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Ex Parte RECEIVED

MAR 29 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 29, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Re: CC Docket Nos. 98-147 and 96-98, Ex Parte Communication

Dear Ms. Salas:

On Thursday, March 28, 2001, Francis Coleman and Darrell Gentry of Mpower Communications, Inc., Patrick Donovan representing Mpower Communications, Inc., and Barry Orrel and I of Qwest Communications International, met with Dorothy Attwood and Glen Reynolds of the Federal Communications Commissions, Common Carrier Bureau (CCB), and Brent Olsen of the CCB's Policy and Program Planning Division to discuss the above referenced dockets. Attached is a copy of a document which specifies the contents of our presentation.

In accordance with Section 1.1206(b)(2) of the Commission's Rules, an original and one copy of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

Robert B. McKenna by

Attachment

cc: Dorothy Attwood  
Glen Reynolds  
Brent Olsen

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List A B C D E

## A Reasonable Interpretation of the Word "Necessary"

Physical collocation of equipment necessary for interconnection or access to unbundled network elements

### *Qwest position:*

We view a piece of equipment as being 'necessary' for interconnection or access to network elements when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary part of the equation applies to the collocation of the equipment, not to the equipment itself.

### *Mpower position:*

"Necessary" means "necessary for effective competition". The Commission should view the 'necessary' standard of Section 252(c)(6) of the Act as coextensive with the ILEC's obligations to provide interconnection and access to UNEs on just and reasonable and nondiscriminatory terms and conditions under Sections 251(c)(2)-(3).

### *Basic agreement:*

- "Necessary" in the Act is not a hollow word meaning nothing.
- "Necessary" in the Act really means "necessary" for carrying out the purposes of the Act.
- This includes the two components identified in Qwest's comments:
  - If this equipment is primarily used for interconnection or access to elements.
  - If collocation of this equipment is necessary for efficient competition.
- If equipment is "primarily" used for this purpose, there is no reason to prohibit ancillary uses as well.

### Legal precedent:

Agency has broad discretion to define "necessary".

- The Supreme Court affirmed its longstanding line of cases that agencies have broad discretion to interpret their authorizing legislation. *Whitman v. American Trucking Assn. (Supreme Court, February 27, 2001)*
- "Necessary" can mean "a useful and appropriate way to accomplish goals". *National Railroad Passenger Corp. V Boston and Main Corp (Supreme Court 1992)*

## **Simplify the Collocation Process**

**Mpower and Qwest propose the following simplified collocation process:**

- **For the first 100 square feet of caged or eight bays of cageless collocation in a standard lineup, CLECs will certify that the equipment placed in collocation space:**
  - 1) is necessary for competitively meaningful interconnection or access to UNEs;**
  - 2) is NEBs compliant for this application; and**
  - 3) is compliant with ANSI T1.413 Annex E when used for line sharing/splitting.**
- **If a CLEC requires additional collocation space in a Central Office in which it already occupies space under the foregoing conditions, the equipment to be collocated must be on the ILEC's approved product list.**
- **ILECs will maintain the right to observe all collocation space to assure NEBs compliance.**

**Benefits to Regulators and the Public Interest:**

- **Addresses an issue that has plagued the industry.**
- **Unburdens the regulator by encouraging the industry to develop solutions to its own problems.**
- **Represents reasonable solution of conflicting ILEC/CLEC views.**

**Benefits to ILECs:**

- **Protects against warehousing of valuable Central Office space.**
- **Screens out "abusive" installations of large equipment such as 5 ESS switches but allows for collocation of soft switches or routers.**

**Benefits to CLECs:**

- **Protects against warehousing of valuable Central Office space, reducing the possibility that one or two CLECs can "lock-up" an area.**
- **Streamlined collocation processes allow for quicker entry into the market, avoids delays associated with deploying new technologies.**

## **Forbearance From Pick and Choose**

### **Voluntary ILEC/CLEC Wholesale Arrangements Offer an Additional Access Option for CLECs that Should be Encouraged, and Exempted from the Section 252(i) "Pick and Choose" Obligations.**

- **Mpower and Qwest recommend that the Commission exercise its authority under Section 10 of the Act to forbear from applying ILEC "pick and choose" obligations under Section 252(i) of the Act with respect to ILEC/CLEC agreements meeting certain standards.**
- **If ILECs are no longer wary of entering into innovative agreements with CLECs to encourage additional methods for providing CLEC access to advanced network architectures, CLEC access will be promoted.**
- **This limited forbearance would not in any respect affect CLECs' rights under Section 252(i) to opt into standard interconnection agreements as a whole or on a "pick and choose" basis.**
- **The freedom of contract approach envisioned by Mpower and Qwest would be a supplemental alternative to, not a replacement for, the current interconnection regime.**
- **Makes network deployment less risky.**
- **Contracts may not be used in UNE proceedings to prejudice either party.**
- **Implementation Issues:**
  - **Scope of subject matter/contract coverage**
  - **ILEC affiliates - in region, out-of-region**
  - **Nondiscrimination**
  - **Opt-in**
  - **Preemption of state involvement**
  - **FCC implementation process**

## **Copper Plant**

**Qwest does not have plans to remove our copper loop plant in its 14-state area for the foreseeable future.**

- **As a result of the tremendous growth in Qwest's service territory in the past several years, Qwest engineers have worked hard to make the most efficient use of existing plant.**
- **It has been Qwest's position that, when we place a growth job, providing fiber into an area, we leave the copper loops in and we have used spare copper loop facilities to continue to meet customer demand. We have made use of radio, copper, and fiber facilities to meet customer needs.**
- **Qwest does not currently require the removal or abandonment of the copper. In fact, it allows us the capability to provide a copper loop for customer requests that require such a loop.**
- **Qwest believes that retirement of copper loops being used as UNEs for the provision of competitive services might raise legal issues under the Telecommunications Act.**