

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**IN THE MATTER OF THE PETITION FOR
ARBITRATION OF AT&T
COMMUNICATIONS OF THE PACIFIC
NORTHWEST AND TCG SEATTLE WITH
QWEST CORPORATION PURSUANT TO
47 U.S.C. § 252(b)**

DOCKET NO. UT-033035

REBUTTAL TESTIMONY OF THOMAS R. FREEBERG

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 3, 5, 17, 18, 19, 21, 30, and 34)

October 10, 2003

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I. IDENTIFICATION AND PURPOSE

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.

A. My name is Thomas R. Freeberg. My business address is 301 W. 65th St., Room 100, Richfield, Minnesota 55423-1559. I am a Director at Qwest Corporation ("Qwest"), with responsibilities for directing Qwest's efforts to comply with Sections 251, 252, and 271 of the Communications Act of 1934, as amended.

Q. ARE YOU THE SAME TOM FREEBERG WHO FILED DIRECT TESTIMONY IN THIS CASE?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR ANSWER TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the following testimony : (1) Direct Testimony of David L. Talbott ("Talbott Direct"), filed on behalf of AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively "AT&T") with respect to Issues 3, 17, 18, 19 and 21; (2) Direct Testimony of Douglas N. Hyatt ("Hyatt Direct") on behalf of AT&T, with respect to Issue 5; and (3) Direct Testimony of Michael J. Hydock ("Hydock Direct") on behalf of AT&T with respect to Issues 30 and 34.

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II. REBUTTAL TESTIMONY

A. Definition Of Tandem Switch (Issue 3).

2 **Q. IS QWEST'S PROPOSED DEFINITION IN THIS ARBITRATION THE**
3 **SAME AS THE DEFINITION THIS COMMISSION CONSIDERED AND**
4 **APPROVED FOR QWEST'S SGAT?**

5 A. Yes, it is. Qwest's proposed definition is the same as the definition in Qwest's SGAT.

6 **Q. IS QWEST'S PROPOSED DEFINITION IN THIS ARBITRATION**
7 **CONSISTENT WITH THE FCC'S RULES?**

8 A. Yes, it is. Qwest's proposed definition of a "tandem office switch" tracks FCC Rule
9 51.711(a)(3) *exactly*.

10 **Q. IS AT&T'S PROPOSED DEFINITION CONSISTENT WITH EITHER**
11 **QWEST'S APPROVED SGAT OR FCC RULES?**

12 A. No, it is not. AT&T proposes to add the qualification that its switch(es) only be
13 "capable" of serving a comparable geographic area. As stated in my direct testimony, this
14 is inconsistent with the plain language of the FCC's rule as well as this Commission's prior
15 decision in the *25th Supplemental Order*.¹

¹ Twenty-Fifth Supplemental Order; Order Granting In Part and Denying In Part Petitions for Reconsideration of Workshop One Final Order, *The Investigation Into U S WEST Communication's Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996; U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act*, Dkt. Nos. UT-003022, UT-003040, ¶¶ 15-19 (Feb. 8, 2002) ("*25th Supplemental Order*").

1 **Q. DOES MR. TALBOTT PROPERLY STATE QWEST'S POSITION ON THE**
2 **DEFINITION OF A TANDEM SWITCH?**

3 A. No. Mr. Talbott incorrectly asserts on pages 2-3 of his testimony that, "At bottom,
4 Qwest's position is that AT&T must demonstrate that it 'actually serves' and actually
5 performs tandem-switching functions within a comparable geographic area in order to
6 charge Qwest the tandem rate for termination of Qwest's traffic." Qwest's proposed
7 definition clearly does not state that AT&T's switch must function as a tandem in order for
8 AT&T to be entitled to charge the tandem switching rate, only that AT&T's switch must
9 serve a comparable geographic area as Qwest's tandem switch.

10 **Q. HAS QWEST PROPOSED A TEST TO DETERMINE WHETHER A SWITCH**
11 **SERVES A COMPARABLE GEOGRAPHIC AREA AS QWEST'S TANDEM?**

12 A. Yes, it has. Qwest's proposed test is attached to my direct testimony as Exhibit TRF-2.
13 Contrary to Mr. Talbott's assertions on page 5 of his testimony, Qwest does not require
14 either a regulator or Qwest to inspect AT&T's customer base. The test Qwest proposes
15 does not call for high thresholds of service nor does it require that AT&T's switch function
16 as a tandem. The test does require that AT&T certify that AT&T has loop facilities into
17 80% of the rate centers served by the Qwest tandem to which AT&T's switch is
18 interconnected. The loop facilities may be unbundled network elements, facilities
19 provided by a third party or AT&T-owned facilities similar to those AT&T shows on the
20 circular generic diagrams it has used to describe its network in previous arbitrations.
21 Once AT&T submits this certification to Qwest, Qwest accepts without further validation
22 that AT&T should bill Qwest at the tandem rate for all calls processed by that AT&T
23 switch for the duration of the contract, subject to any relevant change in law. This test is
24 not arduous and does *not* require that AT&T serve a specific number of customers in

1 100% of the Qwest rate centers.

2 **Q. DOES MR. TALBOTT DISPUTE QWEST'S PROPOSED TEST?**

3 A. No, he does not.

4 **Q. DO YOU AGREE WITH MR. TALBOTT'S ASSERTION ON PAGE 4 OF HIS**
5 **TESTIMONY THAT IN ADDITION TO DETERMINING THE PROPER**
6 **DEFINITION OF TANDEM SWITCH, THE COMMISSION SHOULD**
7 **DETERMINE THAT AT&T'S SWITCHES MEET AT&T'S PROPOSED**
8 **DEFINITION?**

9 A. No, I do not. Mr. Talbott's request is presumptive and premature. The purpose of the
10 interconnection agreement is to set forth the terms and conditions governing the parties'
11 relationship. The proper role of the Commission in an interconnection agreement
12 arbitration is to determine the disputed term, here the definition of a tandem switch. It is
13 not to assume the resolution of the definitional dispute, further assume a dispute as to its
14 application, apply specific facts, and decide a specific outcome under a yet-to-be-
15 implemented interconnection agreement. Once the definition is determined and the parties
16 are operating under it, they may or may not have a dispute concerning whether, on the
17 facts, a particular switch meets the definition. If such a dispute arises, the Commission
18 can address it based on the evidence then presented and then current. Without a
19 definition and without any implementation of it, no "dispute" is ripe for consideration here.

20 **Q. DOES MR. TALBOTT ACCURATELY CHARACTERIZE QWEST'S**
21 **WILLINGNESS TO APPLY WHATEVER DEFINITION OF A TANDEM**
22 **SWITCH THIS COMMISSION ORDERS FOR THIS AGREEMENT?**

23 A. No. On page 4 of this testimony, Mr. Talbott improperly predicts that, "If the

1 Commission does not determine now that AT&T's and TCG's switches are tandems for
2 purposes of reciprocal compensation, Qwest will not pay AT&T and TCG the tandem
3 rate when this contract is implemented and AT&T will have to come back before this
4 Commission to have it make the very determination AT&T seeks in this proceeding." Mr.
5 Talbott cites no basis for this prediction, and there is none. As I set forth above, it is
6 premature to predict a dispute concerning whether a switch does or does not meet a
7 definition yet-to-be-ordered into this new agreement, which is yet to be implemented by
8 the parties.

9 **Q. ARE THERE OTHER REASONS FOR DENYING AT&T'S REQUEST THAT**
10 **THE COMMISSION DETERMINE THAT AT&T'S SWITCHES MEET**
11 **AT&T'S PROPOSED DEFINITION?**

12 A. Yes. AT&T now proposes a new last sentence within its proposed definition of tandem
13 switch that states "For purposes of this Agreement, AT&T's [TCG's] switches in the State
14 are Tandem Office Switches." With this new sentence, AT&T not only improperly
15 changes the very nature of a definition, it creates enormous confusion as to how its
16 proposed definition is to be applied to the other carriers who will opt-in to this agreement.
17 Presumably, other carriers will wish to have their own names substituted for AT&T and
18 TCG, with the result that every carrier will claim, like AT&T and TCG here, that the
19 definition automatically operates as a fact-based finding that their switches *are* tandem
20 switches. This result is clearly wrong and renders the proposed definition meaningless.

21 **Q. WHAT JUSTIFICATION DOES MR. TALBOTT OFFER FOR WHY AT&T**
22 **AND TCG SWITCHES SHOULD RECEIVE TANDEM COMPENSATION?**

23 A. Mr. Talbott offers two justifications for why AT&T and TCG switches should receive

1 tandem compensation. First, Mr. Talbott attaches Exhibits DLT-2 through DLT-5 to his
2 testimony. These exhibits are maps of Washington which Mr. Talbott suggests show the
3 coverage of Qwest, AT&T, and TCG switches. Mr. Talbott improperly concludes that
4 since the areas "shaded in" on the maps are comparable, AT&T and TCG switches serve
5 comparable geographic areas. Second, Mr. Talbott asserts that AT&T and TCG's
6 switches serve a comparable number of Qwest's Washington rate centers as Qwest's
7 tandem switches.

8 **Q. DO YOU AGREE WITH MR. TALBOTT'S FIRST SUPPOSITION THAT THE**
9 **FACT THAT THE MAPS HE CONSTRUCTS COVER A COMPARABLE**
10 **GEOGRAPHIC AREA AS THE QWEST MAPS DEMONSTRATE THAT**
11 **AT&T AND TCG SERVE A COMPARABLE GEOGRAPHIC AREA?**

12 A. No. I have attached Exhibit TRF-7 which shows the geographic areas within each LATA
13 in Washington where Qwest is authorized to serve by the Commission in Washington.
14 The shaded areas are a compilation of all of the local exchange areas included in each
15 LATA consistent with Qwest's exchange maps contained in its tariffs on file with the
16 Commission. Standing alone the maps simply show where Qwest is authorized to provide
17 service. Nothing else. However, Qwest is serving customers *throughout* the shaded
18 area. How Qwest is serving those customers, however, that is what network
19 configuration is used by Qwest, cannot be gleaned from this map. I have also identified
20 the respective Qwest tandems used to serve customers in the respective LATAs.

21 A comparison of the maps provided by Mr. Talbott quickly shows that the areas
22 shaded on the maps simply show the authorized Qwest exchange areas. These are the
23 same areas in which AT&T is authorized to serve and consistent with its exchange maps
24 on file with the Washington Commission. This is not surprising since all new entrants rely

1 on Qwest's exchange maps. However, the fact that AT&T or TCG is *authorized to*
2 *serve* in these areas does not demonstrate whether they are completing calls throughout
3 the geographic area so as to qualify for tandem compensation under FCC Rule 51.711.
4 The maps Mr. Talbott provided do not demonstrate this fact. The maps only show the
5 aggregation of exchange maps where AT&T and TCG are authorized to provide service.

6 **Q. DO YOU AGREE WITH MR. TALBOTT'S SECOND CLAIM THAT ALL OF**
7 **AT&T'S AND TCG'S SWITCHES SERVE A COMPARABLE NUMBER OF**
8 **THE QWEST RATE CENTERS THAT ARE SERVED BY THE QWEST**
9 **TANDEM SWITCHES?**

10 A. No. Mr. Talbott provides no support for this claim. I believe he is simply asserting that
11 presumably both AT&T and TCG have requested and been assigned by the North
12 American Numbering Plan Administrator ("NANPA") the NPA/NXX codes associated
13 with the various rate centers encompassing their authorized exchanges within each LATA.
14 However, again there is no demonstration that the AT&T and TCG loops extend into the
15 relevant geographic area. Mr. Talbott's assertion does not demonstrate this fact. It
16 simply confirms what AT&T and TCG really say with their proposed language: AT&T
17 and TCG have loaded the necessary NPA/NXX codes to enable their switches to be
18 capable of serving a geographic area comparable to the Qwest tandem at some point in
19 the future, but there is no evidence that they are serving these areas today and certainly
20 nothing to bind AT&T to serve the area in the future.

