

II. BACKGROUND AND PROCEDURAL HISTORY

3 This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc., with the requirements of section 271 of the Telecommunications Act of 1996 (the Act)² and to review and consider approval of Qwest's Statement of Generally Available Terms and Conditions (SGAT) under section 252(f)(2) of the Act. The Commission is conducting its review in this proceeding through a series of workshops, comments by the parties, and the opportunity for oral argument to the Commission on contested issues.

4 In our first workshop in this proceeding, we reviewed Qwest's compliance with 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), as well as SGAT provisions addressing these issues. The administrative law judge entered a *Draft Initial Order* on August 8, 2000, recommending findings and conclusions on contested issues. After receiving comments from the parties, the administrative law judge entered a *Revised Initial Order* on August 31, 2000. The parties submitted written comments on the *Revised Initial Order* and on September 18, 2000, argued disputed issues to the Commission. On June 11, 2001, we entered the *Order Addressing Workshop One Issues: Checklist Items No. 3, 7, 8, 9, 10, 12, and 13 (Workshop One Final Order)*, adopting the findings and conclusions entered in the *Revised Initial Order* with certain modifications.

5 On June 21, 2001, Qwest filed a Petition for Reconsideration of Issues Relating to Intercarrier Compensation for ISP-Bound Traffic, an issue we addressed in the context of Qwest's compliance with the requirements of Checklist Item No. 13. AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T) and WorldCom, Inc. (WorldCom) also filed a joint petition for reconsideration on June 21, 2001. In that petition, AT&T and WorldCom requested the Commission reconsider its determination of several issues involving reciprocal compensation, an issue concerning CLEC access to the InterNetwork Calling Name (ICNAM) database, and whether Qwest's compliance with Checklist Items No. 3 and 13 is subject to a review of Qwest's performance. On July 9, 2001, AT&T and WorldCom filed supplemental authority with the Commission to support its earlier petition. No party filed responses to these petitions.

² Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

III. DISCUSSION

A. Qwest Petition - Compensation for ISP-Bound Traffic

- 6 Paragraph 90 of the *Workshop One Final Order* requires Qwest to modify its SGAT to reflect that traffic bound for Internet-Service Providers (ISPs) is subject to reciprocal compensation. In its petition for reconsideration, Qwest asserts that the law concerning compensation for traffic bound for Internet Service Providers (ISPs) has changed, requiring a change in the Commission's determination on the issue.
- 7 The issue of whether reciprocal compensation applies to ISP-bound traffic has been the subject of several FCC and court orders. In 1999, the FCC issued a declaratory ruling determining that ISP-bound traffic was largely interstate in nature and that the reciprocal compensation provisions of section 251(b)(5) did not apply to such traffic.³ The FCC also determined that states were not precluded from requiring reciprocal compensation for ISP-bound traffic as the FCC had not yet established a federal rule governing intercarrier compensation for ISP-bound traffic.⁴ In the FCC's order approving Bell Atlantic's application for section 271 approval in New York, the FCC determined--based upon its *ISP Order*--that reciprocal compensation for ISP-bound traffic was not a requirement for section 271 approval.⁵ Finally, in March 2000, the U.S. Court of Appeals for the District of Columbia vacated the *ISP Order* in part and remanded the decision to the FCC to determine whether ISP-bound traffic was subject to the reciprocal compensation requirements of section 251(b)(5).⁶
- 8 At the time the administrative law judge entered the *Revised Initial Order*, the FCC had not yet issued an order on remand. The recommended decision in the *Revised Initial Order* held that the provision of the *Bell Atlantic New York Order* did not apply, as the *ISP Order* had been vacated and remanded to the FCC.⁷ In addition, the *Revised Initial Order* held that in the absence of an FCC order precluding states from determining whether ISP-bound traffic is subject to reciprocal compensation, state commissions may consider the issue.⁸

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in Cc Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689, ¶12 (1999) (*ISP Order*).

