

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)
Arbitration of)
)
AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST AND TCG)
SEATTLE,) Docket No. UT-033035
)
With)
)
QWEST CORPORATION)
)
Pursuant to 47 U.S.C. Section 252(B))
_____)

REBUTTAL TESTIMONY OF

DAVID L. TALBOTT

ON BEHALF OF AT&T COMMUNICATIONS OF THE

PACIFIC NORTHWEST, INC. AND TCG SEATTLE

ON DISPUTED ISSUES 3, 17-19, and 21

OCTOBER 10, 2003

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR FULL NAME, PRESENT POSITION AND**
3 **BUSINESS ADDRESS.**

4 A. My name is David L. Talbott. I am employed by AT&T Corp. (“AT&T”) in the
5 Local Services Access Management group in AT&T Network Services as a
6 District Manager. My business address is 3737 Parke Drive, Edgewater,
7 Maryland 21037.

8 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
9 **PROCEEDING?**

10 A. Yes, I previously submitted direct testimony in this proceeding.

11 **II. PURPOSE AND SUMMARY OF TESTIMONY**

12 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

13 A. I am responding to the direct testimony of Thomas R. Freeberg on Issues 3, 17,
14 18, 19 and 21 on the Disputed Issues List (“DIL”).

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A. My testimony essentially refutes the claims made by Mr. Freeberg by referencing
17 both law and fact. In addition, I address some of the confusion that Mr. Freeberg
18 injects into several issues. For example, Mr. Freeberg merges Issue 3 into Issue
19 18.¹ In fact, these are two separate issues that need to be resolved independently.
20 My testimony attempts to set the record straight.

¹ Freeberg Direct Testimony at 39, ln. 23.

1 **III. DISPUTED ISSUES**

2 **A. Issue 3 - Definition of Tandem Office Switch**

3 **Q. IN HIS TESTIMONY ON PAGE 8, MR. FREEBERG PURPORTS TO**
4 **RECITE AT&T'S PROPOSED DEFINITION FOR TANDEM OFFICE**
5 **SWITCHES. IS HIS RECITATION ACCURATE?**

6 A. No, Mr. Freeberg has inadvertently omitted the last sentence of AT&T's proposed
7 definition. Here is the entire text of AT&T's proposed definition:

8 "Tandem Office Switches" - CLEC end office Switch(es) shall be
9 considered Tandem Office Switch(es) for the purpose of
10 determining reciprocal compensation rates to the extent such
11 Switch(es) is (are) capable of serving a comparable geographic
12 area as Qwest's Tandem Office Switch. If the Parties have not
13 already agreed that CLEC's switches meet the definition of
14 Tandem Office Switches, a fact based consideration of geography,
15 when approved by the Commission or mutually agreed to by the
16 Parties, should be used to classify any Switch on a prospective
17 basis. In addition, "Tandem Office Switches" are used to connect
18 and switch trunk circuits between and among other End Office
19 Switches. Access tandems typically provide connections for
20 exchange access and toll traffic, and Jointly Provided Switched
21 Access traffic while local tandems provide connections for
22 Exchange Service (EAS/Local) traffic. CLECs may also utilize a
23 Qwest Access Tandem for the exchange of local traffic as set forth
24 in this Agreement. *For purposes of this Agreement, AT&T's*
25 *[TCG's] switches in the State are Tandem Office Switches.*

26 **Q. WHAT IS THE PURPOSE OF THE LANGUAGE THAT MR. FREEBERG**
27 **HAS NEGLECTED TO INCLUDE IN HIS TESTIMONY?**

28 A. In this proceeding, AT&T and TCG² seek a finding from this Commission that
29 indeed its switches in Washington cover a comparable geographic area to those of
30 Qwest's tandems. Without such finding, AT&T fears that it will be right back in
31 front of the Commission asking that it make such a finding because Qwest is

² TCG is in brackets in the proposed definition because it is AT&T's and TCG's intention to have separate, but identical interconnection agreements with Qwest in Washington. The brackets simply indicate that TCG will be inserted in place of AT&T in the TCG arbitrated interconnection agreement with Qwest should the Commission adopt AT&T's definition.

1 refusing to pay the appropriate tandem rate. The evidence in the record is
2 sufficient for the Commission to make a determination and it is a matter of
3 regulatory efficiencies not to string this dispute over two separate proceedings,
4 but rather to resolve it completely in this arbitration.

5 **Q. SO IS AT&T ASKING THE COMMISSION TO RESOLVE TWO ISSUES?**

6 A. Yes, as I noted in my direct testimony, both the definition of “tandem office
7 switch” and whether AT&T and TCG’s switches meet the definition are issues in
8 dispute. Both the definition and whether our switches meet the definition have
9 been issues discussed by the Parties throughout the negotiations. AT&T added
10 the last sentence in its proposed definition because Qwest has consistently tried to
11 avoid having this issue decided in the arbitrations. As the Parties implement the
12 contract that comes out of the arbitration, they will immediately need to know
13 whether or not AT&T and TCG may employ the tandem rate for their switches.
14 Thus, the Commission should resolve the issue.

15 **Q. MOVING ON, MR. FREEBERG CLAIMS THAT QWEST’S DEFINITION**
16 **OF “TANDEM OFFICE SWITCH” IS CONSISTENT WITH THE FCC’S**
17 **RULE. DO YOU AGREE?**

18 A. No. When Mr. Freeberg reads 47 C.F.R. § 51.711(a)(3), he reads it as saying that
19 the CLEC must “actually serve” a geographic area comparable to the area served
20 by the incumbent LEC’s tandem switch in order to receive the tandem rate for
21 terminating the ILEC’s traffic. However, the Rule does not say that and the FCC
22 has never interpreted the Rule in that fashion. Rule 47 C.F.R. § 51.711(a)(3)
23 provides:

1 Where the switch of a carrier other than an incumbent LEC *serves*
2 a geographic area comparable to the area served by the incumbent
3 LEC's tandem switch, the appropriate rate for the carrier other than
4 an incumbent LEC is the incumbent LEC's tandem interconnection
5 rate.³

6 The Rule uses the word "serves," not "actually serves," and, as I explained in my
7 direct testimony, this led to some controversy as to the meaning of the word
8 "serves." For example, did it mean "actually serves" as Mr. Freeberg asserts or
9 did it mean that a CLEC serves an area if it is prepared and offers a
10 telecommunications service throughout the area? Ultimately, the controversy was
11 resolved in favor of AT&T's position, and to illustrate why, I will use a
12 landscaping business analogy. A particular landscaping company could advertise
13 that it serves Seattle and the surrounding area. Of course, this company may not
14 have customers within every neighborhood of this area, but it is capable and
15 prepared to serve anyone within each of these neighborhoods. In other words, this
16 company has invested in the equipment necessary and is capable of serving
17 prospective customers within each of the neighborhoods. The number and
18 location of the landscaper's customers will vary depending upon marketing
19 success, but this does not change the fact that Seattle and the metropolitan area is
20 the area the landscaper serves.

³ 47 C.F.R. § 51.711(a)(3) (emphasis added).

1 **Q. QWEST TAKES ISSUE WITH THE WIRELINE BUREAU'S DECISION**
2 **IN THE VIRGINIA ARBITRATION AS THOUGH IT IS NOT AN FCC**
3 **DECISION AND OPINES THAT THE WASHINGTON COMMISSION**
4 **SHOULD IGNORE IT BECAUSE QWEST WAS NOT A PARTY TO THE**
5 **PROCEEDING IN QUESTION. IS QWEST'S ADVICE ACCEPTABLE?**

6 A. Absolutely not, considering that Verizon made the identical argument to Qwest's
7 and the issue was resolved against Verizon in the *Virginia Arbitration Order*,⁴
8 Qwest's participation in the Virginia case is irrelevant. More importantly, it is my
9 understanding that the Wireline Bureau's decisions have the force and effect of
10 FCC decisions where the FCC has delegated its authority to decide the matter and
11 the FCC has not overturned the Wireline Bureau's decision.⁵

12 **Q. DID THE FCC DELEGATE ITS AUTHORITY TO THE WIRELINE**
13 **BUREAU TO DECIDE THE ISSUES PRESENTED IN THE VIRGINIA**
14 **ARBITRATION?**

15 A. Yes, the Wireline Competition Bureau, in making its arbitration decision for
16 Virginia, was acting under express authority delegated to it by the FCC.⁶ The
17 Bureau's decision is also entitled to significant deference because the people who
18 interpreted the FCC's rules were the senior policy advisers of the agency whose
19 rules they were interpreting and applying. In the absence of any affirmative
20 indication by the FCC that contradicts the Bureau's interpretation, the WUTC
21 must accept the Bureau's interpretation.

