BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC.'s [1] Compliance With Section 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 TWENTY-FOURTH SUPPLEMENTAL ORDER COMMISSION ORDER[2] ADDRESSING WORKSHOP THREE ISSUES: CHECKLIST ITEMS NOS 2, 5, AND 6.

I. SYNOPSIS

1 *In this Order, the Commission reviews the Thirteenth Supplemental Order (Initial Order), an initial order relating to Checklist Items No. 2 (Unbundled Network Elements), 5 (Unbundled Transport), and 6 (Unbundled Switching). The Commission reverses the Initial Order with respect to the jurisdictional treatment of ISP-bound traffic. It affirms all other issues raised by parties in response to the Initial Order.*

II. BACKGROUND AND PROCEDURAL HISTORY

2 This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST), with the

[1] Since the inception of this proceeding, U S WEST has merged and become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this order.

[2] This proceeding is designed, among other things, to produce a recommendation to the Federal Communications Commission (FCC) regarding Qwest's compliance with certain requirements of law. This order addresses some of those requirements. The process adopted for this proceeding contemplates that interim orders including this one will form the basis for a single final order, incorporating previous orders, updated as appropriate. The Commission will entertain motions for reconsideration of this order so that issues may be timely resolved.

requirements of section 271 of the Telecommunications Act of 1996 (the Act),[3] and to review and consider approval of Qwest's Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act.

3 In this proceeding, the Commission must determine whether Qwest has sufficiently opened its local network to competition to permit the Commission to recommend to the Federal Communications Commission (FCC) that Qwest be allowed to enter the interLATA toll market. At its June 16, 2000, open meeting, the Commission allowed Qwest's SGAT to go into effect, subject to later review. The Commission has reviewed the SGAT provisions during the Section 271 workshops to determine whether the provisions comply with section 252(d) and section 251 of the Act, as well as requirements of Washington state law.

4 The Commission has also outlined a process and standards for evaluating Qwest's compliance with section 271. Qwest's compliance with the fourteen "Checklist Items" listed in section 271 has been addressed through a series of workshops. The first workshop addressed Checklist Items No. 3 (Poles, Ducts, and Rights of Way), 7 (911, E911, Directory Assistance, Operator Services), 8 (White Pages Directory Listings), 9 (Numbering Administration), 10 (Databases and Associated Signaling), 12 (Dialing Parity), and 13 (Reciprocal Compensation). The administrative law judge entered a Draft Initial Order on August 8, 2000, and a Revised Initial Order on August 31, 2000. A final Commission order resolving the disputed issues in Workshop 1 was entered on June 11, 2001.

5 The second workshop addressed Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale) and provisions of the SGAT addressing these issues. The administrative law judged entered initial orders on February 23, 2001, and March 30, 2001. A final Commission order resolving the disputed issues in Workshop 2 was entered on August 17, 2001.

6 The Commission convened the third workshop on March 12-15, 2001, to consider the issues related to Checklist Items No. 2, 5, and 6, and provisions of Qwest's proposed SGAT addressing these issues. The Commission convened a follow-up workshop on April 24 and 25, 2001, to address unresolved issues from the March workshop sessions. Administrative Law Judge C. Robert Wallis presided over the workshops.

7 During the workshop sessions, the parties resolved many issues and agreed upon corresponding SGAT language. However, certain issues remained in dispute. The parties filed briefs with the Commission on May 16, 2001, concerning disputed issues involving Checklist Items No. 2, 5, and 6. The administrative law judge entered an Initial Order finding non-compliance with respect to Checklist Items 2, 5, and 6 on

[3] Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

July 24, 2001. The parties argued disputed issues to the Commission on September 21, 2001. This Order resolves the issues raised by the parties in briefs, comments, and oral argument to the Commission regarding matters in the Thirteenth Supplemental Order, the Initial Order entered following the third Workshop.

III. PARTIES AND REPRESENTATIVES

8 The following parties and their representatives participated in the third workshop: Qwest, by Lisa Anderl, attorney, Seattle, WA, and John Munn and Andrew Crain, attorneys, Denver, CO; AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), by Richard Wolters and Dominic Sekich, attorneys, Denver, CO; WorldCom, Inc. (WorldCom) by Ann E. Hopfenbeck, attorney, Denver, CO; Sprint Corporation, by Barbara Young, Hood River, OR; XO Washington, Inc. (XO), and Electric Lightwave Inc., and Advanced TelCom Group, Inc. (ATG), by Gregory J. Kopta, attorney, Seattle, WA; McLeod USA Telecommunications Services, Inc. by Marianne Holifield, attorney, Seattle, WA; Covad Communications, Inc. (Covad), by Brooks E. Harlow, attorney, Seattle, WA; and Public Counsel by Robert Cromwell, Assistant Attorney General, Seattle, WA.

