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

Re: Ex Parte Presentation, CC Docket Nos. 01-338, 96-98, 98-147, *In the Matters of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*

Dear Ms. Dortch:

Over the course of this proceeding, Qwest has made significant efforts to address the Commission's concerns about the EEL safe-harbor mechanisms established in the *Supplemental Order Clarification*. Qwest has proposed modifications to the safe-harbor mechanisms that would allow "commingling" under certain conditions. Specifically, CLECs could commingle EELs with special access interoffice transport, as long as the loop portion of the EEL is subject to appropriate use restrictions *and* the interoffice transport is priced at special access rates. Qwest is opposed to the use of "ratcheting" in this context.[1]

In the *Supplemental Order Clarification*, the Commission maintained a prohibition on "commingling,"[2] because of concerns that removal of the prohibition would lead to "the use of unbundled network elements by IXCs solely or primarily to bypass special access services."[3] On appeal, the D.C. Circuit upheld all the safe-harbor restrictions adopted in the *Supplemental Order Clarification*, including the commingling prohibition.[4] In this proceeding, some CLECs have complained that the commingling prohibition results in inefficient deployment of facilities, because the prohibition prevents them from using existing special access interoffice transport in a wire center to carry EELs traffic to and from that wire center. Thus, instead of using spare capacity on the special access transport, the CLEC must deploy or purchase separate interoffice transport to carry the EELs traffic. Qwest has proposed a means of addressing these CLEC

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1 "Ratcheting" refers to a scheme by which the price of the interoffice transport would be a blended rate, based on the proportion of local and long distance traffic carried over the interoffice transport.

2 The Commission defined commingling as "combining loops or loop-transport combinations with tariffed special access services." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, 9602 ¶ 28

3 *Id.*

4 *Competitive Telecommunications Ass'n v. FCC*, 309 F.3d 8 (D.C. Cir. 2002). Interestingly, the CLECs did not ultimately challenge the commingling prohibition before the court. *See Competitive Telecommunications Ass'n v. FCC*, No. 00-1272, Transcript of Proceedings, at 20 (Oral argument of Mark D. Schneider on behalf of intervenors WorldCom, Inc., et al.) ("[W]e're not trying to convert the transport link. We'll pay full access rates for that[.]")

concerns, without compromising the effectiveness of the safe-harbor restrictions: CLECs may connect EELs to special access interoffice transport, as long as the loop portion of the EEL satisfies the use restrictions adopted in the *Supplemental Order Clarification*, as modified in this proceeding, *and* the interoffice transport is priced at special access rates.

Applying ratcheting to the interoffice transport would be inappropriate for a number of reasons. First, a ratcheting scheme would essentially override the commitments a CLEC made when it purchased the special access transport from the ILEC. Most customers purchase special access services under pricing plans that reward the customer with a lower monthly rate for special access services for a certain period of time, in exchange for a commitment to purchase a particular volume of special access services. Adoption of ratcheting would effectively nullify this bargain. It also must be kept in mind that special access services are priced as a package, assuming that all elements of the package (*e.g.*, channel terminations, interoffice transport) will be purchased by the CLEC and that both nonrecurring and recurring charges will be paid. In some cases, the interoffice transport may be priced at cost, while channel terminations are priced above cost, so that the ILEC will receive a reasonable profit from the total package. If commingling is permitted, ILECs will lose revenue from the potentially more-profitable channel terminations that otherwise would have been connected to the special access interoffice transport. In this situation, applying ratcheting to the commingled transport facility would further undermine what little profit is left in the special access. Ratcheting would also not account for the fact that some nonrecurring costs for special access are recovered through recurring costs. Thus, ratcheting could once again undermine the pricing methodology established by the incumbent LEC.

Further, ratcheting would impose substantial costs on both CLECs and ILECs in terms of ordering and billing:

- Major changes would be required to Qwest's ordering and billing systems, with an estimated cost of approximately $5 million and approximately 18 months of programming. Likewise, the CLEC would have to modify any OSS that interacts with Qwest systems.

- Today UNE-loops are ordered via a Local Service Request ("LSR") and billed in CRIS. Special Access is ordered via an Access Service Request ("ASR") and billed in IABS.

- The Customer Records Information System ("CRIS") and Integrated Access Billing Services ("IABS") systems don't "talk" to each other, so all applicable UNE-loop accounts would have to be manually taken out of CRIS and put into IABS.

- The IABS system has no programming to accommodate UNE-loops. Therefore, the adoption of ratcheting would require Qwest to establish new USOCs and new rate elements, as if this were a new product, in order to accept and bill UNE-loop or EEL orders.

- All internal and external personnel, methods, procedures and documentation would need rework both in CRIS and IABS.

- Until any mechanized enhancements are done, all billing would be manual. In effect, the price of the interoffice transport would vary from month to month.

- New nonrecurring costs would be assessed to CLECs to recover these costs, but the question would be under which billing system – CRIS or IABS

- If ratcheting were based on traffic flows over the commingled facility, the CLEC would be required to measure its traffic on a monthly basis, subject to validation by the ILEC, in order to determine the ratcheting factors. Such a requirement would be inconsistent with CLEC claims that they are incapable of measuring their traffic for purposes of enforcing local usage factors.

In accordance with Commission Rule 47 C.F.R. §1.49(f), this *Ex Parte* is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of the above-referenced proceedings pursuant to Commission Rule 47 C.F.R. §1.1206(b)(1).

Should you have any further questions, please contact me.

/s/ Cronan O'Connell

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