

-----Original Message-----

From: Clauson, Karen L.
Sent: Monday, August 11, 2003 5:56 PM
To: 'Jodi Smith'
Subject: FW: MTI Reply Comments on DS1 Conditioning Issue

[Here are the MTI comments in AZ 271 mentioned in my other email.](#)

-----Original Message-----

From: BRECHERM@gtlaw.com [SMTP:BRECHERM@gtlaw.com]
Sent: Friday, July 25, 2003 4:15 PM
To: klclauson@eschelon.com
Cc: mhazel@mtntel.com; jmanogian@mtntel.com
Subject: Reply Comments on DS1 Conditioning Issue

<<2P2901!.DOC>> Karen - Attached is a copy of the reply comments which we are sending to the Arizona Corporation Commission today on behalf of Mountain Telecommunications, Inc. on the Second Staff Report in the 271 proceeding. The comments are limited to the DS1 conditioning issue. Of course, you will receive an official copy via mail as you are on our service list, but I wanted you to see our filing right away. Thanks for your help in providing me with copies of the testimony and other documents.

Rick Brecher

Mitchell F. Brecher
Greenberg Traurig, LLP
800 Connecticut Avenue, NW
Washington, DC 20006
Telephone (202) 331-3152
Facsimile (202) 261-0152
Mobile (301) 509-8998
e-mail: brecherm@gtlaw.com

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JAMES M. IRVIN
Commissioner

WILLIAM MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

IN THE MATTER OF U S WEST) DOCKET NO T-00000A-97-0238
COMMUNICATIONS, INC.'s COMPLIANCE)
WITH SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)
)
)
)
)
)

REPLY COMMENTS OF MOUNTAIN TELECOMMUNICATIONS, INC.
REGARDING STAFF'S SECOND REPORT

Mountain Telecommunications, Inc. (MTI) hereby submits its reply comments in the above-captioned matter.

In its initial comments regarding the Staff's Second Report, filed July 18, 2003, Eschelon Telecom, Inc. brought to the Commission's attention a significant change in the manner in which Qwest provides DS1 capable loops. Simply by removing a single word from a provisioning document without any authority from either the Commission or the Federal Communications Commission (FCC) to do so, Qwest has increased the costs to its competitors for DS1 capable loops, failed to process orders, and delayed the

provisioning of such loops; and, in doing so, has materially impeded the ability of its competitors to service customers.¹

Eschelon describes accurately what Qwest has done. Qwest's procedures for requesting construction in connection with certain Unbundled Network Elements are set forth in a Qwest document entitled "Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC)." Pursuant to that document, Qwest did not impose construction charges on requests that could be resolved through facility work or assignments. Among the specific exclusions from CRUNEC construction charges was the following:

Incremental Facility Work: Completing facilities to an end-user's premises (e.g., Conditioning, place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal. (emphasis added)

Thus, line conditioning historically had not been subject to "construction" charges (which makes abundant sense given that no construction occurs with line conditioning). Without Commission authority or approval and without change in Qwest's Statement of Generally Available Terms and Conditions (SGAT) or in any interconnection agreement between Qwest and any CLEC (including MTI), Qwest quietly removed the critical word "conditioning" from the above-quoted portion of its CRUNEC document. As a result, Qwest has begun to impose "construction" charges for removing from loops provided as UNEs bridge taps, load coils, low pass filters and range extenders. Such removal is necessary for the loops to be suitable for high speed switched wireline telecommunications capability. Such removal does not require Qwest to engage in

¹ This situation is described in detail in Eschelon's July 18 comments at pp. 4 – 11.

“construction” in any sense of that word or to incur “construction” costs which may be passed on to its UNE customers.

As Eschelon noted in its comments, Qwest’s quiet removal of one critical word and resulting increase in the charges for conditioned loops and resulting delay in provisioning orders which do not include CRUNEC “construction” requests occurred almost simultaneously with Qwest’s receipt of Section 271 authority in several states. Qwest has not explained nor can it explain how removal of load coils, bridge taps, low pass filters and range extenders suddenly changed from “incremental” facility work to significant construction projects requiring payment of new, unauthorized and wholly unexpected additional fees which Qwest creatively has named “Quote Preparation Fee for Simple Facility Rearrangements.” Stated simply, what Qwest has done through the guise of deleting the word “conditioning” from the list of exclusions contained in its CRUNEC document is to require CLECs to pay special fees to Qwest simply to provide those CLECs with price quotes to have done what Qwest is obligated to do under the Communications Act and the FCC’s rules governing unbundled network elements – “condition” loops to make them suitable for high speed switched telecommunications. As Qwest itself has candidly acknowledged, it has a “concrete specific legal obligation to provide all types of loops with their attendant functions, features, and capabilities.”²

