

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Review of the Commission's Rules Regarding) WC Docket No. 03-173
the Pricing of Unbundled Network Elements)
and the Resale of Service by Incumbent Local)
Exchange Carriers)

**RESPONSE OF
QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. ("Qwest") hereby submits its response to AT&T Corp.'s ("AT&T") motion to require incumbent local exchange carriers ("ILEC") to provide responses to discovery requests submitted by AT&T.¹

INTRODUCTION

AT&T's motion requests voluminous amounts of data from Qwest, which are mostly irrelevant to evaluating Qwest's proposed modifications to the current TELRIC methodology and therefore would be of little use to the Federal Communications Commission ("Commission"). AT&T's motion is merely a distraction from the primary issue in this proceeding: the unbundled network element ("UNE") pricing inquiry in many states has become unmoored from any real world constraints. While the ILECs' data may not be comprehensive in every respect, use of these data is far superior to the hypothetical approach championed by AT&T, which has led to UNE prices that often have no connection to reality and have undermined the development of facilities-based competition. Qwest of course recognizes that the Commission has a legitimate need to ensure that sufficient data exist to implement a

¹ See AT&T Motion to Require Incumbent Local Exchange Carriers To Respond To Data Requests, filed Mar. 16, 2004.

proponent's proposed methodology. In due course, Qwest will show that sufficient, reliable data exist to implement its proposal. In the meantime, AT&T's motion should be denied.

I. AT&T'S MOTION IS PROCEDURALLY FLAWED
AND THEREFORE SHOULD BE REJECTED

As AT&T acknowledges, the Commission's discovery rules are designed for a "case of adjudication . . . which has been designated for hearing."² There is no discovery as of right in a rulemaking proceeding, and discovery generally is not utilized. In fact, AT&T cites no instance within the past 25 years of discovery being used in a Commission rulemaking proceeding. This is not surprising, because, unlike an adjudication, a rulemaking proceeding establishes administrative rules of general applicability.

The detailed discovery sought by AT&T is particularly inappropriate given that this proceeding is still at a beginning stage. As AT&T itself has noted, there can be no showing of need for discovery at the early stages of a rulemaking proceeding, when the parties are still addressing the issues in general terms.³ The comment period in this proceeding closed only several weeks ago, with the submission of numerous proposals for fundamental changes to the methodology that is used to set UNE prices. At this stage, any discovery, much less the onerous data sought by AT&T regarding nearly every aspect of the ILECs' networks, is unwarranted.

AT&T's request is overly broad and unduly burdensome. AT&T seeks, for example, very extensive documentation for every expenditure Qwest has incurred in five exchanges over the last three years, plus a detailed analysis of each expenditure, regardless of the materiality of the charge. Thus, AT&T attempts to shift the burden of doing its own document analysis to Qwest. To be sure, the Commission has a legitimate need to ensure that proposals to modify the

² 47 C.F.R. § 1.311(a). *And see* AT&T motion at 1.

Commission's UNE pricing methodology can be implemented. In the course of this proceeding, Qwest intends to present evidence showing that there are sufficient data and information to implement its proposal, and that this evidence is generally superior to the hypothetical, unsubstantiated evidence on which AT&T would have the Commission rely. Unlike AT&T's shotgun approach, however, Qwest will provide data that are actually relevant to an evaluation of Qwest's proposed clarifications and modifications to the Commission's UNE pricing rules.

II. MUCH OF THE DATA SOUGHT BY AT&T ARE UNNECESSARY FOR AND IRRELEVANT TO AN EVALUATION OF QWEST'S PROPOSAL

In its initial comments in this proceeding, Qwest demonstrated the devastating impact on consumers and the economy of perpetuating the hypothetical approach to setting UNE rates that has been advocated by AT&T and adopted in certain states. Qwest urged the Commission to impose real world boundaries on the UNE cost inquiry by clarifying and modifying its Total Element Long Run Incremental Cost ("TELRIC") rules in several key respects. In particular, Qwest recommended that the Commission amend its rules: (1) to require that cost determinations be based on the most efficient network designs, technologies, and practices that are currently used by telecommunications carriers, as demonstrated by marketplace evidence,⁴ (2) to adopt a rebuttable presumption that the most efficient technologies, designs, and practices that have actually been deployed by the ILEC, and the ILEC's actual expenses, satisfy the foregoing standard,⁵ (3) and to reaffirm that TELRIC is to be determined with reference to current constraints and other conditions external to the network, including the number and

³ See *In the Matter of Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Memorandum Opinion and Order, 86 FCC 2d 190, 192-93 ¶ 9 (1981).