IV. DISCUSSION

9 The administrative law judge in July 2001, entered an Initial Order addressing disputed issues from the third workshop. The Commission restates and adopts the findings and conclusions of the Initial Order, with the modifications discussed below.

Checklist Item No. 2: Unbundled Network Elements

Obligation to Build: Issues WA-CL2-15, UNE-C-11, EEL-5, CL2-18, TR-14, and UNE-C-21

10 The Initial Order concluded that Qwest must modify section 9.1.2 of its SGAT and the appropriate subsections, to state that Qwest will provide access to UNEs in any location currently served by Qwest. This request would require Qwest to construct new facilities to locations where existing facilities have reached capacity.

11 Qwest cites pending decisions in other jurisdictions that, it claims, are in conflict with the Initial Order's proposal. Qwest argues that Mr. Antonuk, in the Multistate proceeding Unbundled Network Element Report of August 20, 2001, states that "Qwest should not generally be required to construct new facilities to provide CLECs with UNEs."[4] Mr. Antonuk refers to sections 9.1.2.1 and 9.1.2.2 as provisions that allow CLECs to obtain "new facilities that Qwest would provide under its carrier-of-

[4] Unbundled Network Element Report (Multistate Report), August 20, 2001, p. 25.

last-resort obligations."[5] Similarly, the Colorado Hearing Commissioner required "that Qwest revise SGAT section 9.19 to include the sentence: 'Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself,'" stating that "This language will sufficiently address situations where Qwest rejects a request to build and then constructs the same facilities for its own customers." [6]

12 Qwest also characterizes the initial order as requiring it to build facilities for CLECs at no charge.

13 In this proceeding, the Commission is largely tasked with interpreting Federal law. We believe the best interpretation of the Telecommunications Act supports the recommendation in the Initial Order. We also endorse this position on independent state grounds. Because this combined proceeding encompasses more than Qwest's eligibility for section 271 approval, we think it appropriate to decide this issue here.

14 In briefs and oral argument, Qwest cited various FCC orders (*UNE Remand Order, Collocation Remand Order)* and court decisions from the Eighth Circuit as supporting its position. The Commission has reviewed these decisions and orders and finds them unpersuasive in supporting Qwest's argument.

15 The first Eighth Circuit opinion cited by Qwest struck down the "Superior Quality" provisions enacted by the FCC at 51.305(a)(4) and 51.311(c)[7]. These rules required LECs to provide superior quality access to interconnection and unbundled network elements upon the CLECs' request. The discussion by the FCC in paragraphs 224 and 225 of the *Local Competition Order* are illuminating in that the FCC drew a

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[5] Id. at 24.

[6] Decision No. R01-846, Investigation into U S West Communications, Inc.'s Compliance with §271 (c) of the Telecommunications Act of 1996, Volume 4A Impasse Issues order at p. 10 (August 16, 2001).

[7] 47 CFR 51.305(a)(4): [An incumbent LEC shall provide … interconnection with the incumbent LEC's network…] That, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Nothing in this section prohibits an incumbent LEC from porviding interconenction that is lesser in quality at the sole request of the requesting telecommunications carrier.

47 CFR 51.311(c): To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an icumbent LEC provides to a requesting telecommunications carrier shall, upon erquest, be superior in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must povide to the state commission that it is not technically feasible to provide the requested unbundled network element or access to such unbundled network element at the requested level of quality that is superior to that which the incumbent LEC provides to itself. Nothing in this section prohibits an incumbent LEC from porviding interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier.

distinction between the "equal in quality" standard contained in section 251(c)(2)(c) and the "superior in quality" standard expressed in the aforementioned FCC rules:

> *224.* We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. *We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used with their own networks."*..(emphasis added)
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> 225. …Requiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality."

16 This explanation by the FCC makes clear that it contemplated incumbent LECs being required to plan, design and build their networks, including interconnection facilities, to accommodate the needs of CLECs as well as the needs of their retail customers, and that the term "superior in quality" should not be construed to apply to additions to existing network facilities that provide a level of quality indistinguishable from that the incumbent LEC provides itself.

