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

JOINT STATEMENT OF POSITION AND BRIEF REGARDING QWEST'S §§ 271 and 252(f) OBLIGATIONS RELATED TO INTERCONNECTION, RESALE AND LNP

AT&T Communications of the Pacific Northwest, Inc., AT&T Local Services on behalf of TCG Seattle and TCG Oregon ("AT&T") and WorldCom, Inc. on behalf of its regulated subsidiaries ("WCom"), collectively the "Joint Intervenors," hereby submit this brief addressing Qwest Corporation's ("Qwest" formerly known as U S WEST Communications, Inc.) lack of compliance with its § 271 obligations. Specifically, this brief addresses certain disputed issues between the Joint Intervenors and Qwest in relation to Qwest's alleged compliance with its interconnection, resale and local number portability ("LNP") obligations under §§ 271 and 252(f) of the Telecommunications Act of 1996 ("Act").

INTRODUCTION

The United States Congress conditioned the Regional Bell Operating Companies' ("BOC") entrance into the in-region interLATA long distance market on their compliance with 47 U.S.C. § 271. To be in compliance with § 271, the BOC must "support its application with actual evidence demonstrating its *present* compliance with the statutory conditions for entry."[1]

The Washington Utilities and Transportation Commission ("Commission") is charged with the important task of ensuring that the local telecommunications market in Washington is indeed open to competition and that Qwest is presently complying with its obligations under both state and federal law. While remaining the final decision-maker on Qwest's compliance with its § 271 obligations, the Federal Communications Commission ("FCC") looks to the state commissions for rigorous factual investigations upon which the FCC may base its conclusions.

To conduct a rigorous investigation, one must understand both the legal standards that Qwest is held to and, importantly, Qwest's actual implementation of those standards. In this phase of the investigation, Qwest has chosen to offer its SGAT as alleged proof of compliance with its legal obligations to provide interconnection, resale and LNP pursuant to the Act. Qwest's actual implementation of the SGAT, or its "performance," will be tested in the Regional Oversight Committee's ("ROC") performance and OSS test process. Qwest must bring the results of that process back to Washington for the Commission's consideration.

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[1] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, ¶ 37 (released December 22, 1999). ("***Bell Atlantic New York 271 Order.***")

DISCUSSION

Through these workshops, the Commission is conducting investigations of both Qwest's Statement of Generally Available Terms ("SGAT") and Qwest's actual compliance, or lack thereof, with the checklist items contained in 47 U.S.C. § 271(c)(2)(B). With respect to the SGAT review, a "State commission may not approve such statement unless such statement complies with [§ 252(d)] and [§ 251] and the regulations there under." 47 U.S.C. § 252(f). Furthermore, a state commission may establish or enforce other requirements of state law in its review of the SGAT. Id.

To demonstrate compliance with the requirements of § 271's competitive checklist, Qwest must show that "it has 'fully implemented the competitive checklist [item]… .'"[2] Thus, Qwest must plead, with appropriate supporting evidence, the facts necessary to demonstrate it has complied with the particular requirements of the checklist item under consideration.[3] It must:

> establish that it is 'providing' a checklist item, [by] demonstrat[ing] that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.[4]

In this proceeding, Qwest asks the Commission to consider primarily its SGAT as evidence of compliance with § 271 and eventually the performance data from the Regional Oversight Committee's ("ROC") testing. The FCC expects that Qwest must

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[2] *Bell Atlantic New York 271 Order*, ¶ 44.
[3] Id., ¶ 49.
[4] *In the Matter of Application of BellSouth Corporation et al. for Provision of Inregion-interLATA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121, FCC 98-271, ¶ 54 (released Oct. 13, 1998). ("***BellSouth Second Louisiana 271 Order.***")

prove its compliance with each of these elements by a preponderance of the evidence.[5] Finally, as with any application, the "ultimate burden of proof that its application satisfies all the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement[,]" rests upon Qwest.[6]

In the paragraphs that follow, the Joint Intervenors will address each checklist item separately and certain disputed issues that fall hereunder. For Commission convenience, the issues are organized sequentially as they are found on the Washington Outstanding Issues Log ("Log").

I. LOCAL NUMBER PORTABILITY

A. Definition and Legal Obligation to Provide Local Number Portability ("LNP").

Number portability is the ability of users of telecommunications services "to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[7] In its initial order on number portability, the FCC noted that number portability is essential to meaningful competition in the provision of local exchange services and affirmed that number portability provides consumers flexibility in the way they use their telecommunications services and promotes the development of competition among alternative providers of telephone and other telecommunications services.[8]

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[5] Id., ¶ 48.
[6] Id., ¶ 47.
[7] 47 U.S.C. § 153(30).
[8] *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286, ¶ 28 (released July 2, 1996) ("*First Number Portability Order*").

Conversely, the FCC recognized that:

> a lack of number portability likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs associated with changing telephone numbers. As indicated above, several studies show that customers are reluctant to switch carriers if they are required to change telephone numbers. To the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.[9]

Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the FCC pursuant to section 251.[10] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[11] In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[12]

Pursuant to these statutory provisions, the FCC requires that RBOCs provide number portability in a manner that allows users to retain existing telephone numbers

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[9] *Id.*, ¶ 31 (citations omitted).
[10] 47 U.S.C. § 271(c)(2)(B)(xii).
[11] *Id.*, § 251(b)(2).
[12] *Id.*, § 251(e)(2); *see also BellSouth Second Louisiana 271 Order*, ¶ 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) ("*Third Number Portability Order*"); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, ¶¶ 1, 6-9 (Jun. 23, 1999) ("*Fourth Number Portability Order*").

"without impairment in quality, reliability, or convenience."[13] In addition, the FCC requires the RBOC to demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption.

B. As a Legal and Practical Matter, the SGAT Reveals Qwest's Lack of Compliance with Its § 271 Interconnection Obligations in the Following Ways .

Set forth below is a description of the LNP issues in dispute, why Qwest's SGAT does not demonstrate compliance with its legal obligations, and how these issues must be resolved to bring Qwest into compliance. For consistency, the issues are presented in the same order they appear in the Log.

1. Log No. WA-11-1; Proposed SGAT § 10.2.2.4 – Loop Provisioning Coordination, and Log No. WA-11-5 and 6; Proposed SGAT § 10.2.5.3 – Cutovers and Porting.

AT&T will address these issues together because when these sections are viewed in tandem, they demonstrate the existence of a major gap in Qwest's SGAT.

Before addressing this gap, AT&T will first address concerns it has regarding Section 10.2.2.4.1 for unbundled loop conversions. AT&T has experienced some problems with premature disconnect of the Qwest loop before the loop has been ported to AT&T.[14] When AT&T requests a loop and a number port from Qwest to serve a customer, the cutover of the loop from the Qwest switch to the AT&T switch must be concurrent with the porting of the number. If the number is ported before the loop is cutover, the customer's service is disconnected. The Qwest switch effectively stops providing service to the customer's line before the AT&T switch has dial tone available

[13] *BellSouth Second Louisiana 271 Order*, ¶ 276.
[14] Affidavit of Kenneth L. Wilson Regarding Local Number Portability, pp. 19-23.

for the line. The customer will lose dial tone and will be unable to place or receive calls. This problem can be corrected by ensuring that there is proper coordination during the LNP conversion.

AT&T proposed revisions to Section 10.2.2.4 to cure this deficiency. Specifically, AT&T proposed:

> 10.2.2.4 Qwest will coordinate LNP with Unbundled Loop cutovers in a reasonable amount of time and with minimum service disruption, pursuant to Unbundled Loop provisions identified in Section 9 of this Agreement. CLEC will coordinate with Qwest for the transfer of the Qwest Unbundled Loop coincident with the transfer of the customer's telephone service to Qwest in a reasonable amount of time and with minimum service disruption. ~~For coordination with loops not associated with Qwest's Unbundled Loop offering, the CLEC may order the LNP Managed Cut, as described in Section 10.2.5.4.~~ Qwest will ensure that the end user's loop will not be disconnected prior to confirmation that the CLEC loop, either CLEC-provided or Unbundled Loop, has been successfully installed.[15]

Qwest has rejected this proposed revision.

It is AT&T's position that Qwest must demonstrate it has a legal obligation that will meet the LNP requirements established by the FCC. To do so, Qwest must demonstrate that its processes will ensure the provision of LNP with minimum service disruptions and without impairment of quality. Qwest's SGAT does not currently provide such assurances for LNP with Unbundled Loops.

Second, in the current draft of Section 10.2.2.4, Qwest proposes that it will coordinate LNP with Unbundled Loop cutovers, but for coordination of LNP with CLEC-provided loops, the CLEC must order the managed cut process that is set forth in Section 10.2.5.3. The managed cut process set forth in Section 10.2.5.3 is designed to manage

[15] This Section also includes changes AT&T is proposing in connection with a later issue.

the cutover of large business customer conversions.[16] Because such conversions are typically complex and the customer needs the conversion to proceed so as not to impair its normal business operations, both parties devote significant manpower and time to the planning and execution of the conversion to insure that the extensive number of lines that are to be converted are seamlessly transitioned to the new provider.

Noticeably missing from Qwest's SGAT is any specific provision that addresses the coordination of LNP with simple conversions to CLEC-provisioned loops. That is to say, there is no SGAT provision for CLEC-provided loops similar to the coordination provision for Unbundled Loops, Section 10.2.2.4. The absence of a comparable provision is of particular concern for AT&T, since in Qwest's region and as relevant here in Washington, AT&T is rapidly expanding into the residential mass market using cable telephony and it may be one of the of the few competitors in Washington that is doing so. The porting that AT&T requires in connection with these mass-market conversions are simple conversions, not the complex conversions where the managed cut process would be appropriate.

Coordination of cutovers – whether it be for a Qwest-provided loop or a CLEC-provided loop – is critical to ensuring that the port is completed without interruption of the customer's service. Qwest's LNP process does not provide sufficient protections against customer service outages. In porting numbers, Qwest sets the trigger, which the CLEC activates in order to effect the port of the numbers.[17] In addition, the disconnect of the Qwest loop is set in advance to occur at 8 p.m. on the day the port trigger is set to be

[16] Tr. 1168-69.
[17] Transcript of Hearings from Workshop 2, p. 1172. (The Transcript will be referred to hereafter as "Tr. ___.")

activated.[18] In order to stop the disconnect from occurring, the CLEC must provide Qwest 4 hour advance notice and a supplemental order must be sent from the CLEC to Qwest to stop the disconnect and change the date of the port.[19]

When AT&T provides a new loop to a customer, either via its cable telephony or fixed wireless facilities, and requests that the customer be ported for this new physical loop, if Qwest disconnects its loop before the new CLEC loop is in place, the customer will lose telephone service.[20] There are numerous reasons why the disconnect may occur before the port: to name a few, customers don't keep their install appointments, the installers could be delayed, or there could be installation problems.[21] Whatever the reasons, to avoid customer service outages, coordination must occur on these conversions and some verification process needs to exist to ensure that the port has been activated by the CLEC before Qwest disconnects its loop.[22]

Qwest concedes that this coordination is necessary.[23] However, Qwest refuses to put forth the SGAT language that would put teeth behind such coordination for CLEC-provided loops.

The FCC has stressed the importance of such coordination, stating:

> a BOC must be able to deliver within a reasonable timeframe and with a minimum of service disruption, unbundled loops of the same quality as the loops the BOC uses to provide service to its own customers. In the context of checklist item (xi), we interpret this to mean that the BOC must demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption.[24]

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[18] Tr. 1172.
[19] Tr. 1173.
[20] Tr. 1166-67.
[21] Tr. 1166-67.
[22] *Id.*
[23] Tr. 2454-55.
[24] *BellSouth Second Louisiana 271 Order*, ¶ 279. (Footnotes omitted.)

In addition, in the context of hot cut loop conversion, the FCC has stressed the importance of proper hot cuts to avoid customer service outages and the impact that the failure to provision proper hot cuts will have on competition:

> The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period.[25] Moreover, the failure to provision hot cut loops effectively has a particularly significant adverse impact on mass market competition because they are a critical component of competing carriers' efforts to provide service to the small- and medium-sized business markets.[26]

This same logic applies equally to all coordinated cutovers. Clearly, the objective should be, as is reflected in the FCC LNP standards, to avoid customer service outages. Otherwise, the service outages will reflect adversely on the CLEC and will negatively impact the CLEC's ability to obtain and retain customers.

During the course of the workshops, AT&T proposed numerous revisions to Qwest's SGAT to prevent disruption of the customer's service during the course of an LNP conversion. AT&T proposed revisions to 10.2.2.4, in addition to those referenced above, that would ensure that Qwest would not disconnect its loop before confirming that the CLEC loop has been installed.

