



**Qwest**  
1020 Nineteenth Street NW, Suite 700  
Washington, DC 20036  
Phone 202.429.3121  
Fax 202.293.0561

**Cronan O'Connell**  
Vice President-Federal Regulatory

EX PARTE

December 19, 2002

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147, 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 and CC Docket Nos. 02-33 and CC 01-337, In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

Dear Ms. Dortch:

Yesterday, Cronan O'Connell and Craig Brown of Qwest Communications International Inc. ("Qwest"), met with Daniel Gonzalez Senior Legal Advisor to Commissioner Kevin Martin of the Federal Communications Commission. The material in the attached presentation concerning Triennial Review and Broadband Policies was reviewed. Specifically, Qwest discussed its position concerning the Triennial Review proceeding suggesting that the Commission should adopt policies that clearly define the impairment analysis review for specific UNEs including unbundled switching, unbundled transport and advanced services.

We additionally discussed the need for the Commission to articulate that the State's List of UNEs map to the FCC List, today and as well as in the future. In particular, we discussed a Minnesota Administrative Law Judge's attached recommendation<sup>1</sup> that if implemented, is a complete diversion from the FCC's current position on unbundling of packet services. Also, we reiterated Qwest's UNE-P transition proposal and, its enhanced extended link ("EEL") and commingling proposals.

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<sup>1</sup> *In the Matter of a Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices; In the Matter of an Investigation into Qwest's Obligation to Unbundle its Network to Permit Line Sharing Over Fiber Fed Loops; Proposed Finding of Fact and Conclusion of Law of the Minnesota Dept. of Commerce, PUC Docket Nos. P421/CI-02-293, OAH Docket No. 12-2500-14490-2 Dec., 12, 2002.*

Finally, we discussed Qwest's position that incumbent local exchange carriers ("ILEC") should be regulated as non-dominant in the broadband services market and, ILEC bundled offerings of broadband transmission and internet access should be classified as Title I "information services".

In accordance with FCC rule 1.49(f), this *Ex Parte* letter and attachments are being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 1.1206(b)(2).

Sincerely,  
/s/ Cronan O'Connell

cc: Daniel Gonzalez (via e-mail at [dgonzale@fcc.gov](mailto:dgonzale@fcc.gov) with attachment)

Attachments

**Qwest**<sup>®</sup>



*Spirit of Service*

**Triennial Review and Broadband  
Policies  
December 18, 2002**

# Key Points

## ❑ In the Triennial Review proceeding, the Commission should adopt policies that:

- Eliminate uncertainty
- Incent facilities-based competition which will spur investment

## ❑ In the Broadband proceedings, the Commission should adopt policies that:

- Provide regulatory symmetry for all broadband providers

# ***FCC Should Adopt “Brightline” Standards for Unbundling***

- ❑ Delegation to states is not necessary to make “granular” unbundling decisions
- ❑ The Commission’s adoption of guidelines or presumptive determinations, with ultimate determinations by the states, would be tantamount to complete delegation
- ❑ Open-ended delegation to the states will lead to delay and continued uncertainty

# ***Remove Unbundled Switching from the UNE List Nationally***

## ***FCC Factors:***

**Competitive Switches**



**Alternative Network Architectures**

- 1) CLEC has a switch in the LATA, or**
- 2) CLEC uses third party switches in a LATA, or**
- 3) CLEC has established a point of interconnection (POI) in the LATA to carry traffic to switch outside**

**Hot Cut Process**



**Scalability of Service Centers**

**UNE-L Performance Metrics/Measurements**



**Established by State Commissions and in effect today**

**EEL Local Use Restrictions/Commingling**



**Meets facilities-based CLECs' needs**

**Intermodal Competition**



**Presence of cable and wireless competitors in LATA**

# Qwest Service Centers Scalable to Meet Anticipated UNE-Loop Demand

- ❑ Qwest CLEC Coordination Center (QCCC) currently staffed to handle 1,500 UNE-L cutovers per day, with peak capacity of 2,100 UNE-L cutovers per day
- ❑ Qwest current UNE-P demand is, on average, 375 orders per day
- ❑ QCCC is scalable to meet realistic estimated demand growth from UNE-P to UNE-Loops

