DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

APR 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Coalition of Competitive Fiber Providers' Petition for Declaratory Ruling Concerning Application of Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as amended, to Central Office Facilities of Incumbent Local Exchange Carriers	)	CC Docket No. 01-77

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Sharon J. Devine
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Attorneys for

QWEST COMMUNICATIONS
INTERNATIONAL INC.

April 23, 2001

No. of Copies rec'd 0+7
List A B C D E

TABLE OF CONTENT

Page

SUMMARY ii

I. INTRODUCTION 1

II. NEITHER SECTION 251(b)(4) NOR SECTION 224 GRANT PETITIONERs AN INDEPENDENT RIGHT OF ACCESS TO ILECs' COs 3

III. PETITIONERs CANNOT OBTAIN THE FULL RELIEF THAT THEY REQUEST WITHOUT AN IMPERMISSBLY BROAD RE-DEFINITION OF THE STATUTORY TERMS "CONDUIT," "DUCT" AND "RIGHT-OF-WAY" 7

IV. COLLOCATORs HAVE THE RIGHT TO DIRECTLY INTERCONNECT WITH AND OBTAIN TRANSPORT FACILITIES FROM THE PROVIDER OF THEIR CHOICE 10

V. VERIZON's CATT SERVICE IS A REASONABLE AND FEASIBLE MEANS OF ALLOWING CFPs TO EFFICIENTLY SERVE COLLOCATORS 12

VI. TELECOMMUNICATIONs CARRIERs HAVE A RIGHT OF ACCESS TO MANHOLE ZERO UNDER SECTION 224(f)(1) 13

VII. CONCLUSION 15

SUMMARY

The Commission should decline to expand the scope of Sections 224(f)(1) and 251(b)(4) as petitioners request. As both a CLEC and a competitive provider of local transport, Qwest shares many of the petitioners' concerns regarding their ability to interconnect with collocators in ILEC COs. Qwest's own experience as a CLEC demonstrates that alternative sources of fiber transport can promote market entry and help overcome obstacles that might otherwise delay the availability of new competitive services to consumers. On the other hand, as a major ILEC, Qwest will suffer significant harm if the Commission follows the petitioners' proposed course of action. Thus, Qwest is in the position of having to balance the need and desire of a CLEC and a CFP for access to collocation space in ILECs' COs and the totally lawful desire of an ILEC to control the use of its own private property.

While the Petition may have "pro-competitive" attributes, it is neither legally sound nor in the public interest and should be rejected by the Commission. Not only do petitioners urge the Commission to enter into perilous constitutional waters by dramatically expanding the scope of LEC property that is subject to taking under Section 224, but they also ask the Commission to find a new collocation right that would extend collocation obligations to all LECs, not just to ILECs. Furthermore, the Commission does not need to adopt petitioners' legal position to accommodate the needs of CFPs to interconnect with collocators in ILECs' COs.

There is only one provision of the Act, Section 251(c)(6), that allows other telecommunications carriers a right to occupy space in ILECs' COs. Neither Section 224 nor Section 251(b) address rights of access to the CO itself; these Sections can only be read to address telecommunications carriers' rights of access to poles, conduits, and rights-of-way running through other property. As with any other statutory provision authorizing the taking of

private property, the Commission must narrowly construe this statutory scheme to limit the extent to which the property of ILECs will be subject to physical occupation. Clearly, what petitioners ask for in this proceeding is a broad expansion of the Commission's authority to take private property that cannot be reconciled with the Court's holdings in *GTE* and *Bell Atlantic*.

Any rights that a CFP may have to access collocation space in an ILEC CO flow from Section 251(c)(6) and the rules that the Commission has promulgated in implementing this statutory provision. As such, a CFP has a right to bring its fiber into an ILEC CO if it is also a CLEC and has leased collocation space or if a collocator has entered into an agreement to lease facilities from the CFP. The ILEC may not unduly restrict collocators in their choice of transport providers by requiring CFPs to comply with unnecessary and uneconomically burdensome procedures or methods for gaining access to collocation space.