AT&T proposed that Qwest adopt an automated process that would launch a query or a test call to determine if the CLEC had activated the port.[27] AT&T proposed language that would allow Qwest to establish an automatic or manual process that would

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[25] *Bell Atlantic New York 271 Order*, ¶ 299.
[26] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Co., 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, ¶ 256 (released. June 30, 2000). ("***SBC Texas 271 Order***").
[27] Tr. 1167, 1169.

assure coordination of the disconnect with the port.[28] AT&T proposed SGAT revisions that would require Qwest to set the disconnect for the day after the port is scheduled. *See* discussion below on WA-11- 5 and 11. Finally, AT&T proposed SGAT language that would delay activation of the switch translations until the day following the port. *See* discussion below on WA-11-5 and 11. AT&T also proposes the following new section to deal specifically with this coordination issue:

> 10.2.2.4.2 Qwest will coordinate LNP with loop cutovers involving a Qwest provided loop to a CLEC provided loop in a reasonable amount of time and with minimum service disruption. Qwest will ensure that the Qwest loop is not disconnected before the CLEC loop is installed.

Qwest has rejected every proposal made by AT&T, contending it has made available to CLECs the manpower intensive, time consuming and costly managed cut process for coordinating residential mass-market LNP conversions from Qwest to CLEC-provided loops.[29] This proposal is contrary to the FCC's requirements, is discriminatory, is completely unacceptable and is, frankly, impossible to implement in a mass-market entry context.

As an initial matter, Qwest's proposal is inconsistent with the FCC's requirement that LNP be provided in a manner that allows customers to retain existing telephone numbers "without impairment in quality, reliability, or convenience"[30] and would not result in the coordination of number portability with loop cutovers in a "reasonable amount of time and with minimum service disruption."[31]

It has been AT&T's experience that the managed cutover process, while

[28] Tr. 1167-69.
[29] Tr. 1162-63.
[30] *BellSouth Second Louisiana 271 Order*, ¶ 276.
[31] *Id*.

acceptable for large business conversions, would be unwieldy, costly and an implementation nightmare if applied to the mass-market. In order to ensure that residential cutovers were coordinated, AT&T would have to subject every conversion to the managed cut process. Not only would this impose significant cost on every conversion, but given the number of AT&T residential conversions in Washington, there is simply not enough manpower in either AT&T or Qwest to accomplish the conversions.[32] Nor does devoting such manpower to what should be a simple, automated process make much sense.

In addition, there is no legal basis for Qwest offering coordinated cutovers for the porting of Qwest's unbundled loops, but refusing to provide the same type of coordinated cuts for CLEC-provided loops. In fact, such a requirement is discriminatory and favors Qwest's unbundled loop product over CLEC-provided loops. The FCC has made very clear that the Act does not favor one form of entry over another. That is precisely what Qwest's proposal does. Qwest has stated no technical reason why it cannot provide the same coordination for CLEC loops that it does for Qwest unbundled loops. Rather, Qwest appears to simply want to impose additional delays and costs on the CLEC's use of its own facilities. Such a proposal is anticompetitive and should be rejected. Qwest should be required to provide the same level of coordination for CLEC-provided loops as it does for Qwest-provided, without the delays and costs imposed by the use of the managed cut process.

Qwest attempts to minimize this issue stating that WCom's LNP experience has been smooth and with few problems.[33] As WCom indicated, WCom is not serving the

[32] Tr. 1168-69.
[33] Tr. 1171-72.

mass market.[34] Its business is primarily focused on business customers.[35] As discussed above, such customers' conversions would likely be processed using the managed cut process. In addition, Qwest attempts to discount AT&T's issues by claiming that two CLECs have experienced the majority of the problems and, therefore, these two CLECs have process problems, not Qwest.[36] Qwest has refused to produce the data it purportedly relies upon to make this claim and this data is unverified and unaudited and is, therefore, unreliable.

In any event, it is ultimately Qwest's burden to demonstrate that it has the legal obligation in its SGAT to provide LNP in accordance with the FCC's standards. AT&T has demonstrated that Qwest's SGAT is deficient. AT&T has proposed language that will solve its concerns. AT&T has stated that it is not wedded to a particular solution or particular language revisions. However, Qwest must amend its SGAT and incorporate process changes in its operations to ensure that: 1) the CLEC customers are able to retain existing telephone numbers "without impairment in quality, reliability, or convenience" and 2) that number portability is coordinated with all loop cutovers, not just Unbundled Loop cutovers, in a reasonable amount of time and with minimum service disruption. Until Qwest demonstrates that its processes are fixed and it makes revisions to its SGAT to cure these deficiencies, Qwest has not and cannot fulfill the requirements of Checklist Item 11.

2. Log No. WA-11-2A; Proposed SGAT § 10.2.2.13 – Porting of Reserved Numbers.

In the follow-up workshop, Qwest proposed new language stating that it will not

[34] Tr. 1176-77.
[35] *Id.*
[36] Tr. 1173-75.

allow its end user customers to reserve numbers.[37] In addition, Qwest has agreed that it will port currently reserved numbers until the reservation period has expired.[38] This latter provision is consistent with the law.[39] With these revisions and a commitment from Qwest that it will revise its retail tariffs accordingly, Joint Intervenors believe that issue WA-11-2A is resolved. However, it should be noted that if AT&T or WCom discover that Qwest is not enforcing this new policy, we will seek to port any numbers Qwest has allowed its retail customers to set aside for their future use, as is permitted by law.[40] In addition, if Qwest fails to revise its retail tariffs, Joint Intervenors reserve the right to raise this issue again.

3. Log No. WA-II-3; Proposed SGAT § 10.2.5.2 – LNP Intervals.

Section 10.2.5.2 of the SGAT sets forth the standard provisioning intervals for number portability. Qwest's current proposed intervals under this section are as follows:

1-24 Lines	5 business days
25-49 Lines	10 business days
50 or more Lines	ICB

Qwest claims that these intervals match up closely with their retail service quality obligations.[41] AT&T disagrees that this is a relevant comparison. There is no retail analogue for number porting. Therefore, the proposed interval must be assessed based upon whether they provide the CLEC a meaningful opportunity to compete.[42] Qwest's proposed intervals do not. WAC 480-120-051(1) and (2) require Qwest to install 90 % of

[37] Tr. 2466-67 and Exhibit 490.
[38] *Id.*
[39] *See e.g., In the Matter of Telephone Number Portability*, Second Report and Order, CC Docket No. 95-116, FCC 97-289, ¶ 65 (released August 18, 1997).
[40] *Id.*
[41] Tr. p. 1157.
[42] *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, ¶ 141 (released August 19, 1997). ("***Ameritech Michigan 271 Order.***")

up to 5 residential and business primary access lines within 5 business days. Assuming Qwest complies with this requirement, under Qwest's proposal, CLEC installs that include number porting, which would be the vast majority, would always take longer than Qwest's, since the port alone would take 5 days on comparable orders. Thus, Qwest's proposal is anticompetitive, depriving competitors of a meaningful opportunity to compete.

Qwest also claims that its proposed intervals compare favorably with other RBOC intervals and places in the record a chart summarizing what it claims it found on various websites for a few other RBOCs.[43] Qwest provides no substantiation of the information set forth in the chart.

Qwest's chart is of no value. AT&T has reviewed the websites of the RBOCs listed on the Qwest chart and has been unable to verify the information reflected on the chart. In addition, Qwest could not confirm whether the intervals reflected on the chart were calendar or business days. Finally, the chart is incomplete because it only identifies intervals for two RBOCs.[44] Thus, the chart cannot be relied upon as credible evidence to support Qwest's claim.

Even if the chart were reliable, it does not support Qwest's claim. The intervals proposed by Qwest generally exceed the intervals reflected for the two RBOCs included in the exhibit.[45]

AT&T has two principle concerns with Qwest's proposed intervals for LNP. First, the intervals specified for number ports by Qwest are too long and the longer

[43] Tr. pp. 2483-84; Exhibit 492.
[44] Tr. p. 2490-91.
[45] Tr. p. 2489; Exhibit 492.

intervals for large orders take effect at thresholds that are too low.

Second, the proposed intervals should be limited to ports with Unbundled Loops. As discussed above, Qwest will also be provisioning number ports where the CLEC provisions the loop. Shorter intervals should be contemplated for these ports. The process for provisioning stand-alone ports is a largely automated process and, therefore, the longer intervals proposed by Qwest, which incorporate the time associated with provisioning the loop, are too long.[46] These ports do not require Qwest to do anything other than software changes. They do not have to send technicians to the field or do any facilities work in the central office.

Qwest attempts to justify applying the longer intervals to these stand-alone LNP orders by claiming that the Qwest centers would still need to verify the orders.[47] This argument is a red herring. Qwest must do this same order verification for porting of Unbundled Loops. Therefore, this work is already built into the standard interval and cannot justify the full interval that includes loop installation time. Moreover, Qwest conceded that such verification only takes place for the more complex orders.[48] AT&T agrees that these complex orders would be provisioned on a project basis and would not be subject to the standard intervals.[49] Therefore, Qwest has made no credible argument for applying the longer intervals it has proposed to stand-alone LNP orders.

Accordingly, Section 10.2.6 should be modified as follows:

10.2.6 Standard Due Date Intervals. (a) Service intervals for LNP with Unbundled Loops are described below. ~~These intervals apply when facilities and network capacity are available. Where facilities or network capacity are not~~

[46] Tr. 1158-59.
[47] Tr. 1159.
[48] Tr. 2494.
[49] Tr. 1156-57.

~~available, intervals are on an Individual Case Basis (ICB).~~These intervals do not apply to LNP with CLEC-provided loops. Orders received after 3:00 P.M. are considered the next business day. The following service intervals have been established for local number portability with Unbundled Loops:

	Number of lines	Interval
Simple (1FR/1FB)	1-50	4 business days (includes FOC 24hr interval)
	51or more lines	Project Basis
Complex (PBX Trunks /ISDN, Centrex)	1-25	5 business days (includes FOC 24hr interval)
	26 or more lines	Project Basis

(b) Standard Intervals for LNP without Unbundled Loops are as follows:

1-65	3 business days

This interval is consistent with the minimum standard agreed to by the industry and is more than reasonable when one considers that Qwest provides its retail customers next-day disconnects. These simple conversions require very similar work activity.

4. Log No. WA-11-5; Proposed SGAT § 10.2.5.3 – Cutovers and Porting and Log No. WA-11-11; Proposed SGAT § 10.2.5.3.1 – Porting.

AT&T addressed the issue of coordination of ports for CLEC-provided loops above. As indicated above, AT&T is very concerned about the absence of coordination of Qwest's disconnect of its loop with the installation and porting of the CLEC-provided loop. Such coordination is critical to ensuring that the customer does not lose service during the course of the port.

In addition, AT&T proposed revising the last sentence of Section 10.2.5.3.1 to read:

> The ten (10) digit unconditional trigger and switch translations associated with the end user customer's telephone number will not be removed until 11:59 p.m. of the day after the due date.

This provision is another attempt by AT&T to protect the customer from a premature disconnect by holding up completion of the translations in the switch until the CLEC has completed the port or to give the CLEC time to stop the disconnect if the port cannot be completed.[50]

Qwest objects to this revision for several reasons. First, Qwest claims it is not technically feasible because the switch translations and the port orders are transmitted on the same service orders and procedures would have to be developed to separate out the switch translations.[51] This is not an issue of technical feasibility. This is an administrative issue that could easily be overcome.

Next, Qwest asserts that the premature disconnect issue is a minimal problem, asserting that there are only two CLECs that are having problems coordinating LNP ports. This assertion by Qwest is remarkable. First, Qwest has refused to date to provide the data upon which it relies, but it is clear that this assertion is based upon unverified, unaudited data. For this reason alone, this argument should be completely ignored. Beyond this however, it is appalling that Qwest is willing to discount customer-affecting service outages. Perhaps Qwest is not concerned about putting its customers or its competitors' customers out of service, but it is AT&T's view that all customers are entitled to uninterrupted services and that Qwest and CLECs should make every effort to minimize service disruptions, particularly given the impact that customer outage has on the customer's ability to access 911. The law requires nothing less. It is unlikely that

[50] Tr. 2501, 2503.
[51] Tr. 2504.

Qwest would be willing to indemnify CLECs for any losses they may incur as a result of Qwest's refusal to coordinate the CLEC installation and port of their service with the Qwest disconnect. That is what should be ordered if Qwest continues on this course.

Moreover, Qwest's position is equally unacceptable given the impact that service outages that the customer attributes to the CLEC will have on the CLEC's ability to obtain and retain customers. Qwest's position is anti-competitive.

