

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)
) ET Docket No. 04-35
New Part 4 of the Commission's Rules)
Concerning Disruptions to Communications)

**QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION
PETITION FOR RECONSIDERATION**

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I. INTRODUCTION AND SUMMARY: THE COMMISSION SHOULD
RECONSIDER THE DS3 REPORTING REQUIREMENTS REFLECTED IN
ITS *SERVICE OUTAGE ORDER*

Qwest Corporation (local exchange carrier) and Qwest Communications Corporation (interexchange carrier) (collectively “Qwest”) petition for reconsideration of the Federal Communications Commission’s (“Commission”) August 19, 2004 *Service Outage Order* in the above-referenced proceeding,¹ with reference to two particular aspects of that *Order*.

Specifically, Qwest seeks reconsideration of the DS3 reporting threshold to the extent it is set at levels below an OCn level (e.g., below an OC3 or an OC24 or higher) and to the extent the reporting requirement is imposed as a real-time reporting obligation. Qwest proposes that the Commission revise the new DS3 reporting rule to require reporting only for outages at the OCn level. In the alternative, the Commission should exempt DS3 level outages from the burdensome requirements of real-time reporting and require that such outages be reported quarterly instead.

Qwest also seeks reconsideration of the DS3 reporting requirement to the extent it captures DS3 simplex “switch-to-protect” events, since such events are not “outages” under the

¹ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830 (2004) (“*Service Outage Order*” or “*Order*”). Also see, *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking*, 19 FCC Rcd 3373 (2004) (“*NPRM*” or “*Service Outage NPRM*”).

Commission's definition of the term.² Nor are such events reflective of a significant infrastructure failure.

It is clear that the current DS3 reporting methodology is certain to result in a volume of reports far in excess of that anticipated by the Commission when it instituted its rules.³ Changing the rules along the lines urged by Qwest would materially reduce the administrative burdens the Commission is certain to realize as a result of the current DS3 reporting approach, as well as alleviate unnecessary costs for those carriers affected by the current reporting regime.

Changing the current DS3 reporting regime would also be in the public interest under a sound cost/benefit analysis. At this time, the reporting requirements are not aligned with the public interest and impose undue costs and burdens on carriers that will ultimately be reflected in consumer prices and possible reduced quality of service due to re-directed financial and human resources.

² The Commission recently granted a November 19, 2004 Petition for Partial Stay filed by United States Telecom Association ("USTA") ("*USTA Petition for Partial Stay*"). *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Order Granting Partial Stay*, FCC 04-291, rel. Dec. 22, 2004 ("*Stay Order*"). In the *Stay Order*, for the time being, the Commission exempted carriers from an obligation to report DS3 simplex events that are restored within 5 days. *See id.* ¶¶ 3, 9, 11. The Commission seeks a more developed record on the burdens and benefits of DS3 simplex reporting in order to determine the parameters for such reporting on a more permanent basis in the future. *See id.* ¶¶ 3, 8-9. As Qwest advocates below, while the 5-day approach to DS3 reporting alleviates some of the burdens and costs associated with such reporting, DS3 simplex reporting should be eliminated in its entirety. Even if the Commission's partial stay approach to DS3 simplex reporting were made permanent, carriers would continue to have significant burdens associated with analysis and monitoring and reporting of such events.

³ *See Service Outage Order*, 19 FCC Rcd at 16909-10 ¶ 159 (anticipating perhaps an increased administrative burden on carriers and the Commission along the lines of 1,000 reports per carrier annually).

II. BACKGROUND: THE NEW DS3 REPORTING OBLIGATION

This proceeding arises from the Commission’s obligation and commitment to make available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities . . . for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication[.]”⁴ In the *Service Outage Order*, the Commission changed the current approach to service outage reporting by requiring certain carriers to report outages who had never before been encumbered by mandatory reporting obligations. Concomitantly, it changed many of the metrics for service disruption reporting. One of the significant new aspects of the service outage reporting rules involves DS3 reporting.

To implement the goal of “establish[ing] additional outage-reporting criteria that would apply to failures of communications infrastructure components having significant traffic-carrying capacity,”⁵ the Commission imposed a new requirement that providers submit 2-hour notifications, 72-hour initial detailed reports and 30-day final attested-to reports to the Commission in any instance where they have a DS3 outage of at least 30 minutes duration that “affects at least 1,350 DS3 minutes.”⁶ The Commission derived its DS3 outage metric based on its determination that “DS3 minutes” should be calculated by multiplying the duration of an outage by “the number of previously operating DS3 circuits that were affected by the outage.”⁷

⁴ 47 U.S.C. § 151.

⁵ *Service Outage Order*, 19 FCC Rcd at 16895 ¶ 128.

⁶ *See, e.g., id.* at 16972-28 §§ 4.9(f)(2) and 4.11.

⁷ *Id.* at 16924 § 4.7(d).

In establishing this new DS3 reporting rule, the Commission rejected proposals by providers that it require reporting only for outages at higher infrastructure levels than a DS3.⁸ Instead, it selected the DS3 unit as the threshold building block for “significant” infrastructure outages. In other words, an event impacting only a single DS3 is reportable under the new rules if it is out for a sufficient length of time regardless of the function of the DS3 at issue or the scope of the impact of the outage.

Additionally, while the *NPRM* gave no indication that the Commission was considering any reporting obligation for DS3 events that fell short of significant infrastructure failures, the *Service Outage Order* referenced a reporting obligation for carriers in those cases where a DS3 is part of a SONET ring and some event causes the DS3 to convert to a switch-to-protect mode.⁹ This was an unexpected and surprising regulatory imposition since a carrier’s network operates exactly as it is designed to in a DS3 switch-to-protect event, operating in the vast majority of cases to avoid any substantial degradation of an end-user’s services.¹⁰

⁸ For example, Qwest supported the following proposal by the Industry-Led Outage Reporting Initiative (“ILORI”):

If a significant infrastructure transport component (defined as 48 working DS3’s) is within a service provider’s network and the service provider is responsible for maintenance of the DS3 transport components at both end points, providers would be required to report any failure of 48 working DS3’s that lasts for 30 or more minutes within the communications infrastructure and did not switch to protect. If an outage lasts 6 hours or more and involves 24 working DS3’s but less than 48 working DS3’s then a report would also be required. Anything less than 24 working DS3’s would not be reportable.

