

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Investigation into)	
)	
U S WEST COMMUNICATIONS,)	
INC.'s)	DOCKET NO. UT-003022
)	
Compliance with Section 271 of the)	
Telecommunications Act of 1996)	
)	
In the Matter of)	
)	
U S WEST COMMUNICATIONS,)	DOCKET NO. UT-003040
INC.'s)	
)	
Statement of Generally Available)	
Terms)	
Pursuant to Section 252(f) of the)	
Telecommunications Act of 1996)	
)	
.....)	

INITIAL ORDER FINDING NONCOMPLIANCE IN THE AREAS OF
INTERCONNECTION, NUMBER PORTABILITY AND RESALE

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SYNOPSIS

1 This initial order recommends that the Commission find Qwest not in compliance with Checklist Items No. 1 (Interconnection), 11 (Number Portability), and 14 (Resale) of Section 271(c)(2)(B) of the 1996 Telecommunications Act, and further recommends that the Commission order Qwest to make certain modifications to Sections 4, 6, 7, and 10.2 of its SGAT.

INTRODUCTION

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

3 This initial order serves as the report of the Staff of the Commission addressing the results of the second workshop in this proceeding, makes recommendations to the Commission concerning Qwest's compliance with Checklist Items No. 1 (interconnection), 11 (Number Portability), and 14 (Resale) under Section 271, and makes recommendations concerning certain portions of Qwest's proposed SGAT. Qwest's compliance with collocation issues in Checklist Item No. 1 will be addressed in a supplemental initial order we expect to be issued on March 9, 2001.

Section 271 Process

4 Under Section 271 of the Act, Regional Bell Operating Companies (RBOCs or BOCs) may only provide toll service between local area transport areas (LATAs) if they can demonstrate that certain competitive conditions exist in their local markets. The Federal Communications Commission (FCC), after consultation with the United States Department of Justice (DOJ) and state commissions, may authorize an RBOC to provide interLATA service in a particular state if the RBOC meets the conditions, including competitive checklist items, set forth in section 271(c) of the Act. In particular, the FCC must consult with state commissions "in order to verify the

¹ Early in this proceeding U S WEST completed its merger with Qwest. The names U S WEST and Qwest are used interchangeably in this document.

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

compliance of the [RBOC] with” the requirements of section 271(c). 47 U.S.C. § 271(d)(2)(B).

5 Qwest is the RBOC that provides local exchange and intraLATA toll service to much of Washington state. In advance of Qwest filing an application with the FCC to enter the interLATA market, the Commission in October 1997 issued an Interpretive and Policy Statement on the Process for RBOC Application under Section 271 of the 1996 Telecommunications Act, in Docket No. UT-970300 (Interpretive and Policy Statement).

6 In March 2000, the Commission issued a Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements, in Docket No. UT-970300 (Supplemental Interpretive and Policy Statement). The Supplemental Interpretive and Policy Statement adopted a process and standards for facilitating the Commission’s review of Qwest’s compliance with Section 271(c) of the Act. The Commission established a series of three adjudicative workshops, with an additional workshop if necessary, designed to allow the Commission and interested parties to review and comment on Qwest’s compliance with Section 271(c).

7 In the Interpretive and Policy Statement, the Commission directed Qwest, Staff, Public Counsel and other interested persons to develop the evidentiary requirements for Qwest’s compliance with Section 271. These parties presented to the Commission a draft statement of evidentiary requirements, which the Commission adopted in its Supplemental Interpretive and Policy Statement. Appendix A to the Supplemental Interpretive and Policy Statement identifies certain general and specific evidentiary requirements that Qwest must meet to demonstrate its compliance with each checklist item, as well as items of public interest. Appendix B to the Supplemental Interpretive and Policy Statement establishes similar evidentiary requirements for Competitive Local Exchange Carriers (CLECs). Information provided by Qwest and the CLECs will allow the Commission to better evaluate Qwest’s compliance with the requirements of Section 271.

8 The Commission schedule has been modified to include a fourth workshop in July 2001 and recognizes the probability of a fifth workshop.³ These modifications were

³ *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, Dockets No. UT-003022 and UT-003040, Fifth Supplemental Order; Prehearing Conference Order, ¶¶ 17-18 (Oct. 25, 2000) (Fifth Supplemental Order); see also 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*

necessary to accommodate requests by Qwest and other parties to address certain checklist items in later workshops. In addition, the third party testing and audit of Qwest's OSS performance data sponsored by the Regional Oversight Committee (ROC) may not be available for review until late spring 2001, at the earliest.

The SGAT Process

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

A State commission may not approve such statement unless such statement complies with section (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.⁴

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

- 11 The Interpretive and Policy Statement identified that "the statement of generally available terms option that is set out in Section 271(c)(1)(B) of the Act is not available to [U S WEST] in Washington, consistent with the purposes of the Act and

Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996, Dockets No. UT-003022 and UT-003040, Sixth Supplemental Order; Prehearing Conference Order; Notice of Prehearing Conference (Dec. 6, 2000) (Sixth Supplemental Order).

⁴ 47 U.S.C. § 252(f)(2).

the provisions of Section 271(c)(1)(B).” Interpretive and Policy Statement at 5. In the Supplemental Interpretive and Policy Statement, the Commission clarified that

The existing interconnection agreements between U S WEST and its competitors will form the basis for U S WEST’s legal obligations concerning terms and conditions of service. The Commission will consider an SGAT or similar mechanism if the consideration is limited to elements or services that are not provided for in an interconnection agreement.

Supplemental Interpretive and Policy Statement, at 2.

- 12 During the first workshop session, Qwest and participating CLECs argued that the Commission should consider Qwest’s SGAT for the purpose of determining Qwest’s compliance with Section 271, as well as for Commission review and approval under Section 252(f). While Qwest and the CLECs are correct that the SGAT is a vehicle to document Qwest’s obligations under the Act by incorporating more current industry practices and FCC determinations, Qwest’s history and current practices in providing interconnection under its existing interconnection agreements should not be ignored. The SGAT alone cannot demonstrate compliance. The SGAT provides a promise by Qwest for future, untested practices.⁵ As noted in the Revised Draft Initial Order for the first workshop, the parties should continue to address SGAT issues in workshops to evaluate Qwest’s proposal under Section 252(f). This process is an efficient way to develop consensus on SGAT provisions. However, the parties should also address CLEC and Qwest experience and practice under existing interconnection agreements for demonstration of Qwest’s compliance with Section 271.
- 13 Consistent with the Commission’s directions in the Supplemental Interpretive and Policy Statement, the Commission will consider Qwest’s proposed SGAT in its review of Qwest’s compliance with Section 271(c) for the purpose of considering elements or services not provided in interconnection agreements, and may consider whether SGAT language will affect Qwest’s compliance with checklist items or other requirements under Section 271(c)(1)(B). The Commission will also evaluate the terms of the SGAT independently from Qwest’s compliance with checklist items under Section 271. The Commission will evaluate the SGAT to ensure that it does not violate Commission policy even though there are interconnection agreements and the SGAT is not the controlling document for all companies.

⁵ While a few CLECs have already executed the SGAT for interconnection in Washington, there is very little history of experience under the SGAT.

The Workshops

- 14 The Commission held its first workshop in this proceeding on June 21-23, 2000, addressing the issues of Checklist Items No. 3 (Poles, Ducts, Conduits, and Rights-of-Way), 7 (911/E911, Directory Assistance and Operator Service), 8 (White Pages Listings), 9 (Numbering Administration), 10 (Signaling and Associated Databases), 12 (Dialing Parity), 13 (Reciprocal Compensation), and provisions of the SGAT addressing these issues. The Commission held a follow-up workshop on July 6, 2000, to address unresolved issues from the June workshop session. Staff filed a Draft Initial Order on Workshop 1 issues on August 8, 2000, and a Revised Draft Initial Order on August 31, 2000 after receiving comments from the parties. The parties appeared before the Commission and presented their arguments on disputed issues on September 18, 2000. The Commission's final order on the disputed issues from the first workshop is pending.
- 15 The Commission held its second workshop on November 6-9, and 10, 2000, addressing the issues of Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale), and provisions of the SGAT addressing these issues. The workshop also addressed certain issues carried over from the first workshop, including SGAT language implementing the pick and choose provision of the Act, Section 252(i). The Commission held an additional workshop on collocation issues on November 28 and 29, 2000, and a follow-up workshop on January 3-5, 2001 to address unresolved issues from the November workshop sessions.
- 16 Representatives from Qwest, AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), WorldCom, Inc. (WorldCom), Sprint Communications Company, LP (Sprint), XO Washington, Inc. (XO Washington), f/k/a NEXTLINK Washington, Inc. (NEXTLINK), Electric Lightwave Inc. (ELI), Advanced TelCom Group, Inc. (ATG), Focal Communications Corporation (Focal), The Association of Local Telecommunications Services, Global Crossing Telemangement, Global Crossing Local Services, New Edge Networks, North Point Communications, Allegiance Telecom of Washington, Inc. (Allegiance), McLeod USA Telecommunications Services, Inc. (McLeod), TRACER, Teligent Services, Inc., Rhythms Links Inc., Broadband Office Communications, Inc., Covad Communications, Inc (COVAD), ICG Communications, Inc. (ICG), MetroNet Services Corporation (MetroNet), MGC Communications, Inc., d/b/a Mpower Communications Corp. (Mpower), Yipes Transmission, Inc. (Yipes), and Public Counsel participated in the workshop sessions.
- 17 The parties filed briefs with the Commission on January 25, 2000, addressing their disputes over issues concerning Checklist Items No. 1 (Interconnection), 11 (Number Portability) and 14 (Resale). During the January 2001 follow-up workshop sessions,

the parties requested additional time to address collocation issues in Checklist Item No. 1. The parties filed briefs with the Commission on collocation issues on February 16, 2001, and we expect that a supplemental initial order on collocation issues will be entered on March 9, 2001. The parties may file comments with the Commission concerning this initial order and the supplemental initial order on collocation issues by March 27, 2001. The Commission will schedule a date for oral argument on these issues.

MEMORANDUM

PICK AND CHOOSE

- 18 The parties discussed SGAT language regarding the pick and choose provision of the Act, Section 252(i), in very general terms during the first workshop in June 2000. *See Tr. at 348-52*. During the July 6, 2000 follow-up workshop, Qwest and AT&T offered proposed SGAT language to address the issue. *Ex. 236*. The language reflects an agreement reached between Qwest and AT&T in discussions in Colorado workshops. A number of CLECs requested additional time to review the proposed language. The participants were directed to continue discussions outside of the workshop and present any disagreements in briefs by July 17, 2000. Following the workshop, Mpower, MetroNet, NEXTLINK, ELI, and ATG all requested additional time to review this SGAT language and proposed deferring the matter to a future workshop. Qwest opposed deferral. In its Fourth Supplemental Order, the Commission deferred the matter to the second workshop.
- 19 At the January 2001, follow-up workshop, XO Washington proposed language for SGAT Section 1.8.2 to replace that contained in Exhibit 236. *See Ex. 327*. XO's proposed language clarifies the manner by which a CLEC would request an amendment to its interconnection agreement and the way requests for multiple amendments would be handled. All parties agreed to the language proposed in Exhibit 236, as amended in Exhibit 327. *Tr. at 2448*.
- 20 The Commission issued an interpretive and policy statement regarding implementation of Section 252(i) of the Act.⁶ In that document, the Commission adopted a number of principles and procedures for implementing the pick and choose provision of the Act. The proposed SGAT language in Exhibits 236 and 327 is consistent with those principles and procedures. The Commission approves the proposed SGAT language on pick and choose.

⁶ *See In re Implementation of Section 252(i) of the Telecommunications Act of 1996, Interpretive and Policy Statement (First Revised), Docket No. UT-990355 (April 12, 2000)*.