Qwest also raises 911 concerns regarding AT&T's proposed revision. Qwest alludes to purported concerns raised by the National Emergency Number Association regarding late updates to the 911 database.[52] Qwest presents no evidence to substantiate this assertion.[53] In any case, Qwest can send a message at any time to unlock the 911 database and then the CLEC controls the 911 update. Such updates are unaffected by any delay in Qwest making the switch translations.[54] Again, this is not a sufficient concern issue to justify customer service outages.

Finally, Qwest claims there is a billing concern, i.e., the customer may be billed an additional day for Qwest's service or may get billed by Qwest and the CLEC for the service. Again, this is an administrative issue that should be resolvable.

The bottom line that is highlighted again by Qwest's position on this SGAT section is Qwest's refusal to meet the obligations set forth by the FCC requiring that Qwest ensure that LNP is provided "without impairment of quality, reliability or convenience" and "with minimum service disruption". Qwest's attitude, as displayed in its response on this Checklist Item, is that its only responsibility is to set the trigger on

[52] Tr. 2503.
[53] Tr. 2504-05.
[54] Tr. 1204-05, 2503.

time.[55] Thereafter, according to Qwest, the CLEC controls its fate, because it controls the activation of LNP. Qwest goes on its merry way. Qwest fails to mention that it controls the disconnect of the Qwest loop. If Qwest disconnects its loop and does not coordinate this disconnect with the CLEC installation and port activation, the customer will experience a service outage. Therefore, the Qwest disconnect plays a major role is ensuring that LNP is provided with minimum service disruption. Qwest should be required to adopt SGAT language consistent with that proposed herein by AT&T to ensure that such service outages do not occur. Until it does, Qwest does not satisfy Checklist Item 11.

5. Qwest's Rates for Managed Cuts are Excessive and are not Cost-based.

In its initial testimony, AT&T raised concerns regarding the rates Qwest has established for managed cuts, which are set forth in Exhibit A to the SGAT.[56] While this issue is not an SGAT language issue, per se, rate concerns are an integral part of this Commission's ultimate assessment of Qwest's compliance with Section 271. Accordingly, AT&T wishes to preserve its position on Qwest's managed cut rates at this juncture.

Qwest has arbitrarily established the managed cut rates set forth in Exhibit A. These rates have not been reviewed or approved by the Washington Commission.[57] Qwest has provided no cost support to justify these rates. These rates are excessive and they are not nondiscriminatory, just and reasonable or cost-based, as is required by

[55] Rebuttal Testimony of Margaret Bumgarner, p. 79.
[56] Exhibit 381, Affidavit of Kenneth L. Wilson Regarding Local Number Portability, p. 12 and *see* SGAT Section 10.2.5.4.4 and Exhibit A.
[57] Nor are these rates on any list of rates contemplated for consideration in UT-003013.

Section 252(d)(2) of the Act. Qwest cannot satisfy Checklist Item 11 until properly approved, cost-based rates for LNP have been established.

In sum, the commercial experience of AT&T with numbers ported from Qwest indicates that serious process problems exist with Qwest's compliance with Checklist Item 11. In addition, the SGAT is seriously deficient in addressing the needs of CLECs for number portability. AT&T has proposed numerous revisions to Qwest's SGAT to prevent disruption of the customer's service during the course of an LNP conversion. Qwest has rejected every single proposal. It is ultimately Qwest's burden to demonstrate that it has the legal obligation in its SGAT to provide LNP in accordance with the FCC's standards. AT&T has demonstrated that Qwest's SGAT is deficient. Qwest must make extensive amendments to its SGAT and incorporate numerous process changes to ensure that: 1) the CLEC customers are able to retain existing telephone numbers "without impairment in quality, reliability, or convenience" and 2) that number portability is coordinated with all loop cutovers, not just Unbundled Loop cutovers, in a reasonable amount of time and with minimum service disruption. Until Qwest demonstrates that its processes are fixed through improved performance and revisions to its SGAT, Qwest has not and cannot fulfill the requirements of Checklist Item 11.

II. INTERCONNECTION

A. Legal Standards Required of Interconnection in Checklist Item 1.

Interconnection means the physical linking of two networks for the mutual exchange of traffic.[58] Section 271(c)(2)(B)(i) of the Act requires Qwest to provide

[58] 47 C.F.R. § 51.5 (definition of "Interconnection"); *In the Matter of Implementation of the Local Competitor Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98, FCC 96-325, ¶ 176 (released Aug. 8, 1996). ("***Local Competition Order.***")

interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1). Section 251(c)(2) imposes upon Qwest:

> [t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> > (A) for the transmission and routing of telephone exchange service and exchange access;
> > (B) at *any technically feasible point* within the carrier's network;
> > (C) that is *at least equal in quality to* that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
> > (D) on rates, terms, and conditions that *are just, reasonable, and nondiscriminatory* …

47 U.S.C. § 251(c)(2)(emphasis added); *see also* 47 C.F.R. § 51.305. "Technical feasibility" means technically or operationally possible without regard to economic, space or site considerations.[59] The FCC has determined that competitive local exchange carriers ("CLECs") may "choose any method of technically feasible interconnection at a particular point on the incumbent LEC's ("ILECs") network. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements."[60] The minimum number of feasible points for interconnection include the: (1) line-side of the local switch; (2) trunk-side of a local switch; (3) trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points necessary to exchange traffic and access call-related data bases and (6) the points of access to unbundled network elements ("UNEs").[61]

[59] Id., ¶ 198; 47 C.F.R. § 51.5 (definition of "Technically Feasible").
[60] *Bell Atlantic New York 271 Order*, ¶ 66.
[61] 47 C.F.R. § 51.305.

In addition to technical feasibility, the FCC has also defined "equal-in-quality" to require the incumbent LEC "to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party."[62]

Finally, the FCC has further defined "just, reasonable, and nondiscriminatory" in the context of interconnection to mean:

> that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides comparable function to its own retail operations.[63]

As a general matter, the disputed issues below reveal Qwest's repeated attempt to create less efficient, more costly interconnection and access functions for CLECs and to deter CLEC interconnection at any technically feasible place by any technically feasible method and manner.

B. As a Legal and Practical Matter, the SGAT Reveals Qwest's Lack of Compliance with Its § 271 Interconnection Obligations in the Following Ways .

Set forth below is a description of the interconnection issues in dispute, why Qwest's SGAT does not demonstrate compliance with its legal obligations, and how these issues must be resolved to bring Qwest into compliance. As noted above, the issues are presented in the same order they appear in the Washington Outstanding Issues Log.

1. Log No. WA-I-2; Proposed SGAT § 7.1.1.1.2 – Qwest Should Not be Allowed to Avoid Responsibility for its Wholesale Service Quality and its Potential Adverse Impact on Competitors and Competition; It Should Therefore Indemnity Resellers Against Poor Service Quality.

[62] *Bell Atlantic New York 271 Order*, ¶ 224.
[63] *Bell Atlantic New York 271 Order*, ¶ 65.

Interconnection with the BOC is the lifeblood of the CLEC.[64] Without timely, reliable provisioning of interconnection trunks, which can be expanded as quickly as the CLEC's business expands, the CLEC will not have a business. Despite AT&T's efforts to provide Qwest the necessary information to meet AT&T's interconnection trunking needs during joint trunk planning sessions, AT&T frequently encounters Qwest-caused delay,[65] and in some cases indefinite holds, when ordering interconnection trunks from Qwest.[66]

While Qwest claims it has all the incentive it needs to timely and reliably install its competitor's interconnection trunks, in fact, it has provided no evidence of such incentive.[67] And the evidence that Qwest prematurely[68] presents on average installation of interconnection trunks via its un-audited performance indicators or PIDs does not comport with the real world experience of AT&T.[69] Furthermore, it's important to bear in mind that late installation of interconnection trunks completely precludes a CLEC from conducting any business with any customers served by such trunks. Thus, AT&T proposes an incentive that will ensure that Qwest meets its interconnection obligations. The incentive is provided in the form of a common contract indemnity provision used

[64] Tr.1241, ln. 13.
[65] Affidavit of Timothy Boykin, pp. 10-12.
[66] *See* Tr. 2567, lns. 6-11.
[67] While Qwest has submitted a performance assurance plan ("PAP") at the ROC it has not made that available in this proceeding. Moreover, review of Qwest's PAP reveals that, although the PAP is based upon the Texas plan, it is missing many of the penalties and other incentives from that plan and provides little if any remedy to the CLEC actually suffering the harm and the hands of Qwest's poor performance.
[68] Attached to Qwest's testimony are selective, unaudited interconnection results of Qwest's alleged ROC measurement testing. As noted in the exhibits to Mr. Wilson's testimony, however, the group monitoring Qwest's measurements has discovered numerous problems with Qwest's measurement and hence results. Thus, AT&T continues to advocate that the Commission disregard all premature or unaudited results produced by Qwest, and await the final most relevant audited measurements.
[69] Tr. 1229, ln. 13.

when one party's business must rely heavily upon timely, reliable delivery of a product from another party; in this case, interconnection trunks are the product and the CLECs are the parties whose business survival is tied to Qwest's timely, reliable delivery of such trunks. The proposed incentive is as follows:

> 7.1.1.1 Qwest will provide to CLEC interconnection at least equal in quality to that provided to itself, to any subsidiary, affiliate, or any other party to which it provides interconnection. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding interconnection are subject to this requirement. In addition, Qwest shall comply with all state wholesale and retail service quality requirements.
>
> 7.1.1.1.2 In the event that Qwest fails to meet the requirements of Section 7.1.1.1, Qwest shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.[70]
>
> Qwest shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail or wholesale service quality standards in the provision of interconnection services.

AT&T requests that the Commission approve this indemnity proposal for inclusion in the SGAT. This proposal is consistent with goals of the Act and the FCC to ensure that the incumbent provides "interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations" which includes timely installation.[71]

[70] AT&T reserves the right to address its concerns regarding Section 5.9 (Indemnity) of the SGAT in the appropriate workshop on General Terms and Conditions of the SGAT.
[71] *SBC Texas 271 Order,* ¶ 63.

2. Log No. WA-I-5; SGAT § 7.1.2.1 – Qwest Fails to Comply with Its § 271 Obligations By Deconstructing Interconnection Trunks Into Entrance Facilities Such that It Wrongfully Dictates Where CLECs Must Interconnect.

In its SGAT and testimony, Qwest redefines interconnection trunks as "entrance facilities, [which] are high speed digital loops."[72] From Qwest's perspective the entrance facility is a "transport system … that has one end at a CLEC's switch location or POI and the other end at the [closest] Qwest serving wire center."[73] Rather than allowing the CLEC to choose the particular point of interconnection in the ILEC network, Qwest essentially makes the determination by splitting previously understood interconnection trunks into two parts: (1) loops and (2) interoffice transport. Qwest then proceeds to apply the FCC's vacated proxy loop rates for the entrance facilities, and creates a separate charge for the interoffice transport.[74] Why does Qwest usurp the CLEC's legal right to choose the particular point of interconnection? Because by redefining interconnection trunks it increases the cost of interconnection to the CLECs and increases the revenue to itself.[75]

In addition to breaking up the interconnection trunk, Qwest's SGAT also states: "Entrance Facilities may not be used for interconnection with unbundled network elements."[76] Qwest claims that the FCC allegedly supports its proposition that

[72] 1/10/01 SGAT Lite at §§ 7.1.2 & 7.1.2.1; Rebuttal Testimony of Thomas Freeberg, p. 23, lns. 15-16. During the workshop, Qwest had agreed to remove the word "entrance" from § 7.1.2 and replace it with "Qwest-provided" so as to remove the controversy from this section. Tr. 1250, lns. 6-13. The latest SGAT, however, does not conform to this agreement; thus, the controversy remains with respect to § 7.1.2.
[73] Tr. 1266, lns. 2-6.
[74] *Id*., p. 1258, lns. 3-18.
[75] *See Id*., p. 1258, ln. 19 and p.1259, ln. 5.
[76] SGAT at § 7.1.2.1; *see also* Tr. 1261, ln.11, 1264, ln. 10.

"unbundled elements are not to be mixed with interconnection."[77] Here again, Qwest increases the cost and also decreases efficiency for CLECs.