⁴ Comments of Qwest, WC Docket No. 03-173, filed Dec. 16, 2003 at 15-19.

⁵ *Id.* at 19-22.

location of developed areas.⁶ If adopted, Qwest's proposal would restore desperately needed sanity to the process of setting UNE rates using forward-looking costs, and further the Act's goals of promoting facilities-based competition in the telecommunications industry.

AT&T's motion demonstrates a fundamental misunderstanding of Qwest's proposal. As it did in its reply comments, AT&T suggests that the ILECs possess insufficient data to implement Qwest's proposal. However, most of the data that AT&T requests is not relevant to Qwest's proposal. For example, AT&T's discovery requests include:

- an "inventory of each piece of equipment or other asset in the study area, by location[,] . . . manufacturer, model number, acquisition date, and install date" (AT&T Request No. 1 at Attachment A-2)
- "cable maps, outside plant ("OSP") location records, OSP mortality records, cable inventories," along with locations of all distribution drop terminals, SAIs, FDIIs, RTUs, DLCs and remote switches in the study area, and the number and capacity of copper and fiber cables along each route in the ILEC network (AT&T Request No. 5 at Attachment A-5)
- standards and procedures used by Qwest to remove from its cable maps, cable inventory, or other accounting and financial data bases any cable that has been retired from the company's financial accounts, but not physically removed (AT&T Request No. 6 at Attachment A-6)
- standards and procedures used by Qwest to remove from its cable maps, cable inventory, or other accounting and financial data bases any cable that has been physically removed (AT&T Request No. 7 at Attachment A-6)
- documents relating to the feeder and/or distribution relief and rehabilitation projects that have been undertaken in Qwest's network (AT&T Request No. 10 at Attachment A-7)

⁶ *Id.* at 22-24. Qwest also urged the Commission to clarify that its UNE pricing rules require the use of models, inputs, and assumptions that are consistent within the three components of costs (*i.e.*, operating costs, depreciation expense, and return on capital), as well as within elements, across elements, and across recurring and non-recurring charges. In addition, Qwest recommended that the Commission amend its rules to require that proposed cost models, inputs, and assumptions used to set UNE rates be transparent, verifiable, and explained with specificity. Further, Qwest applied these general rules to specific inputs. Finally, Qwest proposed additional evidentiary and procedural guidelines that would increase the availability and objectivity of information used to determine UNE rates. *Id.* at 25-71.

Qwest is not proposing a cost standard that replicates the existing network, but rather a standard that assumes that the existing network would be rebuilt with efficient technologies and practices that are actually deployed by ILECs or other carriers when currently expanding, upgrading or replacing portions of their networks. Under this approach, older equipment would be replaced by newer, more efficient equipment as long as there is real world evidence that the new equipment actually functions as proposed in the models. As such, existing carrier systems would be modeled using the newest technology. For instance, integrated digital loop carrier with time slot interchanging (*e.g.* GR 303) would be used in place of many of the non-integrated systems that do not have time slot interchanging capabilities but are currently deployed in the network. In short, Qwest's proposal has no relationship to most of the detailed questions AT&T asks about the systems Qwest currently has deployed in its network.

Qwest plans to submit on the record during the course of this proceeding information that is relevant to implementation of its proposed costing approach. In addition, if Qwest's proposal is adopted, competitive local exchange carriers would have access to all data relevant to the Qwest proposal through the discovery process *in the state cost proceeding*. To the extent such data is not available, or is found to be unreliable, Qwest's proposal would allow the state commission to rely on other data or assumptions to establish the value for a given input. However, where such real world data exists, that data would be used, rather than relying on the hypothetical, unverifiable assumptions and opinions that AT&T continues to advocate in this proceeding.

CONCLUSION

For the reasons discussed above, the Commission should deny AT&T's motion to require ILECs to provide responses to discovery requests submitted by AT&T.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **RESPONSE OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be filed with the FCC via its Electronic Comment Filing System, served via email on the FCC's duplicating contractor, Qualex International Inc., and served upon the parties listed on the attached service either via email as indicated or via First Class United States mail, postage prepaid.

/s/ Richard Grozier
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