CHECKLIST ITEM NO. 1 - INTERCONNECTION**FCC Requirements**

- 21 The first item in the competitive checklist, Section 271(c)(2)(B), addresses interconnection. Section 271(c)(2)(B)(i) requires BOCs to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).” The FCC has defined interconnection as “the physical linking of two networks for the mutual exchange of traffic.”⁷ Section 251(c)(2) sets forth the duties of incumbent local exchange companies (ILECs) in providing interconnection:

The 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, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

- 22 The FCC has considered the duties set forth in Section 251(c)(2)(B), (C), and (D) in determining whether an RBOC meets the requirements of Checklist Item No. 1.
- 23 The FCC defines “technical feasibility” to mean that no technical or operational concerns prevent fulfilling a request for interconnection, access to unbundled network elements (UNEs), or methods of achieving interconnection, without regard to economic, accounting, space or site concerns.⁸ The FCC has determined that

Competing carriers may also choose any method of technically feasible interconnection at a particular point on the incumbent LEC’s

⁷*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, 15590, CC Docket No. 96-98, FCC 96-325, ¶ 176 1996, (*Local Competition First Report and Order*); see also 47 C.F.R. § 51.5.

⁸ 47 C.F.R. § 51.5; see also *Local Competition First Report and Order*, ¶ 196.

network. Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.⁹

- 24 At minimum, the feasible points for interconnection include: (1) the line-side of the local switch; (2) the trunk-side of a local switch; (3) the 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 UNEs.¹⁰
- 25 For an ILEC to meet the FCC's equal in quality standard, it must "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."¹¹ An ILEC "must design and operate its interconnection facilities to meet the 'same technical criteria and service standards' that are used for the interoffice trunks within the incumbent LEC's network."¹² In determining whether a BOC provides equal quality interconnection, the FCC has looked to whether there are disparities in trunk group blockage and transmission standards in interconnection provided to CLECs and the RBOC's retail operations.¹³
- 26 Finally, the FCC has defined "just, reasonable, and nondiscriminatory" in the context of interconnection to mean that ILECS "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."¹⁴

Washington Evidentiary Requirements

- 27 The Commission has identified several general requirements and specific evidentiary requirements Qwest must meet to demonstrate its compliance with Checklist Item No. 1. Supplemental Interpretive and Policy Statement, Appendix A. The specific evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 1 are:

⁹ *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, ¶ 66 (rel. Dec. 22, 1999) (*Bell Atlantic New York Order*).

¹⁰ 47 C.F.R. § 51.305.

¹¹ *Local Competition First Report and Order*, ¶ 224.

¹² *Bell Atlantic New York Order*, ¶ 64.

¹³ *Id.*

¹⁴ *Id.* ¶ 65.

1. How is Qwest offering interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Act?
2. On what dates did any nonaffiliated carriers actually interconnect with Qwest?
3. At what points within its network does Qwest provide or offer interconnection?
4. What is the price for interconnection, including all recurring and nonrecurring charges, and is it based on cost as required by section 252(d)(1)?
5. Does Qwest impose material limitations on interconnection (i.e., one-way trunking, use of different trunk groups for different "types" of traffic, etc.)?
6. Provide comparative performance data for the twelve most current months on the time required to repair outages for Qwest's lines versus the CLECs' lines.
7. Provide comparative performance data for the twelve most current months on call completion rates for originating and terminating calls across carriers.

28 In compliance with the Supplemental Interpretive and Policy Statement, Qwest filed Exhibits 342, 343, 344, and 345-C, purporting to document Qwest's compliance with the general and specific evidentiary requirements for Checklist Item No. 1. AT&T filed responses to Appendix B questions for Checklist Item No. 1 in Exhibits 301 and 372. Qwest and AT&T provided the information to supplement written testimony and exhibits.

Parties' Positions

Qwest

29 Through the testimony of Thomas R. Freeberg, Qwest states that it has satisfied the interconnection requirements of Checklist Item No. 1 through Section 7 of the SGAT, existing interconnection agreements between Qwest and CLECs, and certain processes and procedures. *Ex. 331, at 2-3.* Further, Qwest adds that it is providing interconnection in quantities that competitors demand and at an acceptable level of quality. *Id. at 3.*

- 30 Qwest highlighted several alternative interconnection arrangements, including physical collocation, virtual collocation, mid-span meet arrangements, entrance facilities, and interLocal Calling Area facilities. *Id. at 3, 10.* Qwest is developing a new form of interconnection to allow for the exchange of local traffic at Qwest's toll tandem switch. *Id. at 13.* Mr. Freeberg asserts that these interconnection arrangements provide for exchange of traffic at a number of different points, including the line and trunk sides of local switches, tandem switches, central office cross-connections, signal transfer points and points of access to UNEs. *Id. at 3-4.* Any other methods of interconnection are provided through Qwest's bona fide request process. *Id. at 10.*
- 31 According to Qwest, the Company provided interconnection trunking to over 25 facilities-based CLECs, and had over 116,962 interconnection trunks in service in Washington state as of June 1, 2000. *Id. at 7.* Of these trunks 31.3 percent route to Qwest tandem switches and 68.7 percent route to Qwest end offices. *Id. at 4.* In May 2000, over 859 million minutes of calls were exchanged over these interconnection trunks; 15.7 percent of this amount was recorded on tandem trunks and 84.3 percent was recorded on end office trunks. *Id.*
- 32 The process CLEC's must follow to order interconnection, or Local Interconnection Service (LIS), is set forth in the SGAT. *See Id. at 14-16.* The process starts with joint planning meetings and requires CLECs to provide forecasts of their traffic distribution to Qwest end offices and local tandem offices before the orders and due dates are determined. *Id.* Qwest offers LIS training and facility tours to CLECs. *Id.*
- 33 Mr. Freeberg states that Qwest provides interconnection that is at least "equal in quality" to that it provides itself, by monitoring interconnection traffic and trunk group blocking. *Id. at 17-18.* Qwest notifies CLECs of the blocking and requests whether they seek to place additional trunking orders to address the blocking. *Id. at 18.* According to Qwest, 40 percent of the CLECs notified of blocking have not taken any action. *Id.*
- 34 Through the ROC process, Qwest has developed performance measures to determine how well Qwest provides interconnection. In the eleven performance measures that focus on trunk provisioning, trunk repair, and network blocking Qwest argues that its performance exceeds the standards agreed to by the parties to the ROC process. *Id. at 21-28.* Qwest asserts that it is provisioning and repairing interconnection trunks for CLECs in substantially the same time and manner that Qwest provides for itself. *Id. at 6.*

35 Qwest acknowledges four written complaints filed by CLECs against US WEST or Qwest concerning interconnection issues. *Ex. 342, at 4-5*. All of the complaints have been resolved. *Id.*

AT&T

36 Through the affidavits of Kenneth L. Wilson and Timothy D. Boykin, AT&T asserts that Qwest's SGAT and AT&T's experience under its interconnection agreement demonstrate that Qwest is not providing interconnection at any technically feasible point that is at least equal in quality to that it provides itself, on terms and conditions that are just, reasonable and non discriminatory. *Ex. 371, at 4; see Ex. 301*. AT&T asserts Qwest does not meet the requirements of Checklist Item No. 1 for interconnection.

37 In his affidavit, Mr. Wilson expresses concern and objections to various SGAT provisions relating to interconnection and describes problems AT&T has experienced in its interconnection agreement with Qwest. First, AT&T objects to the SGAT definitions for "tandem office switch" and "local interconnection service (LIS) trunking." *Ex. 371 at 8-9, 11-12*. AT&T also objects to Qwest's reference the SGAT to the Interconnection and Resale Resource Guide, or IRRG, by citing to a web site. AT&T argues that as the SGAT currently reads, Qwest could make changes to requirements in the IRRG without consulting with CLECs. *Id. at 9-10*. In addition, AT&T lists concerns with numerous SGAT sections relating to interconnection. *See Id. at 13-47*.

38 AT&T cites examples from it's commercial experience with Qwest as evidence that Qwest does not yet comply with the requirements and obligations of Checklist Item No. 1. *Id. at 47*. Specifically, AT&T argues that Qwest does not allow interconnection and access at any technically feasible point in its network, because Qwest does not allow CLECs to interconnect at access tandem switches. *Id. at 48-50*. AT&T argues that Qwest provides poor interconnection trunk ordering and provisioning service. *Id. at 51-54*. Finally, Mr. Wilson asserts that Qwest's network suffers from excessive call blocking, which most affects CLECs. *Id. at 54-57*.

39 AT&T's also highlights its problems with (1) Qwest's practices relating to location routing number (LRN) assignment, (2) trunk provisioning delays due to difficulties in preparing trunk plans with Qwest, and (3) Qwest's restrictions on access to inside wire in multiple dwelling units.¹⁵ *See Ex. 301, at 2*. Specifically, AT&T details

¹⁵ After AT&T filed its evidence in this docket, AT&T filed a formal complaint with the Commission in Docket No. UT-003120 on this issue of access to MDU inside wire. The issue is being addressed in that proceeding.

events and communications since 1998 between AT&T and Qwest to resolve the problem of customer outages due to Qwest's assignment of LRNs to AT&T customers. *Id. at 2-10*. AT&T explains the problems it has experienced in trying to work with Qwest to develop trunk provisioning plans. AT&T argues that many of the problems arise due to incorrect data Qwest has provided to the CLECs. *Id. at 10-12*.

WorldCom

- 40 Through the testimony of Dayna D. Garvin,¹⁶ WorldCom argues that it would be premature to find Qwest in compliance with Checklist Item No. 1. *Ex. 391, at 45*. WorldCom states the following general concerns about how Qwest provisions interconnection: (1) Qwest has provided interconnection to CLECs only as a result of court orders and state commission decisions, not of its own volition; (2) Qwest should provide additional information to CLECs to improve the quarterly planning and forecasting process; (3) Qwest's product offering for mid-span meet points contains no route diversity; and (4) any determination of Qwest's compliance with Checklist Item No. 1 must wait for the conclusion of the ROC third party testing process. *Id. at 3-6*.
- 41 WorldCom has a number of concerns with Section 7 of the SGAT. First, WorldCom argues that the SGAT definition of interconnection is too limiting, and proposes alternate language. *Id. at 6-7*. WorldCom objects to SGAT language preventing interconnection trunking between local and access tandem switches, and precluding interconnection to access tandems. *Id. at 7, 15*. WorldCom also disputes SGAT language concerning how CLECs may establish a point of interconnection or POI with Qwest. *Id. at 8-9*. WorldCom objects to SGAT language outlining four methods of interconnection, and believes that CLECs should be given the option of other technically feasible methods of interconnection. *Id. at 9-10*. WorldCom raised concerns about the LIS InterLCA Facility interconnection option. *Id. at 10*.
- 42 WorldCom objects, as anti-competitive, to SGAT language requiring parties to charge each other based on Qwest's tariff for interLATA toll traffic. *Id. at 11-12*. WorldCom raises concerns about Qwest's proposal that CLECs deliver end office traffic through the CLECs' collocation facilities. WorldCom believes this contradicts the Act, which allows CLECs to interconnect where technically feasible. *Id. at 12*. WorldCom objects to SGAT language removing interexchange carriers, or IXC's from the list of parties for which Qwest will accept transit traffic from CLECs. *Id. at 12-13*. WorldCom expresses concerns over how Qwest provisions facilities when a CLEC provides forecasts. *Id. at 13*. WorldCom recommends changes to SGAT

¹⁶ Ms. Garvin adopted the direct testimony of Thomas T. Priday filed with the Commission on October 11, 2000. *See Exs. 391 and 392*.

language concerning the resizing and reclaiming of trunk groups. *Id. at 13-14.* WorldCom expresses concern about SGAT language requiring payment of construction charges. *Id. at 14.* WorldCom recommends changes to SGAT language concerning two-way trunk groups. *Id. at 14.* Finally, WorldCom objects to SGAT language requiring CLECs to pay for billing records. *Id. at 16.*

XO Washington

43 Through the testimony of Kaylene Anderson, XO Washington expresses its concern that Qwest refuses to compensate CLECs, including XO Washington, for interconnection facilities other than entrance facilities and transport within the Qwest local calling area. *Ex. 325, at 2.* XO Washington notes that the SGAT provides that Qwest will pay a share of interconnection facilities in proportion to the amount of local traffic (but not ISP-bound traffic) that Qwest terminates to the CLEC based on the interconnection facilities Qwest provides. *Id. at 3.* However, XO Washington notes that Qwest will not pay any portion for the costs of other facilities used to provide interconnection in the Qwest central office of CLEC office. *Id.* XO Washington states that Qwest's refusal to pay for those other facilities is based on Qwest's beliefs that entrance facilities and transport between switches are the minimum facilities necessary for interconnection. *Id. at 4.*

