

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation into)	
)	DOCKET NO. UT-003022
U S WEST COMMUNICATIONS, INC.'s)	
)	
Compliance with Section 271 of the)	
Telecommunications Act of 1996)	
.....)	
In the Matter of)	
)	DOCKET NO. UT-003040
U S WEST COMMUNICATIONS, INC.'s)	
)	DRAFT INITIAL ORDER
Statement of Generally Available Terms)	
Pursuant to Section 252(f) of the)	
Telecommunications Act of 1996)	
.....)	

I. INTRODUCTION

- 1 This draft initial order serves as the report of the Staff of the Washington Utilities and Transportation Commission (Commission) addressing the results of the first workshop, as well as the draft recommendations to the Federal Communications Commission (FCC) concerning the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc., ("U S WEST")¹ with certain requirements under Section 271 of the Telecommunications Act of 1996 (the Act).
- 2 Under Section 271, Regional Bell Operating Companies, or RBOCs, may only provide toll service between local area transport areas (LATAs) if the RBOCs can demonstrate that certain competitive conditions exist in their local markets. The FCC, after consultation with the Department of Justice (DOJ) and state commissions, may authorize an RBOC to provide interLATA service in a particular state if the RBOC meets the conditions, including competitive checklist items, set forth in subsection 271(c) of the Act. In particular, the FCC must consult with state commissions "in order to verify the compliance of the [RBOC] with" the requirements of subsection 271(c).
- 3 Qwest is the RBOC that provides local exchange intraLATA toll service to much of Washington state. In advance of Qwest filing an application with the FCC to enter the interLATA market, the Commission in October 1997 issued an Interpretive and

¹ During this proceeding U S WEST completed its merger with Qwest. The names U S WEST and Qwest are used interchangeably in this document.

Policy Statement on the Process for RBOC Application under Section 271 of the 1996 Telecommunications Act, in Docket No. UT-970300.

- 4 In March of this year, following discussions between Qwest, Commission staff, Public Counsel and other interested parties, the Commission issued a Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements. The Supplemental Interpretive and Policy Statement adopted a process and standards for facilitating the Commissions' review of Qwest's compliance with subsection 271(c) of the Act. The Commission established a series of three adjudicative workshops, with an additional workshop if necessary, designed to allow the Commission and interested parties to review and comment on Qwest's compliance with subsection 271(c). In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission also adopted certain general and specific evidentiary requirements that Qwest must meet to demonstrate its compliance for each checklist item, as well as items of public interest. The general requirements are set forth in Appendix A to this Order and the specific requirements are set forth in sections below.
- 5 The Interpretive and Policy Statement identified that "the statement of generally available terms option that is set out in section 271(c)(1)(B) of the Act is not available to USWC in Washington, consistent with the purposes of the act and the provisions of Section 271(c)(1)(B)." In the Supplemental Interpretive and Policy Statement, the Commission clarified that
- The existing interconnection agreements between U S WEST and its competitors will form the basis for U S WEST's legal obligations concerning terms and conditions of service. The Commission will consider an SGAT or similar mechanism if the consideration is limited to elements or services that are not provided for in an interconnection agreement.
- 6 On March 22, 2000, Qwest filed with the Commission its preliminary statement and outline in support of its FCC application, and in preparation for the first workshop, a summary brief on initial checklist items and the testimony of Lori Simpson, Margaret Bumgarner, and Thomas Freeberg, as well as a Statement of Generally Available Terms (SGAT).
- 7 On June 21-23, 2000, the Commission held its first workshop in Olympia, Washington on the issues of Checklist Items Nos. 3 (Poles, Ducts, Conduits and Rights of Way), 7 (911/E911, Directory Assistance and Operator Service), 8 (White Pages Listings), 9 (Numbering Administration), 10 (Signaling and Associated Databases), 12 (Dialing Parity), and 13 (Reciprocal Compensation). A follow-up workshop was held on July 6, 2000 in Seattle, Washington to address unresolved issues from the June workshop sessions. Representatives from Qwest, Public Counsel, AT&T, WorldCom, NEXTLINK Washington, Inc. ("NEXTLINK"),

Electric Lightwave Inc. ("ELI"), Advanced TelCom Group, Inc. ("ATG"), TRACER, Teligent Services, Inc., Rhythms Links Inc., Broadband Office Communications, Inc., Sprint, ICG Communications, Inc. ("ICG") and Commission staff participated in the workshop sessions.

II. GENERAL MATTERS

- 8 Much of the discussion in the first workshop sessions focused on resolution of disputes concerning language in Qwest's proposed SGAT. Qwest apparently offers the SGAT as an option for CLECs instead of negotiating or arbitrating an interconnection agreement. *See Tr. at 811*. Consistent with the Commission's directions in the Supplemental Interpretive and Policy Statement, the Commission will consider Qwest's proposed SGAT only for the purpose of considering elements of services not provided in interconnection agreements, but not to determine Qwest's compliance with checklist items or other requirements under Section 271(c)(1)(B).
- 9 The workshop participants discussed two general issues in addition to Checklist Items Nos. 3, 7-10, 12, and 13. First, the participants discussed how to handle SGAT issues that do not specifically relate to any of the individual checklist items. The participants proposed to defer discussion of the issue to allow resolution in informal discussions among the participants outside of the workshop framework. Participants will report back to the Commission on the status of their discussions during the prehearing conference for the second workshop, scheduled for August 29, 2000.
- 10 Second, the participants proposed to develop SGAT language on how to implement the pick and choose provision of the Act, Section 252(i). The matter was discussed very generally during the June workshops. *See Tr. at 348-52*. During the July 6, 2000 workshop, Qwest and AT&T offered proposed SGAT language in Exhibit 236 to address the issue. The language reflects an agreement reached between Qwest and AT&T in discussions in Colorado workshops. A number of CLECs requested additional time to review the proposed language. The participants were directed to continue discussions outside of the workshop and present any disagreements in briefs due July 17, 2000. Following the workshop, MCG Communications, Inc. d/b/a Mpower Communications Corp., MetroNet Service Corporation, NEXTLINK, ELI, and ATG, all requested additional time to negotiate concerning this SGAT language, proposing that the matter be deferred to a future workshop. Qwest vigorously opposes deferring the matter to a future workshop. The matter will be resolved in a separate order.

III. CHECKLIST ITEM NO. 3 - POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

A. FCC Requirements and Jurisdiction

- 11 Section 271(c)(2)(B)(iii) requires RBOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [RBOC] at just and reasonable rates in accordance with the requirements of section 224." The FCC's orders approving requests by SBC Communications in Texas and Bell Atlantic in New York to provide interLATA service provide that the FCC interprets Section 251(b)(4) of the Act to require "nondiscriminatory access to LEC poles, ducts, conduits, and rights-of-way for competing providers of telecommunications services in accordance with the requirements of Section 224."²
- 12 Section 224, which governs the regulation of pole attachments, provides that the FCC has jurisdiction over the rates, terms, and conditions for pole attachments, unless such matters are regulated by a state. While some portions of the FCC's rules governing pole attachments have been invalidated, the provisions relating to rates and most provisions relating to terms and conditions remain valid.³ Subsection 224(c)(3) provides that:

For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments-

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter

(i) within 180 days after the complaint is filed with the state, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State if the prescribed period does not

² *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, ¶243 (rel. June 30, 2000) (*SBC Texas Order*); *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 ¶263 (rel. Dec. 22, 1999) (*Bell Atlantic New York Order*).

³ *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. 2000).

extend beyond 360 days after the filing of such complaint.

- 13 The Commission has statutory authority to regulate in the public interest the rates, terms, and conditions of attachments to the poles, ducts, conduits, or rights-of-way of electric or telecommunications companies in the state of Washington. *See chapter 80.54 RCW*. Washington is one of the states that certified to the FCC that it regulates rates, terms, and conditions for pole attachments.⁴ Washington filed its certification on the basis that it regulates the rates, terms, and conditions of pole attachments under chapter RCW 80.54. While the Commission has not adopted rules implementing its authority under chapter 80.54 RCW to regulate the rates, terms, and conditions of pole attachments, given the statutory scheme in Washington state, it is clear under Subsection 224(c)(3) that Washington state's regulations governing the rates, terms, and conditions of pole attachments apply in this matter. Thus, Qwest must comply with Washington statutes on pole attachments, or the rates negotiated in interconnection agreements, in order to meet its burden under Section 271(c)(2)(B)(iii).

B. Evidentiary Requirements

- 14 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 3. The general requirements are set forth in Appendix A to this Order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 3 are:

1. How is U S WEST providing nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates?
2. Does U S WEST provide the same access to these facilities to [competitive local exchange carrier] CLECs as it provides itself? Describe how it does so.
3. Does U S WEST make available to CLECs its maps, plats, and other relevant data, and what are the terms and conditions of such availability? Describe how it does so.
4. Describe any municipal (or other type of government) franchise, grant, or additional requirement that affects U S WEST's access to pathways, poles, conduits, and rights-of-way differently from that of unaffiliated carriers.

⁴ *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd No. 4 1498 (1992).

5. What is U S WEST's policy for reservation of space for its own use? How does this affect access to rights-of-way of competitors?
6. How many competitors gain access to customer dwellings in multidwelling units, including access to interbuilding cabling?

15 In its testimony, Qwest did not identify the evidentiary requirement that a statement or exhibit referred to or satisfied, as required in the Supplemental Interpretive and Policy Statement. However, Qwest did provide statements in prefiled testimony or facts in its prefiled exhibits that satisfy the evidentiary requirements listed above, with the exception of the requirement to make available to CLECs its maps, plats and other relevant data. A tabular presentation of the requirements, cross-referenced to Qwest's exhibits and testimony, is included in Appendix A to this Draft Initial Order. A dispute between AT&T, WorldCom and Qwest concerning access to private right-of-way agreements is discussed further below.

C. Parties' Positions

1. Qwest

16 Through the Direct Testimony of Thomas R. Freeberg, Qwest states that it satisfies the requirements of Checklist Item No. 3 through the provisions in its interconnection agreements and its SGAT. *Ex. 151-T, at 11.* Qwest describes the processes it uses to provide CLECs access to poles, ducts, conduits and rights-of-way and states that its processes result in nondiscriminatory access, and that its procedures for reserving space on its facilities are processed the same for Qwest retail orders as for wholesale orders. *Id. at 13-17.* Qwest testifies that since 1998, 19 CLECs have requested access to Qwest facilities; that Qwest can provide access in all parts of its Washington service territory; and that it has provisioned access to facilities in a timely manner. *Id. at 18.* Qwest states there has been one written complaint, which it says is not germane to checklist compliance as it involves a request for terms that are more favorable to the CLEC than those required by the FCC or those contained in the CLEC's interconnection agreement. *Id. at 19.* Qwest also testifies that it has provided access to seven CLECs for over 3,300 multiple dwelling units in Washington state. *Id. at 20.*

2. AT&T

17 AT&T, through its witness Kenneth Wilson, discussed several issues that had been raised and resolved in the Arizona 271 workshops. *Ex. 201-T, at 13-16.* Mr. Wilson stated that Qwest had modified its SGAT to address the concerns, or had stated under oath that the concerns were addressed through other sections of the SGAT. Therefore, AT&T concluded that if the same amendments and affirmations were made in Washington, AT&T's issues regarding these items would be resolved in

Washington.

18 AT&T also raised issues with respect to CLEC access to relevant plats, maps, engineering reports, and other data, and stated that Qwest should be obligated to provide such information within a period not to exceed 60 days. *Id. at 16*. It objected that the SGAT did not obligate Qwest to comply with all laws regarding construction, installation, modification or placement of poles, ducts, conduits and rights-of-way; that the SGAT required CLECs to obtain authority to occupy rights-of-way without being granted access to Qwest's agreements pertaining to those facilities.

19 AT&T objected to the SGAT section on recovering costs for inspections; on terminating an order "for cause;" and the section setting forth the standards CLECs must meet for access to facilities. *Id. at 18*. AT&T concluded that the SGAT sections noted in Mr. Wilson's testimony must be deleted before Qwest cannot be found in compliance with Checklist Item No. 3.

3. *NEXTLINK*

20 NEXTLINK submitted the testimony of Kaylene Anderson for this checklist item. Ms. Anderson stated that Qwest's application is deficient in three areas: (1) failure to demonstrate that the rates charged are just and reasonable; (2) inclusion of an application process that imposes unnecessary expenses and delays for inquiries regarding space availability; and (3) various contract and legal issues raised by the SGAT and its attachments. *Id. at 8*.

4. *WorldCom*

21 Through its witness Thomas Priday, WorldCom states that Exhibit D to the SGAT was inconsistent with the SGAT itself and that WorldCom is working with Qwest on revised SGAT language to address its concerns. It also recommended that any aspects of access to poles, ducts, conduits and rights-of-way that pertain to sub-loops should be considered in the workshops on Checklist Items Nos. 2 and 4. *Ex. 186-T, at 4-5*. Mr. Priday also raised an issue concerning Section 10.8.1.4 of the SGAT.

D. Qwest Response

22 Qwest responded to parties through the Rebuttal Testimony of Mr. Freeberg. *Ex. 157-T*. Mr. Freeberg stated that it had accepted amended language to the SGAT that satisfied WorldCom's concerns, pointed out that the Washington SGAT did not contain Section 10.8.1.4, and that therefore WorldCom's complaint regarding that section was baseless. *Id. at 7*.

23 Mr. Freeberg testified that Qwest believed it would be able to work with AT&T

regarding its concerns with the SGAT language raised by Mr. Wilson. Mr. Freeberg also stated that Qwest agreed with the recommendation to defer the issue of multiple dwelling unit sub-loops to the workshop on Checklist Items Nos. 2 or 4. *Id. at 8.*

24 In response to the concerns raised by NEXTLINK, Mr. Freeberg confirmed that Qwest had provided cost support information to NEXTLINK. *Id. at 9.* With respect to the unauthorized attachment penalties contained in the SGAT, Qwest stated that penalties higher than \$200 in the Washington SGAT were found acceptable in Oregon and have been incorporated into proposed Oregon Administrative Rules. *Id. at 10.* On field verifications, Qwest states that field verifications are almost always necessary to provide the level of information needed for inquiries regarding pole, conduit, and duct attachments. *Id. at 11.* In answer to NEXTLINK's concern regarding the unilateral ability to raise rates as reflected in the SGAT exhibits, Qwest points out that NEXTLINK, as a party to an interconnection agreement with Qwest, would not be subject to the provisions in the attachment, identified as Section 4.2 of Attachment 3 to Exhibit D of the SGAT. *Id. at 12-13.*

E. Verification of Compliance:

25 During the workshop sessions, two issues arose concerning Qwest's compliance with Checklist Item No. 3. First, AT&T and WorldCom argued that Qwest must make available copies of right-of-way agreements Qwest has negotiated with private landowners to allow competitors nondiscriminatory access to the rights-of-way owned or controlled by Qwest. Second, AT&T, WorldCom, and other CLECs asserted that Qwest must respond within 45 days to CLEC requests for access to poles, ducts, conduit, and rights-of-way, even for extensive or large requests.