21 **Q. DOES MR. TALBOTT DESCRIBE ANY MEANINGFUL CRITERIA FOR**
22 **DETERMINING WHEN, UNDER AT&T'S PROPOSED DEFINITION, A**
23 **SWITCH IS "CAPABLE OF SERVING" A GEOGRAPHIC AREA?**

1 A. No, he does not. I infer, from the maps he has submitted in support of his request that
2 AT&T's switches be deemed tandems, that he believes an AT&T switch is "capable of"
3 serving a geographic area if AT&T has merely received authority to serve the area and
4 has loaded numbers into the switch.

5 **Q. MR. TALBOTT RELIES ON THE INTERPRETATION OF THE FCC'S**
6 **WIRELINE COMPETITION BUREAU'S ("WCB'S") DECISION IN THE**
7 **VERIZON VIRGINIA ARBITRATION FOR SUPPORT OF HIS POSITION.**
8 **DO YOU AGREE?**

9 A. No. As I stated in my direct testimony, Qwest was not a party to that arbitration and did
10 not present the evidence and arguments it presents here nor did Verizon make the same
11 arguments Qwest makes here. Clearly, that arbitration did not involve or analyze past
12 decisions of this Commission. Moreover, AT&T's argument that this Commission's
13 definition of tandem switch must be changed to comport with the WCB's decision is
14 misplaced. This Commission's definition tracks the FCC's definition precisely and the
15 FCC has not changed its definition. Further, AT&T does not argue that *every*
16 determination of the WCB in that arbitration must now displace this Commission's prior
17 decisions. To the contrary, AT&T's arguments concerning the import of the WCB's
18 decision are selective. This Commission should evaluate the evidence presented here
19 against the background of its own recent determination of the definition of a tandem
20 switch.

21 **Q. WHAT DO YOU RECOMMEND TO THE COMMISSION REGARDING**
22 **ISSUE 3-DEFINITION OF A TANDEM SWITCH?**

23 A. The Commission should follow the precedent it established in the 271 proceeding and

1 require a true factual determination of whether a CLEC switch serves a comparable
2 geographic area as the Qwest tandem switch. This approach is also consistent with the
3 plain reading of the FCC's rules. The Commission should reject AT&T's proposed
4 "capable of" language and adopt the Qwest language consistent with Qwest's approved
5 SGAT. The Commission should also reject AT&T's premature request that it make a
6 fact-based finding in this proceeding that all of AT&T's switches are tandem switches.

B. Definition of Exchange Service (Issue 5).

7 **Q. WHO FILED TESTIMONY ON THIS ISSUE ON BEHALF OF AT&T?**

8 A. Douglas N. Hyatt provided testimony on behalf of AT&T regarding Issue 5.

9 **Q. MR. HYATT CLAIMS ON PAGE 5 OF HIS TESTIMONY THAT AT&T'S**
10 **PROPOSED DEFINITION IS "NOT CONTRARY TO THE COMMISSION-**
11 **DETERMINED LOCAL CALLING AREAS." IS THIS CLAIM CORRECT?**

12 A. No, it is not. AT&T's proposed definition and position conflict with the Commission rules
13 regulating local calling areas. As I set forth in my direct testimony, AT&T's proposed
14 language results in an expansion or elimination of local calling areas for calls placed to its
15 VNXX customers. WAC 480-120-265(2) states that the Commission will order
16 expansion of local calling areas "only for compelling reasons." The rule further states that
17 "[t]he commission will generally rely on long distance competition, local competition, and
18 optional calling plans that assess additional charges only to the participating customers, to
19 meet demand for alternate or expanded calling." AT&T's plan would not impose
20 additional charges on participating customers; AT&T plans to offer its VNXX "option"
21 free of charge. As I have testified, AT&T's proposal improperly shifts the costs of toll-
22 free calls from AT&T's customers onto Qwest's.

1 **Q. MR. HYATT CLAIMS ON PAGES 4, AND 9-10 OF HIS DIRECT**
2 **TESTIMONY THAT QWEST'S PROPOSED "EXCHANGE SERVICE"**
3 **DEFINITION IS CONTRARY TO INDUSTRY PRACTICE. DO YOU**
4 **AGREE?**

5 A. No. Qwest's definition is not new, not "vague," and does not "undermine the industry
6 practice." Qwest's definition is reflected in Qwest's Washington tariff and AT&T's own
7 Washington Price List. This definition is in numerous interconnection agreements and in all
8 14 of Qwest's in-region SGATs. Further, this definition, along with the other definitions in
9 Qwest's SGAT, was recently reviewed here as part of the 271 process. Neither AT&T
10 nor any other carrier objected to this SGAT definition, let alone made any of the dramatic
11 claims AT&T makes now.

12 **Q. IS MR. HYATT CORRECT IN HIS ASSERTION ON PAGES 9-10 OF HIS**
13 **TESTIMONY THAT QWEST'S PROPOSED DEFINITION WOULD**
14 **REQUIRE MAJOR CHANGES IN THE WAY CARRIERS RATE CALLS**
15 **TODAY?**

16 A. No. Mr. Hyatt claims that the industry has "always" rated calls on the basis of the NPA-
17 NXX assigned to the call. In making these statements, however, he ignores the important
18 fact that the industry has also historically and routinely assigned NXXs to specific rate
19 centers which serve customers physically located within the geographic boundaries of the
20 rate center. For example, the Central Office Code Assignment Guidelines ("COAG")
21 distributed by the Alliance for Telecommunications Industry Solutions ("ATIS") Industry
22 Numbering Committee, attached as Exhibit TRF-8, state: "It is assumed from a wireline
23 perspective that CO codes/blocks allocated to a wireline service provider are to be
24 utilized to provide service to a customer's premise physically located in the same rate

1 center that the CO codes/blocks are assigned. Exceptions exist, for example tariffed
2 services such as foreign exchange service.¹² Thus, in upholding a denial by the North
3 American Numbering Plan Administrator ("NANPA") of numbering resources to Sprint
4 and Level 3, the Iowa Utilities Board recently concluded that virtual NXX (sometimes
5 referred to in my testimony as "VNXX") is inconsistent with this COCAG guideline:

6 VNXX service does not meet this guideline, nor is it a tariffed service. As
7 presented in this docket, VNXX service uses a NXX code assigned to a specific
8 rate center to reach customers physically located in some other rate center in the
9 same LATA, depending on where the provider chooses to locate its point of
10 interconnection. The traffic is exchanged pursuant to the interconnection
11 agreement between the carriers, according to the VNXX providers. This
12 configuration will produce irregularities in the routing database system and
13 subsequently in the local exchange routing guideline (LERG), as well as require
14 the LEC to carry traffic between exchanges located anywhere in the LATA at
15 compensation negotiated or arbitrated for local interconnection purposes.

16 * * *

17 NANPA did not agree with Level 3's interpretation of the FCC's rules, nor does
18 the Board. Again, as described above, VNXX services are not local exchange
19 services, do not satisfy the applicable INC guidelines, and are, therefore, not
20 entitled to local numbering resources.³

21 The COCAG also states: "SPs [Service Providers] cannot change the rate center
22 on a code that contains ported TNs [Telephone Numbers]. Such changes are not

² Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008 § 2.14 (ATIS Aug. 15, 2003) ("COCAG").

³ Final Decision and Order, *In re Sprint Communications Company, L.P., and Level 3 Communications, LLC*, Dkt. Nos. SPU-02-11 and SPU-02-13, 2003 Iowa PUC LEXIS 229 at *29-30 (IUB June 6, 2003) (references to transcript omitted) ("*Iowa Sprint/Level 3 Decision*").

1 permitted because of the impact to customer calling patterns and associated charges."⁴

2 The ATIS Industry Number Committee Guidelines on thousand-block number pooling
3 (TBPAG), attached as Exhibit TRF-9, also refer to assignment of NXXs to specific rate
4 centers.⁵ For example, the TBPAG states:

5 Thousands-block number pooling, in the context of these guidelines, allows for
6 sharing of Central Office (CO) Codes (NXX Codes) among multiple SPs
7 [Service Providers] *serving the same rate area. All ten thousand telephone*
8 *numbers (TNs) within each NXX Code continue to be associated with the*
9 *same rate area designation (i.e., V&H coordinates), but can be distributed*
10 *among multiple SPs at the thousands-block (NXX-X) level. Examples of*
11 *uses for thousands-blocks for which these guidelines apply include plain old*
12 *telephone service (POTS), Centrex, Direct Inward Dialing (DID), wireless*
13 *service, facsimile, and coin phones.*⁶

14 The TBPAG further states:

15 *Thousands-block assignments will be made from NXX codes assigned and*
16 *utilized within a single rate area. All SP [Service Provider] switch rate area*
17 *boundaries, which cover the same geographic area, will participate in a single*
18 *industry inventory pool. If a single SP has a rate area with boundaries that cover*
19 *a unique geographic area different than any other SP, that SP will participate in a*
20 *separate industry inventory pool.*⁷

21 Accordingly, with these guidelines, carriers rely upon the NPA-NXX assigned to calls for
22 rating and routing because NXXs have been assigned to specific local calling areas or rate

4 COCAG § 3.9.

5 Thousands-Block Number (NXX-X) Pooling Administration Guidelines, INC 99-0127-023 (ATIS Aug. 15, 2003) ("TBPAG").

6 TBPAG § 1.0 (emphasis added).

7 TBPAG § 3.6.

1 centers.

2 **Q. DOES MR. HYATT PROVIDE ANY EVIDENCE THAT ANY CARRIER**
3 **OPERATING UNDER QWEST'S PROPOSED DEFINITION OF**
4 **"EXCHANGE SERVICE" HAS HAD TO MAKE THE MAJOR CHANGES TO**
5 **ITS BILLING SYSTEMS THAT MR. HYATT ALLEGES ARE REQUIRED?**

6 A. No, he does not.

7 **Q. DOES QWEST'S PROPOSED LANGUAGE REQUIRE THE PARTIES TO**
8 **IMPLEMENT SYSTEMS AND BILLING CHANGES TO IDENTIFY AND**
9 **ADDRESS VNXX TRAFFIC?**

10 A. No. I described in Exhibit TRF-5 to my direct testimony the means by which the parties
11 can address this traffic. The elaborate system changes Mr. Hyatt hypothesizes are not
12 necessary nor is Qwest suggesting them.

