

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

In the Matter of the Investigation into ) ) U S WEST COMMUNICATIONS, INC.'s ) ) Compliance with Section 271 of the ) Telecommunications Act of 1996 ) ..... ) 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-003022           DOCKET NO. UT-003040  REVISED INITIAL ORDER
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**I. INTRODUCTION**

1 This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST),<sup>1</sup> with the requirements of Section 271 of the Telecommunications Act of 1996 (the Act).<sup>2</sup> This proceeding will also address the Washington Utilities and Transportation Commission's (Commission) approval of Qwest's proposed Statement of Generally Available Terms (SGAT) under Section 252(f)(2) of the Act.

2 This revised initial order serves as the report of the Staff of the Commission addressing the results of the first workshop, makes draft recommendations to the Federal Communications Commission (FCC) concerning Qwest's compliance with certain requirements under Section 271, and makes recommendations concerning certain portions of Qwest's proposed SGAT.

**A. Section 271 Process**

3 Under Section 271, Regional Bell Operating Companies, RBOCs or BOCs, may only provide toll service between local area transport areas (LATAs) if the RBOCs can demonstrate that certain competitive conditions exist in their local markets. The

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

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

FCC, after consultation with the Department of Justice (DOJ) and state commissions, may authorize an RBOC to provide interLATA service in a particular state if the RBOC meets the conditions, including competitive checklist items, set forth in subsection 271(c) of the Act. In particular, the FCC must consult with state commissions "in order to verify the compliance of the [RBOC] with" the requirements of subsection 271(c). *47 U.S.C. § 271(d)(2)(B)*.

- 4 Qwest is the RBOC that provides local exchange intraLATA toll service to much of Washington state. In advance of Qwest filing an application with the FCC to enter the interLATA market, the Commission in October 1997 issued an Interpretive and Policy Statement on the Process for RBOC Application under Section 271 of the 1996 Telecommunications Act, in Docket No. UT-970300.
- 5 In March of this year, following discussions between Qwest, Commission Staff, Public Counsel, and other interested parties, the Commission issued a Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements. The Supplemental Interpretive and Policy Statement adopted a process and standards for facilitating the Commission's review of Qwest's compliance with subsection 271(c) of the Act. The Commission established a series of three adjudicative workshops, with an additional workshop if necessary, designed to allow the Commission and interested parties to review and comment on Qwest's compliance with subsection 271(c). In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission also adopted certain general and specific evidentiary requirements that Qwest must meet to demonstrate its compliance with each checklist item, as well as items of public interest. The general requirements are set forth in Revised Appendix A to this Order and the specific requirements are set forth in sections below. Appendix B to the Supplemental Interpretive and Policy Statement established similar evidentiary requirements for Competitive Local Exchange Carriers (CLECs).
- 6 The Interpretive and Policy Statement identified that "the statement of generally available terms option that is set out in Section 271(c)(1)(B) of the Act is not available to USWC in Washington, consistent with the purposes of the Act and the provisions of Section 271(c)(1)(B)." In the Supplemental Interpretive and Policy Statement, the Commission clarified that
- The existing interconnection agreements between U S WEST and its competitors will form the basis for U S WEST's legal obligations concerning terms and conditions of service. The Commission will consider an SGAT or similar mechanism if the consideration is limited to elements or services that are not provided for in an interconnection agreement.

- 7 On March 22, 2000, Qwest filed with the Commission its preliminary statement and

outline in support of its FCC application, and in preparation for the first workshop, a summary brief on initial checklist items, the testimony of Lori Simpson, Margaret Bumgarner, and Thomas Freeberg, as well as a Statement of Generally Available Terms (SGAT).

### **B. The SGAT Process**

8 Under Section 252 (f)(1) of the Act, an RBOC may submit to a "State commission a statement of terms and conditions that such company generally offers within that State to comply with the requirements of Section 251 and the regulations thereunder and the standards applicable under this section." Section 252(f)(2) of the Act provides that:

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

9 As discussed above, Qwest filed its proposed SGAT with the Commission on March 22, 2000, in Docket No. UT-003022, requesting Commission approval under Section 252(f)(2). By letter dated April 14, 2000, the Commission rejected Qwest's request to review the SGAT within Docket No. UT-003022. On April 28, 2000, Qwest refiled its SGAT with the Commission requesting Commission approval. On May 19, 2000, the Commission held a workshop for interested persons to discuss the process by which the Commission would review Qwest's proposed SGAT. Following the workshop, the Commission entered an order consolidating the SGAT and Section 271 proceedings. At its June 16, 2000 open meeting, the Commission allowed Qwest's proposed SGAT to go into effect, and stated that it would further review the SGAT provisions in Docket No. UT-003040.

### **C. The First Workshop**

10 On June 21-23, 2000, the Commission held its first workshop in Olympia, Washington on the issues of Checklist Items No. 3 (Poles, Ducts, Conduits, and Rights-of-Way), 7 (911/E911, Directory Assistance and Operator Service), 8 (White Pages Listings), 9 (Numbering Administration), 10 (Signaling and Associated Databases), 12 (Dialing Parity), 13 (Reciprocal Compensation), and provisions of the SGAT addressing these issues. A follow-up workshop was held on July 6, 2000 in Seattle, Washington to address unresolved issues from the June workshop session. Representatives from Qwest, Public Counsel, AT&T Communications of the Pacific

Northwest, Inc. and TCG Seattle (collectively AT&T), WorldCom, Inc. (WorldCom), NEXTLINK Washington, Inc. (NEXTLINK), Electric Lightwave Inc.(ELI), Advanced TelCom Group, Inc. (ATG), TRACER, Teligent Services, Inc., Rhythms Links Inc., Broadband Office Communications, Inc., Sprint, ICG Communications, Inc. (ICG), and Commission Staff participated in the workshop sessions.

11 The Parties filed briefs with the Commission on July 6, 2000, addressing their dispute over compensation for traffic bound to Internet Service Provider's (ISPs) and access to the Inter-network Calling Name database. On July 17, Parties filed briefs on remaining impasse issues. Commission Staff issued a Draft Initial Order on August 8, 2000. The Parties filed comments on the Draft Initial Order on August 18, 2000. The Parties comments are addressed below, or incorporated into discussions in each section below.

12 Qwest and CLECs submitting comments all argued that the Commission should consider Qwest's SGAT, both for purposes of determining Qwest's compliance with Section 271, as well as for purposes of Commission review and approval under Section 252(f). While Qwest and the CLECs are correct that the SGAT may have provisions that incorporate more current industry practices and FCC determinations, Qwest's history and current practices in providing interconnection has occurred under its existing interconnection agreements. The SGAT provides a promise by Qwest for future, as yet untested, practices.<sup>3</sup> The Parties should continue to address SGAT issues in workshops to evaluate Qwest's proposal under Section 252(f). The process is an efficient way to develop consensus on SGAT provisions. However, the Parties should also address Qwest's experience and practice under existing interconnection agreements for consideration of Qwest's compliance with Section 271. The SGAT alone cannot demonstrate compliance.

## II. GENERAL MATTERS

13 Much of the discussion in the first workshop sessions focused on resolution of disputes concerning Qwest's compliance with the certain requirements of Section 271(c), while primarily focusing on language in Qwest's proposed SGAT. Qwest offers the SGAT as an option for CLECs instead of negotiating or arbitrating an interconnection agreement. *See Tr. at 811*. This proceeding will address Commission evaluation of Qwest's SGAT under Section 252(f)(2) of the Act. However, consistent with the Commission's directions in the Supplemental Interpretive and Policy Statement, for purposes of determining Qwest's compliance with the Section 271(c), the Commission will consider Qwest's proposed SGAT only for the purpose of considering elements of services not provided in interconnection

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<sup>3</sup> While Qwest asserts that CLECs are already executing the SGAT for interconnection in Washington, there is no history of experience under the SGAT, as yet.

agreements, but not to determine Qwest's compliance with checklist items or other requirements under Section 271(c)(1)(B). The Commission will evaluate the SGAT to ensure that it is not in violation of Commission policy even in areas where there are interconnection agreements and the SGAT is not the controlling document for all companies. The Commission will also evaluate the terms of the SGAT independently from Qwest's compliance with checklist items under Section 271.

14 The workshop participants discussed two general issues in addition to Checklist Items No. 3, 7-10, 12, and 13. First, the participants discussed how to handle SGAT issues that do not specifically relate to any of the individual checklist items. The participants proposed to defer discussion of the issue to allow resolution in informal discussions among the participants outside of the workshop framework. At the prehearing conference on August 29, 2000, for the second workshop, the Parties reported that the matter is still under discussion.

15 Second, the participants proposed to develop SGAT language on how to implement the pick and choose provision of the Act, Section 252(i). The matter was discussed very generally during the June workshops. *See Tr. at 348-52.* During the July 6, 2000 workshop, Qwest and AT&T offered proposed SGAT language in Exhibit 236 to address the issue. The language reflects an agreement reached between Qwest and AT&T in discussions in Colorado workshops. A number of CLECs requested additional time to review the proposed language. The participants were directed to continue discussions outside of the workshop and present any disagreements in briefs due July 17, 2000. Following the workshop, MCG Communications, Inc. d/b/a Mpower Communications Corp., MetroNet Service Corporation, NEXTLINK, ELI, and ATG, all requested additional time to negotiate concerning this SGAT language, proposing that the matter be deferred to a future workshop. Qwest vigorously opposed deferring the matter to a future workshop. In the Fourth Supplemental Order in this proceeding, the Commission deferred the matter to a future workshop and for discussion during the August 29, 2000 prehearing conference.

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

#### **A. FCC Requirements and Jurisdiction**

16 Section 271(c)(2)(B)(iii) requires RBOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [RBOC] at just and reasonable rates in accordance with the requirements of Section 224." The FCC's orders approving requests by SBC Communications in Texas and Bell Atlantic in New York to provide interLATA service provide that the FCC interprets Section 251(b)(4) of the Act to require "nondiscriminatory access to LEC poles, ducts, conduits, and rights-of-way for competing providers of telecommunications services

in accordance with the requirements of Section 224."<sup>4</sup>

- 17 Section 224, which governs the regulation of pole attachments, provides that the FCC has jurisdiction over the rates, terms, and conditions for pole attachments, unless such matters are regulated by a state. While some portions of the FCC's rules governing pole attachments have been invalidated, the provisions relating to rates and most provisions relating to terms and conditions remain valid.<sup>5</sup> Subsection 224(c)(3) provides that:

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

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

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

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

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State if the prescribed period does not extend beyond 360 days after the filing of such complaint.

- 18 The Commission has statutory authority to regulate in the public interest the rates, terms, and conditions of attachments to the poles, ducts, conduits, or rights-of-way of electric or telecommunications companies in the state of Washington. *See chapter 80.54 RCW*. Washington is one of the states that certified to the FCC that it regulates rates, terms, and conditions for pole attachments.<sup>6</sup> Washington filed its certification on the basis that it regulates the rates, terms, and conditions of pole attachments under chapter RCW 80.54. The Commission has not adopted rules implementing its authority under chapter 80.54 RCW to regulate the rates, terms, and conditions of

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<sup>4</sup> *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, ¶243 (rel. June 30, 2000) (*SBC Texas Order*); *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 ¶263 (rel. Dec. 22, 1999) (*Bell Atlantic New York Order*).

<sup>5</sup> *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11<sup>th</sup> Cir. 2000).

<sup>6</sup> *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd No. 4 1498 (1992).

pole attachments. However, given the statutory scheme in Washington state, it is clear under Subsection 224(c)(3) that Washington state's regulations governing the rates, terms, and conditions of pole attachments apply in this matter. Thus, Qwest must comply with Washington statutes on pole attachments, or the rates negotiated in interconnection agreements, in order to meet its burden under Section 271(c)(2)(B)(iii) and Section 252(f)(2).

## **B. Evidentiary Requirements**

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

1. How is U S WEST providing nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates?
2. Does U S WEST provide the same access to these facilities to CLECs as it provides itself? Describe how it does so.
3. Does U S WEST make available to CLECs its maps, plats, and other relevant data, and what are the terms and conditions of such availability? Describe how it does so.
4. Describe any municipal (or other type of government) franchise, grant, or additional requirement that affects U S WEST's access to pathways, poles, conduits, and rights-of-way differently from that of unaffiliated carriers.
5. What is U S WEST's policy for reservation of space for its own use? How does this affect access to rights-of-way of competitors?
6. How many competitors gain access to customer dwellings in multidwelling units, including access to interbuilding cabling?

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

way agreements and the time to respond to CLEC requests for access to poles, ducts, conduits, and rights-of-way, is discussed further below.

### **C. Parties' Positions**

#### *1. Qwest*

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

#### *2. AT&T*

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

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

24 AT&T objected to the SGAT section on recovering costs for inspections; on



terminating an order “for cause;” and the section setting forth the standards CLECs must meet for access to facilities. *Id. at 18*. AT&T concluded that the SGAT sections noted in Mr. Wilson’s testimony must be deleted before Qwest cannot be found in compliance with Checklist Item No. 3, and before the Commission may approve the SGAT.

### 3. *NEXTLINK*

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

### 4. *WorldCom*

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

### 5. *Qwest Response*

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

28 Mr. Freeberg testified that Qwest believed it would be able to work with AT&T regarding its concerns with the SGAT language raised by Mr. Wilson. Mr. Freeberg also stated that Qwest agreed with the recommendation to defer the issue of multiple dwelling unit sub-loops to the workshop on Checklist Items Nos. 2 and 4. *Id. at 8*.

29 In response to the concerns raised by NEXTLINK, Mr. Freeberg confirmed that Qwest had provided cost support information to NEXTLINK. *Id. at 9*. With respect to the unauthorized attachment penalties contained in the SGAT, Qwest stated that penalties higher than \$200 in the Washington SGAT were found acceptable in Oregon and have been incorporated into proposed Oregon Administrative Rules. *Id. at 10*.

On field verifications, Qwest states that field verifications are almost always necessary to provide the level of information needed for inquiries regarding pole, conduit, and duct attachments. *Id. at 11*. In answer to NEXTLINK's concern regarding the unilateral ability to raise rates as reflected in the SGAT exhibits, Qwest points out that NEXTLINK, as a party to an interconnection agreement with Qwest, would not be subject to the provisions in the attachment, identified as Section 4.2 of Attachment 3 to Exhibit D of the SGAT. *Id. at 12-13*.

#### **D. Impasse Issues**

30 During the workshop sessions, two non-pricing issues arose concerning Qwest's compliance with Checklist Item No. 3 and certain language in the SGAT.<sup>7</sup> First, AT&T and WorldCom argued that Qwest must make available copies of right-of-way agreements Qwest has negotiated with private landowners to allow competitors nondiscriminatory access to the rights-of-way owned or controlled by Qwest. Second, AT&T, WorldCom, and other CLECs asserted that Qwest must respond within 45 days to CLEC requests for access to poles, ducts, conduit, and rights-of-way, even for extensive or large requests.