26 The parties discussed both matters on the record during the workshops as well as during informal discussions between the June and July workshop sessions. At the conclusion of the July 6 follow-up workshop session, the parties had reached an impasse on the time within which Qwest must respond to requests. The parties intended to engage in further discussions on the issue of access to private right-of-way agreements. In order to allow Staff to prepare a complete draft report, the bench requested the parties to discuss the issue in briefs and report later if they have reached an agreement on the issue.

27 Aside from these two issues in dispute, all parties agreed that Qwest had met the requirements of Checklist Item No. 3. Given that the parties are in agreement we agree to defer the issue of access to multiple dwelling unit sub-loops to the workshop for Checklist Item Nos. 2 or 4. This issue will be discussed at the August 29, 2000 prehearing conference. Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated its compliance with Checklist Item No. 3, subject to resolution of the sub-loop issue, as well as resolution of the two issues in dispute below.

F. Private Right-of-Way Agreements

1. AT&T/WorldCom Position

- 28 AT&T and WorldCom (Joint Intervenors) argue that Qwest should disclose, upon request, right-of-way (ROW) contracts and easements that Qwest has entered into with private building and property owners to allow CLECs nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Qwest. The Joint Intervenors argue that the FCC has required RBOCs to make all maps, plats, and all relevant data available for inspection and copying by a CLEC requesting access.⁵ The Joint Intervenors assert that access to the agreements is "integral to assuring that [Qwest] provides nondiscriminatory access to ROW at just and reasonable rates." *Joint Position and Brief Regarding Right-of-Way Contracts, at 13.*
- 29 The Joint Intervenors assert that Qwest, as the historically dominant local telephone utility in Washington state, has authority to exercise powers of eminent domain to obtain necessary ROW access. The Joint Intervenors note that Qwest has traditionally not used its right of eminent domain, but has instead negotiated numerous agreements with private landowners. Some of these agreements are formally recorded in county real property records, but others may be less formal, unrecorded documents. By refusing to provide access to the documents, the Joint Intervenors argue that Qwest violates the requirement for nondiscriminatory access requiring CLECs to test through litigation whether Qwest has ownership or control over an agreement, and puts CLECs and property owners in an awkward position of numerous and costly ROW negotiations or eminent domain proceedings.
- 30 The Joint Intervenors argue that Qwest has ownership or control over the ROWs granted through private contracts and easements. By failing to disclose the agreements, Qwest frustrates the CLECs' ability to determine the nature and scope of Qwest's ownership and control, and requires CLECs to negotiate with land-owners without the necessary knowledge about the existing agreement. They assert that Qwest's failure to provide access to the agreements is anti-competitive behavior, and that requiring Qwest to provide access to the agreements will level the playing field for parties negotiating ROW agreements. The Joint Intervenors also express concern that, if Qwest has no obligation to reveal the ROW agreements, that it will have no incentive to avoid entering into agreements that "explicitly or implicitly discriminate against other competitors or create exclusivity arrangements." *Joint Brief at 7.*

⁵ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile radio Service Providers*, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, ¶ 1223 (rel. Aug. 8, 1996) (*First Report and Order*).

31 Finally, the Joint Intervenors note that Qwest has made a proposal in Colorado to resolve this issue by providing a quit-claim deed to the CLEC and requiring the CLEC to negotiate with the landowner to obtain consent to view the agreement before Qwest will provide access to the agreement. The Joint Intervenors state that they are reviewing the proposal, but object to the cost of the proposal and the requirement to obtain consent from the landowner before obtaining access to the document. The Joint Intervenors argue that Qwest's proposal reveals the company's cynical approach to local competition. *Joint Brief at 12.*

2. *Qwest Position*

32 Qwest asserts that the FCC has determined, with respect to private agreements, that the scope of a utility's ownership or control of an "easement or right-of-way is a matter of state law." *First Report and Order*, ¶ 1179. Qwest also asserts that the FCC declined to "structure general access requirements where the resolution of conflicting claims as to a utility's ownership or control depends on variables that cannot now be ascertained." *Id.* Qwest further quotes the FCC as stating "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit access." *Id.*

33 Qwest denies that it has ownership or control over private ROW agreements, asserting that it is the private landowner who controls access. Qwest asserts that the FCC has stated that where a local exchange carrier has neither ownership nor control over the right-of-way, the carrier has no obligation to obtain access on behalf of the requesting carrier.⁶

34 To satisfy the concerns of the Joint Intervenors, Qwest proposes a process by which "Qwest will agree to provide both redacted copies of such agreements, *and* quitclaim the right to use such real property rights to their fullest extent possible, on the condition that the CLECs obtain the consent of the landowner to place the MDU agreement in the public domain and agree to other reasonable protections of Qwest's real property rights." *Qwest's Legal Brief Regarding Disputed Workshop Issues*, at 4. Qwest believes that this process satisfies its obligations under Checklist Item No. 3.

3. *Discussion*

⁶*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266, ¶ 38 (rel. Oct. 26, 1999) (*Order on Reconsideration*).

- 35 The Joint Intervenors and Qwest continue to negotiate this issue. While we hope the parties reach a mutually satisfactory agreement, after reviewing the parties' arguments, we believe that Qwest must provide CLECs access to private right-of-way agreements in a manner that is the least costly and burdensome to the CLECs.
- 36 Qwest denies that it has ownership or control over ROWs established in agreements Qwest negotiated with private parties. Qwest further asserts that whether it has ownership or control is a matter of state law to be determined on a case-by-case basis. Regardless of whether Qwest has ownership or control, the FCC has required RBOCs to provide access to its maps, plats and other relevant data to avoid "the need for costly discovery in pursuing a claim of improper denial of access." *First Report and Order*, ¶1223.
- 37 Qwest further argues that access to private ROW agreements should not be an issue in determining its compliance with Section 271(c)(2)(B). Qwest is not correct. One of the evidentiary requirements Qwest must meet to establish its compliance with Checklist Item No. 3 is whether Qwest makes available to CLECs its maps, plats, and other relevant data. This is also an FCC requirement in the *First Report and Order*. *Id.* By failing to make available to CLECs private ROW agreements to which Qwest has access, Qwest creates unnecessary barriers to competition by requiring CLECs to negotiate with private landowners without knowing the terms of Qwest's agreement, and requiring CLECs to engage in potentially costly proceedings with both Qwest and the landowner to obtain eminent domain or right-of-way access.
- 38 On August 4, 2000, the parties submitted a schedule for negotiating this issue. We encourage the parties to continue their discussions. While the parties may reach an agreement on this issue, it appears that any agreement must allow for reasonable access to private right-of-way agreements. The issue appears to be access to an agreement to determine whether the CLEC wishes to gain access to an existing ROW. The CLEC cannot make this determination without seeing the document. Qwest's current proposal for providing a quitclaim deed, and requiring CLECs to obtain landowner consent before viewing the document, as well as pay significant fees before viewing the document, places an unreasonable and significant burden on CLECs. Qwest's existing proposal is not acceptable, and does not meet the requirements under Section 271(c)(2)(B) for nondiscriminatory access to ROWs.

G. Time for Qwest to Respond to Requests for Access

1. AT&T/WorldCom/Joint CLEC Position

- 39 AT&T, WorldCom, and the Joint CLECs (NEXTLINK, ELI, and ATG) object to provisions in Qwest's proposed SGAT in which Qwest proposes to provide access to pole attachments or a response to a request for access within 45 days for "standard inquiries" of "one hundred (100) poles or fewer, thirty (30) utility hole sections or fewer, or two (2) miles of linear ROW or less." *See SGAT Exhibit D, Sections 2.1*

and 2.2. For larger requests, Qwest proposes response times of up to 115 days, and for requests of more than 500 poles, 150 manholes, or 10 miles of linear ROW, Qwest proposes that the time limit be negotiated. *Id.* AT&T, WorldCom, and the Joint CLECs assert that the FCC's rules require RBOCs to respond to requests for access to poles, ducts, conduits, and rights-of-way within 45 days, regardless of the size of the request: "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day." 47 C.F.R. § 1.403.3(b).

40 AT&T and WorldCom assert that the FCC has already addressed the issue of how RBOCs must handle large orders in *In the Matter of Cavalier Telephone, L.L.C. v. Virginia Electric and Power Company*, Order and Request for Information, DA 00-1250, File No. PA 99-005, (rel. June 7, 2000). In that case, the FCC stated:

Our rules require Respondent to grant or deny access within 45 days of receiving a complete application for a permit. . . . We have interpreted the Commission's Rules, 47 CFR § 1.1403(b), to mean that a pole owner "must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted." We conclude that Respondent is required to act on each permit application submitted by Complainant within 45 days of receiving the request. To the extent that a permit application includes a large number of poles, respondent is required to approve access as the poles are approved, so that complainant is not required to wait until all poles included in a particular permit are approved prior to being granted any access at all. Respondent shall immediately grant access to all poles to which attachment can be made permanently or temporarily, without causing a safety hazard, for which permit applications have been filed with Respondent for longer than 45 days.

Cavalier Telephone, ¶ 15.

41 AT&T, WorldCom, and the Joint CLECs assert that until Qwest modifies its SGAT to provide a response time of no longer than 45 days, no matter the size of the request, Qwest is not in compliance with Checklist Item No. 3.

2. *Qwest Position*

42 Qwest disputes that the FCC has set a flat 45 day response time for all requests. Qwest argues that the FCC rule, 47 C.F.R. § 1.403(b), does not address the size of the request, and "can easily be interpreted to mean that a utility must respond to a request for access to a single pole or manhole within 45 days." *Qwest's Legal Brief*, at 14.

43 Qwest also argues that its SGAT provision is a very reasonable one, and that WorldCom agreed to the SGAT language during similar workshops in the state of Arizona. Qwest believes WorldCom should be bound by its agreement and should

not be allowed to "unravel" its agreement with Qwest.

3. Discussion

44 The Commission must determine whether Qwest is in compliance with the requirements of Checklist Item No. 3, including any FCC's rules and regulations and orders in effect at the time the application was filed. See *SBC Texas Order*, at 22. While Qwest is correct that the FCC rule does not specify whether the 45 day requirement applies to a request for a single pole or manhole, the rule can also be reasonably interpreted to refer to requests for a number of poles or manholes. The FCC has in fact interpreted the rule in that way. Although the *Cavalier Telephone* decision was decided after Qwest filed its application with the Commission, the FCC's decision on the matter is eminently reasonable.

45 While Qwest may object to WorldCom walking away from an earlier agreement, WorldCom's action does not affect this decision. This proceeding is not an arbitration. In this proceeding, we must determine whether Qwest's SGAT and Interconnection Agreements and actions are in compliance with the Checklist Item and FCC rules and regulations. Qwest is not in compliance with Checklist Item No. 3 until it modifies its SGAT to provide a response to requests for poles, ducts, conduits, and rights-of-way within 45 days of receiving a completed application.

IV. CHECKLIST ITEM NO. 7(i) - 911 AND E911 SERVICES

A. FCC Requirements

46 Section 271(c)(2)(B)(vii) of the Act requires "nondiscriminatory access to - - (I) 911 and E911 services." In its *Ameritech Michigan Order*, the FCC found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."⁷

B. Evidentiary Requirements

47 In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission identified several general and several specific evidentiary requirements Qwest must meet in order to be considered in compliance with Checklist Item No. 7. The general requirements are listed in Appendix A to this Order. The requirements specific to Checklist Item No. 7 are:

1. How is U S WEST providing nondiscriminatory access to 911 and E911 services? Directory assistance services? Operator call

⁷*In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ¶ 256 (*Ameritech Michigan Order*).

completion services?

2. How is U S WEST trying to resolve any problems it has experienced in integrating CLEC customer information into the 911 system? Discuss what problems, if any, are caused by CLEC error.
3. Please provide data showing the percentage of errors found in CLEC end user information and U S WEST end user information, respectively, and the frequency of updates to the database for CLEC end user information and U S WEST end user information, respectively.

48 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy these evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Appendix A to this Draft Initial Order.

C. Parties' Positions

1. Qwest

49 Qwest states that it meets the requirements of Checklist Item No. 7(i) through the provisions in its interconnection agreements and through the offerings contained in the SGAT. *Ex. 131-T, at 23.* Qwest's witness, Margaret Bumgarner, describes in her testimony the processes competitors use to obtain 911 and E911 service from Qwest (*Id. at 7, 9-13*), and Qwest's legal obligations, as reflected in the SGAT and interconnection agreements, to provide these services to CLECs at parity with those services provided to itself. The 911 and E911 services Qwest provides include: provision and protection of trunks for 911 and E911 calls; call routing; E911 database management, including updates, accuracy, and error correction; and a description of performance indicators being developed through the Regional Oversight Committee (ROC) OSS testing project. *Ex. 141-T, at 10.*

50 Qwest states that it has provided, as of January 31, 2000, E911 service to 21 facility-based CLECs through E911 trunking between the CLECs' switches and the Qwest selective router. *Ex. 131-T, at 6.* Qwest also provided service to 25 resellers, who obtain 911/E911 service through the same facilities that serve Qwest end-user customers. *Id.* Qwest also presented information on the 15 performance measures that would be used to gauge its performance with respect to this checklist item. *Ex. 141-T, at 10; Ex. 142-145.*

2. AT&T

51 Through its witness Kenneth Wilson, AT&T identified two issues. One involved the documentation contained in Qwest's manuals and documents that are used by CLECs regarding provision of connection arrangements to the Qwest network. AT&T testified that while the SGAT states it will provide connection arrangements at parity, the underlying Qwest manuals require connection through an additional facility called an ICDF or SPOT Frame for all interconnections between a CLEC and Qwest for 911 and E911 service, while not requiring similar connection for Qwest's own services. *Ex. 201-T, at 24.*

52 The other issue AT&T raised was that Qwest provides protective covers over 911 circuits in its own networks, while not proposing similar protection for 911 circuits for CLECs in its SGAT or other legally binding contractual agreements. *Id.*

3. WorldCom

53 WorldCom presented prefiled testimony from Michael Beach, which was adopted by WorldCom witness Thomas Priday. Mr. Priday raised the same two issues raised by AT&T, discussed above. In addition, WorldCom raised concerns regarding diversity of trunking facilities, routing of overflow traffic, types of interface, and repair. *Ex. 186-T, at 7-9.*

D. Qwest Response

54 Qwest's response, presented through rebuttal testimony and through oral testimony and exhibits submitted in the workshops held June 21-23 and July 6, 2000, was to amend language in its SGAT and in its underlying technical documents and manuals to address the concerns raised by AT&T and WorldCom. *Ex. 141-T, at 6-10.* With respect to the routing of overflow traffic, Qwest explained that the routing of 911 calls was the province of Washington 911 authorities, not Qwest, and that it could not agree with WorldCom's recommendation that Qwest route overflow traffic.

E. Verification of Compliance

- 55 As stated above, Qwest amended language in its SGAT and technical documents to address the remaining concerns of the parties. At the end of the July 6 workshop, all parties at the workshop agreed that all action items regarding Checklist Item 7(i) were resolved and that Qwest was in compliance with Checklist Item No. 7(i).
- 56 Staff observes that the ROC OSS testing process is still underway with respect to the 15 performance measures for access to 911/E911 service. Staff cautions that any conclusion reached in this Order regarding Qwest's compliance with Checklist Item No. 7(i) should be subject to reevaluation if Qwest fails to meet the 15 performance measurements discussed above.
- 57 Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated that it makes available to CLECs nondiscriminatory access to 911 and E911 services, and that through its interconnection agreements and proposed SGAT, it is subject to legally binding commitments to provide these services. Qwest is in compliance with the requirements of Checklist Item No. 7(i). The finding that Qwest meets the requirements of Checklist Item No. 7(i) will be subject to reevaluation if Qwest fails to meet the relevant performance measurements on 911 and E911 services.