XO Washington disagrees with Qwest and believes both companies should share the cost of all facilities that are actually used to provide interconnection in proportion to their use of those facilities. *Id.* XO Washington identifies the interconnection facilities the cost of which carriers should be responsible for a proportional share, focusing on Qwest-provided facilities, facilities constructed by each carrier to a meet point, and CLEC -provided facilities, including collocation facilities. *Id. at 6-9.* XO Washington notes that Qwest has not paid or credited XO Washington for any proportion of the costs of facilities used to interconnect the companies' networks. *Id. at 9.*

44 XO Washington is also concerned about Qwest's ability to engineer its network to accommodate the needs of CLECs. *Id. at 9-10.*

Qwest's Response

45 Through his rebuttal testimony, Mr. Freeberg responds to the affidavits and testimony filed by AT&T, WorldCom, and XO Washington. *See Ex. 348.* Based on the SGAT language changes proposed by the parties, Qwest accepted certain language, proposed alternative language, or did not accept proposals. *Ex. 348, at 2.* Qwest filed a modified Section 7 of the SGAT with the testimony of Mr. Freeberg, reflecting language changes. *Ex. 349.*

46 Among other agreements, Qwest has agreed to exchange local calls at Qwest's access or toll tandem switch, and has stricken SGAT language relating to the interLCA facilities proposal. *Ex. 348, at 3, 8.* Qwest explains why it cannot agree to proposals concerning the following SGAT provisions: (1) trunk planning problems, (2) diverse routing of interconnection trunking, (3) charges for billing records, (4) reference to the IRRG, (5) use of entrance facilities for interconnection, (6) charges for interconnection tie pairs, (7) reciprocal charges for transport, (8) signaling options, and (9) blocking on interconnection trunks. *Id. at 10-32.*

47 Qwest also responds to AT&T and XO Washington's concerns about Qwest's service performance in provisioning trunks, blocking, and compensation for the costs of collocation. *Id. at 33-39.* Specifically, Qwest argues that performance measurement data show that Qwest's interconnection trunks are experiencing a low level of blocking, and that Qwest experiences the same level of blocking on its own non-interconnection trunks. *Id. at 33-35.* Further, Qwest believes that because collocation and UNEs are not available to ILECs on a reciprocal basis from CLECs, reciprocal compensation does not make sense in that context. *Id. at 38.*

Impasse Issues

48 During the workshops and follow-up workshops, Staff prepared an issues log to document matters over which the parties were in agreement or at impasse. The reference numbers following each issue correspond to the number assigned to the issue in the issues log. For example, WA-I-2 refers to Washington interconnection issue number 2. The final version of the log has been admitted as Exhibit 279.

49 After the parties filed an updated SGAT Section 7 and their briefs on impasse issues, they resolved the following interconnection issues: Issue WA-I-13, concerning the transportation and termination of EAS; Issue WA-I-52, concerning percent local usage factoring; and Issue WA-I-70, concerning routing of LRN porting traffic.

1. Indemnity (Issue WA-I-2)

Joint Intervenors' Position

50 AT&T and WorldCom (Joint Intervenors) argue that Qwest should not be allowed to avoid responsibility for its wholesale service quality and the potential adverse impact of poor service quality on competitors and competition. The Joint Intervenors request that Qwest indemnify resellers against poor service quality to address this concern. *Joint Statement and Brief Regarding Qwest's §§ 271 and 252(f) Obligations Related*

to Interconnection, Resale and LNP, at 23 (Joint Brief). The Joint Intervenors request the Commission order Qwest to add the following section to the SGAT:

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.

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.

- 51 Although they address the issue in connection with interconnection, the Joint Intervenors reserve the right to address concerns regarding Section 5.9 (Indemnity) of the SGAT in the appropriate workshop on general terms and conditions of the SGAT. *Joint Brief at 25, n.70.*
- 52 The Joint Intervenors argue that despite AT&T’s efforts to provide Qwest with the necessary information to meet AT&T’s interconnection trunking needs during joint trunk planning sessions, AT&T frequently encounters Qwest-caused delay, and in some cases indefinite holds, when ordering interconnection trunks from Qwest. *Joint Brief at 24.* The Joint Intervenors claim that late installation of interconnection trunks completely precludes a CLEC from conducting any business with any customers served by such trunks.
- 53 The Joint Intervenors claim that Qwest has no incentive to install competitors’ interconnection trunks on a timely and reliable basis. Specifically, the Joint Intervenors state that Qwest’s performance assurance plan, which is being developed through a ROC workshop process, is not yet available in this proceeding. The Joint Intervenors claim that the evidence Qwest presents on average installation of interconnection trunks through unaudited performance indicators, or PIDs, is premature, and does not match AT&T’s experience. The Joint Intervenors believe that their proposed SGAT section 7.1.1.1.2 creates an incentive to ensure that Qwest will meet its interconnection obligations.

Qwest's Position

- 54 Qwest argues that the Joint Intervenors' request for additional indemnification commitments is unfounded. *Qwest's Legal Brief Regarding Disputed Workshop #2 Issues: Checklist Items 1, 11, and 14, at 15 (Qwest Brief)*. First, Qwest claims to have made extensive indemnification commitments in Section 5.9 of the SGAT. Qwest argues that a separate indemnification provision would be duplicative and could create confusion regarding Qwest's obligations.
- 55 Second, Qwest argues that the proper forum to address the issue is the ROC-sponsored workshops to develop a post-271, or Post-Entry Performance Plan (PEPP).¹⁷ *Id. at 16*. Qwest notes that AT&T is an active participant in the PEPP workshops. Qwest states that the ROC process will result in self-executing payments by Qwest if its performance drops below a certain level. Qwest objects to AT&T's demand for a third type of indemnification specific to interconnection that would require Qwest to indemnify CLECs for damages incurred as a result of its failure to meet individual provisioning requirements. *Id.*
- 56 Qwest argues that neither the FCC nor the Commission require that Qwest indemnify CLECs for a failure to timely install interconnection trunks. *Id.*

Discussion and Decision

- 57 The issue of indemnity is, as Qwest notes, addressed in the general terms and conditions section of the SGAT, section 5.9. The Commission will address these general issues later in this proceeding.
- 58 The Joint Intervenors are correct that Qwest should not be allowed to avoid responsibility for its wholesale service quality. However, it is not clear at this point in the proceeding whether the Joint Intervenors' proposal for common contract indemnity in a new section 7.1.1.1.2 is appropriate. Once the ROC completes workshops to develop the performance plan, and a plan is available for review, the Commission will consider it as a part of this proceeding. The issue of indemnity is

¹⁷ The states participating in the collaborative development of a Qwest post-271 enforcement plan are: Colorado, Iowa, Idaho, Montana, Nebraska, North Dakota, South Dakota, Oregon, Utah, Washington, and Wyoming. Expected benefits from the region wide approach include the potential for more uniform service standards within the Qwest region, more efficient use of state and industry staff resources and increased cooperation among the various parties. Preliminary plans call for three workshops to be held between October 2000 and March 2001 to develop the post-271 enforcement plan, with the final product to be completed by April 2001. The state commissions have hired MTG Consulting and the National Regulatory Research Institute to manage the process and facilitate the workshops.

more appropriately addressed when considering general SGAT issues, and after the PEPP is available. The issue of the scope of Qwest's obligations to indemnify CLECs is deferred until later workshops addressing the general terms and conditions of the SGAT, and post-entry performance assurance.

2. *Entrance Facilities used for Interconnection with UNEs (Issue WA-I-5)*

Joint Intervenors' Position

59 The Joint Intervenors argue that Qwest should not be allowed to prohibit the use of entrance facilities for interconnection with UNEs, or dictate where CLECs must interconnect. The Joint Intervenors contend that they have employed dedicated trunk transport as a means of interconnection, or the physical linking of their networks, to particular Qwest switches.

60 Furthermore, AT&T claims that the rate for the interconnection trunks on entrance facilities should be part of reciprocal compensation and not charged at the private line rate. Joint Intervenors note that during the workshop, Qwest had agreed to substitute "Qwest provided" for the word "entrance" in Section 7.1.2 so as to remove controversy over this section. *Tr. at 1250*. However, the latest SGAT language on this section, does not reflect this change. *Ex. 434*. The Joint Intervenors assert that FCC rules support their claim that Qwest cannot prohibit mixing entrance facilities and UNEs.¹⁸

61 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 to incorporate the non-TELRIC based rates associated with Private Line Transport. The Joint Intervenors 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 section 7.1.2.1 should be re-written, and offered new language.

Qwest's Position

62 Qwest argues that there is a distinction between interconnection and UNE requirements. Qwest distinguishes entrance facilities, which it describes as a high-speed digital loop, from direct trunked transport, which it argues is a high-speed interoffice span. *Qwest Brief, at 23*. When a party requests that Qwest provide transport, and where excess electronics do not exist, Qwest places new electronics or

¹⁸ 47 C.F.R. § 51.321(a) & (c).

cable in the conduit between the points requested. Qwest argues that entrance facilities are fundamentally different because they often entail arranging a new digital facility by placing buried or aerial cable in a new location, as opposed to adding a cable to existing conduit or adding electronics to existing fiber.

Joint CLECs' Position

63 The Joint CLECs generally side with the Joint Intervenors and oppose Qwest's proposal to charge CLECs for interconnection facilities at rates that are not based on forward-looking cost, i.e., Private Line Transport tariff rates, particularly if Qwest refuses to pay a proportionate share of those rates but will pay only a share of the significantly lower forward-looking costs. The Joint CLECs assert that Qwest's proposal is discriminatory and inconsistent with both the Act and the FCC's pricing requirements.

Discussion and Decision

64 The parties raise two primary issues with SGAT section 7.1.2: (1) whether Qwest should be permitted to dictate the point of interconnection or interface (POI), and (2) what rates Qwest should charge. An underlying concept that brings these issues to impasse is whether entrance facilities may be combined with UNEs.

65 The Joint Intervenors' argument is persuasive in that the FCC specifically determined that interconnection may be used to access unbundled elements.¹⁹ Qwest's reliance upon paragraph 552 of the same order for the proposition that interconnection trunks cannot be employed to access UNEs is misplaced because the paragraph discusses virtual collocation as opposed to interconnection.

66 The Joint Intervenors' position is supported by the Act and FCC rules. Section 251(c) sets forth requirements for nondiscriminatory interconnection for telephone exchange and exchange access, as well as for access to UNEs, at the request of the CLEC at any technically feasible point within Qwest's network, subject to reciprocal compensation arrangements. FCC rules provide that the rates for transport and termination are to recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier (measured at peak period).²⁰ An ILEC may not impose limitations, restrictions, or requirements on the use of UNEs that would impair the ability of the CLEC to offer a service in the manner the CLEC intends.²¹ Finally, previous interconnection at a particular point using particular facilities is substantial

¹⁹ *Local Competition First Report and Order*, ¶ 549.

²⁰ 47 C.F.R. § 51.709.

