BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996	Docket No. UT-003022
In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	Docket No. UT-003040 QWEST'S REPLY TO CLEC COMMENTS ON SGAT COMPLIANCE WITH WORKSHOP 1 AND 2 ORDERS

I. INTRODUCTION

Qwest Corporation ("Qwest") submits this rebuttal to the comments of AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T");[1] Electric Lightwave, Inc. and XO Washington, Inc. ("ELI/XO"); and Covad Communications Company ("Covad") regarding the compliance of Qwest's Statement of Generally Available Terms ("SGAT") with the Commission's orders in Workshop 1 and 2. As set forth in Qwest's

[1] AT&T filed two sets of comments: AT&T Comments Regarding Qwest's Compliance with Washington Commission Orders Regarding Workshop 1 Issues (hereinafter "AT&T Comments on Workshop 1 Compliance") and AT&T's Comments Regarding SGAT Sections 6, 7, and 8 (hereinafter "AT&T Comments on Sections 6, 7, and 8"). Qwest notes that AT&T's Comments on Workshop 1 Compliance include comments on Section 10.2.2.4 which was addressed in Washington Workshop 2.

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compliance filing, most of the SGAT language at issue is reflected in the SGAT filed with the Commission on September 21, 2001. Thus, unless otherwise indicated, all references to "the SGAT" in this rebuttal are to that version of the SGAT. Qwest's Rebuttal follows the order of the SGAT provisions at issue.

As set forth below, Qwest's SGAT complies with the Commission's Orders in Workshops 1 and 2[2] on those issues for which Qwest has not sought reconsideration. Qwest has diligently attempted to incorporate both letter and spirit of the Commission's orders into the SGAT. On several provisions, the commenting competitive local exchange carriers ("CLECs") do not question the propriety of the SGAT language, but seek modifications to provisions that are unrelated to the Commission's orders. For other provisions, the CLECs suggest modifications to Qwest's SGAT language, but do not challenge its overall propriety. As discussed below, Qwest remains committed to resolving as many disputes collaboratively as possible. Therefore, in several instances, Qwest is willing to suggest modifications to the SGAT to address the CLECs' comments. Qwest has drawn the line, however, where CLECs seek modifications to the SGAT that are unrelated to the Commission's orders, that remain open for resolution in other proceedings, or are otherwise improper as discussed below. As Qwest explains, for these changes, the current SGAT complies with the Commission's orders as well as the Act and FCC orders, and the CLECs' requested changes are improper.

Accordingly, the Commission should find that Qwest's SGAT complies with the Commission's Fifteenth Supplemental and Workshop 1 Orders where issues addressed in those orders are not before the Commission on motions for reconsideration. On those issues for which Qwest has sought reconsideration, the SGAT properly reflects Qwest's legal obligations under the Act and FCC rules.

II. DISCUSSION

A. SGAT §§ 6.2.3 and 6.4.1.

AT&T raised issues regarding two SGAT provisions associated with resale. First, AT&T

[2] Fifteenth Supplemental Order, Commission Order Addressing Workshop 2 Issues: Checklist Items 1, 11 and 14 (dated Aug. 17, 2001) ("Fifteenth Supplemental Order"); Commission Order Addressing Workshop One Issues: Checklist Items No. 3, 7, 8, 9, 10, 12, and 13 (dated June 11, 2001) ("Workshop 1 Order").

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objects to language at the end of Section 6.2.3 that reads "any payments that are made pursuant to this provision will be an offset and credit toward any other penalties voluntarily agreed to by Qwest as part of a performance assurance plan . . . ." AT&T suggests that this language does not comply with paragraph 92 of the Fifteenth Supplemental Order, which states that the issue of the interface or coordination of Qwest's tariff, PAP, and post-merger performance plan should not be decided until the PAP is developed and approved. Qwest believes that the language in question is appropriate and should remain in the SGAT. The Fifteenth Supplemental Order did not require Qwest to modify this section of its SGAT pending the QPAP proceeding. Thus, Qwest's language is consistent with that order. Indeed, in its comments on the QPAP, filed on November 21, 2001 in this docket, AT&T characterizes the language in SGAT Section 6.2.3 as "negotiated." Additionally, Qwest's language in Section 6.2.3 is consistent with the recommended decision in the QPAP proceeding (October 22, 2001 Liberty Decision). Thus, the language should remain as is pending final resolution of this issue.

As to the second issue, regarding SGAT § 6.4.1, Qwest agrees to make the change suggested by AT&T, so that the language in Section 12.3.8.1.3 is identical to the language in Section 6.4.1.

B. SGAT §§ 7.1 and 7.2

AT&T offers several comments relating to Interconnection and Sections 7.1 and 7.2 of the SGAT. Qwest is able to accept several of AT&T's proposals, as described below. However, some of the proposals are inconsistent with Commission recommendations or would add ambiguity to the SGAT and, therefore, should be rejected.

First, AT&T requests the addition of the phrase "at any technically feasible point" to Section 7.1.2. Qwest accepts this proposal.

Second, AT&T proposes the addition of the phrase "determined by the CLEC" to a sentence in Section 7.1.2.1, which Qwest also accepts. Accordingly, the sentence will now read: "An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI *determined by CLEC."* (Emphasis added). Qwest does not accept, however, AT&T's proposed deletion of the following sentence from Section 7.1.2.1: "Entrance facilities may not extend beyond the area served by

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the Qwest Serving Wire Center." This sentence is necessary since, without it, Section 7.1.2.1 could be construed to require Qwest to provide a POI outside its serving territory. Qwest, of course, is not required to provide POIs in out-of-region areas that it does not serve as an incumbent carrier.

In addition, if AT&T is seeking to require Qwest to provide entrance facilities beyond areas considered Qwest serving wire centers, that result would be inconsistent with the manner in which these facilities are priced. Specifically, the price for entrance facilities is flat-rated, not distance-sensitive, and is based on an average length. The price reflects the fact that these facilities typically are relatively short. If Qwest were required to provide entrance facilities beyond the areas served by its serving wire centers, the length of these facilities would increase significantly. This change would not be consistent with the manner in which entrance facilities are priced. Moreover, it is significant that in finding that SBC and Verizon have met the requirements of checklist item 1, the FCC has not imposed a requirement that these carriers extend entrance facilities beyond their serving wire centers.

Third, AT&T seeks elimination of language that Qwest has added to Section 7.1.2.3 to clarify that CLECs can use "remaining capability" in a mid-span meet POI to gain access to unbundled network elements. The provision also provides properly that the portion of that facility that a CLEC uses to access UNEs will be paid for by the CLEC under the terms and conditions applicable to UNEs. This provision is responsive to previous criticism from CLECs arguing that Qwest should not prohibit UNE transport on a mid-span meet facility. Qwest responded by changing its position and agreeing to provide these facilities to access UNEs. The language that AT&T would strike reflects this history. The language reflects Qwest's movement toward the position of the CLECs and adds clarity concerning the use of and compensation for mid-span meet POIs. Accordingly, the language should be included in this section of the SGAT.

Fourth, AT&T correctly points out that Qwest has included two Sections 7.2.2.1.5. This duplication is the result of a typographical error; one of the sections will be deleted.