⁴ *Id.*, ¶27.

⁵ *In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, ¶377 (rel. Dec. 22, 1999).

⁶ *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

⁷ *Revised Initial Order*, ¶199.

⁸ *Id.*, ¶201.

- 9 The FCC issued its *ISP Order on Remand* in April 2001.⁹ In that order, the FCC reaffirmed its decision that ISP bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) but applied a different analysis than it used in the *ISP Order*. The FCC determined that traffic delivered to an ISP is not “telecommunications” as defined in section 153(43), but is information access service provided to information service providers that falls within the category of “information access” in section 251(g).¹⁰ The FCC asserts that section 251(g) exempts certain services, such as information access, from the reciprocal compensation provisions of section 251(b)(5).¹¹ The FCC also determined that compensation for traffic delivered to an ISP is subject to the FCC’s jurisdiction under section 201.¹² The FCC further stated that state commissions would no longer have authority to address the issue of intercarrier compensation for ISP-bound traffic.¹³
- 10 Given the FCC’s determinations in its *ISP Order on Remand*, we agree that we must modify the conclusions in the *Revised Initial Order*, adopted in our *Workshop One Final Order*. Traffic bound for ISPs is not subject to the reciprocal compensation provisions of section 251(b)(5). The FCC, not this commission, will determine the appropriate compensation for such traffic. The issue of compensation for ISP-bound traffic and any SGAT language addressing such compensation is not an issue for consideration under section 271.
- 11 Qwest requests that we approve proposed new SGAT language to address the issue. Under our authority under section 252(f)(2) to review Qwest’s SGAT, we have reviewed Qwest’s proposed section 7.3.6 in the December 14, 2001 version of the SGAT. *Ex. 1169*. We approve that language as conforming to the FCC’s determinations in the *ISP Order on Remand*.
- 12 Finally, Qwest requests that we find the company in compliance with Checklist Item No. 13 with respect to reciprocal compensation. However, the issue of compensation for ISP-bound traffic was not the only disputed reciprocal compensation issue discussed in the *Revised Initial Order* and argued to the Commission. That order also addressed the following impasse issues related to reciprocal compensation: (1) the definition and treatment of tandem switches; (2) compensation for transport between host and remote switches; (3) commingling of interconnection and special access circuits on facilities purchased under private line tariffs; (4) Qwest’s InterLocal Calling Area proposal; and (5) CLEC requests for symmetrical compensation.

⁹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket No. 96-98, CC Docket No. 99-68, FCC 01-131 (rel. April 27, 20001) (*ISP Order on Remand*).

¹⁰ *Id.*, ¶¶31-32, 35, 44.

¹¹ *Id.*, ¶34.

¹² *Id.*, ¶65.

¹³ *Id.*, ¶82.

13 In this order, we modify our decisions concerning compensation for ISP-bound traffic and the tandem switch issue. We deny AT&T's request to reconsider our decision concerning compensation for transport between host and remote switches. Simultaneously with this order, we affirm in the *26th Supplemental Order* our decision in the *15th Supplemental Order* requiring Qwest to establish proportional pricing of facilities used for both interconnection and special access. The remaining issues have been resolved.¹⁴ If Qwest modifies its SGAT concerning the definition and treatment of tandem switches as discussed below, proportional pricing of facilities as discussed in the *26th Supplemental Order*, we will find Qwest in compliance with Checklist Item No. 13 concerning reciprocal compensation.

B. AT&T/WorldCom Joint Petition

14 In their petition, AT&T and WorldCom request reconsideration of the Commission's determination of several issues involving reciprocal compensation, specifically, the definition and treatment of tandem switches, compensation for transport between host and remote switches, and proportional pricing of facilities used for both interconnection and special access. WorldCom requests that the Commission reconsider its decision to restrict CLEC access to the ICNAM Database. Finally, both AT&T and WorldCom assert that Qwest's compliance with Checklist Items No. 3 and 12 should be subject to a review of Qwest's performance. These issues are addressed below.