²¹ 47 C.F.R. § 51.309(a).

evidence that interconnection is technically feasible at that point, or substantially similar points, in networks using substantially similar facilities.²² ILECs must provide any technically feasible method of obtaining access to UNEs at a particular point upon request.²³

- 67 Qwest's existing interconnection agreement with Sprint provides for mid-span meet points of interface where the actual point of interconnection will be subject to negotiation, and the agreement contemplates the use of mid-span meet arrangements for access to UNEs. *Ex. 234, at 7.2.* The Sprint agreement allows for negotiation on alternative facilities including DS1 and DS3. *Id. at 7.6.1.*
- 68 In its agreement with AT&T, Qwest will interconnect at any technically feasible point, subject to negotiation. *Ex. 230 at 2.1.* The MFS/Qwest agreement also contemplates interconnection for access to UNEs. *Ex. 233 at 17.* The MCI/Qwest agreement provides for interconnection at any technically feasible point, including the purpose of access to UNEs, and states that an entrance facility extends from the POI. *Ex. 232, at 3.1, 5.1.*
- 69 These agreements show that Qwest is already offering interconnection at any technically feasible point for access to UNEs. Subject to the provisions of 47 C.F.R. § 51.709, Qwest must provide in the SGAT for interconnection through entrance facilities at a POI determined by the CLEC, including for the purpose of access to UNEs.
- 70 In paragraph 340 of the Commission's Thirteenth Supplemental Order in Docket No. UT-003013, the Commission directed Qwest to file rates for entrance facilities. Notwithstanding the Joint Intervenors' and Joint CLECs arguments concerning Qwest's private line rate for entrance facilities, the rates for entrance facilities in Docket No. UT-003013 shall be applicable in this instance as well, and subject to proportional sharing of costs based upon use for exchange access. CLECs must pay these TELRIC rates for the DS1's used for interconnection, as long as they pay Qwest's private line DS1 rate for the portion used for private lines. Qwest must modify its SGAT to permit interconnection using entrance facilities at any technically feasible POI chosen by the CLEC, including interconnection for access to UNEs, and must revise SGAT section 7.1.2 as agreed at the workshop. *See Tr. at 1250.*

²² 47 C.F.R. § 51.305(c).

²³ 47 C.F.R. § 51.321(a).

3. *Collocation facilities on Qwest's side of POI – Rate elements for Entrance facilities (Issue WA-I-6)*

Joint Intervenors' Position

71 In section 7.1.2.2 of the SGAT, Qwest proposes that “[w]hen interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Expanded Interconnection Channel Termination (EICT) rate elements, as described in Section 7.3.1.2.1 and Exhibit A will apply.” *Ex. 271*. Qwest had originally required CLECs to pay the rate for Interconnection Tie Pairs (ITP), but replaced that rate element with EICT rates.

72 The Joint Intervenors argue that it is unjust and unreasonable to charge the CLEC for the EICT as it is Qwest's obligation to transport the traffic from the CLEC's collocation space or POI in this instance. *Joint Brief at 29-30*. The Joint Intervenors argue that the EICT is Qwest's “side” of the interconnection, not the CLECs. Further, the Joint Intervenors argue that the proposal is discriminatory because Qwest does not pay CLECs for similar service. The Joint Intervenors request that the Commission modify Qwest's SGAT to address its concerns or to make payments reciprocal between the CLEC and Qwest. *Joint Brief at 30*. This issue is addressed further below in section 13 referring to issue WA-I-43.

73 The Joint Intervenors argue that the connection from the CLEC's collocation space to Qwest's switch serves the same function whether it is referred to as an “EICT” or an “ITP,” and that the connection carries the CLEC traffic from the CLEC collocation POI to Qwest's switch. The Joint Intervenors explain that EICT differs from ITP because Qwest builds “repeatering” into an EICT, increasing the cost of the EICT as compared to the ITP. The Joint Intervenors believe the SGAT attempts to increase CLEC costs by requiring CLECs to pay for the EICT.

Qwest's Position

74 Qwest does not address this issue in brief, but disagreed with the Joint Intervenors' proposal during the workshop. Qwest argues that it need not share costs that CLECs incur to interconnect through collocation in a Qwest wire center because Qwest does not have a reciprocal right to collocate in CLEC switching centers. *Ex. 348, at 38*. Qwest witness Freeberg stated that “since collocated equipment is typically used for multiple purposes, the apportioning of cost would certainly be complex.” *Ex. 348, at 38*.

Joint CLECs' Position

- 75 Similar to their position on entrance facilities, the Joint CLECs argue that Qwest is responsible for paying its proportional share of the costs of all facilities used for interconnection.
- 76 The Joint CLECs argue that FCC rules require Qwest to pay its proportionate share of the costs incurred for all facilities used to interconnect the Qwest and CLEC switches for the exchange of traffic between their respective customers, including collocation elements used for interconnection when the CLEC collocates in the Qwest wire center. *Joint CLEC Brief at 3*. The Joint CLECs argue that both Qwest and the CLEC must pay their proportionate share of the nonrecurring and recurring costs of all facilities constructed between their respective switches that are used to exchange local traffic, including ISP-bound traffic.
- 77 The Joint CLECs note further that Qwest has never requested collocation nor sought interconnection in a CLEC switching center. *Joint CLEC Brief at 3, n.2*. The Joint CLECs argue that regardless of whether Qwest can collocate in a CLEC switching center, the CLEC is entitled to recover the costs of Qwest's use of facilities to the same extent that Qwest is entitled to recover the costs of the CLEC's use of Qwest's LIS Entrance Facilities. *Id. at 3-4*.
- 78 The Joint CLECs cite to XO Washington's list of the collocation elements that would be subject to cost sharing when the CLEC interconnects with Qwest using collocated equipment. *Joint CLEC Brief at 4*. The Joint CLECs note that Qwest never explained how apportioning Qwest's recurring and nonrecurring rates for these elements would be any more complex than apportioning the recurring and nonrecurring rates of other facilities used for interconnection. *Id. at 4*.
- 79 The Joint CLECs argue that the issue is one of pricing, and in particular, pricing for collocation. The Joint CLECs argue that Qwest's charges for LIS Entrance Facilities are much less than the comparable collocation elements, even though the facilities provided are the same. *Id.* In particular, the Joint CLECs note that an entrance facility for collocation would cost 3-12 times as much as an entrance facility for interconnection. *Id.* The Joint CLECs request that the Commission order Qwest to pay its share of collocation rates, because such a ruling would comply with FCC rules, but would also provide a partial check on Qwest's pricing for collocation and LIS entrance facilities to ensure that Qwest charges comparable rates for comparable facilities. *Id.*

Discussion and Decision

- 80 Whether Qwest calls a facility an EICT or an ITP functionally does not matter: The function of the facility is to carry traffic from the CLEC collocation POI to Qwest's switch. The issue at impasse is whether Qwest is responsible for providing and paying for its own facilities up to the POI. This is consistent with SGAT section 7.1.2.3 which provides that each party will be responsible for its portion of the build to the POI. The Act does not grant Qwest a right to collocate equipment in a CLEC wire center. Therefore, this is not an issue in this proceeding.
- 81 Most interconnection agreements provide that Qwest is responsible for the network on its side of the POI. For example, the MCI/Qwest agreement, Attachment 4 at section 7.1, provides that "Each party is responsible for providing its own facilities up to the Meet Point." *Ex. 232.*
- 82 Under the current SGAT Section 7, whether the facility running from the collocation POI to the Qwest switch is called an EICT or an ITP has a rate effect upon CLECs which appears to be related to Qwest's attempts to prohibit interconnection for access to UNEs. Because we have disposed of that prohibition above, the only distinction left is that apparently Qwest builds "repeatering" into an EICT, thereby increasing the cost. This issue is related to the issues discussed above concerning entrance facilities and below concerning EICT collocation (Issue WA-I-43). Similar to the decision below requiring Qwest to remove restrictions in section 7.3.1.2.1 associating ITPs with UNE provisioning and not interconnection, and the discussion above requiring Qwest to pay for facilities on its side of the POI, Qwest must also remove the application of EICT rate elements language in Section 7.1.2.2.
4. *Mid-Span Meet POI Unbundled Access (Issue WA-I-7)*
- 83 Qwest's SGAT at Section 7.1.2.3 states that a mid-span meet POI may not be used by a CLEC to access UNEs.

Joint Intervenors' Position

- 84 The Joint Intervenors object to this language. The Joint Intervenors explain that a mid-span meet arrangement consists of facilities used to carry traffic between the ILEC's network and the CLEC's network. These same facilities (essentially the fiber optic pipe running between two locations) are identical to facilities purchased as dedicated transport, and are capable of carrying traffic of end-users served through UNEs. In order to allow competitors to make the most efficient use of a mid-span meet, the Joint Intervenors recommend the SGAT be revised to allow the use of mid-span arrangements to access UNEs.

85 In addition to the prohibition against access to UNEs, WorldCom is also concerned that Qwest's understanding of meet point arrangements may be too narrow. WorldCom proposes adding to the SGAT new sections 7.1.2.3 through 7.1.2.3.4 which set forth, among other things, four technically feasible fiber meet design options.

Qwest's Position

86 Similar to its argument about the use of entrance facilities to access UNEs, Qwest asserts that mid-span meet points may be used for interconnection but not to obtain access to UNEs. Qwest believes that its proposal is a modest restriction on the use of the mid-span meet point for interconnection. Qwest relies on paragraph 553 of the *Local Competition First Report Order* in arguing that both parties must benefit from the arrangement in order for them to share the cost.

Discussion and Decision

87 Similar to the discussion above concerning the use of entrance facilities to access UNEs, Qwest must eliminate from the SGAT the prohibition against using mid-span arrangements to access UNEs. FCC rules govern the methods of obtaining interconnection and access to unbundled elements and specify that the ILEC must provide any technically feasible method of obtaining access to UNEs at a particular point upon request.²⁴ The previous discussion on entrance facilities is incorporated into this discussion.

88 Approving Qwest's proposal would eliminate an efficient method of interconnection and access to UNEs. Because Section 251(c) uses the term "at any technically feasible point" and because Qwest has implemented that term in numerous existing interconnection agreements, there is no need to include WorldCom's proposed new language in the SGAT.

5. *Relationship of Qwest's SPOP Policy with the SGAT (Issue WA-I-8)*

Qwest's Position

89 This issue concerns the relationship to the SGAT and existing interconnection agreements with Qwest's policy for a Single Point of Presence (SPOP). Qwest states that the SPOP was developed as an initial response to Qwest's decision to permit the exchange of local traffic at the toll tandem, and to eliminate the interLCA facilities

²⁴ 47 C.F.R. § 51.321(a).

proposal. *Ex. 473; Tr. at 2398.* The SPOP is intended as a guide to local interconnection service; However, it is not the sole definition of LIS and does not replace any existing form of LIS available or individually negotiated by a CLEC. *Tr. at 2391.* Qwest argues that language in the SPOP supports this analysis: “If our wholesale customers have an existing CLEC Local Interconnection Service (LIS) or WSP (wireless) Type 2 Interconnection network, they can keep their existing trunking network intact, with its multiple points of interconnection (POI), adding to this current configuration as appropriate, or utilize the new SPOP in the LATA product.” *Ex. 473, ¶ 4.*

90 Qwest states asserts that the model agreement for the SPOP is the SGAT, and that the concept of local interconnection through the access tandem, local tandem or end office is set forth in Section 7 of the SGAT. *Tr. at 2399.*

AT&T's Position

91 AT&T questions whether Qwest intends the SPOP or interconnection agreements to govern whether CLECs may interconnect at access tandems. AT&T believes that, in practice, Qwest product managers may treat the SPOP product as an either/or choice for CLECs, requiring them to either negotiate or retain their own LIS agreement or elect the SPOP in its entirety. *Tr. at 2399.* Specifically AT&T reported difficulty in getting access to the toll tandem through the SPOP if they already had access to the local tandem. AT&T requested that Qwest clarify how the SPOP is incorporated into and consistent with the language of the SGAT. *Tr. at 2387.* AT&T further argues that the SPOP product will lead to inefficient interconnection design and that the SPOP product violates Section 251(c)(2) and the FCC rules. *Joint Brief at 36.* As a remedy, AT&T suggests that Qwest should recast its SPOP product and its SGAT to eliminate restrictions on the CLECs' ability to designate the point or points of interconnection CLECs deem to be most efficient.

Joint CLECs' Position

92 Similar to AT&T, the Joint CLECs argue that Qwest may not require interconnection at each Qwest local tandem, and that to do so would lead to an inefficient network design. They argue that the SPOP product must be integrated into the SGAT if Qwest intends to rely on it as a means of meeting its legal obligations for interconnection. *Tr. at 2398.* The Joint CLECs are finding it difficult both to use the SPOP product and to have direct trunking to local tandems and end offices. *Tr. at 2396.* The Joint CLECs propose that the SGAT be amended to clarify this arrangement by specifying two terms. *Joint CLEC Brief at 9.* Those terms would require Qwest to permit interconnection for the exchange of local traffic at Qwest's access tandem:

- (1) without requiring interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem; and
- (2) regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices by the access tandem at the same cost to the CLEC as the interconnection at the access tandem.