# Qwest Current Hot Cut Performance Metrics Can be Utilized for Performance Tracking

- **FCC should continue to rely on state approved Performance Metrics and Measurements**
  - Process already in place today to track performance
  - Metrics as well as penalties in place based on state guidelines
  
- **Qwest Hot Cut results today are excellent**
  - 99.43% of Analog Coordinated Cuts Completed on Time
  - 98.19% of Digital Coordinated Cuts Completed on Time

## ■ **Standard Provisioning Intervals**

| Loop Type    |                              | 1-8 loops | 9-16 loops | 17-24 loop | 25+ loops |
|--------------|------------------------------|-----------|------------|------------|-----------|
| Analog/Voice | Standard Analog Loops        | 5 days    | 6 days     | 7 days     | ICB       |
| Grade Loops  | Quick Loop Analog-Conversion | 3 days    | 3 days     | 3 days     | ICB       |

Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated installation or cooperative testing. Quick Loop is not available for loops served over IDLC technology. Quick Loop is also offered for loops with number portability. The installation intervals for Quick Loop with LNP are 3 days for 1 to 8 loops, 4 days for 9 to 24 loops, and ICB for 25 or more loops.

# Qwest UNE-P Transition Proposal

- ❑ **Unbundled Switching removed from UNE list on a National basis**
- ❑ **UNE-P no longer available to serve new customers**
- ❑ **Qwest has 497,000 UNE-P in service as of October 2002 of which over 75% are UNE-P for business customers today**
  - CLECs may order either Resale or Unbundled Loops subject to the terms of their individual Interconnection Agreements
  - The parties will begin negotiations of an amendment to their existing Interconnection Agreements, if necessary, to reflect the removal of Unbundled Switching from the list of required unbundled network elements
  - Existing UNE-P lines will be “grandfathered” at UNE-P rates until completion of a transition for these lines
  - Qwest estimates that it will take 7 months for it to provision all anticipated requests for conversion
- ❑ **Within 30 days of the date of the FCC Order, Qwest will notify all CLECs via registered letter of their transition options from UNE-P**
  - The schedule will identify, by wire center, all planned transition dates and ordering deadlines

# *Unbundled Transport*

- ❑ **The FCC Should Remove Dedicated Interoffice Transport from the UNE List in specific circumstances**

## **Standard**

- ❑ Wherever Phase I or Phase II Pricing Flexibility has been granted

## **Measurement**

- ❑ FCC findings already demonstrate that there are substantial competitive alternatives to Special Access in those areas where they have granted Phase I Pricing Flexibility
- ❑ Special Access, which is constrained in price, is also a substitute for Unbundled Transport (in addition to alternative providers)

## ***Proposed EEL Local Use Restrictions***

- ❑ Qwest proposes a **streamlined alternative** to the current restrictions that promotes the availability of UNEs for facilities-based local competition and strikes a competitive balance between ILECs & CLECs

### **Standard**

- ❑ CLEC self-certifies that **either** each loop/transport combination facility carries at least 51% “local” traffic **or** that they are the exclusive local carrier for the customer; and
- ❑ EEL terminates to a collocation arrangement; and
- ❑ CLEC has local interconnection service (LIS) trunks in place and Percent Local Usage (PLUs) on file with the ILEC which are associated with the EEL collocation arrangement where the EEL terminates

