

that had an effective SGAT on file with a state commission to amend its SGAT to conform to the FCC's national standards. The FCC set a November 9, 2000 deadline for filing the required SGAT amendments, with changes to take effect within 60 days (i.e., by January 8, 2001).

In October, 2000, Qwest and two other ILECs petitioned the FCC for conditional waivers of those standards, most relevantly, with respect to the 90-day provisioning interval, conditioned on compliance with company-proposed alternative standards. In Order No. 00-2528, the FCC granted Qwest's petition subject to certain modifications: the alternative intervals had to be "reasonable," and would continue in effect pending FCC actions on petitions for reconsideration of the national standards. The FCC specifically stated that "[t]o be deemed reasonable, . . . Qwest's commitments must include application processing and provisioning deadlines for physical collocation that are significantly shorter than those prevalent prior to the Collocation Reconsideration Order." (FCC Order No. 00-2528 at p. 6). The FCC also set a November 22, 2000 deadline for filing the necessary amendments. In addition, the FCC clarified the earlier order by stating that an ILEC needed to amend its SGAT only in states "that have not affirmatively established application processing and provisioning intervals for physical collocation." (*Id.* at p. 3). Although provisioning intervals are currently the subject of Docket UM 975, no order has yet been issued and, therefore, Qwest must amend its Oregon SGAT in order to comply with the terms of the FCC's waiver approval.

On November 22, 2000, Qwest filed a request that we "allow Section 8.4 of Qwest's [SGAT] to be modified through operation of law by the physical collocation provisioning intervals set by the FCC and set forth in Exhibit 2, hereto." That exhibit, affixed to this Order as Appendix A, is a table showing Qwest's installation intervals for various types of collocation arrangements. In support of its request, Qwest stated that the FCC had required Qwest to amend its SGAT to comply with FCC Order No. 00-297, as amended by FCC Order No. 00-2528, described above.

Separate sets of comments were timely filed by Advanced TelCom Group, Inc., Electric Lightwave, Inc., and Allegiance Telecom of Oregon, Inc. as a group (Joint Commenters) and by AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Oregon (AT&T). The Joint Commenters made three points: (1) Qwest's Compliance Filing fails to meet the requirements of Sections 251 and 252 of the Act, (2) Qwest didn't amend the SGAT, but instead filed a "barely legible chart," and (3) if this amendment is to take effect at all, it should be under the same terms as the originally-filed SGAT. AT&T stated that "Qwest's filing does not comply with the FCC's requirement, and...AT&T requests that the Commission order Qwest to withdraw its filing and re-file the appropriate tariff and SGAT amendments."² AT&T then listed a number of infirmities in the Qwest amendment: (1) Qwest's SGAT proposes exceptions to the 90-day provisioning interval which the FCC did not approve, (2) the FCC's waiver was narrower in scope than the

² AT&T Comments, page 1.

contents of the amended SGAT section 8.4, (3) the scope of the forecasting requirements Qwest imposes on CLECs was not reviewed by the FCC, and (4) the FCC limited Qwest's response time to unforecasted provisioning requests to an additional 60 days. Qwest responded generally by asserting that substantive issues should be resolved in the UM 823 workshops and that it has properly interpreted the FCC's orders. It further noted that the intervals that Qwest is currently proposing on an interim basis were all specifically adopted by the FCC pending reconsideration of its collocation rules.

DISCUSSION

The SGAT is, essentially, an irrevocable offer to every competitor that wishes to obtain access to Qwest's network. It is not, however, merely for the benefit of each potential competitive local exchange carrier (CLEC). The SGAT provides a Bell operating company (BOC), such as Qwest, with a valuable tool: it is a simple way for the BOC to demonstrate that it complies with the requirements of Sections 251 and 252 of the Act, thereby avoiding a laborious review of its behavior in each negotiated interconnection and collocation agreement. For the smaller or mid-sized CLEC, the SGAT is a means to obtain an agreement that will cover all critical matters without having to go through the time and expense of engaging expert counsel to go head-to-head with a much larger and richer entity in complex negotiations. State commission approval certifies that the offer is compliant with federal and state law, is fair to the CLEC, insofar as it encourages local competition, and serves the public interest. The SGAT review process is set forth in the Act.

Section 252(f) of the Act provides as follows:

(1) IN GENERAL. – A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251³ and the regulations thereunder and the standards applicable under this section.