AT&T, consistent with the FCC's intent, has employed dedicated trunk transport as its means of interconnection, or the physical linking of its network, to particular Qwest switches.[78] Furthermore, the FCC's rules clarify:

> (a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide … any technically feasible method of obtaining interconnection *or* access to unbundled network elements at a particular point upon a request by a telecommunications carrier.
>
> (b) Technically feasible methods of obtaining interconnection *or* access to unbundled network elements include, but are not limited to:
>
> * * *
>
> (c) A previously successful method of obtaining interconnection or access to unbundled network elements *at a particular premises or point on any incumbent LEC's network* is substantial evidence that such method is technically feasible … .[79]

Consistent with its rule, the FCC's order clarifies that CLECs have the right to deliver terminating interconnection traffic "at any technically feasible point on [the ILEC] network, rather than [the ILEC] obligating [CLECs] to transport traffic to less convenient or efficient interconnection points."[80]

Dedicated trunk transport is a technically feasible method of obtaining interconnection or access to UNEs and Qwest should not now be attempting to dismantle interconnection trunks into loops and transport while limiting the use of "entrance

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[77] Tr. 1263, ln. 19, 1264, ln. 25.
[78] *Local Competition Order*, ¶ 176. Paragraph 176 explains that interconnection is the physical linking of the networks and not transport and termination. While dedicated trunk transport seems to indicate transport, it is used interchangeable with the physical link, not the transport per se, between the CLEC's network and the chosen interconnection point with the BOC. This is the context in which AT&T employs the term here.
[79] 47 C.F.R. §§ 51.321(a) & (c). (Emphasis added.)
[80] *Local Competition Order*, ¶ 209.

facilities" or interconnection trunks that can otherwise be employed for access to UNEs. Furthermore, Qwest has made no showing that it provisions its own interconnection trunks in a manner that is consistent with what it demands here. Such failure is further evidence of Qwest's lack of § 271 compliance.[81]

Turning to the restriction on access to UNEs through interconnection trunks, Qwest's reliance upon the First Report and Order ¶ 552[82] for the proposition that interconnection trunks cannot be employed to access UNEs is misplaced because the referenced paragraph discusses virtual collocation. In fact, the FCC has made very clear that "under section 251(c)(2) and 251(c)(3), any requesting carrier may choose *any method* of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection *or access to unbundled elements.*"[83] Contrary to Qwest's assertion, the FCC specifically recognized that interconnection may be used to access unbundled elements. Moreover, this is consistent with the FCC's repeated directive that CLECs must be permitted to avail themselves of the most efficient means of interconnection and access to unbundled elements.[84]

Finally, the Joint Intervenors also object to Qwest's reference to its Private Line Transport services as an alternative means of interconnection to the extent that Qwest intends by such reference to also incorporate the non-TELRIC based rates associated with

[81] *BellSouth Second Louisiana 271 Order*, ¶ 74.
[82] Although Qwest, through Mr. Freeberg, cites to ¶ 552 of the First Report, he—in other forums has meant to cite to ¶ 553, which discusses mid-span meet points; likewise, this paragraph does not support the proposition that interconnection trunks may not be employed to access UNEs.
[83] *Local Competition Order,* ¶ 549. (Emphasis added.)
[84] SWB 271 Order at ¶ 78.

Private Line Transport. For the reasons stated in their briefs, filed in Workshop 1, AT&T and WorldCom contend that the Commission should permit CLECs to use spare capacity on special access facilities for interconnection, but that such spare capacity must be paid for at TELRIC rates as required by the Act and FCC regulation thereunder.

To bring this section of the SGAT into compliance, the Joint Intervenors propose that this section should be re-written as follows:

> 7.1.2.1 ~~Entrance Facility~~Leased Facilities. Interconnection may be accomplished through the provision of ~~a~~ DS1 or DS3 ~~entrance facility~~dedicated transport facilities. ~~An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to entrance facilities, when CLEC uses such Private Line Transport service for multiple services. Entrance Facilities may not be used for interconnection with unbundled network elements~~ Such transport extends from the Qwest switch to the CLEC's switch location or the CLEC's POI of choice.

3. Log No. WA-I-6; SGAT § 7.1.2.2 – Qwest's Charges for its Interconnection at the CLEC Collocation POI Violate the Act and Therefore Fail to Comply with § 271.

Whether Qwest calls the wire connection from the CLEC collocation space to the Qwest switch an "EICT" or an "ITP" it serves the same function. It carries the CLEC traffic from the CLEC collocation point of interconnection ("POI") to the Qwest switch. The primary difference is that Qwest builds "repeatering" into EICT; thus, increasing the cost of the EICT as compared to the ITP. In either case, Qwest's SGAT attempts to increase costs to the CLEC by demanding that the CLEC pay for the EICT wire.

Because it is Qwest's obligation to take the traffic from the CLEC's collocation space or POI in this instance, it is unjust and unreasonable to charge the CLEC for the

EICT.[85] The EICT is Qwest's side of the interconnection, not the CLECs. Furthermore, Qwest itself does not pay AT&T for similar service and it should therefore not be generally increasing costs to CLECs by such discriminatory behavior.[86] Therefore, AT&T proposes that the Commission modify Qwest's SGAT as follows:

> 7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement. ~~When interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Interconnection Tie Pair (ITP)~~ Expanded Interconnection ~~Channel Termination~~ rate elements, as described in Section 9 ~~7.3.1.2.1 and~~ will ~~apply in accordance with Exhibit A. The rates are defined at a DS0, DS1 and DS3 level.~~

4. Log No. WA-I-7; SGAT § 7.1.2.3 – On Mid-Span Meets Fails to Comply with the Act and Must, Therefore, Be Altered.

The Joint Intervenors object to the language in SGAT § 7.1.2.3 that prohibits the use of mid-span meet arrangements to access unbundled network elements. A mid-span meet arrangement, like other methods of interconnection, consists of facilities used to carry traffic between the ILEC's network and that of the CLEC. These same facilities (essentially the fiber optic pipe running between tow locations) are identical to facilities purchased as dedicated transport, and thus, they are capable of carrying traffic of end-users served through unbundled network elements. In order to allow competitors to make the most efficient use of a mid-span meet, Qwest's SGAT should be revised to eliminate the prohibition against using mid-span arrangements to access unbundled elements.

During the workshop, Qwest claimed that the FCC prohibited the use of a mid-span arrangement for access to unbundled elements in ¶ 553 of the First Report and

[85] 47 C.F.R. §§ 51.305(a) & (e); *see also SBC Texas 271 Order*, ¶ 78.
[86] The alternative would be to make such payments reciprocal between the CLEC and Qwest as more fully discussed below in § 7.3.1.2.1.

Order. Qwest is simply incorrect. The FCC's concern in ¶ 553 of the First Report and Order was not to prohibit the use of mid-span arrangements for access to UNEs, but rather it ¶ 553 clarifies that when a meet point arrangement is used for access to UNEs the CLEC should bear 100 % of the economic costs associated with that use. As the FCC stated in ¶ 553:

> In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point. We believe that although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(d(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. *We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement.*[87]

It is clear from the last sentence of this passage that the FCC did recognize that a meet point arrangement could be used for unbundled access. To the extent the CLEC, however, uses the facilities associated with the meet point arrangement for unbundled access, it must pay the UNE rate for using that portion of the facility that is the ILEC's. Joint Intervenors do not deny that they should pay a fair price for the portion of the connecting trunks to the meet point arrangement that are used for unbundled access.

Thus, the Joint Intervenors recommend that Qwest be required to delete the prohibition against using meet point arrangements for unbundled access from SGAT §

[87] *Local Competition Order*, ¶ 553. (Emphasis added.)

7.1.2.3. To do otherwise would be to deny CLECs the most efficient means of transport for both interconnection trunks and access to UNEs.

In addition to the prohibition, WorldCom is also concerned that Qwest's understanding of meet point arrangements may be too narrow. Qwest's SGAT describes a "Mid-Span Meet POI" as a "negotiated Point of Interface," limited to the Interconnection of facilities between one Party's switch and the other Party's switch." In response to a question from Mr. Wilson regarding whether the CLEC could order the span as dedicated transport, Mr. Freeberg replied that "if Qwest provided all of the facilities, it your [sic] not be a meet-point arrangement. It would be an entrance facility situation."[88] Qwest appears to believe that it can limit meet-point arrangements to those where carriers are essentially meeting mid-span – at a point somewhere between the CLEC's switch and the ILEC's switch. However, as WorldCom's witness, Ms. Garvin explained, there are numerous different ways of designing a meet-point arrangement all of which are technically feasible and therefore permitted under the Act. Among the designs she mentioned in particular was the use of the ILEC's fiber with each company supplying the fiber optic termination on its side of the meet point. What was critical from Ms. Garvin's perspective is that "a mid-span allows us to have a single point of interconnection with a LATA, which all local traffic traverses over and it's made up of facilities and FOT's, fiber optic terminating equipment."[89]

Consistent with Qwest's duty under the Act to provide interconnection at any technically feasible point, § 7.1.2.3 must be broadened to encompass all technically

[88] Tr. 1275, lns. 8-10.
[89] *Id.*, 1276, lns. 4-8.

feasible types of meet point arrangements. To this end, since the last workshop WorldCom proposed the following revisions to Qwest.[90]

> 7.1.2.3 Mid-Span Meet POI. A Mid Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one Party's switch and the other Party's switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. These Mid Span Meet POIs will consist of facilities used for the provisioning of one or two way local/IntraLATA and Jointly Provided Switched Access interconnection trunks, as well as miscellaneous trunks such as HVCI, OS/DA, 911 and including any dedicated DS1, DS3 transport trunk groups used to provision originating CLEC traffic.
>
> > 7.1.2.3.1 The Mid-Span Fiber Meet architecture requires each party to own its equipment on its side of the Point of Interconnection (POI) and then share the investment of the fiber between the parties as agreed. CLECs may designate Mid-Span Fiber Meet as the target architecture, except in scenarios where it is not technically feasible or where the parties otherwise agree. CLEC will not be bound to the target architecture where embedded investment is sufficient to meet forecasted needs for a particular location
> >
> > 7.1.2.3.2 In a Mid-Span Fiber Meet the Parties agree to establish technical interface specifications for Fiber Meet arrangements that permit the successful interconnection and completion of traffic routed over the facilities that interconnect at the Fiber Meet. The CLEC is responsible for providing at its location the Fiber Optic Terminal ("FOT") equipment, multiplexing, and fiber required to terminate the optical signal provided by Qwest. Qwest is responsible for providing corresponding FOT(s), multiplexing, and fiber required to terminate the optical signal provided by CLEC.
> >
> > 7.1.2.3.3 The parties shall, wholly at their own expense, procure, install, and maintain the FOT(s) in each of their locations where the Parties establish a Fiber Meet with capacity sufficient to provision and maintain all trunk groups. The parties shall mutually agree on the capacity of the FOT(s) to be utilized based on equivalent DS1s or DS3s. Each Party will also agree upon the optical frequency and wavelength necessary to implement the interconnection.
> >
> > 7.1.2.3.4 There are four basic Fiber Meet design options. The option selected must be mutually agreeable to both Parties. Additional arrangements may be mutually developed and agreed to by the Parties pursuant to the requirements of this section.

[90] WCom submitted this proposal to Qwest on January 10, 2001 and expects to discuss its Meet Point proposal with Qwest during Colorado workshops scheduled for January 25, 2001. WCom will supplement this brief if the parties come to agreement on this issue.

Design One: CLEC's fiber cable (four fibers) and Qwest's fiber cable (four fibers) are connected at an economically and technically feasible point between the CLEC and Qwest locations. This interconnection point would be at a mutually agreeable location approximately midway between the two. The Parties' fiber cables would be terminated and then cross-connected on a fiber termination panel as discussed below under the Fiber Termination Point options section. Each Party would supply a fiber optic terminal at their respective end. Either party may lease fiber from the other party, or from a third party, to fulfill its obligation to share the investment in the fiber**.** The POI would be at the fiber termination panel at the mid-point meet.

Design Two: CLEC will provide fiber cable to the last entrance (or Qwest designated) manhole at the Qwest tandem or end office switch. Qwest shall make all necessary preparations to receive and to allow and enable CLEC to deliver fiber optic facilities into that manhole. CLEC will provide a sufficient length of Optical Fire Resistant (OFR) cable for Qwest to pull the fiber cable through the Qwest cable vault and terminate on the Qwest fiber distribution frame (FDF) in Qwest's office. CLEC shall deliver and maintain such strands wholly at its own expense up to the POI. Qwest shall take the fiber from the manhole and terminate it inside Qwest's office on the FDF at Qwest's expense. Each Party will supply a fiber optic terminal at its respective end**.** The Parties will agree what remuneration, if any, CLEC will receive for providing the majority of the fiber optic cable. In this case the POI shall be at the Qwest designated manhole location.