⁴ *In the Matter of the Petition of AT&T Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, Memorandum Opinion and Order, CC Docket No. 00-251, (Rel. July 17, 2002) ("*Virginia Arbitration Order*").

⁵ 47 C.F.R. § 0.5(c).

⁶ *Virginia Arbitration Order* at ¶ 1.

1 **Q. WHAT WAS VERIZON'S ARGUMENT IN THE VIRGINIA**
2 **ARBITRATION?**

3 A. In that proceeding, Verizon argued that AT&T must demonstrate that its switches
4 were actually serving comparable areas before AT&T could receive the tandem
5 rate. That is, Verizon asserted that AT&T must actually serve a certain, but
6 unspecified, number of subscribers distributed across a comparable geographic
7 area.⁷ This is precisely the same argument Qwest is making in this proceeding.
8 In response to Verizon's arguments, the Bureau ruled "[w]e agree with AT&T
9 and WorldCom, therefore, that the requisite comparison under the tandem rate
10 rule is whether the competitive LEC's switch is capable of serving a geographic
11 area that is comparable to the architecture served by the incumbent LEC's tandem
12 switch."⁸ The Bureau noted that "[a]lthough Verizon has conceded that the
13 tandem rate rule does not have a functionality requirement, it continues to assert
14 that the competitive LEC switch must actually serve a geographically dispersed
15 customer base in order to qualify for the tandem rate." But the Bureau concluded,
16 "[w]e agree, however, with AT&T and WorldCom that the determination whether
17 competitive LEC's switch 'serves' a certain geographical area does not require an
18 examination of the competitor's customer base."⁹ That would involve a measure
19 of how successful AT&T is in the marketplace rather than its network's
20 capabilities.

⁷ *Virginia Arbitration Order* at ¶ 308 (asserting the "actually serving argument) & ¶ 309 (rejecting Verizon's argument) *See* Verizon VA's Direct Testimony on Non-Mediation Issues Intercarrier Compensation dated July 31, 2001, attached hereto as **Exhibit DLT-7**.

⁸ *Id.* at ¶ 309 (emphasis supplied).

⁹ *Id.*

1 Thus, in the *Virginia Arbitration Order*, the Bureau, and ultimately the FCC, has
2 clearly interpreted the meaning of the word “serves” in Rule 51.711(a)(3) and
3 specifically rejected the exact same meaning that Qwest is advocating here.

4 **Q. MR. FREEBERG IMPLIES THAT HAD QWEST BEEN A PARTY TO**
5 **THE VIRGINIA ARBITRATION THE OUTCOME MIGHT HAVE BEEN**
6 **DIFFERENT. DO YOU AGREE?**

7 A. Mr. Freeberg’s suggestion is wrong. He argues that this Commission ignore the
8 Virginia Arbitration decision because: (1) Qwest was not a party and did not
9 present the evidence or arguments there; (2) this Commission does not have the
10 benefit of all the evidence presented in that arbitration so that it can weigh
11 whether it agrees with the Wireline Competition Bureau’s analysis; and (3) this
12 Commission has its own policies and has addressed in previous proceedings what
13 standard should apply in determining whether a CLEC switch should be treated as
14 a tandem switch. These arguments simply miss the mark.
15 The threshold question in Issue 3 is not one that depends on comparing specific
16 “evidence” for an answer, but instead on how the word “serves” in Rule 47 C.F.R.
17 § 51.711(a)(3) should be interpreted. That is a policy question, not a question of
18 fact because Qwest has not challenged that AT&T’s switches are capable of
19 serving the same geographic areas as Qwest’s tandems. Thus, the Bureau’s
20 interpretation of its own rule in the *Virginia Arbitration Order* provides clarity
21 and a valuable insight into the weight to be given to policy arguments about what
22 it means to “serve” a certain geographic area. The only evidentiary conclusion
23 drawn in the *Virginia Arbitration Order* was that AT&T’s switches were in fact
24 capable of serving areas geographically comparable to those served by Verizon’s

1 tandem switches. AT&T has placed similar evidence in this record of that fact
2 specific to the State of Washington and asks the Commission to find that for
3 purposes of this agreement, AT&T's and TCG's switches serving the State are
4 tandem office switches.

5 **Q. MR. FREEBERG ALSO CLAIMS THAT AT&T'S PROPOSED**
6 **DEFINITION IS INCONSISTENT WITH THIS COMMISSION'S PRIOR**
7 **DECISION IN THE WASHINGTON 271 PROCEEDINGS. DO YOU**
8 **AGREE?**

9 A. No. In the Washington 271 proceedings, Qwest proposed the following language
10 for section 4.11.2 of the SGAT:

11 4.11.2 "Tandem Office Switches" which are used to connect and
12 switch trunk circuits between and among other End Office
13 Switches. CLEC switch(es) shall be considered Tandem Office
14 Switch(es) to the extent such switch(es) *actually* serve(s) the same
15 geographic area as Qwest's Tandem Office Switch or is used to
16 connect and switch trunk circuits between and among other Central
17 Office Switches. (emphasis added)

18 AT&T and WorldCom opposed inclusion of the word "actually" and argued that a
19 CLEC need only demonstrate that its switch serves a geographical area
20 comparable to that of Qwest's tandem switch to receive the tandem switching rate
21 in addition to the end office termination rate.¹⁰ The Commission concurred with
22 AT&T and WorldCom and ordered Qwest to modify SGAT section 4.1.1.2 (sic)
23 to delete the word "actually".¹¹ Thus, it is in fact Qwest that is inconsistent with
24 prior decisions of this Commission when it continues to argue that CLECs must

¹⁰ Twenty-Fifth Supplemental Order; Order Granting In Part and Denying In Part Petitions for Reconsideration of Workshop One Final Order, *The Investigation Into US WEST Communication's Inc. 's Compliance with Section 271 of the Telecommunications Act of 1996; US WEST Communications, Inc. 's Statement of Generally Available Terms Pursuant to Section 252(m) of the Telecommunications Act*, Dkt. Nos. UT-003022, UT-00304077 15-19 (Feb. 8, 2002) ("*25th Supplemental Order*") at ¶ 19.

¹¹ *Id.*

1 demonstrate that their switches actually serve a comparable geographic area to

2 Qwest's tandem switch before they can receive tandem compensation.

3 **Q. HAS QWEST PROPOSED A TEST TO DETERMINE WHEN A CLEC'S**
4 **SWITCH SERVES A GEOGRAPHIC AREA COMPARABLE TO**
5 **QWEST'S TANDEM?**

6 A. Yes. At page 9 of his direct testimony, Mr. Freeberg states that in negotiations,

7 "Qwest proposed a simple test that is Exhibit TRF-2 to this testimony. Upon

8 successful processing of the test, Qwest would pay AT&T at the tandem rate."

9 **Q. CAN YOU EXPLAIN QWEST'S TEST?**

10 A. Based on my review of TRF-2, it appears that a CLEC must have at least one

11 customer served by either a CLEC loop or a Qwest UNE-loop in 80% of the rate

12 centers served by each of Qwest's tandems to qualify for the tandem rate. Thus,

13 Qwest continues to assert that CLECs must demonstrate that their switches

14 actually serve a comparable geographic area to Qwest's tandem switch before

15 they can receive tandem compensation. Thus, *unless* AT&T has built out a

16 network of switches and interoffice transmission facilities that more or less

17 coincides with the network Qwest deployed in the course of over a century and

18 successfully attracts a wide geographic dispersion of customers, Qwest takes the

19 position that it should not pay AT&T at the tandem rate.