These quote preparation fees are not insubstantial. The Quote Preparation Fee being charged by Qwest is \$1,685 per DS1 capable loop order. Of even greater importance than these additional charges which are unwarranted and unauthorized, Qwest’s treatment of line conditioning as construction requiring “preparation” of price

² See Checklist Item 4 Unbundled Loops Rebuttal Affidavit of Jean M. Liston, Qwest Corporation, filed with the Commission February 19, 2001 in this docket, at 6.

quotes has caused substantial delays, often in excess of 100 days, in the processing time for new facilities orders. Like Eschelon, MTI has experienced numerous facilities order rejections in the few months following this change. As a result, MTI has been unable to deliver timely service to its customers. It is difficult to imagine any conduct of any incumbent local exchange carrier that is more anticompetitive and more violative of the letter and the spirit of the 1996 Telecommunications Act than prolonged delays in fulfilling CLEC facility orders under the guise that such orders must be treated as “construction projects” for the simple removal of certain facilities when such removal is necessary in order for the unbundled loops to be suitable for high speed switched telecommunications.

Qwest’s sudden and unauthorized decision to impose construction charges and dilatory price quote preparation procedures on loop conditioning within weeks of receiving initial Section 271 authorizations for other in-region states is all the more remarkable in light of testimony filed by Qwest in state Section 271 proceedings. For example, on January 19, 2001, Qwest submitted the direct testimony of one of its employees, Jean M. Liston in the Seven State 271 Collaborative Process. That testimony was offered for the express purpose of demonstrating Qwest’s purported compliance with item no. 4 of the Competitive Checklist codified at Section 271(c)(2)(B) of the Communications Act. Qwest witness Liston testified that Qwest would condition loops to support CLEC DS1 capable services and explained loop conditioning as follows:

Basically, loop conditioning is the term used to describe the process of removing load coils, bridge taps, and any other devices from existing copper loops that would negatively impact the transmission of a digital signal. In many cases, the data portion of the loop will not work correctly if there are load coils or certain amounts of bridge taps on the loop.

Qwest provides CLECs with Loop Conditioning for xDSL services upon request.³

Indeed, the witness acknowledged accurately in the testimony that the Federal Communications Commission mandated loop conditioning in its First Report and Order in CC Docket No. 96-98.⁴ In short, Qwest's testimony submitted as part of its campaign to win Section 271 relief described loop conditioning, and acknowledged that it was obligated to provide such conditioning as part of its obligation to provide DS1 capable loops. Conspicuously absent from that testimony and from all other filings submitted to the Commission prior to April 2003 is any indication of Qwest's intention to commence imposing construction including price quote, charges and procedures on such loop conditioning on its competitors once it began to win Section 271 authorization. Neither is there any reference to be found in any FCC decision which provides any support whatsoever for the novel proposition that line conditioning constitutes special construction of such a nature as to warrant special procedures, price quote preparation fees, and prolonged provisioning delays.⁵

³ Testimony of Jean M. Liston, Qwest Corporation, Seven State 271 Collaborative Process, submitted January 19, 2001 at 18.

⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd 15499 (1996).

⁵ MTI does not dispute that that Qwest has been authorized by the FCC to impose a TELRIC-based charge for line conditioning. It has that authority and it does charge for conditioning. However, it does not have the authority to impose price quotation and special construction fees in addition to the TELRIC-based conditioning charges.

In considering whether Qwest has complied with the requirements of Section 271, including the Competitive Checklist elements codified at Section 271(c)(2)(B) of the Communications Act, the Commission should be mindful of this latest effort by Qwest to materially increase the charges for unbundled DS1 capable loops. Point no. 4 of the Competitive Checklist is “local loop transmission from the central office to the customer’s premises, unbundled from local switching, or other services.” Unless and until Qwest abandons its policy of imposing “construction” and price quotation charges for line conditioning, it cannot be found to have fulfilled the requirement codified at Section 271(c)(2)(B)(iv) – point 4 of the checklist.

Respectfully submitted,

**MOUNTAIN
TELECOMMUNICATIONS, INC.**

Mitchell F. Brecher

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006
(202) 331-3100

Its Attorneys

July 25, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply Comments of Mountain Telecommunications, Inc. Regarding Staff's Second Report on all parties of record in these proceedings by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