Design Three: Qwest will provide fiber cable to the last entrance (or CLEC designated) manhole at the CLEC location. CLEC shall make all necessary preparations to receive and to allow and enable Qwest to deliver fiber optic facilities into that manhole. Qwest will provide a sufficient length of Optical Fire Resistant (OFR) cable for CLEC to run the fiber cable from the manhole and terminate on the CLEC fiber distribution frame (FDF) in CLEC's location. Qwest shall deliver and maintain such strands wholly at its own expense up to the POI. CLEC shall take the fiber from the manhole and terminate it inside CLEC's office on the FDF at CLEC's expense. Each Party will supply a FOT at its respective end. The Parties will agree what remuneration, if any, Qwest will receive for providing the majority of the fiber optic cable. In this case the POI shall be at the CLEC designated manhole location.

Design Four: Both CLEC and Qwest each provide two fibers between their locations. This design may be considered where existing fibers are available or near each Party's location. Both CLEC and Qwest will provide fiber cable to the last entrance manhole (unless both parties designate otherwise) at the other's respective locations. Both CLEC and Qwest will provide a sufficient length of Optical Fire Resistant (OFR) cable for the other

> to run the fiber cable from the manhole and terminate on each parties respective fiber distribution frame (FDF) in each parties respective location. Each party shall deliver and maintain such strands wholly at its own expense up to the POI. Each party shall take the fiber from the manhole and terminate it inside each party's respective office on the FDF at each party's respective expense. Both parties will work cooperatively to terminate each other's fiber in order to provision this joint point-to-point SONET system. Both parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation.

WorldCom submits that without the proposed revisions that spell out the variety of meet-point arrangements, which may be used to provide interconnection service, Qwest's SGAT falls short of satisfying its duty to provide interconnection under the Act. Accordingly such revisions are necessary if Qwest is to be found compliant with Checklist Item 1.

5. Log No. WA-I-8; Qwest's Repeated Refusals to Permit CLECs to Choose the Most Efficient Means of Interconnection is not Compliant with § 271 of the Act; This Refusal is Evident in its Single Point Of Interconnection ("SPOP") Proposal.

An overarching problem with Qwest's interconnection policy is Qwest's unwillingness to permit CLECs to choose the most efficient means of interconnection as required by the Act and FCC regulations. For example, while Qwest purports to allow a single point of interconnection per LATA, its Single Point of Presence ("SPOP") product designed to implement this policy, unlawfully restricts the CLECs' ability to interconnect at any technically feasible point in Qwest's network. Just like § 7.2.2.9.6 of the SGAT discussed in more detail below, the SPOP product unlawfully limits the CLECs' ability to interconnect at the access tandem to cases where a local tandem is not available to get to an end office. Moreover, among its other failings, the SPOP product wrongfully requires CLECs to choose between utilizing the SPOP in the LATA product offering or interconnecting at multiple points in Qwest's network. By limiting the CLECs' ability to

design interconnection to meet their own needs for efficiency, the SPOP product violates § 251(c)(2) and the FCC's implementing regulations.

As the FCC stated in its First Report and Order, "[t]he interconnection obligation of section 251 (c)(2) . . . allows competing carriers *to choose* the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[91] This means that, in contrast to Qwest's practice of narrowly proscribing the means by which CLECs may obtain interconnection, the Act allows interconnection and access to unbundled elements by any technically feasible means and at any technically feasible point in Qwest's network. Accordingly, until such time as Qwest recasts its SPOP product offering and its SGAT to eliminate restrictions on the CLECs' ability to designate whatever the point or points of interconnection they deem to be most efficient, Qwest cannot be found to be in compliance with Checklist Item No. 1.

6. Log No. WA-I-12; SGAT § 7.2.2.1.2.1 – Qwest's Attempt to Control the Establishment of One & Two Way Trunk Groups Violates § 271 of the Act.

In Qwest's modified SGAT § 7.2.2.1.2.1,[92] Qwest has changed its SGAT to make permissive the establishment of one-way or two way interconnection trunk groups for the exchange of traffic. This, among other things, removed the SGAT's original bias in favor of two-way trunking.[93] It did not, however, resolve the problem AT&T has encountered

[91] *Local Competition Order*, ¶ 172. (Emphasis added.)
[92] Exhibit 365; In Qwest 1/10/01 SGAT it has altered the language in Exhibit 365 in such a way that was not agreed to by the parties to this proceeding. It has added "to the extent that traffic volumes warrant" to the end of the last sentence on Exhibit 365. Thus, AT&T refers the Commission to the language that Qwest offered during the workshop and not that which it attempts to bring in late.
[93] Tr. 1290, lns. 23-4; *Id.*, 1294, ln. 20; Tr. 1295, ln. 15.

when it attempts to implement one-way interconnection trunking with Qwest. When AT&T, for example, seeks to install one-way trunking to a particular tandem switch in Qwest's network, Qwest—in almost a retaliatory move—will insist on installing the corresponding one-way trunking from every end-office to the AT&T switch causing the unnecessary and inefficient use and exhaust of AT&T's switch terminations as well as one-way trunks.[94] Qwest's conduct undermines the CLEC's right to select the points of interconnection and to employ either one-way or two-way trunking. To remove this threat to a CLEC's interconnection at any technically feasible point by any technically feasible method, AT&T proposes that the Commission order Qwest to incorporate the following sentence into § 7.2.2.1.2.1:

> 7.2.2.1.2.1 One-way or two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for the delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the other Party must also provision its own one-way trunks. <u>The point or points of interconnection for such one-way trunk groups shall be those designated by the CLEC.</u>

AT&T's proposal ensures that "new entrants may select the 'most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination.'"[95]

7. <u>Log No. WA-I-13; SGAT § 7.2.2.1.2.2 – Qwest's Misuse of the SGAT and its Attempted Imposition of ILEC Transport Obligations on CLECs Violates the Spirit of § 271, the Purpose of § 252(f) and the Act Generally.</u>

SGAT § 7.2.2.1.2.2 imposes upon CLECs and unidentified third parties certain obligations to provide transport to Qwest and it attempts to dictate the terms of that

[94] Tr. 1291, lns. 2- 20.
[95] *SBC Texas 271 Order,* ¶ 74.

transport. Qwest justifies this attempt to create mutually binding obligations in its SGAT by citing to the Act's general obligation to interconnect in § 251(a)(1). This section of the Act is silent on transport and does not contemplate that the ILEC may dictate, as a part of its interconnection obligations under § 251(c), the terms and conditions of CLEC-provided transport.

While AT&T and WorldCom do not dispute their general obligation to interconnect with Qwest, they do take issue with Qwest's attempt to define the terms and conditions of that interconnection and any transport thereunder within the context of the Qwest SGAT. By Qwest's own admission it hopes to impose the rates, terms and conditions of the incumbent's SGAT onto the CLEC when Qwest orders interconnection and transport from the CLEC.[96]

As described in the Act, the SGAT is by definition "a statement of the terms and conditions *that [the BOC] generally offers* … to comply with the requirements of section 251 … "[97] not the CLEC. Moreover, Qwest's obligations under § 251 are greater than the CLECs'; that is, the FCC has expressly stated that the incumbents are subject to the interconnection obligations of § 251(a) and § 251(c)(2).[98] Thus, the SGAT is an improper avenue within which to ascribe the CLEC's transport obligations, if any, to Qwest. The Joint Intervenors propose, therefore, that the Commission simply order Qwest to delete this provision.

[96] Tr. 1300, ln. 19 ; Tr. 1301, ln. 4.
[97] 47 U.S.C. § 252(f)(1). (Emphasis added.)
[98] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 99-48, ¶ 15 (released March 31, 1999).

8. Log No. WA-I-16; SGAT § 7.2.2.1.5 – Qwest's 50 Mile Limitation on Direct Trunk Transport Violates the CLEC's Right to Choose the Most Efficient Point of Interconnection and Thus is Contrary to Qwest's § 271 Obligations.

Qwest proposes an addition to its SGAT that artificially limits its interconnection obligation under the Act and shifts the burden to build Qwest's network to the CLEC.[99] The proposal requires CLECs to build to a mid-span trunk to all trunk interconnection routes over 50 miles where neither the CLEC nor Qwest have facilities in place. Qwest justifies this proposal providing an extreme and unsubstantiated example of a CLEC that might demand hundreds of miles of direct trunk transport to interconnect its network to Qwest's network.[100]

Nevertheless, the Act clearly states that it is Qwest's obligation to: "provide … interconnection with the local exchange carrier's network … for the transmission and routing of telephone exchange service and exchange access."[101] According to the FCC, interconnection is the physical link between the two networks,[102] and "section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point in the network, rather than obliging such carriers to transport traffic to less convenient or efficient interconnection points."[103]

Simply put, Qwest's 50-mile limitation on its interconnection obligation violates the Act. Moreover, Qwest has not presented even a single real case wherein it was required to construct such extremely long direct trunk transport (a/k/a interconnection trunks), nor has it presented even a shred of evidence that it

[99] Exhibit 376.
[100] Tr. 1308, lns. 5- 25.
[101] 47 U.S.C. § 251(c)(2)(A).
[102] *Local Competition Order*, ¶176; *see also SBC Texas 271 Order*, ¶ 61.
[103] *SBC Texas 271 Order*, ¶ 78.

would not recover the costs to do so. Thus, the Commission should reject Qwest's attempt to artificially limit its legal obligations by requiring that Qwest remove § 7.2.2.5.1 from the SGAT.

9. Log No. WA-I-16(a); Proposed SGAT § 7.2.2.1.6 – Qwest's Claims of Allowing a Single Point Per LATA along with the Necessary Single LRN per LATA Constitute Illusory Compliance with § 271 Because Its Implementation Does Not Function Properly.

A local routing number ("LRN") is a 10-digit number—NPA-NXX-XXXX—that uniquely identifies a switch or point of interconnection.[104] The NPA-NXX portion of the LRN is used to route calls to telephone numbers that have been ported away from Qwest to different carriers.[105] Initially, Qwest had failed to adhere to the industry LRN assignment practice of employing one LRN per LATA; instead it insisted that competitors provide one LRN for every Qwest rate center, and excessive use of limited numbering resources. Moreover, this Qwest policy caused numerous delays in CLEC customer service among other things.[106]

Moreover, where CLECs complied with the industry standard of one LRN per LATA, their customers with telephone numbers ported away from Qwest would not receive certain telephone calls. After significant struggle, Qwest finally agreed to comply with the industry standard and allow CLECs to use one LRN per LATA. Despite Qwest's agreement, AT&T's experience has shown that problems persist, but now in a different form.[107] When the number of CLEC LRNs is reduced to one per LATA, traffic

[104] Boykin Affidavit, p. 2.
[105] *Id.*
[106] *Id.*, pp. 2-3.
[107] Tr. 2784, lns. 6-16.

that is ported and was previously assigned to an eliminated LRN is rerouted by the Qwest switch to the tandem causing excessive blocking at the tandem and the under utilization of the direct trunks that the CLEC has in place to handle such traffic.

To address this persistent problem, in Exhibit 487, AT&T proposed that Qwest add the following language:

> 7.2.2.1.6 Regardless of the number of location routing numbers (LRNs) used by a CLEC in a LATA, Qwest shall route traffic destined for CLEC customers via direct trunking where direct trunking has been established. In the event that direct trunking has not been established, such traffic shall be routed via a Qwest tandem.

If Qwest would implement this proposal, it would in fact comply with industry LRN standards, which are aimed at conserving the limited numbering resources and it would provide interconnection and routing of ported numbers in parity with what it provides to itself; that is, the customers ported to Qwest actually receive their telephone calls using the intended direct and tandem trunk routes.

10. <u>Log No. WA-I-19; Proposed SGAT § 7.2.2.6.3 – Qwest's Failure to Allow MF Signaling Where its Switches are Not SS7 Equipped Violations the FCC's Interconnection Requirements and Thus is Not Compliant with § 271.</u>

AT&T proposed the addition of § 7.2.2.6.3, in Exhibit 496, to address the need for an MF signaling option related to switching where the Qwest switch itself could not accommodate SS7 signaling.[108] MF signaling is multi-frequency, in-band signaling that was widely used before the advent of SS7 signaling and current switches are generally capable of operating under both MF and SS7 signaling.

Where, in particular in rural areas, Qwest's switches have not been updated,

[108] Tr. p. 1316, ln. 17;Tr.1317, ln. 16; *see also,* Tr. 2536, ln. 21, Tr. 2537, ln. 7.

Qwest has refused interconnection with AT&T at such switch because the older switch employs MF signaling rather than SS7 signaling.[109] Qwest had demanded in those instances that AT&T engage in a protracted bona fide request process before it will allow any interconnection at what is otherwise a technically feasible point of interconnection.[110] To resolve this delay or denial of interconnection at any technically feasible point, AT&T proposed the following language in Exhibit 496:

> 7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by the CLEC if the Qwest Central Office Switch does not have SS7 capability or if the Qwest Central Office Switch does not have SS7 diverse routing.