Id.

Sprint's Position

93 Sprint raises concerns over the status of ISP traffic when using SPOP and CLEC rights to receive reciprocal compensation for ISP traffic. Sprint notes that the SPOP provides that “Qwest will not pay reciprocal compensation for ISP-bound traffic.” *Ex. 473, at 3.* Sprint also raises concerns about Qwest interpreting a CLEC’s election of the SPOP as an agreement to terminate any existing reciprocal compensation arrangement the CLEC may already have for ISP traffic.

Discussion and Decision

94 The SPOP is a specific Qwest product that exists outside of the SGAT. Qwest asserts that the SPOP policies are implemented in the SGAT. The parties raise a genuine issue about whether this is true, and whether Qwest employees are using the SPOP or the SGAT as the document governing how to implement the product. Further, the parties raise concerns about how the SPOP should be integrated with the SGAT, or, for that matter, into the terms of individually negotiated agreements.

95 This issue focuses more on Qwest’s performance in provisioning the SPOP product than language in the SGAT. Discussion of Qwest’s performance in provisioning the product is more appropriately handled during workshop discussions on Qwest’s post-entry performance plan and the ROC third party OSS testing process. However, Qwest should include in the SGAT the two provisions proposed by the Joint CLECs. *See Joint CLEC Brief at 9.* This language would begin to resolve the problem by ensuring that CLECs have access to interconnection through the access tandem or at reasonable cost.

6. *One-way Trunk Group Interconnection (Issue WA-I-12)*

Qwest's Position

96 Through the testimony of Mr. Freeberg, Qwest clarifies how it provides CLECs a point of interconnection in cases of two-way and one-way trunking. Qwest states that SGAT section 7.2.2.1.2.1 allows local traffic to be transported by either one-way or two-way trunking, consistent with FCC requirements in paragraph 219 of the *Local Competition First Report and Order*. *Qwest Brief at 6*. If a CLEC chooses two-way trunking, the CLEC defines the POI. If the CLEC chooses one-way trunking, the CLEC defines the POI for traffic flowing from the CLEC to Qwest. However, if a one-way trunk carries traffic from Qwest to the CLEC, Qwest believes it should be in the position to decide the POI and the route that the traffic follows. *Tr. at 2426, 2428*. Qwest argues that any other arrangement could lead to a requirement that Qwest develop an inefficient network and would represent a failure by the CLEC to negotiate in good faith as specified under Section 251(c)(1). *Qwest Brief at 7*. Qwest does propose language to allow CLECs to choose the POI to the extent that traffic volumes warrant. *Tr. at 2426*.

Joint Intervenors' Position

97 The Joint Intervenors argue that the CLEC should be able to determine the POI in cases where a dispute arises between the parties on the end points of Qwest one-way trunk groups, because Qwest has not permitted the establishment of an efficient route to a single point of interface. *Tr. at 2425*. AT&T disagrees with Qwest's proposed language and proposes additional language changes. *Id.* AT&T proposes that Qwest amend the SGAT to include the following sentence: "If the Parties do not agree on the end points of Qwest's one-way trunk groups, CLEC shall determine such points." *Ex. 474*. AT&T indicates that this is less a dispute over the specific language than it is a dispute over the implementation of the trunking network arrangements. AT&T suggests that one remedy for the problem is to insert the following sentence into SGAT section 7.2.2.1.2.1: "The point or points of interconnection for such one-way trunk groups shall be those designated by the CLEC." *Joint Brief at 37*.

Discussion and Decision

98 The dispute between the parties is whether the CLECs or Qwest should be able to determine the POI when Qwest provisions a one-way trunk group for traffic flowing from Qwest to the CLEC. In its *Local Competition First Report and Order*, the FCC decided that a proposal by MCI that competitors and incumbents designate POIs on each other's networks was best addressed in arbitrations and negotiations between

parties.²⁵ The FCC also stated that “requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2).”²⁶

99 Both Qwest and the Joint Intervenors argue that the Commission should adopt their position to encourage the most efficient use of their networks. Qwest’s network structure may be very different from a CLEC’s. What is more efficient for Qwest may not be for a CLEC and vice versa. The best outcome is for the parties to negotiate the POI, as suggested by the FCC. However, given that the dispute is limited to one way trunking from Qwest to the CLEC, Qwest’s arguments are persuasive that Qwest should determine the POI and how to route the trunk most efficiently in its network.

7. *Direct-trunked transport mid-span meets (Issue WA-I-16)*

Joint Intervenors’ Position

100 The Joint Intervenors argue that Qwest’s 50 mile limitation on direct-trunked transport where neither the CLEC nor Qwest have facilities violates the CLEC’s right to choose the most efficient point of interconnection, and is contrary to Qwest’s obligations under Section 271. The Joint Intervenors argue that Qwest’s proposal places the burden of building Qwest’s own network onto CLECs. The proposal requires CLECs to build a mid-span trunk on all trunk interconnection routes over 50 miles where neither the CLEC nor Qwest have facilities in place. The Joint Intervenors dispute Qwest’s argument that a CLEC might demand hundreds of miles of direct-trunked transport to interconnect its network to Qwest’s network as an extreme and unsubstantiated justification for its proposal. *Tr. at 1308.*

101 The Joint Intervenors further argue that Qwest’s proposal violates Section 251(c)(2) of the 1996 Act.

Qwest’s Position

102 Qwest argues that while the Act anticipated that some modifications to an incumbent’s network would be encompassed within its duties under Section 251(c)(2), Congress also recognized that there would be some reasonable boundary on this obligation. *Qwest Brief at 8, n. 24.*

²⁵ *Local Competition First Report and Order*, ¶ 220.

²⁶ *Id.* ¶ 220 n.464.

103 Qwest admits that FCC rules require ILECs to adapt their networks for interconnection or use by other carriers, to condition loops and to activate vertical features to accommodate access to UNEs. Qwest interprets FCC policy as merely allowing competitors access to parts of the existing network Qwest has decided not to use, but allowing ILECs to determine whether an alteration requires substantial changes to the network.

104 Qwest argues that the FCC has specifically acknowledged that some reasonable end point to an incumbent LEC's obligation in this context is appropriate, stating:

Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.²⁷

Moreover, in defining meet point arrangements, the FCC states:

the "point" of interconnection for the purposes of Sections 251(c)(2) and 251(c)(3) remains on "the local exchange carrier's network (e.g. main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection."²⁸

105 Qwest argues that if incumbent LECs were required to build out their facilities to any distance to accommodate interconnection, the FCC's use of the word "limited" in this context, and its statement regarding deferral to state commissions to determine the reasonable distance for mid-span meet points, would have no meaning. Qwest believes that if the FCC has limited an incumbent's obligations in a meet-point arrangement, that it would endorse similar, reasonable limitations on the accommodations Qwest must make when providing direct-trunked transport.

Discussion and Decision

106 In the Arbitrator's Report and Decision in Commission Docket No. UT-960310, the Arbitrator's determination of Issue 7 addressed whether the Commission should allow U S WEST to place a distance limit on mid-span meets. The issue must be considered in light of the CLEC's right to unilaterally select interconnection at any

²⁷ *Local Competition First Report and Order*, ¶ 553.

²⁸ *Id.*

technically feasible point and Qwest's responsibility for the cost of facilities on its side of a meet point. Consistent with the arbitrator's decision, it is reasonable to impose a distance limit on Qwest's obligation to build facilities to a meet point. Qwest has proposed a reasonable limit of fifty miles, which is much greater than the one mile limit in Qwest's current agreement with MCI. *See Ex.232, Attachment 4 at 2.2.* There is no need to eliminate or modify the SGAT language.

8. *MF signaling (Issue WA-I-19)*

Joint Intervenors' Position

107 During the workshops, AT&T proposed and Qwest agreed to a new SGAT section 7.2.2.6.3, to address the need for MF, or multifrequency, signaling options where the Qwest switch does not have SS7 signaling capability. *See Ex. 496; Tr. at 1316-17, 2536-37.* AT&T also requests the same option when a Qwest central office switch does not have SS7 diverse routing. MF signaling is multi-frequency, in-band signaling that was widely used before the advent of SS7 signaling. *Joint Brief at 41.* The Joint Intervenors note that current switches are generally capable of operating under both MF and SS7 signaling.

108 Joint Intervenors raised the issue because Qwest has refused interconnection with AT&T in rural areas where Qwest's switches have not been updated, because the older switch employs MF signaling rather than SS7 signaling. The Joint Intervenors assert that Qwest has requested that AT&T make a bona fide request before allowing any interconnection at what AT&T asserts is otherwise a technically feasible point of interconnection. AT&T proposed the SGAT language in Exhibit 496 concerning diverse routing to resolve the delay or denial of interconnection at any technically feasible point.

109 AT&T requests additional SGAT language stating "or if the Qwest Central Office Switch does not have SS7 diverse routing." The Joint Intervenors assert that this language is necessary because in the event of a signaling failure, the CLEC customers would be left stranded, while the Qwest customers could continue to make calls. *Joint Brief at 42.* The Joint Intervenors argue that this lack of redundancy in Qwest's network has created a barrier to competition because some customers have refused to switch to CLECs due to this lack of diversity in the signaling network. The Joint Intervenors believe Qwest's failure to include the additional language violates the FCC's interconnection requirements and places Qwest out of compliance with Section 271.

Qwest's Position

- 110 Qwest believes building in this redundancy is not necessary. Qwest states that the SS7 system would be fixed quickly in the event of a failure, and Qwest would have to build MF links that it doesn't need to build for itself because when SS7 goes down customers can still talk to other customers in their central office. Qwest would allow CLECs to purchase such redundancy but only through a *bona fide* request. *Qwest Brief at 21.*
- 111 Qwest argues that AT&T's additional language is unnecessary and that Qwest has no legal duty to provide additional levels of redundancy in its network. Qwest argues that even if Qwest agreed to AT&T's proposed language, and the hypothetical failure occurred, both sets of customers served by the respective local switches of AT&T and Qwest would be severely restricted in their ability to place calls for the brief span during which signaling was interrupted. Qwest argues that the Joint Intervenors have provided no FCC orders or court decisions that would require Qwest to establish this type of signaling link redundancy.
- 112 Qwest argues that the FCC has only required BOCs to meet the "reasonably foreseeable" demand of CLECs even for checklist items. *Qwest Brief at 21, n.59, citing Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana, Memorandum Opinion and Order, CC Docket No. 98-121, 13 FCC Red 20599, ¶ 54 (Second BellSouth Louisiana Order).* Qwest asserts that the hypothetical concerns of a single carrier do not rise to the level of a "reasonably foreseeable" demand. Qwest argues that in the very unlikely event that this situation should occur, Qwest would place the repair of the failed signaling link on the highest priority and the signaling would be restored as soon as possible, reducing any parity issue to the level of de minimus. *Qwest Brief at 12.*
- 113 Despite these arguments, Qwest does not refuse to provide multi-frequency trunks. Qwest proposes that if a potential CLEC customer is actually concerned about this hypothetical situation, the CLEC could request this capability by submitting a bona fide request. Qwest will consider such requests on a case-by-case basis. *Id.*

Discussion and Decision

- 114 During the workshop, Staff requested that Qwest provide a list of the names and locations of Qwest fiber spurs in Washington state that do not have diverse fiber routing in and out. *Ex. 507, Bench Request No. 30.* In response to Bench Request No. 30, Qwest provided a map showing the Qwest interoffice network facilities used to serve customers in the state of Washington. Qwest also explained that its network

facilities include not only fiber optics, but a mix of Fiber Optics, Digital Copper T Carrier, Digital Radio, and Analog Radio.