17 With respect to unbundled network elements, Qwest cites the Eighth Circuit opinion's statement that …"subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one.[8]" The FCC's discussion in paragraphs 313 and 314 of the *Local Competition Order*[9] is

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[8] Iowa Utils. Bd. v. FCC, 120 F.3d 753, 812 (8th Cir. 1997), aff'd in part, rev'd on other grounds, sub nom, AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

[9] *Local Competition Order, ¶¶ 313 and 314:*

> 313. We believe that Congress set forth a "nondiscriminatory access" requirement in section 251(c)(3), rather then an absolute equal-in-quality requirement, such as that set forth in section 251(c)(2)(C), because, in rare circumstances, it may be technically infeasible for incumbent LECs to provide requesting carriers with unbundled elements, and access to such elements, that are equal-inquality to what the incumbent LECs provide themselves. According to some commenters, this problem arises in connection with one variant of one of the unbundled network elements we identify in this order. These commenters argue that a carrier purchasing access to a 1AESS local switch may not be able to receive, for example, the full measure of customized routing features that such a switch may afford the incumbent. In the rare circumstances where it is technically infeasible for an incumbent LEC to provision access or elements that are equal-in-quality, we believe disparate access would not be inconsistent with the nondiscrimination requirement. Accordingly, we require incumbent LECs to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs

again instructive, as it is clear that the FCC is discussing situations in which the existing quality level of the incumbent LEC network may not support the provisioning of unbundled network elements that are either equal or superior in quality to the elements the ILEC provides to itself. Taken in that context, the Eighth Circuit's use of the term "existing network" as contrasted with an "unbuilt superior" network cannot be construed to mean what Qwest contends. Footnote 33 of the Eighth Circuit Opinion also supports this interpretation:

> Although we strike down the [FCC]'s rules requiring incumbent LECs to *alter substantially their networks in order to provide superior quality interconnection and unbundled access*, we endorse the Commission's statement that 'the obligations imposed by sections 251(c)(2) and 251(c)(3) include *modification to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements*. *120 F.3d 753, n.33* (emphasis added)

18 In the instant case, the CLECs are not requesting superior quality access to unbundled network elements – they are requesting access at the same level of quality that Qwest currently provides to its own customers. The access the CLECs request, and that we

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provide themselves, and allow for an exception to this requirement only where it is technically infeasible to meet. We expect incumbent LECs to fulfill this requirement in nearly all instances where they provision unbundled elements because we believe the technical infeasibility problem will arise rarely. We further conclude, however, that the incumbent LEC must prove to a state commission that it is technically infeasible to provide access to unbundled elements, or the unbundled elements themselves, at the same level of quality that the incumbent LEC provides to itself.

314. Our conclusion that an incumbent LEC must provide unbundled elements, as well as access to them, that is "at least" equal in quality to that which the incumbent provides itself, does not excuse incumbent LECs from providing, when requested and where technically feasible, access or unbundled elements of higher quality. As we discuss below, we do not believe that this obligation is unduly burdensome to incumbent LECs because the 1996 Act requires a requesting carrier to pay the costs of unbundling, and thus incumbent LECs will be fully compensated for any efforts they make to increase the quality of access or elements within their own network. Moreover, to the extent this obligation allows new entrants, including small entities, to offer services that are different from those offered by the incumbent, we believe it is consistent with Congress's goal to promote local exchange competition. We note that, to the extent an incumbent LEC provides an element with a superior level of quality to a particular carrier, the incumbent LEC must provide all other requesting carriers with the same opportunity to obtain that element with the equivalent higher level of quality. We further note that where a requesting carrier specifically requests access or unbundled elements that are lower in quality to what the incumbent LECs provide themselves, incumbent LECs may offer such inferior quality if it is technically feasible. Finally, we conclude that the incumbent LEC must prove to a state commission that it is technically infeasible to provide access to unbundled elements, or the unbundled elements themselves, at a level of quality that is superior to or lower than what the incumbent LEC provides to itself.

require Qwest to provide, would require modification to Qwest facilities, rather than substantial alterations to provide superior quality facilities to CLECs. Accordingly, this requirement does not violate either Federal law or the decisions cited by Qwest.