While Qwest agreed to the first portion of AT&T's proposal, it has refused to agree to the language stating "or if the Qwest Central Office Switch does not have SS7 diverse routing."[111] This portion of the provision applies where the Qwest switch does not have sufficient diversity in the signaling network such that the CLEC customers would be left stranded if a signaling failure occurred, while the Qwest customers could continue to make calls.[112] In fact, this very lack of redundancy, and parity, has created a barrier to competition because some customers have refused to switch to CLECs, in particular AT&T, as a result of this lack of diversity.[113] For the foregoing reason, the Commission should adopt all of AT&T's proposed language as appropriate for the SGAT and Qwest's § 271 compliance obligations.[114]

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[109] Tr. 1317, lns. 4-11.
[110] *Id.*
[111] Tr. 2537, lns. 1-7.
[112] *Id.*, 2539, ln. 1; *Id*., 2540, ln. 17.
[113] Tr. 2540, lns. 18-25.
[114] AT&T hereby reserves the right to supplement this brief based upon the information Qwest provides pursuant to Bench Request No. 30. AT&T did not receive a timely response to this request such that it could be incorporated into this brief.

11. Log No. WA-I-24; SGAT §§ 7.2.2.8.6 & 6.1 – Qwest's Policies and SGAT Provisions on CLEC Interconnection Forecasting and Deposits Are Unjust, Unreasonable and Not at Parity with the Way Qwest Treats Itself; Thus, they Violate § 271.

In SGAT §§ 7.2.2.8.6 and 7.2.2.8.6.1, Qwest, while insisting upon CLEC trunk forecasting, refuses to build to the CLEC forecast or its own forecast unless certain conditions are meet. Basically, those conditions are that: (a) in a dispute over the CLEC forecast versus Qwest's own forecast, Qwest will make capacity available for the lower forecast (presumably its own forecast); (b) where the CLEC's trunk utilization over the preceding 18-month period is 50 % or less of forecast for each month, Qwest will likely require a 50 % deposit of the estimated capital cost to provision the forecasted trunks before it builds to the lower forecast; (c) Qwest will return the 50 % deposit if the CLEC's state-wide average trunk forecast to usage ration exceeds 50 %, and if the usage does not exceed 50 %, Qwest will keep a pro rata share of the deposit; (d) if Qwest fails to have forecasted capacity available when the CLEC orders trunks, Qwest will refund a pro rata portion of the deposit; and (e) Qwest will build to the higher forecast, and may, at its sole discretion require a 100 % refundable deposit of the estimated cost to provision the new trunks.

"When Qwest makes a forecast and the CLEC makes a forecast, both companies are trying to predict the capacity needed so that no [call] blocking will occur."[115] As revealed in its own Exhibit 435, Qwest's own trunk utilization is roughly 53 % while the CLECs is around 40 %;[116] thus the dominant carrier, Qwest, shows only slightly more

[115] Tr. 2559, lns. 16-19.
[116] Calculated from the August 2000 figures supplied by Qwest.

trunk utilization than the nascent CLECs.[117] When a CLEC's utilization falls, however, Qwest will likely assess the CLEC a 50 % deposit of the estimated capital cost to build the forecasted trunks even though Qwest is not actually building those trunks and reserving them for the use of the CLEC that forecasted them; rather, the trunks could be lost to Qwest's own internal use or other CLECs long before the forecasting (and deposit-paying) CLEC places an order.[118] Furthermore, the lower forecast is likely to be Qwest's own forecast and yet the CLEC is expected to pay a deposit so that Qwest will have the aggregate capacity[119] it predicts it will need—regardless of what the particular CLEC forecasts. The practical impact of this provision is nothing more than Qwest expecting CLECs to fund Qwest's own network capacity growth—something Qwest ought to be providing and paying for itself.[120] Similar problems arise when considering Qwest's 100 % deposit to build to the higher, presumably CLEC, forecast.

Finally, if Qwest suffers any excessive inventory problem—as it claims—much of that problem is caused by Qwest's own trunking policies, both past and present, which required CLECs to employ—for example—separate trunks to carry interLATA toll calls and obtain one-way trunks to numerous, unnecessary end offices.[121] In addition, Qwest's traditional lack of trunk facilities and delays in filling trunk orders has caused some CLECs to order more than immediately needed.[122] Furthermore, in the case of two-way trunks that carry both CLEC and Qwest traffic, Qwest may be as much to blame for

[117] Tr. 2575, lns. 21- 24.
[118] Tr. 2560, lns. 14-20.
[119] Qwest's forecasts include forecasted demand for itself and the CLECs; hence the forecast is an aggregate of all forecast.
[120] Tr. 2561, lns. 2-12.
[121] Tr. 2568, lns. 2-8; Tr. 2578, lns. 1-18; *see also,* Bench Request No. 31 data revealing the number of CLEC trunks in service as 24, 48, 72, etc. when the required trunks are either 0 or very few.
[122] Tr. 2567, lns. 12-17.

under utilization as any CLEC.[123] And considering the discrepancies in data on the actual number of tandem trunks for August 2000, one can hardly judge whether Qwest's utilization or the CLECs is accurately measured here.[124]

In short, this provision is drafted such that it helps no party and actually creates discriminatory trunking and utilization requirements for CLECs that Qwest itself is not held to. It should, therefore, be deleted from the SGAT.

12. Log No. WA-I-35; SGAT § 7.2.2.9.3.2 – Qwest's Demand that CLEC's Inefficiently Use Interconnection Trunks Violates § 271.

In SGAT § 7.2.2.9.3.2, Qwest steadfastly refuses to employ the most efficient use of interconnection trunking that would combine all traffic types on the same trunks. Instead, Qwest demands that CLECs use separate trunk groups for interLATA, 1 + long distance calls and for local calls.[125] This requirement increases interconnection cost to CLECs and requires the inefficient use of trunks along with the under utilization problems described above.

The combination of all traffic is technically feasible, and several states have required that Qwest combine such traffic.[126] Furthermore, the FCC has not indicated that co-mingling of local and long distance traffic on interconnection trunks is or should be prohibited.[127] Thus, Qwest should allow such combination in its SGAT.

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[123] Tr. 2565, lns. 18-22.
[124] The WA August 2000 Exhibit shows 35,457 tandem trunks while the WA Bench Request No. 31 data shows 27,076 trunks and the WA PID (NI-1) shows 22,138 trunks.
[125] Tr. 1356, ln. 25 ; Tr. 1357, ln. 5.
[126] Tr. 1357, lns. 18- 20; *see e.g.*, Arizona, Utah, New Mexico, Montana and Idaho.
[127] While the FCC has considered co-mingling traffic in relation to special access circuits, it has done so in the context unbundled network elements and combinations, not interconnection trunks per se. There the FCC did not address circuits used exclusively to provide local interconnection service. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, ¶ 28 (released. June 2, 2000).

13. Log No. WA-I-37; SGAT § 7.2.2.9.6 – Qwest's Failure to Allow the CLEC to Select Its Point(s) of Technically Feasible Interconnection Violates § 271.

Unlike other BOCs, Qwest has artificially divided its tandem switches into local tandems and access tandems. Frequently, the separation is made in a single tandem switch through the use of switch modules. In an effort to maintain its switch dichotomy, Qwest demands that CLECs terminate local traffic on either Qwest local tandems or end offices.[128] While Qwest will allow a CLEC conditional interconnection at the access tandem, it will completely deny such interconnection if there exists a local tandem serving a particular end office, apparently even if the local tandem has exhausted capacity. Nevertheless, Qwest has admitted that interconnection at the access tandem is technically feasible.[129] And the FCC has concluded that interconnection at the tandem is appropriate and technically feasible.[130]

Qwest's legal obligation is quite clear— the CLEC may select the point or points at which to interconnect.[131] The "incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible."[132] Qwest cannot prove to this Commission or any other that interconnection at the access tandem is technically infeasible. Moreover, such interconnection is frequently the most efficient for the CLEC. Thus, Qwest should be ordered to allow interconnection at the access tandem without all the conditions it attempts to place on CLECs in this particular SGAT section.

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[128] Exhibit 426.
[129] Tr. 1369, lns. 4-8.
[130] *Local Competition Order*, ¶ 210.
[131] *Id.*, ¶ 172; *SBC Texas 271 Order*, ¶ 78.
[132] *SBC Texas 271 Order*, ¶ 78; 47 C.F.R. § 51.305(e).

AT&T's proposed language accomplishes this very simple goal; it states:

> 7.2.2.9.6 The Parties shall terminate Exchange Service (EAS/Local) traffic ~~exclusively~~ on ~~local~~ tandems or end office switches, at CLEC's option.[133]

14. Log No. WA-I-42; SGAT § 7.3.1 – Interconnection Facility Options

Based upon Qwest's proposed revision to SGAT § 7.3.1 found in Exhibit 434 and further modified during the workshop,[134] AT&T and WorldCom concur in the language in this section. Thus, no further briefing is necessary for this section in this workshop.

15. Log No. WA-I-43; SGAT § 7.3.1.2.1 – Qwest's One-Sided EICT Collocation Charges are Unjust, Unreasonable and Discriminatory in Violation of § 271.

In SGAT § 7.3.1.2.1, Qwest proposes to charge for the same wires it calls the Expanded Interconnection Channel Termination or "EICT." Essentially these are Qwest's physical connection to the CLEC's collocation equipment when collocation is the method used to interconnect to Qwest's network.[135] That is, the CLEC collocation in this instance serves as its point of interconnection (POI), and the law requires that Qwest meet the CLEC at that point.[136] Amazingly enough, Qwest's SGAT demands CLECs pay DS-1 or DS-3 circuit rates for this physical link between the CLEC POI and Qwest's equipment in the same building.[137]

As previously noted in relation to the above discussion on interconnection tie pairs, SGAT § 7.1.2.2, Qwest should pay for its side of the interconnection, which in this case, is the EICT. Qwest is not charged for these wires when the CLEC interconnects to

[133] Wilson Interconnection Affidavit, p. 38.
[134] Tr. 2741, lns. 5-20.
[135] Freeberg Rebuttal Testimony, p. 24.
[136] *SBC Texas 271 Order*, ¶ 78.
[137] Exhibit 434, § 7.3.1.2.1.

Qwest in the CLEC premises, and thus, Qwest—likewise—should not charge CLECs. To allow Qwest to shift the entire financial burden of interconnection onto the CLEC flies in the face of the Act and belies further non-compliance with § 271 obligations. Alternatively, the Commission could treat these charges as subject to reciprocal compensation under this section and it should thus be rewritten as follows:

> 7.3.1.2.1 When collocation is used to facilitate interconnection, all EICT rates shall be subject to reciprocal compensation. For an interconnection trunk path through collocated equipment, EICT provides that portion of the physical facility between collocated equipment and Qwest's equipment located elsewhere within the Qwest building.

16. Log No. WA-I-44; SGAT § 7.3.4.2.1 – Qwest's Attempt to Control When CLEC Switch Functions as a Tandem Switch Violates § 271.

This issue has been briefed in relation to the previous workshop and resolution is pending. Therefore, no additional briefing is required here.

17. Log No. WA-I-52; SGAT § 7.3.9 – PLU Factoring Should be Made Expressly Optional and Allow for Use of the CPN factor.

WorldCom seeks revisions to this section to clarify that a CLEC that is able to develop a factor based upon individual call detail can do so rather than using PLU. In particular, WorldCom seeks language permitting it to use a factor based on Calling Party Number ("CPN") rather than PLU. CPN is individual call detail that is already exchanged by the parties and can be used to determine the jurisdictional nature of the call. At workshops conducted on November 7, 2000, Mr. Freeberg indicated that Qwest might be receptive to such a revision, however, WorldCom had not proposed new language by the time of the follow-up workshop in Washington on January 3-5, 2001. WorldCom will propose the following language in the Colorado workshop addressing

these issues on January 25, 2001 and will supplement this filing if the parties resolve this issue in that forum:

> 7.3.9 Percent Local Use (PLU) Factoring. To the extent an originating Party combines Exchange Service (EAS local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers) and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, and the originating Party provides quarterly PLU(s) verifiable with individual call record detail, the terminating Party should apportion per minute of use (MOU) charges appropriately. Verification should follow the process described at Section 18 of this SGAT. Call detail or direct jurisdictionalization using Calling Party Number ("CPN") information may be exchanged in lieu of PLU if it is available.

WorldCom further requests that the Washington Commission consider this language as an appropriate resolution for WorldCom's concerns.