1. Definition and Treatment of Tandem Switches

15 SGAT section 4.1.1.2 establishes a definition of "tandem office switches," while section 7.3.4.2.1, provides that Qwest's tandem switching rate and tandem transmission rate shall apply in addition to the end office termination rate only if the terminating party switches traffic at a tandem *and* an end office switch. The CLECs objected to these provisions during the first workshop, arguing that under FCC rules, a CLEC switch must be treated as a tandem based only on a determination of the geographic scope of the switch, not its functionality. The *Draft Initial Order* and *Revised Initial Order* required Qwest to modify the SGAT to reflect that the determination of tandem treatment depends on several factors, including geography and functionality, consistent with the Commission's interconnection arbitration decisions and the Ninth Circuit Court of Appeals' decision in *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (1999). *Revised*

¹⁴ We have previously determined that the CLECs have not provided sufficient evidence to support a request for symmetrical compensation. *Revised Initial Order*, ¶268. In addition, Qwest withdrew its InterLocal Calling Area proposal and SGAT provisions prior to our final order on the first workshop. *Final Workshop One Order*, ¶37. AT&T and WorldCom defer resolution of this issue to the second workshop concerning interconnection. *Joint Petition for Reconsideration at 2*.

Initial Order, ¶¶212-15, 217-19. The Commission adopted this recommended decision. *Workshop One Final Order*, ¶91.

16 AT&T and WorldCom request reconsideration of the Commission’s decision based upon a recent order issued by the FCC, as well as a decision of the Ninth Circuit Court of Appeals reversing a Commission interconnection arbitration decision on this very issue. AT&T and WorldCom note that the FCC recently stated in a Notice of Proposed Rulemaking that

In addition, section 51.711(a)(3) of the [FCC’s] rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the test of the *Local Competition Order* regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that its switch serves “a geographic area comparable to that served by the incumbent LEC’s tandem switch” is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.¹⁵

17 *Joint Petition for Reconsideration at 4*. The FCC sought comment on whether the rule should include a functional equivalency test, given that some states have included such a test in interpreting section 51.711(a)(3).¹⁶ As of the date of this order, the FCC has not adopted final rules in this rulemaking.

18 In a Statement of Supplemental Authority filed with the Commission on July 9, 2001, AT&T and WorldCom noted that the Ninth Circuit Court of Appeals recently determined that CLECs need only show that their switch serves a geographic area comparable to U S WEST’s tandem switches to receive the tandem rate. *See US WEST Communications, Inc. v. WUTC*, 255 F.3d 990, 997-98 (9th Cir., 2001).

19 Given these decisions by the FCC and the Ninth Circuit, we concur with AT&T and WorldCom that Qwest must modify SGAT section 7.3.4.2.1 to reflect that a terminating party need only demonstrate that its switch serves a geographic area comparable to that of Qwest’s tandem switch to receive the tandem switching rate and tandem transmission rate in addition to the end office termination rate. Qwest must also modify SGAT section 4.1.1.2 to delete the word “actually.”

¹⁵ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶105 (rel. April 27, 2001).

¹⁶ *Id.*, n.173.