(2) STATE COMMISSION REVIEW. – A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253,⁴ nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

³ Section 251 sets forth, generally, the obligations of telecommunications carriers, including additional obligations of the incumbent local exchange carriers to provide their competitors with access to unbundled network elements (UNEs) collocation and wholesale discounts on retail services.

⁴ Section 253 concerns the removal of barriers to entry into the local exchange telecommunications services market.

- (3) **SCHEDULE FOR REVIEW.** – The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission –
- (A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or
 - (B) permit such statement to take effect.
- (4) **AUTHORITY TO CONTINUE REVIEW.** – Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).
- (5) **DUTY TO NEGOTIATE NOT AFFECTED.** – The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251.

In anticipation of USWC's SGAT filing, the Commission adopted OAR 860-016-0040, which provides as follows:

- (1) A Bell Operating Company may file a statement of generally available terms that comply with Sections 251 and 252 of the Act. Any person may file comments concerning the statement of generally available terms within 30 days of the filing of the statement. The comments shall be limited to the standards for review established in this rule.
- (2) The Commission will review the statement of generally available terms within 60 days of its submission, and either reject it or permit it to go into effect. The period for review may be extended if the submitting carrier agrees to a time extension. The Commission may continue to review the statement after it has gone into effect.

In our Order No. 00-327, finding that no other option was seriously open to us, we permitted Qwest's SGAT to go into effect:

"The Commission concurs with the opinions expressed by all of the commenting parties that, as identified in OAR 860-016-0040, we have only the three named alternative choices in our response to the SGAT filing by USWC. We also note that, based upon our reading of its Memorandum, USWC appears to be unlikely to accept the voluntary extension request that constitutes the second option. This is unfortunate, because we believe that this would be the simplest way to handle the SGAT review. The SGAT will

likely undergo considerable revision during the course of the Section 271 proceeding in docket UM 823 and, once in effect, changes to the SGAT document may become cumbersome. It is conceivable that each amendment to the original document might trigger a new 60-day review period and an additional item on our Public Meeting agenda. If the SGAT were merely filed but not in effect, competitive carriers would not be substantially disadvantaged, since USWC is free to offer the equivalent provisions as a standard agreement whenever a competitor requests interconnection. The competitor would then have the choice of accepting this standard agreement or entering into negotiations for some alternative arrangement.

Given USWC's position, however, we must decide between reviewing and issuing a decision on the acceptability of the SGAT by June 23, 2000, or allowing the SGAT to go into effect while we continue our review and analysis of that document. We agree with WSCTC and AT&T/WorldCom that the SGAT should not be approved as filed. There are sufficient bases for concluding that USWC has not made a clear case that the SGAT complies with federal and state law. Even if we did not share WSCTC's and AT&T/WorldCom's conclusions, we find that the 60-day review period is simply insufficient to adequately explore whether the SGAT meets all requirements of federal and state law as the Act and our rules demand. We therefore conclude that the only reasonable option is to permit the SGAT to go into effect while we conduct our review."

However, as noted in language just quoted, we also anticipated the current circumstances: ". . . changes to the SGAT document may become cumbersome . . . each amendment to the original document might trigger a new 60-day review period and an additional item on our Public Meeting agenda." Qwest's proffered amendment, regardless of any waiver Qwest may have received from the FCC, clearly raises the same substantive concerns and requires the same actions as in our previous Order. There is simply insufficient time to conduct the kind of necessary substantive review and render an opinion prior to the FCC's January 21, 2001 deadline. As with the original SGAT submission, we neither endorse nor approve of the substance of this new amendment or the proposed provisioning interval schedule contained in it. Rather, we allow the amendment to take effect and include the amended Section 8.4 in the review process already under way in Docket UM 823. Since CLECs are able to negotiate interconnection agreements regardless of the availability of an SGAT, they will not be prejudiced by our action.

ORDER

IT IS ORDERED that:

1. Pursuant to OAR 860-016-0040(2), the amendment to the Statement of Generally Available Terms filed by Qwest Corporation on November 22, 2000, in accordance with Section 252(f) of the Telecommunications Act of 1996, is permitted to go into effect.
2. The Commission hereby directs that this amendment to the Qwest Statement of Generally Available Terms be considered in the proceedings in Docket UM 823 and that such changes to that amendment as may be necessary to comply with federal and state law shall be made.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.