Fifth, AT&T proposes several modifications to Section 7.2.2.8.6 and related subsections, which relate to LIS forecasting and deposits. The Qwest and AT&T proposals relating to these sections arise

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from the Commission's statement at paragraph 33 of the Fifteenth Supplemental Order that "Qwest should continue to negotiate a permanent *pro rata* formula with the CLECs and submit it for review at the earliest opportunity." Qwest is prepared to accept AT&T's suggested clarification of the permanent *pro rata* formula and the language proposed by AT&T in sections 7.2.2.8.6.1 and 7.2.2.8.6.1.2. Qwest strongly opposes, however, AT&T's attempt to introduce completely new issues.

For example, the *pro rata* formula is not mentioned in sections 7.2.2.8.6 and 7.2.2.8.6.1, and yet AT&T proposes many changes to those sections. Furthermore, Qwest does not propose to lower another carrier's forecast but, instead, proposes that it be permitted to develop its own projection. Both the CLEC projection and Qwest's would be valid. AT&T also goes too far by attempting to insert language that would entitle the CLECs to seek damages against Qwest per section 7.2.2.8.6.1.3. Since that portion of the revision is not responsive in any way to the question of how best to capture clarify the "pro rata" formula issue of determining which trunks are relevant for purposes of trunk forecasting and deposits, Qwest does not agree to amend the SGAT as proposed by AT&T in this section – AT&T's language on this issue should be stricken. With that understanding, Qwest is prepared to accept the balance of the language proposed by AT&T.

Sixth, AT&T and ELI/XO challenge Qwest's language in Section 7.2.2.8.13 relating to Qwest's ability to re-size trunk groups. However, Qwest's proposed language reflects the evolution of this issue that has occurred in workshops and discussions with CLECs in other states. Qwest believes that the language it is proposing from the efforts undertaken in other states is consistent with the Commission's previous directive that the parties should attempt to resolve this issue through negotiations outside the Washington workshops.

The resolution reflected by Qwest's language reflects the give-and-take of the negotiation process. In particular, as part of the discussions with the CLECs, Qwest agreed to drop its demand that a CLEC with a long history of over-forecasting provide Qwest with a deposit even when Qwest builds to a lower forecast of CLEC demand for trunks. In return, Qwest insisted in a Colorado workshop in February 2001 that its ability to control trunk re-sizing, as set forth in Section 7.2.2.8.13, be reinstated.

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That ability to control the sizing of facilities is important to Qwest. Qwest's language would give it the ability to address situations where excess capacity exists in a trunk group for at least three consecutive months. Significantly, when Qwest does re-size a trunk group, it allows for at least 25 percent spare capacity. Including Section 7.2.2.8.13 will ensure that Qwest has the control that is needed to ensure efficient use of its network. Accordingly, Qwest's language is appropriate.

C. SGAT §§ 7.3.1.1.2 and 7.3.1.2.2

As the Commission is well aware, Qwest has filed a petition for reconsideration of the Fifteenth Supplemental Order relating to the issue of ratcheting. Qwest has agreed that CLECs may use spare special access circuits for local interconnection traffic, but asserts that CLECs must pay the full tariffed rates for such circuits. In other words, CLECs may not "ratchet" special access rates to TELRIC rates. As set forth fully in Qwest's Petition, pending further review, the FCC has denied AT&T's demand for ratcheting of special access rates to TELRIC. *See* Qwest's Petition for Reconsideration of the 15th Supplemental Order: Interconnection, Collocation, LNP and Resale, at 2-4 (filed Sept. 4, 2001). AT&T responded to Qwest's Petition on September 10, 2001, and presented the identical arguments it presents in its comments on Qwest's compliance SGAT. *Compare* AT&T's Response in Opposition to Qwest's Motion for Reconsideration of the 15th Supplemental Order (filed by facsimile Sept. 10, 2001) *with* AT&T Comments at 12-18. Indeed, AT&T's comments are a near verbatim recitation of the response it previously filed. Neither AT&T nor ELI/XO presents no new arguments, and accordingly, Qwest will not rehash its arguments here. Suffice it to say that Qwest demonstrated in its Petition that the ratcheting AT&T described in its response and Comments is virtually identical to the ratcheting proposal WorldCom presented, and the FCC rejected, in its *Supplemental Order Clarification*.[3] The Commission should ignore AT&T's duplicative comments and determine this issue in the course of deciding Qwest's Petition for Reconsideration. In reviewing that Petition, the Commission should find that

[3] Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 9587 ¶ 28 & n. 79 (June 2, 2000) ("*Supplemental Order Clarification*"). AT&T's proposal has been rejected by state commissions in Colorado, Utah, Wyoming, New Mexico, Iowa, and North Dakota. Administrative Law Judges in Oregon, Nebraska, Idaho and Montana have also found this proposal inappropriate.

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Qwest's current SGAT language is consistent with current FCC pronouncements.

With respect to Section 7.3.1.2.2, AT&T suggests that Qwest may not have eliminated all the rate elements that should be eliminated pursuant to paragraphs 43 and 155 of the Fifteenth Supplemental Order. In fact, Qwest has eliminated rate elements for EICT from Exhibit A. That charge was based on costs relating to signal regeneration and intra-building cable.

Qwest assumes the Commission did not intend to completely rewrite the rules for reciprocal compensation, which of course would be required if the comment regarding eliminating other rate elements on Qwest's side of the POI were taken out of context. The context is a collocation circumstance. A wider approach would fundamentally alter the relationship between the parties in ways that were never envisioned under the Act, which Qwest assumes the Commission did not intend. Assuming this to be the case, Qwest is not aware of any other rate elements similar to EICT that would require modification. Thus, Qwest's elimination of EICT from Exhibit A is fully responsive to the Commission's Order.

D. SGAT §§ 7.3.1.1.3.1, 7.3.2.2.1, and 7.3.6

1. ELI/XO Comments on 7.3.1.1.3.1 and 7.3.2.2.1

Consistent with the FCC's *ISP Remand Order*[4] and the determination that Internet traffic is interstate, Sections 7.3.1.1.3.1 and 7.3.2.2.1 of Qwest's SGAT exclude Internet traffic from the calculation of relative use that is used to establish responsibility for payment of interconnection facilities.[5] These sections provide in relevant part: "The initial relative use factor will continue for both bill reductions and payments until the Parties agree to a new factor, based upon actual minutes of use data for non-Internet Related traffic to substantiate a change in that factor." ELI and XO argue that the Commission should require Qwest to remove the reference to "non-Internet Related traffic" from these provisions, so

[4] Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, FCC 01-131 (rel. April 27, 2001) ("*ISP Remand Order*").

[5] Qwest has sought reconsideration of the Commission's Workshop 1 Order relating to compensation for Internet-bound traffic, citing the FCC's *ISP Remand Order*.

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that the relative use of, and payment for, interconnection facilities will be determined by including Internet traffic. The Commission should reject this proposed modification.

First, contrary to ELI's and XO's contention, the *ISP Remand Order* directly supports the exclusion of Internet traffic from the allocation of the costs of interconnection facilities based on relative use. The *ISP Remand Order* establishes unequivocally that Internet traffic is interstate in nature.[6] That ruling has a direct bearing on the proper application of the FCC rules that establish relative as the basis for determining responsibility for the costs of transmission facilities. In particular, the relative use rules are set forth in 47 C.F.R. Subpart H, which is titled "Reciprocal Compensation for Transport and Termination of *Local* Telecommunications Traffic." (Emphasis added). The FCC makes clear that the rules within this subpart "apply to reciprocal compensation for transport and termination of *local* telecommunications traffic."[7] Because Internet traffic is not local, it is not affected by the rules in this section and cannot be included, therefore, in calculations of relative use.