18. Log No. WA-I-57; SGAT § 7.4.5 – Qwest's Attempt to Dictate Interconnection by Demanding Trunks Only to End Offices and Local Tandems and Limiting Interconnection at Access Tandems Violates §271 of the Act.

As in SGAT § 7.2.2.9.6, Qwest again limits the CLEC's interconnection in SGAT § 7.4.5 to access tandems. Qwest's legal obligation is clear and its SGAT runs contrary to that obligation; thus, Qwest fails to meet its § 271 obligation for the same reasons noted above in the discussions related to § 7.2.2.9.6.

19. Log No. WA-I-62; SGAT § 7.5.4 – Charges for Provisioning Individual Call Record.

SGAT §§ 7.5.4 and 7.6.3 provide that Qwest will assess a charge for Category 11-01-XX and 11-50-XX records sent in an EMR mechanized format. WorldCom objects to this charge because in its experience these records are already being exchanged by Qwest and WorldCom without charge by either party. Given the reciprocal nature of this activity, WorldCom questions whether the cost associated with tracking and assessing

such a charge is justified in view of the minimal cost associated with performing the database query to retrieve the 11-01-XX and 11-50-XX records and transmit them in an EMR mechanized format.

20. Log No. WA-I-64; SGAT § 4.11.2 – Qwest's Definition of "Tandem Office Switches" Violates § 271 of the Act.

In its SGAT definition, § 4.11.2, Qwest has reinforced two issues that are at impasse. This definition currently reads as follows:

> 4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End 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 Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches.* Access Tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.[138]

First, Qwest is trying to define for CLECs when their switches constitute tandem office switches. This is wholly inappropriate and was, in fact, the subject of briefing in the first workshop wherein the parties are awaiting resolution. Thus, the outcome there should determine whether or not the italicized sentence is stricken from this definition.

Second, the remaining portion of this definition should likewise be stricken because it too is the subject of dispute between the parties. This dispute is discussed above, in relation to Log No. WA-I-37 where Qwest—contrary to the Act—is trying to dictate the conditions under which CLECs may interconnect at the access tandem. Briefly, the FCC and the Act clearly allow CLECs to chose any particular point of technically feasible interconnection, and Qwest within this definition is again attempting

[138] Emphasis added.

to avoid full compliance with the law. The arguments and cites from above are incorporated herein by reference.

21. Log No. WA-I-68; SGAT § 4.39 – Qwest's Definition of "Meet Point Billing" Constitutes and Adhesion Attempt, is Unjust and Unreasonable in Violation of § 271 of the Act.

The issue in dispute with respect to SGAT § 4.39 relates primarily to the way in which Qwest attempts to force interconnecting CLECs to adhere to Qwest's legal position on IP telephony and its improper inclusion of the topic in the SGAT, a document that should not be a tool for redefining switched access. SGAT § 4.39 states:

> 4.39 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide *Switched Access Service including phone to phone voice interexchange traffic that is transmitted over a carrier's packet switched network suing protocols such as TCP/IP to an Interexchange Carrier,* with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.[139]

The italicized portion of this section reveals Qwest's demand that interconnecting CLECs adhere to a definition of switched access, which the FCC has not even adopted. Qwest weaves its desired outcome even further into the SGAT in its definition of "Switched Access" as follows:

> 4.57 "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, *Phone to Phone IP Telephony*, 8XX access, and 900 access and their successors or similar Switched Access services. Switched Access traffic, as specifically defined in U S WEST's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at the IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

[139] Exhibit 295. (Emphasis added.)

Here again the italicized language shows Qwest's strategy.

As an initial matter, the SGAT should not be a tool that Qwest can exploit to avoid its previous contractual obligations or to promote its policy positions particularly when they are utterly irrelevant to the purpose of the SGAT. First, the FCC has made clear that while interexchange carriers ("IXCs") may obtain interconnection pursuant to § 251(c)(2), interconnection solely for the purpose of originating or terminating interexchange traffic and not for the provision of telephone exchange services and exchange access to others is not entitled to receive interconnection pursuant to § 251(c)(2).[140] Thus, switched access and how it's defined—either in Qwest's Interstate Tariffs or its desired policy—is a matter that is not germane to the § 271 interconnection issues here. Second, the FCC has exempted Enhanced Service Provider's ("ESPs"), which includes Internet Service Provider's ("ISPs") traffic from switched access, and it has not carved out a distinction for Internet Protocol ("IP") Telephony traffic such that Qwest could subject such traffic to switched access. Rather, Qwest has improperly chosen its SGAT to impose its policy upon nascent competitive local exchange providers.

Qwest's motive for including its policy in the SGAT is clear. It is seeking to characterize phone-to-phone Internet Protocol Telephony traffic as switched access in order to avoid paying reciprocal compensation for this traffic. The FCC, however, has exempted this traffic from such charges. This traffic should be treated as local and subject to reciprocal compensation.

In fact, on February 25, 1999, the FCC issued a "Declaratory Ruling" in its Local Competition docket, to address questions concerning calls to ISPs and the applicability of

[140] *Local Competition Order*, ¶¶ 190-91.

reciprocal compensation to such calls.[141] In this ruling, the FCC determined that, although ISP traffic is jurisdictionally interstate, since there is no FCC rule governing inter-carrier compensation for ISP calling, where parties have included reciprocal compensation obligations within the ambit of their interconnection agreements, "they are bound by those agreements, as interpreted and enforced by the state commissions."[142] Specifically, the FCC found "no reason to interfere with state commission findings that reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending the FCC's adoption of a rule establishing an appropriate interstate compensation mechanism."[143] It then explained that nothing in its ruling "should be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under existing interconnection agreements.[144] Even where parties have not reached agreement on an inter-carrier compensation mechanism for ISP-bound traffic, the FCC stated that state commissions nonetheless may determine "that reciprocal compensation should be paid for this traffic."[145] Thus, the FCC has expressly determined that state commissions have the authority to impose reciprocal compensation obligations on ISP traffic.

Despite the issuance of its Declaratory Ruling, the FCC removed the treatment of ISP traffic from consideration as a Checklist Item 13 issue in the BANY Order, citing its ruling that ISP traffic was jurisdictionally interstate in nature.[146] However, since that determination, the Court of Appeals for the District of Columbia issued its ruling in the

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[141] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic,* 14 F.C.C.R. 3689, ¶¶ 1,10 (1999) *(*"**Declaratory Ruling**").
[142] *Id.*, ¶ *22*.
[143] *Id.*, ¶ *21*.
[144] *Id.*, ¶ 24.
[145] *Id.*, ¶ 25.
[146] *Bell Atlantic New York 271 Order,* ¶ 377.

appeal of the FCC's Declaratory Ruling.[147] The ruling by the Court of Appeals appears to undermine the FCC's removal of ISP traffic from consideration under Checklist Item 13.

The Court of Appeals, in Bell Atlantic, accepted the FCC's determination that ISP calls are jurisdictionally interstate services, stating that the LECs' carriage of ISP calls, are "interstate communications by wire or radio" and are within the jurisdiction of the Commission.[148] However, the D.C. Circuit remanded the case back to the FCC because the "arguments supporting use of the end-to-end analysis in the jurisdictional analysis [over ISP-bound calls] are not obviously transferable to th[e different] context" of determining the application of § 251(b)(5). For that reason, the Court ruled that the exclusion of ISP-bound traffic from the statutory reciprocal compensation requirements could be upheld (if at all) only if further explanation and analysis were provided on remand.[149] The D.C. Circuit emphasized that it was holding only that the "Commission has not satisfactorily explained why an ISP is not, *for purposes of reciprocal compensation*, 'simply a communications-intensive business end user selling a product to other consumer and business end users.' " [150]

In fact, the D.C. Circuit suggested that the FCC's exclusion of this traffic from the requirements of § 251(b)(5) does not "make sense in terms of the statute or the Commission's regulations" since § 251(b)(5) imposes on all LECs the duty to establish reciprocal compensation arrangements for the transport and termination of

[147] *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C.Cir. Mar. 24, 2000) ("*Bell Atlantic Decision*").
[148] See *Bell Atlantic Decision*, 206 F.3d at 5, 7 ("[t]here is no dispute that the Commission has historically been justified in relying on [the end-to-end] method when determining whether a particular communication is jurisdictionally interstate" and that the "end-to-end analysis" is "sound" for "jurisdictional purposes").
[149] *Id.*, p. 6.
[150] *Id.* (Emphasis added.)

"*telecommunications*" and this traffic appears to be encompassed within the definition of telecommunications.[151]

In any event, ISP-bound traffic has always been treated as "local" for analogous purposes under the FCC's prior decisions and the terms of the First Report and Order. The FCC has *never* required information service providers to pay access charges; they have always been exempted from paying such charges. In short, notwithstanding the fact that ISP-bound traffic is jurisdictionally interstate, for regulatory purposes the FCC has always *treated* that traffic as local.

Because this exemption results in the treatment of ISP-bound traffic as local, the vast majority of state commissions – both before and after the Declaratory Ruling – have ruled that LECs owe cost-based reciprocal compensation for such traffic, just as they do for other local calls.[152] Indeed, since the Declaratory Ruling, at least thirteen states have ordered reciprocal compensation for such traffic, consistent with the FCC's orders

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[151] *Bell Atlantic Decision,* 206 F.3d at 3.

[152] This includes four state commissions in Qwest's region that have ordered reciprocal compensation for ISP-bound traffic. *See In the Matter of the Petition of U S WEST Communications, Inc. for a Determination that ISP Traffic is Not Subject to Reciprocal Compensation Payments Under the MFS/U S WEST Interconnection Agreement,* Order Denying Petition, Minnesota Public Utilities Commission, Docket No. P421/M-99-529, (Rel. August 17, 1999); *In the Matter of the Petition of Sprint Communications Co. L.P. for Arbitration of an Interconnection Agreement with U S WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b),* Final Arbitration Order Under Minn. Rules, Part 7812.17, Subp. 21, Minnesota Public Utilities Commission, Docket No. P-466,421/M-00-33, June 27, 2000; *In the Matter of the Application of the Nebraska Public Service Commission, on its own Motion, to conduct an investigation of the interstate or local characteristics of Internet service provider traffic,* Findings and Conclusions, Nebraska Public Service Commission, Application No. C-1960/PI-25, December 7, 1999*; Electric Lightwave, Inc., Complainant, vs. U S WEST Communications, Inc*., Respondent, *Order, Public Utility Commission of Oregon, Docket No. UC 377, April 26, 1999; WorldCom, Inc. f/k/a MFS Intelenet of Washington, Inc. Complainant, v. GTE Northwest Incorporated Respondent*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Washington Utilities and Transportation Commission, Docket No. UT-980338, May 12, 1999*; In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for U S WEST Communications, Inc. and GTE Northwest Incorporated*, 17th Supplemental Order: Interim Order Determining Prices; Notice of Prehearing Conference, Washington Utilities and Transportation Commission, Docket No. UT-960369, et al, August 30, 1999.

establishing that ISP-bound traffic is to be regulated as if it were a local call rather than as traditional interstate access.[153]

With respect to IP Telephony, the same exemption from the payment of access charges established by the FCC for ISP traffic has been applied as well to IP Telephony traffic. Since 1983, the FCC has classified enhanced service providers ("ESPs") (now referred to as information service providers) under its rules as "end users," thereby exempting them from paying carrier access charges.[154] IP Telephony continues to be classified by the FCC as an information service exempt from access charges. Therefore, Qwest's attempt in its SGAT to include IP Telephony in its definition of Switched Access flies in the face of these FCC rulings and must be rejected. The FCC has clearly treated this traffic as local traffic and, therefore, this traffic should be subject to reciprocal compensation, but most importantly for purposes of interconnection, Qwest should not be attempting to shoe-horn its position into the SGAT via the interconnection provisions.

Finally, by Qwest's own admissions and contrary to its position as offered in Exhibit 362 (a/k/a TRF-48):[155]

> even if one wished to impose … access charges on IP telephony, identifying or distinguishing IP telephony from other Internet usage is problematical. Thus, there is no method currently to identify minutes of usage for the purpose of imposing access charges in all situations. "Marking" or otherwise identifying such traffic, if and when technically feasible, as well as determining the jurisdictional nature of such traffic, also implicates contentious issues in addition to access charges; for

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[153] *See e.g.*, Arbitration Award Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, Docket No. 21982 (Pub. Util. Comm'n of Texas) (July 2000); *Order Directing Reciprocal Compensation Rate, Proceeding on Motion of the Commission to Examine Reciprocal Compensation: Filing of Cablevision Lightpath, Inc., to Rebut the Presumption That a Substantial Portion of Terminated Traffic is Subject to Compensation at End-Office Rate*, Case 99-C-0529 (N.Y. Pub. Serv. Comm.) (December 9, 1999). The other eleven states are Alabama, California, Florida, Georgia, Illinois, Kentucky, North Carolina, Nevada, Oregon, Pennsylvania, and Tennessee.