See Comments of Qwest Communications International Inc., filed herein on May 25, 2004, at 13-14 (“Qwest May 25, 2004 Comments”).

⁹ *See Service Outage Order*, 19 FCC Rcd at 16998-99 ¶ 134.

¹⁰ *See USTA Petition for Partial Stay* at 8 and its reference (footnote 27) to the International Engineering Consortium on-line tutorial regarding SONET rings, <http://www.iec.org/online/tutorials/sonet/index.html> at 6 making this clear.

III. ARGUMENT: THE DS3 REPORTING REGIME IS UNDULY BURDENSOME AND CAN BE MODIFIED MODESTLY TO BETTER ALIGN WITH COMMISSION OBJECTIVES REGARDING SIGNIFICANT INFRASTRUCTURE FAILURES

A. The DS3 Reporting Obligation Should Be Changed Or The Reporting Should Be Permitted On A Non-Real Time Basis

1. The DS3 Reporting Threshold Is Not Indicative Of A Material Infrastructure Failure

The obligation to report service outages at a DS3 level, as opposed to outages at higher facility levels such as OC3, OC24, will result in a substantial number of service disruption filings to the Commission with respect to these types of events alone. Clearly, the burden on the Commission will be significant to the extent that only one type of report will exceed the filing burden the Commission originally anticipated with respect to its entire service disruption reporting regime.¹¹ Additional system and human resources will be necessary to process this additional volume, increasing – rather than decreasing – the already high costs associated with federal regulation of carriers.

Nor are the filing burdens associated with DS3 reporting justified by the basic public interest framework upon which the Commission's current reporting regime was founded. As the Commission's DS3 reporting obligation is now framed, carriers are required to report an outage involving a single DS3 circuit associated with a single DS3 customer. Yet this type of service disruption does not constitute the degradation or failure of a carrier's network. Quite the contrary. Moreover, a disruption of DS3 circuits generally does not suggest a significant negative impact on the nationwide telecommunications infrastructure – the bedrock foundation for the service outage reporting rules in the first instance.

¹¹ See note 3, above.

A DS3 level outage below an OCn level outage rarely would implicate a material network failure. It is notable that DS3 level outages occur at a very low level of service, given that the end-user capacity of a DS3 can only represent 672 subscribers.¹² On the other hand, an OC3 would have to experience trouble for only 7.5 hours before it exceeded the 1,350 minute threshold associated with the DS3 metric and qualified as a reportable event. This is a more appropriate threshold since events impacting OCn-type services are usually larger events affecting more subscribers – potentially more than 2,000 end users in a single event.¹³

The above demonstrates that the current DS3 threshold requirement forces carriers to devote considerable personnel and financial resources to track and report what are **not** significant infrastructure outages. A more appropriate and moderate reporting requirement could be fashioned by requiring carriers to report only when outages impact OCn level services rather than DS3 level events. For these reasons, the Commission should reconsider its DS3 reporting requirement because the DS3 level is too low a threshold for service outage reporting.

2. Carrier DS3 (Non-Simplex) Reporting Burdens Are Substantial

Even assuming the Commission’s new service outage reporting rules were revised to eliminate reporting on DS3 simplex events or to modify those reporting obligations significantly (discussed below), Qwest’s DS3 reporting burden will remain substantial under the current 1,350 DS3 minutes metric. Qwest’s reporting burden, of course, converts into an administrative

¹² Attachment A hereto, Declaration of Dennis Pappas on Reconsideration (“Pappas Reconsideration Declaration”) at ¶ 3.c.

¹³ *Id.* at ¶ 4. While Qwest made this argument during the rulemaking portion of this proceeding (*see* Qwest May 25, 2004 Comments, at 12-14) and has no new evidence to offer on the matter, the Commission should review the filings arguing this point and reconsider its position based on the unwarranted burden imposed by its DS3 threshold.

burden for the Commission as well since human and system resources must be calibrated to the volume of carrier reports filed and analyzed.

Qwest estimates that under this metric it will be reporting DS3 (non-simplex) events at a level that will require it to either hire additional persons or reallocate responsibilities so that additional full time equivalent headcount will be dedicated to reporting these kinds of events. Qwest estimates that the incremental annual cost of reporting outages at the DS3 level instead of at the OCn level will be approximately \$2 million annually.¹⁴ Finally, Qwest estimates that reporting of (non-simplex) DS3 level outages would account for more than 80% of Qwest's total anticipated reportable events in a given year.¹⁵

Qwest already commits considerable resources to minimizing service outages in the first instance and to restoring customer services as quickly as possible when outages do occur. However, the new reporting obligations impose significant burdensome upfront costs in order to craft a monitoring, detection and reporting scheme that will allow Qwest to bear the burden of this reporting obligation into the future. These costs do not contribute to and, in fact, detract from service restoration efforts.¹⁶ Overall, these significant new burdens are not justified by the reporting regime's public interest framework with respect to public health and safety or quality customer service.

¹⁴ See Pappas Reconsideration Declaration at ¶ 3.a.

¹⁵ *Id.* at ¶ 3.b.

¹⁶ *Id.* at ¶ 3.d.

3. Alternatively, DS3 Reporting Should Be Mandated At Most On A Quarterly Basis

Should the Commission be resolute in its refusal to modify its DS3 reporting metric, it can substantially reduce the burden on it and its Staff with respect to DS3 reporting, as well as on the carriers required to report, by revising its rules to alleviate the most onerous aspect of the current rule while leaving in place a framework that would provide the Commission with the information it believes it needs to track the state of the nation's telecommunications infrastructure. This could easily be accomplished by allowing carriers to report DS3 level service outages on a quarterly basis instead of on a real-time basis.¹⁷

As demonstrated above, a DS3 level service outage is not a material network failure or degradation. For this reason, there is no Commission national welfare need for "real-time" reporting for such low-level outages.¹⁸ If the Commission revises its rules to require quarterly reporting for DS3 level reporting, the Commission will get the information it desires to allow it to act in the public interest without imposing unnecessary costs on carriers to provide real-time reporting on routine outages.