19 In requiring Qwest to provide facilities to CLECs in areas already served by facilities that are used to full capacity, we do not ask Qwest to do anything different for CLECs from what it would do for a retail customer requesting like facilities. We do not require Qwest to provide such facilities "for free." Our requirement neither limits nor prevents Qwest from recovering its investment in the same way it would recover the investment it makes for a retail customer requesting a similar facility. We expect that this approach will avoid placing undue hardship on CLECs when their requirements for UNEs in a location are small, and where Qwest would normally be obligated to build more capacity due to growth. When CLECs have larger demands for UNEs than would be expected from a retail customer, the CLECs should have the option of either seeking favorable construction terms from the incumbent or building their own facilities.

Local Use Restrictions on EELs: Issues WA-EEL-1 and 4

20 The Initial Order rejected sections of Qwest's SGAT that imposed conditions on the use of Enhanced Extended Loops (EELs) by CLECs. The Initial Order referred to a previous Commission arbitration order, *Sprint/US West Arbitration, UT-003006, 5th Suppl. Order*, which rejected Qwest restrictions on combinations of UNEs for CLECs.

21 Qwest argues that the FCC, in its *Supplemental Order Clarification* of June 2, 2000, has determined that local use restrictions should apply to new EELs as well as to conversions from special access, citing the potential harm to the funding of universal service if access charges are lost through using EELs at unbundled element rates as a substitute for special access. Qwest also cites the Multistate report as supporting its position that the local use requirement should be applied to all EELs.

22 Joint CLECs comment that the Initial Order is inconsistent in requiring Qwest to eliminate the restrictions on EELs in SGAT sections 9.23.3.7.1 and 9.23.3.7.2.12.2, but allowing to stand the restriction on connecting EELs to tariffed services in SGAT section 9.23.2.7.2.7. Joint CLECs maintain that the FCC's temporary restriction is narrow and applies only to conversions of special access to EELs, and only to connections between EELs and tariffed special access services.

23 One of the primary objectives of the Telecom Act is to remove restrictions on access to facilities that hamper the development of competition in telecommunications markets. This is the basis of the Commission's decision in Docket UT-003006, the Sprint/US West arbitration case. The FCC has extended a temporary restriction on conversions to EELs from special access circuits, but has declined to decide the issue

permanently until it considers more information about the interplay of access charges, universal service, and interconnection. Until the FCC decides the issue, the Commission finds persuasive the reasoning and the policy stated in the Commission's Sprint/U S West decision in Docket UT-003006.

24 As stated in the Initial Order, if the FCC releases a policy decision on the EEL issue, Qwest may propose a modification to the SGAT reflecting that decision. Until then, the Commission concludes that the asserted interplay of access charges, universal service, and interconnection does not warrant any restriction on the use of EELs. Universal service and competition are both important policy objectives, and while restricting use of EELs would clearly hinder competition, it is far from clear that such a restriction is necessary to preserve or advance universal service. The existing access charge mechanism that Qwest and other local exchange companies use to receive universal service support was developed with the potential for competition in mind. Therefore, we decline to change the decision reached in the Initial Order on this issue.

Counting ISP Traffic as Local Traffic in Calculating Local Usage Restriction for EELs: WA-EEL-16

25 The Initial Order found that ISP-bound traffic in Washington should be considered local traffic, consistent with previous rulings. The decision had no effect on the SGAT, since the Commission also ordered that the local-use restrictions that were the subject of this argument be removed from Qwest's SGAT.

26 Qwest argued that the FCC's *ISP Remand Order* clearly established the FCC's jurisdiction over ISP-bound traffic, and that the Commission must reverse the Initial Order's designation of the traffic as local, because the FCC has ruled that it is interstate. Qwest cites the Multi-state Initial Recommendation in support of its position. No other party commented on this issue.

27 The Commission believes, as Qwest proposes, that states have been preempted by the FCC's *ISP Remand Order* on this question, and that ISP-bound traffic must be treated as interstate for the purpose of determining local use of the facilities in question. However, because we have ordered Qwest to remove usage-based criteria from consideration of facilities being priced as EELs, our changed position acknowledging Federal preemption has no practical effect. If, in the future, the FCC makes a final determination that a local-use restrictions must be applied to intrastate purchases of EELs, such restrictions should count ISP-bound traffic as interstate rather than local.

28 In reaching this conclusion, the Commission also acknowledges the concerns expressed in the Multi-state Initial Recommendation. Mr. Antonuk, the facilitator for the Multi-state proceeding and author of the recommendation, points out that the effect of designating ISP-bound traffic as interstate, and requiring CLECs to purchase

special access facilities when providing such service, will result in an inequity between the CLECs and the ILECs, who can continue to provide ISP customers with local exchange service.[10] The Commission echoes these concerns, and expects that the FCC will address them.