Timothy Berg FENNEMORE CRAIG 3003 North Central Avenue Suite 2600 Phoenix, AZ 85012	Scott S. Wakefield RUCO 2828 North Central Avenue Suite 1200 Phoenix, AZ 85004
Lyn Farmer, Chief Administrative Law Judge Jane Rodda, Administrative Law Judge Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007	Raymond S. Heyman Michael Patten Roshka, Heyman & DeWulf 400 East Van Buren Street Suite 800 Phoenix, AZ 85004-3906
Andrew Crain Charles Steese QWEST Corporation 1801 California Street Suite 5100 Denver, CO 80202	Mary E. Steele Daniel Waggoner Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688
Maureen Arnold Qwest Corporation 3033 North Third Street Room 1010 Phoenix, AZ 85012	Kevin Chapman Director-Regulatory Relations 5800 Northwest Parkway Suite 125, Room I-S-20 San Antonio, TX 78249
Richard S. Wolters Michel Singer Nelson AT&T 1875 Lawrence Street Room 1575 Denver, CO 80202-1847	Joyce B. Hundley United States Department of Justice Antitrust Division City Center Building 1401 H Street, NW Suite 8000 Washington, D.C. 20530
Michael M. Grant Todd C. Wiley GALLAGHER & KENNEDY 2575 East Camelback Road Phoenix, AZ 85016-9225	Lyndon J. Godfrey, VP, Government Affairs Rod Aguilar AT&T 795 Folsom Street

<p>Thomas H. Campbell Lewis & Roca 40 North Central Avenue Phoenix, AZ 85007</p>	<p>Suite 2104 San Francisco, CA 94107</p>
<p>Thomas F. Dixon, Jr. MCI WorldCom 707 17th Street Suite 3900 Denver, CO 80202</p>	<p>Maureen A. Scott Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007</p>
<p>Eric S. Heath Sprint Communications Company L.P. 100 Spear Street Suite 930 San Francisco, CA 94105</p>	<p>Caroline Butler Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007</p>
<p>Paul A. Bullis Division Chief Counsel Office of the Arizona Attorney General Public Advocacy Division 1275 West Washington Phoenix, AZ 85007-2926</p>	<p>Ernest G. Johnson, Director Utilities Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007</p>
<p>Kimberly M. Kirby Davis, Dixon, Kirby, L.L.P. 19200 Von Karman Avenue Suite 600 Irvine, CA 92612</p>	<p>Curt Huttzell State Government Affairs Electric Lightwave Four Triad Center Suite 200 Salt Lake City, UT 84180</p>
<p>Garry Appel TESS Communications, Inc. 1917 Market Street Denver, CO 80202</p>	<p>Jonathan E. Canis Michael B. Hazzard Kelly Drye & Warren, L.L.P. 1200 19th Street, NW 5th Floor Washington, D.C. 20036</p>
<p>Mark N. Rogers Excell Agent Services, L.L.C. 2175 West 14th Street Tempe, AZ 85281</p>	<p>Andrew O. Isar TRI 4312 92nd Avenue, NW Gig Harbor, WA 98335</p>
<p>Harry Pliskin Senior Counsel Covad Communications Company 7901 Lowry Boulevard Denver, CO 80230</p>	<p>Steven J. Duffy Ridge & Isaacson P.C. 3101 North Central Avenue Suite 1090 Phoenix, AZ 85012-1638</p>

<p>David Conn McLeodUSA, Inc. 6400 C Street, SW Post Office Box 3177 Cedar Rapids, IA 52406</p> <p>Dan Lipschultz Moss & Barnett 4800 Norwest Center 90 South Seventh Street Minneapolis, MN 55402-4129</p> <p>Richard P. Kolb On Point Communications Two Conway Park 150 Field Drive Suite 300 Lake Forest, IL 60045</p> <p>W. Hagood Bellinger 4969 Village Terrace Drive Dunwoody, GA 30338</p> <p>Diane L. Peters Director, Regulatory Services Global Crossing Telemanagement, Inc. 1080 Pittsford Victor Road Pittsford, NY 14534</p> <p>Bradley Carroll Cox Arizona Telecom, L.L.C. 10401 North 29th Avenue Suite 100 Phoenix, AZ 85027</p> <p>Barbara P. Schneider LEC Relations Manager-Industry Policy Z-Tel Communications, Inc. 601 South Harbour Island Boulevard Suite 220 Tampa, FL 33602</p>	<p>Joan S. Burke Osborn & Maledon 2929 North Central Avenue 21st Floor Phoenix, AZ 85067-6379</p> <p>Diane Bacon, Legislative Director Communications Workers of America 5818 North 7th Street Suite 206 Phoenix, AZ 85014-5811</p> <p>Traci Grundon Mark P. Trincherro Davis Wright Tremaine LLP 1300 Southwest Fifth Avenue Suite 2300 Portland, OR 97201</p> <p>Brian Thomas, VP Regulatory -- West Time Warner Telecom, Inc. 520 Southwest Sixth Avenue Suite 300 Portland, OR 97204</p> <p>Andrea P. Harris Senior Manager, Regulatory Allegiance Telecom Inc. of America 2101 Webster Suite 1580 Oakland, CA 94612</p> <p>Lyndall Nipps Vice President, Regulatory Compliance Allegiance Telecom of Arizona, Inc. 845 Camino Sur Palm Springs, CA 92262</p> <p>Jon Poston ACTS 6733 East Dale Lane Cave Creek, AZ 85331</p>
--	---

Dated at Washington, D.C., this 25th day of July, 2003.

//125793

Michelle D. Diedrick