CFPs may be leasing facilities to numerous collocators in a single ILEC CO. In such cases, it is in the interest of both CFPs and the ILECs to allow CFPs to interconnect with collocating carriers in the most efficient manner. Verizon's CATT service appears to be an efficient means of allowing CFPs to serve multiple collocators in a single CO. If services similar to CATT were made available to CFPs by other ILECs, the process of serving multiple collocators would be simplified for both CFPs and ILECs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Coalition of Competitive Fiber	)	
Providers' Petition for Declaratory	)	
Ruling Concerning Application of	)	CC Docket No. 01-77
Sections 251(b)(4) and 224(f)(1) of	)	
the Communications Act of 1934, as	)	
amended, to Central Office Facilities	)	
of Incumbent Local Exchange Carriers	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. ("Qwest"), through counsel and pursuant to the Federal Communications Commission's ("Commission") *Public Notice* ("*Notice*"),[1] hereby submits its comments on the Petition for Declaratory Ruling ("Petition") filed by the Coalition of Competitive Fiber Providers (or "petitioners").[2]

I. INTRODUCTION

In their Petition, the Competitive Fiber Providers ask the Commission to adopt an overly-broad interpretation of the access requirements imposed on all local exchange carriers ("LEC") by Sections 251(b)(4) and 224 of the Communications Act.[3] As both a competitive LEC ("CLEC") and a competitive provider of local transport, Qwest shares many of the concerns of competitive fiber providers (or "CFPs") regarding their ability to interconnect with collocators in

---

[1] *Public Notice, Pleading Cycle Established for Comments on Petition of Coalition of Competitive Fiber Providers for Declaratory Ruling of Sections 251(b)(4) and 224(f)(1)*, CC Docket No. 01-77, DA 01-728, rel. Mar. 22, 2001.

[2] Petition for Declaratory Ruling filed Mar. 15, 2001.

[3] 47 U.S.C. § 251(b)(4); 47 U.S.C. § 224(f)(1).

incumbent LEC ("ILEC") central offices ("CO"). Qwest's own experience as a CLEC demonstrates that alternative sources of fiber transport can promote market entry and help overcome obstacles that might otherwise delay the availability of new competitive services to consumers.[4] Qwest has used the facilities of other competitive fiber providers in many out-of-region locations[5] to extend the reach of its own network.

On the other hand, as a major ILEC, Qwest also will suffer significant harm if the Commission follows the petitioners' proposed course of action.[6] Thus, Qwest is in the position of having to balance the need and desire of a CLEC and a CFP for access to collocation space in ILECs' COs and the totally lawful desire of an ILEC to control the use of its own private property. The balancing of these interests within Qwest is very much like the balancing which the Commission faces in determining whether the instant Petition has any merit under either the letter or spirit of the 1996 Act.

Evaluating the Competitive Fiber Providers' Petition from any reasonable perspective leads to one conclusion -- the approach that petitioners advocate is neither legally sound nor in the public interest. Not only do petitioners urge the Commission to enter into perilous constitutional waters by dramatically expanding the scope of LEC property that is subject to

---

[4] Qwest's ability to easily interconnect with CFPs in COs (in which Qwest is collocated) in Verizon's service area has enabled Qwest to make services available to its customers much earlier than would have otherwise been possible.

[5] The term "out-of-region" refers to the operations of Qwest affiliates that are outside Qwest Corporation's 14-state region where it operates as an ILEC.

[6] On June 30, 2000, Qwest Communications International Inc. merged with U S WEST, Inc. With this merger Qwest, which already was a large interexchange carrier ("IXC") and CLEC, acquired U S WEST Communications, Inc. (later renamed Qwest Corporation), a Bell Operating Company and ILEC. The resulting merged entity is fairly unique in that Qwest is now a major ILEC, IXC, CLEC, and a CFP (as petitioners use the term).

taking under Section 224,[7] but they also ask the Commission to find a new collocation right that would extend collocation obligations to all LECs (and possibly to all utilities subject to Section 224), not just to ILECs as is the case under Section 251(c)(6). The Commission should reject petitioners' request. It is not necessary to follow this course of action to accommodate the needs of CFPs to interconnect with collocators in ILECs' COs.

Qwest is of the opinion that reiteration, or possibly clarification, of the Commission's existing collocation rules is sufficient to make clear that CFPs can directly connect to CLECs collocated in ILECs' COs. In the comments that follow, we address both the legal foundation of the Competitive Fiber Providers' Petition and their business objective of interconnecting with collocated CLECs in an efficient manner.

II. NEITHER SECTION 251(b)(4) NOR SECTION 224 GRANT PETITIONERs AN INDEPENDENT RIGHT OF ACCESS TO ILECs' COs

Petitioners ask the Commission to find that Sections 251(b)(4) and 224(f)(1) give CFPs (who are not already collocated) a right of access to install their fiber and associated equipment (*e.g.*, connector blocks and distribution frames) in ILECs' COs. Petitioners assert that this right is independent of any collocation rights that they might have under Section 251(c)(6) of the Act. Petitioners contend that the Commission should address the issues raised in its Petition because there is "both a controversy and uncertainty" concerning the rights of CFPs under Sections 251(b)(4) and 224(f)(1). Petitioners' arguments should be rejected as contrary to clear language of the Act.

Prior to the Competitive Fiber Providers' Petition, Qwest was not aware that there was any controversy as to the legal basis for gaining access to ILECs' COs. There is only one provision of the Act -- Section 251(c)(6), the Act's collocation provision -- that allows other

[7] *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000).

telecommunications carriers a right to occupy space in ILECs' COs.[8] Petitioners' attempt to create a new legal right out of thin air by cobbling together Sections 251(b)(4) and 224 does not withstand legal scrutiny. Section 251(c)(6) is the only provision of the Communications Act that specifically addresses the scope of competing carriers' rights of access to "the premises of the local exchange carrier" for collocation purposes. Congress carefully delimited the scope of those rights, largely to "avoid an unnecessary taking of private property."[9]

Neither Section 224 nor Section 251(b) addresses rights of access to the CO itself; the more general provisions of these Sections can only be read to address rights of access to poles, conduits, and rights-of-way running through other property. Any broader construction of those provisions would violate both (1) the long-standing principle of statutory interpretation which requires that more specific provisions take precedence over the more general provisions and (2) the rule (reaffirmed in both *GTE* and *Bell Atlantic*) against broadly interpreting generally-worded federal statutes to authorize unnecessary takings of private property. Indeed, the petitioners seek the same broad relief that the Court found to be unlawful under Section 251(c)(6) in *GTE*.

Petitioners' statutory argument is barred by the plain meaning of the statutory text. What petitioners seek is collocation by another name. Section 251(c)(6) both creates specific rights of physical collocation and carefully limits their scope. Those limits reflect a deliberate congressional policy choice that the Commission is bound to respect. But, even apart from those considerations, constitutional concerns *independently* require the Commission to reject the Petition. As with any other statutory provision authorizing the taking of private property, the

---

[8] Section 251(c)(6) is an explicit congressional authorization allowing CLECs to collocate in ILECs' COs.

[9] *See GTE v. FCC*, 205 F.3d 416, 423 (D.C. Cir. 2000); *see also Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441, 1445-46 (D.C. Cir. 1994).

Commission must narrowly construe this statutory scheme to limit the extent to which the property of ILECs and other LECs will be subject to physical occupation.

In *Bell Atlantic*,[10] the D.C. Circuit rejected the Commission's attempt (in its *Expanded Interconnection* proceeding) to create rights of physical collocation without express statutory authorization.[11] The Court arrived at that holding *not* because the Communications Act itself precluded the Commission's recognition of such rights -- the statute was in fact silent or ambiguous on that point -- but because the Commission lacks authority to resolve statutory ambiguities to expand rights of physical access to private property. The Court reasoned that a "narrowing construction" of statutory access rights is required whenever "administrative interpretation" would otherwise create "an identifiable class of cases in which application of a statute will necessarily constitute a taking" of private property.[12] Any other approach, the Court explained, would inappropriately permit administrative agencies to use "statutory silence or ambiguity to expose the Treasury to liability both massive and unforeseen."[13]

Six years after passage of the 1996 Act, in *GTE v. FCC*,[14] the D.C. Circuit reaffirmed the same point. In the 1996 Act, Congress created an explicit right of physical collocation in ILECs' COs, but it limited the scope of that right to collocation that is "necessary" for interconnection or

---

[10] *Bell Atlantic*, 24 F.3d at 1445-46.

[11] In *Bell Atlantic* the Commission argued that taking authority need not be express but could be implied. The Court rejected this argument finding that such an implication could only be made as a matter of necessity ("where 'the grant [of authority] itself would be defeated unless [takings] power were implied;" *Id.* at 1446, citing *Western Union Tel. Co. v. Pennsylvania R.R.*, 120 F. 362, 373; *affd.* 195 U. S. 540).

[12] *Id.* at 1445 citing *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985).

[13] *Id.*

[14] *See* note 9 *supra*.

access to network elements.[15] The Commission interpreted the new collocation rights broadly, and the D.C. Circuit again repudiated the Commission's approach. The Court reasoned, as it had in *Bell Atlantic*, that statutory provisions invoked to support collocation rights must be carefully construed to avoid any "*unnecessary* taking of private property."[16]

Clearly, what petitioners ask for in this proceeding is a broad expansion of the Commission's authority to take LECs' private property that cannot be reconciled with the Court's holdings in *GTE* and *Bell Atlantic*. With respect to the issue at hand -- whether Sections 251(b)(4) and 224 provide a right for occupation of LECs' COs -- Congress has remained silent. As such, the Commission may not lawfully find such a right through implication, particularly when it would entail a broad expansion in the Commission's takings authority to all LECs, not just ILECs (as is the case with Section 251(c)(6)).

The basic lesson of both *Bell Atlantic* and *GTE* is that the Commission may place Treasury funds at risk for just compensation awards *only to the extent that Congress has unambiguously authorized it to do so*. In both cases, the Commission erred by creating rights of physical occupation that Congress had not expressly authorized. The Commission would make the same fatal mistake here if it were to grant the instant Petition. What petitioners seek are rights of "exclusive physical occupation"[17] beyond the carefully delimited collocation rights that Congress delineated in Section 251(c)(6). The statute plainly precludes granting petitioners those extra rights.[18] And here, as in *Bell Atlantic* and *GTE*, the Commission must follow a

---

[15] 47 U.S.C. § 251(c)(6).

[16] *GTE*, 205 F.3d at 423 (emphasis in original); *see also id.* at 421.

[17] *Bell Atlantic*, 24 F.3d at 1446.

[18] But even if it did not, the best that can be said for petitioners' position is that the statute as a whole -- including Sections 224, 251(b)(4), and 251(c)(6) -- does not clearly support it.

narrow construction of its statutory authority to expose the Treasury to claims for just compensation under the Tucker Act.

Finally, there is no basis for arguing that the constitutional concerns expressed in *Bell Atlantic* are absent because ILECs "will obtain compensation *from the [competing carrier]* for the reasonable costs of co-location."[19] The same argument was raised, and rejected, in *Bell Atlantic* itself.[20] As the D.C. Circuit there explained, "the LECs would still have a Tucker Act remedy for any difference" between what they ultimately receive from those competing carriers "and the level of compensation mandated by the Fifth Amendment."[21] That shortfall could arise in any number of circumstances: it could arise, for example, if the compensation amount ordered by regulators is found to fall short of the constitutionally-prescribed level, or if a competing carrier becomes insolvent before it pays any amount at all to the incumbent whose property has been taken. In any event, D.C. Circuit precedent on this point is clear: even where collocation is accompanied by regulatory compensation, the Commission may not grant rights of physical access to the COs in contexts where Congress has left any doubt about its authority to do so. As such, petitioners' request for a declaratory ruling must be denied.

III. PETITIONERs CANNOT OBTAIN THE FULL RELIEF THAT THEY REQUEST WITHOUT AN IMPERMISSBLY BROAD RE-DEFINITION OF THE STATUTORY TERMS "CONDUIT," "DUCT" AND "RIGHT-OF-WAY"

Assuming arguendo that Sections 251(b)(4) and 224 grant a right of access to LECs' COs, petitioners still could not obtain the relief that they seek without an impermissibly broad construction of such statutory terms as "conduit," "duct" and "right-of-way". Petitioners acknowledge that Commission regulations define "conduit" as "a structure containing one or

[19] *Bell Atlantic*, 24 F.3d at 1445 n.3.

[20] *Ibid.*

[21] *Ibid.*

more ducts, usually placed in the ground, in which cables or wires may be installed."[22] Industry-wide usage makes clear that a "conduit" is "[a] pipe, usually metal but often plastic, that runs either from floor to floor or along a floor or ceiling to protect cables."[23] But petitioners would define the term to include such items as "clips, straps, or racks," solely on the ground that they are "structure[s]" that "hold wiring."[24] Their definitional approach necessarily embraces far too much to remain plausible. The CO itself is a "structure" that "holds wiring." Because petitioners detach their construction from the common usage of the term, the logical consequence of their approach is to include the entire CO *as such* within the definition of "conduit." Such an outcome is absurd and would not withstand judicial scrutiny if the Commission adopted petitioners' proposed definitions.

Similarly unpersuasive is petitioners' effort to characterize "clips, straps, and racks" as "ducts." Such items are obviously not "enclosed raceway[s]" within the Commission's regulatory definition.[25] The Commission has further explained that a "conduit consists of one or more ducts, which are the *enclosures* that carry the cables."[26] In the *Competitive Networks Order*, the Commission concluded that "the obligations of utilities under Section 224 encompass in-building facilities, such as riser conduits, that are owned or controlled by a utility . . . . Our interpretation of Section 224 is also consistent with industry practice, in which the terms duct

---

[22] Petition at 9.

[23] *Newton's Telecom Dictionary* 217 (16 1/2 ed. 2000).

[24] Petition at 9-10.

[25] 47 C.F.R. § 1.1402(k).

[26] *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, Report and Order*, 15 FCC Rcd. 6453, 6491-92 ¶ 77 (2000) (emphasis added).

and conduit are used to refer to a variety of *enclosed* tubes and pathways, regardless of whether they are located underground or aboveground."[27]

As to the scope of the term "right-of-way," the Commission held in the *Local Competition Order*:

> We do not believe that section 224(f)(1) mandates that a utility make space available on the roof of its corporate offices for the installation of a telecommunications carrier's transmission tower, although access of this nature might be mandated pursuant to a request for interconnection or for access to unbundled elements under section 251(c)(6). The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility.[28]

However, in its recent *Competitive Networks Order*, the Commission, while reaffirming that general point, nonetheless determined that "a 'right-of-way' under Section 224 includes property owned by a utility that the utility uses in the manner of a right-of-way as part of its *transmission* or *distribution* network."[29] Petitioners argue that "any wiring or transmission facilities *in ILEC central offices* extending from or to switches is distribution plant" for these purposes.[30] Petitioners' interpretation of "distribution" is unreasonably broad. In other contexts, the Commission has used that term to denote facilities lying well outside the CO.[31] It is unclear,

---

[27] *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, First Report and Order*, 15 FCC Rcd. 22983, 23019 ¶ 8074 (2000) (emphasis added) ("*Competitive Networks Order*").

[28] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499, 16084-85 ¶ 1185 (1996) (footnotes omitted).

[29] *Competitive Networks Order,* 15 FCC Rcd. at 23021 ¶ 83 (emphasis added).

[30] Petition at 12 (emphasis added).

[31] *See, e.g., In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order*, 14 FCC Rcd. 20912, 20914 n.4 (1999) ("Digital transmission technologies have been used for some time in the network 'backbone'

however, what (if any) additional facilities the Commission may have intended to include when it extended the scope of Section 224 -- almost as an afterthought -- to the "transmission . . . network." Clearly, petitioners find no support for their overly-broad definition of right-of-way in case law or industry usage.[32]

IV. COLLOCATORs HAVE THE RIGHT TO DIRECTLY INTERCONNECT WITH AND OBTAIN TRANSPORT FACILITIES FROM THE PROVIDER OF THEIR CHOICE

Any rights that a competitive fiber provider may have to access collocation space in an ILEC CO flow from Section 251(c)(6) and the rules that the Commission has promulgated in implementing this statutory provision. As such, a CFP has a right to bring its fiber into an ILEC CO if it is also a CLEC and has leased collocation space or if a collocator has entered into an agreement to lease facilities from the CFP. In the former case, as both a CLEC and a CFP the

---

facilities, and now are starting to appear in the local feeder and distribution plant."); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 3696, 3789-90 ¶ 206 (1999) (explaining that the feeder distribution interface is the point where the "trunk line . . ., leading back to the central office, and the 'distribution' plant, branching out to subscribers, meet"); *Public Notice, Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals*, 15 FCC Rcd. 23208, 23209 (2000) ("Digital loop carrier systems pose additional difficulties for unbundling for competitive LECs who want to access the loop in the incumbent LEC's central office, because the copper loop to the subscriber (which is needed for xDSL- based services) is only available in the distribution plant, between the remote terminal (or optical network unit) and the network interface device at the customer's premises."). *Cf. Newton's Telecom Dictionary* 279 (16 1/2 ed. 2000) (defining "distribution" as, *inter alia*, "[t]he portion of a switching system in which a number of inputs is given access to an equal number of outputs").

[32] These substantive definitional problems point out an additional procedural defect with the Petition. Petitioners are plainly seeking a substantive *change* in the Commission's rules, not the type of "clarification" that may appropriately be sought through a petition for declaratory judgment. The proper vehicle for such proposals is a rulemaking proceeding, not a petition for declaratory judgment. *See, e.g., In the Matter of GVNW Inc./Management Petition for Declaratory Ruling, or Alternatively, a Waiver of Section 36.612(a) of the Commissions Rules USF Data Collection, Order*, 11 FCC Rcd. 13915, 13918 ¶ 10 (1996) (petition for declaratory ruling is inappropriate where petitioner seeks "[s]ubstantive modifications" to Commission rules; such modifications "require a rulemaking").