[154] *MTS and WATS Market Structure*, Memorandum Report and Order, 97 FCC21d 682, 715 (1983); Access Reform Order, 12 FCC Rcd 15982, ¶¶ 341-42.

[155] Exhibit 362 is attached to Exhibit 348.

> example, universal service and the extent to which Regional Bell Operating Companies ("RBOCs") and their ISP affiliates are engaged in interLATA telecommunications services.
>
> Under these circumstances, state regulation of IP telephony, however well intentioned it may be, may be premature. As the FCC's Office of Plans and Policy has observed:
>
> If federal rules governing Internet telephony are problematic, state regulations seem even harder to justify …. The possibility that fifty separate state Commissions could choose to regulate providers of Internet telephony services within their state (sic) (however that would be defined), already may be exerting a chilling influence on the Internet telephony market.[156]

Regardless, the FCC's position today is no different than it was in April 1999, when Qwest made these assertions. Therefore, AT&T recommends that Qwest delete the italicized portions of §§ 4.39 and 4.57 from its SGAT.

In addition, corresponding changes should be made to other paragraphs, including but not limited to paragraphs 7.3.1.1.3.1 and 7.3.2.2.[157] Qwest should be required to make any other corresponding changes required for consistency and submit those to all parties for review and approval.

III. RESALE

A. Legal Standards Required of Resale in Checklist Item 14.

With respect to the Act, § 271(c)(2)(B)(xiv) requires Qwest to make "telecommunications services … available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. § 271(c)(2)(B)(xiv).

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[156] *U S WEST Communications, Inc. v. Qwest Communications Corp.*, Motion to Dismiss or, In the Alternative, for Deferral, Before the Colorado Public Utilities Commission, Docket No. 99F-141T, p.12 (Apr. 20, 1999). ("*U S WEST v. Qwest*")

[157] Because these sections are contained within the reciprocal compensation portion of the workshops, no more than to point out some examples of Qwest's plan to promote its policies throughout the SGAT will be addressed here.

Section 251(c)(4)(A) mandates that Qwest "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4)(A). Section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3).

In addition to the affirmative obligations to provide telecommunications services for resale, Qwest also has an obligation to refrain from placing "unreasonable or discriminatory conditions or limitations" on the services subject to resale.[158] In short, Qwest's restrictions on resale are presumed to be unreasonable unless it can prove to this Commission that the restriction is reasonable and non-discriminatory. First Report and Order at ¶ 939.[159]

In addition, the FCC has determined that resellers may not make Qwest's resold services available to a different category of customer where Qwest makes that same service available to only a specific category of retail customer.

B. As a Legal and Practical Matter, the SGAT Reveals Qwest's Lack of Compliance with Its Resale Obligations in the Following Ways.

1. Log No. WA-I-14-4; SGAT § 6.2.3 – Again, Qwest's Attempt to Avoid Responsibility for Wholesale Service Quality Is Unreasonable Under § 252 of the Act.

In its SGAT, Qwest would like to essentially insulate itself from any responsibility for the harm its poor service causes to its wholesale reseller customer and

[158] 47 U.S.C. § 251(c)(4)(B).
[159] To rebut the presumption, Qwest would also have to demonstrate that the restriction is narrowly tailored. *Local Competition Order*, ¶ 939.

their customers. Because resellers do not own or control the underlying facilities or the services they resell, they have no control over the quality of service they provide or whether that service complies with any retail service quality rules. As a result, resellers are completely at the mercy of their competitor, Qwest.

Under the original terms of the SGAT, if Qwest provided poor service such that it subjected its resellers to end-user customer complaints and such that the resellers did not receive the wholesale service for which they paid—and perhaps lost business as a result, Qwest's historical response had been largely, tough luck.[160] The Act, however, states in pertinent part:

> 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 [SGAT], including requiring compliance with intrastate telecommunications service quality standards or requirements.[161]

AT&T's proposed indemnity provision was aimed at upholding Washington's service quality requirements by making Qwest expressly responsible for the service quality it provides to its wholesale customers.

On January 5, 2001, Qwest altered its SGAT in §§ 6.2.3.1 and .2 to provide a rather limited and internally inconsistent mechanism under which it takes minimal responsibility for the service quality it provides to the reseller customers' end users while still leaving the reseller itself "twisting in the wind."[162] Under the proposal CLEC customers are never made whole upon suffering harm at the hands of Qwest's poor

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[160] *See* Tr. 1705, lns. 11-20. S*ee also,* SGAT, March 22, 2000, § 6.0.
[161] 47 U.S.C. § 252(f)(2).
[162] Section 6.2.3.1 and 6.2.3.2 provide either for a wholesale credit pass-through to the end user or a discounted fine/penalty to the CLEC, respectively. The apparent intent of Qwest is that these two sections are mutually exclusive such that only one applies but not both. Tr. 2600, ln. 23 ; Tr. 2601, ln. 6.

service quality. Moreover, the CLEC end-user customer is also left without a remedy where no CLEC retail service quality rules exist.[163]

Qwest's recent concession still unreasonably limits its liability for harm caused by Qwest's poor service quality to the reseller's end-user, and it utterly leaves the reseller without a real remedy. Generally Qwest's purported solution will only provide a "partial" credit pass-through to the reseller, if and only if, the reseller is legally required to provide such credit to its end users under the State's service quality rules.[164] The credit is "partial" because Qwest will only agree to reimburse those harmed customers the ***wholesale amount***, not the amount they actually paid for the service. In order to be in business at all the reseller is not likely charging its end-user the wholesale rate it receives from Qwest for the service the reseller provides to its customers; rather it must adjust the cost of that service to meet its own expenses and realize a profit—while still providing service at competitive prices. Thus, in the case of poor service quality, the innocent reseller not only did not acquire the service for which it paid, but it may be liable to its end-user customer for the full cost of the end-user's service while Qwest would limit its liability to a fraction of the actual damage it caused.[165] This is manifestly unfair and certainly not at parity with what Qwest would have to do in regard to making its own end-user customers whole for their losses under the retail service quality standards.[166] Qwest is expressly discriminating against its wholesale customers and creating

[163] One might argue that CLEC service quality rules are unnecessary in light of the fact that they are indeed competitors and as such the competitive market should ensure service quality.
[164] Tr. 2594, ln. 2 ; Tr. 2597, ln. 20.
[165] Tr. 2598, ln. 11 ; Tr. 2599, ln. 17.
[166] Tr. 2599, lns. 11-17.

unreasonable and discriminatory limitations on the services subject to resale.[167] Such conduct is contrary to the Act, 47 U.S.C. § 251(c)(4)(B); *see also* First Report and Order at ¶ 939.

2. Log No. WA-I-14-6; SGAT § 6.2.5 – To Provide Parity of Treatment Qwest Should Provide Forecasting for CLEC.

With respect to the forecasting that Qwest demands of resellers, there are two issues: (1) ensuring that Qwest uses confidential reseller forecasts solely for their intended purpose – that is, to ensure its network has adequate capacity to meet wholesale customer demand, and not for any other self-serving strategy or regulatory imitative; and (2) requiring Qwest to supply its resellers with adequate forecasting information on its Operational Support System's capacity, among other things, to ensure they can meet their customer demands.

3. Log No. WA-I-14-7; SGAT §§ 6.4.1 & 6.6.3 – Qwest's Desire to Take Unfair Advantage of Misdirected CLEC Customer Contact is Anticompetitive and a Violation of the Law such that it Constitutes a Violation of § 271 of the Act.

Sections 6.4.1 and 6.6.3 deal with customers that, in error, call the wrong carrier with questions about service or maintenance and repair. Under the terms of its SGAT, Qwest maintains that it ought to be allowed to turn these misdirected calls into solicitation opportunities for itself. As grounds for this anticompetitive conduct, Qwest claims that the U. S. Constitution, no less, demands that it be granted an unfettered right

[167] Not only does Qwest's SGAT provision show discrimination as between wholesale and retail customers, but by Qwest's own admission it doesn't perceive the reseller as a customer at all; "[w]ell, we don't provide the service to the CLEC, in fact; we provide it to the end user. I do appreciate the semantics or the theoretical notion that we provide the service to the reseller, but we don't; we provide it to the end user." Tr. 2609, lns. 6-9 (quoting Ms. Lori Simpson, Qwest resale witness).

to interfere with the relationship between the CLEC and its end-user customer.[168]

Fortunately, the U. S. Constitution provides no such right. Rather, the U.S. Supreme Court has clearly stated that freedom of speech is not without bounds.[169] In particular, for commercial speech—which is precisely the speech Qwest employs in its attempt to snatch CLEC customers via erroneous or misdirected calls—enjoys only "a limited measure of protection."[170] In fact, the Supreme Court has held:

> We have always been careful to distinguish commercial speech from speech at the First Amendment's core. '[C]ommercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values,' and is subject to 'modes of regulation that might be impermissible in the realm of noncommercial expression.'"[171]

Generally, commercial speech is protected if, and only if, it concerns lawful activity or is not misleading.[172] Even if the speech falls into these categories, it may still be subject to governmental regulation where, as here, the government has a substantial interest in support of its regulation and that the proposed restriction is narrowly tailored to materially advance that interest.[173]

4. Log No. WA-I-14-12; SGAT § 6.2.2.11 – Qwest's Favorable Treatment of Itself With Regard to Megabit Resale Constitutes a Violation of § 271.

Qwest's MegaBit service is generally service provided over digital subscriber line ("DSL") technology to its retail customers. This service allows customers faster access

[168] In the Multistate 271 workshop Qwest's attorneys argued that the protection AT&T and WorldCom seek would violate Qwest's right to free speech under the United States Constitution; *see also*, Tr. 1717, lns. 4-23 (identifying the issue).
[169] *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623, 115 S.Ct. 2371, 2375 (1995).
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*

to the internet and corporate networks, among other things. It allows retail customers concurrent telephone and data calls over the same line, and it allows for computer telephony.

Under the Act, Qwest is obligated to offer for resale at the wholesale discount any telecommunications service that it provides at retail to its end-user customers. Qwest has indicated that MegaBit service is offered for resale at the wholesale discount, but it has failed to confirm that the reseller can offer MegaBit service to its end-user customers without also having Qwest providing the underlying voice service.[174] CLEC-resellers should be given the opportunity to provide the underlying voice just as Qwest does; to decide otherwise is to create a discriminatory offering in favor of Qwest.

Clearly, such a substantial interest exists here (e.g., opening the local markets to competition and preventing anticompetitive behavior that threatens such competition). Moreover, the CLECs are only asking that the limitation be narrowly drawn to apply to misdirected or erroneous calls, which Qwest's representatives can quickly discern by asking the customer. Such questioning is within reason and easily incorporated into the representative's existing scripts.[175] Finally, the law in Washington as well as elsewhere prohibits Qwest from engaging in tortuous interference with contracts (such as the contract between the CLEC and its end-user customer) by encouraging its representatives to solicit misdirected CLEC calls.[176]

Based upon this supporting law, Joint Intervenors ask that the Commission protect nascent competition by disallowing Qwest to abuse its position as the dominant reseller

[174] Tr. 2652, ln. 3 ; Tr. 2653, ln. 22.
[175] Most companies such as Qwest provide computer-available scripts for their representatives to follow while on the phone with customers.
[176] *See Commodore v. University Mechanical Contractors, Inc.*, 839 P.2d 314 (Wash. 1992).

and underlying service provider in the resale circumstance. Qwest should therefore be prohibited from using the misdirected CLEC end-user calls as a sales opportunity by SGAT language that prohibits such conduct.

CONCLUSION

Many a local competitor, including Joint Intervenors, have invested heavily in the promise of open and fair competition in the local exchange market. Joint Intervenors request that the Commission, through its rigorous investigation of Qwest's claims, ensure that the nascent local competitors realize that promise. To that end, the Joint Intervenors respectfully submit this Statement of Position and Brief on certain disputed issues regarding Qwest's alleged interconnection, resale and LNP compliance. Based upon the record, as set forth herein, Qwest fails to satisfy Checklist Items1, 11 and 14. Until Qwest cures the deficiencies in its SGAT that are set forth herein, Qwest cannot satisfy Section 271 of the Act.

Respectfully submitted on this 25th day of January, 2001.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

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Mary B. Tribby
Letty S.D. Friesen
Rebecca B. DeCook
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6475

AND

WORLDCOM, INC.

Anne Hopfenbeck
707 –17th Street, #3900
Denver, Colorado 80202
303-390-6206