B. Carriers Should Not Have To Report DS3 Simplex Events

In addition to the *Petition for Partial Stay* filed by USTA, Qwest filed its own *Petition for Partial Stay* regarding the DS3 reporting obligation insofar as it applied to DS3 switch-to-protect events. Qwest's filing demonstrated that the Commission had provided inadequate notice in the *Service Outage NPRM* regarding the imposition of such a requirement, as well as

¹⁷ *Id.* at ¶ 5.

¹⁸ See Declaration of Dennis Pappas at ¶ 4 ("Pappas Stay Declaration"), appended as Attachment A to the *Qwest Petition for Partial Stay*, filed herein on Dec. 13, 2004, appended hereto as Attachment B.

presenting substantive arguments regarding why the obligation was arbitrary and capricious. In its *Stay Order*, the Commission rejected similar arguments as they were proffered by USTA.¹⁹

Still Qwest believes the arguments are sound. For this reason, it attaches its *Petition for Partial Stay* to this filing and incorporates by reference here those arguments as part of this *Petition for Reconsideration*. Yet in light of the recent *Stay Order*, Qwest here focuses on its more substantive, rather than procedural, arguments as to why the Commission should forego DS3 simplex reporting altogether. Like the arguments above regarding non-simplex DS3 reporting, the Commission has significantly underestimated the burden it will assume should it not modify its DS3 simplex reporting regime. Carrier reports will number in the thousands for these kinds of reports alone, a fact pattern not anticipated by the Commission nor one necessary to protect the public interest.

1. DS3 Simplex Events Are Not Outages Under The Rules

DS3 simplex events do not fall within the Commission’s definition of an outage. Such events do not represent a significant failure or degradation of a carrier’s network. And such events rarely, if ever, impair or even impact a customer’s service. Oftentimes the event itself is transparent to the customer. The redundancy the customer wanted as a part of its service purchase operates just as the customer wants it to do and, in fact, the way the network was designed to operate – the customer’s traffic is switched to protect the transmission of information and matters requiring review are usually resolved in a timely fashion generating no event of concern.

Given that such an event is not an “outage,” under the current rule definition, the Commission should remove the reporting obligation imposed by the *Service Outage Order* or it

¹⁹ *Stay Order* ¶ 4.

should initiate a *Further Notice of Proposed Rulemaking* to change the definition of the term “outage.”

2. The Reporting Burden Associated With A DS3 Simplex Reporting Obligation Far Exceeds The Commission’s Expectations. Even Under The Rule As Recrafted In The *Stay Order* The Burden Is Undue

The cumulative evidence already put on the record since the promulgation of the *Service Outage Order* demonstrates the extent to which the Commission’s DS3 simplex reporting mandate is at odds with the Commission’s own expectations regarding the total burden associated with its new service outage regime.²⁰ The Commission estimated that “the total number of reports, from all reporting sources combined, [would] be substantially less than 1,000 annually.”²¹ The record now demonstrates the huge chasm between the Commission’s expectations and the reality of such a filing regime in terms of report volumes.

The record demonstrates that the DS3 simplex reporting obligation will impose an excessive financial burden on carriers. As USTA correctly points out, the burden arises both in connection with the on-going management of the reporting process for the high volume of reportable events once they are detected and the need to modify carrier network management

²⁰ See *USTA Petition for Partial Stay* at 10-13 and Affidavits, Declarations attached thereto (e.g., BellSouth anticipates 1,011 simplex reports per year with an estimated cost of \$5.82M, of which only 0.3% to 0.4% of these events would result in customer-affecting outages; Verizon estimates a reporting volume of 1,000 reports with an annual cost of \$5.5M; SBC anticipates having to file 3,500 reports with each report requiring an average of 90 management man-hours). *And see Petition for Reconsideration of the United States Telecom Association*, ET Docket No. 04-35, filed Dec. 16, 2004 (“*USTA Petition for Reconsideration*”); *Qwest Petition for Partial Stay* at 5 (Qwest estimated that its local exchange carrier would file approximately 804 reports and its interexchange carrier 1,606 reports). See further Letter from Michael Fingerhut, Sprint, to Marlene Dortch, Secretary, Federal Communications Commission, ET Docket No. 04-35, filed Nov. 8, 2004 at 2; and see MCI Comments in Support of the United States Telecom Association’s Petition for Partial Stay, ET Docket No. 04-35, filed Nov. 26, 2004 at 3-4.

²¹ *Service Outage Order*, 19 FCC Rcd at 16946-47 ¶ 28 (Appendix D).

functions to begin to be able to identify potentially reportable events in the first place.²² In a DS3 simplex switch-to-protect environment, carrier operations support systems are not designed today to capture information about such events as if they were outages. Accordingly, carriers must incur great expense to modify their network management functions to even begin to come into compliance with the DS3 simplex rule.²³ As the USTA filing alone demonstrates, this per-carrier expense greatly exceeds the \$41,600 annual per-carrier cost estimated by the Commission in the *Service Outage Order*.²⁴

Clearly the burdens associated with DS3 simplex reporting are materially at odds with the Commission's expectations. Neither the Commission nor carriers are well positioned to assume this type of filing burden. Without permanent changes in the reporting requirement, substantial costs will be expended both by the Commission and carriers on additional headcount and system changes in order to accommodate this kind of reporting structure. The assumption of these additional costs has not been proven, at this time, to be in the public interest. As is demonstrated in this Petition and the growing record on this issue, the Commission should reconsider its decision to require carriers to report DS3 simplex events as outages.