20 For example, under Qwest's test, AT&T could have thousands of customers

21 across the Seattle LATA, but if AT&T does not have a customer in 4 of the 18

22 rate centers served by Qwest's STTLWA0303T tandem, it would not be entitled

23 to the tandem rate.

1 **Q. IS QWEST’S PROPOSED TEST CONSISTENT WITH THE FCC’S**
2 **INTERPRETATION OF THE WORD “SERVES” IN 47 CFR 51.711(A)(3)?**

3 A. No, Qwest’s proposed test is completely inconsistent with the FCC’s
4 interpretation of the meaning of the word “serves” in the *Virginia Arbitration*
5 *Order*. The Bureau, and ultimately the FCC, has clearly interpreted the meaning
6 of the word “serves” in 47 C.F.R. 51.711(a)(3) and specifically rejected the exact
7 same meaning that Qwest is advocating here.
8 Qwest’s proposed test requires that the competitive LEC switch must actually
9 serve a geographically dispersed customer base in order to qualify for the tandem
10 rate, and requires an ongoing examination of the CLEC’s customer base to
11 determine if the CLEC continues to meet Qwest’s proposed test. This is the very
12 approach the FCC rejected in the *Virginia Arbitration Order*. The Bureau noted
13 that “[a]lthough Verizon has conceded that the tandem rate rule does not have a
14 functionality requirement, it continues to assert that the competitive LEC switch
15 must actually serve a geographically dispersed customer base in order to qualify
16 for the tandem rate.” But the Bureau concluded, “[w]e agree, however, with
17 AT&T and WorldCom that the determination whether competitive LEC’s switch
18 ‘serves’ a certain geographical area does not require an examination of the
19 competitor’s customer base . . . and does not depend on how successful the
20 competitive LEC has been in capturing a ‘geographically dispersed’ share of the
21 incumbent LEC’s customers.”¹²

¹² *Virginia Arbitration Order* at ¶ 309.

1 **Q. DO YOU HAVE ANY OTHER COMMENTS ON QWEST'S EXHIBIT**
2 **TRF-2?**

3 A. Yes. Qwest has inappropriately included a number of Idaho rate centers in the
4 Exhibit as well as an Oregon rate center. In addition, Qwest has omitted its
5 PTLDOR13C9T tandem that serves five rate centers in the Washington portion of
6 LATA 672. Finally, Qwest has included numerous rate centers under more than
7 one tandem switch.

8 To correct these errors and to provide an accurate count of Qwest's rate centers in
9 Washington that are served by each of Qwest's tandem switches, I have attached
10 **Exhibit DLT-8**, which also provides the number of Qwest's rate centers in
11 Washington that are served by the AT&T Communications and TCG switches.¹³

12 This evidence unequivocally demonstrates that AT&T Communications and TCG
13 both meet the requirements of 47 C.F.R. § 51.711(a)(3).

14 **Q. ALTHOUGH AT&T CLARIFIED ITS POSITION IN MINNESOTA AND**
15 **IN COLORADO, QWEST STILL MISSTATES, AT PAGES 12-13 OF MR.**
16 **FREEBERG'S TESTIMONY, AT&T'S POSITION. HERE AGAIN,**
17 **QWEST TELLS ANOTHER COMMISSION THAT AT&T BELIEVES**
18 **QWEST SHOULD PAY THE TANDEM RATE SIMPLY BECAUSE**
19 **AT&T'S SWITCH HAS BEEN ASSIGNED NXXS ACROSS THE ENTIRE**
20 **GEOGRAPHIC AREA OF THE LOCAL EXCHANGE. ONCE AGAIN,**
21 **DOES THIS ACCURATELY REFLECT AT&T'S POSITION?**

22 A. No. Mr. Freeberg seriously misrepresents AT&T's position on this issue when he
23 asserts that AT&T demands Qwest should pay tandem rates simply because
24 AT&T's "switch had been assigned NXXs by the plan administrator from many
25 ILEC rate centers, regardless of whether AT&T provides telecommunications

¹³ The Qwest rate centers served by each Qwest tandem are as shown in the Local Exchange Routing Guide ("LERG") as of August 1, 2003. The LERG, produced by Telcordia Technologies, contains routing data that supports the current local exchange network configuration within the North American Numbering Plan ("NANP") as well as identifying reported planned changes in the network.

1 service to subscribers working and living in those areas ...”¹⁴ This is not why
2 AT&T believes its switches are capable of serving a geographical area
3 comparable to the area served by Qwest’s tandem switches and it is not why
4 AT&T believes it is entitled to charge Qwest the tandem rate for terminating
5 Qwest’s traffic.

6 **Q. WHY DOES AT&T CLAIM ITS SWITCHES ARE CAPABLE OF**
7 **SERVING A COMPARABLE GEOGRAPHIC AREA?**

8 A. To help me explain how AT&T’s switches are capable of serving a comparable
9 geographic area to Qwest’s tandems, I created **Exhibit DLT-9**, which depicts
10 Qwest’s network and **Exhibit DLT-10**, which depicts AT&T’s network.

11 As shown on Exhibit DLT-9, Qwest’s network in Washington consists of a two
12 level hierarchical network with many locally deployed end office switches, each
13 of which provides dial tone to customers located within a compact geographical
14 area, or wire center, served by the switch. These switches are in turn
15 interconnected via tandem switches. The end office switches may also be directly
16 connected to each other where traffic volumes justify such direct
17 interconnections.

18 As shown on Exhibit DLT-10, AT&T has deployed a flat network structure with
19 transport replacing additional switches, including the tandem switches. AT&T
20 can and does use one switch to serve an area equal to that served by many Qwest
21 end-office switches and their associated tandem switch or switches. AT&T has a
22 variety of options that collectively provide AT&T the ability to serve any

¹⁴ Direct Testimony of Thomas R. Freeberg at 12, ln. 24.

1 qualified customer. For example, AT&T has deployed 38 GHz radio and fiber
2 optic rings to serve customers in Washington. AT&T can and does serve its
3 customers by leasing special access facilities from Qwest and/or third parties.
4 And AT&T can obtain access to UNE loops through collocations in Qwest's
5 offices. AT&T need not deploy additional switches or replicate Qwest's network
6 to serve customers.

7 In addition to its switching and network facilities, AT&T has obtained local
8 routing numbers for its switches and has established interconnection trunking with
9 Qwest in each LATA within which AT&T offers service.

10 In summary, AT&T has deployed switching and network facilities, obtained local
11 routing numbers for its switches, established interconnection trunking with Qwest
12 and has available or is able to obtain loop facilities to reach customers. With
13 these capabilities, AT&T is able to port in and serve telephone numbers from
14 geographic areas comparable to Qwest's tandems, which is the basis for the
15 coverage areas shown on AT&T Exhibits DLT-2 through DLT-5 and the
16 Comparison of Washington Rate Center Quantities Served by Switch, AT&T
17 Exhibit DLT-8. Thus, as shown on AT&T exhibits DLT-2 through DLT-5 and
18 exhibit DLT-8, AT&T's switches are capable of serving a geographical area
19 comparable to the areas served by Qwest's tandems.

1 **Q. ARE THERE ANY OTHER PREREQUISITES THAT AT&T BELIEVES**
2 **ARE NECESSARY TO A COMMISSION FINDING THAT IT MAY**
3 **RECEIVE THE TANDEM RATE FOR ITS SWITCHES?**

4 A. Yes, there is the obvious requirement that AT&T and TCG are certified local
5 exchange carriers in the State and that they have the necessary tariffs on file with
6 the Commission. Both prerequisites are met in this case.