V. CHECKLIST ITEM NO. 7(ii) - DIRECTORY ASSISTANCE

A. FCC Requirements

- 58 Section 271(c)(2)(B)(vii) of the Act requires RBOCs to provide to CLECs "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers." The FCC concluded in the *Second BellSouth Louisiana Order* that a BOC "must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of Section 271(c)(2)(B)(vii)(II)."⁸ In the *Local Competition Second Report and Order*, the FCC held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."⁹

⁸ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121, 13 FCC REd 20599, ¶ 240. (*Second BellSouth Louisiana Order*).

⁹ See *Bell Atlantic New York Order*, ¶ 352.

59 The FCC concluded that BellSouth did not demonstrate nondiscriminatory access to directory assistance. It questioned why BellSouth had not disaggregated performance data for itself and competing carriers. It stated that future showings of compliance with this checklist item should include either disaggregated performance data, should explain why disaggregation was not feasible or was unnecessary to demonstrate compliance.¹⁰

B. Evidentiary Requirements

60 In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission identified several general and specific evidentiary requirements Qwest must meet in order to be considered in compliance with Checklist Item No. 7. The general requirements are listed in Appendix A to this order. The requirements specific to Checklist Item No. 7 are:

1. How is U S WEST providing nondiscriminatory access to 911 and E911 services? Directory assistance services? Operator call completion services?
2. How is U S WEST trying to resolve any problems it has experienced in integrating CLEC customer information into the 911 system? Discuss what problems, if any, are caused by CLEC error.
3. Please provide data showing the percentage of errors found in CLEC end user information and U S WEST end user information, respectively, and the frequency of updates to the database for CLEC end user information and U S WEST end user information, respectively.

61 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in these general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Appendix A to this Draft Initial Order.

¹⁰*Second BellSouth Louisiana Order*, ¶ 245.

C. Parties' Positions

1. Qwest

62 Qwest, in the prefiled testimony of Lori A. Simpson, states that it satisfies this checklist item via its SGAT, which legally binds the company to provide CLECs with nondiscriminatory access to Qwest's directory assistance service. *Ex. 111-T, at 5*. It further obligates Qwest to provide directory assistance service to CLECs according to the same methods, practices and standards Qwest uses to provide service to its end users. *Id.* Qwest states that CLEC end users' listings are included in the Qwest directory assistance database, and that CLECs can use various elements of directory assistance service, which includes listings, listing updates, directory assistance database access, directory assistance operators, and directory assistance trunking. *Id. at 6*. As of March 22, 2000, Qwest states that it provides directory assistance to 25 resellers and 11 facility-based CLECs in Washington; has included more than 25,700 CLEC end user listings in its directory assistance database in Washington, and provides its Directory Assistance List service to two active CLECs in Washington. *Id. at 10*.

63 Through its SGAT, Qwest provides call branding and dialing parity to CLECs for directory assistance. *Ex. 111-T, at 16*. Calls to Qwest directory assistance operators are handled on a first-come, first-served basis, without regard to whether they are originated by a CLEC or by Qwest. *Id. at 20*.

64 Qwest uses two performance indicators to measure performance for directory assistance, a "Speed of Answer" measure (DA-1) and one titled "Calls Answered within 10 Seconds (DA-2)." Both of these measures are performed for aggregate data from Qwest and CLEC end use customers. Qwest states that it does not disaggregate these measures to compare its performance for CLEC customers versus its own customers because the directory assistance system incorporates parity by design. Calls are answered on a first-come, first-served basis. The only exceptions are made for calls involving Spanish-speaking callers, coin telephone callers, and national directory assistance calls, each of which is handled by a different set of operators than local directory assistance. Once these calls are routed to separate queues, the calls are answered on a first-come, first-served basis. Qwest states that because its call answering systems and procedures are such that directory assistance operators cannot distinguish between calls from CLEC end users and Qwest end users, that there is no need to maintain separate performance data for end users based on the end user's service provider.

65 The performance measures described above are among those being audited through the ROC OSS testing process being performed currently. Accordingly, Staff's conclusion with regard to this checklist item will be conditioned on the outcome of the ROC testing on those performance measures.

66 Qwest states that it also provides directory assistance listings to CLECs in bulk through its SGAT. *Ex. 114-T, at 3; Ex. 106, Sec. 10.5.1.1.2.*

2. AT&T

67 Through the testimony of Kenneth Wilson, AT&T discussed several issues that had been raised and resolved in the Arizona 271 workshops. *Ex. 201-T, at 27-29.* Mr. Wilson stated that Qwest had modified its SGAT to address the concerns, or had stated under oath that the concerns were addressed through other sections of the SGAT. Therefore, AT&T concluded that if the same amendments and affirmations were made in Washington, AT&T's issues regarding directory assistance would be resolved in Washington.

3. WorldCom

68 WorldCom, through the testimony of Thomas Friday, stated its objections to language in the SGAT, Section 10.5.1.1.2, that it claimed unduly restricted its use of directory assistance list information purchased from Qwest. *Ex. 186-T, at 6.*

69 WorldCom testified that the use of the word "license" in the above SGAT section implied "a greater control and power to revoke by [U S WEST] on the use of this data by CLECs than is appropriate." *Id.*

70 WorldCom also raises the issue of warranty and accuracy requirements for directory assistance list information, claiming that the SGAT language (sections 10.6.2.1, 10.4.2.13, 10.4.2.14) imposes more stringent requirements for CLECs providing list information to Qwest than it does on Qwest Directory Assistance list information provided to CLECs. *Ex. 186-T, at 12-13.*

D. Qwest Response

71 Qwest's witness Lori Simpson counters that the Washington SGAT only needs to address situations in which CLECs purchase directory assistance listings for the purpose of competing with Qwest to provide local exchange service in Qwest's local service territories. *Ex. 114-T, at 4.* During the workshops, both WorldCom and Qwest proposed SGAT language amendments to address the restrictions on use of DA listings information by both Qwest and CLECs.

72 Qwest states that WorldCom has provided no evidence that use of the word "licensing" is causing it harm, and that directory assistance listings are customer information that Qwest must appropriately protect, and licensing the listings for a specific use provides the needed protection. Qwest also points out that its agreements with third parties whose listings are included in Qwest's listing database provide that

the third-party listings can only be used for the purpose of providing directory assistance service, and that removing the licensing language could result in violations of Qwest's agreements. *Id. at 6.*

73 Qwest's response on the subject of accuracy and warranty requirements is that it has an obligation to ensure that CLEC listing information it receives is accurate, but that Qwest cannot be asked to warrant that its listing information, including listings from CLECs and others, is accurate. During the workshops, Qwest offered proposed language amendments to sections of the SGAT that would make the accuracy and warranty requirements reciprocal for CLECs and Qwest. AT&T raised concerns that the language as drafted was less restrictive to Qwest than to the CLECs.

E. Verification of Compliance

74 At the conclusion of the July 6, 2000, workshop, the parties agreed to continue to work on resolving the remaining impasse issues regarding reciprocity and licensing, since these issues were going to be addressed in workshops in Colorado held August 1-3, 2000. On August 4, 2000, Qwest submitted a document via e-mail entitled "Status Report Re: Workshop 1 Items Discussed in Colorado Workshop 2 and Update to Outstanding Issues Log." In that document, Qwest stated that Issues WA-7-7 and WA-7-9a, pertaining to reciprocity and licensing, had been resolved for Washington. Qwest submitted language agreed to by the parties which addressed the concerns raised above by AT&T and WorldCom. We believe the new SGAT language satisfies the concerns of the commenting parties and is reasonable. We conclude that Qwest has satisfied the requirements of Checklist Item No. 7(ii), subject to reevaluation if Qwest fails to meet the relevant performance measurements.

VI. CHECKLIST ITEM NO. V(iii) - OPERATOR SERVICES

A. FCC Requirements

75 Section 271(c)(2)(B)(vii) of the Act requires RBOCs to provide to CLECs "nondiscriminatory access to . . . (III) operator call completion services." The FCC concluded in the *Second BellSouth Louisiana Order* that a BOC "must be in compliance with the regulations implementing Section 251(b)(3) to satisfy the requirements of Section 271(c)(2)(B)(vii)(III)."¹¹ The FCC concluded that BellSouth did not demonstrate nondiscriminatory access to operator services. It questioned why BellSouth had not disaggregated performance data for itself and competing carriers. It stated that future showings of compliance with this checklist item should include either disaggregated performance data, or should explain why disaggregation was not feasible or was unnecessary to demonstrate compliance.¹²

¹¹ *Second BellSouth Louisiana Order*, ¶ 240.

¹²*Id.*, ¶ 245.

B. Evidentiary Requirements

76 In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission identified several general and several specific evidentiary requirements Qwest must meet in order to be considered in compliance with Checklist Item No. 7. The general requirements are listed in Appendix A to this order. The requirements specific to Checklist Item No. 7 are:

1. How is U S WEST providing nondiscriminatory access to 911 and E911 services? Directory assistance services? Operator call completion services?
2. How is U S WEST trying to resolve any problems it has experienced in integrating CLEC customer information into the 911 system? Discuss what problems, if any, are caused by CLEC error.
3. Please provide data showing the percentage of errors found in CLEC end user information and U S WEST end user information, respectively, and the frequency of updates to the database for CLEC end user information and U S WEST end user information, respectively.

77 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Appendix A to this Draft Initial Order.

C. Parties' Positions

1. Qwest

78 Qwest, in the prefiled testimony of Lori A. Simpson, states that it satisfies this checklist item via its SGAT, which legally binds the company to provide CLECs with nondiscriminatory access to Qwest's operator services. *Ex. 111-T, at 13*. As of March 22, 2000, Qwest states that it provides operator services to 25 resellers and 11 facility-based CLECs in Washington *Id. at 15*.

79 Through its SGAT, Qwest provides call branding and dialing parity to CLECs for operator services. *Ex. 111-T, at 16*. Calls to Qwest operators are handled on a first-come, first-served basis, without regard to whether they are originated by a CLEC or by Qwest. *Ex. 111-T, at 20-21*. Qwest's rates for these services are contained in Exhibit A to its SGAT.

80 Qwest uses two performance indicators to measure performance for operator services (and directory assistance), a “Speed of Answer” measure (OS-1) and one titled “Calls Answered within 10 Seconds” (OS-2). Both of these measures are performed for aggregate data from Qwest and CLEC end use customers. Qwest states that it does not disaggregate these measures to compare its performance for CLEC customers versus its own customers because the operator services system incorporates parity by design. Calls are answered on a first-come, first-served basis. The only exceptions are made for calls involving Spanish-speaking callers and coin telephone callers, and once these calls are routed to those operators, the calls are answered on a first-come, first-served basis. Qwest states that because its call answering systems and procedures are such that operators cannot distinguish between calls from CLEC end users and Qwest end users, that there is no need to maintain separate performance data for end users based on the end user’s service provider.

2. *Other Parties’ Response*

81 No parties filing testimony in this proceeding or appearing at the workshops raised concerns regarding the operator services provided by Qwest.

D. Verification of Compliance

82 The performance measures described above are among those being tested through the ROC OSS testing process being performed currently. Accordingly, our conclusion with regard to this checklist item will be conditioned on the outcome of the ROC testing on those performance measures.

83 Based on the evidence presented, and the absence of concerns raised by parties either in testimony or in workshops, we conclude that Qwest has satisfied the requirements of this checklist item, subject to reevaluation if Qwest fails to meet the relevant performance measurements.

VII. CHECKLIST ITEM NO. 8 - WHITE PAGES DIRECTORY LISTINGS

A. FCC Requirements

84 Section 271(c)(2)(B)(viii) of the Act states that access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers must include “White pages directory listings for customers of the other carrier’s telephone exchange service.”

85 In the *Second BellSouth Louisiana Order*, the FCC stated that “consistent with the Commission’s [FCC’s] interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes, the residential and business listings of the

customers of the local exchange provider. We further conclude that the term ‘directory listing,’ as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”¹³

86 The FCC also concluded that to meet this obligation, a Bell Operating Company must demonstrate that it provides: (1) nondiscriminatory appearance and integration of white page listings to CLEC customers; and (2) white page listings for competitor’s customers with the same accuracy and reliability that it provides its own customers. *Id. at ¶ 256.*

87 The FCC further stated that “[i]nherent in the obligation to provide a white pages directory listing in a nondiscriminatory fashion is the requirement that the listing the BOC provides to the competitor’s customers is identical to, and fully integrated with, the BOC’s customers’ listings.” *Id.* By “identical,” the FCC was referring to factors such as the size, font, and typeface of the listing. Its use of the term “fully integrated” was intended to mean that the BOC should not separate the competing carrier’s listings from its own customers. *Id.*

B. Evidentiary Requirements

88 Appendix A to the Washington Utilities and Transportation Commission’s Supplemental Interpretive and Policy Statement sets forth both general and specific questions Qwest must respond to when requesting consideration of its compliance with Section 271. The general requirements are set forth in Appendix A to this Order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 8 are:

1. How is U S WEST providing white page directory listings for customers of the CLEC’s telephone exchange service?
2. Under what terms does U S WEST provide white page directory listings?
3. Under what terms does U S WEST provide nondiscriminatory access to basic directory listings for business accounts (name, address, telephone number, and primary business classification)?
4. Under what terms does U S WEST provide: (1) complete content of white page local exchange directory in electronic format; (ii) specific white page directory publication schedules and deadlines; and (iii) specific white page directory publication schedules and delivery dates/ locations?

¹³ *Second BellSouth Louisiana Order*, ¶ 255.

5. Under what terms does U S WEST deliver white and yellow page directories to customers of new carriers? How do those terms differ from those U S WEST affords itself, its affiliates, or its retail customers? How do they differ from the requirements contained in WAC 480-120-042?

89 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Appendix A to this Draft Initial Order.

C. Parties' Positions

1. Qwest

90 In testimony filed on March 22, 2000, Qwest witness Lori A. Simpson stated that Qwest had met the requirements of Checklist Item No. 8. *Ex. 111-T, at 29-38*. In her testimony, Ms. Simpson addressed how Qwest has met the requirements related to white pages listings and how Qwest is legally bound to the requirements set forth in the 1996 Act. Citing primarily the language in the company's SGAT, Ms. Simpson explained the accessibility, options, and non-discriminatory treatment Qwest ensures for all CLECs requesting that their customers' information appear in the Qwest Dex White Pages. Specifically, section 10.4.2.24 of the Washington SGAT states:

U S WEST represents and warrants that any arrangement for the publication of white pages directory listings with an affiliate (including, without limitation, U S WEST Dex, Inc.) (an "Affiliate"), requires such Affiliate to publish the directory listings of CLEC contained in U S WEST's listings database so that the CLEC's directory listings are non-discriminatory in appearance and integration, and have the same accuracy and reliability that such Affiliate provides to U S WEST's end users.