Moreover, while the interim relief granted through the *Stay Order* was welcome, it remains the case that carriers will still realize burdensome administrative processes with respect to switch-to-protect events under the 5-day approach. For example, Qwest's local exchange company will still have to monitor and evaluate ALL switch-to-protect events in order to determine if the event itself is reportable under the 5-day rule (*i.e.*, did the service revert back to

²² See *USTA Petition for Reconsideration* at 6-8.

²³ *Id.* And see *Qwest Petition for Partial Stay* at 4, 7 and Pappas Stay Declaration at ¶ 4.

²⁴ *Service Outage Order*, 19 FCC Rcd at 16944-45 ¶ 24 (Appendix D).

its primary path within the 5-day window). As with the simplex reporting regime reflected in the *Service Outage Order*, the regime reflected in the *Stay Order* could continue to require diversions of resources from creating a quality service environment in the first instance, and resolving service problems expeditiously when they are discovered, to one focused on administrative reporting tasks. Qwest does not consider this kind of diversion to be in the public interest within the context of simplex reporting.

IV. CONCLUSION

For the above reasons, Qwest requests that the Commission grant the instant Petition for Reconsideration.

Respectfully submitted,

QWEST CORPORATION
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January 3, 2005

Their Attorneys

ATTACHMENT A

DECLARATION of Dennis Pappas in Support of Reconsideration

1. **Introduction.** In this declaration I, Dennis Pappas, provide background and supporting information for the reconsideration request by Qwest Corporation (“QC”) (local exchange carrier) and Qwest Communications Corporation (“QCC”) (interexchange carrier) (collectively “Qwest”) regarding DS3 level outage reporting. The information I provide is based largely on my own personal knowledge garnered from direct day-to-day personal involvement with the issues and topics discussed. Some of the information in this declaration has been provided to me by persons with personal knowledge and responsibility for the topics under discussion. I consider this information reliable and have relied on it in assessing the current outage reporting impacts and consequences.
2. **Professional Information.**
 - a. I am currently a Director in Qwest’s Public Policy organization representing Network Operations. While this position is lodged in the Public Policy Organization within Qwest, my particular group has subject matter expertise in Network Operations and Impacts and I have made this expertise available in the past through testimony in various state regulatory proceedings.
 - b. I have worked in the telecommunications industry for 26 years, mostly with Qwest and its predecessor companies U S WEST, Mountain Bell and AT&T. I have held numerous management positions all which have required expertise in network operations including, for example, Network Staff Manager and Regional Service Manager. Subsequent to this assignment I was the General Manager for Qwest’s Wholesale and Diversified markets. In this role, my team had the responsibility for about 75 competitive local exchange carrier (“CLEC”) accounts and among many other things, provided readouts to the CLECs on service affecting outages – my team monitored the progression of many of the CLEC outages to ensure timely response for service outages and in many instances, provided outage specific analysis to these customers on service affecting events. Prior to 1993, I worked as a Network Installation and Maintenance Technician (I&M Technician) and an Outside Plant Technician responsible for the placement, installation and repair of Qwest facilities. I have performed many of the tasks, such as trouble isolation and cable maintenance and repair, which are required by our technicians today in order to ensure that a customer outage does not continue for an extended period of time.
 - c. In my capacity as witness for the company since December 2001, and as part of my current job responsibilities, I have direct day-to-day involvement with

Qwest's employees responsible for network planning and operations with regards to state and federal regulatory mandates. In line with my job responsibilities, I have been heavily involved in discussions with those employees regarding the impact of the Federal Communications Commission's ("FCC" or "Commission") recent *Service Outage Order (In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830 (2004) ("*Service Outage Order*" or "*Order*"). I had previous experience in the outage process since I was the Qwest representative in NRIC VI, Focus Group II on voluntary reporting. The team I was involved with in the Focus Group was charged with developing a voluntary regiment that would allow additional insight into "major" network events. This team was also responsible for developing the final report and recommendations that stemmed from several months of continued work.

3. **The Existing DS3 Level Reporting Requirements Are Not Aligned From a Cost/Benefit Analysis.** In connection with Qwest's earlier-filed Petition for Partial Stay, filed December 13, 2004, I prepared and submitted a declaration regarding the impact of the Commission's new outage reporting rules specifically in connection with the Commission's mandate that carriers report DS3 simplex switch-to-protect events as outages. **The following estimates exclude these DS3 simplex events – i.e.,** the estimates in this declaration assume the Commission's new rules apply only to non-simplex DS3 events. The Commission should reconsider its DS3 level reporting obligation in light of the facts that:
- a. Even if there were no carrier obligation to report on DS3 simplex events, Qwest estimates it will experience DS3 (non-simplex) reportable events at a volume requiring material additional full time equivalent headcount; and that the incremental annual cost of reporting outages at the DS3 level instead of at the OCn level will be approximately \$2 million annually.
 - b. Reporting of non-simplex events at a DS3 level accounts for more than 80% of Qwest's total reportable events in a given year.
 - c. DS3 level outages occur at a very low level of service. The end-user capacity of a DS3 can only represent 672 subscribers.
 - d. The majority of the additional costs are front-end costs required only by the reporting regime and do not assist in the restoration process. In other words, a great part of the burden of the new reporting will result from the inordinate amount of time and headcount required to manually monitor the event to determine if and when it meets the threshold set forth in the proposed rules in order to meet the real-time (*i.e.*, 120 minutes, 72 hours, 30 days, etc.) reporting obligations of the new rules. QC will also require additional headcount to

conduct root cause analysis and produce the documentation that will be submitted into the reporting tool while other headcount will be dedicated to nothing more than reviewing, approving and submitting the extensive number of reports. It is our concern that focusing these resources on the task of reporting rather than repairing will take the emphasis away from more significant events and could actually lead to longer repair intervals as a result.