7 **Q. IS AT&T'S INTERPRETATION OF RULE 51.711(a)(3) CONSISTENT**
8 **WITH THE ACT'S PRO COMPETITION POLICIES?**

9 A. Yes it is. The underlying intent of the 1996 Telecommunications Act was to ease
10 the entry of CLECs into the market. The FCC's tandem rate rule recognizes that
11 while new entrants may adopt network architectures that differ from those of
12 incumbents, the new entrants nonetheless are entitled to be compensated for their
13 costs of terminating traffic.¹⁵ Indeed, in order to achieve the same scale
14 economies as incumbents, CLECs must deploy switches that serve a
15 comparatively broader geographic area, because they lack the concentrated,
16 captive customer base that the incumbents enjoy. If Qwest's interpretation of the
17 FCC rule were adopted, CLECs would be hard pressed to achieve that customer
18 base. Qwest's proposal would have the effect of penalizing CLECs entering the
19 market, because they would not yet have had sufficient time to build their
20 customer bases to be "comparable" to the size and scope of Qwest's. Indeed,
21 without earning the higher tandem rate that compensates the CLEC for its costs of
22 termination and for deploying an architecture designed to serve an area
23 comparable to the incumbent's, CLECs would be unable to recoup their costs to

¹⁵ *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499, 172, 176 (1996) ("*Local Competition Order*") at ¶¶ 1090-1091.

1 terminate Qwest's traffic and would thereby be precluded from entering certain
2 markets altogether.

3 **Q. IS AT&T'S PROPOSED DEFINITION OF "TANDEM OFFICE SWITCH"**
4 **CONSISTENT WITH RULE 47 C.F.R. § 51.711(a)(3)?**

5 A. Yes it is, and the Minnesota arbitration along with the FCC's Bureau agree. To
6 avoid any possible controversy or litigation in the future regarding the
7 interpretation of "serves" in the Parties' interconnection agreement, AT&T's
8 language makes clear that a CLEC switch shall be considered a Tandem Office
9 Switch for the purpose of reciprocal compensation rates if such switch is capable
10 of serving a comparable geographic as Qwest's Tandem Office switch. This
11 conforms the language in the Parties' interconnection agreement to the FCC's
12 interpretation of 47 C.F.R. § 51.711(a)(3). In addition, AT&T asks the
13 Commission to make a factual determination based on the evidence AT&T has
14 submitted in this proceeding that AT&T's and TCG's switches serving the State
15 meet this definition.

16 **Q. BEGINNING ON PAGE 14, MR. FREEBERG CLAIMS THERE IS AN**
17 **IMBALANCE BETWEEN CLECS AND QWEST RELATED TO TANDEM**
18 **RATES. IS THIS TRUE WITH RESPECT TO AT&T AND TCG?**

19 A. No. Mr. Freeberg states that during July 2003, Qwest sent over 1.8 billion
20 minutes to Washington CLECs on local interconnection trunks and during the
21 same period Qwest received approximately 300 million minutes from Washington
22 CLECs. Thus, Mr. Freeberg points to an alleged imbalance of traffic situation
23 where Qwest sends six times as much traffic to the CLECs as the CLECs send to

1 Qwest and suggests this is a reason the Commission should not adopt AT&T's
2 language on the tandem rate issue.
3 The balance of traffic between the parties is not a relevant consideration or an
4 appropriate input into the Commission's deliberations on the tandem rate issue
5 either under the FCC's *Local Competition Order*¹⁶ or the rule itself. The *Local*
6 *Competition Order* stated:

7 We, therefore, conclude that states may establish transport and
8 termination rates in the arbitration process that vary according to
9 whether the traffic is routed through a tandem switch or directly to
10 the end-office switch. In such event, states shall also consider
11 whether new technologies (*e.g.*, fiber ring or wireless networks)
12 perform functions similar to those performed by an incumbent
13 LEC's tandem switch and thus, whether *some or all calls*
14 terminating on the new entrant's network should be priced the
15 same as the sum of transport and termination via the incumbent
16 LEC's tandem switch. *Where the interconnecting carrier's switch*
17 *serves a geographic area comparable to that served by the*
18 *incumbent LEC's tandem switch, the appropriate proxy for the*
19 *interconnecting carrier's additional costs is the LEC tandem*
20 *interconnection rate.*¹⁷

21 The only relevant facts are whether or not AT&T's fiber rings and switches are
22 capable of serving a geographic area comparable to that served by Qwest's
23 tandem switches.

24 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

25 A. The Commission should adopt AT&T's proposed definition of tandem office
26 switch in Section 4 of the agreement because it is consistent with and conforms

¹⁶ *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 Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996) ("**Local Competition Order**").

¹⁷ *Id.* at ¶ 1090 (emphasis added).

1 the language in the Parties' interconnection agreement to the FCC's interpretation
2 of Federal Rule 47 C.F.R. § 51.711(a)(3). The Commission should also find that
3 based on the evidence submitted, AT&T's and TCG's switches are capable of
4 serving areas comparable to Qwest's tandems and AT&T and TCG are entitled to
5 receive the tandem rate for terminating Qwest's traffic.

6 **B. Issue 17 - Reduction Of Direct Trunked Transport Rate Element When 2-**
7 **Way Trunking Is Established For Reciprocal Compensation And**
8 **Exclusion/Inclusion Of ISP-Bound Traffic**

9 **Q. TURNING TO ISSUE 17, REFERENCING THE ARGUMENT ON PAGES**
10 **33-34 OF MR. FREEBERG'S DIRECT TESTIMONY, WOULD**
11 **INCLUSION OF INTERNET TRAFFIC IN THE CALCULATION OF**
12 **RELATIVE USE DENY QWEST RECOVERY OF ITS COSTS IN**
13 **VIOLATION OF 47 U.S.C. § 252(d)(1)?**

14 A. No, it would not. Issue 17 involves whether the Parties should apply the relative
15 use factor to all telecommunications traffic they exchange. As I explained in my
16 direct testimony at pages 15-17, under the Federal Rules, each party is financially
17 responsible for: (1) transporting its own originating traffic to the point of
18 interconnection ("POI"); and (2) paying for transport and termination of the
19 traffic to the end user on the terminating Party's network. This responsibility is
20 clearly spelled out in 47 C.F.R. § 51.703(b) and 47 C.F.R. § 51.709(b),
21 respectively. If there was any question about excluding some traffic, it was laid to
22 rest by the FCC's pronouncements in paragraph 1062 of its *Local Competition*
23 *Order* and paragraph 52 in its *Virginia Arbitration Order*, both of which I cited in
24 my direct testimony at pages 16-17. Neither 47 C.F.R. § 51.703(b) nor 47 C.F.R.
25 § 51.709(b) contain exceptions allowing a carrier to exclude Internet related (ISP-

1 bound) traffic from its obligations to be financially responsible for traffic
2 originating on its network.

3 Thus, it is clear that Qwest is financially responsible for the traffic originating on
4 its network, including Internet-related traffic, and recovers its costs for such
5 traffic from its end users. Therefore, inclusion of Internet traffic in the relative
6 use calculation does not prevent Qwest from recovering its costs. Here again,
7 Qwest seeks to shift its financial responsibility to AT&T.

8 **Q. DO YOU AGREE WITH MR. FREEBERG'S STATEMENT THAT**
9 **INTERNET TRAFFIC IS NOT SUBJECT TO § 251(b)(5)?**

10 A. I disagree. In the *ISP Remand Order*, the FCC stated that:

11 Unless subject to further limitation, section 251(b)(5) would
12 require reciprocal compensation for transport and termination of
13 *all* telecommunications traffic, -- *i.e.*, whenever a local exchange
14 carrier exchanges telecommunications traffic with another carrier.
15 Farther down in section 251, however, Congress explicitly exempts
16 certain telecommunications services from the reciprocal
17 compensation obligations. Section 251(g) provides:

18 On or after the date of enactment of the Telecommunications Act
19 of 1996, each local exchange carrier . . . shall provide exchange
20 access, *information access*, and exchange services for such access
21 to interexchange carriers and information service providers in
22 accordance with the same equal access and nondiscriminatory
23 interconnection restrictions and obligations (including receipt of
24 compensation) that apply to such carrier on the date immediately
25 preceding the date of enactment of the Telecommunications Act of
26 1996 under any court order, consent decree or regulation, order, or
27 policy of the [Federal Communications] Commission, until such
28 restrictions and obligations are explicitly superceded by
29 regulations prescribed by the Commission after such date of
30 enactment.¹⁸

¹⁸ *ISP Remand Order* at ¶ 32 (footnote omitted; emphasis in original).