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

##### *1. Private Right-of-Way Agreements*

###### *a. AT&T/WorldCom Position*

32 AT&T and WorldCom (Joint Intervenors) argue that Qwest should disclose, upon request, right-of-way (ROW) contracts and easements that Qwest has entered into with private building and property owners to allow CLECs nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Qwest. The Joint Intervenors argue that the FCC has required RBOCs to make all maps, plats, and

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<sup>7</sup> There was also a lack of consensus on the charges Qwest proposes for inquiries and field verifications, but that issue, like other pricing issues, will be addressed in Docket No. UT-003013. Based on the workshop discussions, that issue also may be resolved if the Parties can agree on SGAT language that would permit CLECs to conduct their own field verifications.

all relevant data available for inspection and copying by a CLEC requesting access.<sup>8</sup> The Joint Intervenors assert that access to the agreements is "integral to assuring that [Qwest] provides nondiscriminatory access to ROW at just and reasonable rates." *Joint Position and Brief Regarding Right-of-Way Contracts, at 13.*

- 33 The Joint Intervenors assert that Qwest, as the historically dominant local telephone utility in Washington state, has authority to exercise powers of eminent domain to obtain necessary ROW access. The Joint Intervenors note that Qwest has traditionally not used its right of eminent domain, but has instead negotiated numerous agreements with private landowners. Some of these agreements are formally recorded in county real property records, but others may be less formal, unrecorded documents. By refusing to provide access to the documents, the Joint Intervenors argue that Qwest violates the requirement for nondiscriminatory access requiring CLECs to test through litigation whether Qwest has ownership or control over an agreement, and puts CLECs and property owners in an awkward position of numerous and costly ROW negotiations or eminent domain proceedings.
- 34 The Joint Intervenors argue that Qwest has ownership or control over the ROWs granted through private contracts and easements. By failing to disclose the agreements, Qwest frustrates the CLECs' ability to determine the nature and scope of Qwest's ownership and control, and requires CLECs to negotiate with land-owners without the necessary knowledge about the existing agreement. They assert that Qwest's failure to provide access to the agreements is anti-competitive behavior. Requiring Qwest to provide access to the agreements will level the playing field for parties negotiating ROW agreements. The Joint Intervenors also express concern that, if Qwest has no obligation to reveal the ROW agreements, it will have no incentive to avoid entering into agreements that "explicitly or implicitly discriminate against other competitors or create exclusivity arrangements." *Joint Brief, at 7.*
- 35 Finally, the Joint Intervenors note that Qwest has made a proposal in Colorado to resolve this issue by providing a quit-claim deed to the CLEC and requiring the CLEC to negotiate with the landowner to obtain consent to view the agreement before Qwest will provide access to the agreement. The Joint Intervenors state that they are reviewing the proposal, but object to the cost of the proposal and the requirement to obtain consent from the landowner before obtaining access to the document. The Joint Intervenors argue that Qwest's proposal reveals the company's cynical approach to local competition. *Joint Brief, at 12.*

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

b. Qwest Position

- 36 Qwest asserts that the FCC has determined, with respect to private agreements, that the scope of a utility's ownership or control of an "easement or right-of-way is a matter of state law." *First Report and Order*, ¶ 1179. Qwest also asserts that the FCC declined to "structure general access requirements where the resolution of conflicting claims as to a utility's ownership or control depends on variables that cannot now be ascertained." *Id.* Qwest further quotes the FCC as stating "the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit access." *Id.*
- 37 Qwest denies that it has ownership or control over private ROW agreements, asserting that it is the private landowner who controls access. Qwest asserts that the FCC has stated that where a local exchange carrier has neither ownership nor control over the right-of-way, the carrier has no obligation to obtain access on behalf of the requesting carrier.<sup>9</sup>
- 38 To satisfy the concerns of the Joint Intervenors, Qwest proposes a process by which "Qwest will agree to provide both redacted copies of such agreements, *and* quitclaim the right to use such real property rights to their fullest extent possible, on the condition that the CLECs obtain the consent of the landowner to place the MDU agreement in the public domain and agree to other reasonable protections of Qwest's real property rights." *Qwest's Legal Brief Regarding Disputed Workshop Issues*, at 4. Qwest believes that this process satisfies its obligations under Checklist Item No. 3.

c. Draft Initial Order

- 39 In the Draft Initial Order, we noted that the Joint Intervenors and Qwest continue to negotiate this issue and encouraged them to continue discussions. However, after reviewing the parties' arguments, we determined that Qwest's current proposal for providing a quitclaim deed, and requiring CLECs to obtain landowner consent before viewing the document, as well as pay significant fees before viewing the document, places an unreasonable and significant burden on CLECs. Qwest's existing proposal is not acceptable, and does not meet the requirements under Section 271(c)(2)(B) for nondiscriminatory access to ROWs.

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<sup>9</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266, ¶ 38 (rel. Oct. 26, 1999) (*Order on Reconsideration*).

40 Qwest denies that it has ownership or control over ROWs established in agreements Qwest negotiated with private parties. Qwest further asserts that whether it has ownership or control is a matter of state law to be determined on a case-by-case basis. Regardless of whether Qwest has ownership or control, the FCC has required RBOCs to provide access to its maps, plats and *other relevant data* to avoid "the need for costly discovery in pursuing a claim of improper denial of access." *First Report and Order*, ¶1223 (*emphasis added*).

41 Qwest further argues that access to private ROW agreements should not be an issue in determining its compliance with Section 271(c)(2)(B). Qwest is not correct. One of the evidentiary requirements Qwest must meet to establish its compliance with Checklist Item No. 3 is whether Qwest makes available to CLECs its maps, plats, and *other relevant data*. The FCC established this requirement in the *First Report and Order*. *Id.* By failing to make available to CLECs private ROW agreements to which Qwest has access, Qwest creates unnecessary barriers to competition by requiring CLECs to negotiate with private landowners without knowing the terms of Qwest's agreement, and requiring CLECs to engage in potentially costly proceedings with both Qwest and the landowner to obtain eminent domain or right-of-way access.

d. Qwest's Comments

42 Qwest disagrees with the Draft Initial Order and argues that Staff should avoid reaching a decision on this issue until the parties have completed their negotiations in Colorado proceedings. Qwest asserts that its quitclaim proposal, which it is still negotiating with CLECs, does not require CLECs to gain property owner consent when the right-of-way is publicly recorded. Qwest only requires landowner approval before a CLEC views any agreement that "includes a confidentiality provision or creates a legitimate expectation of privacy on the part of the property owner." *Qwest's Comments on Staff's Draft Initial Order on Workshop 1 Issues*, at 3.

43 Qwest notes that the FCC has allowed utilities to impose reasonable conditions to protect proprietary information.<sup>10</sup> Qwest asserts that its requirements for obtaining property owner consent is a reasonable condition. Qwest is concerned that CLECs will publicly record any agreement made available to them. Qwest believes landowner consent should be required prior to the release of information to CLECs.

44 Qwest also notes that it has modified its proposal to allow CLEC review during the inquiry phase of an access request, with a "nominal, one-time fee," and that this modification should satisfy Staff's concerns about cost.

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<sup>10</sup> *First Report and Order*, ¶ 1223.

45 Finally, Qwest asserts that CLECs cannot avoid negotiating directly with private landowners concerning access to rights-of-way. Qwest argues that it has done more than it needs through its proposed Quitclaim process to meet the requirements of Checklist Item No. 3.

e. Discussion

46 After considering Qwest's comments, we continue to believe that any proposal to resolve this issue is unacceptable if it places significant burdens on CLECs in order to obtain access to documents that identify the nature of Qwest's ownership or control over access to poles, ducts, conduits, or rights-of-way. We do agree with Qwest that the CLECs bear ultimate responsibility for negotiating the terms of access with the private landowners. However, the point at which CLECs must contact property owners remains in dispute. We are pleased that Qwest has modified the fees CLECs must pay and the time at which CLECs may view documents, which lessens the burden imposed in Qwest's original proposal. However, there appears to be continuing dispute as to how to approach agreements in which Qwest believes the property owner may have an expectation of privacy and in which CLECs believe Qwest may have exclusive access. We maintain our request that the parties continue to negotiate this issue and notify the Commission if they reach accord, or impasse, on this issue.

2. *Time for Qwest to Respond to Requests for Access*

a. AT&T/WorldCom/Joint CLEC Position

47 AT&T, WorldCom, and the Joint CLECs (NEXTLINK, ELI, and ATG) object to provisions in Qwest's SGAT in which Qwest proposes to provide access to pole attachments or a response to a request for access within 45 days for "standard inquiries" of "one hundred (100) poles or fewer, thirty (30) utility hole sections or fewer, or two (2) miles of linear ROW or less." *See Ex. 106, SGAT Exhibit D, Sections 2.1 and 2.2.* For larger requests, Qwest proposes response times of up to 115 days, and for requests of more than 500 poles, 150 manholes, or 10 miles of linear ROW, Qwest proposes that the time limit be negotiated. *Id.* AT&T, WorldCom, and the Joint CLECs assert that the FCC's rules require RBOCs to respond to requests for access to poles, ducts, conduits, and rights-of-way within 45 days, regardless of the size of the request: "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day." 47 C.F.R. § 1.403.3(b).

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

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

*Cavalier Telephone, ¶ 15 (emphasis added).*

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

b. Qwest Position

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

51 Qwest also argues that its SGAT provision is a very reasonable one, and that WorldCom agreed to the SGAT language during similar workshops in the state of Arizona. Qwest believes WorldCom should be bound by its agreement and should not be allowed to "unravel" its agreement with Qwest.

c. Draft Initial Order

52 The Draft Initial Order noted that the Commission must determine whether Qwest is in compliance with the requirements of Checklist Item No. 3, including any FCC's rules and regulations and orders in effect at the time the application was filed. *See SBC Texas Order, at ¶ 22.* The Commission must also consider whether to approve the SGAT provision under Section 252(f)(2) of the Act. While Qwest is correct that the FCC rule does not specify whether the 45 day requirement applies to a request for a single pole or manhole, the rule can also be reasonably interpreted to refer to

requests for a number of poles or manholes. The FCC has in fact interpreted the rule in that way. Although the *Cavalier Telephone* decision was decided after Qwest filed its application with the Commission, the FCC's decision on the matter is eminently reasonable.

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

d. Qwest's Comments

54 In Qwest's comments in response to the Draft Initial Order, the Company provides two basic arguments and three specific examples of why the Company should be able to offer a flexible time schedule beyond a flat 45 days, for granting or denying requests for access to poles, ducts, and rights-of-way based on size. Qwest suggests as a worst case scenario that one CLEC could request access to the 100,000 poles and 348,000 feet of duct that Qwest controls in Washington and that the Company would have to respond within 45 days. They suggest that it would be physically impossible to evaluate the condition of all of these facilities in 45 days.

55 Specifically, Qwest argues that nothing in Section 251(b)(4) or Section 271(c)(2)(B)(iii) of the Act requires Qwest to meet a 45 day threshold regardless of size of the request. Qwest also asserts that the FCC's rule in 47 C.F.R 1.1403 (b) is silent on very large pole requests. Qwest argues that the FCC's *First Report and Order* states that inflexible blanket rules are inappropriate and that safety and flexibility need to be considered with decisions made on a case-by-case basis.<sup>11</sup> Qwest argues that the Draft Initial Order is incorrect in asserting that FCC rule precludes Qwest from having a rolling approval schedule based on size. Qwest also argues that the Draft Initial Order misinterprets the FCC's *Cavalier Telephone* decision. Qwest argues that the primary issue in *Cavalier* concerned a utility holding Cavalier hostage for safety violations that would need to be corrected prior to permitting the phone company to attach to their poles.

e. Discussion

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<sup>11</sup> *First Report and Order*, ¶¶ 1143, 1151.



- 56 After reviewing Qwest's arguments, we continue to believe that it is appropriate to require a 45 day response time regardless of the size of the request. While it certainly is true that neither Section 251(b)(4) nor Section 271(c)((2)(B)(iii) specify a time limit for granting or denying access to poles, ducts, and rights-of-way, the FCC's rule and subsequent orders require a 45-day limit. RBOCs must comply with relevant FCC rules and orders to be compliant with Section 271.<sup>12</sup> While the FCC's rule is silent as to whether the response time varies depending upon the size of the request, nothing in the rule suggests that the size of the request should alter the 45 day limit. AT&T, World Com, and the Joint CLECs are correct in recognizing that the rule is explicit on the point that "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day."
- 57 The *First Report and Order* does suggest that "in evaluating requests for access, a utility may continue to rely on such codes as the NESC [National Electric Safety Code] to prescribe standards with respect to capacity, safety, reliability, and general engineering principles."<sup>13</sup> However, allowing these factors in evaluating a request for access, or placing conditions on access is different than granting or denying the request within a given 45 day period. These standards can form the basis for denying the request, but not for changing the time frame in which the evaluation takes place. The 45 day rule is intended as a "swift and specific enforcement procedure that will allow for competition where access can be provided."<sup>14</sup> Establishing guidelines for evaluation is not the same as having those guidelines drive the timetable for acting on a properly documented application from a CLEC.
- 58 In its *Local Competition Reconsideration Order*, the FCC reiterated that "because *time is of the essence in access requests*, a utility must respond to a written request for access within 45 days. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45<sup>th</sup> day."<sup>15</sup> This statement recognizes that the time frame for approving or denying a request is a primary policy consideration and specifies that the appropriate time frame is 45 days. The FCC further held in its *Local Competition Reconsideration Order* that:

Under the procedures adopted in the order, a utility must grant or deny a request for access within 45 days of a written request. If the utility denies the request, it must do so in writing, the reasons

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<sup>12</sup> *SBC Texas Order*, ¶ 22.

<sup>13</sup> *First Report and Order*, ¶ 1151.

<sup>14</sup> *Id.*, ¶ 1224.

<sup>15</sup> *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266 (Rel. Oct. 26, 1999), ¶ 117 (*Local Competition Reconsideration Order*).

given for the denial must relate to the permissible grounds for denying access (e.g., lack of capacity, safety, reliability, or engineering concerns).<sup>16</sup>

59 Again, this seems to be an affirmation of the 45 day limit. It does not preclude the utility from denying the request on reasonable grounds, but it does affirm that the 45 day time frame is appropriate for making these determinations.

60 Finally, concerning the *Cavalier Telephone* case, one of the primary issues in that case was, as Qwest notes, a utility company that delayed access to its poles due to safety and other issues. However, the FCC's decision is clear that the number of poles requested does not alter the requirement to grant or deny access to poles, ducts, or rights-of-way within 45 days.<sup>17</sup>

#### **E. Verification of Compliance**

61 Aside from these two issues in dispute, all parties agreed that Qwest had met the requirements of Checklist Item No. 3 and any outstanding pricing issues. Given that the parties are in agreement, we agree to defer the issue of access to multiple dwelling unit sub-loops to the workshop for Checklist Item Nos. 2 and 4. Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated its compliance with Checklist Item No. 3, subject to resolution of the sub-loop issue, any outstanding pricing issues, and resolution of the two issues in dispute above. As discussed in the Commission's Fourth Supplemental Order, Qwest's compliance with this checklist item is contingent upon Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the Regional Oversight Committee (ROC) Operation Support System (OSS) regional testing process.

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

#### **A. FCC Requirements**

62 Section 271(c)(2)(B)(vii) of the Act requires "nondiscriminatory access to - - (I) 911 and E911 services." In its *Ameritech Michigan Order*, the FCC found that "section

271 requires a BOC to provide competitors access to its 911 and E911 services in the

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<sup>16</sup> *Id.* ¶ 17.

<sup>17</sup> *Cavalier Telephone*, Order and Request for Information, DA 00-1250, File No. PA 99-005 (Rel. June 7, 2000), ¶ 15.

same manner that a BOC obtains such access, i.e., at parity.”<sup>18</sup>

## **B. Evidentiary Requirements**

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

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

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

## **C. Parties’ Positions**

### *1. Qwest*

65 Qwest states that it meets the requirements of Checklist Item No. 7(i) through the provisions in its interconnection agreements and through the offerings contained in

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<sup>18</sup> *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ¶ 256 (*Ameritech Michigan Order*).

the SGAT. *Ex. 131-T, at 23*. Qwest's witness, Margaret Bumgarner, describes in her testimony the processes competitors use to obtain 911 and E911 service from Qwest (*Id. at 7, 9-13*), and Qwest's legal obligations, as reflected in the SGAT and interconnection agreements, to provide these services to CLECs at parity with those services provided to itself. The 911 and E911 services Qwest provides include: provision and protection of trunks for 911 and E911 calls; call routing; E911 database management, including updates, accuracy, and error correction; and a description of performance indicators being developed through the ROC OSS testing project. *Ex. 141-T, at 10*.

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

## 2. AT&T

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

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

## 3. WorldCom

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

#### 4. *Qwest Response*

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

#### 5. *Comments on Draft Initial Order*

71 Qwest agrees with the conclusions of the Draft Initial Order concerning this checklist item. The CLECs also noted agreement, but sought to clarify that compliance with the checklist item was contingent on Qwest's performance.

### **D. Verification of Compliance**

72 As stated above, Qwest amended language in its SGAT and technical documents to address the remaining concerns of the parties. At the end of the July 6 workshop, all parties at the workshop agreed that all action items regarding Checklist Item 7(i) were resolved and that Qwest was in compliance with Checklist Item No. 7(i), subject to Commission review of performance measures.

73 Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated that it makes available to CLECs nondiscriminatory access to 911 and E911 services, and that through its interconnection agreements and proposed SGAT, it is subject to legally binding commitments to provide these services. Qwest is in compliance with the requirements of Checklist Item No. 7(i) subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process. The ROC OSS testing process is still underway with respect to the 15 performance measures for access to 911/E911 service.

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

#### **A. FCC Requirements**

74 Section 271(c)(2)(B)(vii) of the Act requires RBOCs to provide to CLECs "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers." The FCC concluded in the *Second BellSouth Louisiana Order* that a BOC "must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of Section

271(c)(2)(B)(vii)(II)."<sup>19</sup> In the *Local Competition Second Report and Order*, the FCC held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."<sup>20</sup>

75 The FCC concluded that BellSouth did not demonstrate nondiscriminatory access to directory assistance. The FCC questioned why BellSouth had not disaggregated performance data for itself and competing carriers. The FCC stated that future showings of compliance with this checklist item should include either disaggregated performance data, should explain why disaggregation was not feasible or was unnecessary to demonstrate compliance.<sup>21</sup>

### **B. Evidentiary Requirements**

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

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

### **C. Parties' Positions**

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<sup>19</sup> *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121, 13 FCC REd 20599, ¶ 240. (*Second BellSouth Louisiana Order*).

<sup>20</sup> *See Bell Atlantic New York Order*, ¶ 352.