4. **A More Balanced DS3 Reporting Regime Would Focus on OCn or Above Reporting.** A more moderate threshold for reporting would be to require reporting on any outages impacting OCn level services that hit the 1,350 DS3 minutes threshold. An OC3 would have to experience trouble for only 7.5 hours before it exceeded the 1,350 DS3 minute threshold and resulted in a reportable event. This is a more appropriate threshold as events impacting OC-type services are usually larger events affecting more subscribers – potentially more than 2,000 end users in a single event.
5. **Alternatively, Non-Real Time Reporting of DS3 Events Would Be Sufficient Under a Public Interest Test.** Should the Commission not be willing to change the existing DS3 metric, it should exempt DS3 level events from the 3-step reporting requirements of the new rules and require only a quarterly reporting regiment for DS3 level circuits whereby carriers would submit confidential, quarterly reports describing the number of DS3 level reportable events they incurred in the prior quarter and the date and duration of each event. The Commission could then follow up to seek more detailed information for events if necessary. In that way, the FCC would have a view to these low level outages without requiring carriers to spend hours per event completing a report for what are routine events.

/s/ Dennis Pappas
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January 3, 2005

ATTACHMENT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)
) ET Docket No. 04-35
New Part 4 of the Commission's Rules)
Concerning Disruptions to Communications)

**QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION
PETITION FOR PARTIAL STAY**

I. INTRODUCTION AND SUMMARY

Qwest Corporation (local exchange carrier) and Qwest Communications Corporation (interexchange carrier) (collectively “Qwest”) request the Federal Communications Commission (“Commission”) to stay the implementation date of its new rule 47 C.F.R. § 4.9¹ insofar as the rule would compel reporting of DS3 simplex “switch-to-protect” events. The stay should extend through the conclusion of the reconsideration portion of the instant proceeding.

The DS3 service outage reporting regime adopted by the Commission does not advance its stated concerns and objectives when extended to DS3 simplex reporting of switch-to-protect events. The Commission sought to craft DS3 service outage rules that would allow monitoring of “a communications highway” carrying digital traffic that it considered part of this nation’s “communications infrastructure.”² Through such monitoring it believed it could assess those circumstances when that highway was unavailable for critical telecommunications functions.³

¹ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830, 16925-28 (“*Service Outage Order*”).

² *Id.* at 16836 ¶ 8.

³ *Id.* at 16855 ¶ 45.

While the goal is laudable, a requirement that carriers report DS3 simplex switch-to-protect events is not aligned with the regulatory objective and is not based on reasoned decisionmaking.

The public interest will not be harmed by a limited stay since there is no simplex reporting obligation at this time. The reconsideration process will provide commenting parties the opportunity to put on the record evidence regarding the costs and burdens of such a reporting requirement. That evidence can then be weighed against any putative public interest benefit.

Qwest is of the opinion that the evidence developed during the reconsideration process will demonstrate that DS3 simplex reporting is too burdensome not only to carriers but to the Commission itself to be sustained. Qwest expects the evidence to show that the simplex reporting obligation does not advance the Commission's overall objective regarding DS3 reporting and that there is no correlative benefit to the public in retaining the reporting requirement. Qwest is confident that, at the conclusion of the reconsideration process, the Commission will modify the simplex reporting requirement such that it becomes better aligned with the Commission's objective to be informed of events that actually represent material degradations of service or network performance, *i.e.*, outages.

II. ANY MANDATE THAT CARRIERS REPORT DS3 SIMPLEX EVENTS SHOULD BE STAYED PENDING RECONSIDERATION

A. There Was Inadequate Notice Of Any Contemplated DS3 Simplex Reporting Obligation

A limited stay of the simplex reporting aspect of the DS3 reporting requirements is warranted given that the *Service Outage NPRM*⁴ lacked adequate notice under the Administrative

⁴ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Notice of Proposed Rulemaking*, 19 FCC Rcd 3373 (2004) ("*Service Outage NPRM*").

Procedure Act (“APA”)⁵ that the Commission might construe a switch-to-protect event as an “outage.” The surprise to carriers associated with the Commission’s *Service Outage Order*’s establishment of a DS3 simplex reporting obligation is particularly obvious when one considers that the facts of a DS3 simplex event are at odds with the definition of “outage” proposed in the *Service Outage NPRM*, a definition ultimately adopted by the Commission.⁶ Specifically an “outage” is “a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider’s network.”⁷ Neither aspect of this definition is evident in a DS3 simplex event. Indeed, a DS3 switch-to-protect event operates exactly as it is designed to in the carrier’s network; and, in the vast majority of cases, operates to avoid any substantial degradation of an end user’s services.⁸

As a result of the inadequate notice regarding any potential DS3 simplex reporting obligation, commenting parties did not comment on simplex reporting in response to the *Service Outage NPRM*. The reporting obligation was articulated for the first time in the *Service Outage Order* when anecdotal evidence was cited in support of the requirement; and a single switch-to-protect event that did result in a service outage was mentioned.⁹ This is not the type of empirical

⁵ See 5 U.S.C. § 553(b).

⁶ See definition of outage in final rules, as adopted, for Part 4, § 4.5(a), in *Service Outage Order*, 19 FCC Rcd at 16923 (App. B).

⁷ *Id.*, 19 FCC Rcd at 16923 § 4.5.

⁸ See *Petition for Partial Stay*, filed herein by United States Telecom Association (“USTA”) on Nov. 19, 2004, at 8 and its reference (footnote 27) to the International Engineering Consortium on-line tutorial regarding SONET rings, <http://www.iec.org/online/tutorials/sonet/index.html> at 6 making this clear (“USTA *Petition for Partial Stay*” or “USTA *Petition*”).

⁹ *Service Outage Order*, 19 FCC Rcd at 16898-99 ¶ 134 (referencing communications with the Commission regarding an unspecified “number of network outages . . . where there [were] multiple failures on a SONET ring at different points in time” and “one case” where the DS3 apparently failed “five months after the initial failure”).

“evidence” or filed commentary that should form the basis of Commission rules, particularly rules that impose substantial and costly regulatory requirements on the wireline telecommunications industry.

