

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)	CC Docket No. 01-338
)	

**RESPONSE OF QWEST COMMUNICATIONS INTERNATIONAL INC.
TO EMERGENCY REQUEST OF
THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

Qwest Communications International Inc.¹ hereby responds to the September 8, 2004 Request of The Association for Local Telecommunications Services (“ALTS”) that it be permitted to utilize the confidential line count information filed by ILECs in the ongoing Universal Service proceeding (and subject to the *Interim Protective Order* in that docket)² in the ongoing proceeding on remand from the DC Circuit decision in *USTA v. FCC*.³

ALTS claims to need the ability to use this confidential information to “assess the level of impairment competitors experience in the absence of unbundled interoffice transport.”⁴

ALTS’ theory is that “without access to access line per wire center data, competitors cannot

¹ Qwest Communications International Inc. is the 100% owner of Qwest Corporation, an incumbent local exchange carrier (“ILEC”) serving fourteen western and midwestern states. As used in this response, the term “Qwest” refers to Qwest Corporation the ILEC.

² See *In the Matter of Federal-State Joint Board on Universal Service, Interim Protective Order*, 15 FCC Rcd 10183 (2000) (“*Interim Protective Order*”).

³ *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *pets. for cert.*, Nos. 04-12, 04-15, 04-18 (June 30, 2004).

⁴ Request at 4.

assess whether there is in fact a reliable correlation between interoffice transport impairment and access line density.”⁵ ALTS hypothesizes that, “without the disclosures requested herein, the Commission will not have the benefit of competitors’ analyses and arguments, and the public debate and record regarding impairment will accordingly will (*sic*) be incomplete.”⁶

ALTS’ Request is frivolous and should be denied. There is no indication that the universal service data that Qwest and other ILECs have submitted in the Universal Service docket has any relevance to any competitor’s ability to provide service without the use of a TELRIC [Total Element Long Run Incremental Cost]-priced unbundled network element (“UNE”). The information was submitted in confidence to the Commission with the express understanding that it would be used for universal service analysis only, and ALTS has shown no reason to modify that expectation.

But ALTS’ Request points out a very serious and recurrent problem that the Commission will need to deal with soon in a meaningful way: the persistent refusal of competitive local exchange carriers (“CLECs”) to submit any meaningful data of their own on the record to permit the Commission to verify their claims of impairment. Obviously CLECs have in their possession the best evidence of whether they can provide service without access to TELRIC-priced UNEs, but they repeatedly fail to submit that evidence to the Commission, relying instead on vague claims that ILEC evidence is not accurate, not complete, or otherwise not compelling. CLECs have been just as reluctant to produce meaningful or accurate information in state proceedings, including the state proceedings triggered by the *Triennial Review Order* involving switching, high-capacity loops and transport.

⁵ *Id.*

⁶ *Id.*

Instead CLECs claim the theoretical impossibility of competing with ILECs, without disclosing the extent of their actual successful competition, which in fact is substantial. Thus, for example, regarding high-capacity loops and transport, CLECs have persistently failed to submit information on the extent of their own deployment of high-capacity facilities, their use of the high-capacity facilities of others, their use of ILEC special access services, or their own willingness to permit other CLECs to use spare capacity on the facilities that they have themselves deployed. This is clearly most probative information concerning a CLEC's ability to compete under current circumstances, yet CLECs fail to submit it or make it available (under an appropriate protective order, if necessary). And this is despite the fact that the CLECs clearly have the burden of proof under the law of demonstrating that they are impaired in their ability to provide a service without access to an ILEC UNE at a TELRIC price.

In other words, despite their protestations that they need to use ILEC confidential Universal Service line count information to ensure that the record in the *Triennial Review Order* proceeding is not "incomplete and one-sided,"⁷ the primary hole in the record of all proceedings on impairment to date has been caused by the adamant refusal of CLECs to assume their properly assigned burden of proof and disclose the extent of their own current and planned competitive deployments.

⁷ *Id.*

ALTS' Request should be denied.

Respectfully submitted,

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September 17, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **RESPONSE OF QWEST COMMUNICATIONS INTERNATIONAL INC. TO EMERGENCY REQUEST OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES** to be

1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 96-45, WC Docket No. 04-313 and CC Docket No. 01-338, 2) served via e-mail on Ms. Janice M. Myles of the Wireline Competition Bureau's Competition Policy Division at janice.myles@fcc.gov, 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at www.bcpweb.com, and 4) served via First Class United States mail, postage prepaid, on the party listed on the attached service list.

Richard Grozier
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September 17, 2004

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