<sup>21</sup> *Second BellSouth Louisiana Order*, ¶ 245.

1. *Qwest*

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

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

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

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

2. *AT&T*

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

### 3. *WorldCom*

83 WorldCom, through the testimony of Thomas Friday, stated its objections to language in the SGAT, Section 10.5.1.1.2, that it claimed unduly restricted WorldCom's use of directory assistance list information purchased from Qwest. *Ex. 186-T, at 6*. WorldCom testified that the use of the word "license" in that SGAT section implied "a greater control and power to revoke by [U S WEST] on the use of this data by CLECs than is appropriate." *Id.*

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

### 4. *Qwest Response*

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

86 Qwest states that WorldCom has provided no evidence that use of the word "licensing" is causing it harm, and that directory assistance listings are customer information that Qwest must appropriately protect, and licensing the listings for a specific use provides the needed protection. Qwest also points out that its agreements with third parties whose listings are included in Qwest's listing database provide that the third-party listings can only be used for the purpose of providing directory assistance service. Removing the licensing language could result in violations of Qwest's agreements. *Id. at 6*.

87 On the subject of accuracy and warranty requirements, Qwest responds is that it has an obligation to ensure that CLEC listing information it receives is accurate, but that



Qwest cannot be asked to warrant that its listing information, including listings from CLECs and others, is accurate. During the workshops, Qwest offered proposed amendments to sections of the SGAT that would make the accuracy and warranty requirements reciprocal for CLECs and Qwest. AT&T raised concerns that the language as drafted was less restrictive to Qwest than to the CLECs.

#### 5. *Comments on Draft Initial Order*

88 Qwest agrees with the conclusions of the Draft Initial Order concerning this checklist item. The CLECs also noted agreement, but sought to clarify that compliance with the checklist item was contingent on Qwest's performance.

### **D. Verification of Compliance**

89 At the conclusion of the July 6, 2000, workshop, the parties agreed to continue to work on resolving the remaining impasse issues regarding reciprocity and licensing, as these issues were to be addressed in a Colorado workshop held August 1-3, 2000. On August 4, 2000, Qwest submitted a document via e-mail entitled "Status Report Re: Workshop 1 Items Discussed in Colorado Workshop 2 and Update to Outstanding Issues Log." In that document, Qwest stated that Issues WA-7-7 and WA-7-9a, pertaining to reciprocity and licensing, had been resolved for Washington. Qwest submitted language agreed to by the parties which addressed the concerns raised above by AT&T and WorldCom. We believe the new SGAT language satisfies the concerns of the commenting parties and is reasonable. We conclude that Qwest has satisfied the requirements of Checklist Item No. 7(ii) and Section 252(f)(2), subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process.

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

### **A. FCC Requirements**

90 Section 271(c)(2)(B)(vii) of the Act requires RBOCs to provide to CLECs "nondiscriminatory access to . . . (III) operator call completion services." The FCC concluded in the *Second BellSouth Louisiana Order* that a BOC "must be in compliance with the regulations implementing Section 251(b)(3) to satisfy the requirements of Section 271(c)(2)(B)(vii)(III)."<sup>22</sup> The FCC concluded that BellSouth did not demonstrate nondiscriminatory access to operator services. It questioned why BellSouth had not disaggregated performance data for itself and competing carriers. It stated that future showings of compliance with this checklist item should include either disaggregated performance data, or should explain why disaggregation was not

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<sup>22</sup> *Second BellSouth Louisiana Order*, ¶ 240.

feasible or was unnecessary to demonstrate compliance.<sup>23</sup>

## **B. Evidentiary Requirements**

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

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

## **C. Parties' Positions**

### *1. Qwest*

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

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

95 Qwest uses two performance indicators to measure performance for operator services: "Speed of Answer" (OS-1) and "Calls Answered within 10 Seconds" (OS-2). Both of these measures are performed for aggregate data from Qwest and CLEC end use customers. Qwest states that it does not disaggregate these measures to compare its performance for CLEC customers versus its own customers because the operator services system incorporates parity by design. Calls are answered on a first-come, first-served basis. The only exceptions are made for calls involving Spanish-speaking callers and coin telephone callers, and once these calls are routed to those operators, the calls are answered on a first-come, first-served basis. Qwest states that because its

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<sup>23</sup> *Id.*, ¶ 245.

call answering systems and procedures are such that operators cannot distinguish between calls from CLEC end users and Qwest end users, that there is no need to maintain separate performance data for end users based on the end user's service provider.

## 2. *Other Parties' Response*

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

## 3. *Comments on Draft Initial Order*

97 Qwest agrees with the conclusions of the Draft Initial Order concerning this checklist item. The CLECs also noted agreement, but sought to clarify that compliance with the checklist item was contingent on Qwest's performance.

## **D. Verification of Compliance**

98 Based on the evidence presented, and the absence of concerns raised by parties either in testimony or in workshops, we conclude that Qwest has satisfied the requirements of this checklist item, subject to Commission review and evaluation of audited results of relevant performance measures and Qwest performance following the ROC OSS regional testing process.

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

### **A. FCC Requirements**

99 Section 271(c)(2)(B)(viii) of the Act states that access or interconnection provided or generally offered by a BOC to other telecommunications carriers must include "White pages directory listings for customers of the other carrier's telephone exchange service."

100 In the *Second BellSouth Louisiana Order*, the FCC stated that "consistent with the Commission's [FCC's] interpretation of 'directory listing' as used in section 251(b)(3), the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes, the residential and business listings of the customers of the local exchange provider. We further conclude that the term 'directory listing,' as used in this section, includes, at a minimum, the subscriber's name, address, telephone

number, or any combination thereof.”<sup>24</sup>

101 To meet this obligation, the FCC requires BOCs to demonstrate that they provide: (1) nondiscriminatory appearance and integration of white page listings to CLEC customers; and (2) white page listings for CLEC customers with the same accuracy and reliability that the BOC provides its own customers. *Id.* at ¶ 256.

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

### **B. Evidentiary Requirements**

103 In Appendix A to the Supplemental Interpretive and Policy Statement, the Commission identified several general and specific evidentiary requirements Qwest must meet to be considered in compliance with Checklist Item No. 8. The general requirements are listed in Revised Appendix A to this Order. The specific evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 8 are:

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

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<sup>24</sup> *Second BellSouth Louisiana Order*, ¶ 255.

directories to customers of new carriers? How do those terms differ from those U S WEST affords itself, its affiliates, or its retail customers? How do they differ from the requirements contained in WAC 480-120-042?

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

### **C. Parties' Positions**

#### *1. Qwest*

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

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

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

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

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

- 108 In addition to one primary listing, customers may select premium listings or privacy listings. *Ex. 111-T, at 30.* Qwest commits that it treats CLEC end user privacy listings with the same level of confidentiality as Qwest end user listings. *Id.* All listings after the first primary listing are offered at the retail rate, less the applicable wholesale discount. *Ex. 106, Section 10.4.2.2.* Through Exhibit 116, Ms. Simpson showed the differences in how a primary versus a premium listing would appear in the White Pages Directory.
- 109 Ms. Simpson testified that the number of listings for resellers had increased from 25,700 listings to 29,100 by June 2000. *Ex. 111-T, at 31; Ex. 114-T, at 13.* Confidential Exhibit C-113 provides a list of CLECs using Qwest's Directory Assistance Service, Operator Services, and White Pages Directory Listings.
- 110 Qwest ensures that all listings are nondiscriminatory in appearance and integration. Ms. Simpson testified that two sections of the SGAT, Sections 10.4.2.8 and 10.4.2.10, verify this practice.
- 111 Ms. Simpson provided through Exhibit 117 a copy of a page from the Washington QwestDex white pages that included both primary and premium listings from both Qwest and CLEC customers.
- 112 Qwest must provide CLECs with white pages listings that are as accurate and reliable as the white pages listings it provides to its own end users.<sup>25</sup> Qwest is also required to put in place procedures to reduce the potential for errors in listings. Qwest asserts that it meets these requirements by using the same procedures for Qwest and CLEC listings. *Ex. 106, Sections 10.4.2.5 and 10.4.2.1.1.*
- 113 In Exhibit 112, Ms. Simpson shows the process used for listings. By this process, Qwest ensures all listings are treated in a nondiscriminatory manner using the same or similar processes and procedures that result in accurate and reliable listings. *Ex. 111-T, at 34; Ex. 112.* Qwest uses the same personnel, systems, databases, and methods and procedures for Qwest listings and CLEC listings. Only one list is submitted daily to QwestDex for inclusion in the white pages directories.
- 114 Additionally, CLECs are given opportunities to review their own listings for accuracy as they appear in Qwest's listings database. In order to do this, Qwest provides monthly "verification proofs" to CLECs. *Ex. 111-T, at 34 -35; Ex. 106, Sections 10.4.2.19-21.*

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<sup>25</sup> *Second BellSouth Louisiana Order*, ¶ 257.

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

116 Qwest is monitoring its performance in providing listings by use of two measurements. One will measure the accuracy and the timeliness of listings for CLECs and for Qwest. That is referenced as DB-1. It is intended to measure the average time required to complete updates to the directory listings database. The second measurement (DB-2) is "Percentage of Accurate Database Updates." It is intended to measure the percentage of database updates completed without errors. *Ex. 111-T, at 36; Ex. 120.* These measures are in place now and will be reviewed through the ROC OSS testing process.

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

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

## 2. *Position of AT&T*

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

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

## 3. *Position of WorldCom*

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

4. *Comments on Draft Initial Order*

122 Qwest agrees with the conclusions of the Draft Initial Order concerning this checklist item. The CLECs also noted agreement, but sought to clarify that compliance with the checklist item was contingent on Qwest's performance.

**D. Verification of Compliance**

123 During the June and July workshop sessions, Qwest agreed to make additional changes to the SGAT to reflect discussions during the workshop session. *Tr. at 181; 681-85; 687-93.* Following discussion in the workshops, all parties agreed that Qwest had met the requirements for this checklist item, contingent on Qwest meeting the relevant performance measures.

124 Based on evidence presented, and the resolution of concerns raised by parties during the workshop, we conclude that Qwest has satisfied the requirements of this checklist item, subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process.

**VIII. CHECKLIST ITEM NO. 9: NUMBERING ADMINISTRATION**

**A. FCC Requirements**

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

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

126 On July 13, 1995, the FCC ordered that numbering administration for area codes and



prefixes be centralized at the national level and transferred to an independent third party administrator.<sup>26</sup> In its *Local Competition Second Report and Order*, the FCC interpreted Section 251(b)(3) of the Act as requiring LECs that provide telephone numbers to permit competing providers access to the numbers that is identical to the access that the LEC provides to itself.<sup>27</sup>

127 The FCC also states that an ILEC shall "not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers."<sup>28</sup> In its *Local Competition Second Report and Order*, the FCC issued guidelines and provided steps for transferring responsibility to the North American Numbering Plan Administrator (NANPA). On September 1, 1998, this responsibility was transferred to NeuStar (formerly known as Lockheed Martin). Prior to this date, Qwest was the Central Office Code Administrator within its region.

### **B. Evidentiary Requirements**

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

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

129 Qwest did not identify in its testimony specific references as to what sections of testimony answered the questions posed in the general and specific evidentiary

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<sup>26</sup> FCC Report and Order, Administration of the North American Numbering Plan, CC Docket 92-237, released July 13, 1995.

<sup>27</sup> *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd at 19446-47 (rel. Aug. 8, 1996) (*Local Competition Second Report and Order*).

<sup>28</sup> *Id.* at amendment to Part 52, Subpart B, 52.9(a)(2).

requirements. However, Qwest did provide statements in prefiled testimony and facts in prefiled exhibits that satisfy the applicable evidentiary requirements. A tabular presentation of the requirements, cross-referenced to Qwest's testimony and exhibits, is included in Revised Appendix A to this Order.

### C. Parties' Positions

#### 1. Qwest

130 On March 22, 2000, Qwest witness Margaret S. Bumgarner filed direct testimony indicating that Qwest had met the requirements of Checklist Item No. 9 for Numbering Administration. *Ex. 131-T, at 25.* Prior to transferring numbering responsibility to NeuStar, Qwest followed guidelines established by the national Industry Numbering Committee (INC), published as INC 95-0407-008. *Id.* Qwest states that it has met all of the FCC's requirements by:

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

#### *Id.*

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

#### 2. AT&T

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

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

133 A Local Routing Number (LRN) is assigned to a carrier's switch so that calls to numbers that have been ported will be routed to the proper switch. The LRN appears next to each number that has been ported in the regional number portability database. The industry standard has required that one LRN be assigned per LATA for each

CLEC switch. Qwest's policy for LRN assignment was one LRN per CLEC per rate center. AT&T believes this is an inefficient use of numbering resources. In a January, 2000 letter Qwest informed AT&T that it had made a policy change. AT&T indicated that parties were still working to resolve issues in implementing the policy change. *Id. at 37.*

134 The second issue, "improper reassignment of telephone numbers," refers to instances where numbers had been ported from Qwest to a CLEC, and Qwest had inadvertently reassigned the numbers to other customers. This has also been referred to as "double assignment."

135 AT&T proposes to defer Local Routing Number issues to Checklist Item No. 1 (Interconnection), and the impacts of double assignments to Checklist Item No. 11 (Number Portability).

136 As for AT&T's third concern, the process for loading NXX prefixes for CLECs, a Regional Oversight Committee (ROC) testing parameter NP-1, related to NXX code activation, will be used to verify that prefix updates are handled at parity. Monthly reports are currently being issued on measurements of this test metric. AT&T considers this item (WA 9-3) conditionally closed pending the review of Qwest's performance and audited results from the ROC OSS region-wide testing.

### 3. *Qwest Response*

137 Qwest indicated there had been problems with the reassignment of ported numbers, and referred to similar problems in the Arizona Section 271 proceeding. *Tr. at 187.* Qwest stated that, on occasion, ported numbers were reassigned to other Qwest customers. Similarly, Qwest admitted to problems with making errors in the assignment of new CLEC NXX codes in its own switches. Errors in routing tables make it difficult to complete calls to the new NXX code once it is activated.

138 Qwest agreed to defer the LRN issue and the issue of double assignment of numbers to Checklist Items Nos. 1 and 11 respectively. Qwest also agreed with the conditions placed on metric NP-1 pending the audit of its performance results.

### 4. *Comments on Draft Initial Order*

139 Qwest agrees with the conclusions of the Draft Initial Order concerning this checklist item. The CLECs also noted agreement, but sought to clarify that compliance with the checklist items was contingent on Qwest's performance.

## **D. Verification of Compliance**

140 We accept the deferral of the two items concerning the assignment of LRNs (WA 9-1), and the double assignment of numbers (WA 9-2), to Checklist Items Nos. 1 and 11 respectively. Based on the testimony, comments, and exhibits submitted, Qwest has demonstrated that it provides nondiscriminatory access to telephone numbers and complies with the NANPA guidelines for numbering administration. The Commission finds Qwest to be in compliance with Checklist Item No. 9, subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process.

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

### **A. FCC Requirements**

141 Section 271(c)(2)(B)(x) requires RBOCs to provide "Nondiscriminatory access to databases and associated signaling necessary for call routing and completion." The Act also includes "databases [and] signaling systems . . . used in the transmission, routing or other provision of a telecommunications service" within the definition of the term "network element." 47 U.S.C. § 153(29). In its *First Report and Order*, the FCC interpreted the Act to require RBOCs to provide unbundled access to call-related databases and signaling systems as network elements.<sup>29</sup> In its *First Report and Order* and in the *UNE Remand Order*, the FCC has required ILECs to provide unbundled access to the following call-related databases: the Line Information Database ("LIDB"), the Toll Free Calling database ("8XX"), the Local Number Portability database ("LNP"), the Advanced Intelligent Network database ("AIN"), calling-name database, and 911 and E911 databases.<sup>30</sup>

142 In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to show that it provided requesting carriers with nondiscriminatory access to: "(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS)."<sup>31</sup> The FCC also required BellSouth "to design, create, test, and deploy AIN-based services at the SMS, through

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<sup>29</sup> *First Report and Order*, ¶¶ 479, 484.

<sup>30</sup> *First Report and Order*, ¶ 484; *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ¶ 403 (*UNE Remand Order*).

<sup>31</sup> *Second BellSouth Louisiana Order*, ¶ 267; *See also SBC Texas Order*, ¶ 362.

a service creation environment, that BellSouth creates to itself."<sup>32</sup>

## **B. Evidentiary Requirements**

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

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

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

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

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<sup>32</sup> *Id.*, ¶ 272.