1 Thus, the FCC concluded that, under the Act, *all traffic* is subject to reciprocal
2 compensation under §251(b)(5), unless it falls within the exemptions established
3 in the § 251(g) carve out.¹⁹

4 In May 2002, the D.C. Circuit Court of Appeals held that the FCC could not
5 subject ISP-bound traffic to the § 251(g) carve out because this carve out was
6 intended by Congress to preserve certain compensation mechanisms that were in
7 effect when Congress implemented the Act, i.e., access payments, and was not
8 meant to create new classes of service within the meaning of the § 251(g) carve
9 out.²⁰

10 Since the FCC concluded that, under the Act, *all traffic* is subject to reciprocal
11 compensation under § 251(b)(5), unless it falls within the exemptions established
12 in the § 251(g) carve out and the D.C. Circuit Court found that ISP-bound
13 (Internet) traffic is not traffic subject to 251(g), then ISP-bound (Internet) traffic
14 is § 251(b)(5) traffic.

15 Accordingly, ISP-bound traffic is “telecommunications” as set forth in 47 C.F.R.
16 § 51.701(b)(1) and thus is subject to 47 C.F.R. § 51.703(b).

¹⁹ *Id.* at ¶ 46.

²⁰ *Worldcom, Inc. v. FCC*, 288 F.3d 429, 351 U.S. App. D.C. 176, D.C. Cir., May 3, 2002.

1 **Q. IN ANY OF THE § 271 PROCEEDINGS BEFORE THE FCC, HAS THE**
2 **FCC RULED THAT INTERNET TRAFFIC SHOULD NOT BE**
3 **INCLUDED IN THE FORMULA ALLOCATING THE COSTS OF**
4 **INTERCONNECTION FACILITIES AS MR. FREEBERG, AT PAGE 33**
5 **OF HIS TESTIMONY, STATES?**

6 A. No, at this time the FCC has left the decision on this issue up to the state
7 commissions. The FCC specifically addressed this issue in paragraph 325 of the

8 *Qwest 9-State Order*:

9 We recognize that the relative use issue has been arbitrated by
10 Level 3 and Qwest before various state commissions with different
11 outcomes, and is the subject of two court proceedings. As we noted
12 in the *SWBT Texas Order*, the 1996 Act authorizes the state
13 commissions to resolve specific carrier-to-carrier disputes, and it
14 authorizes federal courts to ensure that the results of the state
15 arbitration process are consistent with federal law. We find that
16 this issue is part of a carrier-to-carrier dispute that is appropriately
17 addressed through state commission and federal court proceedings.
18 Moreover, the Commission has not clearly addressed the issue
19 raised here - the treatment of Internet-related traffic in the
20 intercarrier allocation of shared facilities costs. As we previously
21 stated, "new interpretive disputes concerning the precise content of
22 an incumbent LEC's obligations to its competitors, disputes that
23 our rules have not yet addressed and that do not involve *per se*
24 violations of the Act or our rules, are not appropriately dealt with
25 in the context of a section 271 proceeding."²¹

26 Thus, the FCC was clear that it did not resolve the dispute within the context of
27 Qwest's § 271 proceeding, and left the resolution of the issue up to the state
28 commissions and the federal courts. That said, however, the FCC Rules are clear
29 on their face in not allowing Qwest to exclude Internet-bound traffic from the
30 relative use calculations.

²¹ Memorandum Opinion and Order, *Application of Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC No. 02-332, 17 FCC Rcd. 26303 at ¶ 325 (2002) ("*Qwest 9-State Order*").

1 **Q. HAS THE WASHINGTON COMMISSION FOUND THAT INTERNET**
2 **BOUND TRAFFIC SHOULD BE INCLUDED IN THE FORMULA TO**
3 **ALLOCATE COSTS?**

4 A. Yes. In an arbitration between Qwest and Level 3, this Commission determined
5 that Internet-bound traffic should be included in relative use calculations.

6 **Q. HAVE OTHER STATES IN QWEST'S REGION FOUND THAT**
7 **INTERNET BOUND TRAFFIC SHOULD BE INCLUDED IN THE**
8 **FORMULA TO ALLOCATE COSTS?**

9 A. Yes, the Commissions in the states of Minnesota and New Mexico have found
10 that internet-bound traffic should be included in the formula used to allocate the
11 costs of interconnection facilities.

12 **Q. MR. FREEBERG, ON PAGE 37 OF HIS TESTIMONY, CLAIMS THAT**
13 **THE COMMISSION WILL CREATE AN EVEN GREATER IMBALANCE**
14 **OF TRAFFIC BETWEEN AT&T AND QWEST IF IT ADOPTS AT&T'S**
15 **LANGUAGE. IS HE CORRECT?**

16 A. No, he is absolutely incorrect. While Mr. Freeberg makes these assertions he
17 offers no factual evidence to support it. AT&T does not have an "ISP-based
18 business plan" and AT&T is not seeking to require "Qwest's retail rate payers to
19 absorb an even greater share of AT&T's costs of serving ISPs" as Mr. Freeberg
20 asserts at page 37 of his testimony.

21 **Q. HOW SHOULD THE COMMISSION RESOLVE THE ISSUE**
22 **REGARDING INCLUSION OF INTERNET-BOUND TRAFFIC IN THE**
23 **RELATIVE USE FACTOR?**

24 A. AT&T serves a wide range of customers and there is no reason to punish AT&T
25 for what other carriers may be doing by excluding a subset of traffic from the
26 computation of the cost sharing for the interconnection facilities. AT&T believes
27 there is no lawful basis to do so nor has Qwest demonstrated any compelling

1 public policy reason to do so. The Commission should adopt AT&T's language
2 including the language regarding the retroactive true-up period if the initial
3 relative use factor of fifty percent (50%) is found to be in error. I note that in his
4 direct testimony, Mr. Freeberg does not address AT&T's proposed language
5 regarding the retroactive true up of the initial relative use factor.

6 **Q. PLEASE EXPLAIN THE DISAGREEMENT REGARDING SECOND**
7 **ISSUES ASSOCIATED WITH ISSUE 17.**

8 A. AT&T and Qwest have generally agreed that when a party to the interconnection
9 agreement provides dedicated transport facilities²² supporting the two-way trunk
10 group between the Parties, the Parties will share the cost associated with such
11 facilities based on their relative use. The exception is when the Parties use an
12 existing private line facility that AT&T has purchased from a Qwest's Interstate
13 tariff. In that case, Qwest will not agree to share the cost of the private line
14 facility.
15 Qwest contends that facilities purchased out of Qwest's FCC tariffs are not
16 subject to relative use adjustments, or ratcheting of any kind, and this
17 Commission has no authority to order such adjustments. AT&T disagrees with
18 Qwest. Qwest's position is contrary to: (1) the FCC's regulations, specifically 47
19 C.F.R. § 51.703(b) which states "A LEC may not assess charges on any other
20 telecommunications carrier for telecommunications traffic that originates on the
21 LEC's network;" and (2) 47 C.F.R. § 51.709(b) which states "The rate of a carrier
22 providing transmission facilities dedicated to the transmission of traffic between

²² Dedicated transport facilities are the physical transmission channels that carry the two-way trunk group between the AT&T and Qwest switches that are used for local and intraLATA toll traffic.

1 two carriers' networks shall recover only the costs of the proportion of that trunk
2 capacity used by an interconnecting carrier to send traffic that will terminate on
3 the providing carrier's network." By sending its originating traffic over the private
4 line facility without applying a relative use factor or otherwise compensating
5 AT&T for its use, Qwest is making AT&T pay to transport Qwest originating
6 traffic in contravention of 47 C.F.R. § 51.703(b) and 47 C.F.R. § 709(b).
7 Qwest has agreed to apply a relative use factor for UNE dedicated transport
8 facilities supporting the two-way trunk group between the Parties and for private
9 line facilities purchased out of Qwest's state tariff and there is no reason not to
10 use the same approach for private line facilities purchased out of Qwest's FCC
11 tariff.