13 **Q. IS AT&T'S PROPOSED DEFINITION OF "EXCHANGE SERVICE"**
14 **CONSISTENT WITH INDUSTRY PRACTICES?**

15 A. No. AT&T sees no tie between a customer's assigned telephone number and the rate
16 center where the customer wants its calls delivered. AT&T's proposed definition would,
17 contrary to the industry numbering practices I discuss above, divorce NPA-NXXs from
18 the rate centers to which they are assigned. Under AT&T's approach, a customer
19 physically located anywhere in the state or country could request to be assigned an NXX
20 "associated" with an ILEC rate center anywhere in the state or country. As a result of
21 such assignment, carriers effectively eliminate local calling areas and toll charges. This is
22 because no carrier can rely on the NXX as a surrogate for the physical location of the
23 customer. Under AT&T's proposed definition, a customer physically located in New

1 York could be assigned a telephone number that appears to be an Olympia number.
2 AT&T does not dispute that under its proposed definition, calls between a Qwest
3 Olympia customer and the New York AT&T customer (assigned an Olympia NPA-
4 NXX) would be treated as "local" calls.⁸

5 Although AT&T claims that it does not assign numbers in this fashion, its proposed
6 definition does not prohibit (and would endorse) this practice. Regardless, even if AT&T
7 made a commitment not to assign numbers in this fashion, another CLEC opting into
8 AT&T's agreement would not necessarily make a similar one. Thus, under AT&T's
9 proposed definition of "Exchange Service," a call that crosses LATA and state boundaries
10 is a "local" call if NPA-NXX numbers match. Therefore, it is AT&T, not Qwest, that
11 seeks radical change to the way carriers interact today.

12 **Q. IS AT&T'S PROPOSED DEFINITION CONSISTENT WITH INDUSTRY**
13 **GUIDELINES ON NUMBER PORTABILITY?**

14 A. No. AT&T's proposed definition is inconsistent with number portability practices. Qwest
15 ports numbers provided that the original and ported numbers are from the same rate
16 center. Only service provider portability and location portability within a rate center are
17 supported at this time. AT&T endorses, through its exchange service definition, porting
18 between rate centers. Qwest follows 47 C.F.R. § 52.26(a) which states that local
19 number portability administration must comply with the recommendations of the North
20 American Numbering Council. The NANC's LNP Architecture Task Force Report

⁸ In the parties' Minnesota arbitration, AT&T conceded that calls between a Qwest St. Paul customer and the AT&T New York customer assigned an NPA-NXX in St. Paul would be treated as a "local" call. Similarly, in the parties' Colorado arbitration, AT&T conceded that calls between a Qwest Denver customer and the AT&T New York customer assigned an NPA-NXX in Denver would be treated as a "local" call.

1 provides that "location portability is technically limited to rate center/rate district
2 boundaries of the incumbent LEC due to rating/routing concerns."⁹

3 **Q. HAVE OTHER CARRIERS AGREED WITH AT&T'S PROPOSED**
4 **DEFINITION?**

5 A. Because this is a two-party arbitration, other Washington service providers have not
6 weighed in on this issue. In the recent Minnesota arbitration, however, other carriers
7 were permitted to comment on the parties' positions on this issue. Although AT&T claims
8 its position is consistent with "industry practice," it is notable that other Minnesota carriers
9 disagreed strongly with this characterization, and no other carrier endorsed it. For
10 example, the Minnesota Independent Coalition characterized AT&T's position as a
11 "radical new approach."¹⁰ Onvoy also provided comments opposing AT&T's language as
12 the functional equivalent of eliminating local calling areas.¹¹ In addition, many state
13 commissions have rejected "Virtual NXX" (VNXX) proposals such as the one AT&T
14 proposes in this proceeding. If AT&T's position were the "industry standard," as AT&T
15 suggests, then there would be wide support for AT&T's position.

⁹ North American Numbering Council, Architecture and Administrative Plan for Local Number Portability, NANC-LNP Architecture Task Force, § 7.3 (Apr. 25, 1997), attached as Exhibit TRF-10.

¹⁰ Reply Brief of the Minnesota Independent Coalition, *Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b)*, PUC Docket No. P442,421/IC-03-759, at 4-5 (Aug. 1, 2003).

¹¹ Onvoy, Inc. Brief, *Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b)*, PUC Docket No. P442,421/IC-03-759, at 7 (July 28, 2003).

1 **Q. ON PAGE 4 OF HIS TESTIMONY, MR. HYATT CLAIMS THAT QWEST'S**
2 **DEFINITION ALLOWS IT TO "SELECTIVELY APPLY ITS LOCAL**
3 **CALLING AREAS TO ITS COMPETITORS SO AS TO DESTROY ANY**
4 **COMPETITION IT FACES FOR ITS FX SERVICE." IS THIS CLAIM**
5 **CORRECT?**

6 A. No. Qwest's proposed definition puts enforcement in the hands of the regulator.

7 **Q. ON PAGES 14-19, MR. HYATT DISCUSSES HIS INTERPRETATION OF**
8 **VARIOUS FCC ORDERS RELATING TO RECIPROCAL COMPENSATION.**
9 **DO YOU AGREE WITH MR. HYATT'S ANALYSIS?**

10 A. No. Mr. Hyatt suggests that the FCC in the *ISP Remand Order*¹² eliminated the existing
11 distinctions between intraLATA toll traffic and local telecommunications traffic. The *ISP*
12 *Remand Order*, however, addresses only the treatment of Internet-bound traffic sent to
13 ISPs in the same local calling area as the calling party. The FCC did not address virtual
14 NXX traffic or the elimination of intraLATA toll traffic. Had the FCC intended (1) to
15 strip state commissions of their authority to define local calling areas and (2) to eliminate
16 the distinctions between intraLATA toll traffic, governed by the access charge regime, and
17 local exchange traffic, subject to reciprocal compensation under Section 251(b)(5), it
18 would have explicitly addressed the topic. Instead, the FCC emphasized that its order
19 did not eliminate the existing intraLATA access regime:

¹² Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-98 & 99-68, FCC 01-131, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002)

1 [W]e again conclude that it is reasonable to interpret section
2 251(b)(5) to exclude traffic subject to parallel intrastate access
3 regulations, because 'it would be incongruous to conclude that
4 Congress was concerned about the effects of potential disruption to
5 the interstate access charge system, but had no such concerns about
6 the effects on analogous intrastate mechanisms."¹³

7 Therefore, Mr. Hyatt is incorrect when he claims that the *ISP Remand Order*
8 eliminated the distinction between toll and local traffic and converted what has been
9 traditionally treated as intraLATA toll traffic into traffic subject to reciprocal compensation
10 under Section 251(b)(5). He is also incorrect that the FCC rescinded its findings in
11 paragraph 1035 of the *Local Competition Order*. Although I do not believe that the
12 Wireline Competition Bureau appropriately addressed virtual NXX in the *Verizon*
13 *Virginia Arbitration Order*,¹⁴ I do note that the WCB cited and relied on paragraph
14 1035 of the *Local Competition Order* in rejecting AT&T's proposal to have "LATA-
15 wide calling areas." In rejecting this AT&T proposal, the WCB stated that "state
16 commissions have authority to determine whether calls passing between LECs should be
17 subject to access charges or reciprocal compensation for those areas where the LECs'
18 service areas do not overlap." The WCB further stated that it "declined to disturb the
19 existing distinction in Virginia between those calls subject to access charges and those
20 subject to reciprocal compensation."¹⁵ Thus, according to the WCB decision AT&T

¹³ *Id.* ¶ 37 n. 66 (citing *Local Competition Order*).

¹⁴ Memorandum Opinion and Order, *Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, CC Dkt. Nos. 00-218, 00-249 and 00-251, 17 FCC Rcd 27039 (2002) ("*Verizon Virginia Arbitration Order*").

¹⁵ *Id.* ¶ 549.

1 relies upon, paragraph 1035 of the *Local Competition Order* remains applicable.

2 **Q. MR. HYATT ALSO CLAIMS ON PAGES 24-25 OF HIS TESTIMONY THAT**
3 **AT&T'S PROPOSED DEFINITION IS CONSISTENT WITH THE "CALLING**
4 **PARTY NETWORK PAYS" FRAMEWORK. DO YOU AGREE?**

5 A. No. The general principle underlying this framework is the cost causer should pay. It is
6 true that, for most services, the originating or calling party is the cost causer and ultimately
7 provides compensation for the network costs incurred. The originating caller is not
8 always the cost causer, however. There are exceptions, such as 800 toll service, FX-
9 service, and paging services where it is the terminating or called party who causes the cost
10 to be incurred by purchasing these services from the terminating provider. AT&T's
11 proposed definition violates cost-causation principles because it would permit subscribers
12 of VNXX service (the cost causers) to shift the cost of toll-free service onto the
13 originating caller. It is precisely because AT&T proposes to shift the cost of its VNXX
14 service onto Qwest that AT&T states it offers its VNXX service at no additional charge
15 to its VNXX customers (the cost causers).

16 **Q. ON PAGES 29 AND 30 OF HIS TESTIMONY, MR. HYATT DISCUSSES**
17 **PREEMPTION AND THE DIFFERENCE BETWEEN ISP-BOUND VNXX**
18 **TRAFFIC AND VOICE VNXX TRAFFIC. IS THIS TESTIMONY RELEVANT**
19 **TO THE DISPUTE OVER THE DEFINITION OF "EXCHANGE SERVICE?"**

20 A. No. The Commission is called upon here to perform a straightforward task: determine
21 which definition of "exchange service" proposed by the parties better comports with the
22 existing law. As I discussed in my direct testimony and in this rebuttal testimony, Qwest's
23 definition meets that standard, whereas AT&T's definition does not. Importantly, Qwest's

1 definition would not apply to *any* virtual NXX traffic because such calls do not begin and
2 end in the same local calling area. Therefore, AT&T's claims of FCC preemption would
3 not be implicated and need not be addressed in this proceeding.

4 **Q. DO YOU AGREE WITH MR. HYATT'S ASSERTIONS ON PAGE 30 OF HIS**
5 **TESTIMONY THAT ALL ISP-BOUND TRAFFIC, INCLUDING FX-LIKE**
6 **TRAFFIC, IS SUBJECT TO ONLY THE FCC'S JURISDICTION?**

7 A. No. As I stated above, AT&T's preemption arguments are misplaced in this definitional
8 dispute and, further, they are incorrect. The Commission is asked here to adopt terms for
9 a two-party interconnection agreement. This is not an industry-wide docket, nor is it a
10 generic docket on the nature of ISP-bound traffic or Commission jurisdiction. Therefore,
11 Mr. Hyatt is raising issues that are beyond the scope of this arbitration and this definitional
12 dispute. Also, this Commission has issued orders on the treatment of ISP-bound traffic,
13 and the *ISP Remand Order* expressly preserves those determinations.

14 **Q. MR. HYATT ARGUES ON PAGES 23 AND 34-35, THAT AT&T'S VNXX**
15 **OFFERING IS NOT "TELEPHONE TOLL SERVICE" UNDER THE ACT**
16 **BECAUSE AT&T DOES NOT CHARGE ITS CUSTOMERS SEPARATELY**
17 **FOR A VNXX. PLEASE RESPOND.**

18 A. Mr. Hyatt's argument is circular and highlights the problem with AT&T's position and
19 proposed definition. Under AT&T's interpretation, no service would be "telephone toll
20 service" so long as a carrier chose not to apply toll charges to it.