Qwest Compliance with Wholesale and Retail Quality Standards: WA-CL2-5b

29 In Section 9.1.2 of its SGAT, Qwest committed that it would comply with all state wholesale quality standards in providing unbundled elements. The Initial Order required Qwest's SGAT to state that Qwest will comply with all state wholesale and retail service quality standards.

30 Qwest asks that the Commission clarify the order, to specify that Qwest must provide retail parity for UNEs with retail analogues. Qwest points out that some UNEs do not have retail analogues and that the ROC OSS testing forum[11] resulted in performance benchmarks being established for those elements, which should satisfy CLECs. Qwest states that applying retail quality standards to wholesale services will provide CLECs a superior level of service, which is prohibited. Qwest also quotes from the Colorado Hearing Commissioner Decision (analogous to a Final Order) which states that CLECs wanting the retail service quality rules to apply can buy retail products for resale; that applying retail quality service rules would contradict the Colorado Performance Assurance Plan; and that UNEs are wholesale products sold at wholesale prices under wholesale rules and should only be subject to wholesale quality rules. No other comments were filed regarding this issue.

31 The Commission intended the addition of compliance with retail standards to be required where a retail analogue exists, and revises the required change to the SGAT to read as follows:

> "In addition, Qwest shall comply with all state wholesale service quality standards *and their appropriate retail analogue or performance benchmarks*."

[10] While it was not the WUTC's decision that created this potential inequity, it may well fall on the WUTC and other state commissions to resolve it. The disparity that results from charging CLECs special access rates for service to ISP customers while excluding those charges from Qwest's own rates raises concerns about anti-competitive effects of Qwest's rates, both to ISPs that it serves directly and to its own retail customers who call ISPs. It also raises questions about the prices that Qwest itself charges for Internet service, were Qwest not exiting that market.

[11] ROC stands for the Regional Oversight Committee, comprising representatives of the regulatory commissions in states in which Qwest provides local exchange service. The OSS (operational support system) tests are tests sponsored by the ROC on behalf of the states to verify operation of Qwest's OSS systems and the ability of interconnecting carriers to receive the service they need from Qwest.

Connecting UNEs to Finished Services: WA-CL2-6, WA-UNEC-4

32 The Initial Order required Qwest to narrow the prohibition against connecting UNEs to "Finished Services" to a prohibition of connecting loop or loop-transport combinations with tariffed special access services.

33 Qwest maintains that the Initial Order is too broad and contrary to existing law. It states that the FCC does not require the connection of UNEs to finished services, and that connections of UNEs should be limited to services necessary to provide local exchange service. Qwest refers to a Colorado Hearing Commissioner is finding that existing rules prohibit the connection of UNEs to the items identified by Qwest as finished services in the SGAT. Qwest states that it will not oppose the connection of UNEs to local exchange services, but believes allowing connection to non-local services is not consistent with the goals of the Act. Qwest's SGAT has been revised to state that "Loops or loop-transport combinations will not be directly connected to a Qwest special access service."

34 Qwest's SGAT revisions are sufficient to broaden the services that can be connected with UNE combinations. Revising the SGAT to allow a broad range of services to be connected with UNE combinations furthers the goals of the Act and is consistent with other Commission decisions. Qwest's SGAT also contains "change of law" provisions so that further prohibitions imposed by the FCC can be accommodated in it. The Commission concludes that no change to the SGAT, as revised by Qwest above, is required at this time.

Regeneration Costs

35 The Initial Order proposed, based on the FCC's *Second Report and Order*, that Qwest provide regeneration required in cross-connects between itself and CLECs, and that the cost of any regeneration not requested by CLECs should be spread equitably to all users of Qwest facilities including Qwest.

36 Qwest states that it appreciates the Commission's statement that it is entitled to recover regeneration costs and that it will address its concerns about the ruling in response to the Commission's identical ruling in the 15th Supplemental Order, which was the final order on Workshop 2 issues.

37 No change is necessary to the Initial Order.

Distinction between UDIT and EUDIT: WA-TR-2

38 The Initial Order recommended that the SGAT be modified to eliminate the distinction between UDIT and EUDIT. It stated that the only apparent difference justifying different charges for the two elements was the owner at the far end of the

transport. The Initial Order did not specifically state that Qwest must conform the pricing or rate structure for UDIT and EUDIT.