The existing record lacks information about the costs to carriers to implement a simplex reporting regime and the benefit to the public in adopting such a reporting requirement. During the reconsideration phase of the current proceeding, the Commission will undoubtedly be provided with material evidence on the burdens associated with a carrier obligation to report DS3 simplex switch-to-protect events. A limited stay should be granted to allow for the production of that evidence unencumbered by an already imposed federal regulatory burden.

B. Qwest’s Petition Meets The Requirements
For A Grant Of A Partial Stay

A stay of the obligation to file DS3 simplex switch-to-protect reports is warranted since carriers are likely to be successful on the merits in terms of convincing the Commission to reverse the substance and scope of the existing obligation on reconsideration. Moreover, requiring carriers to implement this burdensome simplex reporting regime by January 2005 would cause carriers irreparable injury. On the other hand, no third parties will be harmed and the public interest will be served by granting a partial stay along the lines requested by Qwest.¹⁰

1. The Simplex Reporting Obligation Will Most Likely Be Modified
On Reconsideration And Carriers Will Be Successful On The Merits

The burdens associated with reporting DS3 simplex switch-to-protect events are substantial not only to carriers but for the Commission as well. The evidence recently put on the

¹⁰ The likelihood of success on the merits, irreparable injury, lack of harm to third parties and a benefit to the public interest are elements for the grant of a stay. *See Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“*Virginia Jobbers*”).

record in association with the USTA *Petition for Partial Stay*¹¹ demonstrates the extent to which the Commission's mandate is at odds with the Commission's own expectations regarding the total burden associated with its new service outage regime. The Commission estimated that "the total number of reports, from all reporting sources combined, will be substantially less than 1,000 annually."¹² Yet the USTA *Petition* demonstrates the extent to which the Commission's expectations deviate from reality in terms of report volumes.

In the USTA *Petition* at least three Regional Bell Operating Companies each have declared that they would estimate filing 1,000 or more reports for DS3 simplex reporting alone!¹³ Qwest estimates that its local exchange carrier would file approximately 804 reports and its interexchange carrier 1,606 reports.¹⁴ This means that – as to Qwest – the Commission's anticipated reporting burden is off by more than 100%.

Clearly the reporting burdens associated with simplex reporting are materially at odds with the Commission's expectations. For this reason, they should not be imposed (*i.e.*, should be stayed) during the pendency of the reconsideration process. The Commission should utilize the reconsideration process to allow for a more fully-developed record on the matter of simplex reporting so that it can either substantially revise its estimate of the total reporting burden associated with the new service outage reporting regime or it can modify its reporting regime to more align itself with the production of 1,000 reports annually.

¹¹ See USTA *Petition for Partial Stay* and Affidavits, Declaration attached thereto.

¹² *Service Outage Order*, 19 FCC Rcd at 16946-47, Appendix D (Final Regulatory Flexibility Analysis) ¶ 28.

¹³ See USTA *Petition for Partial Stay* at 10-13 (*e.g.*, BellSouth anticipates 1,011 simplex reports per year with an estimated cost of \$5.82M, and of those events, only 0.3% to 0.4% would result in customer-affecting outages; Verizon estimates a reporting volume of 1,000 reports with an annual cost of \$5.5M; SBC anticipates having to file 3,500 reports with each report requiring an average of 90 management man-hours).

2. Carriers, Including Qwest, Will Suffer Irreparable Injury If The DS3 Simplex, Switch-To-Protect Events Are Not Removed From The Initial Implementation Of The Service Reporting Rules And The Balance Of Equities Supports The Partial Stay

Wireline carriers across the country, large and small, incumbent and new entrants, will suffer irreparable injury if the Commission requires ubiquitous DS3 simplex reporting on an unqualified basis beginning January of 2005 or thereabouts, in advance of the development of a full record. Carriers will of necessity be forced to expend monetary and human resources as they strive to meet the reporting requirements associated with simplex reporting.

While economic injury is sometimes argued as an insufficient basis on which to find “irreparable injury,” such is not automatically excluded, particularly when the monetary losses cannot be recouped in the future through an adequate compensatory scheme.¹⁵ The Commission might find it not unreasonable, during the reconsideration process, to require carriers to absorb the economic burden (*i.e.*, costs) associated with implementing a reporting regime that could result in an additional 1,000 reports **in total across the industry** (not an insubstantial number in itself). However, the fact that the Commission’s estimates are so understated that the number of reports required for DS3 simplex reporting alone exceeds what the Commission previously assumed as the totality of the reporting burden for carriers demonstrates the significant scope of the economic injury carriers will really have to bear should they be obligated to report simplex events as if they were outages. Those losses will not be able to be recouped should the Commission change its decision regarding simplex reporting.

¹⁴ Declaration of Dennis Pappas, Attachment A, appended hereto at ¶ 4.

¹⁵ See *Virginia Jobbers*, 259 F.2d at 925. And see *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977) (“*Washington Metro.*”); *Sampson v. Murray*, 415 U.S. 61, 90 and n.64, 94 S. Ct. 937, 39 L. Ed.2d 166 (1974) (citing to *Virginia Jobbers*).

In a DS3 simplex switch-to-protect environment, not only has no outage legally occurred (considering the Commission’s definition) but carriers’ operations support systems (“OSSs”) are not designed to capture information about such events as if they were outages. As the Commission is aware, changes to OSSs generally require vendor support. That support must be preceded by fabrication.¹⁶ None of that has occurred at this point.

Moreover, nothing in the existing record evidences significant benefits to the public from simplex reporting such that those benefits could be said to outweigh what are generally quite significant costs anytime changes are made to OSSs. The Commission should secure such evidence during the reconsideration portion of this proceeding before imposing such a simplex reporting obligation.