### C. Parties' Positions

#### 1. Qwest

- 146 Through the testimony and exhibits of witness Margaret S. Bumgarner, Qwest describes its compliance with the requirements of Checklist Item No. 10, and the evidentiary requirements for the checklist item in the Commission's Supplemental Interpretive and Policy Statement. Qwest states that through its interconnection agreements and proposed SGAT it provides and offers nondiscriminatory access to its signaling network and the following call-related databases: LNP, LIDB, 8XX, ICNAM, AIN, and E911/911. *Ex. 131-T, at 30, 36-38.* Five CLECs currently purchase unbundled signaling links in Washington, two CLECs use the 8xx database, one uses LIDB, and one uses the LNP database. *Id. at 35, 38; Ex. C-140.* While no CLECs currently use the ICNAM or AIN databases in Washington, Qwest states that it offers nondiscriminatory access to the databases through its SGAT. *Ex. 106, § 9.13.1.1; Ex. 131-T, at 38-39.*
- 147 The terms, conditions, and rates for providing access to databases and associated signaling are set forth either in interconnection agreements or Qwest's proposed SGAT. *Ex. 131-T, at 30, 34-36.* Qwest's technical standards and rules for providing access to databases and signaling are available on Qwest's website, also referred to as Ex. 118. *Id. at 30-31.* Technical standards and publications are listed in Section 21.0 of the SGAT and are included in Exhibits 138, 139, C-149, and 150. Qwest's rates for access to databases and signaling are included in interconnection agreements and its SGAT. *Id. at 30.* Qwest uses prices determined in the Washington Cost Docket, Docket Nos. UT-960369, 960370, and 960371. *Id.*
- 148 Through its SGAT, Qwest provides and offers access to call-related databases and signaling in the same manner it obtains access itself. *Id. at 34-35, 40-41.* Qwest is subject to performance measures for this checklist item that have been developed by the ROC. *Ex. 141-T, at 18.* Two performance measures, DB-1, and DB-2, are designed to measure the time required to update the database and accuracy of updates. *Id.* Qwest is developing a performance measure for LIDB. *Id.* Qwest notes that testing of the ROC performance measures and third party OSS testing will determine Qwest's compliance with this checklist item.
- 149 Qwest has received no formal or informal complaints about its provisioning of access to call-related databases and signaling. *Ex. 131-T, at 41.* With the exception of the dispute over access to the ICNAM database, there are no databases or signaling to which CLECs have sought access and Qwest has been unwilling or unable to supply access. *Id. at 39.*
- 150 Qwest objects to the Joint Intervenors' request that Qwest include language in its

SGAT to provide access to the entire ICNAM database as opposed to access on a per-dip or query basis. Qwest asserts that the FCC requires incumbent LECs to provide access to their calling-name databases on a per-query basis only. Both the *First Report and Order* and the *UNE Remand Order* provide that incumbent LECs must provide access "for the purpose of switch query and database response" through the SS7 signaling network. *First Report and Order*, ¶ 484; *UNE Remand Order*, ¶ 402.

151 Qwest does not dispute that call-related databases are unbundled network elements (UNEs) to which CLECs must have unbundled access. However, in response to the Joint Intervenors' position that access to the entire database is technically feasible and should be provided, Qwest asserts that the standard for "technical feasibility" under 47 U.S.C. § 251 (c)(3) determines only *where* access must be provided, not *what* must be provided.<sup>33</sup> Qwest asserts that it has provided access to the ICNAM database at the signaling transfer point, or STP, a technically feasible point, as required by the FCC. Finally, Qwest asserts that while the FCC has determined that access to call-related databases is necessary and that failure to provide access would impair the ability of CLECs to provide service, the FCC has required only physical access at the signaling transfer point, and only on a per-query basis.<sup>34</sup>

## 2. Joint Intervenors

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

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

154 The Joint Intervenors reserve the right to comment on Qwest's performance measures

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<sup>33</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 391 (1999).

<sup>34</sup> *UNE Remand Order*, ¶¶ 410-20.

pending audited results of testing of the performance measures. *Tr. at 230*. As discussed above, except for the issue over access to ICNAM, and Commission review and evaluation of audited results of relevant performance measures, the Joint Intervenors agree that Qwest is in compliance with the requirements for Checklist Item No. 10.

### 3. *Draft Initial Order*

- 155 In the Draft Initial Order, we concluded that Qwest properly interprets the FCC's requirements for providing access to call-related databases and the ICNAM database in particular. In its First Report and Order, the FCC provided that "incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network" and that ILECs must provide access "by means of physical access at the STP linked to the unbundled database."<sup>35</sup>
- 156 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."<sup>36</sup> Further, the FCC required ILECs to provide access "by means of physical access at the signaling transfer point linked to the unbundled databases."<sup>37</sup>
- 157 Qwest also properly cites the Supreme Court's interpretation of the term "technical feasibility" in *AT&T Corp. v. Iowa Utils. Bd.* Qwest has offered access at a technically feasible point – the signaling transfer point – the point at which the FCC has required ILECs to provide access.
- 158 The Joint Intervenors seek more than the FCC has required of ILECs as of the time Qwest filed its request to provide In-Region interLATA service. In the *SBC Texas Order*, the FCC specifically provided that an RBOC must be in compliance with FCC rules and orders as of the time they make their application.<sup>38</sup> In addition, the FCC noted that during the review process for compliance with checklist items, "inevitably . . . a variety of new and unresolved interpretive disputes about the precise content of

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<sup>35</sup> *First Report and Order*, ¶ 484.

<sup>36</sup> *UNE Remand Order*, ¶¶ 402, 403.

<sup>37</sup> *Id.*, ¶ 410.

<sup>38</sup> *SBC Texas Order*, ¶ 22.



an incumbent LEC's obligations to its competitors" will arise.<sup>39</sup> However, the FCC stated that the Section 271 process is not intended to resolve such disputes.<sup>40</sup>

#### 4. *WorldCom Comments*

159 WorldCom filed separate comments on the Draft Initial Order, specifically objecting to the conclusion that Qwest need not provide access to the entire ICNAM database through bulk transfer. WorldCom requests the Staff to reconsider its recommendation on this point, arguing that Qwest's failure to provide CLECs access to the database on a bulk transfer basis is discriminatory access.

160 WorldCom argues that Section 251(c)(3) requires "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." WorldCom further argues that at the time the FCC issued its *First Report and Order*, the FCC concluded that it was only technically feasible to access call-related databases at the signaling transfer point, or STP.<sup>41</sup> WorldCom claims that it is now technically feasible to access databases by other means than through the signaling network. WorldCom argues that Qwest provides access on a global basis to itself, and that denying WorldCom access on a global basis is discriminatory. In addition, WorldCom 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 quality of service as Qwest.

#### 5. *Qwest Comments*

161 Qwest agrees with the conclusion in the Draft Initial Order that FCC rules do not require bulk transfer of the entire ICNAM database. Qwest concurs with the conclusion that WorldCom is demanding more than FCC rules require, and that Qwest is therefore providing access to the ICNAM database that is nondiscriminatory and consistent with the requirements of Section 271(c)(2)(B)(x).

#### 6. *Discussion*

162 While WorldCom is correct that Section 251(c)(3) requires nondiscriminatory access at any technically feasible point, the *UNE Remand Order*, issued much more recently than the *First Report and Order*, requires access to calling name databases such as the

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<sup>39</sup> *Id.*, ¶ 23.

<sup>40</sup> *Id.*

<sup>41</sup> *First Report and Order*, ¶ 485.

ICNAM only at the STP.<sup>42</sup> We continue to believe that Qwest need not modify its SGAT to allow access to its ICNAM database on a bulk transfer basis either to comply with the requirements of Checklist Item No. 10, or for the basis of approval of the SGAT under Section 252(f)(2). WorldCom may wish to negotiate this issue with Qwest while modifying or renegotiating its existing interconnection agreement. However, following the FCC decisions in the *First Report and Order* and the *UNE Remand Order*, Qwest need not make bulk transfer access to the ICNAM database available to all CLECs under its SGAT in Washington.

#### **D. Verification of Compliance**

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

164 After reviewing WorldCom's comments we reiterate our conclusion that Qwest need not modify its SGAT to include access to the entire ICNAM database in order to be in compliance with the requirements of Checklist Item No. 10 or for the commission to approve the SGAT. Qwest meets the requirements of Checklist Item No. 10 subject to Commission review and evaluation of audited results of relevant performance measurements for call-related databases and associated signaling and Qwest performance following the ROC OSS regional testing process.

### **X. CHECKLIST ITEM NO. 12 - DIALING PARITY**

#### **A. FCC Requirements**

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

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

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory

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<sup>42</sup>*UNE Remand Order*, ¶ 402.

listing, with no unreasonable dialing delays.

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

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

168 In the *Bell Atlantic New York Order*, the FCC interpreted Section 153(15) to mean that customers of competing carriers must be able to dial the same number of digits as a customer of a RBOC to complete a local telephone call.<sup>43</sup> Also, the FCC expects customers of competing carriers to receive the same quality of service as RBOC customers.<sup>44</sup>

## **B. Evidentiary Requirements**

169 Appendix A to the Commission's Supplemental Interpretive and Policy Statement identifies several general and specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 12. The general requirements are set forth in Revised Appendix A to this Order. The evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 8 are:

1. How is U S WEST providing nondiscriminatory access to such services or information, as is necessary, to allow a requesting carrier to implement dialing parity in accordance with the requirements of Section 251 (b)(3)?
2. What percentage of U S WEST switches are providing dialing parity to competitors for local calls?
3. What percentage of U S WEST switches, serving what percentage of access lines, have been equipped to provide dialing parity for intraLATA toll calls, and in what percentages of switches, serving what percentage of access lines, has that capability been tested?
4. Will intraLATA toll dialing parity be implemented in such

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<sup>43</sup> *Bell Atlantic New York Order*, ¶ 373

<sup>44</sup> *Id.*

switches using the "full 2-PIC" subscription method, and if not, what method will be used?

5. Does U S WEST plan to provide dialing parity for intraLATA toll calls before, or only coincident with, its provision of in-region interLATA services? Why or why not?
6. After receiving Section 271 authorization, when a customer calls U S WEST to establish new local exchange service or to switch the location of its existing service, how does U S WEST plan to have its service representatives inform the customer of their long distance provider options in the manner prescribed in Ameritech/Michigan and Bell South/South Carolina Orders (i.e., offering to list the optional providers, using a random order)? Please provide scripts to be used by service representatives to inform customers of their provider options.

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

### **C. Parties' Positions**

#### *1. Qwest*

171 On March 22, 2000, Qwest witness Margaret S. Bumgarner testified that Qwest had met the requirements of Checklist Item No. 12 and is legally bound to the requirements of the Act. *Ex. 131-T, at 43-46.* Qwest states that it meets its obligations for dialing parity through its proposed SGAT, and its existing interconnection agreements.

172 Bumgarner calls specific attention to SGAT Section 14.1., which states:

The Parties shall provide local dialing parity to each other as required under Section 251(B)(3) of the Act. U S WEST will provide local dialing parity to competing providers of telephone exchange service, and will permit all such providers to have non-discriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. The CLEC may elect to route all of its end-user customers' calls in the same manner as U S WEST routes its end-user customers' calls, for a given call type (e.g., 0, 0+, 1+, 411), or the CLEC may elect to custom route

its end-user customers' calls differently than U S WEST routes its end user's calls. Additional terms and conditions with respect to customized routing are described in Sections 9.12 of this Agreement. Customized Routing may be ordered as an application with Resale or Unbundled Local Switching.

*Ex. 106, Section 14.1.*

173 There are no differences in the number of digits Qwest or CLEC customers must dial to complete a given local call to any other local customer or to access operator services or directory assistance. *Ex. 131-T at 44.* Qwest does not impose any requirement or technical constraint that requires CLEC customers to dial any access codes or greater number of digits than Qwest customers to complete the same call, or that causes CLEC customers to experience inferior quality with post-dialing delays. *Ex. 131-T at 44.* Qwest provides for dialing parity for customized routing of CLEC customers' calls when using Qwest switches either as a reseller or through unbundled local switching. Toll dialing parity for intraLATA calls was fully implemented in Washington on February 8, 1999, and the "2-PIC" subscription method is used. *Ex. 131-T, at 45.* Ms. Bumgarner testifies that all calls are treated the same. Dialed digits transmitted or received by Qwest's switches use the same translation and routing tables for completing a call, regardless of whether the call originates on another carriers's network. A call originating from a CLEC's network is treated the same as a call originating from within Qwest's network, because Qwest's switches cannot distinguish between calls. *Ex. 131-T, at 44.* There are no charges for dialing parity. *Ex. 131-T, at 45.*

## 2. Other Parties

174 No party filed testimony or comments on this item. No party asked questions concerning this checklist item during the workshop. Qwest's compliance with this checklist item appears to be undisputed.

## 3. Comments on Draft Initial Order

175 Qwest agrees with the findings of the Draft Initial Order concerning this checklist item, except to note that the ROC has not developed performance measures or standards for dealing parity. Qwest notes that the FCC determined in its *Local Competition Second Report and Order* that such measures are unnecessary.<sup>45</sup>

## D. Verification of Compliance

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<sup>45</sup> *Local Competition Section Report and Order*, ¶ 162.

176 Based on the testimony and evidence Qwest has presented, and the absence of concerns raised by parties either in testimony or workshops, the Commission finds that Qwest has satisfied the requirements of this checklist item, and approves all relevant SGAT provisions. Given that the FCC has determined that performance measures are unnecessary and that the ROC has not developed performance measures, Qwest's compliance on this checklist item is not contingent on performance.

## **XI. CHECKLIST ITEM NO. 13 - RECIPROCAL COMPENSATION**

### **A. FCC Requirements**

177 Section 271(c)(2)(B)(xiii) of the Act requires that a BOC's access and interconnection must include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."<sup>46</sup> Section 252(d)(2)(A) provides that "a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the *mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier*; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." (*Emphasis added*).

### **B. Evidentiary Requirements**

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

1. How is U S WEST providing reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2)?
2. Describe arrangements for reciprocal compensation, including bill-and-keep, for local exchange traffic between U S WEST and CLECs and other ILECs?
3. For carriers with bill-and-keep arrangements, specify whether bill-and-keep is replaced with explicit compensation arrangements

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<sup>46</sup> *Bell Atlantic New York Order*, ¶ 375.

when traffic is not in balance. How is traffic balance determined?

4. For all carriers with explicit compensation arrangements, specify the type of arrangements and rates (i.e., call termination rates).

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

### **C. Parties' Positions**

180 Qwest's compliance with this checklist item and Qwest's SGAT are significantly disputed by the CLECs. This Order first discusses Qwest's general compliance and then addresses the CLECs' specific concerns. WorldCom, AT&T, Sprint, NEXTLINK, ELI, ATG, and ICG all contest various positions Qwest has taken concerning reciprocal compensation, as well as specific provisions of the SGAT addressing reciprocal compensation. Specifically, the CLECs assert that Qwest: (1) must provide reciprocal compensation for traffic bound to internet service providers (ISPs); (2) fails to allow CLECs to recover tandem switching charges; (3) seeks to impose transport charges on CLECs for the facility link between Qwest's host and remote switches; (4) seeks to impose non-TELRIC-based charges for calls that are clearly local calls; and (5) fails to allow CLECs to recover symmetrical compensation.

#### *1. Qwest's Position Generally*

181 Qwest asserts that it meets the requirements of Checklist Item No. 13 through its SGAT, existing interconnection agreements, and other processes and procedures that track the minutes-of-use on trunks, and when to pay reciprocal compensation to CLECS. *Ex. 151-T, at 2, 4.* Qwest had, as of March 1, 2000, 109,240 interconnection trunks in service between itself and 21 CLECs in Washington. *Ex. 151-T, at 4; Ex. 157-T, at 13; Tr. 387.* As of March 2000, over 829 million minutes of calls were exchanged over those trunks. *Ex. 157-T, at 13; Tr. 387.* Qwest reports that 90 percent of the traffic originates by or behind a Qwest switch and terminates on a CLEC switch. *Ex. 151-T, at 4, 29; Ex. 165.*

182 In Exhibit 151-T, Qwest describes the arrangements, i.e., rates, terms, and conditions, for call termination and transport between Qwest and CLECs for purposes of determining reciprocal compensation. While Qwest notes that it provides such services through interconnection agreements, its testimony refers primarily to the

SGAT. *Id.* at 23-30. Qwest provides and offers Direct Trunked Transport and Tandem Switched Transport, a two-way trunking option. *Id.* at 23-27. Most of the existing CLEC/Qwest trunking is two-way. *Id.* at 24. The reason for reciprocal compensation is the need to engage in cost-sharing where there is two-way trunking and traffic is flowing back and forth in a way that is not balanced. *Tr.* at 388. Qwest asserts that it complies with the requirements of Checklist Item No. 13.