Further, in defining transport services that are subject to reciprocal compensation, the FCC speaks only of local traffic:

> For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.[8]

Consistent with this definition, the concept of each carrier paying for its relative use of transmission facilities, which is set forth in FCC Rule 51.709(b), applies only to local traffic. Because the FCC has established that Internet traffic is interstate, this traffic cannot be part of the relative use calculations that determine the extent of a carrier's reciprocal compensation obligations relating to transport facilities.[9]

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[6] *ISP Remand Order at* ¶ 57. Because the FCC has established that Internet traffic is interstate, the Commission should reject ELI's and XO's request that this traffic be included in the definitions of "EAS/Local Traffic" and Exchange Service." *See* ELI/XO Comments at 2.

[7] *See* 47 C.F.R. § 51.701(a) (emphasis added).

[8] 47 C.F.R. § 51.701(c) (emphasis added).

[9] In addition, because issues relating to inter-carrier compensation for Internet traffic are within the FCC's exclusive

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Second, the exclusion of Internet traffic from relative use calculations is consistent with the substantial policy concerns that the FCC identified in the *ISP Remand Order*. Indeed, in a recent interconnection arbitration between Qwest and Level 3 Communications in Oregon, the administrative law judge cited these concerns in support of his ruling, which the Oregon Commission adopted, that Internet traffic should be excluded from calculations of relative use and cost allocations for interconnection facilities:

> The same arbitrage opportunities that the FCC cites with respect to termination of ISP-bound traffic, apply in the allocation of ILEC facilities' costs on the basis of relative use by the traffic originator, because an ILEC customer who calls an ISP generates an identical number of minutes-of-use over facilities on the ILEC side of the POI as over the CLEC's terminating facilities. The overall thrust of the language of the *ISP Remand Order* is clearly directed at removing what the FCC perceives as uneconomic subsidies and false economic signals from the scheme for compensating interconnecting carriers transporting Internet-related traffic. Since the allocation of costs of transport and entrance facilities is based upon relative use of those facilities, ISP-bound traffic is properly excluded, when calculating relative use by the originating carrier.[10]

Accordingly, the Commission should reject ELI's and XO's proposed modifications to Sections 7.3.1.1.3.1 and 7.3.2.2.1 of the SGAT.

2. CLEC Comments on Sections 7.3.4.3, 7.3.4.4, and 7.3.6

AT&T and ELI/XO have offered several comments relating to Sections 7.3.4.3, 7.3.4.4, and Section 7.3.6 of the SGAT relating primarily to Qwest's language that implements the FCC's *ISP Remand Order*. Qwest responds to these comments below according to each subsection the CLECs have addressed.

a) Sections 7.3.4.3 and 7.3.4.4

As AT&T discusses, Qwest modified Sections 7.3.4.3 and 7.3.4.4 of the SGAT to state clearly

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jurisdiction, state commissions are without authority to require the inclusion of this traffic in calculations of relative use.

[10] *In the Matter of Petition of Level 3 Communications for Arbitration with Qwest Corporation*, ARB 332, Commission Decision Adopting Arbitrator's Decision, Arbitrator's Decision at 8 (Sept. 13, 2001).

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that it has adopted the rate scheme for inter-carrier compensation set forth in the *ISP Remand Order*. AT&T proposes eliminating Section 7.3.4.3 and modifying 7.3.4.4 to add clarity and to avoid redundancy. AT&T Comments at 8. Qwest agrees that Section 7.3.4.3 can be eliminated. It also agrees to accept AT&T's proposal relating to Section 7.3.4.4, but requests a minor modification to AT&T's proposal.

Qwest's modification to AT&T's language relating to Section 7.3.4.4 involves the following sentence that AT&T proposes: "CLEC may choose one (1) of the following two (2) options for the exchange of *all* traffic subject to § 251(b)(5) of the Act ("§ 251(b)(5) Traffic")". (Emphasis added). Qwest requests that the word "all" in this sentence be replaced by the term "EAS/Local Traffic." This change is appropriate because Section 7.3.4.4 involves an election by the CLECs relating specifically to EAS/Local Traffic. Use of the term "all traffic" leaves some ambiguity concerning the type of traffic that will be covered the CLEC's election. With this minor, clarifying change to AT&T's language, Qwest accepts the proposal.

AT&T also proposes the following modifications relating to these sections: (1) change the reference to "EAS/local traffic" to "Section 251(b)(5) traffic;" (2) eliminate the reference to "Information Services Access" in Section 7.3.4.4.1; and (3) add language to Section 7.3.4.4.2 requiring cooperation between the parties in identifying and distinguishing between Internet-bound traffic and Section 251(b)(5) traffic. AT&T Comments at 8-9. Qwest accepts each of these proposals.

b) Sections 7.3.6.2 and 7.3.6.2.2.1

Section 7.3.6.1 of the SGAT provides clearly that Qwest has elected to exchange ISP-bound traffic at the FCC-ordered rates pursuant to the *ISP Remand Order,* and Section 7.3.6.2 establishes that the usage-based rate mechanism in the FCC's *ISP Remand Order* applies as of the date the FCC adopted the Order, April 18, 2001.[11] AT&T argues that the rate mechanism in the *ISP Remand Order* should apply only "from the date the CLEC executes the SGAT or opts into the SGAT or this provision

[11] In its comments, ELI/XO assert that the SGAT should specifically state that Qwest has elected to use the rates the FCC ordered in the *ISP Remand Order*. ELI/XO Comments at 2-3. Section 7.3.6.1 now clearly states Qwest's election.

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of the SGAT." AT&T Comments at 10. This argument improperly interprets the Order; AT&T's proposed modification should be rejected. Qwest does not disagree with intervenors regarding the SGAT 7.3.6 language having an impact only upon the prospective payments that the parties make. Qwest is concerned that AT&T's proposed language at 7.3.6.1 could be understood to make sections 7.3.6.2 and 7.3.6.2.2 moot since they rely on dates that precede the Effective Date. That would be an improper result.

AT&T's proposal would lead to language that is too narrow to encompass the different scenarios the FCC discussed in the *ISP Remand Order*. For example, in paragraph 81 of the Order, the FCC established a rule specific to situations "where carriers are not exchanging traffic pursuant to interconnection agreements *prior to adoption of this Order* (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served)." (Emphasis added). In those situations, the FCC ordered that "carriers shall exchange ISP-bound traffic on a bill-and-keep basis during the interim period."[12]

As this language demonstrates, the compensation scheme that will govern the exchange of local traffic between carriers is dependent upon when the carriers began exchanging traffic pursuant to an interconnection agreement or the SGAT. AT&T's proposal that the compensation scheme in the *ISP Remand Order* would apply from the date a CLEC enters into the SGAT fails to account for the significance of whether Qwest and the CLEC were exchanging traffic prior to the CLEC's adoption of the SGAT. This circumstance must be accounted for in the SGAT language to give full effect to the *ISP Remand Order*. Because AT&T's proposed language does not account for this important part of the FCC's Order, the Commission should reject the proposal.