2. Compensation for Transport between Host and Remote Switches

- 20 During the first workshop, the CLECs objected to a provision of Qwest's proposed SGAT, section 7.3.4.2.3, that requires CLECs to pay tandem transmission rates for transport between a Qwest host switch and the switch in a Qwest remote office. The contested issue concerns "whether the originating carrier or the terminating carrier is responsible for the cost of transporting the traffic from the host switch to the remote switch, or, . . . whether the call terminates at the host or at the remote." *Revised Initial Order*, ¶228. The parties also dispute whether the umbilical is more like a loop or a trunking facility.
- 21 The *Draft Initial Order* determined that in order to comply with Checklist Item No. 13, RBOCs must provide reciprocal compensation arrangements in accordance with section 252(d)(2) of the Act. The *Draft Initial Order* noted that section 252(d)(2) requires "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." The *Draft Initial Order* concluded that the host-remote umbilical was more like a loop, and provided that if Qwest expects to be compensated for transport between its host and remote switches, Qwest must also compensate its competitors for transport between the CLEC's control switch and nodes along the CLECs' SONET fiber rings. *Draft Initial Order*, ¶208.
- 22 Following comments by Qwest, the *Revised Initial Order* recommended that Qwest should receive compensation for transport from its host to its remote switches. *Revised Initial Order*, ¶227. The *Revised Initial Order* acknowledged that CLECs are required by Qwest's network design to interconnect at the host and rely on Qwest for transport to the remote switch. *Id.*, ¶229. Finally, the *Revised Initial Order* found that Qwest had demonstrated that the umbilical connecting the host to the remote is an interoffice facility over which Qwest is entitled to recover transport charges. *Id.*, ¶230. The Commission adopted this recommended decision, finding that the SGAT provision requiring CLECs to pay transport charges for transport between Qwest's host and remote switches was consistent with FCC rules and network engineering. *Workshop One Final Order*, ¶83.
- 23 AT&T and WorldCom seek reconsideration, relying on previously filed comments. In those comments, AT&T and WorldCom argue that neither the testimony nor the evidence support Qwest's claim that the umbilical is an interoffice facility. *Joint Comment on Revised Initial Order at 3*. AT&T and WorldCom further argue that the FCC's rule in 47 C.F.R. §51.711 requires ILECs to symmetrically pay CLECs reciprocal compensation for transport in their SONET ring architectures. *Id. at 4*.
- 24 The Commission declines to reconsider the decision on host-remote transport reached in *Workshop One Final Order*. AT&T and WorldCom's arguments that the umbilical and remote switch are no more than a loop, or are equivalent to a loop, are not

convincing. The remote switch is considered an end office. Under FCC rules and definitions, “transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party.” *See 47 CFR §51.701*. In this case there is no tandem switching and no tandem switching charge, but there is transmission between the host switch and the remote switch. Since Qwest has stated that there is only one end office switching charge, the requirements of the Act and FCC orders are satisfied. The language in Qwest’s proposed SGAT section 7.3.4.2.3. is acceptable.

- 25 Additionally, AT&T and WorldCom’s argument that its SONET fiber rings should be treated as transport between the switch and the nodes along the rings is incorrect. The rings represent long extensions of the loop between customers and the CLEC’s switch. The added costs of the loops have been factored into the switching component by allowing the switch to be treated as a tandem switch for the purposes of reciprocal compensation. Should a CLEC decide to deploy remote switching units (RSUs) in its network, traffic terminating at the RSUs would be eligible for the tandem transport charge between the RSU and the CLEC’s primary (or host) switch. Allowing CLECs to recover transport between their switch and an RSU is consistent with the FCC’s requirement for symmetrical compensation.

3. Proportional Pricing

- 26 Whether facilities used for both interconnection and special access should be priced proportionally, i.e., TELRIC rates applying to the portion used for interconnection, and private line tariff rates applying to the portion used for special access, is an issue that arose in both the first and second workshops. AT&T and WorldCom seek reconsideration of our determination in the *Workshop One Final Order* to reject proportional pricing. We grant AT&T and WorldCom’s petition on this issue, having resolved the issue in the *26th Supplemental Order*, entered simultaneously with this order, by requiring Qwest to proportionally price facilities used for interconnection and special access.

4. ICNAM Database

- 27 In order for Qwest to comply with the requirements of Checklist Item No. 10, Qwest must provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.” 47 U.S.C. §271(c)(2)(B)(x). The only issue in dispute on Checklist Item No. 10 concerns CLEC access to the InterNetwork Calling Name or ICNAM database. The *Revised Initial Order* recommended that Qwest need only provide access to the ICNAM database on a “per-dip” or query basis, rather than providing CLECs access to the whole database. *Revised Initial Order*, ¶162. The Commission adopted this recommended decision. *Workshop One*

Final Order, ¶¶20, 78. WorldCom seeks reconsideration of the Commission's decision. *Joint Petition for Reconsideration at 3-4*.