## 2. Treatment of ISP Traffic

### a. CLEC Position

183 AT&T, WorldCom, Sprint, NEXTLINK, ELI, ATG, and ICG all submitted briefs on the issue of compensation for ISP-bound traffic. These CLECs object to Qwest's exclusion of ISP-bound traffic from the reciprocal compensation provisions of the SGAT, and assert that Qwest cannot be in compliance with Checklist Item No. 13 nor should the Commission approve Qwest's proposed SGAT until Qwest modifies the SGAT to include a provision for compensation for ISP-bound traffic.

184 First, the CLECs argue that Section 251(b)(5) of the Act requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Joint Intervenor's Brief*, at 4. Further, the CLECs assert that the FCC, in its *First Report and Order*, determined that reciprocal compensation was limited to "local traffic," which "originates and terminates within a local service area."<sup>47</sup> However in its *ISP Order*, the FCC concluded that because calls to ISPs are jurisdictionally interstate in nature, they do not terminate at the ISP and cannot be subject to Section 251(b)(5).<sup>48</sup>

185 Second, while the CLECs recognize that the FCC decided in the *Bell Atlantic New York Order* to exclude consideration of ISP-bound traffic from Section 271 proceedings, they argue that the decision is no longer valid. The FCC's *Bell Atlantic New York Order* relied substantially on its *ISP Order*.<sup>49</sup> However, in March of this year, the Circuit Court of Appeals for the District of Columbia vacated the FCC's order on compensation for ISP-bound traffic.<sup>50</sup> The CLECs argue that there is no longer sufficient basis for the FCC's decision in its *Bell Atlantic New York Order* to exclude the issue of compensation for ISP-bound traffic from consideration in 271

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<sup>47</sup> *First Report and Order*, ¶¶ 1033-35.

<sup>48</sup> *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket No. 96-98, FCC 99-38, (rel. Feb. 26, 1999) ¶¶ 1, 10 (*ISP Order*).

<sup>49</sup> *Bell Atlantic New York Order*, ¶ 377.

<sup>50</sup> *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).



proceedings. Further, the CLECs argue that the FCC declined to address the issue in the *SBC Texas Order* because no party in that proceeding argued failure to meet the requirements of the checklist item for failure to pay reciprocal compensation for ISP-bound traffic.<sup>51</sup>

186 Thus, following the *Bell Atlantic* case, the CLECs argue that the Commission has authority to determine the issue of whether Qwest must pay reciprocal compensation for ISP-bound traffic. The CLECs cite a number of decisions, including one affirmed by the Ninth Circuit Court of Appeals, in which the Commission has already made that determination.<sup>52</sup> The CLECs also cite a number of federal court decisions upholding state Commission decisions requiring compensation for ISP-bound traffic. *See Joint CLEC Brief on ISP Legal Issues, at 4.* The CLECs assert that Qwest continues to defy the Commission's orders and court rulings on the issue, forcing CLECs to arbitrate this issue, delaying entry, and driving up costs. The CLECs argue that the Commission should find Qwest not to be compliant with Checklist Item No. 13 and should refuse to approve Qwest's SGAT until Qwest includes language in its SGAT providing for compensation for ISP-bound traffic.

b. Qwest Position

187 Qwest specifically excludes ISP-bound traffic from the provisions of its proposed SGAT allowing for reciprocal compensation to CLECs for traffic terminating on Qwest's network. Qwest first asserts that the question of compensation for ISP-bound traffic is not a Section 271 issue. Relying on the FCC's decision in the *Bell Atlantic New York Order*,<sup>53</sup> Qwest argues that the FCC has determined that the issue of compensation for ISP-bound traffic is not an issue for 271 proceedings, but is an inter-carrier compensation issue. *Ex. 151-T at 4-5, 35; Ex. 157-T, at 14-15.* Qwest further argues that the *Bell Atlantic New York Order* is still valid, asserting that the D.C. Circuit court merely remanded the *ISP Order* back to the FCC. *U S WEST's*

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<sup>51</sup> *SBC Texas Order*, ¶ 386.

<sup>52</sup> *U S WEST Communications, Inc., v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1122-23 (9<sup>th</sup> Cir. 1999), cert. den. June 29, 2000; *Generic Cost Docket*, Seventeenth Supplemental Order, Docket Nos. UT-960369, UT-960370, UT 960371, at ¶ 54; *WorldCom Inc., f/k/a MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Docket No. UT-980338, at 23; *NEXTLINK Washington, Inc. v. U S WEST Communications, Inc.*, Commission Order Adopting Recommended Decision, in part, and Modifying Recommended Decision, in Part, Docket No. UT-990340; *Advanced Telecom Group, Inc., v. U S WEST Communications, Inc.*, Commission Order Adopting Recommended Decision, in part, and Modifying Recommended Decision, in part; Docket No. UT-993003.

<sup>53</sup> *Bell Atlantic New York Order*, ¶ 377.

*Legal Brief Regarding Exclusion of Internet-Bound Traffic, at 4.* In addition, Qwest argues that the FCC plans to reaffirm its prior decision. *Id.*

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

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

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

c. Draft Initial Order

191 The Draft Initial Order concluded that Qwest is not in compliance with the requirements of Checklist Item No. 13 until it modifies its SGAT provisions to reflect Commission orders addressing compensation for ISP-bound traffic. The Draft Initial Order made the following determination:

192 The FCC's *Bell Atlantic New York Order* provides that compensation of ISP-bound traffic is not a Section 271 issue, given the FCC's decision in its *ISP Order*.<sup>54</sup> However, now that the D.C. Circuit has vacated the FCC's *ISP Order* in its *Bell Atlantic decision*, the CLECs are correct that the FCC's decision in its *Bell Atlantic New York Order* is no longer valid. In its *SBC Texas Order*, the FCC declined to take up the issue in a Section 271 proceeding primarily because no party raised the issue of noncompliance for failure to pay reciprocal compensation for ISP-bound traffic.<sup>55</sup> Payment of reciprocal compensation for ISP-bound traffic is properly a question of compliance in Section 271 proceedings, as well as in proceedings conducted pursuant to Section 252(f).

193 Section 251(b)(5) and the FCC's *First Report and Order* require that LECs pay compensation to all CLECs for local traffic. The Commission has determined in a

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<sup>54</sup> *Bell Atlantic New York Order*, ¶ 377.

<sup>55</sup> *SBC Texas Order*, ¶ 386

number of prior proceedings – including enforcement proceedings against Qwest – that ISP-bound traffic is local traffic. Qwest’s SGAT is intended to present Qwest’s available terms and conditions in Washington. Under Section 252(f)(2), Qwest’s SGAT must reflect the Commission’s repeated decisions that CLECS are entitled to compensation for ISP-bound traffic. However, nothing prevents CLECs and Qwest from negotiating provisions in individual agreements that would exclude compensation for ISP-bound traffic.

194 While the Commission’s Supplemental Interpretive and Policy Statement states that the Commission will not rely on provisions in the SGAT to determine Qwest’s compliance with the provisions of Section 271, the Commission will evaluate SGAT provisions to ensure that they do not violate Commission decisions. The issue of compensation for ISP-bound traffic is an issue on which the Commission has issued several orders requiring Qwest to compensate carriers for ISP-bound traffic. Qwest may not avoid making payments to CLECs for ISP-bound traffic through its SGAT. The Commission finds that Qwest is not in compliance with the requirements of this checklist item and the Commission will not approve Qwest’s SGAT until Qwest modifies its SGAT provisions to reflect Commission orders addressing compensation for ISP-bound traffic.

d. Qwest Comments

195 Qwest argues that the Commission should adopt the FCC’s determination that reciprocal compensation for ISP-bound traffic is not an issue in determining compliance with the requirements of Section 271. Similarly, Qwest argues that the Commission should not require Qwest to modify its SGAT to provide reciprocal compensation for ISP-bound traffic.

196 On the issue of compliance with Section 271 requirements, Qwest asserts that the FCC’s *Bell Atlantic New York Order* establishes that Section 251(b)(5) of the Act does not require ILECs to provide reciprocal compensation for ISP-bound traffic, and likewise, Section 271(c)(2)(B)(xiii) does not require BOCs to demonstrate that they pay reciprocal compensation for this traffic. The FCC relied in large part on its *ISP Order*. Qwest asserts that even though the *ISP Order* has been vacated, that current law, i.e., the *SBC Texas Order*, does not require ILECs to pay reciprocal compensation for ISP-bound traffic.

197 As to inclusion of reciprocal compensation for ISP-bound traffic in the SGAT, Qwest argues that the SGAT is its standard contract offering and that it should not require Qwest to include such a provision. By requiring Qwest to include such a provision, Qwest will have to pay reciprocal compensation for such traffic to any CLEC opting into the SGAT. Qwest argues that CLECs should have to negotiate for this option, rather than adopt the provision of the SGAT. By requiring Qwest to include this in the SGAT, Qwest argues that Staff precludes negotiation of any alternative

arrangements.

198 Finally, Qwest argues that neither the Staff nor the Commission should prejudge this issue as the Commission has agreed to consider the issue in Part B of the new generic pricing proceeding, Docket No. UT-003013. In addition, Qwest asserts that the Commission should refrain from entering an opinion on the issue, as the FCC declined to do so in its *SBC Texas Order*, given that the FCC's *ISP Order* is before the FCC on remand.

e. Discussion

199 As we discussed in the Draft Initial Order, the *Bell Atlantic New York Order* relied on the *ISP Order* to determine that ISP-bound traffic was non-local interstate traffic to which the reciprocal compensation provisions of Section 251(b)(5) do not apply, and therefore that the matter is not a subject for consideration in the Section 271 proceeding.<sup>56</sup> While, as Qwest notes, the *Bell Atlantic New York Order* was recently affirmed by the Circuit Court of Appeals for the District of Columbia, the issue of reciprocal compensation was never raised in the appeal.<sup>57</sup> Since the FCC's *Bell Atlantic New York Order*, the D.C. Circuit court has vacated the FCC's *ISP Order* and remanded the matter to the FCC for further consideration.<sup>58</sup> In addition, in its most recent order on BOC compliance with Section 271, the FCC declined to address the issue of whether compensation for ISP-bound traffic because no party had raised the issue, and because the FCC presumably did not want to prejudge the outcome of its determination in the remand of its *ISP Order*.<sup>59</sup> Contrary to Qwest's interpretation, the FCC did not confirm its determination in the *Bell Atlantic New York Order*. Given that the FCC's *ISP Order* has been vacated, that portion of the *Bell Atlantic New York Order* addressing reciprocal compensation for ISP-bound traffic is no longer binding on the Commission. Therefore, FCC order precludes this Commission from determining that reciprocal compensation for ISP-bound traffic is a requirement for compliance with Section 271.

200 On a separate matter, regardless of whether reciprocal compensation for ISP-bound traffic is a matter for consideration in Section 271 proceedings, Qwest's SGAT must include reciprocal compensation for ISP-bound traffic. Qwest continues to assert that the FCC's interpretation of ISP-bound traffic as interstate, rather than local, traffic is the current state of the law. However, Qwest's interpretation mischaracterizes the

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<sup>56</sup> *Bell Atlantic New York Order*, ¶ 377.

<sup>57</sup> *AT&T Corp. v. FCC*, No. 99-1538 (D.C. Cir. Aug. 1, 2000).

<sup>58</sup> *Bell Atlantic*, 206 F.3d at 6.

<sup>59</sup> *SBC Texas Order*, ¶ 386.

current "state of the law," as well as the FCC's *ISP Order*. The *ISP Order* provides that nothing precludes state commissions from determining that ISP-bound traffic is local traffic and imposing requirements to pay reciprocal compensation for such traffic.<sup>60</sup> In addition, the Circuit Court of Appeals for the district of Columbia has vacated the FCC's ruling on the nature of ISP-bound traffic and remanded the issue to the FCC for further review. Given this "state of the law," the Commission's prior orders on this issue are binding on Qwest, and require Qwest to modify its SGAT to comply with these Commission orders.

201 The Commission need not refrain from entering a decision on this issue. In the absence of an FCC decision precluding states from determining whether ISP-bound traffic is subject to reciprocal compensation, state commissions may continue to consider the issue.

202 While the Commission will be considering the issue of reciprocal compensation for ISP-bound traffic in the new generic pricing proceeding, Docket No. UT-003013, the Commission has stated it will "consider all reciprocal compensation proposals, including terms and conditions relevant to reciprocal compensation recovery mechanisms and rates for terminating local and ISP-bound traffic."<sup>61</sup> The Commission's review in Docket No. UT-003013 is limited to reviewing pricing for reciprocal compensation, not reconsidering the Commission's position on the issue.

### 3. *Definition of Tandem Switch*

#### a. CLEC Position

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

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same geographic area as U S WEST's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic,

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<sup>60</sup>*ISP Order*, ¶¶ 24-27.

<sup>61</sup> *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination, Fifth Supplemental Order*, Docket No. UT-003013 (Aug. 2000), ¶ 16.

while local tandems provide connections for Exchange Service (EAS/Local) traffic.

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

We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch, and thus, whether some or all calls terminating on the new entrants network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.<sup>62</sup>

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

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

7.3.4.2.1 For traffic delivered through a [Qwest] or CLEC local tandem switch (as defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if

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<sup>62</sup> *First Report and Order*, ¶ 1090.

CLEC or [Qwest] only switches the traffic once and this switch meets the definition of tandem switch in 4.11.2, then only the tandem switching rate shall apply.

*Ex. 106.*

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

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

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

b. Qwest Position

210 Qwest interprets paragraph 1090 of the FCC's *First Report and Order* to require that CLECs only be paid the tandem rate when CLECs perform an additional switching function. Specifically, Qwest interprets the FCC's *First Report and Order* to require states to consider functionality of the competing carrier's switch and the geographic area served by the switch. Qwest contests that geographic scope of the switch is the sole determining factor. Further, Qwest asserts that, because of the architecture of most competitors' networks, Qwest has no option available to terminate calls on a local end office switch in order to avoid tandem switching charges. *Ex. 157-T, at 17-20.* Qwest asserts that competitors should only be due a tandem switching charge if

they physically switch a call twice.

211 Qwest relies on the Commission's decision in the U S WEST-AT&T Wireless Arbitration,<sup>63</sup> as well as the *MFS Intelenet* decision to assert that states must consider both functionality and geography in determining whether a CLEC's switch should be treated as a tandem for purposes of reciprocal compensation.

c. Draft Initial Order

212 The Draft Initial Order described that the CLECs and Qwest all properly note that the Commission has entered several decisions in interconnection arbitrations concerning the tandem treatment of CLEC switches. In the decision upheld by the Ninth Circuit in *MFS Intelenet*, in the U S WEST-AT&T Wireless decision affirmed by the District Court of Western Washington, and in the Commission's GTE-ELI decision,<sup>64</sup> the Commission made factually-based decisions after considering the factors of geography and functionality. The Commission has not considered geography to be the sole factor in determining whether a CLEC switch is entitled to tandem treatment. In *MFS Intelenet*, the Ninth Circuit specifically held that:

The Commission's classification of MFS's switch as a tandem switch was not arbitrary or capricious. The Commission properly considered whether MFS's switch *performs similar functions and serves a geographic area comparable to U.S. West's tandem switch*. [Citations omitted (*emphasis added*)]. The Commission found that MFS's switch "is comparable in geographic scope" to U.S. West's tandem switch, and "performs the function of aggregating traffic from widespread remote locations" as a tandem switch does.<sup>65</sup>

213 The Draft Initial Order noted that the interconnection agreement underlying the Ninth Circuit decision states, at Section V. D. 1. c, "For traffic terminated at a USWC or MFS tandem switch, the tandem call termination rate provides for *end office call termination, tandem switched transport and tandem switching*." (*Emphasis added*). The inclusion of these elements in the tandem rate addressed in the Ninth Circuit

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<sup>63</sup> *Petition for Arbitration of an Interconnection Agreement Between AT&T Wireless Services, Inc., and U S WEST Communications, Inc.*, Commission's Order Adopting Arbitrator's Report and Order and Approving Interconnection Agreement, Docket No. UT-960381 (Oct. 6, 1997).

<sup>64</sup> *In re Arbitration Between Electric Lightwave, Inc. and GTE Northwest Incorporated*, Docket No. UT-980370, Order Approving Negotiated and Arbitrated Interconnection Agreement, 13-15 (May 12, 1999).

<sup>65</sup> *MFS Intelenet*, 193 F. 3d at 1124.



decision gives credence to WorldCom's view of the appropriate rate to charge when a switch is considered a tandem, and accorded tandem treatment.

214 Given that the determination of tandem treatment of a CLEC switch is dependent upon several factors, including geography and functionality, the Draft Initial Order concluded that Qwest's SGAT provisions concerning tandem treatment cannot be seen as compliant with the requirements of Checklist Item No. 13 or Section 252(f)(2). Qwest should modify its SGAT to allow for a factually based consideration of geography and function, as discussed by the FCC in its *First Report and Order*, and the Ninth Circuit in its *MFS Intelenet* decision. Further, tandem treatment should not be restricted to a CLEC switching a call twice.