91 *Ex. 106*. Further the SGAT elaborates in sections 10.4.2.25-.26 that the white pages directory will include information in the customer guide section providing customers information on how to contact their CLEC in order to make listing or service changes. *Id.*

92 Qwest offers several options for listing types. These include primary, premium, and privacy listings. These listing types are the same as those Qwest provides its own retail end users. *Ex. 111-T, at 30*. Simpson described in some detail about the different types of listings and the fees associated with the listing. Citing SGAT section 10.4.2.1, specifically:

CLEC will provide in standard, mechanized format, and U S WEST will accept at no charge, one primary listing for each main telephone number belonging to CLEC's end users.

93 *Ex. 106, Section 10.4.2.1.* In addition to one primary listing, customers may select premium listings or privacy listings. *Ex. 111-T, at 30.* Qwest commits that it treats CLEC end user privacy listings with the same level of confidentiality as Qwest end user listings. *Id.* All listings after the first primary listing are offered at the retail rate, less the applicable wholesale discount. The SGAT provides:

CLEC will be charged for premium and privacy listings (e.g., additional, foreign, cross reference) at U S WEST's General Exchange listing Tariff rates, less the wholesale discount, as described in Exhibit A. Primary listings and other types of listings are defined in the U S WEST General Tariffs.

94 *Ex. 106, Section 10.4.2.2.* Through Exhibit 116, Ms. Simpson showed the differences in how a primary versus a premium listing would appear in the White Pages Directory.

95 Ms. Simpson submitted that the number of listings for resellers had increased from 25,700 listings to 29,100 by June 2000. *Ex. 111-T, at 31; Ex. 114-T, at 13.* Confidential Exhibit C-113 provides a list of CLECs using Qwest's Directory Assistance Service, Operator Services, and White Pages Directory Listings.

96 Qwest ensures that all listings are nondiscriminatory in appearance and integration. Ms. Simpson cited two sections of the SGAT to verify this practice. The SGAT states:

U S WEST provides non-discriminatory appearance and integration of white pages listings for all CLEC's and U S WEST's end users. All requests for white pages directory listings, whether CLEC or U S WEST end users, follow the same processes for entry into the listings database.

CLEC white pages listings will be in the same font and size as listing for U S WEST end users, and will not be separately classified.

97 *Ex. 106, Sections 10.4.2.8 and 10.4.2.10.* Ms. Simpson provided through Exhibit 117 a copy of a page from the Washington QwestDEX white pages that included both primary and premium listings from both Qwest and CLEC customers.

98 Qwest is required by the FCC to provide CLECs with white pages listings that are as accurate and reliable as the white pages listings it provides to its own end users.¹⁴ They are also required to put in place procedures to reduce the potential for errors in listings. Qwest asserts that it meets these requirements by using the same procedures for Qwest and CLEC listings. Its SGAT provides:

CLEC end user listings will be treated the same as U S WEST's end user listings

...

U S WEST processes for publication of white pages directory listings will make no distinction between CLEC and U S WEST subscribers. CLEC listings will be provided with the same accuracy and reliability as U S WEST's end user listings. U S WEST will ensure CLEC listings provided to U S WEST are included in the white pages directory published on U S WEST's behalf using the same methods and procedures, and under the same terms and conditions, as U S WEST uses for its own end user listings.

99 *Ex. 106, Sections 10.4.2.5 and 10.4.2.1.1.* In Exhibit 112, Ms. Simpson shows the process used for listings. By this process Qwest ensures all listings are treated in a nondiscriminatory manner using the same or similar processes and procedures that result in accurate and reliable listings. *Ex. 111-T, at 34; Ex. 112.* Qwest uses the same personnel, systems, databases, and methods and procedures for Qwest listings and CLEC listings. Only one list is submitted daily to QwestDEX for inclusion in the white pages directories.

100 Additionally, CLECs are given opportunities to review their own listings for accuracy as they appear in Qwest's listings database. In order to do this, Qwest provides monthly "verification proofs" to CLECs. *Ex. 111-T, at 34 -35; Ex. 106, Sections 10.4.2.19-21.*

101 Qwest provides for the delivery of directories to CLEC end users on the same terms and conditions as directories are delivered to Qwest end users, and in compliance with the requirements for delivery of directories set forth in WAC 480-120-042. In its SGAT at Section 10.4.2.12, Qwest sets out the services to be provided and the frequency or reasons directories are to be delivered.

102 Qwest is monitoring its performance in providing listings by use of two measurements. One will measure the accuracy and the timeliness of listings for CLECs and for Qwest. That is referenced as DB-1. It is intended to measure the average time required to complete updates to the directory listings database. The

¹⁴ *Second BellSouth Louisiana Order*, ¶ 257.

second measurement (DB-2) is “Percentage of Accurate Database Updates.” It is intended to measure the percentage of database updates completed without errors. *Ex. 111-T, at 36; Ex. 120.* These measures are in place now and will be reviewed through the ROC OSS review process.

103 Qwest also provides training to CLECs to ensure they can submit accurate and complete listings orders to Qwest. This training is provided at no cost to the CLEC. Documentation provided in Exhibit 118 can also be accessed on the internet at <http://www.uswest.com/wholesale> if a CLEC prefers to use that method instead of a training course. Ms. Simpson provided a list of the CLECs in Washington that had taken the time to attend Qwest’s training. *Ex. 111-T, at 36.*

104 Any CLEC wishing to publish its own white pages directories may receive in electronic format, on magnetic tape, or by other medium, a copy of the Qwest listings. Qwest makes this commitment in Section 10.4.2.23 of its SGAT. *Ex. 106.*

2. *Position of AT&T*

105 AT&T witness Kenneth Wilson testified that Qwest must meet the requirements set forth in the FCC’s *BellSouth Louisiana Order* in order to meet the requirements of Checklist Item No. 8. *Ex. 201-T, at 29-31.* Mr. Wilson outlined in his testimony concerns that AT&T raised about SGAT provisions during workshops in Arizona. *Id. at 31-33.* Mr. Wilson explained that if AT&T’s concerns are satisfied in Washington as they were in Arizona, that its issues would be resolved. *Id.*

106 Mr. Wilson did express concern about coordination of the process for assuring that Qwest provides white pages listings for competitor’s customers with the same accuracy and reliability that it provides its own customers. *Id. at 33-34.* Finally, Mr. Wilson noted that AT&T reserves the right to challenge Qwest’s compliance with this checklist item if Qwest fails to meet the relevant performance measures. *Id. at 34-35.*

3. *Position of WorldCom*

107 WorldCom witness Thomas T. Priday testified that in order for WorldCom to agree that Qwest had met the requirements for Checklist Item No. 8, Qwest must meet the relevant performance measures on directory listings. *Ex. 186-T, at 13.* WorldCom reserves the right to challenge Qwest’s compliance if it fails to meet the relevant performance measures.

D. Verification of Compliance

108 During the June and July workshops, Qwest agreed to make additional changes to the SGAT to reflect discussions during the workshop session. *Tr. at 181; 681-85; 687-*

93. Following discussion in the workshops, all parties agreed that Qwest had met the requirements for this checklist item, with the exception of reviewing the audited results of the ROC OSS testing for performance measures.

109 Based on the evidence presented, and the resolution of concerns raised by parties during the workshops, we conclude that Qwest has satisfied the requirements of this checklist item, subject to reevaluation if Qwest fails to meet the relevant performance measurements.

VIII. CHECKLIST ITEM NO. 9: NUMBERING ADMINISTRATION

A. FCC Requirements

110 The Act requires RBOCs to provide nondiscriminatory access to telephone numbers until the FCC establishes guidelines, plans, or rules for transferring responsibility of numbering administration to an independent third party. In the Act, the requirements for number portability are covered in Section 251(b)(2) and the requirements for Numbering Administration are covered in Section 251(e)(1). Checklist Item 271(c)(2)(B)(ix) reads as follows:

Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

111 On July 13, 1995, the FCC ordered that numbering administration for area codes and prefixes be centralized at the national level and transferred to an independent third party administrator.¹⁵ In its *Local Competition Second Report and Order*, the FCC interpreted section 251(b)(3) of the Act as requiring LECs that provide telephone numbers to permit competing providers access to the numbers that is identical to the access that the LEC provides to itself.¹⁶

112 The FCC also states that an ILEC shall "not unduly favor or disfavor any particular

¹⁵ FCC Report and Order, Administration of the North American Numbering Plan, CC Docket 92-237, released July 13, 1995.

¹⁶ *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd at 19446-47 (rel. Aug. 8, 1996) (*Local Competition Second Report and Order*).

telecommunications industry segment or group of telecommunications consumers."¹⁷ In its *Local Competition Second Report and Order*, the FCC issued guidelines and provided steps for transferring responsibility to the North American Numbering Plan Administrator (NANPA). On September 1, 1998, this responsibility was transferred to NeuStar (formerly known as Lockheed Martin). Prior to this date Qwest was the Central Office Code Administrator within its region.

B. Evidentiary Requirements

113 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 9. The general requirements are listed in Appendix A to this order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 9 are:

1. How is U S WEST providing nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers?
2. Under what terms do carriers, including U S WEST and its affiliates, obtain access to telephone numbers for assignment?
3. How is U S WEST managing limitations in numbering resources (e.g., NXX freezes)?

114 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Appendix A to this Draft Initial Order.

C. Parties' Positions

1. Qwest

115 On March 22, 2000, Margaret S. Bumgarner of Qwest filed direct testimony on behalf of Qwest indicating that Qwest had met the requirements of Checklist Item No. 9 for Numbering Administration. *Ex. 131-T, at 25*. Prior to transferring numbering responsibility to NeuStar, Qwest followed guidelines established by the national Industry Numbering Committee (INC), and published as INC 95-0407-008. *Id.*

¹⁷*Id.* at amendment to Part 52, Subpart B, 52.9(a)(2).

Further Qwest states that it met all of the FCC's requirements by:

- 1) not charging any fees for the assignment of use of central office codes; and,
- 2) using the Central office Code Assignment Guidelines . . . as uniform standards and procedures to process NXX code requests and assignment of those codes.

116 *Id.* Further Qwest points out that prior to the transfer it assigned 75 NXX codes to CLECs in Washington during twelve months within an average of 4.8 days. During the same period it assigned 34 NXX codes to itself within an average of 3.8 days. All but two of the codes were assigned within the 10 working days required by the industry guidelines in Section 5.2.2.

2. AT&T

117 AT&T found three issues at odds with Qwest's compliance with the Numbering Administration Checklist Item:

- 1) Qwest Local Routing Number (LRN) Policy;
- 2) Qwest's "improper reassignment of telephone numbers," *Ex. 201, at 36*; and
- 3) Qwest's process for loading CLEC prefixes in Qwest switches.

118 A Local Routing Number (LRN) is assigned to a carrier's switch so that calls to numbers that have been ported will be routed to the proper switch. The LRN appears next to each number that has been ported in the regional number portability database. The industry standard has required that one LRN be assigned per LATA for each CLEC switch. Qwest's policy for LRN assignment was one LRN per CLEC per rate center. AT&T believes this is an inefficient use of numbering resources. In a January, 2000 letter Qwest informed AT&T that it had made a policy change. AT&T indicated that parties were still working to resolve issues in implementing the policy change. *Id. at 37.*

119 The second issue, "improper reassignment of telephone numbers," refers to instances where numbers had been ported from Qwest to a CLEC, and Qwest had inadvertently reassigned the numbers to other customers.

120 Local Routing Number issues have been deferred to Checklist Item No. 1 (Interconnection), and the impacts of number porting on number reassignments have been deferred to Checklist Item No. 11 (Number Portability).

121 As for AT&T's third concern, the process for loading NXX prefixes for CLECs, a Regional Oversight Committee (ROC) testing parameter NP-1, related to NXX code activation, will be used to verify that prefix updates are handled at parity. Monthly

reports are currently being issued on measurements of this test metric. This item (WA 9-3) is conditionally closed pending the review of the audited results of the region-wide test.

D. Qwest Response

- 122 Qwest indicated there had been problems with the reassignment of ported numbers, and referred to similar problems in the Arizona Section 271 proceeding. *Tr. at 187.* Qwest also states that, on occasion, ported numbers were reassigned to other Qwest customers. Similarly, Qwest admitted to problems with making errors in the assignment of new CLEC NXX codes in its own switches. Errors in routing tables make it difficult to complete calls to the new NXX code once it is activated.
- 123 Qwest agreed to defer the LRN issue and the double assignment of numbers to Checklist Items Nos. 1 and 11 respectively. Qwest also agreed with the conditions placed on metric NP-1 pending audit.

E. Verification of Compliance

- 124 Qwest provided statements in prefiled testimony or facts in its prefiled exhibits that satisfy the general and evidentiary requirements set forth in the Supplemental Interpretive and Policy Statement.
- 125 In response to Bench Request No. 22, Qwest indicated it was no longer requiring one LRN per CLEC per rate center, but would permit a single LRN per LATA per CLEC switch. Other parties (AT&T) have indicated that the details of the policy change have not been completely implemented and recommend deferral of this issue to Checklist Item No. 1.
- 126 Qwest also admits that, on occasion, ported numbers were reassigned to other Qwest customers. Qwest has approached its number assignment administrator and expects the problem to be corrected. Qwest agrees to defer this issue to Checklist Item No. 11.
- 127 We accept the deferral of the two items (WA 9-1) concerning the assignment of LRNs, and (WA 9-2) on the double assignment of numbers, to Checklist Items Nos. 1 and 11 respectively. The Commission finds Qwest to be in compliance with Checklist Item No. 9, subject to satisfactory audited results of metric NP-1 in the ROC OSS regional tests.

IX. CHECKLIST ITEM NO. 10 - DATABASES AND ASSOCIATED SIGNALING

A. FCC Requirements

128 Section 271(c)(2)(B)(x) requires RBOCs to provide "Nondiscriminatory access to databases and associated signaling necessary for call routing and completion." The Act also includes "databases [and] signaling systems . . . used in the transmission, routing or other provision of a telecommunications service" within the definition of the term "network element." 47 U.S.C. § 153(29). In its *First Report and Order*, the FCC interpreted the Act to require RBOCs to provide unbundled access to call-related databases and signaling systems as network elements.¹⁸ In its *First Report and Order* and in the *UNE Remand Order*, the FCC has required ILECs to provide unbundled access to the following call-related databases: the Line Information Database ("LIDB"), the Toll Free Calling database ("8XX"), the Local Number Portability database ("LNP"), the Advanced Intelligent Network database ("AIN"), calling-name database, and 911 and E911 databases.¹⁹

129 In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to show that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."²⁰ The FCC also required BellSouth "to design, create, test, and deploy AIN-based services at the SMS, through a service creation environment, that BellSouth creates to itself."²¹

B. Evidentiary Requirements

130 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 10. The general requirements are listed in Appendix A to this order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 10 are:

1. How is U S WEST providing nondiscriminatory access to databases and associated signaling necessary for call routing and completion?

¹⁸*First Report and Order*, ¶¶ 479, 484.

¹⁹*First Report and Order*, ¶ 484; *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ¶403 (*UNE Remand Order*).