Finally, a stay is warranted where there may be no absolute showing of irreparable injury if an applicant demonstrates a high probability of success on the merits,¹⁷ the issuance of the stay would not substantially harm others and the public interest is not compromised – a sort of balancing of the equities within the context of the facts at hand.¹⁸ Such is the case here. The

¹⁶ See, e.g., *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697, 23714 ¶ 42 (2003); *In the Matter of Provision of Directory Listing Information Under the Communications Act of 1934, As Amended, Notice of Proposed Rulemaking*, 17 FCC Rcd 1164, 1175-79 ¶¶ 22-29 (2002); *In the Matter of Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Notice of Proposed Rulemaking*, 16 FCC Rcd 7255, 7258-59 ¶¶ 10-11 (2001); *In the Matter of: Communications Assistance for Law Enforcement Act, Further Notice of Proposed Rulemaking*, 13 FCC Rcd 22632, 22648 ¶ 30 (1998).

¹⁷ See *Virginia Jobbers*, 259 F.2d at 925 (an “injury held insufficient to justify a stay in one case may well be sufficient to justify it in another, where the applicant has demonstrated a higher probability of success on the merits[.]”).

¹⁸ See *Washington Metro.*, 559 F.2d at 843-44 (acknowledging a standard governed by the “balance of equities” when an applicant’s chance of success on the merits might be questionable, but noting that such a balanced approach might properly result in “[a]n order maintaining the status quo . . . when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on

equities of the instant situation are all with the carriers who were surprised by the DS3 simplex, switch-to-protect obligation in the first place and that will be unfairly burdened by its implementation.

3. Third Parties Will Not Be Harmed By Granting A Partial Stay

The extension of DS3 reporting into the area of simplex switch-to-protect reporting was unanticipated. Such reporting does not occur at this time. Thus, no customers and no public interest organizations – be they formal regulatory commissions or agencies associated with public health and welfare – have a settled expectation regarding this kind of information or a reliance on receiving it. Staying the requirement for broad-based, unconditional DS3 simplex reporting, therefore, will do no harm to these third parties. Rather, the partial stay would essentially leave matters as they exist today until a more complete record is developed on the costs and benefits of proceeding with a more complex and costly reporting regime for simplex.¹⁹

Moreover, as has been argued by carriers, a customer's service is almost never impaired or impacted when a switch-to-protect situation develops. Oftimes the event itself is transparent to the customer. The redundancy the customer wanted as a part of its service purchase operates just as the customer wants it to do and, in fact, the way the network was designed to operate – the

the movant.”). *And see Memorandum Opinion and Order, TCI Cablevision of Dallas, Inc.*, 15 FCC Rcd 7379 ¶ 2 (2000) (citing to *Washington Metro.*; other citations omitted). *And see also Skillern v. Proconier*, 469 U.S. 1182, 1184, 105 S. Ct. 945, 83 L. Ed.2d 956 (Brennan, J., Marshall, J (dissenting) (“ . . . [w]hile ‘the movant need not always show a “probability” of success on the merits,’ he must ‘present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities . . . weighs heavily in the favor of granting the stay[.]’” (citation omitted).).

¹⁹ *See Washington Metro.*, 559 F.2d at 844; *District 50, United Mine Workers of America v. Int'l Union, United Mine Workers of Am.*, 412 F.2d 165, 168 (D.C. Cir. 1969) (“The usual role of . . . preliminary [relief] is to preserve the status quo pending the outcome of litigation[.]” (citation omitted).).

customer's traffic is switched to protect the transmission of the information and matters requiring review are usually resolved in a timely fashion resulting in no event of concern.

4. A Partial Stay Is In The Public Interest

At this point, the record contains evidence of substantial costs and burdens associated with simplex reporting and no countervailing evidence supports any public benefit in such reporting. A partial stay, for a limited period of time, to allow for the development of a full record and a final decision based on facts and data is certainly in the public interest. Such a decision avoids the burdens (both monetary and human) associated with the implementation of a regulatory mandate that has not been fully analyzed.

III. CONCLUSION

For all the above reasons, the Commission should grant a limited partial stay of its DS3 reporting rule so that carriers are not required to file DS3 simplex event reports during the pendency of the reconsideration process. Wireline carriers affected by the rule are likely to prevail on the merits and persuade the Commission to eliminate the requirement as it is currently framed during the reconsideration process. No party will be harmed by a limited partial stay, since no similar rule exists at this time and the partial stay will simply extend the *status quo*. Moreover, the grant of a limited stay will alleviate the burden not only on carriers but on the Commission as well, a burden that far exceeds that originally anticipated by the Commission. Finally, the public interest will be advanced by not burdening carriers with substantial costs that

are either not recoverable or that must be passed onto consumers in the form of higher prices for the costs of goods sold. A partial stay is warranted in the instance case under the law and the equities.

Respectfully submitted,

QWEST CORPORATION
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December 13, 2004

ATTACHMENT A

DECLARATION OF DENNIS PAPPAS

1. **Introduction.** In this declaration I, Dennis Pappas, provide background and supporting information for the Qwest Corporation (local exchange carrier) and Qwest Communications Corporation (interexchange carrier) (collectively “Qwest”) Petition for Partial Stay filing regarding DS3 simplex outage reporting. The information I provide is based largely on my own personal knowledge garnered from direct day-to-day personal involvement with the issues and topics discussed. Some of the information in this declaration has been provided to me by individuals with personal knowledge and responsibility for the topics under discussion. I consider this information reliable and I have, in fact, relied on it in assessing the current outage reporting impacts and consequences.

2. **Professional Information.**
 - a. I am currently a Director in the Public Policy organization representing Network Operations. While this position is lodged in the Public Policy organization within Qwest, my particular group has subject matter expertise in Network Operations and Impacts. I have made this expertise available in the past through testimony in various state regulatory proceedings.