- 28 WorldCom requests that the Commission review the arguments WorldCom made concerning the *Draft Initial Order*, and consider a recent decision of the Michigan Public Service Commission on the issue. *Joint Petition for Reconsideration at 3*. In comments on the *Draft Initial Order*, WorldCom argued that Qwest provides discriminatory access to the ICNAM database by failing to provide access on a bulk transfer basis. WorldCom acknowledged that the FCC has required ILECs to provide access to databases “by means of physical access at the [signaling transfer point] linked to the unbundled database.”¹⁷ WorldCom argues, however, that it is now technically feasible to access the database at other than the signaling transfer point. WorldCom also argues that limiting access to a per-dip or per-query basis requires WorldCom to incur additional costs and prevents WorldCom from providing the same level of service as Qwest.
- 29 The decision of the Michigan Commission on which WorldCom relies merely identifies the issue and states a conclusion that Ameritech should provide access to the ICNAM database on a bulk transfer basis.¹⁸ The decision does not provide a basis for the conclusion and, therefore, provides little guidance for this Commission.
- 30 Both the *Draft Initial Order* and *Revised Initial Order* concluded that Qwest properly interprets the FCC's requirements for providing access to call-related databases, and the ICNAM database in particular. In its Local Competition *First Report and Order*, the FCC provided that “incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network” and that ILECs must provide access “by means of physical access at the STP linked to the unbundled database.”¹⁹
- 31 In its *UNE Remand Order*, the FCC included calling-name databases, such as the ICNAM, as UNEs with other call-related databases, but retained the same standard for access to the UNE: “[I]ncumbent LECs, upon request, must provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network.”²⁰ Further,

¹⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-235, ¶484 (rel. Aug. 8, 1996) (Local Competition *First Report and Order*).

¹⁸ *In the Matter of the Application of Ameritech Michigan for approval of cost studies and resolution of disputed issues related to certain UNE offerings*, Opinion and Order, Case No. U-12540, Mar. 7, 2001, at 21.

¹⁹ *First Report and Order*, ¶484.

²⁰ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ¶¶ 402, 403 (*UNE Remand Order*).

the FCC required ILECs to provide access “by means of physical access at the signaling transfer point linked to the unbundled databases.”²¹

32 Qwest has offered access at a technically feasible point – the signaling transfer point – the point at which the FCC has required ILECs to provide access. WorldCom seeks more than the FCC has required of Qwest. Therefore, we deny WorldCom’s petition for reconsideration on this issue, and affirm our decision that Qwest need not modify its SGAT to allow access to its ICNAM database on a bulk transfer basis.

5. Compliance with Checklist Items No. 3 and 12

33 AT&T and WorldCom assert that the *Workshop One Final Order* correctly notes that “the processes associated with checklist items 3 and 12 are not being tested through the ROC testing process.” *AT&T and WorldCom Petition at 2*. However, AT&T and WorldCom argue that Qwest must still demonstrate its performance in providing access to poles, ducts, conduit, and rights-of-way under Checklist Item No. 3, and providing dialing parity pursuant to Checklist Item No. 12. AT&T and WorldCom request that the Commission modify the *Workshop One Final Order* to reflect that Qwest’s compliance with Checklist Items No. 3 and 12 is “subject to the Commission’s review of Qwest’s performance.” *Id., at 3*.

34 The parties make a reasonable and sensible request, given that we have not yet completed our review for any of the checklist items of Qwest’s overall performance or performance with respect to the performance indicator definitions or PIDS developed during the Regional Oversight Committee (ROC) testing process. Our review of Qwest’s compliance with checklist Items No. 3 and 12 remains subject to a review of Qwest’s overall performance, understanding that there are no PIDs associated with these checklist items.