39 In its Comments, Qwest suggested that this issue had been briefed in the generic cost docket (UT-003013), that both policy and cost issues had been presented in that proceeding, and that Qwest believes the Commission should decide the policy issue in that docket. Qwest characterized its comments as a "placeholder," notifying other parties that it would address the issue in the generic cost docket.

40 The Commission's review of the records in UT-003022 and UT-003013 indicates that the record on the policy issues is much more comprehensive in this Docket UT-003022. The Initial Order's recommended treatment on UDIT/EUDIT presupposed that the pricing of the elements would reflect no distinction between them, and that Qwest would make the pricing consistent with our decision here. The Commission agrees with the Initial Order recommendation on this issue. The policy decisions made herein will be followed in the determination of pricing for these elements in Docket UT-003013.

41 Based on the entire record and the file in these proceedings, the Commission makes the following finds of fact and conclusions of law.

V. FINDINGS OF FACT

42 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. § 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.

43 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, to verify the compliance of Qwest with the requirements of section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Telecommunications Act.

44 (3) Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.

45 (4) Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this section, the FCC is required to consult with the regulatory commission of any state that is the subject of a BOC's application under section 271 in order to verify the compliance of the BOC with the requirements of section 271(c).

46 (5) Pursuant to 47 U.S.C. § 252(f)(2), BOCs must submit any statement of terms and conditions that the company offers within the state to the state commission for review and approval.

47 (6) On June 6, 2000, the Commission consolidated its review of Qwest's SGAT in Docket No. UT-003040 with its evaluation of Qwest's compliance with the requirements of section 271(c) in Docket No. UT-003022.

48 (7) During a workshop held on March 12-15 and April 24-25, 2001, Qwest and a number of CLECs submitted testimony and exhibits to allow the Commission to evaluate Qwest's compliance with the requirements of section 271(c), concerning Checklist Items No. 2 (Ubundled Network Elements), 5 (Unbundled Transport), and 6 (Unbundled Switching), as well as to review Qwest's SGAT.

49 (8) Section 9.1.2 of the SGAT sets limits on Qwest's obligations to build facilities requested by CLECs.

50 (9) The FCC's *ISP Remand Order* established the FCC's jurisdiction over ISP-bound traffic.

51 (10) Some UNEs do not have retail analogues; for these elements, the ROC OSS testing forum established performance benchmarks.

52 (11) Qwest's SGAT section 9.23.1.2.2 has been revised to state that "Loops or loop-transport combinations will not be directly connected to a Qwest special access service."

53 (12) Qwest has stated it will address its concerns about the Commission's initial decision on recovery of regeneration costs in response to the Commission's identical ruling in the 15th Supplemental Order on Workshop 2 issues.

54 (13) The Initial Order recommended that the SGAT be modified to eliminate the distinction between UDIT and EUDIT. The record on this issue in this docket is more extensive than the record in Docket UT-003013.

VI. CONCLUSIONS OF LAW

55 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.

56 (2) The limitations on Qwest's obligation to build embodied in the SGAT are inconsistent with Commission policy or with the goals of the Telecommunications Act of 1996.

57 (3) The treatment of ISP-bound traffic as local violates the FCC's ruling in its *ISP Remand Order*. The FCC, through its ISP Remand Order, has preempted the Commission's jurisdiction to determine the jurisdictional treatment of ISP-bound traffic.

58 (4) Qwest's SGAT language regarding adherence to retail service quality standards should be changed to acknowledge UNEs having no retail analogue.

59 (5) The policy decisions regarding UDIT/EUDIT distinctions that are made in this Docket should be used as guidance in setting rates for those elements in Docket UT-003013.

VII ORDER

THE COMMISSION ORDERS That:

60 (1) Qwest must revise its SGAT construction requirements to reflect the decision and requirements articulated in paragraph 267 of the 13th Supplemental Order in this proceeding.

61 (2) ISP-bound traffic should be treated as interstate traffic for purposes of Qwest's SGAT.

62 (3) Qwest must revise SGAT section 9.1.2 to reflect the modified language stated in this Order at paragraph regarding retail service analogues.

63 (4) Qwest's modification of SGAT section 9.23.1.2.2 regarding connection of loop or loop-transport combinations with special access services is accepted.

64 (5) The Commission will consider comments regarding regeneration costs in its reconsideration of the 15th Supplemental Order on Workshop 2 Issues in this Docket.

65 (6) The Commission retains jurisdiction to implement the terms of this Order.

DATED at Olympia, Washington and effective this day of December, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).