CFP has an independent right of access. In the latter case, the CFP stands in the shoes of the collocator and is acting as his agent or subcontractor. The ILEC may not unduly restrict collocators in their choice of transport providers by requiring CFPs to comply with unnecessary and uneconomically burdensome procedures or methods for accessing collocation space.[33]

Consistent with our advocacy in the collocation proceeding, it is Qwest's position that the collocation provisions of the Act, when properly interpreted, provide considerable flexibility for CLECs and CFPs to access each other on reasonable terms in the central office. In the collocation proceeding, Qwest argued that it would not be just and reasonable to deny a collocator who otherwise meets the "necessary" standard (i.e. for interconnection or access to UNEs) additional incidental (and reasonable) uses of the collocation space, such as cross-connects to other CLECs that are otherwise lawfully collocated in the central office.[34] Qwest

---

[33] Qwest discussed this issue at length in its comments in the Collocation Remand proceeding which are attached hereto. For example in its comments, "Qwest urge[d] the commission to require incumbent LECs to:

- honor the ROW/conduit access provisions of the interconnection agreements and prohibit the incumbent LECs from requiring separate, duplicate contracts in order to obtain access to manholes; and

- ensure that CLECs can continue to have the option of having ROW/or conduit access issues addressed as part of a single, comprehensive interconnection agreement that must be filed and approved by the state commissions."

Id. at 20-21.

[34] *See* Qwest Comments in the Collocation Remand proceeding, CC Docket Nos. 98-147 and 96-98, filed Oct 12, 2000, at 16-17 ("Qwest Collocation Comments") "The Act, however, does not allow a CLEC to obtain collocation from an ILEC for the *sole or primary purpose* of cross-connecting to other CLECs. Indeed, cross-connecting to other CLECs does not equate to interconnection with the [incumbent] local exchange carrier's network, [47 U.S.C. § 251(c)(2)] or access to the unbundled network elements of the incumbent LEC; [47 U.S.C. § 251(c)(3)] nor can it be argued that cross-connects are necessary to access the UNEs of, or achieve interconnection with, the incumbent LEC as required by section 251(c)(6). [Footnote omitted.] Where a CLEC does not otherwise meet the standards set forth in that provision, there can be no justification (or authority) for requiring the incumbent LEC to permit such cross-connects."

submits that such an incidental use of the space includes CLEC to CLEC cross-connects which allow a collocated CLEC to reach a CFP's facilities through another CLEC's collocation space. By this method, a CFP may effectively interconnect with several CLECs lawfully collocated in a CO without collocating or running fiber to multiple collocation arrangements.

Thus, petitioners are incorrect to the extent that they contend that the Commission's rules prevent them from reaching their customers that are collocated in ILECs' COs. However, if a specific ILEC's procedures obstruct CFPs from serving collocated customers, it is a matter for a complaint proceeding not a declaratory ruling.

V. VERIZON's CATT SERVICE IS A REASONABLE AND FEASIBLE MEANS OF ALLOWING CFPs TO EFFICIENTLY SERVE COLLOCATORS

Competitive fiber providers may be providing service to numerous collocators in a single ILEC CO. In such cases, it is in the interest of both the CFPs and ILECs to allow the CFPs to interconnect with collocating carriers in the most efficient manner. Verizon's Competitive Alternate Transport Terminal ("CATT") service appears to be an efficient means of allowing CFPs to serve multiple collocators in a single CO. This service allows CFPs to access a shared splice point, the CATT, in the CO for the purpose of terminating competitive fiber for distribution to individual collocators.[35] If services similar to CATT were made available to CFPs by other ILECs, the process of serving multiple collocators would be simplified for both the CFPs and the ILECs.[36]

As was mentioned above, Qwest uses third-party fiber providers to deploy local networks in areas where it has not yet completed construction of its own network facilities. In Verizon's

[35] The CATT can be found at URL: http://www.BellAtlantic.com/wholesale/html/customer_doc.htm . Click on CLEC Handbooks, Volume 3, then go to Section 4.6.

territory, where CFPs have the ability to access CLEC collocation sites using Verizon's CATT service, Qwest has been able to meet CFPs in COs rather than in a manhole. Conversely, in those regions where a CATT-type service is not available, Qwest is usually required to interconnect with CFPs outside the CO. In such situations, Qwest normally must construct new facilities outside the CO to reach a "meet point" to connect with a collocator fiber provider. This greatly increases the expense and time required to gain access to competitive fiber transport.

In addition to using CFPs, Qwest would like the opportunity to act as a CFP since it has fiber rings in many out-of-region metropolitan areas. In those cases where Qwest has collocated in an ILEC CO and has pulled its own fiber (into its collocation space), it would like to provide other collocated CLECs with an alternative means of transport. Verizon's CATT service allows Qwest to serve these CLECs in a timely and efficient manner.

CATT-type arrangements also provide benefits to the ILEC including:

- Conservation of conditioned collocation space -- CATT service is advantageous for both ILECs and competitive fiber providers since it allows competitive fiber providers to use lower-cost unconditioned CO space; thereby allowing ILECs to conserve more costly conditioned space for collocators requiring the placement of specialized telecommunications equipment.