IV. FINDINGS OF FACT

- 35 (1) Paragraph 90 of the *Workshop One Final Order* requires Qwest to modify its SGAT to reflect that traffic bound for Internet-Service Providers (ISPs) is subject to reciprocal compensation.
- 36 (2) Paragraph 201 of the *Revised Initial Order* held that in the absence of an FCC order precluding states from determining whether ISP-bound traffic is subject to reciprocal compensation, state commissions may consider the issue.
- 37 (3) The FCC issued its *ISP Order on Remand* in April 2001, reaffirming its decision that ISP bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5), and stating that state commissions would no

²¹ *Id.*, ¶ 410.

longer have authority to address the issue of intercarrier compensation for ISP-bound traffic

- 38 (4) SGAT section 4.1.1.2 establishes a definition of “tandem office switches,” while section 7.3.4.2.1, provides that Qwest’s tandem switching rate and tandem transmission rate shall apply in addition to the end office termination rate only if the terminating party switches traffic at a tandem *and* an end office switch.
- 39 (5) Paragraph 91 of the *Workshop One Final Order* required Qwest to modify the SGAT to reflect that the determination of tandem treatment depends on several factors, including geography and functionality.
- 40 (6) The Ninth Circuit Court of Appeals recently determined in *US WEST Communications, Inc. v. WUTC*, Case No. 98-36013 (9th Cir. July 3, 2001) that CLECs need only show that their switch serves a geographic area comparable to Qwest’s tandem switch to receive the tandem rate.
- 41 (7) In a Notice of Proposed Rulemaking issued on April 27, 2001, the FCC interpreted its rule 51.711(a)(3) to require a CLEC to show only that its switch serves a comparable geographic area to be entitled to receive the tandem interconnection rate.
- 42 (8) SGAT section 7.3.4.2.3 requires CLECs to pay tandem transmission rates for transport between a Qwest host switch and remote switch.
- 43 (9) Relying upon the requirement for “mutual and reciprocal recovery” of costs in section 252(d)(2), the *Draft Initial Order* concluded at paragraph 208 that the host-remote umbilical was more like a loop, and required Qwest to compensate its competitors for transport between the CLEC’s control switch and nodes along the CLECs’ SONET fiber rings.
- 44 (10) Paragraph 227 of the *Revised Initial Order* recommended that Qwest receive compensation for transport from its host to its remote switches, noting that Qwest had demonstrated that the umbilical connecting the host to the remote is an interoffice facility over which Qwest is entitled to recover transport charges, and that CLECs are required by Qwest’s network design to interconnect at the host and rely on Qwest for transport to the remote switch.
- 45 (11) In paragraph 83 of the *Workshop One Final Order*, the Commission adopted the recommended decision in paragraph 227 of the *Revised Initial Order*, finding that the SGAT provision requiring CLECs to pay transport charges for transport between Qwest’s host and remote switches was consistent with FCC rules and network engineering.

- 46 (12) The Commission has determined in paragraph 40 of the *26th Supplemental Order* that facilities used for both interconnection and special access should be priced proportionally, i.e., TELRIC rates applying to the portion used for interconnection, and private line tariff rates applying to the portion used for special access, arose in both the first and second workshops.
- 47 (13) Paragraph 162 of the *Revised Initial Order* recommended that Qwest need only provide access to the ICNAM database on a “per-dip” or query basis, rather than providing CLECs access to the whole database.
- 48 (14) In paragraph 78 of the *Workshop One Final Order*, the Commission adopted the recommended decision in paragraph 162 of the *Revised Initial Order*, approving Qwest’s SGAT language concerning access to the ICNAM database.
- 49 (15) The ROC testing process is not testing processes or PIDs associated with Checklist Items No. 3 and 12.