²⁰ *Second BellSouth Louisiana Order*, at ¶267. See also *SBC Texas Order*, ¶362.

²¹ *Id.*, ¶ 272.

2. To which CLECs is U S WEST providing such access, and under what terms, conditions, and rates?
3. Are there any databases that competitors have requested access to that U S WEST is unwilling or unable to supply? Identify the databases and state why U S WEST is unable or unwilling to supply access. Identify the competitors involved.
4. Are there any pending requests for access to databases that U S WEST has not granted or completed? Identify the nature of the request, the competitor involved and the reason(s) why the request has not been granted or completed.

131 Qwest did not identify in its testimony specific references as to what sections of testimony, or which exhibits answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony or facts in its prefiled exhibits that satisfy these evidentiary requirements. Although summarized below, a tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is attached as Appendix A to this Draft Initial Order.

132 A dispute between AT&T, WorldCom, and Sprint (collectively "Joint Intervenors") and Qwest concerning the extent of CLEC access to the InterNetwork Calling Name Database, or ICNAM, under Qwest's proposed SGAT is discussed further below. While the parties addressed the issue in testimony, they have also submitted briefs on the issue.

C. Parties' Positions

1. Qwest

133 Through the testimony and exhibits of witness Margaret S. Bumgarner, Qwest describes its compliance with the requirements of Checklist Item No. 10, and the evidentiary requirements for the checklist item in the Commission's Supplemental Interpretive and Policy Statement. Qwest states that it provides and offers nondiscriminatory access to its signaling network and the following call-related databases: LNP, LIDB, 8XX, ICNAM, AIN, and E911/911, through its interconnection agreements and proposed SGAT. *Ex. 131-T, at 30, 36-38.* Five CLECs currently purchase unbundled signaling links in Washington, two CLECs use the Toll Free calling database, one uses LIDB, and one uses the LNP database. *Id. at 35, 38; Ex. C-140.* While no CLECs currently use the ICNAM or AIN databases in Washington, Qwest offers nondiscriminatory access to the databases through its SGAT. *Ex. 106, § 9.13.1.1; Ex. 131-T, at 38-39.*

- 134 The terms, conditions, and rates for providing access to databases and associated signaling are set forth either in interconnection agreements or Qwest's proposed SGAT. *Ex. 131-T, at 30, 34-36.* Qwest's technical standards and rules for providing access to databases and signaling are available on Qwest's website, also referred to as Ex. 118. *Id. at 30-31.* Technical standards and publications are listed in Section 21.0 of the SGAT and are included in Exhibits 138, 139, C-149, and 150. Qwest's rates for access to databases and signaling are included in interconnection agreements and its SGAT. *Id. at 30.* Qwest uses prices determined in the Washington Cost Docket, Docket Nos. UT-960369, 960370, and 960371. *Id.*
- 135 Through its SGAT, Qwest provides and offers access to call-related databases and signaling in the same manner it obtains access itself. *Id. at 34-35, 40-41.* Qwest is subject to performance measures for this checklist item that have been developed by the ROC. *Ex. 141-T, at 18.* Two performance measures, DB-1, and DB-2, are designed to measure the time required to update the database and accuracy of updates. *Id.* Qwest is developing a performance measure for LIDB. *Id.* Qwest notes that testing of the ROC performance measures and third party OSS testing will determine Qwest's compliance with this checklist item.
- 136 Qwest has received no formal or informal complaints about its provisioning of access to call-related databases and signaling. *Ex. 131-T, at 41.* With the exception of the dispute over access to the ICNAM database, there are no databases or signaling to which CLECs have sought access and Qwest has been unwilling or unable to supply access. *Id. at 39.*
- 137 Qwest objects to the Joint Intervenors' request that Qwest include language in its SGAT to provide access to the entire ICNAM database as opposed to access on a per-dip or query basis. Qwest asserts that the FCC requires incumbent LECs to provide access to their calling-name databases on a per-query basis only. Both the *First Report and Order* and the *UNE Remand Order* provide that incumbent LECs must provide access "for the purpose of switch query and database response" through the SS7 signaling network. *First Report and Order, ¶ 484; UNE Remand Order, ¶ 402.*
- 138 Qwest does not dispute that call-related databases are unbundled network elements (UNEs) to which CLECs must have unbundled access. However, in response to the Joint Intervenors' position that access to the entire database is technically feasible and should be provided, Qwest asserts that the standard for "technical feasibility" under 47 U.S.C. § 251 (c)(3) determines only *where* access must be provided, not *what* must be provided.²² Qwest asserts that it has provided access to the ICNAM database at the signaling transfer point, or STP, a technically feasible point, as required by the FCC. Finally, Qwest asserts that while the FCC has determined that access to call-related

²²*AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391 (1999).

databases is necessary and that failure to provide access would impair the ability of CLECs to provide service, the FCC has required only physical access at the signaling transfer point, and only on a per query basis.²³

2. *Joint Intervenors*

139 In their testimony and exhibits, Joint Intervenors AT&T and WorldCom made several recommendations for changes to SGAT language reflecting access to call-related databases and signaling. *Ex. 186-T, at 9-11; Ex. 201-T, at 39-41.* During the June and July workshops, Qwest agreed to each of the recommendations, except for the request for access to the entire ICNAM database. *Ex. 141-T, at 15-17; See also Tr. 225-28; 729.*

140 Because the ICNAM database is a UNE, the Joint Intervenors argue that ILECs must provide access to the entire database to ensure that CLECs do not receive access that is inferior to what Qwest provides itself. The Joint Intervenors do not deny that, in the *UNE Remand Order*, the FCC required ILECs to provide access only on a switched query and database response through the SS7 network. However, they assert that it is technically feasible for Qwest to provide access to the database on a bulk basis. The Joint Intervenors also cite the FCC's *UNE Remand Order* to state that the FCC determined access to call-related databases to be necessary. The Joint Intervenors argue that Qwest does not meet the requirements of Checklist Item No. 10 unless it provides access to the ICNAM database as a whole, rather than on a per-dip or per-query basis.

141 The Joint Intervenors reserve the right to comment on Qwest's performance measures pending audited results of testing of the performance measures. *Tr. at 230.* As discussed above, except for the issue over access to ICNAM, and satisfactory audited results of testing performance measures, the Joint Intervenors agree that Qwest is in compliance with the requirements for Checklist Item No. 10.

D. Verification of Compliance

142 Aside from the issue in dispute about access to the ICNAM database, and pending the results of testing of performance measures DB-1, DB-2 and for the LIDB database, all parties agreed that Qwest had met the requirements of Checklist Item No. 10. The testimony and exhibits of Qwest witness Bumgarner demonstrate that Qwest provides and offers nondiscriminatory access to call-related databases and associated signaling in compliance with the requirements of section 271(c)(2)(B)(x), and the Commission's evidentiary requirements.

²³*UNE Remand Order*, ¶¶ 410-20.

- 143 Qwest properly interprets the FCC's requirements for providing access to call-related databases and the ICNAM database in particular. In its *First Report and Order*, the FCC provided that "incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network" and that ILECs must provide access "by means of physical access at the STP linked to the unbundled database."²⁴
- 144 In its *UNE Remand Order*, the FCC included calling-name databases, such as the ICNAM, as UNEs with other call-related databases, but retained the same standard for access to the UNE: "[I]ncumbent LECs, upon request, must provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network."²⁵ Further, the FCC required ILECs to provide access "by means of physical access at the signaling transfer point linked to the unbundled databases."²⁶
- 145 Qwest also properly cites the Supreme Court's interpretation of the term technical feasibility in *AT&T Corp. v. Iowa Utils. Bd.* Qwest has offered access at a technically feasible point - the signaling transfer point - the point at which the FCC has required ILECs to provide access.
- 146 The Joint Intervenors seek more than the FCC has required of ILECs as of the time Qwest filed its request to provide In-Region interLATA service. In the *SBC Texas Order*, the FCC specifically provided that an RBOC must be in compliance with FCC rules and orders as of the time they make their application.²⁷ In addition, the FCC noted that during the review process for compliance with checklist items, "inevitably . . . a variety of new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors" will arise.²⁸ However, the FCC stated that the Section 271 process is not intended to resolve such disputes.²⁹
- 147 Qwest is in compliance with the requirements of Checklist Item No. 10. Qwest need not modify its SGAT to include access to the entire ICNAM database in order to be in

²⁴*First Report and Order*, ¶ 484.

²⁵*UNE Remand Order*, ¶ 402, 403.

²⁶*Id.*, ¶ 410.

²⁷*SBC Texas Order*, ¶ 22.

²⁸*Id.*, ¶ 23.

²⁹*Id.*

compliance with the requirements of Checklist Item No. 10. The finding that Qwest meets the requirements of Checklist Item No. 10 is subject to reevaluation if testing shows that Qwest fails to meet the relevant performance measurements for call-related databases and associated signaling.

X. CHECKLIST ITEM NO. 12 - DIALING PARITY

A. FCC Requirements

148 Section 271(c)(2)(B)(xii) of the 1996 Act requires RBOCs to provide
“Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”

149 Section 251(b)(3) imposes upon all Local Exchange Carriers:

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory listing, with no unreasonable dialing delays.

150 Dialing parity is defined in Section 153(15) of the Act as occurring when:

a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access codes, their telecommunications to the telecommunications service provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier).

151 In the *Bell Atlantic New York Order*, the FCC interpreted Section 153(15) to mean that customers of competing carriers must be able to dial the same number of digits as a customer of a RBOC to complete a local telephone call.³⁰ Also, the FCC expects customers of competing carriers to receive the same quality of service as RBOC customers. *Id.*

B. Evidentiary Requirements

³⁰ *Bell Atlantic New York Order*, ¶373

152 Appendix A to the Washington Utilities and Transportation Commission's Supplemental Interpretive and Policy Statement sets forth both general and specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 12. The general requirements are set forth in Appendix A to this order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 8 are:

1. How is U S WEST providing nondiscriminatory access to such services or information, as is necessary, to allow a requesting carrier to implement dialing parity in accordance with the requirements of section 251 (b)(3)?
2. What percentage of U S WEST switches are providing dialing parity to competitors for local calls?
3. What percentage of U S WEST switches, serving what percentage of access lines, have been equipped to provide dialing parity for intraLATA toll calls, and in what percentages of switches, serving what percentage of access lines, has that capability been tested?
4. Will intraLATA toll dialing parity be implemented in such switches using the "full 2-PIC" subscription method, and if not, what method will be used?
5. Does U S WEST plan to provide dialing parity for intraLATA toll calls before, or only coincident with, its provision of in-region interLATA services? Why or why not?
6. After receiving section 271 authorization, when a customer calls U S WEST to establish new local exchange service or to switch the location of its existing service, how does U S WEST plan to have its service representatives inform the customer of their long distance provider options in the manner prescribed in Ameritech/Michigan and Bell South/South Carolina Orders (i.e., offering to list the optional providers, using a random order)? Please provide scripts to be used by service representatives to inform customers of their provider options.

153 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits,

is included in Appendix A to this Draft Initial Order.

C. Parties' Positions

1. Qwest

154 On March 22, 2000, Qwest witness Margaret S. Bumgarner testified that Qwest had met the requirements of Checklist Item No. 12. *Ex. 131-T, at 43-46*. Ms. Bumgarner testified about how Qwest has met the requirements related to dialing parity and how Qwest is legally bound to the requirements set forth in the Act. Bumgarner presents the Washington SGAT, Washington interconnection agreements, FCC rulings and the Act itself as the legal framework setting out its obligations to make local dialing parity available in its service area in Washington.

155 Bumgarner calls specific attention to SGAT section 14.1., which states:

The Parties shall provide local dialing parity to each other as required under Section 251(B)(3) of the Act. U S WEST will provide local dialing parity to competing providers of telephone exchange service, and will permit all such providers to have non-discriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. The CLEC may elect to route all of its end-user customers' calls in the same manner as U S WEST routes its end-user customers' calls, for a given call type (e.g., 0, 0+, 1+, 411), or the CLEC may elect to custom route its end-user customers' calls differently than U S WEST routes its end user's calls. Additional terms and conditions with respect to customized routing are described in Sections 9.12 of this Agreement. Customized Routing may be ordered as an application with Resale or Unbundled Local Switching.

156 *Ex. 106, Section 14.1.* There are no differences in the number of digits Qwest or CLEC customers must dial to complete a given local call to any other local customer or to access operator services or directory assistance. *Ex. 131-T at 44*. Qwest does not impose any requirement or technical constraint that requires CLEC customers to dial any access codes or greater number of digits than Qwest customers to complete the same call, or that causes CLEC customers to experience inferior quality with post-dialing delays. *Ex. 131-T at 44*. Qwest provides for dialing parity for customized routing of CLEC customers' calls when using Qwest switches either as a reseller or through unbundled local switching. In Washington toll dialing parity for intraLATA calls was fully implemented on February 8, 1999, and the "2-PIC" subscription method is used. *Ex. 131-T, at 45*. Ms. Bumgarner testifies that all calls are treated the same. Dialed digits transmitted or received by Qwest's switches use the same

translation and routing tables for completing a call, regardless of whether the call originates on another carriers's network. A call originating from a CLEC's network is treated the same as a call originating from within Qwest's network, because Qwest's switches cannot distinguish between calls. *Ex. 131-T, at 44.* There are no charges for dialing parity. *Ex. 131-T, at 45.*

2. *Other Parties*

157 No party filed testimony or comments on this item. No party asked questions concerning this checklist item during the workshop. This item is undisputed.

D. Verification of Compliance

158 Based on the testimony and evidence Qwest has presented, and the absence of concerns raised by parties either in testimony or workshops, the Commission finds that Qwest has satisfied the requirements of this checklist item.

XI. CHECKLIST ITEM NO. 13 - RECIPROCAL COMPENSATION

A. FCC Requirements

159 Section 271(c)(2)(B)(xiii) of the Act requires that an RBOC's access and interconnection must include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." In turn, section 252(d)(2)(A) provides that "a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the *mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier*; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." (*Emphasis added*).

B. Evidentiary Requirements

160 Appendix A to the Supplemental Interpretive and Policy Statement identifies several general requirements and several specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 13. The general requirements are listed in Appendix A to this order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 13 are:

1. How is U S WEST providing reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)?

2. Describe arrangements for reciprocal compensation, including bill-and-keep, for local exchange traffic between U S WEST and CLECs and other ILECs?
3. For carriers with bill-and-keep arrangements, specify whether bill-and-keep is replaced with explicit compensation arrangements when traffic is not in balance. How is traffic balance determined?
4. For all carriers with explicit compensation arrangements, specify the type of arrangements and rates (i.e., call termination rates).

161 Qwest did not identify in its testimony specific references as to what sections of testimony, or which exhibits answered the questions posed in the general and specific evidentiary requirements. However, Qwest did provide statements in prefiled testimony or facts in its prefiled exhibits that satisfy most of the evidentiary requirements. Although summarized below, a tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is attached as Appendix A to this Draft Initial Order.