 - b. I have worked in the telecommunications industry for 26 years, mostly with Qwest and its predecessor companies U S WEST, Mountain Bell and AT&T. I have held numerous management positions all which have required expertise in network operations, including, for example, Network Staff Manager and Regional Service Manager. Subsequent to this assignment I was the General Manager for Qwest’s Wholesale and Diversified markets. In this role, my team had the responsibility for about 75 competitive local exchange carrier (“CLEC”) accounts and among many other things, provided readouts to the CLECs on service affecting outages – my team monitored the progression of many of the CLEC outages to ensure timely response for service outages. Prior to 1993, I worked as a Network Installation and Maintenance Technician (I&M Technician) and an Outside Plant Technician responsible for the placement, installation and repair of Qwest facilities. I have performed many of the tasks, such as trouble isolation and cable repair, which are required by our technicians today in order to ensure that a customer outage does not continue for an extended period of time.

 - c. Since December 2001, in my capacity as witness for the company, and as part of my current job responsibilities, I have direct day-to-day involvement with Qwest’s employees responsible for network planning and operations with regards to state and federal regulatory mandates. In line with my job responsibilities, I

*Attachment A
Declaration of Dennis Pappas
December 13, 2004*

have been heavily involved in discussions with those employees regarding the impact of the Federal Communications Commission's ("Commission") recent *Service Outage Order*.¹ I had previous experience with the outage process since I was the Qwest representative in NRIC VI, Focus Group II on voluntary reporting. The team I was involved with in the Focus Group was charged with developing a voluntary regiment that would allow additional insight into "major" network events. This team was also responsible for developing the final report and recommendations that stemmed from several months of continued work.

3. **Reporting Under Previous Rules.** In 2003, Qwest filed a total of 8 final outage reports pursuant to 47 C.F.R. § 63.100. To date, in 2004, Qwest has filed 9 such reports. Since 1998, we have seen these reports go from 36 outage reports to 8 last year.
4. **DS3 Simplex Reporting.** At this time, Qwest estimates that DS3 simplex reporting would result in at least 804² reportable events for Qwest Corporation ("QC") (its local exchange carrier) and 1,606 reportable events for Qwest Communications Corporation ("QCC") (its interexchange company).³ The Commission should stay its DS3 simplex

¹ *In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 16830 (2004).

² Because of certain limitations in the historical data from which this number was calculated, I believe the number of QC simplex reportable events is slightly higher than 804 but at this time I cannot provide an exact number.

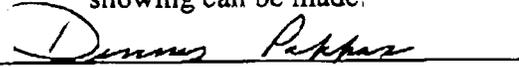
³ On November 19, 2004, Qwest filed an *ex parte* with the Secretary of the Commission in which it described its then-existing estimates of the number of reportable events that would result to Qwest from the Commission's DS3 service outage reporting rules. In that *ex parte*, Qwest estimated that QC would have 1,400 reportable DS3 simplex events and QCC would have 1,600 reportable DS3 simplex events. The numbers used in that *ex parte* were derived by reviewing actual tickets to see if their duration would meet or exceed the threshold set forth in the proposed rules.

Qwest continues to review its data and to assess the requirements of the *Order* based on activity in relation to this docket. Subsequent to Qwest's *ex parte*, the United States Telecom Association ("USTA") filed a Petition for Stay regarding the DS3 simplex reporting obligations. In reviewing the attached Declarations to that Petition, it became clear to me and others at Qwest that there were multiple ways of counting "an outage." Qwest had utilized one way, *i.e.*, the counting of numerous services within a single sheath, while the USTA Declarants used a different counting mechanism. Specifically, USTA Declarants appear to have counted a cable cut as a single event not taking into consideration the services on the facility. Utilizing the USTA counting methodology, the number of additional reports for Qwest associated with DS3 simplex reporting (and for total DS3 reporting) has dropped somewhat but obviously remains substantial.

reporting obligation since it was imposed on the industry without adequate notice and without any meaningful cost/benefit analysis.

- a. A DS3 simplex switch-to-protect event is not an “outage” under the Commission’s own definition of the term because there is no degradation of service to the customer and no failure or degradation of the carrier’s network. In fact, the act of switching to protect occurs so quickly (50 milliseconds) that it is transparent to the end user. While Qwest’s network might record that this action occurred, its network systems are not designed to store this information in a manner that renders its retrieval simple or cheap (*e.g.*, in a “file”). Rather, the information is logged and stored; and either a person or a newly-developed system must be created to capture the detail necessary to determine if an outage report is necessary.
- b. There is no record evidence of the costs or benefits associated with DS3 simplex reporting. Rather, there is only anecdotal evidence submitted by the Commission itself without rigorous analysis.
- c. The over 2,000 reports for DS3 simplex reporting by Qwest alone represents 100% more reports than the Commission anticipated all carriers would be filing with respect to all of the new reporting obligations under the Service Outage Order. *See Service Outage Order, Appendix D (Final Regulatory Flexibility Analysis), 19 FCC Rcd at 16946-47 ¶ 28.*
- d. The new reporting requirements described above will result in additional costs associated with the manual operations. This is driven by the need to have constant monitoring of the event to determine if and when it meets the threshold set forth in the proposed rules. QC will also require additional headcount to conduct a route cause analysis and produce the documentation that will be submitted into the reporting tool while other headcount will be dedicated to nothing more than reviewing, approving and submitting the extensive number of reports.

- e. Not only does the new reporting obligation significantly increase costs and burdens on carriers but on the Commission as well since it will be receiving twice as many reports from just one carrier as it anticipated receiving for all reporting, but the public interest inherent in such a reporting regime has not been demonstrated. Simplex events in no manner reflect material defects in carriers' network infrastructures or substantive customer service impediments, the Commission's stated objectives in fashioning the requirement in the first instance. For these reasons, Qwest is asking for a stay of this requirement until such a showing can be made.



Dennis Pappas
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December 13, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION PETITION FOR PARTIAL STAY** to be 1) filed with the FCC via its Electronic Comment Filing System, and 2) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

Richard Grozier
Richard Grozier

December 13, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST CORPORATION AND QWEST COMMUNICATIONS CORPORATION PETITION FOR RECONSIDERATION** to be 1) filed with the FCC via its Electronic Comment Filing System, and 2) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpweb.com.

Richard Grozier
Richard Grozier

January 3, 2005