# Proposed EEL Local Use Restrictions

## EEL Measurements / Audits

- ❑ CLECs converting from a UNE-P combination to an EEL will automatically be presumed to meet the “local” standard, with a follow-up certification by the CLEC to be provided no later than six months after the conversion
- ❑ As is the case today, Internet access will not satisfy the “local” traffic criterion
- ❑ As a condition of the purchase of or conversion to EELs, the CLEC must agree to provide traffic billing records to a third party auditor to be identified by the ILEC for review of compliance with the local use certification.
  - The ILEC may initiate an audit by an independent third party to assure compliance with the local use restriction no earlier than 6 months, after this provisioned.
  - Every 6 months, the CLEC must be prepared to provide to third party auditor, if requested, one month’s call detail recordings (CDR) upon 7 day’s notice. The audit will include verification that the traffic carried over the facility or facilities in question meets the local usage restriction.
  - The data required for an audit would be the CDR in the AMA format from the CLEC local voice switch.
- ❑ If the CLEC is found to be in violation of the local use restriction, the CLEC will pay: 1) all costs for the auditor and the ILEC personnel involved in the audit, 2) corrected billing back to date the circuit was established, 3) interest on the amount of corrected billing, and 4) loss of commingling rights after three faulted audits for one year

# Commingling Proposal

- ❑ **Qwest's commingling proposal promotes the availability of UNEs for facilities-based local competition, supports efficient use of interoffice facilities and strikes a competitive balance between ILECs & CLECs**
  
- ❑ **Standard**
  - Commingling is defined as the combination of EEL Loops and Private Line/Special Access channel termination circuits onto the same Multiplexed Interoffice Transport Facility billed at tariffed rates.
  
- ❑ **Measurements**
  - The UNE loop portion of EELs connected to the Interoffice Facility (IOF) must satisfy the local use restrictions (51% local voice traffic)
  - Commingling only permitted for DS1 level UNE-loops on a DS3 tariffed facility
  - The co-mingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA)

# *Unbundling of Advanced Services*

- ❑ CLECs are not impaired without further access to Advanced Services facilities
- ❑ ILECs have no scale advantages in the market for Advanced Services - intermodal competition is thriving
- ❑ So far, the result of Advanced Services unbundling (Line Sharing, Remote Collocation) have been a failure

# Broadband

- ILECs' should be regulated as non-dominant in the broadband services market
  - Marketshare as of 6/30/02 for highspeed Internet access nationally:
    - 9.2M cable modem subscribers (56.8% marketshare)
    - 5.1M ADSL subscribers (31.5% marketshare)
  - Demand and supply elasticity is demonstrated in the marketplace today by both the customers (large business as well as consumer) and competitors
  - Cost, structure, size and resources of the competitors clearly demonstrates that ILECs do not enjoy any advantages over any competitors

## ***Broadband (cont.)***

- ❑ ILECs' bundled offering of broadband transmission and Internet access should be classified as Title I “information services” with no "telecommunications service" components;
  - As a threshold matter, bundled ISP services are plainly “information services” under the statutory definition
  - The statutory analysis rests on the functions that are made available
  - Commission then reaffirmed this conclusion in the Cable Modem Order
  - In this case, the provider is “using” telecommunications not “providing” a telecommunications service

## Broadband (cont.)

- Computer II/III rules have no valid application to the ILEC's transmission component of bundled DSL Internet access
  - Commission has already determined that Computer II/III should not apply to in the cable modem services
  
- ILECs should be permitted to provide bulk broadband transport services to ISPs on a private carriage basis
  - Meets FCC criteria of 1) individualized contracts tailored to meet the needs of a particular customer; 2) customer is a business entity with sufficient ability to represent themselves in negotiations; 3) contracts are medium to long range; and 4) carrier does not possess market power

## RECOMMENDATION

1. A determination that Qwest must provide the UNEs proposed by the Department that include an end-to-end UNE that provides for the transport of the voice and data traffic between the end user and the central office, as well as the components of the end-to-end UNE;
2. A determination that Qwest must provide CLECs with access to the features and functionalities of the DSLAM and ATM network that are technically feasible, including a request for a general statement that features and functionalities available now or in the future should be made available to the CLECs;
3. A determination that at the beginning of Phase Two (the cost phase), the ALJ shall develop the list of features and functionalities to be assigned costs during the Phase Two proceeding;
4. A determination that Qwest must provide line splitting; and
5. A determination that CLECs should have access to the loop-related database information that is helpful to them in planning the best way to serve each end use customer.

Dated:

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STEVE M. MIHALCHICK  
ADMINISTRATIVE LAW JUDGE