12 **Q. IS MR. FREEBERG CORRECT WHEN HE ASSERTS THAT AT&T'S**
13 **POSITION IS SOMEHOW AN ATTEMPT BY AT&T TO REDUCE ITS**
14 **INTEREXCHANGE CARRIER ACCESS COSTS?**

15 A. No. Mr. Freeberg is incorrect when he alleges on page 37 of his testimony that
16 AT&T's position is somehow an attempt by AT&T to reduce its interexchange
17 carrier access costs. If AT&T obtains a DS-3 level special access facility from
18 Qwest's FCC tariff and decides to use a portion of such facility for its long
19 distance and a portion of the facility for its local traffic, AT&T pays fully for both
20 functions.

1 **Q. WOULD YOU PROVIDE AN EXAMPLE OF HOW THE PARTIES**
2 **WOULD SHARE THE COST OF THE PRIVATE LINE FACILITY?**

3 A. Yes. Suppose AT&T has leased a DS-3 level facility²³ from Qwest to a certain
4 Qwest end office location. Further suppose that the size of the trunk group
5 between the parties is 48 trunks (voice circuits) and that each party's relative use
6 of the trunk group is 50%. Therefore, Qwest's relative use is equal to 24 trunks,
7 or a DS-1 level of capacity. Since the DS-3 facility has a capacity of 28 DS-1
8 channels, Qwest would not bill AT&T for one twenty-eighth (1/28) of the cost of
9 the DS-3 facility. Thus, AT&T would continue to pay Qwest for the pro rata
10 billing for the 27 DS-1 channels that AT&T can use for its own purposes. In the
11 alternative, Qwest could bill AT&T for the full capacity of the DS-3 facility and
12 AT&T could, in turn, bill Qwest for its use of the DS-1 at Qwest's DS-1 special
13 access rate. In any case, to comply with 47 C.F.R. § 51.703(b) and 47 C.F.R. §
14 709(b), Qwest must be financially responsible for the facilities used for
15 telecommunications traffic that originates on its network

16 **Q. IS MR. FREEBERG CORRECT IN HIS ASSERTION THAT THE**
17 **WASHINGTON COMMISSION CANNOT ADOPT AT&T'S PROPOSED**
18 **LANGUAGE BECAUSE THE FACILITIES ARE PURCHASED FROM**
19 **QWEST'S FEDERAL TARIFF?**

20 A. As I will explain, Mr. Freeberg is incorrect. First, the Parties, in a contract, are
21 choosing to employ a portion of the private line for interconnection, which is
22 clearly governed by the Act and is a local or intrastate service. The Commission
23 is empowered by § 252(b)(4)(C) to "resolve each issue set forth in the petition

²³ A DS-3 facility has a capacity of 28 DS-1 channels each of which has a capacity of 24 voice circuits or trunks.

1 and response, if any, by imposing the appropriate conditions as required to
2 implement subsection (c)...” Further, in § 252(c)(1), the Commission is charged
3 with “ensur[ing] that such resolution and conditions meet the requirements of
4 section 251, including the regulations prescribed by the [FCC] pursuant to section
5 251.” Thus, the Commission is clearly empowered to adjudicate interconnection
6 agreements and must ensure that such agreements conform to the Act and the
7 FCC’s Rules cited in my testimony.

8 Second, if it adopts AT&T’s language, the Commission will not be changing the
9 rates in Qwest’s federal tariff, it will be determining how the Parties will share the
10 cost associated with such facilities based on their relative use as an
11 interconnection facility. The cost of the facilities to be allocated between the
12 Parties is still determined by the rates in Qwest’s federal tariff. For example, if
13 Qwest’s relative use of a DS-3 facility is equal to a DS-1 level of capacity, then
14 Qwest would not bill AT&T for one twenty-eighth (1/28) of the cost of the DS-3
15 facility based on the DS-3 facility rates in Qwest’s federal tariff.

16 Third, the fact that a private line facility is obtained from Qwest’s Tariff F.C.C.
17 No. 1 does not mean that AT&T is precluded from renting the line back to Qwest
18 when Qwest uses it to exchange local traffic. Qwest just does not wish to pay the
19 exorbitant rates it charges CLECs and others for such private lines.

1 **Q. MR. FREEBERG CITES TO LANGUAGE ADOPTED IN THE § 271**
2 **WORKSHOPS. DOES THE FACT THAT THE LANGUAGE ADOPTED**
3 **IN THE § 271 PROCEEDING ADDRESSES ONLY QWEST'S**
4 **INTRASTATE TARIFF PRECLUDE THE COMMISSION OR**
5 **CONTRACTING PARTIES FROM ADOPTING DIFFERENT**
6 **LANGUAGE?**

7 A. No. The Commission's finding that Qwest's SGAT §§ 7.3.1.1.3.1 and 7.3.2.2.1
8 comply with 47 U.S.C. § 271(c)(2)(B)(xiii) simply means that the Commission
9 found that the language satisfied the 271 Checklist requirements. A Commission
10 finding in a 271 Proceeding is just that and is not a final disposition of the issue
11 for all purposes, forever. The Commission's § 271 decisions do not preempt the
12 Commission's consideration of the issue in the context of adjudicating a fair
13 interconnection agreement nor does it prevent the Commission from finding that
14 AT&T's language is more equitable as between the parties.

15 **Q. WHAT ABOUT MR. FREEBERG'S STATEMENT THAT THE FCC HAS**
16 **PROHIBITED RATCHETING IN THE RECENTLY RELEASED**
17 **TRIENNIAL REVIEW ORDER?**

18 A. AT&T is not proposing ratcheting and AT&T's proposed language does not
19 address ratcheting as that term is employed in the *Triennial Review Order*.
20 Ratcheting is a pricing mechanism that involves billing a single circuit at multiple
21 rates to develop a single, blended rate.²⁴ The *Triennial Review Order* indicated
22 that ILECs were not required to implement ratcheting in order to charge CLECs a
23 single blended rate for the CLEC's use of a facility if that facility was carrying

²⁴ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (Rel. Aug. 21, 2003) ("*Triennial Review Order*" or "TRO") at ¶ 582.

1 commingled traffic. AT&T is not asking that its use of the private line facilities
2 be ratcheted or priced differently from the interstate tariffed rate. Rather, AT&T
3 is asking that Qwest pay AT&T for Qwest's use of AT&T's facility that Qwest
4 uses to deliver Qwest's originating traffic to AT&T.
5 Specifically, AT&T's language simply applies the relative use factor approach
6 that the parties have already agreed to use for dedicated transport facilities
7 supporting the two-way trunk group between the Parties to existing private line
8 facilities that AT&T has purchased from a Qwest's interstate tariff. As explained
9 in my direct testimony at page 14, the relative use factor designates the percentage
10 of trunks in the trunk group that are required to carry each Party's traffic and does
11 not involve ratcheting in any way.

12 Mr. Freeberg's contorted speculation at page 38 of his testimony that AT&T
13 might somehow seek to apply the relative use factor in a ratcheting manner to
14 seek UNE rates is totally unfounded. Mr. Freeberg is simply grasping at straws in
15 an attempt to find some justification for Qwest's opposition to AT&T's proposed
16 language requiring Qwest to share the cost associated with interstate private line
17 facilities based on the relative use by each party. Qwest would prefer to have use
18 of those facilities for free and it is relying on a decision from the *Triennial Review*
19 *Order* that is not on point to allegedly support its position.

20 **Q. HOW SHOULD THE COMMISSION RESOLVE THE PARTIES'**
21 **DISAGREEMENT?**

22 A. The Commission should resolve this issue in AT&T's favor because AT&T's
23 position is fair by requiring that both parties pay for their respective use of the

1 special access facility²⁵ or portion of the UNE dedicated transport facility used for
2 the trunk group and AT&T's language is consistent with requirements of both 47
3 C.F.R. § 51.703(b) and 47 C.F.R. § 51.709(b). AT&T's clarification under these
4 sections is consistent with the agreed to language in 7.3.1(b). AT&T's proposals,
5 here, make clear that the cost sharing provisions are not limited solely to Entrance
6 Facilities and Direct Trunked Transport, but apply also to other comparable
7 facilities providing equivalent functionality. This is consistent with other agreed
8 to provisions in the Proposed Interconnection Agreement.