C. Parties' Positions

162 Qwest's general compliance with this checklist item is significantly disputed by the CLECs. Staff discusses Qwest's general compliance and then addresses the CLECs specific concerns. The CLECs dispute a number of issues concerning Qwest's compliance with the requirements of Checklist Item No. 13. WorldCom, AT&T, Sprint, NEXTLINK, ELI, ATG, and ICG all contest various positions Qwest has taken concerning reciprocal compensation, as well as specific provisions of the SGAT addressing reciprocal compensation. Specifically, the CLECs assert that Qwest: (1) must provide reciprocal compensation for traffic bound to internet service providers (ISPs); (2) fails to allow CLECs to recover tandem switching charges; (3) seeks to impose transport charges on CLECs for the facility link between Qwest's host and remote switches; (4) seeks to impose non-TELRIC-based charges for calls that are clearly local calls; and (5) fails to allow CLECs to recover symmetrical compensation.

1. Qwest's Position Generally

163 Qwest asserts that it meets the requirements of Checklist Item No. 13 through its SGAT, existing interconnection agreements, and other processes and procedures that track the minutes of use on trunks, and when to pay reciprocal compensation to CLECS. *Ex. 151-T, at 2, 4.* Qwest had, as of March 1, 2000, 109,240 interconnection trunks in service between itself and 21 CLECs in Washington. *Ex. 151-T, at 4; Ex. 157-T, at 13; Tr. 387.* As of March, 2000, over 829 million minutes of calls were exchanged over those trunks. *Ex. 157-T, at 13; Tr. 387.* Qwest reports

that 90 percent of the traffic originates by or behind a Qwest switch and terminates on a CLEC switch. *Ex. 151-T, at 4, 29; Ex. 165.*

164 In Exhibit 151-T, Qwest describes the arrangements, i.e., rates, terms, and conditions, for call termination and transport between Qwest and CLECs for purposes of determining reciprocal compensation. While Qwest notes that it provides such services through interconnection agreements, its testimony refers primarily to the SGAT. *Id. at 23-30.* Qwest provides and offers Direct Trunked Transport and Tandem Switched Transport, a two way trunking option. *Id. at 23-27.* Most of the existing CLEC/Qwest trunking is two-way. *Id. at 24.* The reason for reciprocal compensation is the need to engage in cost-sharing where there is two-way trunking and traffic is flowing back and forth in a way that is not balanced. *Tr. at 388.* Qwest asserts that it complies with the requirements of Checklist Item No. 13.

2. Treatment of ISP Traffic

a. CLEC Position

165 AT&T, WorldCom, Sprint, NEXTLINK, ELI, ATG, and ICG all submitted briefs on the issue of compensation for ISP-bound traffic. These CLECs object to Qwest's exclusion of ISP-bound traffic from the reciprocal compensation provisions of the SGAT, and assert that Qwest cannot be in compliance with Checklist Item No. 13 until it modifies the SGAT to include a provision for compensation for ISP-bound traffic.

166 First, the CLECs argue that Section 251(b)(5) of the Act requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Joint Intervenor's Brief, at 4.* Further, the CLECs assert that the FCC, in its *First Report and Order*, determined that reciprocal compensation was limited to "local traffic," which "originates and terminates within a local service area."³¹ However in its *ISP Order*, the FCC concluded that because calls to ISPs are jurisdictionally interstate in nature, they do not terminate at the ISP and cannot be subject to Section 251(b)(5).³²

167 Second, while the CLECs recognize that the FCC decided in the *Bell Atlantic New York Order* to exclude consideration of ISP-bound traffic from Section 271 proceedings, they argue that the decision is no longer valid. The FCC's *Bell Atlantic*

³¹*First Report and Order*, ¶¶1033-35.

³²*In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket No. 96-98, FCC 99-38, (rel. Feb. 26, 1999) ¶¶ 1, 10 "ISP Order".

New York Order relied substantially on its *ISP Order*.³³ However, in March of this year, the Circuit Court of Appeals for the District of Columbia vacated the FCC's order on compensation for ISP-bound traffic.³⁴ The CLECs argue that there is no longer sufficient basis for the FCC's decision in its *Bell Atlantic New York Order* to exclude the issue of compensation for ISP-bound traffic from consideration in 271 proceedings. Further, the CLECs argue that the FCC declined to address the issue in the *SBC Texas Order* because no party in that proceeding argued failure to meet the requirements of the checklist item for failure to pay reciprocal compensation for ISP-bound traffic.³⁵

168 Thus, following the *Bell Atlantic* case, the CLECs argue that the Commission has authority to determine the issue of whether Qwest must pay reciprocal compensation for ISP-bound traffic. The CLECs cite a number of decisions, including one affirmed by the Ninth Circuit Court of Appeals, in which the Commission has already made that determination.³⁶ The CLECs also cite a number of federal court decisions upholding state Commission decisions requiring compensation for ISP-bound traffic. See *Joint CLEC Brief on ISP Legal Issues*, at 4. The CLECs assert that Qwest continues to defy the Commission's orders and court rulings on the issue, forcing CLECs to arbitrate this issue, delaying entry, and driving up costs. The CLECs argue that the Commission should find Qwest not to be compliant with Checklist Item No. 13 until Qwest includes language in its SGAT providing for compensation for ISP-bound traffic.

b. Qwest Position

169 Qwest specifically excludes ISP-bound traffic from the provisions of its Washington

³³*Bell Atlantic New York Order*, ¶ 377.

³⁴*Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

³⁵*SBC Texas Order*, ¶ 386.

³⁶ *U S WEST Communications, Inc., v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1122-23 (9th Cir. 1999), cert. den. June 29, 2000; *Generic Cost Docket*, Seventeenth Supplemental Order, Docket Nos. UT-960369, UT-960370, UT 960371, at ¶54; *WorldCom Inc., f/k/a MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Docket No. UT-980338, at 23; *NEXTLINK Washington, Inc. v. U S WEST Communications, Inc.*, Commission Order Adopting Recommended Decision, in part, and Modifying Recommended Decision, in Part; Docket No. UT-990340 *Advanced Telecom Group, Inc., v. U S WEST Communications, Inc.*, Commission Order Adopting Recommended Decision, in part, and Modifying Recommended Decision, in part. Docket No. UT-993003.

SGAT allowing for reciprocal compensation to CLECs for traffic terminating on Qwest's network. Qwest first asserts that the question of compensation for ISP-bound traffic is not a Section 271 issue. Relying on the FCC's decision in the *Bell Atlantic New York Order*,³⁷ Qwest argues that the FCC has determined that the issue of compensation for ISP-bound traffic is not an issue for 271 proceedings, but is an inter-carrier compensation issue. *Ex. 151-T at 4-5, 35; Ex. 157-T, at 14-15*. Qwest further argues that the *Bell Atlantic New York Order* is still valid, arguing that the D.C. Circuit court merely remanded the *ISP Order* back to the FCC. *U S WEST's Legal Brief Regarding Exclusion of Internet-Bound Traffic, at 4*. In addition, Qwest argues that the FCC plans to reaffirm its prior decision. *Id.*

170 Qwest disagrees with the Commission's decision in the Washington Cost Docket, Docket Nos. UT-960369, et al., that ISP-bound traffic is subject to reciprocal compensation. *Ex. 151-T, at 4-5*. However, Qwest states that it has and will continue to pay CLECs for ISP-bound traffic under its interconnection agreements. *Id.*

171 Second, Qwest asserts that excluding a provision for reciprocal compensation for ISP-bound traffic is not an SGAT issue, as "[n]o provision of the Act and no FCC order requires [Qwest] to include Internet-bound traffic in the reciprocal compensation provisions of its SGAT." *U S WEST's Legal Brief, at 5*. Qwest argues that the SGAT is a standard contract offering, and that no carrier is bound to accept its terms. CLECs may opt into various provisions of the SGAT, but are not obligated to opt into the reciprocal compensation provisions. *Id. at 7*.

172 Finally, Qwest argues that a Section 271 proceeding is not the proper forum to address compensation for Internet-bound traffic. *Id. at 7-8*. Qwest argues that the issue should be addressed in the context of the Commission's ongoing cost docket, Docket No. UT-003013.

3. Definition of Tandem Switch

a. CLEC Position

173 This issue concerns how Qwest's SGAT defines tandem switching and whether a CLEC switch is considered a tandem switch. *Ex. 106, Section 4.11.2*. AT&T, WorldCom, Sprint, NEXTLINK, ELI, and ATG, contest Qwest's SGAT provision, Section 4.11.2, that defines tandem office switches. That section provides:

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent

³⁷ *Bell Atlantic New York Order*, ¶ 377.

such switch(es) actually serve(s) the same geographic area as U S WEST's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic, while local tandems provide connections for Exchange Service (EAS/Local) traffic.

174 The CLECs argue that Qwest's definition is not consistent with FCC rules that address the circumstances under which a CLEC switch will be considered a tandem switch. FCC rules provide that "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 CFR 51.711(a)(3). Similarly, in implementing these rules, the FCC's *First Report and Order* provides that:

We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch, and thus, whether some or all calls terminating on the new entrants network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.³⁸

175 Given the FCC's rule, the CLECs argue that the definition in the SGAT should be modified, at a minimum, to delete the word "actually" and replace "same" with "comparable."

176 The CLECs, in particular WorldCom, object to Section 7.4.3.2.1 of the SGAT, which states:

7.3.4.2.1 For traffic delivered through a [Qwest] or CLEC local tandem switch (as

³⁸*First Report and Order*, at ¶ 1090.

defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if CLEC or [Qwest] only switches the traffic once and this switch meets the definition of tandem switch in 4.11.2, then only the tandem switching rate shall apply.

177 *Ex. 106.* WorldCom argues that if a WorldCom switch serves a geographic area comparable to the area served by Qwest's tandem switch, then the tandem switching, transport and end office switching rates should apply. WorldCom asserts that the number of times traffic is switched should not control whether a CLEC qualifies for tandem treatment. *Ex. 181-T, at 12.*

178 The CLECs also object to Qwest's use of the functionality of a switch as the means to determine whether a CLEC switch should be treated as a tandem switch. The CLECs argue that geographic scope is the only factor to be considered in determining whether a switch should be treated as a tandem. The CLECs rely on the Ninth Circuit's decision in *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F. 3d 1112, 1124 (1999) as justification for this argument.

179 Further, NEXTLINK, ELI, and ATG argue that Qwest's reliance on the District Court's decision upholding the Commission's arbitration decision in *U S WEST Communications, Inc. v. WUTC and AT&T Wireless*, No. C97-5686BJR, Order on Motions for Summary Judgment (W.D. Wash., Aug. 31, 1998), is misplaced. The CLECs argue that the case involved commercial mobile radio service (CMRS) providers, not landline-based CLECs to whom the SGAT will be applicable. Secondly, the CLECs argue that the Commission arrived at different conclusions in two other arbitrations, including the one resulting in the MFS Intelenet decision, which was affirmed by the Supreme Court. The CLECs argue that Qwest must pay a tandem interconnection rate when the CLEC switch serves a comparable geographic area as the LEC switch. It is only if the areas are not comparable that the functionality of the networks must be considered.

b. Qwest Position

180 Qwest interprets paragraph 1090 of the FCC's *First Report and Order* to require that CLECs only be paid the tandem rate when CLECs perform an additional switching function. Specifically, Qwest interprets the FCC's *First Report and Order* to require states to consider functionality of the competing carrier's switch and the geographic area served by the switch. Qwest contests that geographic scope of the switch is the sole determining factor. Further, Qwest asserts that, because of the architecture of most competitors' networks, Qwest has no option available to terminate calls on a

local end office switch in order to avoid tandem switching charges. *Ex. 157-T, at 17-20*. Qwest asserts that competitors should only be due a tandem switching charge unless they physically switch a call twice.

181 Qwest relies on the Commission's decision in the U S WEST-AT&T Wireless Arbitration,³⁹ as well as the MFS Intelenet decision to assert that states must consider both functionality and geography in determining whether a CLEC's switch should be treated as a tandem for purposes of reciprocal compensation.

4. Host/Remote Issue

a. Qwest Position

182 Qwest's proposed SGAT provides that "when CLEC terminates traffic to a [Qwest] remote office, tandem transmission rates will be applied for the mileage between the [Qwest] host office and the remote." *Ex. 106, Section 7.3.4.2.3*. Qwest believes that a CLEC should be charged for transport when the competitor's traffic is transported from a Qwest host switch to a Qwest remote end office switch. *Ex. 157-T, at 25-27*. Qwest's proposed SGAT language requires CLECs to pay tandem transmission rates for transport between a Qwest host switch and remote switch in a remote office. Qwest notes that a tandem switching rate does not apply, as calls transported from the host to the remote are switched only once.

183 Qwest objects to AT&T's request to interconnect at the host switch and transport calls along dedicated trunks for no charge. Qwest asserts that carriers should be compensated for the transport they actually provide. Qwest asserts that the costs of serving retail end users are factored into retail rates.

b. CLEC Position

184 AT&T, WorldCom, and Sprint argue that Qwest's proposed SGAT language imposes a discriminatory tandem transmission charge on CLECs, when no such charge is warranted. The CLECs note that Qwest does not assess additional charges to retail end users for a host-remote link, and that to do so for competitors is discriminatory.

185 The CLECs assert that the host/remote architecture is an economic choice made by Qwest. Further, they assert that the host switch does not perform true tandem functions. The host/remote architecture is very similar to the central switch/SONET

³⁹*Petition for Arbitration of an Interconnection Agreement Between AT&T Wireless Services, Inc., and U S WEST Communications, Inc., Commission's Order Adopting Arbitrator's Report and Order and Approving Interconnection Agreement, Docket No. UT-960381 (Oct. 6, 1997).*

ring arrangement used by many competitors. These competitors haul local traffic over considerable distances to a central switch, due to the low densities of subscribers during the beginning stages of development of their networks. The CLECs assert that they receive no comparable compensation from Qwest for this similar transport over long loops. In addition, many competitors have not been granted permission to collocate remote switching units (RSUs), and have been forced to install transmission equipment (typically Digital Loop Carrier) instead.

5. *Commingling/Ratcheting*

a. CLECs' Position

186 AT&T, WorldCom and Sprint object to Section 7.3.1.1.2 of Qwest's proposed SGAT. That section provides that private line rates should apply when a CLEC uses spare capacity on facilities previously purchased under a private line tariff. AT&T, WorldCom and Sprint argue that they should be able to provision Local Interconnection Service (LIS) trunks on existing facilities, typically DS-3s that carry exchange access traffic, with the charges adjusted proportionally, or "ratcheted," so that the portion of the LIS trunks used for local interconnection service would be charged at TELRIC rates. *Ex. 201-T, at 55*. For example, the CLECs propose when a CLEC purchases a DS3 with 28 channels and allocates 14 channels for interconnection, and 14 for long distance service, the traffic would be priced accordingly.