21 **Q. ON PAGE 25 OF HIS TESTIMONY, MR. HYATT CLAIMS THAT ADOPTING**
22 **QWEST'S DEFINITION OF "EXCHANGE SERVICE" WOULD ADVERSELY**
23 **"IMPACT COMPETITION." DO YOU AGREE?**

1 A. No. AT&T's claim that Qwest's definition would preclude it from competing and from
2 offering consumers "innate efficiencies" is erroneous. As I stated above, AT&T's position
3 violates the principle that the cost causer should pay. AT&T has the option today under
4 existing Commission rules to define its local calling areas as it chooses for its own retail
5 customers. If AT&T wanted to change its calling areas to enable its customers to have
6 larger "local" calling areas for which no retail toll charges applied, it could do so. Notably,
7 however, AT&T has *not* chosen to define local calling areas for retail purposes on the
8 basis of NPA-NXX or to otherwise modify its retail local calling areas. Instead, AT&T's
9 own tariffs adopt the Qwest local calling areas, which are defined based upon geographic
10 areas, not NPA-NXX's. Therefore, AT&T is currently only authorized to provide local
11 exchange service within Qwest's existing local calling areas.

12 Because AT&T can define its own local calling areas, the issue this dispute presents
13 is whether AT&T can unilaterally (1) alter the local calling areas of *Qwest* retail customers
14 and (2) overturn the existing intercarrier compensation regime by converting what are now
15 toll calls for which AT&T would pay access charges to local calls for which AT&T would
16 receive reciprocal compensation. Several other state commissions that have examined
17 virtual NXX proposals like AT&T's have rejected claims that such schemes benefit
18 competition or the public interest.

19 For example, the Rhode Island commission determined that a similar virtual NXX
20 proposal by Global Naps was not in the public interest "because it encourages rate
21 arbitrage and may undermine universal service."¹⁶

¹⁶ Final Arbitration Decision and Order, *Review of the Arbitrator's Decision in Global Naps, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Rhode Island*, Dkt. No. 3437, 2003 R.I. PUC LEXIS 9 (R.I. PUC Jan. 24, 2003) (adopting Arbitration Decision on "LATA wide" calling and VNXX); Arbitration

1 GNAPs' VNXX proposal will allow GNAPs to receive reciprocal compensation
2 in some cases while allowing GNAPs to avoid paying access charges in other
3 cases. Also, GNAPs' VNXX proposal could adversely impact VZ-RI's
4 [Verizon Rhode Island's] financial ability to satisfy its obligations as the carrier of
5 last resort and providing affordable phone service to rural and low income
6 customers. In addition, GNAPs' VNXX proposal could effectively increase a
7 VZ-RI retail customer's local calling area because the VZ-RI customer could call
8 a GNAPs VNXX customer without paying access charges. This development
9 would further undermine VZ-RI's ability to obtain access charges for intraLATA
10 calls. Essentially, GNAPs' VNXX proposal is similar to GNAPs local calling
11 area plan in regards to intraLATA toll calls except on a smaller scale.¹⁷

12 The state board in Vermont also recognized that rating calls as Qwest proposes
13 poses no harm to competition:

14 It is important to recognize that rating calls based upon origination and
15 termination points does not limit competition or provide an unfair advantage to
16 the incumbent telephone carriers. VNXX does not in anyway represent an
17 innovation of the sort that competition is intended to encourage. Rather, VNXX
18 is an artificial service that takes advantage of the manner in which NXX codes
19 are assigned as a means to avoid toll charges and is essentially a form of price
20 arbitrage. In effect, a CLEC using VNXX offers the equivalent of incoming 1-
21 800 service, without having to pay any of the costs associated with deploying
22 that service and instead relying upon Verizon to transport the traffic without
23 charge simply because the VNXX says the call is 'local.'¹⁸

Decision, *Arbitration of the Interconnection Agreement Between Global Naps, Inc. and Verizon-Rhode Island, Inc.*, Dkt. No. 3437, 2002 R.I. PUC LEXIS 20 at *47 (R.I. PUC Oct. 16, 2002) ("*GNAPs Rhode Island*").

¹⁷ *Id.*

¹⁸ Order, *Petition of Global NAPS, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Dckt. No. 6742, 2002 WL 32059712 at *11 (Vt. Pub. Serv. Bd. Dec. 26, 2002) ("*Vermont GNAPS Decision*").

1 **Q. ON PAGE 26 OF HIS TESTMONY, MR. HYATT CLAIMS THAT ADOPTING**
2 **QWEST'S DEFINITION OF "EXCHANGE SERVICE" WOULD ADVERSELY**
3 **AFFECT THE PUBLIC INTEREST. DO YOU AGREE?**

4 A. No. It is AT&T's proposal, not Qwest's proposal, that adversely impacts public interest.
5 The Commission's existing rules and definitions reflect its determinations of what types of
6 calls and calling arrangements support the public interest. As I demonstrated in my direct
7 testimony, AT&T's proposed definition conflicts with the Commission's rules, definitions,
8 and existing state law. AT&T's proposed definition serves only to facilitate a new scheme
9 that ignores existing state regulatory requirements.

10 Furthermore, AT&T's definition undermines the public policy of providing service in
11 accordance with a carrier's filed tariff. AT&T's virtual NXX proposal, which Mr. Hyatt
12 claims AT&T offers as part of its basic local exchange service offering, allows a customer
13 with virtual NXX service to make and receive local calls outside of the Commission-
14 authorized local calling area for that customer. As such, AT&T's virtual NXX service
15 allows for a customer-by-customer expansion of existing local calling areas without
16 Commission authorization.

17 Finally, AT&T also has provided no analysis or information on the impact on the
18 access charge regime of its proposal. Instead of providing such analysis or support, Mr.
19 Hyatt simply claims that this dispute is "really about" Qwest's alleged "attempt[] to recover
20 competitive losses" through access charges.¹⁹ However, the access charge regime existed
21 before the passage of the Act and currently applies to all carriers, including those that are
22 not parties to this arbitration. AT&T's virtual NXX proposal is a thinly-veiled attempt to
23 eliminate intrastate access charges and would have repercussions on revenues of Qwest

¹⁹ Hyatt Direct at 28, line 5-7.

1 and other carriers, local and interexchange, that AT&T either ignores or cannot quantify.
2 Recognizing this, every party submitting comments in the Minnesota proceeding on
3 AT&T's proposed definition opposed it and endorsed Qwest's definition.

4 The Commission should look past this two-party dispute and recognize the
5 statewide impact AT&T's language would have. Other CLECs that opt into AT&T's
6 agreement, if AT&T's position were adopted, would be able to ignore their tariffed
7 exchange areas and redefine calls as local or toll on a call-by-call basis. Adoption of
8 AT&T's language could lead to widespread virtual NXX use, resulting in the collapse of
9 the Commission's defined local calling areas and the associated intercarrier compensation
10 structure.

11 **Q. MR. HYATT CLAIMS ON PAGES 27-28 THAT QWEST INCURS NO**
12 **ADDITIONAL COSTS FOR HANDLING AT&T'S VNXX TRAFFIC AND**
13 **SHOULD BE "INDIFFERENT" TO WHETHER IT PAYS RECIPROCAL**
14 **COMPENSATION ON THIS TRAFFIC. DO YOU AGREE WITH MR.**
15 **HYATT?**

16 A. No. AT&T's definition would convert what is now traffic for which Qwest charges toll
17 rates and receives toll compensation to traffic for which Qwest would pay reciprocal
18 compensation and forego toll compensation.

19 In addition, this Commission respects the principles of cost-causation: applying
20 costs to the carrier or subscriber that causes them. What AT&T is attempting to do is
21 shift the costs AT&T and its customers should assume for providing service onto Qwest
22 and its customers. As I discuss below with regards to tariffed FX service, when Qwest
23 provides FX service, the FX customer pays for the long haul transport that Qwest
24 provides. AT&T, however, intends to offer its VNXX "service" as a basic local exchange

1 offering at no additional cost to the cost causer. It is able to do so not because of
2 "innovative network design" but because AT&T improperly shifts the cost of transporting
3 the call to Qwest. The state commission in California saw through this scheme in an
4 arbitration between Verizon and Pac-West.²⁰ The California commission rejected all
5 arguments that Verizon must prove it incurs additional transport costs. The California
6 commission disagreed that customer location is "immaterial" and instead found that that
7 "[c]learly, uncompensated costs are borne by the originating network provider" ²¹ In
8 fact, the California commission characterized the same claim that AT&T makes here (that
9 "a cost differential between VNXX and local calls must be found") as a "red herring."²²
10 The California commission summarized the basis for its decisions on virtual NXX as
11 follows:

12 The prior arbitration decisions reflect a consistent Commission
13 application of the rule of cost causation. The principle would be
14 violated if the Commission allowed competitors to avoid paying for
15 transport over another carrier's network in order to long haul
16 interexchange traffic terminated in disparate rate centers. To allow such
17 long-haul transport without transport compensation would be unfair for
18 the ILEC, which bears the cost of its transport network. Further, such
19 a policy in regards to VNXX, once widely adopted by the CLEC
20 industry would potentially result in a shift in the cost of such transport to

²⁰ Decision 03-05-075, *Verizon California, Inc. (U-10021-C) Petition for Arbitration with Pac-West Telecomm., Inc. (U5266-C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application No. 02-06-024, 2002 Cal. PUC LEXIS 945 (Cal. PUC May 22, 2003) ("*Pac-West California*").

²¹ *Pac-West California*, 2002 Cal. PUC LEXIS 945 at *9.

²² *Id.*

1 local exchange subscribers rather than to the subscribers of VNXX
2 service which is the beneficiary of the foreign exchange like service.²³

3 The California commission reasoned that requiring Verizon to handle virtual NXX
4 traffic without transport compensation similar to the compensation an incumbent receives
5 for providing FX service would be contrary to the goals of the Act to foster meaningful
6 competition:

7 The policies of this Commission and the Telecom Act precisely intends for
8 carriers to invest in facilities based on the innovation incentives inherent in an
9 openly competitive market. We refrain from creating an incentive that distorts
10 marketplace investments by requiring incumbents to either subsidize its
11 competitors' or shift costs to local exchange customers for inter-exchange traffic
12 that is destined beyond the origination rate center. Such policy would encourage
13 CLECs to become providers of termination facilities, to collect reciprocal
14 compensation and thereby avoid investment in multiple points of interconnection,
15 switching and transport, and result in less network redundancy than facilities
16 based competition economics would otherwise dictate. The competitive
17 challenge is both on the CLECs and ILECs to invest wisely in origination and
18 termination facilities.²⁴

19 The Iowa Utilities Board expressed similar concerns that virtual NXX permits the
20 VNXX carrier to "ride" the incumbent's network "for free."²⁵

21 **Q. IS THE VERIZON VIRGINIA ARBITRATION DECISION RELEVANT**
22 **HERE?**

23 A. No. Unlike this case, Verizon apparently did not show harm or offer any methodology
24 for identifying VNXX traffic. Exhibit TRF-4, attached to my direct testimony, presents a

²³ *Id.* at *10-11 (footnote omitted).

²⁴ *Id.* at *12-13.

²⁵ *Iowa Sprint/Level 3 Decision* at 13.

1 workable methodology for identifying this traffic. Mr. Hyatt does not challenge this
2 methodology. The California PUC decided it is not the ILEC's responsibility to determine
3 methodology in this case.²⁶

4 **Q. MR. HYATT CONTENDS ON PAGE 21 OF HIS TESTIMONY THAT AT&T'S**
5 **"INNOVATIVE" NETWORK DESIGN AND TECHNOLOGY PERMITS IT**
6 **TO OFFER VNXX AS A BASIC LOCAL SERVICE TO ITS CUSTOMERS.**
7 **PLEASE RESPOND.**

8 A. AT&T's virtual NXX proposal does not rely on any innovation or new technology. The
9 ability to load NXXs from many different exchanges into a switch, expecting all other
10 carriers with more extensive networks to carry originated calls to a single point in the
11 state or LATA, is not application of an "innovative" technology.²⁷ Furthermore, if
12 AT&T's definition of "exchange service" were adopted, AT&T would be able to offer
13 its customers VNXX service as part of its local service offering because Qwest is
14 providing the long-haul transport, not because AT&T has created some new
15 "innovative" network design. The California commission and Vermont board decisions I
16 discuss above and the South Carolina decision I discussed in my direct testimony
17 recognize that what AT&T proposes is arbitrage, not innovation.

18 **Q. ON PAGES 19-23 OF HIS TESTIMONY, MR. HYATT COMPARES AT&T'S**
19 **VXXX PROPOSAL TO QWEST'S TARIFFED FX SERVICE. ARE THESE**

²⁶ *Pac-West California*, 2002 Cal. PUC LEXIS 945 at *8-9.

²⁷ In fact, AT&T's claim that loading these NXXs into its switches qualifies as an "innovative new technology" further highlights the problems with its proposed definition of a tandem switch that I discuss in connection with Issue 3.

1 **SERVICES THE SAME?**

2 A. No. As Mr. Hyatt testifies, AT&T offers VNXX at no additional charge as part of its
3 basic local exchange service offering.²⁸ Qwest does not offer FX service as part of its
4 basic local exchange service offering of local calling in unlimited volume at a flat rate.
5 Furthermore, Qwest does not provide FX service to customers in Washington at no
6 additional charge. Instead, Qwest charges the FX customer for the additional transport
7 Qwest provides. AT&T cites no tariff for its provision of VNXX nor otherwise describes
8 its Washington "offering." Accordingly, it is unclear what AT&T "VNXX proposal" is at
9 issue in Washington to be compared to Qwest's FX service, which is tariffed. I discuss
10 differences between Qwest's FX service and AT&T's general VNXX proposal in my
11 direct testimony. These differences are illustrated in the attached diagram, Exhibit TRF-
12 11.

13 Other state commissions have recognized that VNXX and FX service are not the
14 same. For example, the Vermont board determined:

15 Global is correct that FX service allows a call to be treated as local, even though
16 its ultimate physical termination point may be outside the local calling area.
17 Global's VNXX proposal differs from FX service significantly, however. Retail
18 customers using FX service purchase the FX line, paying costs that cover the
19 cost of that line and the transportation of traffic in bulk between the two end
20 points. In Global's case, neither Global nor its customers taking advantage of
21 VNXX purchase any facility or actually transport the call between central offices.
22 Instead, they rely on Verizon to provide FX service for free (as a result of
23 Verizon's obligation to transport calls to the interconnection point), rather than
24 being compensated by the buyer of the FX line. This is not equivalent to FX
25 service.²⁹

²⁸ *E.g.*, Hyatt Direct at 23, line 12-13.

²⁹ *Vermont GNAPS Decision*, 2002 WL 32059712 at *12.

1 **Q. ON PAGE 20, MR. HYATT ALSO SUGGESTS THAT QWEST'S MARKET**
2 **EXPANSION LINE PRODUCT IS EQUIVALENT TO AT&T'S VNXX**
3 **PROPOSAL. DO YOU AGREE?**

4 A. No. Qwest's Market Expansion Line product description³⁰ makes clear that toll charges
5 apply if calls are forwarded outside the business customer's main business line calling area.
6 Toll charges are also faced by Qwest foreign exchange service subscribers.³¹

7 **Q. WHAT OTHER PROBLEMS DOES AT&T'S PROPOSED LANGUAGE**
8 **PRESENT?**

9 A. As the Iowa Utilities Board determined, virtual NXX schemes discourage efficient
10 network usage. When NXXs are assigned to specific rate centers in accordance with
11 industry practice and routed in accordance with those practices, if the traffic volume
12 exchanged between the parties in an exchange (Exchange A) reaches a certain level, both
13 Qwest and the CLEC will have the incentive to establish additional points of
14 interconnection in Exchange A to avoid the costs of hauling traffic to another, distant
15 exchange (Exchange B) where the POI is located. "In the VNXX situation," the Iowa
16 Board found, "Level 3 will never have an incentive to establish a point of interconnection
17 in Exchange A, no matter what the traffic level, because Qwest would be doing all the

³⁰ See DHN-4 page 2, tariff section 5.4 B.8 and 5.4 C, sheets 99-100. Here service is shown as rated on a distance-sensitive, measured basis. Qwest does not sell local service at distance-sensitive, measured rates in Washington. Under Washington law, all ILECs are required to offer retail telecommunications service within the local calling area in unlimited volume, at a single flat rate.

³¹ See DNH-2, page 1, tariff section 5.1.4 B, sheet 16 and 5.1.4 D.2 and 5.1.4 D.3, sheet 26. Retail subscribers face per mile interexchange channel charges and interexchange channel terminal charges.

1 hauling from A to B, for which Level 3 would pay nothing. This ability to ride Qwest's
2 network from one exchange to another for free makes VNXX particularly attractive to
3 Level 3 and other similar entities.⁶²

4 Finally, the Iowa Utilities Board and the state commission in Maine both determined
5 that virtual NXX proposals have serious affects on numbering resources.³³

6 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON THIS**
7 **ISSUE?**

8 A. The Commission should retain Qwest's proposed definition of "Exchange Service."

9 **Q. SHOULD THE COMMISSION DECIDE ANY OTHER ISSUE IN THE**
10 **CONTEXT OF THIS DISPUTE OVER THE DEFINITION OF "EXCHANGE**
11 **SERVICE?"**

12 A. No. The only "disputed issue" AT&T identified in its arbitration petition and the parties
13 identified on the disputed issues matrix under Issue 5 was the definition of "Exchange
14 Service." AT&T appears now to argue that there is an additional issue this Commission
15 should decide as part of the dispute over the definition of "Exchange Service."
16 Specifically, Mr. Hyatt suggests at page 4 of his testimony that the Commission should
17 decide the following new issue: "Should Qwest be allowed to preclude competing foreign

³² *Iowa Sprint/Level 3 Decision* at *12-13 (transcript references omitted).

³³ *Iowa Sprint/Level 3 Decision*; Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, *Investigation into Use of Central Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber; New England Fiber Communications, LLC d/b/a Brooks Fiber Proposed Tariff Revision to Introduce Regional Exchange (RX) Service*, Dkt. Nos. 98-758, 99-593, 2000 Me. PUC LEXIS 487 (June 30, 2000).

1 exchange ("FX") services through its desire to apply access charges to AT&T's FX-like
2 provisioning option and no access charges to its competing retail FX service?"

3 **Q. WHY IS IT INAPPROPRIATE FOR THE COMMISSION TO ADDRESS**
4 **THIS PURPORTED NEW ISSUE HERE?**

5 A. AT&T raises an issue that has no relation to the identified dispute regarding the definition
6 of "Exchange Service." Instead, AT&T seeks declarations from the Commission
7 regarding whether, if the Commission adopts Qwest's proposed definition of "Exchange
8 Service," the parties should follow a purported "status quo" regarding application of
9 access charges for "AT&T's FX-like provisioning option" or a declaration regarding some
10 other purported practices regarding application of access charges to Qwest's "competing
11 retail FX service." Again, AT&T makes this request for a factual determination of how
12 the parties should be required to operate under a definition and agreement that have not
13 yet been addressed, let alone adopted, by the Commission.

14 Like AT&T's new request under Issue 3 to *apply* a definition of a tandem switch,
15 AT&T's alleged new disputed issue under Issue 5 is a premature request by AT&T to
16 *apply* a definition, even though the definition has not yet been decided and the parties are
17 not operating under it. This new issue does not relate to a dispute over the proper
18 language to be included in the parties' agreement, but rather is a fast-forward request for
19 declarations on operational issues under an agreement that has yet to be executed and
20 approved. If, upon execution and approval of the agreement, AT&T and Qwest have a
21 dispute regarding operations under the new agreement, the parties have negotiated a
22 dispute resolution process to address such disputes. AT&T's attempt to add new factual
23 issues in this arbitration is a short-circuiting of this agreed-upon process. Because
24 AT&T's alleged new issue under Issue 5 has no bearing on the purpose of this

1 arbitration – resolution of disputes regarding competing *contract language* for a new
2 interconnection agreement – AT&T's alleged new issue has no place in this arbitration.
3 AT&T's alleged new issue is particularly unripe for consideration here because, as set
4 forth above, AT&T provides no information whatsoever concerning its "FX-like
5 provisioning option" in Washington.

C. Including Internet-Bound Traffic in the Relative Use Calculation (Issue 17).

6 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE 17.**

7 A. Issue 17 involves two disagreements. The first is whether a relative use factor should
8 apply to dedicated³⁴ interconnection facilities that are used to carry non-local, non-
9 telecommunications traffic bound for the Internet in the same way the factor applies to
10 local traffic mutually exchanged between the parties. AT&T seeks to include Internet-
11 bound traffic in the relative use calculations for direct trunk transport and entrance
12 facilities. While Qwest acknowledges the Commission's decision to include ISP-bound
13 traffic in calculating relative use factors relating to trunking facilities in the Level 3
14 arbitration, Qwest continues to respectfully disagree with that decision as being
15 inconsistent with relevant orders and decisions of the FCC and sound public policy. The
16 second disagreement is over AT&T's improper suggestion that a relative use factor should
17 be applied not only to TELRIC-based dedicated transport, but also to a "comparable
18 facility providing equivalent functionality." This phrase could wrongly sanction the
19 ratcheting of a circuit purchased from a federal tariff. AT&T's proposals in this
20 proceeding raise concerns that support rejecting AT&T's proposed language.

³⁴ Originating common transport is supplied by Qwest to the CLEC at no charge to the CLEC.

1 **Q. REGARDING THE FIRST ISSUE, DOES QWEST OFFER ANY RATIONALE**
2 **THAT WOULD WARRANT A DIFFERENT APPROACH THAN THAT**
3 **ADOPTED BY THE COMMISSION IN THE LEVEL 3 CASE?**

4 A. Yes. I offered this rationale in my direct testimony by explaining the differences between
5 the positions taken by AT&T in this proceeding and Level 3 in the earlier arbitration case.

6 **Q. REGARDING THE SECOND ISSUE, IS IT QWEST'S POSITION THAT**
7 **COST SHARING SHOULD APPLY TO FACILITIES OTHER THAN**
8 **ENTRANCE FACILITIES AND DIRECT TRUNKED TRANSPORT?**

9 A. No. Per Qwest's proposed language and the Washington SGAT, cost sharing should
10 only apply to Entrance Facilities and Direct Trunked Transport. When the functionality of
11 UDIT is employed to support a local interconnection trunk group and by an IXC as an
12 entrance facility, cost sharing does not apply.³⁵

13 **Q. ON PAGE 12 OF HIS TESTIMONY, MR. TALBOTT STATES THAT AT&T'S**
14 **PROPOSED LANGUAGE FOR SECTIONS 7.3.1.1.3.1 AND 7.3.2.2.1 SHOULD**
15 **ALSO APPLY TO "COMPARABLE FACILITIES" TO DIRECT TRUNK**
16 **TRANSPORT AND ENTRANCE FACILITIES. DO YOU AGREE WITH MR.**
17 **TALBOTT'S POSITION?**

18 A. No. Mr. Talbott states that this phrase would apply to private line transport services

³⁵ See, e.g., Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36, ¶ 580 (rel. Aug. 21, 2003) ("*Triennial Review Order*").