215 The Draft Initial Order found that Qwest is not in compliance with the requirements of Checklist Item No. 13 and that the Commission will not approve Qwest's SGAT until Qwest modifies its SGAT as discussed above.

d. Qwest Comments

216 Qwest supports the conclusion in the Draft Initial Order that whether a CLEC switch qualifies for tandem treatment is not solely dependent on the geographic area the switch serves. However, Qwest expresses concern that the Order recommends that Qwest modify its SGAT to allow CLECs to recover both end office and tandem switching rates even if a CLEC only switches traffic once. Qwest requests that the Commission modify the Draft Initial Order to reflect that CLECs are entitled to tandem switching rates as well as end office rates only if they switch traffic twice. Qwest requests that the Commission modify the Draft Initial Order to reflect the Commission's determination in its AT&T Wireless arbitration that AT&T Wireless was entitled to only the end office rate as its switch effectively switched traffic once, not twice.

e. Discussion

217 We believe the conclusion in the Draft Initial Order is consistent with the Act and with the FCC's *First Report and Order*. Both function and geography are to be considered in determining appropriate transport and termination rates. The language in the SGAT, as written, would preclude the Commission's ability to exercise its judgment with respect to the factors of geography and function.

218 Qwest's comments also ignore the existence of Commission decisions that reached a different conclusion than the determination in the U S WEST - AT&T Wireless arbitration. The Commission, in other arbitration orders, has determined that CLEC switches should be classified as tandem switches and rated accordingly. The common thread in the Commission's decisions on this issue has been that, in each case, the

Commission has considered the functions and geography involved in providing the service, and has made its decision based on the facts in the case.

219 The Commission declines to reconsider its decision on tandem definition in this Order. The SGAT must be modified as described in the Initial Draft Order before Qwest can be found in compliance with Checklist Item No. 13, and before the Commission will approve Qwest's SGAT.

#### 4. *Host-Remote Issue*

##### a. Qwest Position

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

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

##### b. CLEC Position

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

223 The CLECs assert that the host-remote architecture is an economic choice made by Qwest. Further, they assert that the host switch does not perform true tandem functions. The host-remote architecture is very similar to the central switch/SONET ring arrangement used by many competitors. These competitors haul local traffic over considerable distances to a central switch, due to the low densities of subscribers during the beginning stages of development of their networks. The CLECs assert that they receive no comparable compensation from Qwest for this similar transport over long loops. In addition, many competitors have not been granted permission to collocate remote switching units (RSUs), and have been forced to install transmission

equipment (typically Digital Loop Carrier) instead.

c. Draft Initial Order

224 The Draft Initial Order determined that in order to be in compliance with Checklist Item No. 13 and Section 252(f)(2), RBOCs must provide reciprocal compensation arrangements in accordance with Section 252(d)(2) of the Act. Section 252(d)(2) requires "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." The Draft Initial Order concluded 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. Traditionally, a host-remote architecture has been used to connect to rural areas, and to connect between towns. Thus, any host-remote configurations within a wire center are not addressed by this Order. The Draft Initial Order found that Qwest is not in compliance with the requirements of this checklist item and that the Commission will not approve Qwest's SGAT until Qwest modifies its SGAT to reflect the discussion above.

d. Qwest Comments

225 Qwest asserts that the Draft Initial Order is incorrect in concluding that Qwest must compensate competitors for transport between the control switch and nodes along CLEC SONET rings, if Qwest expects compensation for transport between its host and remote switch. Qwest argues that this conclusion ignores federal law and industry engineering. Qwest asserts that the Draft Initial Order is incorrect in assuming that the umbilical between a host and remote switch is similar to a loop. Qwest argues that umbilicals are interoffice facilities, comprised of trunks. Interoffice facilities are shared facilities, whereas loops are dedicated for the exclusive use of an end-user. Qwest claims that the costs of its umbilical from the host to the remote switch are not recovered in loop costs. Qwest notes that FCC jurisdictional separations rules require allocation of remote interoffice facilities on a traffic-sensitive basis recognizing the shared nature of the usage, whereas loops are allocated on a non-traffic-sensitive basis.

226 Finally, Qwest asserts that the CLECs argument that they are not being compensated for transport to nodes along a SONET ring is not appropriate in this proceeding. This Commission has set reciprocal compensation costs based on Qwest's costs studies and costs. The CLECs have not submitted cost support for the recovery of transport to nodes, or long loops. Without such evidence, the Commission must base transport and termination rates on Qwest's costs.

e. Discussion

- 227 After reviewing Qwest's comments, we agree that the conclusion in the Draft Initial Order concerning compensation between the host and remote should be modified. Qwest should receive compensation for transport from its host to its remote switches. Qwest's SGAT language in Section 7.3.4.2.3 requiring CLECs to pay tandem transmission rates for mileage between the host and remote should be approved. Qwest need not modify this provision in order to be in compliance with the requirements of Checklist Item No. 13.
- 228 Each interconnecting carrier is responsible for the cost of transporting traffic to the point at which it is terminated on the other carrier's switch. In the most simple example, this means that the originating carrier is responsible for transporting traffic to the terminating carrier's switch, but is not responsible for the cost of the loop used to connect the customer to that switch. The analysis becomes more complicated when alternative configurations of the network are involved. Here, the terminating carrier employs a host-remote configuration in which the customer's loop is connected to a remote switch, which is in turn connected by an umbilical to a host switch. The contested issue is 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, stated in another way, whether the call terminates at the host or at the remote.
- 229 The CLECs argue that they are unable to interconnect at the remote, so that they are forced by Qwest's network design decisions to interconnect at the host and rely on Qwest for transport to the remote switch. It does not follow, however, that a CLEC should not be charged for transport from the host to the remote simply because it is forced by the Qwest architecture to use Qwest's transport.
- 230 Qwest has demonstrated that the umbilical that connects the host to the remote is an interoffice facility, and that Qwest is entitled to transport charges for the mileage between them. The Draft Initial Order concluded that CLEC's should be entitled to similar compensation for portions of their SONET architecture. However, as Qwest has correctly pointed out, no CLEC has presented testimony of the cost of such transport. If CLECs believe they are entitled to such transport, they must submit appropriate cost information.
5. *Commingling/Ratcheting*
- a. CLECs' Position
- 231 AT&T, WorldCom and Sprint object to Section 7.3.1.1.2 of Qwest's proposed SGAT. That section provides that private line rates should apply when a CLEC uses spare capacity on facilities previously purchased under a private line tariff. AT&T,

WorldCom, and Sprint argue that they should be able to provision Local Interconnection Service (LIS) trunks on existing facilities, typically DS-3s that carry exchange access traffic, with the charges adjusted proportionally, or "ratcheted," so that the portion of the LIS trunks used for local interconnection service would be charged at TELRIC rates. *Ex. 201-T, at 55*. For example, the CLECs propose that when a CLEC purchases a DS-3 with 28 channels and allocates 14 channels for interconnection, and 14 for long distance service, that the traffic should be priced accordingly.

232 AT&T, WorldCom, and Sprint argue that their proposal does not involve "commingling" of traffic as discussed by the FCC in its *Supplemental Order to the UNE Remand Order*.<sup>66</sup> The CLECs argue that the FCC's concern was for CLECs using combined unbundled elements, rather than interconnection trunks. The CLECS further argue that the FCC's concern was that commingling might result in conversion of special access circuits by interexchange carriers (IXCs) to provide dedicated access services, not the use of circuits for interconnection purposes.

b. Qwest Position

233 Qwest asserts that its SGAT provision allows CLECs the option of using excess capacity on existing private line facilities as an interconnection trunk instead of purchasing entrance facilities. Qwest argues that CLECs should be required to pay private line rates for the use of those facilities, and should not be allowed to pay TELRIC rates for that portion of the network element used to carry local traffic. In its SGAT provision, Qwest proposes to allow CLECs to use spare capacity on a facility carrying private line traffic in order to save the cost of an additional facility, but will not adjust the price to reflect the traffic mix.

234 Qwest asserts that the FCC has, by order, prohibited ILECs from "ratcheting" or "commingling" rates on special access trunks that may also be used for local interconnection. Qwest relies on the FCC's *UNE Remand Order*,<sup>67</sup> as follows:

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

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<sup>66</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, FCC-370 (rel. Nov. 24, 1999) (*Supplemental Order*).

<sup>67</sup> *UNE Remand Order*, ¶ 2 (emphasis added).

*of local exchange service* in addition to the exchange access, to a particular customer.

235 Further, Qwest asserts that WorldCom made a similar request to the FCC in an *ex parte* letter (*see Ex. 169*), and that the FCC denied the request in its *Supplemental Order to the UNE Remand Order*.<sup>68</sup> In that Order, the FCC provided that:

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

236 Qwest asserts that, under the *SBC Texas Order*, it may not provide the arrangement that WorldCom and AT&T request as Qwest must comply with FCC rules and orders to be in compliance with the requirements of Section 271 of the Act.<sup>69</sup>

c. Draft Initial Order

237 The Draft Initial Order stated that although we understand Qwest's concern about compliance with FCC orders and rules, we are not convinced that the proposal made by AT&T and WorldCom is the same arrangement that WorldCom proposed in its *ex parte* letter, or that the FCC discusses in its *Supplemental Order*.<sup>70</sup> For that reason, we agreed in the Draft Initial Order with the CLECs that placing LIS trunk traffic on an entrance facility carrying exchange access traffic does not constitute "commingling" of traffic under the *Supplemental Order*, and thus should be allowed. Compensation for that portion of the trunk used for local interconnection service should be priced proportionally at TELRIC rates. For this reason, the Draft Initial Order found that Qwest is not in compliance with this checklist item and that the Commission will not approve Qwest's SGAT until Qwest modifies its SGAT Section 7.3.1.1.1 as discussed above.

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<sup>68</sup> *Supplemental Order*, ¶ 28.

<sup>69</sup> *SBC Texas Order*, ¶¶ 227-28.

<sup>70</sup> *Supplemental Order*, ¶ 28.

## d. Qwest Comments

238 Qwest argues that allowing ratcheted rates for jointly-used facilities is not required in the Act or in an FCC order. Therefore, Qwest argues that its failure to offer such rates cannot be used as the basis for finding Qwest to be non-compliant with Checklist Item 13. Further, Qwest states that there is no difference in the proposal made by AT&T and WorldCom at the workshops and the proposal made by WorldCom to the FCC. *Ex. 169.*

## e. Discussion

239 In our Draft Initial Order, we approved the arrangement proposed by CLECs to use a “ratcheted” rate for DS-3 facilities through which DS-1s used either solely for local interconnection or solely for toll services could be multiplexed. *Initial Draft Order, ¶ 209.* This was based on the conclusion that “we were not convinced that the proposal made by AT&T and WorldCom is the same arrangement that WorldCom proposed in its ex parte letter, or that the FCC discusses in its Supplemental Order.

240 Under Section 271(c)(2)(B)(xiii) of the Act, Qwest has a duty to provide reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2). That section states that reciprocal compensation cannot be found to be just and reasonable unless “such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier.” To the extent that this issue involves the determination of the appropriate cost associated with this activity, it is a Section 271 issue and is properly addressed in this Order.<sup>71</sup>

241 We have reviewed in detail the record on this issue. The issue was raised in the testimony of Kenneth Wilson (*Ex. 201-T, at 55*) and Mark Argenbright (*Ex. 181-T 13-14*). Mr. Argenbright’s testimony stated that “when a CLEC uses an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs in conjunction with its use of UNEs [it] should have the tariff rates ratcheted to reflect the UNE usage on the commingled facility.” At the first workshop, Mr. Argenbright stated that his testimony was “less than clear” and added that the ratcheting proposal was only applicable to the extent that it involved interconnection trunks. *Tr., at 607-8.* In their brief, AT&T and WorldCom stated that since their request only involved interconnection trunks, it was not affected by the FCC’s decision in the *Supplemental Order*, further clarified in the *Supplemental Order Clarification*.<sup>72</sup>

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<sup>71</sup> The Commission observes that it has been so characterized by Qwest in its SGAT Issues Matrix, filed June 19, 2000, in Docket Nos. UT-003022 and UT-003040.

<sup>72</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification*, CC Docket No. 96-98,

- 242 In its *Supplemental Order*, the FCC imposed a temporary prohibition on combining loops or loop-transport combinations with tariffed special access services (“commingling”), except in cases where the carrier was providing a significant amount of local exchange service, in addition to exchange access service, to a particular customer. The purpose of the temporary constraint was to maintain the status quo while the FCC reviewed the issues contained in the *Fourth FNPRM*. The prohibition does not apply when significant local exchange service is being provided to the end user, or when the carrier is the exclusive provider of local exchange service to the end user. In its *Supplemental Order Clarification*, the FCC defined more precisely what it meant by the term “significant amount of local exchange service.”<sup>73</sup> When determining whether a carrier meets the criteria for significant local use, the FCC held that when DS-1s are multiplexed onto DS-3s, all DS-1s must meet the significant local use criteria in order for the DS-3 to meet the criteria.
- 243 Both the *Supplemental Order* and the *Supplemental Order Clarification*, as written, prohibit the substitution of unbundled loop-transport combinations for special access services, unless certain conditions are met.<sup>74</sup> The FCC does not mention “interconnection trunks” in either the *Supplemental Order* and *Clarification*. The FCC appears to be concerned with the situation of converting special access facilities to UNE pricing to provide service to particular end users, rather than the provision of interconnection facilities between carriers and the ILEC. However, the proposal in Exhibit 169 is very similar to the situation before us, in that it involves the sharing of a DS-3 facility for both toll and local traffic based on the assumption that the traffic in the underlying DS-1s would not be mixed within the DS-1 facilities. *Tr. at 605-6; Ex. 169*.
- 244 We note that the FCC decision is a temporary constraint. The FCC has stated that it has not prejudged the commingling issue, but rather is waiting to make a final decision until it receives more information. Even if the activity prohibited by the FCC is not entirely identical to the situation before us, the ultimate FCC order may provide valuable guidance once it is issued.
- 245 Whether or not the FCC prohibition applies to the proposal put forth by AT&T and WorldCom, several issues remain.
- 246 First, the issue arises because of the significant scale economies inherent in DS-3 facilities relative to DS-1 facilities. Given the cost and pricing structure of DS-1s and

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FCC 00-183 (rel. June 2, 2000) (*Supplemental Order Clarification*).

<sup>73</sup> *Id.*, ¶ 22.

<sup>74</sup> *Id.*, ¶ 8.



DS-3s in the private line tariff and price list, an entire DS-3 is more economical even when only 9 of the 28 available DS-1 equivalents is actually used.<sup>75</sup> Thus, apart from any price advantage that may be obtained by classifying any given circuit as interconnection rather than special access, CLECs have a strong interest in aggregating DS-1s into DS-3s. There is a public interest in such aggregation as well, since the DS-3s are less costly to provision than are the equivalent number of DS-1s. The CLECs are purchasing DS-3 facilities even though they are not using all 24 DS-1s contained in the facility. Their alternative would be to purchase, under the private line price list, only those DS-1s that they need. Given the pricing structure of DS-1s and DS-3s in the private line price list, it is cheaper for the CLEC to purchase an entire DS-3 if they will use more than 9 of the 24 available channels. The CLECs' purchasing decisions appear to be driven by economic efficiency, rather than network efficiency. *Tr. at 615.*

247 Second, Qwest will allow the CLECs to use the excess capacity on special access DS-3s for local interconnection. *Ex. 106, Section 7.3.1.1.2.* The CLECs' alternatives would be to purchase an entire DS3 for this purpose, or only the DS-1s that they need. The ability to use this capacity for interconnection, without paying an additional monthly rate, is cheaper than the other two alternatives available, even at the private line rates. We do not believe the Qwest proposal would force CLECs to use more facilities than are necessary, as stated in the AT&T/WorldCom brief. Joint Statement, at 33.

248 According to Appendix A of the SGAT, the monthly rates for entrance facilities are \$76.70 for DS-1s and \$314.05 for DS-3s. These prices are appreciably lower than the private line rates for facilities that are presumably the same. It is understandable that CLECs would rather pay these lower rates for facilities used for interconnection than the higher private line rate.

249 Several other questions remain. Qwest states that allowing commingling could result in the Commission "impermissibly modifying a federal tariff." *Qwest Comments, at 16.* Qwest also characterizes the CLEC proposal as identical to what they proposed to the FCC. If this is the case, the Commission questions whether Qwest could allow CLECs to use private line facilities for interconnection without also violating the federal tariff or the FCC order. It appears that either Qwest does not consider the sharing of a DS-3 facility to be "commingling" as the term was used by the FCC, or that Qwest is willing to "commingle" traffic originating on DS-1s onto a DS-3 as long as it receives the higher price. *Tr. at 604.*

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<sup>75</sup> According to the Qwest Private Line Transport Services Price List, the DS-1 monthly rate is \$150 or \$142.50, depending on quantity ordered; the DS-3 monthly rate is \$1,282.50.