187 AT&T, WorldCom and Sprint argue that their proposal does not involve "commingling" of traffic as discussed by the FCC in its *Supplemental Order to the UNE Remand Order*.⁴⁰ The CLECs argue that the FCC's concern was for CLECs using combined unbundled elements, rather than interconnection trunks. The CLECS further argue that the FCC's concern was that commingling might result in conversion of special access circuits by interexchange carriers (IXCs) to provide dedicated access services, not the use of circuits for interconnection purposes.

b. Qwest Position

188 Qwest asserts that its SGAT provision allows CLECs the option of using excess capacity on existing private line facilities as an interconnection trunk instead of purchasing entrance facilities. Qwest argues that CLECs should be required to pay private line rates for the use of those facilities, and should not be allowed to pay TELRIC rates for that portion of the network element used to carry local traffic. In its

⁴⁰*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order, CC Docket No. 96-98, FCC-370 (rel. Nov. 24, 1999) ("Supplemental Order").*

SGAT provision, Qwest proposes to allow CLEC's to use spare capacity on a facility carrying private line traffic, in order to save the cost of an additional facility, but will not adjust the price to reflect the traffic mix.

189 Qwest asserts that the FCC has, by order, prohibited ILECs from "ratcheting" or "commingling" rates on special access trunks that may also be used for local interconnection. Qwest relies on the FCC's *UNE Remand Order*,⁴¹ as follows:

[I]nterexchange carriers (IXCs) may not convert special access circuits to combinations of unbundled loops and transport network elements, whether or not the IXCs self provide entrance facilities (or obtain them from third parties). This constraint does not apply if an IXC uses combinations of unbundled elements to provide a *significant amount of local exchange service* in addition to the exchange access, to a particular customer.

190 Further, Qwest asserts that WorldCom made a similar request to the FCC in an *ex parte* letter (see *Ex. 169*), and that the FCC denied the request in its *Supplemental Order to the UNE Remand Order*.⁴² In that Order, the FCC provided that:

We further reject the suggestion that we eliminate the prohibition on "commingling" (i.e., combining loops or loop transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services.

191 Qwest asserts that, under the *SBC Texas Order*, it may not provide the arrangement that WorldCom and AT&T request as Qwest must comply with FCC rules and orders to be in compliance with the requirements of Section 271 of the Act.⁴³

6. Single POI-Per LATA/InterLocal Calling Area Trunking

a. Qwest Position

192 In Sections 7.1.2.4.1, 7.1.2.4.3, and 7.1.2.4.4 of its SGAT, Qwest allows CLECs to establish a single point of interconnection, or "POI," within a LATA, provides transport facilities to allow CLECs to transport traffic within local calling areas of a

⁴¹*UNE Remand Order*, ¶ 2 (emphasis added).

⁴²*Supplemental Order*, ¶ 28.

⁴³*SBC Texas Order*, ¶¶ 227-28.

LATA through "LIS interLocal Calling Area facilities," and charges Direct Trunked Transport rates should the length of transport fall within 20 miles, and Private Line Transport Service rates for the portion of transport exceeding 20 miles. Qwest asserts that these provisions allow CLECs to interconnect through a single POI per LATA, and properly allow Qwest to recover the cost of transporting CLEC calls over long distances within the LATA.

b. CLEC Position

193 AT&T, WorldCom, and Sprint assert that the proposed SGAT provisions do not allow for a single POI per LATA, but require CLECs to choose between establishing points of interconnection deep within Qwest's network in each Qwest rate center, or paying private line rates for trunking from the tandem to those rate centers. The CLECs argue this violates the requirement that CLECs be allowed to interconnect at any feasible point. The CLECs further argue that private line rates are an additional expense that competitors should not be required to bear.

194 AT&T, WorldCom, and Sprint argue that Qwest's proposal does not compensate CLECs for Qwest's use of the CLEC's network. The CLECs argue that by requiring one party to an interconnection agreement to pay a much greater amount for interconnection facilities the, "whole principle of reciprocal, cost-based compensation for the transport and termination of traffic between carriers is undermined." *Joint Statement, at 18*. The CLECs therefore propose that each carrier should deliver its traffic to the top of the other carrier's network.

7. *Symmetrical Compensation*

a. Qwest Position

195 Qwest objects to the CLECs' proposal to recover the hidden costs of interconnection, such as the costs of collocation and long loops, through reciprocal compensation. Qwest asserts that the CLECs proposal is inconsistent with FCC orders and pricing rules for transport and termination. Specifically, Qwest notes that the FCC's *First Report and Order* requires costs to be based upon incumbent LECs' costs unless the CLEC proves that its costs are higher by submitting its own cost study.⁴⁴ Qwest asserts that the costs of collocation and long loops are incurred voluntarily by CLECs to avoid the costs of purchasing and installing additional switches. Qwest relies on two district court decisions which hold that incumbent LECs need not pay a portion of a competitor's costs in providing interconnection with the LEC.⁴⁵

⁴⁴*First Report and Order*, ¶ 1085.

⁴⁵*AT&T Communications of the South Central States, Inc. v. BellSouth Telecom, Inc.*, 20 F. Supp. 2d 1097 (E.D. Ky 1998); *U S WEST Communications, Inc. v. AT&T Corp.*, No. A1-97-085, (D.N.D. Jan. 8, 1999).

b. CLEC Position

196 AT&T, WorldCom, Sprint, NEXTLINK, ELI, and ATG all assert that Qwest should pay a proportional share of the costs of facilities used for interconnection. NEXTLINK, ELI and ATG argue that Section 709(b) of the FCC's rules require Qwest to pay its proportional share:

[A] carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

197 47 C.F.R. § 51.709(b). In addition, AT&T, WorldCom, and Sprint rely on Section 711 to require symmetrical compensation:

Where the switch of a carrier other than an incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

198 47 CFR § 51.711(a)(3). The CLECs also rely on paragraph 1086 of the FCC's *First Report and Order*: "A symmetric compensation rule gives the competing carriers correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes to its own costs."

199 The CLECs assert that the SGAT does not permit symmetrical treatment for many cost items involved in a typical interconnection arrangement, such as: Splicing at Man Hole 0 (MH0); Entrance into the U S WEST building; Fiber Distribution Panel; 3/1 Multiplexing; EICT cables to U S WEST equipment; Collocation space; Power; Air Conditioning; Grounding; Initial set up and design fees; and Cages. *Joint Statement, at 21*. The CLECs assert that Qwest's refusal to incorporate symmetrical treatment into the SGAT will result in CLECs not being adequately compensated.

D. Verification of Compliance

1. Generally

200 While Qwest notes that it provides such services through interconnection agreements, its testimony refers only to the SGAT. In future testimony, workshops and briefing, The Commission requests that Qwest make specific reference to its interconnection agreements when describing how it meets the requirements for checklist items.

Under the Supplemental Interpretive and Policy Statement, the Commission stated that it would determine Qwest's compliance with checklist items based upon Qwest's interconnection agreements, and not on Qwest's SGAT provisions. While Qwest's response to Bench Request No. 1, Exhibit 251, provides a chart cross-referencing each checklist item with the SGAT and individual interconnection agreements, Qwest should incorporate these references in its specific presentation of a checklist item. The burden to show compliance under its interconnection agreements is upon Qwest, not staff or other parties.

2. *Treatment of ISP Traffic*

- 201 The FCC's *Bell Atlantic New York Order* provides that compensation of ISP-bound traffic is not a section 271 issue, given the FCC's decision in its *ISP Order*.⁴⁶ However, now that the D.C. Circuit has vacated the FCC's *ISP Order* in its *Bell Atlantic New York Order* decision, the CLECs are correct that the FCC's decision in its *Bell Atlantic New York Order* is no longer valid. In its *SBC Texas Order*, the FCC declined to take up the issue in a 271 proceeding primarily because no party raised the issue of noncompliance for failure to pay reciprocal compensation for ISP-bound traffic.⁴⁷ Payment of reciprocal compensation for ISP-bound traffic is properly a question of compliance in Section 271 proceedings.
- 202 Section 251(b)(5) and the FCC's *First Report and Order* require that LECs pay compensation to all CLECs for local traffic. The Commission has determined in a number of prior proceedings—including enforcement proceedings against Qwest-- that ISP-bound traffic is local traffic. Qwest's SGAT is intended to present Qwest's available terms and conditions in Washington. Qwest's SGAT must reflect the Commission's repeated decisions that CLECs are entitled to compensation for ISP-bound traffic. However, nothing prevents CLECs and Qwest from negotiating provisions in individual agreements that would exclude compensation for ISP-bound traffic.
- 203 While the Commissions' Supplemental Interpretive and Policy Statement states that the Commission will not rely on provisions in the SGAT to determine Qwest's compliance with the provisions of Section 271, the issue of compensation for ISP-bound traffic is an issue on which the Commission has issued several orders requiring Qwest, to compensate carriers for ISP-bound traffic. Qwest may not avoid making payments to CLECs for ISP-bound traffic through its SGAT. The Commission finds that Qwest is not in compliance with the requirements of this checklist item until it modifies its SGAT provisions to reflect Commission orders addressing compensation

⁴⁶*Bell Atlantic New York Order*, ¶ 377.

⁴⁷*SBC Texas Order*, ¶ 386

for ISP-bound traffic.

3. *Definition of Tandem Switch*

204 The CLECs and Qwest all properly note that the Commission has entered several decisions in interconnection arbitrations concerning tandem treatment of CLEC switches. In the decision upheld by the Ninth Circuit in MFS Intelenet, in the U S WEST-AT&T Wireless decision affirmed by the District Court of Western Washington, and in the GTE-ELI decision,⁴⁸ the Commission made factually-based decisions after considering the factors of geography and functionality. The Commission has not considered geography to be the sole factor in determining whether a CLEC switch is entitled to tandem treatment. In MFS Intelenet, the Ninth Circuit specifically held that:

The Commission's classification of MFS's switch as a tandem switch was not arbitrary or capricious. The Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to U.S. West's tandem switch. [Citations omitted]. The Commission found that MFS's switch "is comparable in geographic scope" to U.S. West's tandem switch, and "performs the function of aggregating traffic from widespread remote locations" as a tandem switch does.⁴⁹

205 It should be noted that the interconnection agreement underlying the Ninth Circuit decision states, at Section V. D. 1. c, "For traffic terminated at a USWC or MFS tandem switch, the tandem call termination rate provides for end office call termination, tandem switched transport and tandem switching." (*Emphasis added*). The inclusion of these elements in the tandem rate addressed in the Ninth Circuit decision gives credence to WorldCom's view of the appropriate rate to charge when a switch is considered a tandem, and accorded tandem treatment.

206 Given that the determination of tandem treatment of a CLEC switch is dependent upon several factors, including geography and functionality, Qwest's SGAT provisions concerning tandem treatment cannot be seen as compliant with the requirements of Checklist Item No. 13. Qwest should modify its SGAT to allow for a factually based consideration of geography and function, as discussed by the FCC in its *First Report and Order*, and the Ninth Circuit in its MFS Intelenet decision.

⁴⁸*In re Arbitration Between Electric Lightwave, Inc. and GTE Northwest Incorporated*, Docket No. UT-980370, Order Approving Negotiated and Arbitrated Interconnection Agreement, 13-15 (May 12, 1999).

⁴⁹*MFS Intelenet*, 193 F. 3d at 1124.

Further, tandem treatment should not be restricted to a CLEC switching a call twice.

207 The Commission finds that Qwest is not in compliance with the requirements of this checklist item until it modifies its SGAT as discussed above.

4. *Host/Remote Issue*

208 In order to be in compliance with Checklist Item No. 13, RBOCs must provide reciprocal compensation arrangements in accordance with Section 252(d)(2) of the Act. Section 252(d)(2) requires "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." If Qwest expects to be compensated for transport between its host and remote switches, Qwest must also compensate its competitors for transport between the CLEC's control switch and nodes along the CLECs' SONET fiber rings. Traditionally, a host/remote architecture has been used to connect to rural areas, and to connect between towns. Thus, any host/remote configurations within a wire center are not addressed by this Draft Initial Order. The Commission finds that Qwest is not in compliance with the requirements of this checklist item until it modifies its SGAT to reflect the discussion above.

5. *Commingling/Ratcheting*

209 While we understand Qwest's concern about compliance with FCC orders and rules, we are not convinced that the proposal made by AT&T and WorldCom is the same arrangement that WorldCom proposed in its ex parte letter, or that the FCC discusses in its *Supplemental Order*.⁵⁰ For that reason, we agree with the CLECs that placing LIS trunk traffic on an entrance facility carrying exchange access traffic does not constitute "commingling" of traffic under the *Supplemental Order*, and thus should be allowed. Compensation for that portion of the trunk used for local interconnection service should be priced proportionally at TELRIC rates. For this reason, the Commission finds that Qwest is not in compliance with this checklist item until it modifies its SGAT section 7.3.1.1.1 as discussed above.

6. *Single POI-Per LATA/Inter Local Calling Area Trunking*

210 The Commission finds that Qwest is not in compliance with this checklist item. Qwest's proposed SGAT provisions are not in compliance with the provisions of Section 252(d)(2) as they require competitors to pay retail private line prices for transport of traffic. Qwest imposes a barrier to entry by requiring competitors to pay retail rates for transport of traffic within the Qwest network. Transport charges for InterLocal Calling Area Trunks should be priced at TELRIC rates, rather than private

⁵⁰ *Supplemental Order*, ¶28.

line rates.

7. *Symmetrical Compensation*

211 While the CLECs raise an interesting argument for symmetrical or reciprocal compensation, we are not prepared to resolve this impasse issue on the limited records before us at this time. We propose that the parties further address the matter, in a limited fashion, in workshop discussions concerning interconnection. Should the parties find a solution to this impasse issue before that time, the parties are requested to bring that resolution to the attention of the Commission.

8. *Summary of Compliance*

212 For the reasons discussed above, the Commission finds that Qwest is not in compliance with the requirements of Checklist Item No. 13.

APPENDIX A

Qwest Compliance With Evidentiary Requirements Included in Supplemental Interpretive and Policy Statement

Checklist Item 3: Poles, Ducts, Conduits and Rights of Way

For each section 271 checklist item, U S WEST should provide relevant, detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
1. Describe how U S WEST has fully implemented this checklist item as required by section 271 of the Act.	Ex. 151-T, at 3-5.
2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC's, affiliates, and itself? How were these performance standards determined?	Ex. 151-T, at 8-11.
3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?	Ex. 151-T, at 18-20; Ex. C-156.
4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.	Response to BR #17; Response to BR#19.
5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.	N/A
6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?	Ex. 106.

<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>N/A - item is being provided.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>N/A - item is being provided.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Ex. 151-T, at 19; Ex. 157-T, at 9-11.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 151-T, at 18.</p>

Questions Specific to Checklist Item 3:

Question	Testimony/Evidence Reference
<p>1. How is U S WEST providing nondiscriminatory access to poles, ducts, conduits and rights-of-way at just and reasonable rates?</p>	<p>Ex. 151-T, at 6, 7; SGAT, Ex. 106, Sec. 10.8.2. There is an impasse issue w/ respect to nondiscriminatory access to rights-of-way.</p>

2. Does U S WEST provide the same access to these facilities to CLECs as it provides itself? Describe how it does so.	Ex. 151-T, at 12-15.
3. Does U S WEST make available to CLECs its maps, plats, and other relevant data, and what are the terms and conditions of such availability? Describe how it does so.	Ex. 151-T, at 15; SGAT, Ex. 106, Sec. 10.8.2.4. There is an impasse issue w/respect to “extensive requests.”
4. Describe any municipal (or other type of government) franchise, grant, or additional requirement that affects U S WEST's access to pathways, poles, conduits, and rights-of-way differently from that of unaffiliated carriers.	Ex. 151-T, at 6-7; SGAT, Ex. 106.
5. What is U S WEST's policy for reservation of space for its own use? How does this affect access to rights-of-way of competitors?	SGAT, Ex. 106, Sec. 10.8.2.
6. How many competitors gain access to customer dwellings in multidwelling units, including access to interbuilding cabling?	Ex. 151-T, at 20.

Checklist Item 7: 911/E911, Directory Assistance, and Operator Services

For each section 271 checklist item, U S WEST should provide relevant, detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
1. Describe how U S WEST has fully implemented this checklist item as required by section 271 of the Act.	911: Ex. 131-T, at 6; DA: Ex. 111-T, at 5; OS: Ex. 111-T, at 13.
2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?	911: Ex. 131-T, at 21, 22; No info on how performance standards were determined. Ex. 131-T, at 7-8, on NENA industry guidelines. DA/OS: Ex. 120; Ex. 121. No info on how standards were determined.

<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>911: Ex. 131-T, at 6; Ex. C-140; DA: Ex. 111-T, at 7; Ex. 114-T, at 9-10. OS: Ex. 111-T, at 15.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>911:Ex. 131-T, at 15, 16,18, 19; DA: Ex. 111-T, at 8-11, Ex. 114-T, at 7-8; SGAT, Ex. 106, revised Secs. 10.6.2.1.1, 10.6.2.2, 10.4.2.1.3, 10.5.2.10.; OS; Ex. 111-T, at 18-20.</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>911: Ex. 131-T, at 7. Process, Ex. 132; No info on update scheduling; DA: SGAT, Ex. 106,10.5, 10.6; OS: SGAT, Ex. 106, 10.7. No process or schedule for updating rules.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>SGAT, Ex. 106; Matrix of what docket things are being addressed in; pricing deferred to 3013.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>NA - items are being offered.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>NA - items are being offered.</p>

<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>911: No information provided. DA/OS: Ex. 111-T, at 28 - none known about.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>911: Ex. 131-T, at 9. DA/OS: Ex. 111-T, at 28.</p>

Questions Specific to Checklist Item 7:

Question	Testimony/Evidence Reference
<p>1. How is U S West providing nondiscriminatory access to 911 and E911 services/ Directory assistance services? Operator call completion services?</p>	<p>911: Ex. 131-T, at 6-20.</p>
<p>2. How is U S WEST trying to resolve any problems it has experienced in integrating CLEC customer information into the 911 system? Discuss what problems, if any, are caused by CLEC error.</p>	<p>911: Ex. 131-T, at 19.</p>
<p>3. Please provide data showing the percentage of errors found in CLEC end user information and U S WEST end user information, respectively, and the frequency of updates to the database for CLEC end user information and U S WEST end user information, respectively.</p>	<p>911: Ex. 131-T, at 21. Data is not available for CLEC end user information and Qwest end user information separately. Reports are due out by second quarter 2000. DA./OS: Ex. 111-T, at 21 and Ex. 112; measures are being implemented (see Checklist Item #8)</p>

Checklist Item 8: White Pages Directory Listings

For each section 271 checklist item, U S WEST should provide relevant. detailed information in

response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
1. Describe how Qwest has fully implemented this checklist item as required by section 271 of the Act.	Ex. 111-T, at 29 - 35.
2. What performance standards must Qwest meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?	Ex. 111-T, at 36; Ex. 114-T, at 14; and Ex. 120. NOTE: There is no discussion of specifically how the company came to develop these two approaches for the needed standards. The first performance report is due now.
3. To whom is Qwest presently providing, on a commercial basis, this checklist item?	Ex. 111-T, at 31; and Ex. 113-C.
4. Describe how the quality and reliability of checklist items provided to competitors by Qwest are comparable to the quality and reliability for such items Qwest provides to itself or its own customers.	Ex. 111-T, at 32 - 34; and Ex. 112.
5. What technical standards and/or business rules is Qwest providing to CLEC’s for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.	Ex. 111, at 33 - 36, Qwest Reseller and Facility-based Co-Provider Directory Listings User Documents, Ex. 118 NOTE: There is no explanation or schedule provided for the updating of these technical standards and/or business rules.
6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?	Ex. 111-T, at 31.

<p>7. If Qwest is not currently providing this checklist item, is Qwest offering the item? If so, how is it offering the item and under what terms, condition, and rates? Describe how the checklist item is readily available and easily obtained by competitors?</p>	<p>N/A - item is being provided</p>
<p>8. If Qwest is not currently offering this checklist item, is Qwest capable of commercially providing it? What is Qwest's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>N/A - item is being provided</p>
<p>9. Has Qwest received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did Qwest take to avoid recurrences?</p>	<p>N/A - no known complaints on this item</p>
<p>10. Is Qwest able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 111-T, at 31; Ex. 112; TR 163, lines 20-25.</p>

Questions Specific to Checklist Item 8:

Question	Testimony/Evidence Reference
<p>1. How is Qwest providing white pages directory listings for customers of the CLEC's telephone exchange service?</p>	<p>Ex. 111-T, at 30, 35, 36, and 37; and Ex. 112.</p>
<p>2. Under what terms does Qwest provide white pages directory listings?</p>	<p>Ex. 111-T, at 36; Ex. 112; SGAT, Ex. 106, Section 10.4; Qwest Reseller and Facility-based Co-Provider Directory Listings User Documents, Ex. 118.</p>

<p>3. Under what terms does Qwest provide nondiscriminatory access to basic directory listings for business accounts (name, address, telephone number, and primary business classification)?</p>	<p>SGAT, Ex. 106, Section 10.4, NOTE: There is no specific comment in the SGAT, Section 10.4 about <i>business accounts</i> specifically. The SGAT puts it on the CLEC to ensure all listings are given all the appropriate classifications.</p>
<p>4. Under what terms does Qwest provide: (1) complete content of white page local exchange directory in electronic format; (ii) specific white page directory publication schedules and deadlines; and (iii) specific white page directory publication schedules and delivery dates/locations?</p>	<p>Ex 111-T, at 35, 37; SGAT, Ex 106, section 10.4.2.3; TR 168; Ex 118.</p>
<p>5. Under what terms does Qwest deliver white and yellow page directories to customers of new carriers? How do those terms differ from those Qwest affords itself, its affiliates, or its retail customers? How do those terms differ from the requirements contained in WAC 480-120-042?</p>	<p>Ex 111-T, at 35; SGAT, Ex 106, 10.4.2.12, NOTE: The terms about delivery of white and yellow pages do differ from the WAC. The Washington SGAT is more specific about the terms.</p>

Checklist Item 9: Nondiscriminatory Access to Telephone Numbers

For each section 271 checklist item, U S WEST should provide relevant, detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
<p>1. Describe how U S WEST has fully implemented this checklist item as required by section 271 of the Act.</p>	<p>Ex. 131-T, at 25-27.</p>
<p>2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?</p>	<p>Ex. 131-T, at 25. Guidelines are external (Industry Numbering Committee). No info on how guidelines were determined.</p>

<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>Number assignment function now performed by third party. Qwest currently provides NXX Code activations. No information provided re: to whom it provides NXX activations.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Non-compliant. For NXX code activations, Qwest's performance results indicate that its performance for CLECs is deteriorating, while it is improving for Qwest itself. (See NP-1 NXX Code Activation, Supplemental Response to BR #12)</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 131-T, at 26, for NXX activations. Carriers are responsible for accuracy and complete information submitted to LERG.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>N/A - service is provided at no charge.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>N/A - item is being provided.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>N/A - item is being provided.</p>

<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Issues re local routing numbers and double assignment of numbers have been deferred to Checklist items 1 and 11, respectively.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Yes.</p>

Questions Specific to Checklist Item 9:

Question	Testimony/Evidence Reference
<p>1. How is U S WEST providing nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers?</p>	<p>Ex. 131-T, at 25-27. For NXX code activations, Qwest is not in compliance according to the performance results. For number assignment, question is N/A - Access to phone numbers is administered through a third party.</p>
<p>2. Under what terms do carriers, including U S WEST and its affiliates, obtain access to telephone numbers for assignment?</p>	<p>Ex. 131-T, at 25.</p>

<p>3. How is U S WEST managing limitations in numbering resources (e.g., NXX freezes)?</p>	<p>Ex. 131-T, at 28. Process is managed by a third party.</p>
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Checklist Item 10: Databases and Associated Signaling

For each section 271 checklist item, U S WEST should provide relevant, detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
<p>1. Describe how U S WEST has fully implemented this checklist item as required by section 271 of the Act.</p>	<p>Ex. 106; Ex. 131-T, at 30-42.</p>
<p>2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?</p>	<p>Ex. 141-T, at 18; Ex. 145; Ex. 146-C.</p>
<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>Ex. 131-T, at 30, 35, 38-39; Ex. 140-C.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Ex. 131-T, at 34-35, 39-41.</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 106, Section 21.0; Ex. 131-T at 30-31, 39-40; Ex. 138, Ex. 139; Ex. 149-C; Ex. 150.</p>

<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 131-T, at 30.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>(Currently providing access to some databases and associated signaling - see (3) above.) Ex. 106; Ex. 131-T, at 30, 34-36.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>Qwest offering access through SGAT if not provided in interconnection agreements. Ex. 131-T, at 30-42.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>No. <u>See</u> Ex. 131-T, at 41.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 131-T, at 30-42.</p>

Questions Specific to Checklist Item 10:

Question	Testimony/Evidence Reference
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<p>1. How is U S WEST providing nondiscriminatory access to databases and associated signaling necessary for call routing and completion?</p>	<p>Ex. 106, at Section 9.13.1.1; Ex. 131-T, at 33-35, 38.</p>
<p>2. To which CLECs is U S WEST providing such access, and under what terms, conditions, and rates?</p>	<p>Ex. 131-T, at 30, 35, 38-39; Ex. 140-C.</p>
<p>3. Are there any databases that competitors have requested access to that U S WEST is unwilling or unable to supply? Identify the databases and state why U S WEST is unable or unwilling to supply access. Identify the competitors involved.</p>	<p>No; Ex. 131-T, at 39.</p>
<p>4. Are there any pending requests for access to databases that U S WEST has not granted or completed? Identify the nature of the request, the competitor involved and the reason(s) why the request has not been granted or completed.</p>	<p>Yes, WorldCom’s request for access to entire ICNAM database, rather than on a per dip or query basis. <u>See</u> Ex. 141-T, at 15-16.</p>

Checklist Item 12: Dialing Parity

For each section 271 checklist item, U S WEST should provide relevant, detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
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<p>1. Describe how U S WEST fully implemented this checklist item as required by section 271 of the Act.</p>	<p>Ex. 131-T, at 43 - 46; TR 191 - 192.</p>
<p>2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC's, affiliates, and itself? How were these performance standards determined?</p>	<p>N/A NOTE: There are no performance standards listed in the testimony.</p>
<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>Ex. 131-T, at 44.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Ex. 131-T, at 44-46.</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 131-T, at 44. NOTE: No detail was provided about these technical standards, nor was there any reference to updating them. Also, the document referenced in the footnote has not been included, to my knowledge, in the filed documentation.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 131-T, at 45.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>N/A - item is being provided</p>

<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Haas any CLEC requested the checklist item?</p>	<p>N/A - item is being provided</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Ex. 131-T, at 46.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 131-T, at 44.</p>

Questions Specific to Checklist Item 12:

Question	Testimony/Evidence Reference
<p>1. How is U S WEST providing nondiscriminatory access to such services or information, as is necessary, to allow a requesting carrier to implement dialing parity in accordance with the requirements of section 251 (b)(3)?</p>	<p>Ex. 131-T, at 44; SGAT, Ex. 106, section 14.1.</p>
<p>2. What percentage of U S WEST switches are providing dialing parity to competitors for local calls?</p>	<p>Ex. 131-T, at 44.</p>

<p>3. What percentage of U S WEST switches, serving what percentage of access lines, have been equipped to provide dialing parity for intraLATA toll calls, and in what percentages of switches, serving what percentage of access lines, has that capability been tested?</p>	<p>Ex. 131-T, at 45.</p>
<p>4. Will intraLATA toll dialing parity be implemented in such switches using the “full 2 - PIC” subscription method, and if not, what method will be used?</p>	<p>Ex. 131-T, at 45.</p>
<p>5. Does U S WEST plan to provide dialing parity for intraLATA toll calls before, or only coincident with, its provisioning of in-region interLATA services? Why or why not?</p>	<p>N/A - item is being provided.</p>
<p>6. After receiving section 271 authorization, when a customer calls U S WEST to establish new local exchange service or to switch the location of it existing service, how does U S WEST plan to have its service representatives inform the customer of their long distance provider options in the manner prescribed in Ameritech/Michigan and Bell South/South Carolina Orders (i.e., offering to list the optional providers, using a random order)? Please provide scripts to be used by service representatives to inform customers of their provider options.</p>	<p>Ex. 131-T, at 45. NOTE: No scripts were provided..</p>

Checklist Item 13: Reciprocal Compensation Arrangements

For each section 271 checklist item, U S WEST should provide relevant. detailed information in response to the generic questions below, as well as to the specific questions for each item.

Generic Questions:

Question	Testimony/Evidence Reference
<p>1. Describe how U S WEST has fully implemented this checklist item as required by section 271 of the Act.</p>	<p>Ex. 151-T; Ex. 157-T; Ex. 106.</p>

<p>2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?</p>	<p>Not addressed in testimony. <i>See</i> Ex. 106, Section 20 (Under Development).</p>
<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>Ex. 151-T, at 4, 32-33.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Not addressed in testimony. <i>See</i> Ex. 106, Section 20 (Under Development).</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 106, Section 21; Ex. 151-T, at 31-32, 36; Ex. 154.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 106, Exhibit A; Ex. 151-T, at 23, 27-31.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>Providing through interconnection agreements, <i>also see</i> SGAT, Ex. 106.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>Providing through interconnection agreements, <i>also see</i> SGAT, Ex. 106.</p>

<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Yes. NEXTLINK brought a formal complaint on this checklist item to the Commission concerning payment of reciprocal compensation for ISP traffic. NEXTLINK also raised the issue during the workshops in June and July.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 151-T, at 33.</p>

Questions Specific to Checklist Item 13:

Question	Testimony/Evidence Reference
<p>1. How is U S WEST providing reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)?</p>	<p>Ex. 151-T, at 4-5, 31.</p>
<p>2. Describe arrangements for reciprocal compensation, including bill-and-keep, for local exchange traffic between U S WEST and CLECs and other ILECs?</p>	<p>Qwest does not completely explain for interconnection agreements, but primarily for the SGAT. <i>See</i> Ex. 151-T, at 27 to 31.</p>
<p>3. For carriers with bill-and-keep arrangements, specify whether bill-and-keep is replaced with explicit compensation arrangements when traffic is not in balance. How is traffic balance determined?</p>	<p>Ex. 151-T, at 31.</p>

<p>4. For all carriers with explicit compensation arrangements, specify the type of arrangements and rates (i.e., call termination rates).</p>	<p>Qwest does not completely explain for interconnection agreements, but primarily for the SGAT. <i>See</i> Ex. 151-T, at 27 to 30.</p>
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