ELI/XO also express concern about the use of the term "Interconnection configurations" in Section 7.3.6.2, which appears in the section as follows: "The following usage-based compensation applies to *Interconnection configurations* exchanging ISP-bound traffic pursuant to Interconnection

[12] *ISP Remand Order* ¶ 81.

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agreements as of adoption of the FCC ISP Order, April 18, 2001." (Emphasis added). ELI/XO propose to replace "Interconnection configurations" with the word "market." ELI/XO Comments at 3. While Qwest is open to the suggestion of adding clarity to this sentence, replacing "Interconnection configurations" with "market" would actually decrease the clarity. Accordingly, in an attempt to accommodate ELI/XO, Qwest proposes that the sentence track paragraph 81 of the *ISP Remand Order* by stating: "The following usage-based compensation applies if Qwest and CLEC were exchanging traffic pursuant to an interconnection agreement as of the FCC's adoption of the FCC ISP Order, April 18, 2001." This proposal accurately captures the FCC's intent and does not produce the ambiguity that would result from the ELI/XO proposal.

AT&T also raises a question about the intent of Qwest's modification of Section 7.3.6.2.2.1. Specifically, AT&T requests Qwest to state whether the purpose of this change was to be consistent with changing the obligation in this section from "Qwest's" to the "Parties." AT&T Comments at 10. Qwest confirms that was the sole purpose of this change. In addition, AT&T proposes the addition of "to the other party" in Sections 7.3.6.2.2.1 and 7.3.6.2.2.2 to clarify that each party is responsible to the other party for the payments identified in these sections. AT&T Comments at 11. Qwest accepts this proposal.

ELI/XO also request the addition of the phrase "or any other agreement" in the last sentence of Section 7.3.6.2.2.1. ELI/XO Comments at 3. However, because Qwest has accepted AT&T's proposal, the sentence to which ELI/XO are referring has been eliminated. Qwest encourages ELI/XO to agree with the AT&T proposal for this section, which Qwest has adopted.

c) Section 7.3.6.2.3

AT&T also asks Qwest to clarify the inclusion of the phrase "former Interconnection Agreement" in Section 7.3.6.2.3 as a source of rates for compensation for Internet traffic. AT&T Comments at 11. In the *ISP Remand Order*, the FCC established that the interim compensation regime it adopted "applies

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as carriers re-negotiate expired or expiring interconnection agreements."[13] In addition, the compensation regime "does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions."[14]

Qwest included the reference to "former Interconnection Agreement" to reflect the FCC's ruling that its compensation regime does not alter existing contractual obligations, unless a change of law provision applies. Thus, if an interconnection agreement called for a bill-and-keep compensation mechanism for Internet traffic, that mechanism would continue to apply prospectively. Accordingly, the reference to "former Interconnection Agreement" as a source of rates is appropriate and should be adopted.

d) Section 7.3.6.3

ELI/XO request deletion of this section. ELI/XO Comments at 3. Qwest has agreed, and the section will be deleted.

E. SGAT §§ 8.2 through 8.4

1. Covad Comments Relating to SGAT § 8.2.1.16

Section 8.2.1.16 addresses the extent of Qwest's obligations to release to a CLEC floor space that Qwest has reserved for its own future use. The language in this section is specifically based upon 47 C.F.R. § 51.323(f)(5) and reflects the FCC's determinations that: (1) Qwest has the right to retain a limited amount of floor space for its own future use on terms that are not more favorable than those that apply to CLEC reservations of collocation space for future use; and (2) Qwest is required to relinquish space it is holding for future use before denying a CLEC request for virtual collocation, unless Qwest proves to the Commission that virtual collocation at that point is not technically feasible. Covad offers two objections to Qwest's language, neither of which is supported by the FCC's rule or the Commission's ruling relating to this issue.

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[13] *ISP Remand Order* ¶ 82.

[14] *Id.*

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First, Covad objects that the language does not obligate Qwest to relinquish reserved space to accommodate a CLEC's request for physical collocation but, instead, only imposes that obligation for virtual collocation. Covad Comments at 3. However, Rule 51.323(f)(5) unambiguously establishes that an ILEC's obligation to relinquish reserved space relates to a CLEC's requests for virtual collocation:

> An incumbent LEC shall relinquish any space held for future use before denying a request for *virtual collocation* on the grounds of space limitations, unless the incumbent LEC proves to the state commission that *virtual collocation* at that point is not technically feasible. (emphasis added).

There are sound reasons why this obligation is limited to virtual collocation. As the FCC's rule implicitly recognizes, when ILECs reserve physical space, they often do so to allow for additions to premises that benefit CLECs and the ILEC alike. For example, Qwest may reserve space in anticipation of adding more power facilities or other types of infrastructure that benefit all carriers using the premises. If Qwest were required to relinquish this space immediately upon receiving a CLEC request for physical collocation space, it would lose space reserved for these important additions of infrastructure.

The distinction between physical and virtual collocation that the FCC rule recognizes also reflects basic differences in where virtual and physical equipment is placed in Qwest premises. Because of these differences, space restrictions are less likely to occur with virtual collocation than with physical collocation; the FCC rule relating to space relinquishment reflects this reality.

Second, Covad contends that under Qwest's language, a CLEC is required to use any space that Qwest relinquishes for physical collocation only and cannot use the space for virtual collocation. Covad advances this assertion without citing any language that would impose this limitation. *See* Covad Comments at 3. In fact, nothing in Section 8.2.1.16 requires CLECs to use relinquished space only for physical collocation. The restriction that Covad complains about simply does not exist.

Finally, it is noteworthy that Covad did not raise these issues relating to Section 8.2.1.16 during the workshops. If the concerns were genuine, Covad surely would have raised them during the workshops. The Commission should reject their untimely attempt to raise these issues now. Section

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8.2.1.16 is fully consistent with FCC Rules 51.321(f) and 51.323(f)(5) and should be adopted.

2. Covad Comments Relating to SGAT § 8.2.6.3

Section 8.2.6.3 of the SGAT addresses adjacent and remote adjacent collocation and is modeled based upon FCC Rule 51.323(k)(3). This provision of the SGAT states that "Qwest will provide power and all other Physical Collocation services and facilities." Covad objects that the word "physical" should be removed from this section because it imposes a restriction on a CLEC's ability to collocate adjacent to a remote terminal. Covad Comments at 3-4. This restriction arises, Covad asserts, because the language only requires Qwest to provide the services necessary for physical collocation.

Covad's argument ignores altogether Rule 51.323(k), the FCC rule that sets forth requirements for adjacent collocation. That rule refers only to an ILEC's obligation to provide "power and *physical* collocation services and facilities: "The incumbent must provide power and *physical* collocation services and facilities, subject to the same non-discrimination requirements as applicable to any other *physical* collocation arrangement."[15] Qwest's language precisely tracks the FCC's language.

Tellingly, Covad does not cite any rule or order that supports its attempt to expand Rule 51.323(k) by eliminating "physical." Indeed, there are no rules or orders, including any orders of this Commission from the workshops, that support Covad's proposed language. The Commission should reject Covad's proposed modifications to Section 8.2.6.3 and, consistent with the requirements of Rule 51.323(k), should adopt Qwest's language.