115 Qwest explained that the map provided in response to the bench request covers Qwest's Central Office Locations, Independent Company Central Office Locations, LATA Boundaries, the 206/360 NPA Boundary, and the Independent Company Facilities. The map shows the Fiber Regeneration Locations, Qwest Radio Repeaters, Independent Company Radio Repeaters, Radio Passive Reflectors, and Pair Gain Locations. Qwest explained that a single line on the map does not mean that there is only one cable in place for that interoffice facility. *See Ex. 507.*

116 Qwest further explained that it has deployed SS7 technology to all of its central offices in the State of Washington, and that all equipped offices have in place a minimum of two links to the SS7 network.

117 The information provided by Qwest in response to Bench Request No. 30 indicates that there is SS7 signaling capability with diverse routing in every central office. Based on the information provided by Qwest, the Commission finds that there is no need to include additional language in the SGAT to address diverse routing. If a special circumstance arises, Qwest has agreed that CLECs may make a bona fide request for additional diverse routing capability.

9. *Forecasting Disputes, Deposits (Issue WA-I-24)*

118 Sections 7.2.2.8.6. and 7.2.2.8.6.1 of the SGAT provide Qwest the right to require deposits from CLECs in the case of forecast quantities. Qwest will make capacity available at its lower forecast capacity. Qwest may require an up-front deposit of up to 50 percent of the estimated capital cost of the requested trunking, if the CLEC's trunk utilization over the prior 18 months is 50 percent or less. The deposit would be returned to the CLEC if its trunk utilization exceeded 50 percent within six months. In the case of a CLEC requesting Qwest to build to the CLEC's higher forecast, Qwest may require a 100 percent deposit. *Ex. 434, at 8, 9.*

Joint Intervenors' Position

The Joint Intervenors raise various performance parity issues, complaining that Qwest insists upon CLECs providing trunk forecasting, but then refuses to build to the CLEC forecast or its own forecast unless certain conditions are met. The Joint Intervenors assert that under Qwest's proposal, in a dispute over the CLEC forecast versus Qwest's own forecast, Qwest will make capacity available based on the lower forecast (which is usually Qwest's forecast). The Joint Intervenors assert that where the CLEC's trunk utilization over the preceding 18-month period is 50 percent or less

of its forecast for each month, Qwest may require a 50 percent deposit of the estimated capital cost to provision the forecasted trunks before Qwest will build to the lower forecast. They state that Qwest will return the 50 percent deposit if the CLEC's state-wide average trunk forecast-to-usage ratio exceeds 50 percent, but if the usage does not exceed 50 percent, Qwest will keep a pro rata share of the deposit. If Qwest fails to have forecasted capacity available when the CLEC orders trunks, Qwest will refund a pro rata portion of the deposit. Finally, the Joint Intervenors state that Qwest is willing to build to the higher forecast, but may require a 100 percent refundable deposit of the estimated cost to provision the new trunks.

119 The Joint Intervenors complain that the purpose of making forecasts is to ensure there is adequate capacity on Qwest's network to avoid call blocking. The Joint Intervenors assert that Qwest shows only slightly more trunk utilization than the CLECs. *Ex. 435*. The Joint Intervenors worry that when a CLEC's utilization falls, Qwest will likely assess the CLEC a 50 percent deposit of the estimated capital cost to build the forecasted trunks even though Qwest is not actually building the trunks and reserving them for the use of the CLEC that forecasted them. The Joint Intervenors are concerned that the trunks could be lost to Qwest's own internal use or other CLECs long before the CLEC that provides the forecast and pays the deposit places an order. *Tr. at 2560*.

120 The Joint Intervenors also allege that the lower forecast is likely to be Qwest's own forecast. However, the CLEC is expected to pay a deposit so that Qwest will have the aggregate capacity it predicts it will need, regardless of what the particular CLEC forecasts.²⁹ The Joint Intervenors argue that similar problems arise when considering Qwest's 100 percent deposit to build to the higher, presumably CLEC, forecast.

121 The Joint Intervenors argue that Qwest's alleged surplus inventory 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. *Joint Intervenors Brief, at 44*. In addition, Joint Intervenors argue that some CLECs have had to order more trunk facilities than they immediately needed, because Qwest has traditionally lacked trunk facilities and experienced delays in filling trunk orders. *Tr. at 2567*. In the case of two-way trunks that carry both CLEC and Qwest traffic, Joint Intervenors claim that Qwest may be as much to blame for under utilization as any CLEC. *Tr. at 2565*. The Joint Intervenors also question the accuracy of the utilization measurements for both Qwest and CLECs, noting that an August 2000 Exhibit shows 35,457 tandem trunks

²⁹ Aggregate capacity includes the forecasted demand for Qwest and the CLECs; therefore the forecast is an aggregate of all forecasts.

while the Response to Bench Request No. 31 shows 27,076 trunks, and data for evaluating performance measure NI-1 shows 22,138 trunks. *Joint Brief at 45, n.124.*

Qwest's Position

122 Qwest agreed in SGAT section 7.2.2.8.4 to "ensure that capacity is available to meet CLECs' [interconnection] needs as described in the CLEC forecasts." Qwest states that, in many instances, the forecasts will require it to construct new facilities at substantial expense. Qwest is concerned that it may incur costs to build new facilities, which will lay underutilized, dormant or dark. *Qwest Brief at 17.* Qwest says under-utilization has already cost Qwest an unnecessary \$300 million region-wide, and if the forecasting practices of CLECs continues, this number will only grow. *Tr. at 2561.*

123 Qwest argues it is entitled to recover its costs, but that CLECs currently do not pay anything for a LIS trunk until they order it. If the order never materializes because the CLEC over-forecasts, Qwest will build facilities that the CLEC never uses, and for which Qwest is never paid. Qwest asserts that any nonrecurring charges associated with interconnection trunks, if charged or paid at all, are a fraction of the actual cost of constructing the facility. *Qwest Brief at 18, n. 51.*

124 Qwest also argues that the proposed process is intended to provide CLECs the incentive to give Qwest accurate forecasts. Qwest rebuts the argument that CLECs should be refunded the deposit if Qwest ever has occasion to use the facility. Qwest says that this would lead to ways for CLECs to avoid being financially responsible for their inflated forecasts. Qwest says it already has enough incentive to act on CLEC's forecasts because there are self executing penalties through the performance assurance plan process if trunks are not provided timely and in sufficient volume to avoid trunk blocking. Qwest points out it has agreed to the CLEC demands on this point in the PEPP process. *Qwest Brief at 18.*

Joint CLECs' Position

125 The Joint CLECs assert that Qwest and CLECs share the responsibility for interconnecting their networks, but Qwest imposes on CLECs the burden to forecast and order interconnection facilities from Qwest sufficient to carry all local traffic between their networks, including traffic originated by Qwest's customers and terminated to CLEC's customers. *See Tr. at 2564-54; 2773-74.* The Joint CLECs say that Qwest now seeks to impose the additional burden of paying a deposit to Qwest before Qwest will construct those facilities.

- 126 The Joint CLECs make several arguments. First, the Joint CLECs argue that the charge Qwest proposes is not really a deposit. A “deposit” is “money given as a pledge or down payment.” *Joint CLEC Brief at 10, citing Webster’s New Collegiate Dictionary*. The Joint CLECs argue that Qwest does not propose to sell or transfer ownership of the facilities it builds to the CLEC, even if the CLEC pays a 100 percent down payment. The Joint CLECs complain that this is unfair because payment of the deposit does not guarantee that the facilities will be available when the CLEC orders them. *Joint CLEC Brief, at 10*. The Joint CLECs argue that the trunks to which that deposit are applicable should be dedicated to the CLEC, and the CLEC should be entitled to an ownership interest in those trunks in the same percentage as the deposit.
- 127 The second concern the Joint CLECs have with Qwest’s deposit proposal is that they believe Qwest proposes to penalize CLECs for alleged underutilization of trunks. The proposal requires CLECs to pay an unrefundable deposit for Qwest to construct trunks in one area if there are underutilized trunks elsewhere, even if those trunks subject to a deposit are used at or over 50 percent of capacity, unless all trunks statewide are used at or over 50 percent of forecasted capacity.
- 128 Third, the Joint CLECs point out that Qwest proposes to calculate statewide trunk utilization based not on usage of the trunking in place but based on trunking the CLEC forecasted six months in advance of provisioning. Joint CLECs complain that Qwest will calculate the usage based on the trunks originally forecast, rather than on the revised forecast and order.

Discussion and Decision

- 129 The purpose of forecasting is to assure sufficient capacity on Qwest’s network to avoid blocked calls, and encourage efficient use of resources. The burden should be balanced between the two parties, and so it is reasonable that there should be a deposit. However, deposits should not be based on overforecasts or underutilization of trunk groups in other geographic areas. In addition, Qwest should guarantee the availability of the forecasted trunks for which the CLEC paid the deposit. The forecasting process is still not fully implemented. As forecasting and other interconnection policies generally begin to mature, and if Qwest fails under the PEPP process to provision trunks without delay, the issue will need to be revisited. Qwest must revise the SGAT language accordingly, but the parties should also address the pro rata formula for refundable deposits and return with an agreeable formula or brief the matter for further decision making.
- 130 Section 4 of Qwest’s Exchange and Network Services Tariff WN U-40, governing Construction Charges and Other Special Charges (Line Extension Charges) (at 4.2.2(B)(2) on Original Sheet 4, and 4.2.2(A)(1) on Original Sheet 5) provides that

Qwest retains ownership of facilities constructed largely at customer expense. The question of ownership raised by the parties is resolved in a similar manner in this proceeding. The incentive to provide accurate forecasts and the burden this places upon CLECs must be balanced together with Qwest's obligations under the Act as well as with the interests of Qwest's end-user ratepayers. The burden may fall to ratepayers if Qwest were to build facilities for CLECs that were unused or non-revenue bearing due to poor CLEC forecasts. The SGAT need not be modified to include the Joint CLECs' request for transfer of ownership.

10. *Ownership of special construction facilities (Issue WA-I-30)*

Qwest's Position

- 131 Qwest asserts that the parties have agreed to language that will permit Qwest to charge special construction charges when a CLEC requests Qwest to provide interconnection facilities in extraordinary circumstances. *Qwest Brief at 19*. No other party discussed the issue in brief. With respect to the issue of ownership, Qwest asserts that projects involving special construction charges are no different than those that do not involve such charges. Qwest argues that parties compensate Qwest through a non-recurring construction charge in the same way a retail end-user would compensate Qwest pursuant to a retail tariff. *Id.*
- 132 Qwest argues that, as an example, pursuant to section 4.2.2 of Qwest's Washington intrastate tariff, Qwest charges end-user customers special charges for line extensions to premises outside of the base rate area, but the tariff provides that "[a]ll line extensions are owned and maintained by the Company."³⁰ In addition, Qwest' notes that even though applicants may elect to furnish and set required poles or provide a trench on their own property to avoid charges, ownership of the facilities remains with Qwest. *Id.*
- 133 Qwest claims that it owns the facilities built whether in a retail environment or under the Act. Under the Act, CLECs lease facilities owned by incumbents. Qwest argues that the Colorado Commission has held that Qwest should retain ownership when constructing facilities for CLECs. *Qwest Brief at 20*.

³⁰ Qwest Brief at 19, citing Terms, Conditions, Rates and Charges Applying to the Provision of Intrastate Exchange and Network Services Within the Operating Territory of Qwest Corporation in the State of Washington, WN U-40, effective August 30, 2000, at 4.2.2 (A)(1).

Discussion and Decision

134 Consistent with the discussion of ownership of facilities concerning issue WA-I-24, above, Qwest need not revise its proposed SGAT Section 7.2.2.8.16. This finding is also consistent with the FCC's determination that:

Carriers requesting access to unbundled elements within the incumbent LEC's network *seek in effect to purchase the right to obtain exclusive access to an entire element, or some feature, function or capability of that element*. For some elements, especially the loop, *the requesting carrier will purchase exclusive access to the element for a specific period, such as on a monthly basis*. Carriers seeking other elements, especially shared facilities such as common transport, *are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis*.³¹

135 The FCC has also stated:

We further conclude that a telecommunications carrier purchasing access to an unbundled network facility *is entitled to exclusive use of that facility for a period of time*, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled *to use of that feature, function, or capability for a period of time*. The specified period may vary depending on the terms of the agreement between the incumbent LEC and the requesting carrier.³²

136 Following the FCC's determinations, there is no right of ownership, but a right to use facilities for a period of time when purchasing access to UNE's, or features, functions, or capability.