9 **C. Issue 18 - Reciprocal Compensation And Calculation Of Tandem**
10 **Transmission Rate**

11 **Q. IN REGARD TO ISSUE 18, MR. FREEBERG CLAIMS THAT AT&T'S**
12 **LANGUAGE IS INCONSISTENT WITH 47 CFR § 51.711(a)(3)**
13 **CREATING ASYMMERTY OF COMPENSATION. IS HE CORRECT?**

14 A. Mr. Freeberg is mistaken in his assertion. AT&T's language is in fact consistent
15 with 47 C.F.R. § 51.711(a)(3) and Mr. Freeberg's testimony regarding "symmetry
16 and asymmetry" goes to the issue of whether or not AT&T is entitled to charge
17 Qwest the tandem interconnection rate for terminating traffic that originates on
18 Qwest's network, which is Issue 3, and does not go to the issue at hand here,
19 which is whether or not the tandem interconnection rate that AT&T charges
20 Qwest should include a mileage component.

²⁵ Section 7.3.1.1.2 of the Proposed Interconnection Agreement already recognizes that if Private Line facilities are used for local interconnection, those facilities should be priced at interconnection rates. If they are used as two-way facilities, the cost should be shared, consistent with the parties' general agreement about cost sharing with local interconnection facilities.

1 **Q. IN THE CONTEXT OF ISSUE 18 MR. FREEBERG SEEMS TO REVERT**
2 **BACK TO HIS ARGUMENTS RELATED TO ISSUE 3 IMPLYING**
3 **PERHAPS THAT IT IS RELEVANT HERE. IS IT RELEVANT HERE?**

4 A. No. Mr. Freeberg injects Issue 3—regarding whether AT&T may charge Qwest
5 the tandem rate for use of AT&T’s switches. The issue here, Issue 18, is what
6 elements that tandem rate ought to include, not whether the rate applies. As
7 AT&T argued in Issue 3, the FCC’s rule, 47 C.F.R. § 51.711(a)(3), states:

8 Where the switch of a carrier other than an incumbent LEC serves
9 a geographical area comparable to the area served by the
10 incumbent LEC’s tandem switch, the appropriate rate for the
11 carrier other than an incumbent LEC is the incumbent LEC’s
12 *tandem interconnection rate*. (Emphasis added)

13 Thus, AT&T is entitled to charge Qwest the tandem interconnection rate for
14 terminating Qwest’s traffic if AT&T’s switch serves a geographical area
15 comparable to the area served by the incumbent LEC’s tandem switch.

16 **Q. SETTING ASIDE ISSUE 3, LET’S RETURN TO THE DISPUTE**
17 **RELATED TO ISSUE 18. HOW SHOULD THE TANDEM RATE BE**
18 **CALCULATED?**

19 However, Qwest’s tandem interconnection rate includes three rate components:
20 End Office Call Termination, Tandem Switching, and Tandem Transmission,
21 which is mileage sensitive. While Qwest’s Call Termination and Tandem
22 Switching Rates are applied on a per-minute-of-use basis only, Qwest’s Tandem
23 Transmission Rate has both a per minute of use Fixed Rate and a per minute of
24 use, per mile Recurring Rate. Qwest’s Tandem Transmission rates are:

<u>Tandem Transmission</u>	<u>Recurring Fixed</u>	<u>Recurring</u>
	(Per Minute of Use)	(Per MOU, Per Mile)
0 Miles	\$0.0	\$0.0
0-8 Miles	\$0.000260	\$0.000001
Over 8 to 25 Miles	\$0.000260	\$0.000001
Over 25 to 50 Miles	\$0.000260	\$0.000001
Over 50 Miles	\$0.000260	\$0.000001

8 Thus, a question arises as to the mileage that should be included in the tandem
9 interconnection rate that AT&T applies to Qwest's traffic. Since the rate is a
10 proxy, for AT&T's actual costs, and AT&T does have separate tandem and end
11 office switches, AT&T cannot calculate and bill actual mileage between those
12 points. On the other hand, under 47 C.F.R. § 51.711(a)(3), AT&T is entitled to
13 bill Qwest at "the incumbent LEC's *tandem interconnection rate*" when AT&T's
14 switches serve a geographical area comparable to the area served by the
15 incumbent LEC's tandem switch. One approach would be to bill Qwest the actual
16 average mileage that Qwest bills to AT&T. Of course, this requires calculation of
17 the average mileage each month. Another approach is to include a specified
18 number of miles in the interconnection agreement and to bill Qwest accordingly.
19 AT&T chose the second approach because it simplifies the billing and bill
20 verification processes for both Qwest and AT&T. AT&T chose 9 miles because
21 that is the mileage Qwest currently assumes for tandem transmission for transiting
22 calls and thus the assumption seemed reasonable.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 18?**

2 A. The Commission should resolve the issue in favor of AT&T because AT&T's
3 resolution treats the Parties fairly.

4 **D. Issue 19 - ISP-Bound Traffic, UNE-P Minutes And The 3:1 Ratio Of**
5 **Terminating To Originating Traffic**

6 **Q. HAS QWEST DECIDED THAT IT WILL NOT CONTEST THIS ISSUE?**

7 A. Yes. At page 41 of his testimony, Mr. Freeberg states that "[a]lthough Qwest
8 does not agree with AT&T's position, for purposes of this arbitration and
9 interconnection agreement, Qwest will not contest this issue."

10 **Q. GIVEN QWEST'S POSITION, DOES THE COMMISSION NEED TO**
11 **RESOLVE THIS ISSUE?**

12 A. Since Qwest is not contesting the issue, the Commission should simply adopt
13 AT&T's proposed language for section 7.3.6.2.1 of the Agreement because there
14 is no dispute to resolve.

15 **E. Issue 21 - Billing For Traffic That Does Not Carry The Calling Party**
16 **Number ("CPN") – If The Originating Party Passes CPN On Less Than 95%**
17 **Of Its Calls, Should Those Calls Passed Without CPN Be Billed As**
18 **IntraLATA Switched Access Or Based On A Percentage Local Usage**
19 **("PLU")**

20 **Q. IN HIS TESTIMONY, MR. FREEBERG PURPORTS TO PROVIDE**
21 **AT&T'S PROPOSED LANGUAGE FOR SECTION 7.3.8; IS HIS**
22 **RECITATION ACCURATE?**

23 A. No. I provided the latest version of AT&T's language in my direct testimony.

24 **Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING QWEST'S**
25 **PROPOSED LANGUAGE FOR SECTION 7.3.8 AS IT APPEARS IN MR.**
26 **FREEBERG'S TESTIMONY?**

27 A. Yes. I would point out that the Qwest language contained in Mr. Freeberg's
28 testimony is one-sided in that it imposes obligations only on AT&T. For

1 example, it states, "If a CLEC fails to provide CPN (valid originating
2 information), and cannot substantiate technical restrictions (i.e., MF signaling)
3 such traffic will be billed as Switched Access." Apparently, Qwest believes this
4 provision that deals with the failure to provide CPN should only place obligations
5 on AT&T and not on Qwest. This is inappropriate, inequitable and unbalanced.
6 Qwest must have the same responsibility to provide CPN as AT&T does under
7 the agreement.

8 **Q. ISSUE 21 INVOLVES TRAFFIC THAT LACKS CPN. PLEASE**
9 **RESPOND TO MR. FREEBERG'S ASSERTION THAT QWEST SHOULD**
10 **NOT BE RESPONSIBLE FOR CPN-LESS CALLS THAT TRANSIT ITS**
11 **NETWORK.**

12 A. AT&T is not seeking to have Qwest assume financial responsibility for all CPN-
13 less calls transiting Qwest's network. AT&T is simply proposing language that
14 makes it clear that the carrier providing the transit service is responsible for
15 identifying CPN-less transiting traffic and the carriers that originated such traffic
16 so that such traffic can be identified and properly billed by the terminating carrier.
17 It is a reciprocal obligation of both Qwest and AT&T.

18 **Q. IS AT&T'S PROPOSED LANGUAGE REASONABLE AND**
19 **APPROPRIATE IN DEALING WITH CPN-LESS TRANSIT TRAFFIC?**

20 A. Yes. Without CPN, a terminating carrier such as AT&T cannot identify the
21 carrier originating the traffic and therefore cannot distinguish between the transit
22 provider's traffic (Qwest, in this example) and traffic from other carriers which is
23 transiting the transit provider's network.