3. Covad Comments Relating to SGAT § 8.2.1.23 and 8.3.1.9

Covad correctly points out that Section 8.2.1.23 of the SGAT, which addresses channel regeneration, is missing a necessary provision. Covad Comments at 4. Qwest inadvertently omitted consensus language establishing that price quotes it provides to CLECs can include charges for regeneration only when, based on ANSI standards relating to limitations on cable distance, regeneration is not required but the CLEC nevertheless requests it. With a small exception, Qwest accepts Covad's

[15] 47 C.F.R. § 51.323(k) (emphasis added).

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proposed language. The language that the parties agree upon in full is as follows, with the newly added language shown in italics:

> Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection. If the length of the most efficient route exceeds any such distance limitations, Qwest will notify CLEC of available options. When CLEC notifies Qwest of CLEC's preferred option, Qwest will proceed with the route design and quote preparation. *If, based on ANSI standards for cable distance limitations, regeneration is not required but is requested by the CLEC, the quote will include the applicable charges. If, based on ANSI standards for cable distance limitations, regeneration is required, the quote will not include any charge for regeneration.*

In addition to the italicized language shown above, Covad proposes language stating that CLECs will not be charged for regeneration when it is required. Covad Comments at 5. However, that language would be superfluous. Section 8.3.1.9 of the SGAT describes the applicable rate elements and already establishes that principle: "Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network." Because Section 8.3.1.9 already addresses this issue, there is no need to include Covad's additional proposed language in Section 8.2.1.23. Accordingly, the Commission should adopt the language set forth above for Section 8.2.1.23.

Covad also suggests a modification to Section 8.3.1.9 to clarify that when Qwest is permitted to charge for regeneration, it will charge the CLECs indirectly and on a proportionate basis shared equally by all collocators and Qwest. Covad Comments at 6. Qwest does not object to including that principle in the SGAT based on the Commission's ruling in the Fifteenth Supplemental Order, but Covad's proposed language is ambiguous and confusing. Instead, Qwest proposes the following language for Section 8.3.1.9, with the new language shown by italics:

> Channel regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network. If based on the ANSI Standard for cable distance limitations, regeneration would not be required but is specifically requested by a CLEC, then the Channel Regeneration Charge would apply. *If channel regeneration is required based on the ANSI standard for cable distance limitations, Qwest will recover the costs indirectly and on a proportionate basis with equal sharing of the costs among all collocators and Qwest.* Cable

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> distance limitations are based on ANSI standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B."

In its proposed language, Covad attempts to limit Qwest's ability to charge for regeneration to situations where "Qwest satisfies the ANSI standards and regeneration nonetheless is required." The reference to Qwest "satisfying" the ANSI standard is confusing and inappropriate. The relevant ANSI standard provides only that for certain lengths of cable, regeneration is required. It is not a standard that Qwest "satisfies;" instead, it is a standard that indicates whether regeneration is required. Qwest's language set forth above eliminates this ambiguity and accurately captures the Commission's ruling relating to this issue in the Fifteenth Supplemental Order.

4. Covad Comments Relating to SGAT §§ 8.4.3.4.3 through 8.4.3.4.5

Paragraph 70 of the Commission's Fifteenth Supplemental Order establishes that under the FCC's *Collocation Waiver Order*,[16] Qwest is allowed up to 150 days to provision a collocation request if a CLEC has not forecasted the collocation. Covad recognizes the effect of this ruling, but it requests language establishing that upon the expiration of the FCC's waiver, "Qwest must provision collocation space within ninety (90) days." Covad Comments at 7. Covad's proposal is inconsistent with the FCC's waiver and should be rejected.

The FCC's waiver arose from Qwest's petition for reconsideration of the 90-day provisioning interval established in the FCC's *Collocation Reconsideration Order*.[17] In granting the waiver, the FCC made clear that it would remain in effect at least until a ruling on the petitions of Qwest and other ILECs for reconsideration,[18] and the FCC has not yet ruled on those petitions. A potential outcome of Qwest's petition, of course, is that the FCC will modify the 90-day provisioning interval. Under Covad's

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[16] Memorandum Opinion and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 16 FCC Rcd 3748 (rel. Nov. 7, 2000)("*Collocation Waiver Order*").

[17] *See* Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Order Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, FCC 00-297 (rel. Aug. 10, 2000) ("*Collocation Reconsideration Order*").

[18] *Collocation Waiver Order* ¶ 20.

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proposal, however, a 90-day interval would apply even if the FCC ultimately orders a longer interval. In other words, Covad would have this Commission deny Qwest the relief it is seeking in its petition even if the FCC grants that relief. The SGAT should be consistent with the FCC's ruling on Qwest's petition for reconsideration; Covad's request for language that potentially would deviate from the FCC's ruling is improper and should be rejected.

Covad suggests that the Commission ordered the inclusion of a 90-day interval in Sections 8.4.3.4.3 through 8.4.3.4.5 when it stated in paragraph 70 of the Fifteenth Supplemental Order that "Qwest must change the interval provisions in the SGAT when the waiver expires." As this plain language shows, the Commission required Qwest to change the interval when the waiver expires but did *not* rule that the change must be to a 90-day collocation interval. The more appropriate, reasonable reading of the Commission's ruling is that Qwest must modify the SGAT to reflect whatever interval the FCC orders in resolving Qwest's petition for reconsideration.

5. Covad Comments Relating to Technical Publications, Methods of Procedure, and Other Written Policies Relating to Collocation

a) The Parties are Addressing Issues Relating to Qwest's Documentation in the Change Management Proceedings

Covad devotes substantial discussion to the sufficiency of Qwest's documentation relating to collocation, including documentation consisting of technical publications and descriptions of Qwest's collocation policies and procedures. Covad Comments at 7-10. While the discussion is replete with inaccurate criticisms of Qwest's documentation, it also is premature. In the ongoing proceedings relating to Qwest's Change Management Process ("CMP"), the parties are addressing in detail the documentation that Qwest provides. Covad should raise any concerns it has about Qwest's documentation in those proceedings, not in its comments relating to the SGAT. It is Qwest's hope that the CMP proceedings will lead to substantial agreement relating to issues involving documentation. If Qwest and the CLECs do not resolve all of these issues, Covad will have the opportunity to raise any concerns it still has at the conclusion of the CMP proceedings. Addressing these issues now, while the CMP proceedings are ongoing, is duplicative and premature.

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For example, in its comments, Covad raises the issue of whether Qwest should provide the CLECs with a decoder ring to facilitate the review of product catalogs ("PCATs") and technical publications. Covad Comments at 9-10. The parties are already addressing this issue in the CMP proceedings. Similarly, Covad discusses the extent of Qwest's obligation to perform retroactive reviews of PCATs and technical publications that Qwest modified to conform with decisions of state commissions. Covad Comments at 10. That issue also is under active consideration in the CMP proceedings. Likewise, the adequacy of Qwest's highlighting of changes to PCATs, which Covad also raises in its comments, is being squarely addressed in the CMP proceedings. None of these issues should be addressed until the conclusion of the CMP proceedings, particularly since those proceedings may lead to agreement among the parties.

b) Covad's Criticisms of Qwest's Documentation are Inaccurate.