1 ("PLTS") purchased from Qwest's tariffs, interstate and intrastate. AT&T claims that
2 Qwest should give AT&T a non-TELRIC "relative use" rate reduction when AT&T
3 decides to use the spare circuits of previously-purchased PLTS for AT&T local traffic.
4 Qwest opposes this ambiguous language addition for several reasons.

5 First, when AT&T chooses to place interconnection traffic over the spare circuits of
6 a previously purchased PLTS facility, Qwest permits AT&T to do so. AT&T is not
7 required to use spare PLTS circuits to carry local interconnection traffic, nor can Qwest
8 require AT&T to use the spare PLTS for AT&T local traffic. Qwest does not charge
9 AT&T any additional charges for exercising this option; AT&T pays only the tariffed rate
10 that it paid for the PLTS facility as a whole. Qwest also does not "discount" the tariffed
11 rate if AT&T has spare circuits. Whether the circuits are used or remain idle, the tariffed
12 rate remains the same. Because AT&T chooses this option and Qwest does not impose
13 charges for this choice, applying a relative use factor to reduce the tariffed rate of the
14 PLTS facility is improper.

15 Qwest also opposes AT&T's language because it would require Qwest to base
16 AT&T's tariff reduction on a non-TELRIC-based rate. Entrance facilities and direct
17 trunked transport are TELRIC-rated facilities. AT&T seeks to require Qwest to pay a
18 non-TELRIC rate, which is inconsistent with interconnection pricing principles.

19 In addition, AT&T purchases PLTS out of Qwest's federal tariffs, and this
20 Commission has previously recognized that it does not have authority to apportion the
21 rates in Qwest's FCC tariffs. In the *34th Supplemental Order* in the Washington 271
22 proceeding, CLECs, including AT&T, requested that the Commission order Qwest to
23 "ratchet" the rates of both Washington and FCC-tariffed PLTS to reflect the portion of
24 the facility used for local interconnection traffic. The Commission agreed with Qwest that

1 it did not have authority over federally-tariffed PLTS. In paragraph 22, the Commission
2 stated: "We agree that this Commission may not assert jurisdiction over the pricing of
3 interstate facilities, and cannot order Qwest to apply proportional pricing to those
4 facilities."³⁶ AT&T's request for inclusion of "comparable facilities," by which it means
5 PLTS, in the relative use provisions of the parties' agreement would require the
6 apportioning this Commission previously rejected.

7 In addition, as I mentioned in my direct testimony, the FCC's recently issued
8 *Triennial Review Order* supports Qwest's language. In the *Triennial Review Order*,
9 the FCC addresses whether incumbent LECs must permit CLECs to "commingle" UNEs
10 with services provided under tariffs, such as special access services. The FCC concludes
11 that while incumbent LECs must permit commingling, CLECs are *not* entitled to "ratchet"
12 (or adjust) the rates of the special access circuits to account for the local usage.³⁷ Thus,
13 the FCC has determined that CLECs could commingle UNEs and special access
14 services, but that a prohibition on "ratcheting" would ensure that CLECs did not obtain
15 reduced or discounted prices on tariffed special access services.³⁸ AT&T's proposed
16 language necessarily results in a reduced DS-3 rate in contravention of the *Triennial*
17 *Review Order*.

³⁶ 34th Supplemental Order; Order Regarding Qwest's Demonstration of Compliance with Commission Orders; *Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996; U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket Nos. UT-003022, UT-003040, ¶ 22 (May 29, 2002).

³⁷ *Triennial Review Order* at ¶ 580.

³⁸ *Id.* at ¶ 583 & n. 1800.

1 **Q. DO YOU AGREE WITH MR. TALBOTT'S STATEMENT ON PAGE 14 OF**
2 **HIS TESTIMONY THAT AT&T'S LANGUAGE IS CONSISTENT WITH**
3 **OTHER PROVISIONS OF THE PARTIES' AGREEMENT?**

4 A. No. The other provisions of the parties' agreement reflect that cost-adjustments to PLTS
5 facilities apply only to facilities purchased out of the *intrastate* tariff. There is *no*
6 apportioning of *any kind* applied to PLTS facilities purchased out of Qwest's *FCC* tariff.

7 **Q. DID LEVEL 3 REQUEST THAT RELATIVE USE REQUIREMENTS**
8 **INCLUDE FACILITIES IN ADDITION TO ENTRANCE FACILITIES AND**
9 **DIRECT TRUNK TRANSPORT?**

10 A. No. To my knowledge, Level 3 did not propose the "comparable facility" language
11 AT&T proposes here. Level 3 agreed that a relative use factor would only apply to
12 TELRIC-priced entrance facilities and direct trunk transport. Thus, this is another
13 difference between the Level 3 and AT&T positions.

14 **Q: MR. TALBOTT CLAIMS ON PAGE 15 OF HIS TESTIMONY THAT 47**
15 **C.F.R. § 51.703(B) INCLUDES INTERNET BOUND TRAFFIC. DO YOU**
16 **AGREE?**

17 A. No. Rule 703(b) is a provision of Subpart H of the Part 51 of the FCC's rules. Subpart
18 H contains the FCC's rules for reciprocal compensation. Taking Mr. Talbott's reasoning
19 to its logical conclusion reveals the error of his approach: if, as Mr. Talbott suggests, Rule
20 703(b) *includes* ISP-bound traffic, then under Rule 703(a), ISP-bound traffic would be
21 subject to reciprocal compensation. This argument simply cannot be squared with the
22 FCC's orders. In the *ISP Remand Order* and subsequent FCC 271 Orders the FCC
23 has clearly and repeatedly ruled that Internet-bound traffic is *not subject* to the reciprocal

1 compensation obligations imposed by Section 251(b)(5) of the Act.³⁹ Therefore, because
2 Internet-bound traffic is not subject to the reciprocal compensation obligations of Section
3 251(b)(5), it is excluded from the FCC rules that implement Section 251(b)(5), such as
4 Rules 51.703(a) and (b).

5 **Q. MR. TALBOTT CITES IN FOOTNOTE 15 ON PAGE 16 A D.C. CIRCUIT**
6 **COURT OF APPEALS DECISION AND CLAIMS THAT THIS DECISION**
7 **MEANS THAT ISP-BOUND TRAFFIC IS TELECOMMUNICATIONS**
8 **TRAFFIC THAT IS SUBJECT TO RECIPROCAL COMPENSATION. DO**
9 **YOU AGREE?**

10 A. No. In the decision Mr. Talbott cites, the D.C. Circuit stated that the FCC could not rely
11 upon 47 U.S.C. § 251(g) to exclude Internet-bound traffic from the reciprocal
12 compensation obligations in Section 251(b)(5). However, Mr. Talbott's statement that
13 "ISP-bound traffic is 'telecommunications' as set forth in 47 C.F.R. § 51.701(b) and is
14 subject to 47 C.F.R. § 51.703(b)" is wrong. The court did not determine that Internet-
15 bound traffic is "telecommunications" traffic or that it should be subject to reciprocal

³⁹ See, e.g., Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Dkt. No. 02-67, 17 FCC Rcd 12275 ¶ 160 (2002); Memorandum Opinion and Order, *Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Dkt. No. 02-35, 17 FCC Rcd 9018 ¶ 272 (2002); Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Dkt. No. 01-138, 16 FCC Rcd 17419 ¶ 119 (2001); Memorandum Opinion and Order, *Application of Verizon New York, Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Dkt. No. 01-100, 16 FCC Rcd 14147 ¶ 67 (2001).

1 compensation. In fact, the court was explicit that it did *not* make this determination:

2 Having found that § 251(g) does not provide a basis for the [FCC's]
3 action, *we make no further determinations. For example, as in Bell*
4 *Atlantic, we do not decide whether handling calls to ISPs*
5 *constitutes "telephone exchange service" or "exchange access" (as*
6 *those terms are defined in the Act, 47 U.S.C. §§ 153(16), 153(47))*
7 *or neither, or whether those terms cover the universe to which*
8 *such calls might belong. Nor do we decide the scope of*
9 *"telecommunications" covered by § 251(b)(5). Nor do we decide*
10 *whether the Commission may adopt bill-and-keep for ISP-bound calls*
11 *pursuant to § 251(b)(5) Indeed, these are only samples of the*
12 *issues we do not decide, which are in fact all issues other than*
13 *whether § 251(g) provided the authority claimed by the*
14 *Commission for not applying § 251(b)(5).*⁴⁰

15 Mr. Talbott's statement that Internet-bound traffic is "telecommunications" traffic included
16 in Rules 51.701(b) and 51.703(b) is curious. AT&T does not challenge those aspects of
17 the *ISP Remand Order* that establish an interim intercarrier compensation mechanism for
18 this traffic. If, as Mr. Talbott incorrectly concludes, the FCC or courts had found that
19 Internet-bound traffic was "telecommunications" traffic governed by Section 251(b)(5),
20 then I would have expected AT&T to claim that it is entitled to 251(b)(5) compensation
21 for this traffic. Of course, it has not and cannot. Indeed, Mr. Talbott acknowledges on
22 this same page of his testimony that the D.C. Circuit did not vacate the *ISP Remand*
23 *Order*.⁴¹ Therefore, as Mr. Talbott implicitly acknowledges, the current FCC rules that

⁴⁰ *WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002) (emphasis added).

⁴¹ Talbott Direct at 21, lines 12-14. *See also WorldCom*, 288 F.3d at 434 (citations omitted) ("Finally, we do not vacate the order. Many of the petitioners themselves favor bill-and-keep, and there is plainly a non-trivial likelihood that the [FCC] has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(i)) . . . Thus, we simply remand the case to the [FCC] for further proceedings.

1 *exclude* Internet-bound traffic from all reciprocal compensation obligations remain in
2 effect. Because Internet-bound traffic remains excluded from the reciprocal
3 compensation obligations of Section 251(b)(5), none of the Subpart H rules of Part 51
4 rules apply to this traffic.

5 **Q. DOES QWEST ACKNOWLEDGE THIS COMMISSION'S PRIOR**
6 **DETERMINATIONS ON THIS POINT IN THE LEVEL 3 CASE?**

7 A. Yes, although Qwest continues to respectfully disagree with the Commission's decision in
8 the Level 3 proceeding. Moreover, here Qwest proposes only that the terminating carrier
9 be responsible for internet-bound transport at the lowest rate Qwest offers. Qwest wants
10 to be clear that it does not seek to apply retail or exchange access tariff rates.

11 **Q. ON PAGE 20 OF HIS TESTIMONY, MR. TALBOTT ADDRESSES A**
12 **DISPUTE AS TO WHETHER THE PARTIES SHOULD EMPLOY A**
13 **RETROACTIVE TRUE UP FOR THE FIRST QUARTER VERSUS A TRUE**
14 **UP FOR MULTIPLE QUARTERS IN CONNECTION WITH THE INITIAL**
15 **RELATIVE USE FACTOR. PLEASE RESPOND.**

16 A. First, Qwest generally opposes true ups of rates. They tend to invite disagreements and
17 disputes. However, as Qwest's proposed language provides, a retroactive true up
18 relating to traffic exchanged the first quarter may be appropriate given the actual balance
19 of traffic exchanged between the parties. To the extent that the initial default relative use
20 factor of 50% does not reflect the parties' actual traffic flows, the agreement should
21 provide incentives to the adjust the factor. Applying a true up to the first quarter only
22 appropriately encourages the parties to address any adjustment to the relative use factor
23 early. By contrast, allowing for retroactive true ups beyond the first quarter provides an

1 incentive to put off such an adjustment indefinitely.