- An efficient and administratively simple method for ILECs to allow CFPs to interconnect with multiple collocated CLECs. Thereby, avoiding the necessity of bringing multiple fiber runs into an ILEC CO.

VI. TELECOMMUNICATIONs CARRIERs HAVE A RIGHT OF ACCESS TO MANHOLE ZERO UNDER SECTION 224(f)(1)

Petitioners ask the Commission to "specifically determine that 'manhole zero' is subject to the nondiscriminatory access obligation of Section 224(f)(1)."[37] This is a reasonable request

[36] While Qwest Corporation, Qwest's ILEC operation, does not yet have such a service offering, it is seriously considering doing so in the near future.

[37] Petition at 18.

and should be granted if the Commission chooses to formally address the specifics of the Petition. Regardless, Qwest is of the opinion that manhole zero is a part of a LEC's conduit systems. As such, other telecommunications carriers have a nondiscriminatory right-of-access to manhole zero under Section 224(f)(1).

It is difficult to satisfy the nondiscriminatory access requirement if LECs do not have reasonable processes and procedures in place to accommodate requests for access. As Qwest pointed out in its earlier comments in the Collocation Remand proceeding, out of region (*i.e.*, outside of Qwest Corporation's 14-state service area) Qwest has encountered numerous challenges/obstacles in gaining access to manhole zero from other ILECs.[38] At a minimum, the Commission should require ILECs to have a uniform process within their service areas, unless a state pole attachment act controls and has different requirements.[39] Not only would uniform processes reduce the burden on new entrants, they also appear to be a more efficient way for ILECs to operate.[40] Even in those cases where ILECs have defined processes, the processes often are not being followed.[41] This cannot be allowed to continue -- nondiscriminatory

---

[38] Qwest Collocation Comments at 18-23.

[39] 47 U.S.C. § 224(c)(1).

[40] "For example, in the SWBT territory of SBC, the process of having manholes assigned is included in the collocation application process. However, in the Ameritech territory and the Pacific Bell territory, completely separate manhole applications must be submitted. In Ameritech, the applications can be submitted to a centralized Structure Access Center, however in Pacific Bell, the applications must be filed with a variety of regional contacts depending upon the city in which the manholes are required. In addition, in California, Pacific Bell will not accept applications from personnel at a CLEC whose names are not pre-designated on a list that the CLEC must maintain with Pacific Bell (a CO 4926 form). Finally, Qwest has encountered delays in having incumbent LECs assign manholes until the incumbent LEC is provided a detailed map of Qwest's local network - a map which is not necessary in order for the incumbent LECs to assign the manholes on their own network." (Qwest Collocation Comments at 20-21.) Needless to say, as this example demonstrates, a single process would increase the efficiency of both telecommunications carriers seeking access and ILECs.

[41] *Id.* at 22.

processes are meaningless unless they are followed. Of equal importance to Qwest is the time required to access manholes. In some cases, intervals have been unreasonably long. LECs' processes should be based on reasonable intervals that are clearly spelled-out in applications and other relevant documents.

VII. CONCLUSION

For the foregoing reasons, the Commission should decline to expand the scope of Sections 224(f)(1) and 251(b)(4) as petitioners request. Such a broad expansion in the Commission's takings authority would neither be lawful nor in the public interest. Moreover, it appears that much of the relief that petitioners seek is not necessary because CFPs already have significant rights to interconnect with customers that are collocated in ILECs' COs.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: James T. Hannon /dc

Sharon J. Devine
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

April 23, 2001

DOCKET FILE COPY ORIGINAL

RECEIVED

APR 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
And	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Robert B. McKenna
Blair A. Rosenthal
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Attorneys for
QWEST COMMUNICATIONS
INTERNATIONAL INC.

Of Counsel,
Dan L. Poole

October 12, 2000

"COURTESY COPY"

TABLE OF CONTENTS

Page

I. INTRODUCTION 2

A. Proper Interpretation of the "Necessary" Standard Need not Impede Advancement of the Act's Goals and Objectives 3

B. Rules or Policies which Serve as a Primary Purpose to Reduce the Value of the Collocation Product are not Mandated by the Act 4