While Covad's comments relating to Qwest's documentation are premature, they also are vague and inaccurate. For example, Covad asserts that Qwest documentation relating to collocation and performance requirements includes requirements that are inconsistent with the SGAT. Covad Comments at 11. However, Covad does not provide even one example to support this unfounded criticism. Covad also asserts that Qwest's PCAT relating to collocation is inadequate because it includes only five indicators of where Qwest has changed the document. Covad Comments at 9. But Covad fails to offer any evidence suggesting that Qwest should have included other indicators.

Similarly, in an attempt to demonstrate that Qwest's collocation PCAT is inconsistent with the SGAT, Covad cites a provision from the PCAT that it claims establishes virtual collocation only as an option when space for physical collocation is unavailable. Covad Comments at 11. This section of the PCAT is, however, consistent with Section 8.2.1.10 of the SGAT and reflects consensus language. The PCAT section that Covad quotes describes Qwest's obligations when there is insufficient space available in Qwest premises to satisfy a CLEC's request for caged physical collocation. Consistent with Section 8.2.1.10 of the SGAT, the PCAT establishes that if the amount of space a CLEC requests is unavailable but a smaller amount is available, Qwest will offer the smaller amount. The section provides further that,

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alternatively, Qwest will offer the CLEC another form of collocation: "Alternatively, the CLEC will be offered Cageless Physical Collocation (single frame bay increments) or Virtual Collocation as an alternative to the Caged Physical Collocation."

Covad incorrectly construes this language as imposing a limitation on the availability of virtual collocation, arguing that the section establishes that Qwest will provide virtual collocation "only upon a determination that there is insufficient space for the requested physical collocation." Covad Comments at 11. That is not the case at all. Read in the proper context, this consensus language simply provides that if there is insufficient space for the CLEC's requested caged physical collocation, Qwest will assist the CLEC by offering virtual collocation. It does not establish that virtual collocation is an option only when physical collocation is not. Accordingly, this section of the PCAT is consistent with the SGAT.

Equally unfounded is Covad's claim that a section of the collocation PCAT is inconsistent with the SGAT because it provides that adjacent collocation can only be requested in the form of physical collocation. Covad Comments at 11-12. However, as discussed previously, FCC Rule 51.323(k) establishes that adjacent collocation is a form of physical collocation. Section 8.2.6.3 of the SGAT and the section of the PCAT that Covad cites both reflect this FCC rule; there is no inconsistency.

Nor is there any inconsistency between the sections of the PCAT relating to channel regeneration and collocation provisioning intervals, despite Covad's allegations. *See* Covad Comments at 12-14. Because Qwest uses the PCAT across all 14 states, it necessarily includes general language relating to these and other issues. However, Covad ignores the fact that the PCAT provides links to state-specific SGATs that reflect state-specific orders relating to collocation issues. It also provides links to Qwest's Service Interval Guide where a CLEC can find state-specific intervals. Thus, through the PCAT links, Qwest ensures that the PCATs are consistent with state-specific SGATs. If Covad were to use the PCAT links for Washington, it would find language that is consistent with the Commission's orders relating to collocation.

6. AT&T Comments on SGAT § 8.4.1.8.5

AT&T asserts that in an email to the Colorado distribution list, Qwest agreed to the text for

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Section 8.4.1.8.5 set forth in AT&T's Comments Regarding Sections 6, 7, and 8. Qwest agrees, and will include the text at issue in its next SGAT filing.

F. Section 10.2.2.4.

AT&T challenges the final sentence of Section 10.2.2.4, which states "If CLEC requests Qwest to do so by 8:00 p.m. (mountain time), Qwest will assure that the Qwest Loop is not disconnected that day." AT&T Comments on Workshop 1 Compliance at 6-7. AT&T claims that this language is "not consistent" with Qwest's LNP process. *Id.* AT&T is wrong. The product notification that AT&T attaches to its Comments on Workshop 1 Compliance as Attachment B explicitly requires CLECs to provide notice to Qwest as soon as possible *on the due date* if the CLEC is not able to meet its provisioning obligations. The ability to provide *late* notice is the exception, not the rule. Qwest notes that its current SGAT language is consistent with language required in both the multi-state facilitator's report and the Colorado Hearing Commissioner's order on checklist item 11. Moreover, Qwest's language tracks the ROC-approved PID for OP-17. Furthermore, the language is consistent with the Commission's Fifteenth Supplemental Order, which requires Qwest to hold the disconnect until 11:59 p.m. on the day following the scheduled port (due date) to ensure that the customer is not disconnected. The ALJ's Workshop 2 Order recognized that the CLEC is responsible for its own business processes.[19] The rationale for holding the switch translations until 11:59 p.m. on the day following the due date was driven *not* by the CLECs' inability to provide prompt notice, but a concern for ensuring that customers are not disconnected:

> Although such testing and verification systems are not necessary, AT&T's proposal to extend the time of 10-digit trigger and customer translations is a reasonable alternative. The Commission is concerned that customers will not be able to access 911 service when service disruptions occur. In order to prevent service outages to customers should there be problems with porting a number or the coincident cutover of a loop, Qwest should wait until 11:59 p.m. of the day following the scheduled port before

[19] Initial Order Finding Noncompliance in the Areas of Interconnection, Number Portability and Resale ¶ 212 at 59 (Feb. 22, 2001) ("ALJ Workshop 2 Initial Order") ("The BOC can be responsible only for its own processes, not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment").

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disconnecting a customer's previous service.[20]

AT&T has presented no evidence that it cannot provide notice to Qwest on the due date. Although a simple telephone call is all that is necessary, the CLEC can also provide notice of the hold of the disconnect by sending an electronic escalation notice or by submitting a supplemental order that changes the due date. Given the undeniable ease of providing notice of the delay of the disconnect, Qwest is perplexed why AT&T cannot agree that notice on the due date serves both the interests of the carriers and end users.

Under AT&T's proposal, however, end users are again at risk of disconnect. With late notice the norm, Qwest may not have sufficient time to prevent the disconnect.[21] To ensure that customers are not disconnected, Qwest's SGAT properly requires timely notice on the due date. Neither Qwest's processes nor the Commission's Fifteenth Supplemental Order supports AT&T's demand.

In addition, AT&T claims that the following sentence of Section 10.2.2.4 is confusing: "for coordination of Loops not associated with Qwest's Unbundled Loop offering, the CLEC may order either the coordinated cutover process or the managed cutover process." AT&T Comments at 7. AT&T claims that the reference to a "Loop" that is not a Qwest "Unbundled Loop" is confusing. *Id.* Although Qwest does not share AT&T's confusion, it is willing to modify "Loop" to "CLEC-provided loop" if that will promote clarity. This proposed revision is set forth below.

Second, AT&T finds the refers to "coordinated cutovers" confusing because it claims a "coordinated cutover" is a specific product offered by Qwest for unbundled loops. Qwest notes that the SGAT refers to a "coordinated cutover" by the a different term -- "Coordinated Installation." *See* SGAT § 9.2.2.9 (describing loop installation options). For the equivalent of a "managed cut" with a Qwest provided unbundled loop, the SGAT uses the terminology "Project Coordinated Installation." SGAT § 9.2.2.9.7. Nevertheless, as Qwest noted in its Comments on the ALJ's Initial Workshop 2 Order, the

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[20] ALJ Workshop 2 Initial Order, ¶ 215 at 60.