2 **Q. WHAT SHOULD THE COMMISSION DO?**

3 A. The Commission should adopt Qwest's proposed language for Sections 7.3.1.1.3.1 and
4 7.3.2.2.1. This language matches the Washington SGAT and should become part of the
5 parties' new agreement.

D. Tandem Transmission Compensation (Issue 18).

6 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE FOR ISSUE 18.**

7 A. Issue 18 involves whether AT&T can "assume" that it provides Qwest 9 miles of common
8 transport to the extent AT&T is entitled to compensation at the tandem switching rate.

9 **Q. MR. TALBOTT CLAIMS AT PAGE 21 THAT AT&T IS PERMITTED TO**
10 **CHARGE QWEST SYMMETRICAL TANDEM RATES. DO YOU AGREE**
11 **WITH MR. TALBOTT'S ANALYSIS?**

12 A. I agree that 47 C.F.R. § 51.711(a) requires symmetrical reciprocal compensation rates. I
13 also agree that tandem transmission rates in Washington are mileage sensitive. However,
14 I do not agree that AT&T's proposal is symmetrical, nor do I agree that nine miles of
15 transport should be "assumed" to have been provided for all of AT&T's terminating calls.

16 AT&T's interpretation of Rule 711(a) actually creates *asymmetry*. As I discussed
17 in my direct testimony, the only time Qwest applies an assumed nine-mile charge for
18 tandem transmission is for *transiting* calls. A transited call is neither originated nor
19 terminated by Qwest and, accordingly, is not subject to reciprocal compensation under
20 Section 251(b)(5). AT&T seeks to apply the assumed mileage rating to *non-transited*
21 calls. When Qwest terminates non-transit local calls, Qwest applies an actual airline
22 mileage. Therefore, where Qwest's tandem and Qwest's end office are in the same

1 building, Qwest rates tandem transmission at zero-mileage. However, AT&T proposes
2 here that where its tandem and end office are in the same building, AT&T should
3 "assume" it provides nine miles of transport and charge Qwest for non-transited calls.
4 This is not symmetrical.

5 **Q. DOES AT&T EXPLAIN THE BASIS FOR ITS ASSUMPTION OF NINE**
6 **MILES OF TRANSPORT?**

7 A. Mr. Talbott provides no explanation for the nine-mile assumption in his direct testimony in
8 this proceeding.

E. Inclusion of UNE-P Minutes in 3:1 Ratio (Issue 19).

9 **Q: PLEASE DESCRIBE DISPUTED ISSUE 19.**

10 A. This issue involves whether UNE-P originating minutes should be included in the
11 calculation of the 3:1 ratio presumption for determining whether traffic is Internet-bound.

12 **Q: WHAT IS QWEST'S POSITION ON THIS ISSUE?**

13 A. Although Qwest does not agree with AT&T's position, for purposes of this arbitration and
14 interconnection agreement, Qwest will not contest this issue. Qwest believes that the
15 parties should move immediately to identifying the volume of Internet-bound traffic based
16 on actual data, rather than relying on the 3:1 presumption, and expressly and specifically
17 reserves its ability to do so. AT&T does not dispute that Qwest can rebut the
18 presumption by demonstrating the factual ratio to the Commission. Qwest's proposed
19 method of identifying Internet-bound traffic was attached to my direct testimony as Exhibit
20 TRF-5.

F. Rating Of No-Calling-Party-Number ("No-CPN") Traffic (Issue 21)

1 **Q. WHAT IS THE PARTIES' DISPUTE RELATING TO ISSUE 21.**

2 A. Section 7.3.8 of the agreement attempts to address the means for rating calls that lack
3 the identity of the originating caller. If a call lacks originating caller identity, (1) retail
4 caller identification service fails and, (2) billing systems cannot discern whether the call is
5 transit or non-transit, local or toll.⁴² This makes call rating difficult. Calls that lack
6 originating identity are an industry-wide problem. AT&T seeks to rate these calls in a
7 manner that improperly places financial responsibility on Qwest and AT&T seeks to
8 increase, rather than decrease, incentives to initiate no-CPN calls.

9 **Q. ON PAGE 29 OF HIS TESTIMONY MR. TALBOTT CLAIMS, "QWEST HAS**
10 **SIMPLY SUGGESTED THAT DECREASING THE REQUIRED LEVEL OF**
11 **CPN FROM 95% TO 90% WILL CREATE HIGHER OCCURRENCES OF**
12 **BILLING DISPUTES BETWEEN THE PARTIES, BUT HAS OFFERED NO**
13 **EMPIRICAL DATA TO SUPPORT ITS ASSERTION." CAN YOU OFFER**
14 **EMPIRICAL DATA?**

15 A. Yes. If 1% of one month's worth of Washington interconnection traffic were to be rated
16 at a TELRIC-based rate (local) rather than a TSLRIC-based rate (toll) and if, for
17 example the two rates were one cent per minute different from each other, the dollar
18 amount of the dispute would be \$180,000. Thus, the increase in no-CPN traffic AT&T
19 proposes clearly provides a corresponding increase in the likelihood that disputes will
20 arise over these significant dollar amounts. AT&T's incorporation of notions of

⁴² Qwest concurs with AT&T's explanation that callers may elect to suppress the forwarding of their number with no risk of creating an intercarrier compensation call rating problem.

1 "legitimacy" in evaluating the reasons for no-CPN traffic further exacerbates the problem
2 and invites disputes. AT&T's language provides:

3 If the terminating Party has reason to believe that the lack of CPN is not
4 *primarily due to legitimate causes* consistent with 47 CFR §64.1601(d) (such
5 as customers' requests for privacy indicators, calls originating from payphones,
6 PBX's or Centrex systems), the terminating Party may file a complaint with the
7 Commission in which the terminating Party shall demonstrate that it is appropriate
8 to assess access charges or other penalties relating to the no CPN traffic
9 because the lack of CPN is not the result of legitimate causes. Until and unless a
10 state commission finds that it is appropriate to assess access charges or other
11 penalties to the no CPN traffic, all such calls exchanged without CPN will be
12 billed as either EAS/Local or IntraLATA Toll in direct proportion to the minutes
13 of use of calls exchanged with CPN for the immediately preceding quarter.

14 In addition, given AT&T's other proposals in this proceeding, it is likely that disputes
15 could also arise involving VNXX calls.

16 **Q. DO YOU AGREE WITH MR. TALBOTT'S RECOMMENDATION THAT**
17 **THE THRESHOLD FOR ACCEPTABLE NO-CPN TRAFFIC BE SET AT 10**
18 **PERCENT INSTEAD OF THE QWEST-PROPOSED 5 PERCENT?**

19 A. No. As stated in my direct testimony, the level of no-CPN traffic being delivered to
20 CLECs by Qwest is under 2 percent. The level of no-CPN traffic being delivered by
21 CLECs to Qwest is below 2 percent. I agree with the possible causes cited by Mr.
22 Talbott for no-CPN traffic, but Qwest's proposed threshold level for no-CPN is more
23 appropriate and AT&T presents no evidence that AT&T specifically services end users
24 in Washington that will generate extraordinary traffic with no CPN. Mr. Talbott
25 provides no credible reason or support in his testimony to justify a threshold that would
26 be five times existing levels.

1 **Q. IS THE ABSENCE OF CPN ON TERMINATING CALLS A PROBLEM FOR**
2 **THE INDUSTRY?**

3 A. Yes it is. As stated in my direct testimony, knowing the originating telephone number
4 enables the terminating company to identify which carrier "owns" the customer and
5 whether the call originated within the local calling area or at some distant location so that
6 access charges would apply. Recent press reports have carried allegations by both
7 Verizon and SBC that some carriers "strip off" CPN in order to avoid paying access
8 charges. Indeed, AT&T itself has alleged in a pending bankruptcy proceeding that a
9 company was disguising toll calls as local in order to avoid access charges and to collect
10 reciprocal compensation.⁴³ Recently AT&T filed a suit alleging improper routing of calls
11 to avoid access charges and to collect reciprocal compensation.⁴⁴ With this background,
12 it makes no sense to raise the permissible threshold of no-CPN traffic. And given that
13 numerous other CLECs "opt-in" to the AT&T agreement, Qwest and AT&T should be
14 working together to maintain a low goal, not a higher goal.

15 **Q. WHAT IS THE APPROPRIATE WAY TO TREAT CALLS LACKING**
16 **ORIGINATING CARRIER IDENTIFICATION?**

17 A. An exchange access charge is the best mechanism to encourage companies to limit the
18 amount of no-CPN traffic. Assuming that the percentage of no-CPN traffic exchanged

⁴³ See Latour, Almare, et al., *MCI, Hoping to Exit Bankruptcy, Faces New Investigation of Fraud*, Wall St. J., July 28, 2003, A1; Labuton, Stephen, *AT&T to Offer New Allegation in MCI Inquiry*, N.Y. Times, July 28, 2003, A1.

⁴⁴ See Latour, Almare, et al., *MCI Questions Rivals' Call Practices*, Wall St. J., Sept. 3, 2003, A3.

1 between the parties remains approximately in balance, then the net impact is small.⁴⁵
2 However, in the event that one company shows a dramatic increase in no-CPN traffic, the
3 exchange access charge will provide reasonable incentive to that company to identify the
4 problem and to solve the problem expeditiously.

5 **Q. DO YOU HAVE ANY COMMENT ON MR. TALBOTT'S CLAIM, ON PAGE**
6 **28 OF HIS DIRECT TESTIMONY, THAT AT&T'S AGREEMENTS WITH**
7 **SBC AND VERIZON CONTAIN THRESHOLDS OF 10 PERCENT NO-CPN**
8 **TRAFFIC?**

9 A. Yes. I am not familiar with the agreements Mr. Talbott refers to. I don't know what
10 considerations led to the setting of the high threshold. I note, however, that this
11 Commission approved Qwest's SGAT which contains the 5 percent threshold and, to the
12 extent that Qwest's interconnection agreement's with CLECs in Washington address this
13 issue, they provide for the same. More importantly, however, it is undisputed that no-
14 CPN traffic is undesirable and that levels in Washington are fortunately, to date, low.

15 **Q. IS AT&T'S PROPOSED SECOND PARAGRAPH MAKING QWEST**
16 **RESPONSIBLE FOR OTHER CARRIERS' NO-CPN TRAFFIC CONSISTENT**
17 **WITH ITS PROPOSAL TO RAISE THE NO-CPN THRESHOLD?**

18 A. No. AT&T seeks to have it both ways. When it is *sending* a call, AT&T proposes that
19 the threshold of no-CPN traffic should be increased to 10 percent. When it is *receiving*
20 traffic, AT&T proposes it should collect exchange access charges associated with some
21 no-CPN traffic and illegally hold Qwest, as the transit provider, liable for the no-CPN
22 traffic of other CLECs. When other CLECs in Washington "opt-in" to AT&T's

⁴⁵ In a recent month CLECs sent 1.46% no-CPN traffic while Qwest sent 1.09%.

1 agreement, this approach results in those CLECs sending up to 10 percent of their traffic
2 to Qwest without CPN with impunity, and, when that traffic transits Qwest's network for
3 termination to AT&T, AT&T would look to Qwest for compensation for this same traffic.