- 250 Qwest also discusses the “significant burden” associated with tracking and adjusting traffic flowing on commingled trunks. *Qwest Comments at 16*. Since the CLEC proposal is merely to prorate the cost of a DS-3 based on the use of the underlying DS-1s multiplexed on to the DS-3, we question how significant this burden would be.
- 251 Upon further consideration of the record, the decision in the Draft Initial Order should be reversed. Our decision is not based on the *FCC Supplemental Order* or the *Supplemental Order Clarification*. We continue to question whether the CLEC proposal is identical to the one posed to, and prohibited by, the FCC. Our decision is based on the conclusion that the Qwest proposal to allow use of existing spare capacity on private line facilities for interconnection gives the CLECs the ability to achieve the network efficiency they say they want. Given their willingness to purchase the spare capacity for economic reasons even at the higher private line rate, the CLECs are in essence saving the cost of purchasing separate interconnection entrance facilities in addition to the private line facilities. We will therefore allow Qwest to leave Section 7.3.1.1.2 of the SGAT unchanged. We may wish to review this provision once the FCC issues its final decision on the commingling issue.

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

##### a. Qwest Position

- 252 In Sections 7.1.2.4.1, 7.1.2.4.3, and 7.1.2.4.4 of its SGAT, Qwest allows CLECs to establish a single point of interconnection, or "POI," within a LATA, provides transport facilities to allow CLECs to transport traffic within local calling areas of a LATA through "LIS InterLocal Calling Area facilities," and charges Direct Trunked Transport rates should the length of transport fall within 20 miles, and Private Line Transport Service rates for the portion of transport exceeding 20 miles. Qwest asserts that these provisions allow CLECs to interconnect through a single POI per LATA, and properly allow Qwest to recover the cost of transporting CLEC calls over long distances within the LATA.

##### b. CLEC Position

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

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

c. Draft Initial Order

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

d. Qwest Comments

256 Qwest objects to the conclusion in the Draft Initial Order that Qwest's Inter Local Calling Area transport proposal is not in compliance with the provisions of Section 252(d)(2) by requiring CLECs to pay retail private line rates for transport of traffic. Qwest argues that when a CLEC establishes a single POI in a distant location and the call is hauled across local calling areas, it is no longer local traffic. Qwest argues that the *First Report and Order* requires Qwest to pay reciprocal compensation only for local traffic.<sup>76</sup> Qwest further cites an Arizona District Court case to assert that it may charge a CLEC for the increased costs of transport when a CLEC chooses to establish a single POI. Qwest requests that the Draft Initial Order be modified to allow Qwest to price at cost-based rates transport that is neither interconnection nor local telecommunications.

e. Discussion

257 This issue involves the transport of telecommunications traffic to and from a CLEC's switch when the CLEC chooses to locate its switch outside a local calling area particularly when establishing a single POI per LATA. The question of how to charge for transport occurs when, for example, a CLEC serves Olympia from a switch in Tacoma and a CLEC customer in Olympia calls a Qwest customer in Olympia. Due to the requirement not to discriminate, Qwest must charge wholesale rates for

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<sup>76</sup> *First Report and Order*, ¶ 1034.

transport of local CLEC traffic, even if that traffic leaves the local calling area for purposes of transport. A CLEC call is local, even if it is delivered to a Qwest tandem switch located outside the local calling area. Under this example, Qwest must provide TELRIC-priced transport for the round-trip from Olympia to Tacoma and back.

258 While Qwest asserts in its comments that any call that leaves a local calling area cannot be considered a local call, Qwest is not consistent in how it classifies traffic as local. During the first workshop, Qwest witness Freeberg explained how a call between two Qwest offices might be completed through a tandem located in another local calling area. *Tr. at 536*. In this case, Qwest referred to this call as a local call. Clearly, when Qwest transports a call to and from a local tandem, that transport is being provided as part of its local service. In the same way, the CLEC switch in Tacoma (in the example above) is providing a comparable function, and the transport to and from that switch is being used in the provision of local service. Therefore, we decline to modify the Draft Initial Order to allow Qwest to charge retail private line rates for traffic that is essentially local.

#### 7. *Symmetrical Compensation*

##### a. Qwest Position

259 Qwest objects to the CLECs' proposal to recover the hidden costs of interconnection, such as the costs of collocation and long loops, through reciprocal compensation. Qwest asserts that the CLECs proposal is inconsistent with FCC orders and pricing rules for transport and termination. Specifically, Qwest notes that the FCC's *First Report and Order* requires costs to be based upon incumbent LECs' costs unless the CLEC proves that its costs are higher by submitting its own cost study.<sup>77</sup> Qwest asserts that the costs of collocation and long loops are incurred voluntarily by CLECS to avoid the costs of purchasing and installing additional switches. Qwest relies on two district court decisions which hold that incumbent LECs need not pay a portion of a competitor's costs in providing interconnection with the LEC.<sup>78</sup>

##### b. CLEC Position

260 AT&T, WorldCom, Sprint, NEXTLINK, ELI, and ATG all assert that Qwest should pay a proportional share of the costs of facilities used for interconnection.

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<sup>77</sup> *First Report and Order*, ¶ 1085.

<sup>78</sup> *AT&T Communications of the South Central States, Inc. v. BellSouth Telecom, Inc.*, 20 F. Supp. 2d 1097 (E.D. Ky 1998); *U S WEST Communications, Inc. v. AT&T Corp.*, No. A1-97-085, (D.N.D. Jan. 8, 1999).

NEXTLINK, ELI, and ATG argue that Section 709(b) of the FCC's rules requires Qwest to pay its proportional share:

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

*47 C.F.R. § 51.709(b).*

261 In addition, AT&T, WorldCom, and Sprint rely on Section 711 to require symmetrical compensation:

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

*47 CFR § 51.711(a)(3).*

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

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

c. Draft Initial Order

264 The Draft Initial Order determined that the commission was not prepared to resolve this impasse issue on the limited record before us at this time. The Draft Initial Order stated that the parties should further address the matter, in a limited fashion, in workshop discussions concerning interconnection. Should the parties find a solution to this impasse issue before that time, the parties are requested to bring that resolution to the attention of the Commission.

d. Qwest Comments

265 Qwest agrees with the finding in the Draft Initial Order that the record is not sufficient in this proceeding to determine whether CLECs should be entitled to symmetrical treatment in the form of reciprocal compensation for certain items involved in interconnection. However, Qwest disagrees with the recommendation to allow CLECs to address the matter further in the next workshop session, which will address interconnection issues.

266 Qwest argues that the Act and FCC rules require payment of reciprocal compensation for transport and termination, not for the costs of interconnection. Qwest asserts that it has no responsibility to share the CLECs' expenses for various interconnection facilities.

e. CLEC Comments

267 In comments jointly filed by a number of CLECs, the CLECs note that cost sharing for interconnection facilities is scheduled to be addressed in the new cost proceeding, Docket No. UT-003013. The CLECs suggest that we include a reference to that effort in this Order, but also allow parties to address the issue in the second workshop.

f. Discussion

268 We decline to modify our determination on this issue in the Draft Initial Order. As we stated in the Draft Initial Order, the CLECs have not presented sufficient evidence during this workshop phase to allow the Commission to reach a conclusion on whether ILECs must make symmetrical payment as the CLECs request. As the CLECs note, this issue will be addressed during Part B of the new generic pricing proceeding, Docket UT-003013. However, to the extent a matter addresses interconnection and not reciprocal compensation, parties may raise the issue of symmetrical compensation for interconnection facilities during the second workshop scheduled to begin on November 6, 2000.

**D. Verification of Compliance**

*1. Generally*

269 While Qwest notes that it provides reciprocal compensation through interconnection agreements, its testimony refers only to the SGAT. In future testimony, workshops and briefing, the Commission requests that Qwest make specific reference to its interconnection agreements when describing how it meets the requirements for checklist items. Under the Supplemental Interpretive and Policy Statement, the Commission stated that it would determine Qwest's compliance with checklist items based upon Qwest's interconnection agreements, and not on Qwest's SGAT

provisions. While Qwest's response to Bench Request No. 1, Exhibit 251, provides a chart cross-referencing each checklist item with the SGAT and individual interconnection agreements, Qwest should incorporate these references in its specific presentation of a checklist item. The burden to show compliance under its interconnection agreements is upon Qwest, not staff or other parties.

## 2. *Summary of Compliance*

270 For the reasons discussed above, the Commission finds that Qwest is not in compliance with the requirements of Checklist Item No. 13. Further, Qwest's compliance is subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process. Finally, the Commission cannot approve the provisions of Qwest's SGAT governing reciprocal compensation until Qwest modifies its SGAT as discussed above.

## **XII. APPENDIX A**

### **A. Comments by Qwest**

271 Qwest suggested several corrections to the notations contained in Appendix A of the Draft Initial Order for some checklist items. First, concerning Checklist Item No. 9, Qwest disagreed with the notation on the appendix that Qwest was noncompliant and that its performance results indicated improvement for itself and a decline in performance for CLECs. Qwest stated that it had provided only one month of data and that trends could not be characterized from the data.

272 Concerning Checklist Item No. 10, Qwest objects to the notation on Specific Question No. 4 that WorldCom has a pending request for access to the ICNAM database in its entirety. Qwest states that WorldCom has not made a formal request for this access.

273 Concerning Checklist Item No. 12, Dialing Parity, Qwest suggested that the answers to questions regarding performance standards and scripts be considered not applicable, or the questions deleted. Qwest stated that the FCC had determined in its Local Competition Order that measures were not necessary, and that the question regarding scripts was not relevant to Checklist Item No. 12.

### **B. Discussion**

274 Concerning Checklist Item No. 9, the comments on Appendix A are based on the data provided. Qwest provided data for two months, March and April 2000, and a graph showing the data points for the NP-1 measure plotted for CLECs and for Qwest. The

graph supported the notation made on the Appendix. The Commission declines to change its notation, but recognizes that more data over a longer period of months will be more indicative of a trend. Compliance with this checklist item remains subject to the conclusion of performance test auditing being conducted through the ROC OSS regional testing process.

275 Concerning Checklist Item No. 10, the Commission recognizes that its answer is not correct and will change it to "no."

276 The Commission has reviewed Qwest's suggestions concerning Checklist Item No. 12 and believes they are reasonable. The notation on general Question No. 2 will say "N/A" and the note will be deleted. Specific Question No. 6 will be deleted, as this question will likely be addressed in the context of compliance with Section 272 or anti-backsliding issues.

## **XII. FINDINGS OF FACT**

- 277 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.
- 278 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 subsection 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 Act.
- 279 3. Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.
- 280 4. Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State 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 subsection 271(c).
- 281 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.



- 282 6. In October 1997 and in March 2000, the Commission issued two Interpretive and Policy Statements addressing the process and evidentiary requirements for the Commission's verification of Qwest's compliance with Section 271(c).
- 283 7. On March 22, 2000 and on April 28, 2000, Qwest submitted its SGAT for review and approval by this Commission.
- 284 8. On June 6, 2000, the Commission consolidated its review of Qwest's SGAT and its evaluation of Qwest's compliance with the requirements of Section 271(c).
- 285 9. During a workshop held on June 21-23 and July 6, 2000, 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), as well as to review Qwest's SGAT.
- 286 10. Aside from the issues of Qwest's proposed SGAT language to provide access to private right-of-way agreements and time to respond to requests for access, all parties agreed that Qwest has demonstrated that Qwest provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned and controlled by Qwest as required by Checklist Item No. 3.
- 287 11. Qwest's proposed SGAT language that allows CLECs to obtain access to certain right-of-way agreements with private landowners only after obtaining the consent of the landowner and paying a nominal fee continues to impose an unreasonable burden upon CLECs seeking access to the right-of way agreements to determine whether to request access to the right-of-way.
- 288 12. FCC rules require ILECs and other utilities to grant or deny a CLEC's request for access to poles, ducts, conduit, and rights-of way within 45 days, regardless of the number of poles, ducts, conduits, or rights-of-way included in the request.
- 289 13. Qwest's SGAT language allows longer than 45 days to grant or deny a CLEC's request for access to multiple poles, ducts, conduits, and rights-of way.
- 290 14. Qwest provides CLECs with nondiscriminatory access to 911, E911, Directory Assistance, and operator services as required by Checklist Item Nos. 7(i), (ii), and (iii).
- 291 15. All parties agree that Qwest provides White Pages Directory Listings for CLEC customers as required by Checklist Item No. 8.
- 292 16. The parties agree that Local Routing Number, or LRN, issues should be deferred and addressed in Workshop 2 as part of Checklist Item No. 1.

- 293 17. The parties agree that the effects of number porting on number reassignments should be deferred and addressed in Workshop 2 as part of Checklist Item No. 11.
- 294 18. Aside from the LRN and number porting issues deferred to Workshop 2, the parties agree that Qwest provides nondiscriminatory access to telephone numbers for assignment to CLEC customers and complies with the NANPA guidelines for numbering administration as required by Checklist Item No. 9.
- 295 19. With the exception of the issue of access to the ICNAM database, the parties agree that Qwest provides nondiscriminatory access to its call-related databases and associated signaling as required by Checklist Item No. 10.
- 296 20. Qwest's SGAT provisions regarding access to the ICNAM database are in compliance with FCC rulings and orders.
- 297 21. None of the parties to the proceeding raised concerns in testimony or at the workshops about Qwest's provision of dialing parity as required by Checklist Item No. 12.
- 298 22. Based on the testimony and evidence it submitted, Qwest provides nondiscriminatory access to services and information as necessary to allow CLECs to implement dialing parity for local calls to and from CLEC customers compared to Qwest's own customers.
- 299 23. Based on the testimony and evidence presented during the workshop, Qwest does not provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) as required by Checklist Item No. 13.
- 300 24. Qwest's SGAT provisions relating to reciprocal compensation for ISP-bound traffic are not consistent with existing interconnection agreements or prior Commission decisions on this issue, and do not provide reciprocal compensation arrangements as required by Checklist Item No. 13.
- 301 25. Qwest's SGAT provisions relating to the definition of whether a CLEC switch is a tandem switch or entitled to tandem treatment are not consistent with existing interconnection agreements or federal court decisions on the issue, and do not provide reciprocal compensation arrangements as required by Checklist Item No. 13.
- 302 26. Qwest's SGAT provisions requiring compensation for transportation of traffic between a host and remote switch are consistent with FCC rules and network engineering principles.

- 303 27. Qwest's SGAT Section 7.3.1.1.2 allows CLECs to use capacity on existing private line facilities for interconnection but prices the service based on its private line tariff rather than as local interconnection service. This provision allows CLECs an acceptable alternative to purchasing additional facilities and provides reciprocal compensation arrangements as required by Checklist Item No. 13.
- 304 28. Qwest's SGAT provisions requiring CLECS to pay retail private line rates for the transportation of local traffic are not consistent with Qwest's own practices and thus do not provide reciprocal compensation arrangements as required by Checklist Item No. 13.
- 305 29. The CLECs have not provided sufficient evidence to demonstrate that they are entitled to symmetrical or reciprocal compensation for various interconnection facilities, nor that Qwest fails to comply with the requirements of Checklist Item No. 13 for failing to pay symmetrical compensation.
- 306 30. Through its existing interconnection agreements and its SGAT, Qwest is subject to legally binding commitments to provide access to 911, E911, Directory Assistance, and operator services, White Pages Directory Listings, telephone numbering, access to databases and associated signaling, and dialing parity.
- 307 31. Any findings of Qwest's compliance with Checklist Items No. 3, 7(i), 7(ii), 7(iii), 8, 9, 10, and 13 are subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process.
- 308 32. Qwest's compliance with Checklist Item No. 12 is not subject to Commission review and evaluation of performance measures, as the ROC has not developed such performance measures.

### **XIII. CONCLUSIONS OF LAW**

- 309 1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 310 2. Qwest's SGAT provisions concerning access to private right-of-way agreements are not in compliance with the requirements of Checklist Item No. 3.
- 311 3. Qwest's SGAT provisions concerning the time for responding to CLEC requests for access to poles, ducts, conduits, and rights-of-way are not in compliance with FCC rules, orders, or the requirements of Checklist Item No. 3.

- 312 4. Until Qwest modifies its SGAT provisions relating to access to private right-of-way agreements and the response time for access to poles, ducts, conduits, and rights-of-way, and contingent upon Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(iii), Checklist Item No. 3, and the Commission will not approve Qwest's SGAT.
- 313 5. Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(vii) (I), (II), and (III), Checklist Items No. 7(i), (ii), and (iii), subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 314 6. Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(viii), Checklist Item No. 8, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 315 7. Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(ix), Checklist Item No. 9, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 316 8. Qwest's SGAT allows CLECs to obtain access to the ICNAM and other databases at a technically feasible point, and is consistent with the FCCs determinations in its *First Report and Order* and *UNE Remand Order*.
- 317 9. Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(x), Checklist Item No. 10, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 318 10. Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xii), Checklist Item No. 12.
- 319 11. Qwest's SGAT provisions concerning reciprocal compensation for ISP-bound traffic are not consistent with existing interconnection agreements and Commission decisions on the issue, and are not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 320 12. Qwest's SGAT provisions concerning the definition of tandem switch and the treatment of CLEC switches are not consistent with Commission arbitration decisions and federal court decisions, and are therefore not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.