11. *Exchange Access (Issue WA-I-35)*

137 In SGAT section 7.2.2.9.3.2, Qwest proposes to prohibit commingling of exchange service traffic with switched access traffic on the same trunk group. The Joint Intervenors object, stating that such commingling is technically feasible and not prohibited by the FCC. *Joint Brief, at 45*.

³¹ *Local Competition First Report and Order*, ¶ 258 (emphasis added).

³² *Id.* at ¶ 268 (emphasis added).

138 During briefing, Qwest acknowledged that the Commission has determined that such commingling is permissible, and agreed to allow such commingling in the state of Washington. *Qwest Brief*, at 28.

139 Given Qwest's concession of this issue, Qwest must remove Section 7.2.2.9.3.2 from the SGAT.

12. *Exchange of Local Traffic at the Tandem Switch/Trunk Ordering (Issues WA-I-37 and WA-I-57)*

Joint Intervenors' Position

140 Qwest's proposal in SGAT Section 7.2.2.9.6 requires CLECs to terminate local traffic on either Qwest local tandems or end offices and requires CLECs to order trunking to local tandems and end offices. The Joint Intervenors argue that unlike other BOCs, Qwest has artificially divided its tandem switches into local tandems and access tandems. They note that this separation is made in a single tandem switch through the use of switch modules. The Joint Intervenors further assert that Qwest will allow a CLEC conditional interconnection at the access tandem, but will deny such interconnection if there exists a local tandem serving a particular end office, even if the local tandem has exhausted capacity. *Joint Brief at 46*. The Joint Intervenors argue that the FCC has concluded that interconnection at the tandem is appropriate and technically feasible.³³ They further note that Qwest has admitted that interconnection at the access tandem is technically feasible. *Tr. at 1369*.

141 The Joint Intervenors assert that CLECs may select the point or points at which to interconnect.³⁴ They argue that the FCC had provided that 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."³⁵ The Joint Intervenors assert that interconnection at the access tandem is frequently the most efficient for the CLEC. The Joint Intervenors recommend that the Commission order Qwest to allow interconnection at the access tandem without the conditions proposed in SGAT section 7.2.2.9.6.

³³ *Local Competition First Report and Order*, ¶ 210.

³⁴ *Id.* ¶ 172; *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Service, Inc., d/b/a southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Service in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65-, FCC 00-238, ¶ 78 (rel. June 30, 2000) (*SBC Texas Order*).

³⁵ *SBC Texas 271 Order*, ¶ 78; 47 C.F.R. § 51.305(e).

Joint CLECs' Position

- 142 The Joint CLECs argue that SGAT section 7.2.2.9.6 violates that Act and requires construction of excessive and unnecessary interconnection facilities. *Joint CLEC Brief at 7*. The Joint CLECs argue that Qwest may not require interconnection at each Qwest local tandem pointing out that the Act and FCC rules require Qwest to provide interconnection with its network “at any technically feasible point.”³⁶ The Joint CLECs assert that the Commission has interpreted this and other applicable federal law to require that Qwest allow CLECs to interconnect at no more than a single point in each LATA, and at an access tandem, to exchange local traffic. *Id. at 6*. The Joint CLECs argue that Qwest’s SGAT ignores these obligations and requires CLECs to interconnect at each Qwest local tandem or end office serving an area in which the CLEC has customers and permitting interconnection at the Qwest access tandem only if no local tandem serves that area.
- 143 Although Qwest has expressed the need for efficient interconnection, the Joint CLECs argue that section 7.2.2.9.6 promotes inefficient interconnection. The section requires trunking to each local tandem, regardless of the level of traffic exchanged between the CLEC and end offices served by that tandem. While Qwest and a CLEC may not exchange sufficient traffic to justify a trunk group to each local tandem in less urban areas, the SGAT imposes such inefficient trunking, rather than permitting a single trunk to the Qwest access tandem that serves that area. *Id. at 7*.
- 144 The Joint CLECs assert that Qwest’s concerns about stranded capacity do not apply when a CLEC chooses to route local traffic through the access tandem because the traffic volumes do not justify separate trunk groups to the local tandems. *Id. at 8*. They argue that interconnection at the access tandem under these circumstances would not impact capacity on Qwest’s toll and local networks any more than when no local tandem serves a particular area. The Joint CLECs assert that the SGAT could require direct trunks to the local tandem when traffic volumes justify a separate facility, just as it currently requires direct trunks to an end office under such circumstances. *Id.*
- 145 The Joint CLECs propose that Qwest should either permit interconnection at the access tandem or provide interconnection facilities to the local tandems and end offices served by that access tandem at the same cost to the CLEC as interconnection at the access tandem.

³⁶ 47 U.S.C. § 251(c)(2)(B); 47 C.F.R. § 51.305(a)(2).

Discussion and Decision

146 The FCC has concluded that interconnection at the tandem is technically feasible.³⁷ In its *Local Competition First Report and Order*, the FCC rejected the imposition of reciprocal requirements on CLECs to interconnect at a point of the incumbent's choosing.³⁸

147 The Joint CLECs are persuasive in their argument that interconnection at the access tandem when traffic volumes are low would not impact capacity on Qwest's toll and local networks any more than when no local tandem serves a particular area. Most importantly, Qwest has admitted that interconnection at the access tandem is technically feasible and efficient. *Tr. at 1369*. Therefore, Qwest's must revise the SGAT to permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T. Qwest must not require interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connections to the local tandem. Qwest must do so regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.

13. *EICT Collocation (Issue WA-I-43)*

Joint Intervenors' Position

148 The Joint Intervenors object to Qwest's proposal to charge DS-1 or DS-3 circuit rates for the physical link between the CLEC POI and Qwest's equipment in the same building, the same wires Qwest calls the Expanded Interconnection Channel Termination or "EICT." *Ex. 434*. The Joint Intervenors also object to the prohibition in the SGAT against using ITPs for interconnection, limiting their use to accessing UNEs. The wires are Qwest's physical connection to the CLEC's collocation equipment when the CLEC chooses collocation as the method used to interconnect with Qwest's network. The Joint Intervenors argue that Qwest's collocation charges are unjust, unreasonable, one-sided, discriminatory, and in violation of Section 271. The Joint Intervenors argue that Qwest must meet the CLEC at that point of interconnection.³⁹

³⁷ *Local Competition First Report and Order*, ¶ 210.

³⁸ *Id.* ¶ 220.

³⁹ *SBC Texas Order*, ¶ 78.

149 The Joint Intervenors argue that similar to Issue WA-I-6 concerning EITC discussed above in Section 3, Qwest should pay for its side of the interconnection, i.e., the EICT. The Joint Intervenors assert that the CLEC does not charge Qwest for these wires when the CLEC interconnects to Qwest in CLEC premises, and that Qwest should not charge CLECs. The Joint Intervenors propose as an alternative that the Commission treat these charges as subject to reciprocal compensation under this section and propose new language in section 7.3.1.2.1.

Qwest's Position

150 Qwest rejects WorldCom's and AT&T's claims that Qwest should share or absorb the costs of EICT. Qwest asserts that the Act requires CLECs to bear the costs related to collocation. *Qwest Brief at 28, n.84.*

151 Qwest argues that EICT and multiplexing costs are not properly shared through reciprocal compensation because they are costs associated with collocation. *Id. at 28-29.* Qwest asserts that AT&T admits that the primary driver of a CLEC's decision to use collocation is access to unbundled network elements, not interconnection. *Id. at 29.* Qwest argues that it should not subsidize CLECs' UNE access costs, nor should the costs of accessing UNEs be allocated to interconnection. *Id.*

152 Qwest argues that collocation is an option for CLECs as a method of interconnection. Qwest argues that EICT costs are costs that the CLEC can avoid. *Id.* Qwest argues that CLECs should absorb those costs if they are costs the CLECs can choose or avoid.

Discussion and Decision

153 Consistent with the decision in Issue WA-I-6 above concerning EICT rates, Qwest should pay for its side of the interconnection, the EICT. CLECs do not charge Qwest for this connection when they interconnect to Qwest in CLEC premises. Qwest, likewise, should not charge CLECs.

154 Qwest's view that collocation is optional is not consistent with FCC orders. The function of the facility is to carry traffic from the CLEC collocation POI to Qwest's switch. Whether Qwest calls it an EICT or an ITP does not matter functionally. Qwest is responsible for providing its own facilities up to the POI. This is consistent with the SGAT at section 7.1.2.3 which provides that each party will be responsible for its portion of the build to the POI.

155 As discussed above in Section 2 concerning Issue WA-I-5, Qwest must allow the use of interconnection tie pairs for interconnection, not just access to UNEs.

156 As discussed above in Section 3 concerning Issue WA-I-6, whether the facility running from the collocation POI to the Qwest switch is called an EICT or an ITP has a rate effect upon CLECs which appears to be related to Qwest's attempts to prohibit interconnection for access to UNEs. Qwest is responsible for constructing and paying for facilities on its side of the POI. Therefore, Qwest must remove restrictions in SGAT section 7.3.1.2.1 associating ITPs with UNE provisioning and not interconnection, and remove the application of EICT rate elements in Sections 7.1.2.2 and 7.3.1.2.1.

14. *Definition of a tandem switch/ rating issues (Issue WA-I-44)*

Discussion and Decision

157 SGAT section 7.3.4.2.1 describes the rates applicable to tandem switching, and refers to the definition of a tandem switch in the SGAT, section 4.11.2. Specifically, the SGAT provides that if a switch switches traffic once, a party will receive only the tandem switching rate, whereas if it switches twice, the party will receive the tandem rate, the tandem transmission rate, and the end office call termination rate. Qwest did not brief the issue, and the Joint Intervenors noted that the issue was fully briefed following the first workshop.

158 This issue was addressed at length in the Draft Initial and Revised Initial Orders from the first workshop. In those orders, we determined that both function and geography must be considered in determining the appropriate transport and termination rates. *Revised Initial Order*, ¶¶ 214, 217. The language in the SGAT, as written, would preclude the Commission's ability to exercise its judgment with respect to the factors of geography and function. *Id.* ¶ 217. Qwest's SGAT provisions, sections 4.11.2 and 7.3.4.2.1 concerning tandem treatment, do not comply with the requirements of Checklist Item Nos. 1 and 13, section 252(f)(2). Qwest should modify its SGAT to allow for a factually based consideration of geography and function.

15. *Charges for Provisioning Individual Call Record/ Transit Records (Issues WA-I-62 and WA-I-63)*

159 SGAT sections 7.5.4 and 7.6.3 apply a reciprocal charge for Category 11-01-xx and 11-50-xx records sent in an EMR mechanized format. The sections note that the records are used to provide information necessary for a carrier to bill an interexchange or originating carrier for jointly provided switched access services, 8XX database queries, and transit.

Joint Intervenors' Position

160 The Joint Intervenors object to the charges for records in SGAT sections 7.5.4 and 7.6.3 because Qwest and WorldCom already exchange these records without charge by either party. *Joint Brief at 49*. WorldCom questions whether the cost associated with tracking and assessing the charge is justified considering 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. *Id. at 49-50*.

Qwest's Position

161 Qwest argues that it is only fair to allow carriers who provide records of jointly provided switched access services, 8XX database queries, and transit to be compensated for the costs of producing those records. *Qwest Brief at 30*. In order for the carrier terminating a call to seek compensation from intermediary carriers, terminating carriers will need access to certain information. Qwest asserts that its proposal covers the costs of the party that produces that necessary information, and notes that it is a reciprocal charge that applies to both Qwest and CLECs.

162 Qwest denies that it has provided the service without charge. Qwest asserts that it has charged for this service in accounting service agreements with CLECs. *Tr. at 2759*. Qwest claims that the Act allows incumbent's to recover their costs of providing interconnection. *See Qwest Brief at 31*. Lastly, Qwest argues that parties should raise concerns with the actual rate in the Commission's ongoing cost docket.