V. CONCLUSIONS OF LAW

- 50 (1) Pursuant to the FCC’s *ISP Order on Remand*, compensation for traffic delivered to an ISP is subject to the FCC’s jurisdiction under section 201, not subject to the reciprocal compensation provisions of section 251(b)(5).
- 51 (2) The issue of compensation for ISP-bound traffic and any SGAT language addressing such compensation is not subject to consideration under section 271.
- 52 (3) Qwest’s proposed SGAT section 7.3.6 conforms to the FCC’s determinations in the *ISP Order on Remand*.
- 53 (4) Pursuant to the FCC’s recent Notice of Proposed Rulemaking concerning intercarrier compensation and the Ninth Circuit’s decision in *U S WEST v. WUTC*, a terminating CLEC need only demonstrate that its switch serves a geographic area comparable to that of Qwest’s tandem switch to receive the tandem switching rate and tandem transmission rate, in addition to the end office termination rate.
- 54 (5) Qwest’s remote switch is considered an end office under the FCC’s rule set forth in 47 C.F.R. §51.701.

- 55 (6) Qwest's proposed SGAT section 7.3.4.2.3 provides for one end office switching charge for transmission between its host and remote switches, consistent with FCC rules.
- 56 (7) Qwest will be in compliance with Checklist Item No. 13, concerning reciprocal compensation if it modifies its SGAT concerning the definition and treatment of tandem switches as required by this order, and concerning the proportional pricing of facilities as discussed in the *26th Supplemental Order*.
- 57 (8) The decision of the Michigan Commission concerning access to the ICNAM database provides little guidance for this Commission in determining whether access to the database should be on a per-query or bulk transfer basis.
- 58 (9) In both the Local Competition *First Report and Order*, and the *UNE Remand Order*, the FCC has required ILECs to provide nondiscriminatory access to call-related databases "for the purpose of switch query and database response" through access to the signaling transfer point.²²
- 59 (10) Qwest's SGAT offers access to the ICNAM database at a technically feasible point – the signaling transfer point – the only point at which the FCC has required ILECs to provide access.
- 60 (11) It is reasonable to require Qwest to demonstrate its overall performance on Checklist Items No. 3 and 12, given that the Commission has not yet completed, for any of the checklist items, its review of Qwest's overall performance or performance with respect to the performance indicator definitions or PIDS developed during the Regional Oversight Committee (ROC) testing process.

VI. ORDER

THE COMMISSION ORDERS That:

- 61 (1) The Commission retains jurisdiction to implement the terms of this order.
- 62 (2) Qwest's Petition for Reconsideration of Issues Relating to Intercarrier Compensation for ISP-Bound Traffic is granted.
- 63 (3) Qwest's proposed SGAT section 7.3.6 is approved for inclusion in the SGAT.
- 64 (4) AT&T and WorldCom's Joint Petition for Reconsideration is granted as to the issues of the definition and treatment of tandem switches, proportional pricing,

²² Local Competition *First Report and Order*, ¶484; *UNE Remand Order*, ¶¶402, 403.

and Qwest's compliance with Checklist Items No. 3 and 12. The Joint Petition for Reconsideration is denied as to the issues of compensation for transport between Qwest's host and remote switches, and access to the ICNAM database.

- 65 (5) Qwest must modify SGAT section 7.3.4.2.1 to reflect that a terminating party need only demonstrate that its switch serves a geographic area comparable to that of Qwest's tandem switch to receive the tandem switching rate and tandem transmission rate in addition to the end office termination rate.
- 66 (6) Qwest must also modify SGAT section 4.1.1.2 to delete the word "actually."
- 67 (7) Qwest's proposed SGAT section 7.3.4.2.3 is approved for inclusion in the SGAT.
- 68 (8) Paragraph 93 of the *Workshop One Final Order* is modified to reflect that Qwest's compliance with Checklist Items No. 3 and 12 is subject to a review of Qwest's overall performance.

DATED at Olympia, Washington and effective this day of February, 2002

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner