not address this issue in any detail, a few comments are in order. First, GSA is simply wrong in its claim that existing regulation of ILECs is not asymmetric (GSA at 6). Second, Ohio’s claim that regulatory asymmetry will be reduced with greater regulation of competitive local exchange carriers should be rejected as beyond the scope of a Section 11 Proceeding (see Ohio at 8). The Commission has already made it clear in its recent report on its 2000 Biennial Regulatory

II. THE COMMISSION, FIRST, MUST DETERMINE WHICH RULES ARE NECESSARY FOR IT TO PERFORM ITS STATUTORY DUTIES

Rather than focusing on long range goals in Phase 3, the Commission should determine the absolute minimum set of accounting and reporting requirements that are necessary for it to perform its statutory duties today and in the near future.⁹ Any requirements beyond this minimum should be retained only if there is a compelling public interest.¹⁰ Such an approach rightfully places the burden of justifying any ILEC accounting and reporting requirements beyond the minimum on either Commission staff or other parties advocating requirements.¹¹

The Commission's review/determination can neither be standardless nor can its decisions be based on regulatory convenience. If the intent and language of Section 11 is to be satisfied, ILEC accounting and reporting requirements must be based on regulatory need. This standard

Review that it does not intend to increase regulatory requirements in a Section 11 biennial review. See In the Matter of The 2000 Biennial Regulatory Review, CC Docket No. 00-175, Report, FCC 00-456, rel. Jan. 17, 2001 ¶ 19.

⁹ It is Qwest's opinion that the word "necessary" as it is used in Section 11 means that the information flowing from an accounting or reporting requirement must be directly used to regulate the affected companies (i.e., ILECs) and that such regulation is required to protect the public interest. A requirement would not be deemed to be "necessary" under this definition if the information is merely helpful or of general interest to regulators. Similarly, if an accounting or reporting requirement was the product of another era (e.g., when the ILECs were true monopolists subject to rate-of-return regulation) and the information is no longer directly used to regulate the provision of ILEC services in today's environment, then it would not be a necessary requirement and should be eliminated.

¹⁰ Qwest urged the Commission to take such an approach in its Phase 2 comments and does so again in Phase 3. See Comments and Reply Comments of Qwest Corporation, filed herein Dec. 21, 2000 (at 3-4) and Jan. 30, 2001 (at 4-5), respectively.

¹¹ The burden of proof should not be placed on the regulated party (i.e., the ILECs), as has traditionally been done, to prove that existing requirements are unnecessary. Even if such an approach were justified in the past, it surely is not now with the passage of Section 11 which directs the Commission to eliminate "unnecessary regulation." As the Commission well knows, ILECs' competitors are not the least bit reluctant to suggest, with little or no evidence or justification, that existing regulatory requirements be maintained or increased.

requires that the Commission inquiry be focused on “what rules are necessary,”¹² rather than “what rules can be eliminated.”¹³ Qwest is of the opinion that the results of such an effort would result in a significant downsizing and streamlining of the existing ILEC accounting and reporting requirements with little, if any, loss of regulatory efficiency.¹⁴ Only after a minimum set of requirements has been identified should the Commission consider retaining any other existing requirements.¹⁵

Many of the accounting and reporting requirements ILECs face today are the product of a long history of cost-based, rate-of-return regulation that no longer exists at the federal level or in most states. If the Commission is to give proper deference to Congress and comply with Section 11, it must take a “fresh look” at its accounting and reporting requirements to determine what is necessary in today’s environment. The Commission should not start with the existing rules and “work backwards.” The Commission’s inquiry should be governed by today’s regulatory and business environment rather than the past. While questions of dominance and market power may

¹² This is quite a different approach from that taken in the Notice which offers minimal relief and almost invites commenting parties to suggest creative reasons as to why the existing rules should remain in place. With such an approach it is inevitable that competitors and the states will advocate the retention of virtually all existing rules and then some. The Commission should avoid the temptation to adopt a rebuttable presumption that all existing rules are necessary. Not only would such an approach place an unfair burden of proof on the ILECs, it would be at odds with Section 11.

¹³ While it is theoretically possible to end up with the same set of requirements by starting out with the existing set of rules and asking “what can be eliminated,” it is highly unlikely and a very inefficient way of determining what accounting and reporting requirements are necessary for regulators to perform their statutory duties.

¹⁴ While the Notice asserts that existing accounting and reporting requirements provide much valuable information to the Commission to perform its duties, this claim is at best questionable. Time and again, Qwest has found itself in the position of resubmitting information or submitting some variation of the reported information in response to Commission or staff requests when questions or issues actually arise.

¹⁵ Furthermore, the Commission should not adopt any additional requirements beyond this minimum set unless it finds a compelling public interest reason to do so.

ultimately play a role in determining whether an existing rule should be maintained, the initial inquiry should focus on regulatory need.

Similarly, while Qwest supports the use of automatic triggers as an efficient way to provide regulatory relief in place of extended rulemakings, the Commission should not address the issue of appropriate triggers until it has determined which rules are necessary for it to fulfill its statutory duties. If a rule is not necessary, the Commission need not waste its limited resources establishing an automatic trigger to eliminate the requirement. Establishing triggers, in and of itself, is not sufficient to comply with Section 11 -- the Commission first must develop and apply a standard for determining “regulatory necessity.”

Part 32 was developed and adopted in an era when cost-based regulation was the norm. The primary concerns of regulators were cross-subsidization and the reasonableness of rates. These are no longer relevant concerns at the federal level where stringent price cap constraints (i.e., basket and band limitations) have replaced “bottom-up” cost-based ratemaking and ILEC profits are constrained by their increases in productivity. In such an environment it is not necessary for the Commission to dictate detailed accounting standards such as Part 32. Generally Accepted Accounting Principles (“GAAP”) are more than sufficient to meet the Commission’s needs for price cap companies.¹⁶ Clearly, today’s “regulatory considerations”

¹⁶ In fact, in adopting Part 32, the Commission recognized that it was in the public interest to minimize the differences in accounting practices between telecommunications companies and other public companies if regulatory considerations permitted. See In the Matter of Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42 and 43 of the FCC’s Rules), CC Docket No. 78-196, Report and Order, 60 Rad. Reg. 2d (P&F) 1111, 1138 ¶ 112, rel. May 15, 1986. “In sum, the rationale underlying our decision to adopt GAAP to the extent regulatory considerations permit has not changed. We believe movement of the accounting practices of the telecommunications industry closer to the more widely accepted accounting practices of the unregulated American business community is in the public interest.”

permit the Commission to fully embrace GAAP and allow price cap companies to use GAAP in place of Part 32.

III. CONCLUSION

This proceeding represents an opportunity for the Commission both to comply with the dictates of Section 11 and to lift the burden of unnecessary and costly accounting and reporting requirements from large ILECs. Qwest urges the Commission to take a “fresh look” at its current rules by establishing a reasonable standard for what is “necessary” in today’s competitive price cap environment and eliminating all rules that do not meet this threshold test.

Respectfully submitted,

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March 14, 2001

CERTIFICATE OF SERVICE

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

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