[21] In addition, the OP-17 measure tracks Qwest's performance in completing LNP number ports, and focuses on the degree to which Qwest performs the port without implementing the associated disconnects before the scheduled date/time. Qwest requires notice on the due date in order to meet its performance requirements and avoid penalties.

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term "coordinated cutover" may be confusing. Section 10.2.2.4 was Qwest's attempt to incorporate the terminology the ALJ had emphasized in the Initial Workshop 2 Order and that the Commission approved in its Fifteenth Supplemental Order. Qwest is willing to consider modifying the reference to "coordinated cutovers" and presents its suggested modifications to Section 10.2.2.4. Qwest also proposes modest typographical and capitalization corrections:

> 10.2.2.4 Qwest will coordinate LNP with Unbundled Loop cutovers in a reasonable amount of time and with minimum service disruption, pursuant to Unbundled Loop provisions identified in Section 9 of this Agreement. CLEC will coordinate with Qwest for the return of the Qwest Unbundled Loop coincident with the transfer of the customer's service to Qwest in a reasonable amount of time and with minimum service disruption. For coordination with CLEC-provided loops not associated with Qwest's Unbundled Loop offering, the CLEC may order the managed cutover process, called Managed Cut, set forth in Section 10.2.5.4; however, CLEC is not required to use the Managed Cut procedure when provisioning CLEC-provided loops. If CLEC requests Qwest to do so by 8:00 p.m. (mountain time), Qwest will assure that the Qwest Loop is not disconnected that day.

G. SGAT § 10.8

1. AT&T Comments on SGAT § 10.8.2.27

AT&T opposes language that Qwest has included in Section 10.8.2.27 limiting CLEC use of unrecorded agreements between Qwest and multiple-dwelling unit ("MDU") owners. Importantly, this text does *not* require CLECs to obtain the property owner's consent before Qwest provides unrecorded agreements to CLECs. Thus, the language Qwest proposes complies with the Commission's order on Workshop 1.

In Workshop 1, AT&T requested that Qwest disclose its right-of-way agreements and agreements with owners of multiple-dwelling units ("MDUs") so that AT&T could determine the extent to which Qwest has ownership or control over the right-of-way or conduits or "rights-of-way" within MDUs. Qwest agreed to provide recorded right-of-way documents to CLECs within 10 days of a request, without any consent requirement. With respect to MDU agreements, although Qwest disagrees that these agreements contain "rights-of-way," Qwest agreed to provide these documents to CLECs so

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that they could verify the extent to which Qwest has ownership or control interests. Before disclosing these agreements, some of which may have some type of confidentiality protections, Qwest requested that the CLEC obtain the consent of the third-party property owner. In its Workshop 1 Order, the Commission held that Qwest cannot require CLECs to obtain the consent of property owners prior to Qwest producing these non-recorded, third-party agreements to CLECs. Although Qwest does not agree with the Commission's determination, it has eliminated all provisions of SGAT § 10.8 and Exhibit D that require such consent in accordance with the Commission's Workshop 1 Order.

AT&T now opposes Section 10.8.2.27 of the SGAT. Section 10.8.2.27 permits CLECs to use unrecorded agreements for checklist item 3 purposes, the purported basis for AT&T's request for access to these documents. Specifically, under Section 10.8.2.27.4, CLECs may use non-recorded agreements (a) to determine whether Qwest has ownership or control over duct, conduits, or rights-of-way within the property described in the agreement; (b) to determine the ownership of wire within the property described in the agreement; or (c) to determine the demarcation point between Qwest facilities and the Owner's facilities in the property described in the agreement. However, this provision does restrict CLECs from using these agreements for marketing or negotiating purposes, which are wholly unrelated to checklist item 3. Section 10.8.2.27 states that CLEC shall not disclose the contents, terms, or conditions of any agreement provided pursuant to Section 10.8 to any CLEC agents or employees engaged in sales, marketing, or product management efforts on behalf of CLEC. No FCC order requires Qwest to disclose financial, promotional, or marketing terms of its agreements with CLECs, nor does the Commission's order extend so far. Accordingly, Qwest's proposed SGAT language is appropriate: it permits AT&T to use unrecorded agreements for the purposes it sought them, but precludes AT&T from using competitively-sensitive information against Qwest, without requiring the CLEC to obtain consent and without imposing any burden on CLECs.

AT&T is correct that Qwest proposed this language in response to the multi-state facilitator's

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report on checklist item 3.[22] AT&T also opposed this language, but raised only its opposition to the multi-state facilitator's resolution of the consent issue that permitted CLECs to opt out of obtaining landowner consent to disclosure of non-recorded agreements by agreeing to indemnify Qwest in the event of legal action arising out of that disclosure. *See* AT&T Comments on Workshop 1 Compliance, Attachment 1 at 3-7. AT&T has presented no principled reason why it should be able to use the financial and marketing terms of these agreements to gain an unfair competitive advantage over both Qwest and property owners.

The multi-state facilitator agreed that CLECs should be able to access unrecorded agreements with MDU owners, but disagreed that CLECs should be able to rifle them for competitive information. On this point, the multi-state facilitator found:

> [AT&T's] argument misses the point of why access to these agreements is material under the Act. *Access is material as it relates to access to Qwest facilities, and its particular relevance is on the issue of allowing a CLEC to make its own determination of the sufficiency of Qwest rights to support the CLEC's occupancy*.[23]

Furthermore, the multi-state facilitator stated:

> The CLEC information needs that Qwest must meet are not related to providing commercial information that CLECs can use to make their own more economical or efficient arrangements with those who supply needed goods, services, or the like. The pertinent issues are not economic ones, but concern issues such as, for example, questioning a Qwest claim that no rights exist or that existing rights are not sufficient to accommodate CLEC access. We should be careful not to construe the Act as allowing a form of discovery whose purpose is to give CLECs superior bargaining position vis-à-vis landowners.

AT&T did not, in the multi-state, appear to take issue with this conclusion. The foregoing

[22] To date, a version of this language has been approved by state commissions in Colorado, Idaho, Iowa, Montana, North Dakota, and Wyoming.

[23] Multi-State Paper Workshop Report at 20-21 (emphasis added).

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statements accurately and reasonably interpret the scope of CLEC access to Qwest's agreements with MDU owners. Importantly, contrary to AT&T's Comments on Workshop 1 Compliance, the language in the Washington SGAT has been carefully revised to eliminate all consent requirements, in compliance with the Commission's Workshop 1 Order.

AT&T also claims that Qwest's SGAT "includes language that has been ordered by the Utah Commission as its resolution of this issue, which AT&T believes is unnecessary and inconsistent with the Washington Commission's ruling on this issue." AT&T Comments on Workshop 1 Compliance at 2. The Utah Commission proposed a third alternative in lieu of requiring CLECs to obtain property owner consent to disclosure of unrecorded agreements or indemnify Qwest. Specifically, the Utah Commission requested that AT&T and Qwest negotiate a form of protective order that would protect disclosure of these non-recorded agreements. Qwest and AT&T are in the process of negotiating such a protective order as well as SGAT language to incorporate a protective agreement. This alternative, like the multi-state facilitator's indemnification option, does not require CLECs to obtain the property owner's consent to disclosure of non-recorded agreements. It does, however, restrict disclosure of the terms of non-recorded agreements and the uses to which those agreements may be put, similar to the language in Section 10.8.2.27. Qwest would agree, and has offered to AT&T, to incorporate the Utah Commission's protective order option in all of its SGATs, including the Washington SGAT. However, contrary to AT&T's Comments, to date, Qwest has not included the Utah option in the Washington SGAT. Accordingly, although Qwest does not agree that the Utah option is unnecessary or inconsistent with the Workshop 1 Order, it has not included that option in the Washington SGAT in light of its ongoing negotiations with AT&T.