24 As a transit provider, Qwest has the obligation to properly identify traffic that
25 transits its network. Absent data from the transit provider, the terminating carrier

1 has no alternative except to bill the transit provider. At page 41 of his testimony,
2 Mr. Freeberg acknowledges that if a call lacks CPN, “billing systems cannot
3 discern whether the call is a transit or non-transit or local versus toll.”
4 AT&T’s language simply acknowledges this reality and states that the transit
5 provider will not be accountable for transit traffic without CPN as long as the
6 transit provider provides information to the terminating carrier that allows the
7 terminating carrier to identify and bill the appropriate originating carrier for the
8 traffic. As the transit provider, Qwest has this information and can provide it to
9 the terminating carrier. This is true because Qwest is billing the originating
10 carrier for the transit service.

11 **Q. IS THERE ANY MERIT TO MR. FREEBERG’S ASSERTION THAT**
12 **AT&T IS NOT REQUIRED TO CONNECT TO OTHER CARRIERS**
13 **THROUGH QWEST?**

14 A. There are 25 independent telephone companies in Washington plus cellular
15 carriers, paging companies and competitive LECs. When AT&T exchanges a
16 relatively small volume of traffic with such carriers it is simply not practical to
17 interconnect separately to each of them. The obligation to interconnect generally
18 implies an obligation to interconnect for the purpose of passing traffic among
19 networks. Without such implication, every carrier would have to interconnect to
20 every carrier directly, which is an absurd notion that is utterly inconsistent with
21 the way in which carriers pass traffic amongst themselves today. Furthermore,
22 under the Act, Qwest has a duty to provide transit service.

1 **Q. PLEASE EXPLAIN FURTHER QWEST’S DUTY TO PROVIDE TRANSIT**
2 **SERVICE.**

3 A. AT&T has the right, pursuant to § 251(a)(1) of the Act, to interconnect directly or
4 indirectly with the facilities and equipment of other carriers²⁶ and Qwest is
5 required, pursuant to § 251(c)(2)(A) of the Act, to interconnect with carriers for
6 the transmission and routing of telephone exchange service and exchange access.
7 The statute does not limit this duty to only traffic exchanged between AT&T and
8 Qwest.

9 As the North Carolina Utilities Commission concluded in a proceeding to
10 determine if Verizon was required to transit Sprint’s interLATA EAS traffic to
11 third party, competing local providers (“CLPs”) and CMRS providers:

12 The Commission is persuaded that a transit obligation can be well
13 supported under both state and federal law. The Commission does
14 not agree with the opponent’s view that duties and obligations
15 under TA96 do not or cannot exist separately from their
16 incarnation in particular interconnection agreements pursuant to
17 the negotiation and arbitration process – or as Verizon put it
18 “[TA96] contemplates only duties that are to be codified in
19 interconnection agreements, not duties that apply independent of
20 interconnection agreements.”

21 If there were no obligation to provide transit service, the ubiquity
22 of the telecommunications network would be impaired. Indeed, in
23 a small way this has already happened in this case when Verizon
24 refused to transit certain traffic. . . . These effects illustrate the
25 ultimate unsupportability of the Opponent’s view of their
26 obligations as ILECs to interconnect indirectly – essentially, as
27 matters of grace, rather than duty.

28 The fact of the matter is that transit traffic is not a new thing. It
29 has been around since “ancient” times in telecommunications
30 terms. The reason that it has assumed new prominence since the

²⁶ Indirect interconnection was described by the FCC in ¶ 997 of the *Local Competition Order* as interconnection to other carriers via the incumbent’s network; which is precisely what Qwest’s transit service provides.

1 enactment of TA96 is that there are now many more carriers
2 involved – notably, the new CMRS and the CLPs – and the amount
3 of traffic has increased significantly. Few if any, thought about
4 complaining about transit traffic until recently. It strains credulity
5 to believe Congress in TA96 intended, in effect, to impair this
6 ancient practice and make it merely a matter of grace on the part of
7 ILECs, when doing so would inevitably have a tendency to thwart
8 the very purposes that TA96 was designed to allow and
9 encourage.²⁷

10 **Q. ON PAGE 45 OF HIS TESTIMONY, MR. FREEBERG STATES THAT**
11 **AT&T MAY HAVE A PLAN TO INTRODUCE SERVICES THAT**
12 **FURTHER PRECLUDE THE CONSISTENT FORWARDING OF**
13 **CALLER IDENTIFICATION INFORMATION. WHAT ON EARTH IS**
14 **HE TALKING ABOUT?**

15 A. Mr. Freeberg is engaged in speculative fantasy. AT&T is not seeking some
16 loophole and has no plans to introduce any services that preclude the consistent
17 forwarding of CPN. You will note Mr. Freeberg cites no factual support for his
18 conjecture. That said, AT&T understands that the CPN requirement should have
19 some “bite” to it. On the other hand, AT&T is concerned that it has a greater risk
20 of more volatility in the level of no-CPN traffic because AT&T’s customer base
21 includes a disproportionate share of business customers. If AT&T were to lose a
22 large business customer that provided CPN and pick up a large business customer
23 whose customer premise equipment (“CPE”) is unable to provide CPN, there
24 could be a significant increase in the percentage of AT&T’s traffic without CPN.
25 Since AT&T does not have the huge residential customer base that Qwest has to
26 smooth out these changes, AT&T’s provision of CPN is subject to greater
27 volatility than Qwest’s and AT&T could be punished simply because it lost one

²⁷ *In the Matter of Petition of Verizon South, Inc. for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Co. to Adopt Alternative Transport Method, Order Denying Petition, Docket No. P-19, SUB 454 (Sept. 22, 2002) at 6– 7.*

1 business customer and picked up another business customer. That would not be
2 appropriate.

3 **Q. DOES AT&T HAVE OTHER CONCERNS WITH QWEST'S PROPOSED**
4 **LANGUAGE THAT HAVE SOME BASIS IN REALITY AS OPPOSED TO**
5 **MR. FREEBERG'S CONJECTURE?**

6 A. Yes. Qwest's language only provides for relief from switched access billing for
7 no-CPN traffic for technical restrictions, like MF signaling and does not address
8 network or signaling failures that can also cause no-CPN situations for limited
9 periods of time. With its language, AT&T simply seeks a little larger range that
10 allows for the types of situations that could occur and would affect the percentage
11 of traffic passed without CPN. Thus, AT&T proposes a requirement of 90% for
12 calls passed without CPN instead of the 95% proposed by Qwest.

13 **Q. IS IT A VALID ASSUMPTION ON QWEST'S PART THAT ALL CPN-**
14 **LESS TRAFFIC IS TOLL TRAFFIC?**

15 A. No, there is simply no valid reason to assume that all no-CPN traffic is toll traffic.
16 Qwest has certainly offered no evidence to show that this is in fact the case, and
17 in fact, Qwest has admitted that it is not when it acknowledges that CPN may not
18 be attached to traffic for a variety of reasons. As I explained in my direct
19 testimony, certain older customer premise equipment does not pass CPN and
20 some ISDN PRI customers often do not pass CPN information to AT&T.
21 Whether the Commission adopts AT&T's 90% or Qwest's 95% CPN
22 requirement, it should direct the parties to use a PLU factor to jurisdictionalize
23 no-CPN traffic. Qwest's proposal to bill all no-CPN traffic as toll sacrifices
24 accuracy for administrative convenience. The Parties are familiar with the

1 development and application of PLU factors and use of such factors is not a
2 problem.

3 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 21?**

4 A. The Commission should adopt AT&T's language. AT&T's proposed treatment
5 of traffic without CPN is reasonable and entirely consistent with the FCC's ruling
6 in the *Virginia Arbitration Proceeding*. On the other hand, Qwest's proposed
7 language is even more draconian than the Verizon language that the FCC rejected
8 in the *Virginia Arbitration Proceeding*. Here, Qwest proposes to assume that all
9 calls without CPN are toll calls and to charge access charges for all such calls.

10 Qwest's proposal is unreasonable and should be rejected by the Commission.

11 **IV. CONCLUSION**

12 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

13 A. Yes, it does.