- 321 13. Qwest's SGAT provision requiring CLECs to pay transport charges for transport between Qwest host and remote switches is consistent with FCC rules and network engineering and is therefore in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 322 14. Qwest's SGAT provision involving commingling of access and interconnection service over a DS-3 facility and requiring CLECs to pay private line rates when using spare capacity on facilities previously purchased under a private line tariff allows CLECs an acceptable alternative to purchasing additional facilities. The provision is therefore in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 323 15. Qwest's SGAT provision requiring CLECS to pay retail private line rates when Qwest must transport local traffic to a CLEC switch outside of a local calling area is inconsistent with Qwest's own practices, and is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 324 16. Until Qwest modifies its SGAT provisions concerning reciprocal compensation as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and the Commission will not approve Qwest's SGAT.

#### **XIV. ORDER**

- 325 1. Qwest and other parties should continue negotiations on the issue of access to certain private right-of-way agreements, with the understanding that Qwest's quitclaim proposal, while improved, still imposes significant burdens on CLEC access to documents to determine whether to seek access to certain rights-of-way.
- 326 2. Qwest must modify its SGAT provisions concerning the time to respond to CLEC requests for access to multiple poles, ducts, conduits, and rights-of-way to be consistent with FCC rules requiring a response within a 45 day period in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(iii), Checklist Item No. 3, and for the Commission to approve Qwest's SGAT.
- 327 3. Consideration of Local Routing Number issues and the effect of number porting on number reassignments shall be deferred and addressed in Workshop 2 as a part of discussion on Checklist Items No. 1 and 11, respectively.
- 328 4. Qwest must modify its SGAT provisions to require payment of reciprocal

compensation for ISP-bound traffic in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and for the Commission to approve Qwest's SGAT.

- 329 5. Qwest must modify its SGAT provisions concerning the definition and treatment of CLEC switches as tandem switches to be consistent with prior Commission arbitration decisions and court rulings concerning the factors to be considered and the termination rates to be paid in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and for the Commission to approve Qwest's SGAT.
- 330 6. Qwest must modify its SGAT provisions concerning InterLocal Calling Area Trunking to reflect that Qwest will charge CLECs TELRIC rates rather than retail private line rates for the transportation of local traffic, even if the transportation occurs outside of the local calling area, in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and for the Commission to approve Qwest's SGAT.
- 331 7. The parties to this proceeding may submit testimony and evidence in Workshop 2 on the issue of symmetrical compensation for interconnection facilities to the extent that the matter addresses interconnection and not reciprocal compensation.
- 332 8. Qwest must submit to the Commission the audited results of performance testing relating to Checklist Items No. 3, 7 (i), (ii), (iii), 8, 9, 10, and 13, and associated testimony concerning the audited results as soon as the results are available.
- 333 9. The Commission retains jurisdiction to implement the terms of this order.

DATED at Olympia, Washington, and effective this 31st day of August, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL  
Administrative Law Judge



**REVISED APPENDIX A**  
**(August 31, 2000)**  
**Qwest Compliance With Evidentiary Requirements**  
**Included in Supplemental Interpretive and Policy Statement**

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

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

**Generic Questions:**

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



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

**Questions Specific to Checklist Item 3:**

Question	Testimony/Evidence Reference
<p>1. How is U S WEST providing nondiscriminatory access to poles, ducts, conduits and rights-of-way at just and reasonable rates?</p>	<p>Ex. 151-T, at 6, 7; SGAT, Ex. 106, Sec. 10.8.2. There is an impasse issue w/ respect to nondiscriminatory access to rights-of-way.</p>
<p>2. Does U S WEST provide the same access to these facilities to CLECs as it provides itself? Describe how it does so.</p>	<p>Ex. 151-T, at 12-15.</p>

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

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

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

**Generic Questions:**

Question	Testimony/Evidence Reference
1. Describe how U S WEST has fully implemented this checklist item as required by Section 271 of the Act.	911: Ex. 131-T, at 6; DA: Ex. 111-T, at 5; OS: Ex. 111-T, at 13.
2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?	911: Ex. 131-T, at 21, 22; No info on how performance standards were determined. Ex. 131-T, at 7-8, on NENA industry guidelines. DA/OS: Ex. 120; Ex. 121. No info on how standards were determined.
3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?	911: Ex. 131-T, at 6; Ex. C-140; DA: Ex. 111-T, at 7; Ex. 114-T, at 9-10. OS: Ex. 111-T, at 15.

<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>911:Ex. 131-T, at 15, 16,18, 19; DA: Ex. 111-T, at 8-11, Ex. 114-T, at 7-8; SGAT, Ex. 106, revised Secs. 10.6.2.1.1, 10.6.2.2, 10.4.2.1.3, 10.5.2.10.; OS; Ex. 111-T, at 18-20.</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>911: Ex. 131-T, at 7. Process, Ex. 132; No info on update scheduling; DA: SGAT, Ex. 106,10.5, 10.6; OS: SGAT, Ex. 106, 10.7. No process or schedule for updating rules.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>SGAT, Ex. 106; Matrix of what docket things are being addressed in; pricing deferred to 3013.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>NA - items are being offered.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>NA - items are being offered.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>911: No information provided. DA/OS: Ex. 111-T, at 28 - none known about.</p>

10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.	911: Ex. 131-T, at 9. DA/OS: Ex. 111-T, at 28.
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**Questions Specific to Checklist Item 7:**

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

**Checklist Item 8: White Pages Directory Listings**

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

**Generic Questions:**

Question	Testimony/Evidence Reference
1. Describe how Qwest has fully implemented this checklist item as required by Section 271 of the Act.	Ex. 111-T, at 29 - 35.

<p>2. What performance standards must Qwest meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC's, affiliates, and itself? How were these performance standards determined?</p>	<p>Ex. 111-T, at 36; Ex. 114-T, at 14; and Ex. 120.</p> <p>NOTE: There is no discussion of specifically how the company came to develop these two approaches for the needed standards. The first performance report is due now.</p>
<p>3. To whom is Qwest presently providing, on a commercial basis, this checklist item?</p>	<p>Ex. 111-T, at 31; and Ex. 113-C.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by Qwest are comparable to the quality and reliability for such items Qwest provides to itself or its own customers.</p>	<p>Ex. 111-T, at 32 - 34; and Ex. 112.</p>
<p>5. What technical standards and/or business rules is Qwest providing to CLEC's for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 111, at 33 - 36, Qwest Reseller and Facility-based Co-Provider Directory Listings User Documents, Ex. 118</p> <p>NOTE: There is no explanation or schedule provided for the updating of these technical standards and/or business rules.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 111-T, at 31.</p>
<p>7. If Qwest is not currently providing this checklist item, is Qwest offering the item? If so, how is it offering the item and under what terms, condition, and rates? Describe how the checklist item is readily available and easily obtained by competitors?</p>	<p>N/A - item is being provided</p>
<p>8. If Qwest is not currently offering this checklist item, is Qwest capable of commercially providing it? What is Qwest's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>N/A - item is being provided</p>

<p>9. Has Qwest received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did Qwest take to avoid recurrences?</p>	<p>N/A - no known complaints on this item</p>
<p>10. Is Qwest able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 111-T, at 31; Ex. 112; TR 163, lines 20-25.</p>

**Questions Specific to Checklist Item 8:**

Question	Testimony/Evidence Reference
<p>1. How is Qwest providing white pages directory listings for customers of the CLEC's telephone exchange service?</p>	<p>Ex. 111-T, at 30, 35, 36, and 37; and Ex. 112.</p>
<p>2. Under what terms does Qwest provide white pages directory listings?</p>	<p>Ex. 111-T, at 36; Ex. 112; SGAT, Ex. 106, Section 10.4; Qwest Reseller and Facility-based Co-Provider Directory Listings User Documents, Ex. 118.</p>
<p>3. Under what terms does Qwest provide nondiscriminatory access to basic directory listings for business accounts (name, address, telephone number, and primary business classification)?</p>	<p>SGAT, Ex. 106, Section 10.4,  NOTE: There is no specific comment in the SGAT, Section 10.4 about <b><i>business accounts</i></b> specifically. The SGAT puts it on the CLEC to ensure all listings are given all the appropriate classifications.</p>
<p>4. Under what terms does Qwest provide: (i) complete content of white page local exchange directory in electronic format; (ii) specific white page directory publication schedules and deadlines; and (iii) specific white page directory publication schedules and delivery dates/locations?</p>	<p>Ex 111-T, at 35, 37; SGAT, Ex 106, Section 10.4.2.3; TR 168; Ex 118.</p>

<p>5. Under what terms does Qwest deliver white and yellow page directories to customers of new carriers? How do those terms differ from those Qwest affords itself, its affiliates, or its retail customers? How do those terms differ from the requirements contained in WAC 480-120-042?</p>	<p>Ex 111-T, at 35; SGAT, Ex 106, 10.4.2.12,</p> <p>NOTE: The terms about delivery of white and yellow pages do differ from the WAC. The Washington SGAT is more specific about the terms.</p>
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**Checklist Item 9: Nondiscriminatory Access to Telephone Numbers**

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

**Generic Questions:**

Question	Testimony/Evidence Reference
<p>1. Describe how U S WEST has fully implemented this checklist item as required by Section 271 of the Act.</p>	<p>Ex. 131-T, at 25-27.</p>
<p>2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?</p>	<p>Ex. 131-T, at 25. Guidelines are external (Industry Numbering Committee). No info on how guidelines were determined.</p>
<p>3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?</p>	<p>Number assignment function now performed by third party. Qwest currently provides NXX Code activations. No information provided re: to whom it provides NXX activations.</p>
<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Non-compliant. For NXX code activations, Qwest’s performance results indicate that its performance for CLECs is deteriorating, while it is improving for Qwest itself. (See NP-1 NXX Code Activation, Supplemental Response to BR #12)</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 131-T, at 26, for NXX activations. Carriers are responsible for accuracy and complete information submitted to LERG.</p>

<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>N/A - service is provided at no charge.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>N/A - item is being provided.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>N/A - item is being provided.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Issues re local routing numbers and double assignment of numbers have been deferred to Checklist Items 1 and 11, respectively.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Yes.</p>



**Questions Specific to Checklist Item 9:**

Question	Testimony/Evidence Reference
1. How is U S WEST providing nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers?	Ex. 131-T, at 25-27. For NXX code activations, Qwest is not in compliance according to the performance results. For number assignment, question is N/A - Access to phone numbers is administered through a third party.
2. Under what terms do carriers, including U S WEST and its affiliates, obtain access to telephone numbers for assignment?	Ex. 131-T, at 25.
3. How is U S WEST managing limitations in numbering resources (e.g., NXX freezes)?	Ex. 131-T, at 28. Process is managed by a third party.

**Checklist Item 10: Databases and Associated Signaling**

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

**Generic Questions:**

Question	Testimony/Evidence Reference
1. Describe how U S WEST has fully implemented this checklist item as required by Section 271 of the Act.	Ex. 106; Ex. 131-T, at 30-42.
2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC's, affiliates, and itself? How were these performance standards determined?	Ex. 141-T, at 18; Ex. 145; Ex. 146-C.
3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?	Ex. 131-T, at 30, 35, 38-39; Ex. 140-C.

<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Ex. 131-T, at 34-35, 39-41.</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 106, Section 21.0; Ex. 131-T at 30-31, 39-40; Ex. 138, Ex. 139; Ex. 149-C; Ex. 150.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 131-T, at 30.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>(Currently providing access to some databases and associated signaling - see (3) above.)  Ex. 106; Ex. 131-T, at 30, 34-36.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>Qwest offering access through SGAT if not provided in interconnection agreements.  Ex. 131-T, at 30-42.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>No. <u>See</u> Ex. 131-T, at 41.</p>

<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 131-T, at 30-42.</p>
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**Questions Specific to Checklist Item 10:**

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

### Checklist Item 12: Dialing Parity

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

#### Generic Questions:

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

<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>N/A - item is being provided</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Haas any CLEC requested the checklist item?</p>	<p>N/A - item is being provided</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Ex. 131-T, at 46.</p>
<p>10. Is U S WEST able to provide this checklist item in all parts of its Washington territory? If not, describe in which parts of its territory the service cannot be provided, and why.</p>	<p>Ex. 131-T, at 44.</p>

**Questions Specific to Checklist Item 12:**

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

3. What percentage of U S WEST switches, serving what percentage of access lines, have been equipped to provide dialing parity for intraLATA toll calls, and in what percentages of switches, serving what percentage of access lines, has that capability been tested?	Ex. 131-T, at 45.
4. Will intraLATA toll dialing parity be implemented in such switches using the “full 2 - PIC” subscription method, and if not, what method will be used?	Ex. 131-T, at 45.
5. Does U S WEST plan to provide dialing parity for intraLATA toll calls before, or only coincident with, its provisioning of in-region interLATA services? Why or why not?	N/A - item is being provided.

**Checklist Item 13: Reciprocal Compensation Arrangements**

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

**Generic Questions:**

Question	Testimony/Evidence Reference
1. Describe how U S WEST has fully implemented this checklist item as required by Section 271 of the Act.	Ex. 151-T; Ex. 157-T; Ex. 106.
2. What performance standards must U S WEST meet regarding the quality, reliability, and timeliness of providing checklist items to CLEC’s, affiliates, and itself? How were these performance standards determined?	Not addressed in testimony. <i>See</i> Ex. 106, Section 20 (Under Development).
3. To whom is U S WEST presently providing, on a commercial basis, this checklist item?	Ex. 151-T, at 4, 32-33.

<p>4. Describe how the quality and reliability of checklist items provided to competitors by U S WEST are comparable to the quality and reliability of such items U S WEST provides to itself or its own customers.</p>	<p>Not addressed in testimony. <i>See</i> Ex. 106, Section 20 (Under Development).</p>
<p>5. What technical standards and/or business rules is U S WEST providing to CLECs for each checklist item? Explain the process and scheduling for updating these technical standards and/or business rules.</p>	<p>Ex. 106, Section 21; Ex. 151-T, at 31-32, 36; Ex. 154.</p>
<p>6. What is the rate of each checklist item? How was the pricing of each item (as applicable) determined? Is pricing equitable?</p>	<p>Ex. 106, Exhibit A; Ex. 151-T, at 23, 27-31.</p>
<p>7. If U S WEST is not currently providing this checklist item, is U S WEST offering the item? If so, how is it offering the item and under what terms, conditions, and rates? Describe how the checklist item is readily available and easily obtained by competitors.</p>	<p>Providing through interconnection agreements, <i>also see</i> SGAT, Ex. 106.</p>
<p>8. If U S WEST is not currently offering this checklist item, is U S WEST capable of commercially providing it? What is U S WEST's anticipated schedule to provide the item? Has any CLEC requested the checklist item?</p>	<p>Providing through interconnection agreements, <i>also see</i> SGAT, Ex. 106.</p>
<p>9. Has U S WEST received any formal or informal written complaints from new entrants regarding provision of this checklist item? If so, what was the nature of the complaint, what is its current status and, if applicable, how was it resolved? For complaints that were found to be valid, what steps did U S WEST take to avoid recurrences?</p>	<p>Yes. NEXTLINK brought a formal complaint on this checklist item to the Commission concerning payment of reciprocal compensation for ISP traffic. NEXTLINK also raised the issue during the workshops in June and July.</p>

10. Is U S WEST able to provide this checklist item in all parts of its Washington state service territory? If not, describe in which parts of its territory the service cannot be provided, and why.	Ex. 151-T, at 33.
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**Questions Specific to Checklist Item 13:**

Question	Testimony/Evidence Reference
1. How is U S WEST providing reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2)?	Ex. 151-T, at 4-5, 31.
2. Describe arrangements for reciprocal compensation, including bill-and-keep, for local exchange traffic between U S WEST and CLECs and other ILECs?	Qwest does not completely explain for interconnection agreements, but primarily for the SGAT. <i>See</i> Ex. 151-T, at 27 to 31.
3. For carriers with bill-and-keep arrangements, specify whether bill-and-keep is replaced with explicit compensation arrangements when traffic is not in balance. How is traffic balance determined?	Ex. 151-T, at 31.
4. For all carriers with explicit compensation arrangements, specify the type of arrangements and rates (i.e., call termination rates).	Qwest does not completely explain for interconnection agreements, but primarily for the SGAT. <i>See</i> Ex. 151-T, at 27 to 30.



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