AT&T further claims Qwest's proposed language has "numerous" problems. AT&T, however, has misread both the language and the SGAT. For example, AT&T claims that Section 10.8.2.27 is "limited to multi-dwelling units agreements." AT&T Comments on Workshop 1 Compliance at 3. However, the provision does not apply to right-of-way agreements because those agreements are almost always recorded. Qwest has agreed to provide recorded agreements without restriction as set forth in

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paragraph 2.1 of Exhibit D to the SGAT. Thus, the provisions of Section 10.8.2.27, which pertain to *unrecorded* MDU agreements, are simply inapplicable to recorded agreements.

AT&T also claims that the proper reference should be to "multiple tenant environments" not "multiple dwelling units." During the workshop process and briefing on this issue, parties generally used the term "multiple dwelling unit," and Qwest retained that nomenclature. Qwest has no opposition to revising the reference to "multiple tenant environments."

AT&T further claims that Qwest's SGAT language improperly "presumes" the agreements at issue contain a confidentiality restriction. AT&T Comments on Workshop 1 Compliance at 4. In fact, some of them do. For example, the "template" MDU agreement that AT&T has cited in Colorado, Washington and other 271 workshops includes a confidentiality provision that protects Qwest from disclosure of the agreement as well as confidential information provided under the agreements:

> Property Owner/Developer may receive or have access to records and information whether written or oral which U S WEST considers to be confidential and proprietary, including technical information such as specifications, drawings and technical guidelines. Such information shall be designated by U S WEST as confidential and/or proprietary, and Property Owner/Developer shall hold such confidential or proprietary information, including this Agreement, in trust and confidence for U S WEST, shall use it only for the purposes permitted hereunder, and shall deliver to U S WEST all such records and information, in written or graphic form, upon expiration or termination of this Agreement. Nothing in this section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.[24]

Qwest is not waiving its confidentiality rights with respect to information provided under the agreements, and it has not been ordered to do so. Furthermore, Qwest's waiver of confidentiality is limited because by providing non-recorded agreements to one CLEC, Qwest is not waiving any confidentiality or nondisclosure rights it may have with respect to all other CLECs. Because this agreement grants Qwest certain confidentiality rights that it has not be asked or ordered to waive, and

[24] AT&T appended a copy of the template MDU agreement to its briefing on rights-of-way filed in Workshop 1 on July 17, 2000.

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does not agree to waive, Qwest properly limits the nature of any waiver of its confidentiality rights in the SGAT language.

Furthermore, regardless of AT&T's views on the confidentiality of these agreements, there is no legal basis for permitting CLECs access to these third-party commercial agreements for purposes beyond permitting the CLEC to verify the scope of Qwest's ownership or control rights and determining the demarcation point on the property and the ownership of inside wire. Were it *not* for these purposes, CLECs would have no right at all to demand that Qwest turn over its commercial dealings with its customers and other third parties to its competitors. Thus, confidentiality is not relevant to restricting CLECs from using these agreements for purposes unrelated to any alleged checklist item 3 purpose.

AT&T further asserts that the terms of SGAT § 10.8.2.27 would impose an unnecessary burden on CLECs. AT&T Comments on Workshop 1 Compliance at 4. AT&T provides not support or explanation for this naked assertion. Since the provision simply limits the use to which CLECs use the agreements to legitimate checklist item 3 and subloop purposes and narrowly prohibits access to certain CLEC personnel, it is difficult to imagine what "burden" this language imposes.

Finally, AT&T claims that "Qwest has attempted to impose obligations on third party landowners regarding redaction of information from these agreements." AT&T Comments on Workshop 1 Compliance at 4. There was never any dispute in the workshops across the states that Qwest could redact dollar figures from non-recorded agreements that it discloses. If CLECs wish to obtain these agreements directly from the property owner, then the property owner should be required to comply with this undisputed, and minimally imposing, requirement. If AT&T wants to preclude third party property owners from providing CLECs with unrecorded MDU agreements, then Qwest will consider adding such a restriction and eliminating the provisions relating to property owner redactions.

2. ELI/XO Comments on Field Verification Costs

ELI/XO dispute that Qwest proposed language to permit CLEC-performed field verifications in Workshop 1, and therefore further claim that the issue of field verification costs for conduit occupancy remains open for the Commission's resolution in the cost docket. The issues that were challenged, raised,

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and presented in the Commission's cost docket are a matter of public record and will not be rehashed here. Qwest notes, however, that ELI/XO are incorrect in asserting that Qwest proposed the language for Section 10.8.4.2.1 after Workshop 1 in Washington. ELI/XO Comments at 4. Qwest proposed the language that appears in its SGAT during the July 6, 2000, follow up session of Workshop 1, and the proposed text was assigned Exhibit 171. Although XO requested the opportunity to review the proposed language offline, to Qwest's recollection, no party, notably neither ELI nor XO, challenged that text or proposed competing SGAT language off line, in their post-hearing briefs, or in comments on the ALJ's draft Workshop 1 orders. Accordingly, because ELI/XO has not presented Qwest or the Commission with alternative language, Qwest believes this language is now closed. Qwest notes that although ELI/XO claim they do not concur in this language, ELI/XO Comments at 4, they do not explain the basis for their disagreement and still do not propose alternative language. Finally, and most important, they fail to explain why a possible decision in the cost docket requires this SGAT language to be held open. To the extent a decision is reached in the cost docket that affects Qwest's current rates in Exhibit A of the SGAT, then Exhibit A will be revised. There is no reason to "hold open" this SGAT provision. Because Qwest's proposed SGAT language for Section 10.8.4.2.1 stands unrefuted, the Commission should consider this SGAT language closed.

H. Miscellaneous

Unfortunately, AT&T does not describe the allegedly different language that it claims exists in Sections 9.15.2.2.1 and 10.7.3.1.6 of the SGAT. Thus, Qwest is somewhat at a loss in responding to AT&T. Nevertheless, Qwest has attempted to ferret out AT&T's concerns. With respect to Section 9.15.2.2.1, AT&T may be referring to subsection (f) which is marked "Intentionally Left Blank." This provision originally contained forecasting requirements. As part of Qwest's commitment to eliminate most forecasting requirements, Qwest deleted this subsection. Regarding Section 10.7.3.1.6, Qwest believes the text is in error. The correct text is set forth below:

> 10.7.3.1.6 Busy Line Verify – For each call where the operator determines that conversation exists on a line.

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Qwest will correct its SGAT to incorporate this revision.

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III. CONCLUSION

Qwest's SGAT complies with the Commission's Workshop 1 and 2 Orders. Nevertheless, to further demonstrate its commitment to resolving disputes collaboratively, Qwest will agree to incorporate the SGAT revisions discussed above. With these revisions, the Commission should find that the SGAT is consistent with the orders in the first two workshops.

RESPECTFULLY SUBMITTED this _____ day of December, 2001.

QWEST

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