C. The Commission Should not Devise Pricing Rules that Motivate Incumbent LECs to Seek to Avoid Collocation 6

D. Qwest's Current In-Region Collocation Policies Have Resulted in Significant Space Dedicated to Collocation 7

II. COMMENTS ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 98-147 8

A. Meaning of "Necessary" under Section 251(c)(6) 8

B. Removal of Obsolete Equipment 12

C. Functionality of Equipment CLECs Seek to Collocate 12

D. Line Cards 14

E. Limitations on Services Provided by a Collocator 15

F. Cross Connections between Collocators 16

G. Points of Entry into Incumbent LEC Central Offices 18

H. Selection of the Actual Physical Collocation Space 23

I. Collocation at Remote Incumbent LEC Premises 25

1. Disclosure of Information Concerning Remote Terminals 27

2. Line Card Collocation 28

3. Zoning and Rights-of-Way Issues 29

4. Virtual Collocation in Remote Locations 30

J. Provisioning Intervals 31

K. Space Reservation Policies 32

III. COMMENTS ON FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 96-98 33

A. Loops and Interoffice Transport 33

B. Subloops 34

C. Spare Copper 38

D. Cross Connection 40

IV. THE COMMISSION MUST RECOGNIZE THAT PRIVATEPROPERTY RIGHTS REMAIN OF CRITICAL IMPORTANCE 41

ATTACHMENT -- Petition of Qwest Corporation for Clarification or, in the Alternative, Reconsideration, CC Docket Nos. 98-147 and 96-98, filed electronically on October 10, 2000 (receipt included)

SUMMARY

These Comments mark the first time that the new Qwest Communications International, Inc. ("Qwest"), following its merger with U S WEST, Inc., has weighed in on any significant issues involving local competition. With this merger Qwest became a unique entity in the telecommunications landscape. Qwest is now a large interexchange carrier, competitive local exchange carrier ("CLEC"), and data local exchange carrier ("DLEC"), while simultaneously being a Bell operating company and large incumbent local exchange carrier ("incumbent LEC"). As such, Qwest is both a major purchaser and provider of collocation. Accordingly, Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses with the totally lawful desire of an incumbent LEC to make use of its own private property for its own uses. The balancing of these competing interests within Qwest as a whole, is very much like the balancing that the Commission will undertake in adopting rules that best meet the goals and aims of the Telecommunications of 1996 (the "Act").

Qwest has attempted to reflect this balancing in these comments. The central points in the comments are summarized as follows.

In terms of redefining the "necessary" standard of section 251(c)(6), Qwest submits that a particular piece of equipment is "necessary" for interconnection or access to unbundled network elements ("UNEs") 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.

It is also Qwest's view that if the primary purpose for collocating a given piece of equipment is interconnection or access to UNEs, then the CLECs should be permitted to collocate the equipment even if the equipment is multi-functional, and performs other reasonable ancillary functions that do not constitute interconnection or UNE-access functions. Moreover, once a CLEC lawfully obtains a collocation arrangement—i.e., by placing equipment that is both necessary to and actually used for interconnection or access to UNEs—then the CLEC should be allowed to deploy all reasonable ancillary functions of that equipment. This standard should apply even if the ancillary functions involve services not strictly defined as telecommunications service (although, functions totally unrelated to telecommunications should be prohibited).

Similarly, although a CLEC should not be allowed to collocate for the sole purpose of obtaining a cross-connection with another CLEC, once a CLEC lawfully obtains a collocation arrangement, it should be allowed to cross-connect to other collocators.

With respect to points of entry to incumbent LEC central offices, Qwest submits that the incumbent should be required to designate the appropriate point of entry for CLECs. Similarly, Qwest believes that incumbents should have the discretion to select the actual physical location of a CLEC's collocation space. The incumbent must act reasonably in doing so, however, and may not intentionally

place CLECs in a difficult to use or isolated space when more suitable space is available.

Qwest also supports physical collocation of CLECs at remote incumbent LEC premises, and, as an incumbent, offers several products to accommodate such requests. Where space is not sufficient to allow a CLEC to occupy an entire shelf in a remote terminal, then space is also not sufficient for a virtual remote collocation. Lastly, Qwest does not support the collocation of a single line card (as opposed to an entire shelf) at this time because a number of technological issues make it unworkable; should these technological issue be resolved, however, the Commission should revisit the issue, consistent with the requirements of the Act and the evolving marketplace.

With regard to the deployment of new network architectures, Qwest believes that the loop is properly defined as the physical transmission path between Qwest central offices and the customer premises. Qwest believes that dense wavelength division multiplexing should be treated as an additional capability of the loop and not as capacity of the fiber loop itself. Additionally, it is Qwest's position that unbundled dedicated transport should not be considered part of the loop—it is simply the provision of bandwidth between two offices.

With regard to the retirement of copper facilities, in many cases, any overlay of fiber does not mean that existing copper is abandoned—it is often converted to distribution facilities, and not retired at the time of the fiber placement. Further,