4 **Q. SHOULD QWEST, AS THE TRANSIT PROVIDER, BE HELD**
5 **RESPONSIBLE FOR OTHER COMPANIES' NO-CPN CALLS?**

6 A. As I stated in my direct testimony, according to the law, the transit provider cannot be
7 held responsible for payment for call origination. If a call arrives at the Qwest switch
8 from AT&T or any other CLEC bound for another CLEC, that call only transits
9 Qwest's network. If the call does not contain identity, Qwest simply has no CPN to
10 forward and Qwest bears no obligation to supply the particular call record that AT&T
11 seeks. Qwest will consider the development necessary to create the record if AT&T
12 agrees to fund the development and ongoing cost. However, an industry-wide solution
13 is preferred.

14 There is no dispute that Qwest, as a transit provider, passes along to terminating
15 carriers all of the CPN it gets. Such calls terminate to Qwest customers, including calls
16 that originate from AT&T. AT&T's proposed language to hold the transit provider
17 liable for no-CPN traffic, particularly when coupled with its proposal to dramatically
18 increase the threshold amount of such traffic is misguided and should be rejected.

G. Billing For Traffic Without OCN And CIC Codes (Issue 30)

19 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 30.**

20 A. This issue is similar to the no-CPN issue discussed above. Here, the parties dispute the
21 make-up of the call record associated with all transit calls. In its proposed language for
22 Section 21.1.2.3.1 and 21.1.2.3.2, AT&T seeks to make Qwest the clearinghouse for

1 all traffic that transits Qwest's network.

2 **Q. AT PAGE 9 OF HIS TESTIMONY, MR. HYDOCK SAYS THAT AT&T'S**
3 **PROPOSAL IS A "MUTUAL" OBLIGATION. DO YOU AGREE?**

4 A. No, the language makes Qwest more liable than the CLEC. The volumes of traffic
5 exchanged between the parties are *not* balanced – Qwest delivers at least twice as much
6 transit traffic to Washington CLECs as the CLECs deliver to Qwest.⁴⁶ Therefore, as a
7 practical matter, AT&T's proposal would disproportionately favor AT&T. Thus, Mr.
8 Hydock's characterization of AT&T's proposed language as "mutual" or "reciprocal" is
9 misleading. Qwest has not agreed to and should not be forced to assume
10 disproportionate financial responsibility for a situation that it did not create and that affects
11 all carriers.

12 **Q. MR. HYDOCK CLAIMS ON PAGE 11 OF HIS TESTIMONY THAT THE**
13 **TRANSITING CARRIER "IS DIRECTLY INTERCONNECTED WITH THE**
14 **ORIGINATING CARRIER [OF A LOCAL CALL]" AND, THEREFORE, "IS**
15 **ABLE TO OBTAIN OR DERIVE" ORIGINATING OCN (OPERATING**
16 **COMPANY NUMBER). IS THIS ACCURATE?**

17 A. No. AT&T's solution is flawed. Qwest is not always "directly interconnected" with the
18 originating carrier as Mr. Hydock claims. AT&T has conceded this point in other
19 arbitration proceedings. For traffic that is transited twice, where for example, an
20 originating company hands a call off to an initial transit carrier which, in turn, hands the call
21 off to Qwest as second transit carrier, which then hands the call off to AT&T for

⁴⁶ In a recent month Qwest sent 280 million transit minutes while receiving 136 million transit minutes.

1 termination, Qwest is *not* "directly interconnected" with the originating carrier. While
2 Qwest may be able to *derive*, through the application of an as-yet-nonexistent processes,
3 some, but not all, of the information AT&T seeks, AT&T has repeatedly indicated that it
4 is unwilling to pay for system enhancements required to conduct the forensic analysis
5 required to discover such information. AT&T would have Qwest bear financial
6 responsibility development of the new process/system and for originating carrier
7 compensations even where Qwest is unable to determine the originating carrier and even
8 though Qwest passes along all of the signaling information it receives from the carrier
9 preceding it in the call path.

10 **Q. MR. HYDOCK ALSO STATES THAT AT&T PAYS QWEST FOR BILLING**
11 **RECORDS THAT "SHOULD" INCLUDE THE CIC AND OCN, AND THAT**
12 **IF THE INFORMATION IS NOT INCLUDED IN THE RECORDS, "QWEST**
13 **SHOULD BEAR RESPONSIBILITY FOR THIS OMISSION." DO YOU**
14 **AGREE?**

15 A. No. Qwest follows industry guidelines and standards, and, pursuant to these guidelines
16 and standards, Qwest passes along all of the CIC and OCN provided to it. A transit
17 provider has no independent obligation to obtain CIC or OCN that it does not receive
18 from the carrier preceding it in the call path. A revised industry standard or guideline
19 requiring originating carriers to supply the information AT&T seeks may address this
20 concern; making transit providers financially responsible for omissions that they do not
21 create does not.

22 **Q. DOES QWEST PROVIDE A SERVICE THAT IDENTIFIES WIRELESS TRANSIT CALLS?**

23 A. Yes. Qwest provides a wireless transit record to terminating carriers. In order to provide
24 the OCN on this record, Qwest's end office or tandem switch creates a record of each

1 wireless call coming in via trunk groups assigned to each wireless provider. Qwest then
2 includes the OCN of the carrier who ordered the incoming trunk group on the call record.
3 Qwest makes this record available to AT&T. If the wireless carrier does not directly
4 connect to Qwest but, instead, does so indirectly through a wireline CLEC, and that
5 CLEC acts as a transit provider for the wireless carrier, then Qwest is unable to provide
6 OCN for the originating wireless carrier.

7 **Q. BUT, IN ORDER THAT INTERCARRIER RECIPROCAL COMPENSATION CAN FUNCTION,**
8 **DOESN'T AT&T NEED THE OCN OF THE ORIGINATING CARRIER WHO IS USING QWEST**
9 **UNE-P TO PLACE CALLS TO AN AT&T RETAIL CUSTOMER?**

10 A. No. When a UNE-P line originates a call destined for the retail customer of a facilities-
11 based CLEC, that facilities-based CLEC bills Qwest for terminating the call and Qwest
12 pays the facilities-based CLEC. When a call between the same endpoints flows in the
13 opposite direction, the buyer of Qwest UNE-P service faces no cost associated with
14 terminating traffic and therefore, the buyer of Qwest UNE-P has no cost to recover via
15 reciprocal compensation. This method is far more simple than the one AT&T seems to
16 favor and the net intercarrier financial result is the same for all three carriers. For this
17 reason, the terminating carrier does not require the OCN of the carrier buying UNE-P
18 from Qwest.

19 **Q. WHAT ABOUT INTRALATA TOLL CALLS?**

20 A. The call record of an intraLATA toll call will have either a CIC or AT&T may derive the
21 OCN from the CPN of the call.

22 **Q. AT&T'S PROPOSED LANGUAGE MAKES THE TRANSITING CARRIER LIABLE FOR ACCESS**
23 **REVENUES THE TERMINATING CARRIER IS UNABLE TO BILL DUE TO THE ORIGINATING**
24 **CARRIER'S FAILURE TO PROVIDE THE CIC. IS THIS PROPOSAL BASED ON A LEGAL**

1 **REQUIREMENT OR INDUSTRY REQUIREMENT?**

2 A. No. The Wireline Competition Bureau addressed this issue in the *Verizon Virginia*
3 *Arbitration Order* (which AT&T relies on extensively for other issues in this arbitration)
4 and rejected WorldCom's proposal to require Verizon to serve as a billing agent or
5 intermediary between WorldCom and third-party carriers with which it exchanges traffic
6 transiting Verizon's network.⁴⁷ Under WorldCom's rejected proposal (like AT&T's
7 proposal here), Verizon would have been obligated to "compensate WorldCom for transit
8 traffic as though the traffic were exchanged between WorldCom and Verizon."⁴⁸ For the
9 same reasons that the Wireline Competition Bureau rejected WorldCom's misguided
10 proposal in the *Verizon Virginia Arbitration Order*, the Commission should reject
11 AT&T's proposal here. AT&T's proposal is particularly inappropriate where, as here, it
12 is undisputed that Qwest forwards to AT&T all of the CIC and OCN it receives as a
13 transit provider and there are no industry standards *requiring* the originating carrier to
14 provide to the transiting carrier the information AT&T seeks.

15 **Q. ARE THERE ANY OTHER REASONS WHY THE COMMISSION SHOULD**
16 **REJECT AT&T'S PROPOSAL TO MAKE QWEST ITS "BILLING**
17 **INTERMEDIARY" FOR TRANSIT TRAFFIC?**

18 A. Yes. AT&T's proposal conflicts with a "fundamental purpose" of section 251 of the Act
19 which is to "promote the interconnection of all telecommunications networks by ensuring
20 that incumbent LECs are not the only carriers that are able to interconnect efficiently with

⁴⁷ See *Verizon Virginia Arbitration Order* ¶¶ 107, 114, 119.

⁴⁸ *Id.* ¶ 107.

1 other carriers.⁴⁹ AT&T's proposal to make transit carriers billing agents guarantors for
2 terminating carriers provides no incentives for terminating carriers to establish
3 interconnection arrangements from originating carriers. In other proceedings, AT&T has
4 admitted that it does interconnect with other carriers when it is in its business interest to do
5 so. AT&T's proposed language in section 21.1.2.3.1 and 21.1.2.3.2 should be rejected.

H. Qwest as the Local intraLATA Primary Interexchange Carrier ("LPIC") (Issue 34).

6 **Q. WHAT IS THE BASIS FOR DISPUTED ISSUE 34?**

7 A. Issue 34 involves how to bill the small number of AT&T customers who have chosen
8 Qwest, the incumbent LEC, as their preferred intraLATA toll provider.

9 **Q. WHO ADDRESSED THIS ISSUE ON BEHALF OF AT&T?**

10 A. Mr. Hydock addressed this issue on behalf of AT&T.

11 **Q. MR. HYDOCK CLAIMS ON PAGE 17 OF HIS TESTIMONY THAT QWEST**
12 **"SEEKS TO FORCE" AT&T TO SERVE AS QWEST'S BILLING AND**
13 **COLLECTION AGENT. PLEASE RESPOND.**

14 A. Unlike the situation in some states, Qwest is not required to provide AT&T's end user
15 customers' intraLATA toll service in Washington. Accordingly, when AT&T provides
16 local service to its end user customers, Qwest does not require AT&T to offer Qwest
17 intraLATA toll service to AT&T customers. Indeed, Qwest's proposed language makes
18 it clear that Qwest does not even *authorize* AT&T to offer to its customers Qwest as an

⁴⁹ See *id.* ¶ 118 (quoting Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. No. 98-147, 16 FCC Rcd 15435, ¶ 84 (2001), *aff'd sub nom. Verizon Telephone Cos. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002)).

1 LPIC. Against this backdrop, *if*, knowing that Qwest currently cannot bill AT&T's
2 customers for the service, AT&T nevertheless *chooses* to offer Qwest as an intraLATA
3 toll service option to its customers, AT&T cannot credibly argue that Qwest "forces"
4 AT&T to perform billing services. While Mr. Hydock claims that Act does not require
5 AT&T to be Qwest's billing and collection agent, he ignores the fact that there is no
6 requirement for AT&T to offer Qwest as an intraLATA toll option. In short, if AT&T
7 does not want to bill its customers for the intraLATA toll Qwest provides to them, then
8 AT&T should not offer Qwest as an intraLATA toll option to its local customers.

9 **V. CONCLUSION**

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes, it does.