Discussion and Decision

163 Qwest's interconnection agreements with AT&T and WorldCom contain provisions allowing parties to charge each other fees for "recording, rating, or transmitting usage data." *Ex. 230, Attachment 5, at 27; Ex. 232, Attachment 5, at 28*. In both agreements, the charges were waived for the first six months of non-test data. *Id.*

164 In the Joint Intervenors' brief, WorldCom questions whether a charge is justified based on the minimal cost of retrieving the records and transmitting them. *Joint Brief at 49-50*. However, there is no evidence in this record to answer WorldCom's question about the cost of the service.⁴⁰ Qwest claims that it does charge CLECs for

⁴⁰ Qwest states in its brief that "If Wcom has an issue with the actual rate it can raise those concerns in the Commission's ongoing cost docket." Qwest's remark is curious; Exhibit A to the SGAT states that this rate is not being addressed in the cost docket. *Ex. 106, Exhibit A at 17*.

this service. *Qwest Brief at 31*. Its SGAT states that the rate is TELRIC-based. *Ex. 106, at Ex. A, 16*.

165 The SGAT sections should remain as proposed by Qwest. No party has presented persuasive evidence to support WorldCom's objection to these rates. The provision is reciprocal, allowing CLECs to charge Qwest for the same service.

16. *Interconnection at Access Tandem (Issue WA-I-64)*

Joint Intervenors' Position

166 The Joint Intervenors argue that Qwest's proposal in SGAT section 4.11.2 attempts to define for CLECs when their switches constitute tandem office switches. The Joint Intervenors argue that the definition is inappropriate and was the subject of briefing in the first workshop. They assert that the final order in the first workshop should determine whether or not the definition should be revised.

167 The Joint Intervenors also argue that another portion of Qwest's proposed definition should be stricken because it attempts to dictate the conditions under which CLECs may interconnect at the access tandem. The Joint Intervenors consider this dispute related to Issue WA-I-37. The Joint Intervenors argue that the definition does not comply with FCC policy or the Act, which allows CLECs to chose any particular point of technically feasible interconnection.

Discussion and Decision

168 This issue is resolved consistent with discussion above concerning Issues WA-I-37 and WA-I-44. Qwest's definition of a tandem switch is not sufficient. Qwest may not dictate the conditions under which CLECs may interconnect at the access tandem. Under the Act and FCC rules, CLECs may interconnect at any technically feasible point.

17. *Meet Point Billing/Voice Interexchange Traffic/Phone-to-Phone IP telephony (Issues WA-I-68 and WA-I-69)*

Qwest's Position

169 In the SGAT, Qwest identifies the definition of Meet-Point Billing or Jointly Provided Switched Access as an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to include phone-to-phone voice interexchange traffic that is transmitted over a carrier's packet switched network using protocols such as TCP/IP to an interexchange carrier. *See Ex. 434 at section*

4.39. Qwest also identifies the definition of “Switched Access Service” to include a list of transmission and switching services to IXCs for the purpose of originating or terminating telephone toll service. This list includes “phone to phone IP telephony. *Id. at section 4.5.7.*

170 Qwest also sponsored Exhibit 362 that proposed the treatment of IP telephony described in a Colorado arbitration proceeding. In the Colorado proceeding, Qwest argued that this language related to the specific and limited treatment of phone-to-phone TCP/IP traffic and its relationship to switched access charges. Qwest argued that it is not intended to apply to a broader treatment of the IP/switch access issue. *Ex. 362, at 5.* Further, Qwest cites to the Colorado Commission’s ruling in its VNI Decision (Docket No. 99K-335T, Decision No. C00-760, July 11, 2000) that “regardless of technology used, the provision of interexchange services without payment of access charges is improper.” *Id. at 7.* Qwest sums up its position on the issue by suggesting that avoiding the payment of access charges by using IP telephony is an example of improper toll bridging.

Joint Intervenors’ Position

171 The Joint Intervenors propose to strike the second half of the sentence in SGAT section 4.39 that reads “including phone-to phone voice interexchange traffic that is transmitted over a carrier’s packet switched network using protocols such as TCP/IP to an Interexchange Carrier.” *See Ex. 356.*

172 The Joint Intervenors argue that the issue of the treatment of IP telephony should not be addressed in the SGAT. The matter includes issues of reciprocal compensation and practical issues of attempting to separate out IP telephony traffic from other forms of traffic. *Joint Brief at 51-57.* The Joint Intervenors argue that the FCC has expressly determined that state commissions have the authority to impose reciprocal compensation obligations on ISP traffic. *Joint Brief at 53.* Referring to litigation over the FCC’s decision on ISP traffic, the Joint Intervenors argue that the issue is still unresolved. The Joint Intervenors argue that it is premature to define through the SGAT the status of IP telephony as interstate or local traffic, or its reciprocal compensation status. *Joint Brief at 56.*

173 The Joint Intervenors propose that Qwest delete this language from the SGAT at sections 4.39 and 4.57, as well as make changes to other paragraphs, including but not limited to SGAT sections 7.3.1.1.3.1 and 7.3.2.2.

Joint CLECs' Position

174 The Joint CLECs argue that the SGAT proceeding is not the proper forum to determine whether switched access service includes IP telephony. *Joint CLEC at 12-13*. Specifically, the CLECs assert that Qwest is attempting to use the SGAT to define the treatment of IP telephony without factual or legal support. The Joint CLECs request the Commission order Qwest to strike the references in the SGAT.

Discussion and Decision

175 Consistent with the findings in paragraphs 199 and 200 of the Revised Initial Order in this proceeding concerning the status of ISP traffic and payment for that traffic, Qwest should strike all references in the SGAT to phone to phone IP telephony. In particular, Qwest must strike the reference to “including phone-to-phone voice interexchange traffic that is transmitted over a carrier’s packet switch network using protocols such as TCP/IP to an Interexchange Carrier.” *See Ex. 271, §§ 4.57, 4.3.9, 7.3.1.1.3.1, and 7.3.2.2.*

Verification of Compliance

176 To establish compliance with the requirements of Checklist Item No. 1 for interconnection, Qwest must meet the requirements of sections 251(c)(2) and 251(d)(1) of the Act. In particular, Qwest must provide interconnection at any technically feasible point, equal-in-quality to that it provides to itself or any subsidiary, affiliate, or other party to which it provides interconnection, on rates, terms and conditions that are just, reasonable, and nondiscriminatory.⁴¹

177 Qwest asserts that it has met the requirements for Checklist Item No. 1 for interconnection through its interconnection agreements with CLECs and through SGAT section 7. However, a review of the SGAT sections over which the parties are at impasse indicates that Qwest has not met the requirements for this checklist item. Qwest must modify its SGAT consistent with the determinations made above in this order. In particular, Qwest must allow CLECs to access UNEs through interconnection, allow CLECs to determine the point of interconnection on Qwest’s network, and allow CLECs to exchange local traffic at the access tandem switch, not just the local tandem and end office switches. In addition, Qwest must not base trunk ordering deposits on use or forecasting of trunk groups in other geographic areas, and must guarantee availability of trunks for which CLECs have provided forecasts and deposits.

⁴¹ 47 U.S.C. § 251(c)(2).

178 Notwithstanding any modifications to the SGAT, Qwest must also demonstrate through commercial experience and a review of the audited results of relevant performance measures that it is providing interconnection pursuant to the requirements of Section 271(c)(2)(B)(i). Performance data is not yet available from the ROC third party testing process to determine if Qwest is meeting its own standards for providing interconnection. Until the Commission reviews and evaluates the audited performance data, the Commission cannot yet verify whether Qwest has met the requirements of this checklist item.

CHECKLIST ITEM NO. 11 – NUMBER PORTABILITY

FCC Requirements

179 Section 271(c)(2)(B)(xi) of the Act requires RBOCs to be in compliance with the number portability regulations adopted by the FCC pursuant to Section 251 of the Act. The Act defines number portability as “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.”⁴² Section 251(b)(2) of the Act requires all LECs, including Qwest, “to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [FCC].” Further, Section 251(e)(2) provides that “the cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC].”

180 The FCC requires LECs to offer interim number portability through remote call forwarding (RCF), flexible direct inward dialing (DID), and any other technically feasible method of providing number portability.⁴³ LECs must deploy long-term number portability in the largest 100 Metropolitan Statistical Areas (MSAs) beginning in October 1997, but no later than December 31, 1998, and after that date, make long-term number portability available in smaller MSAs within six months after a specific request by another telecommunications carrier.⁴⁴ Once long-term number portability is deployed in an exchange, a LEC may no longer provide interim methods

⁴² 47 U.S.C. § 153(30); see also 47 CFR § 52.21(k).

⁴³ *In re Telephone Number Portability*, First Report and Order and Further Notice of Rulemaking, CC Docket No. 95-116, RM 8535, FCC 96-286 (rel. July 2, 1996) ¶¶ 110-14 (*First Number Portability Order*).

⁴⁴ *First Number Portability Order*, ¶¶ 3, 77, 80.

of number portability.⁴⁵ The FCC also has established competitively neutral cost-recovery methods for administering interim and long-term number portability.⁴⁶

Washington Evidentiary Requirements

181 The Supplemental Interpretive and Policy Statement identifies the following specific evidentiary requirements that Qwest must meet to establish compliance with Checklist Item No. 11:

1. What methods of interim number portability is Qwest providing? Specify if it is being offered under tariff or under terms of specific interconnection agreements.
2. To which CLECs is Qwest providing interim number portability, and under what terms, conditions and rates?
3. Has Qwest denied interim number portability arrangements requested by any CLECs? If so, describe the circumstances in detail.
4. What has been Qwest's operational experience in providing each type of interim number portability?
5. What are the characteristics of each interim number portability arrangement, including cost recovery and service quality implications?
6. Is Qwest going to meet the FCC-mandated implementation schedule for permanent local number portability? If not, why not??
7. If Qwest does not meet the FCC-mandated implementation schedule for permanent local number portability, how will this affect its ability to provide services to CLECs?

182 In compliance with the Supplemental Interpretive and Policy Statement, Qwest filed several exhibits regarding Qwest's compliance with the general and specific evidentiary requirements for Checklist Item No. 11. *See Exs. 291-293-C. AT&T*

⁴⁵ *Id.*, ¶ 115.

⁴⁶ *In re Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, RM 8535, FCC 98-82 (rel. May 12, 1998) ¶¶ 8-10 (*Third Number Portability Order*); *In re Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, RM 8535, FCC 99-151 (rel. July 16, 1999), ¶¶ (*Fourth Number Portability Order*).

filed responses to Appendix B questions for Checklist Item No. 11. *Ex. 382*. Qwest and AT&T provided the information to supplement written testimony and exhibits.

Parties' Positions

Qwest

- 183 Through the testimony of Margaret S. Bumgarner, Qwest argues that it has satisfied the requirements for Checklist Item No. 11. *See Ex. 281*. Specifically, Qwest asserts that its SGAT and interconnection agreements establish legally binding obligations for Qwest to provide number portability in conformance with the Act and FCC rules. *Ex. 281, at 4*. In compliance with FCC rules, Qwest initially deployed long-term number portability (LNP) in the top ten Metropolitan Statistical Areas in Qwest's region, including Seattle and Tacoma. *Id.* Qwest makes four methods of interim number portability (INP) available in those exchanges not converted to LNP, i.e., remote call forwarding, direct inward dialing trunks, route indexing, and portability hub-routed indexing. *Ex. 281, at 8*. However, there is currently no demand for INP, as Qwest has deployed LNP on 100 percent of its access lines as of October 2000. *Ex. 281, at 8-9; Tr. at 1088*.
- 184 As of August 2000, Qwest had ported 119,548 telephone numbers in Washington for 21 CLECs, and as of May 31, 2000, had converted 12,505 INP numbers to LNP service. *Ex. 281, at 10; Ex. 290, at 2; Ex. 293; Tr. at 1088*. Qwest has deployed LNP using Location Routing Number (LRN) technology, developed using FCC requirements and industry guidelines. *Ex. 281, at 11*. LRN is an addressing and routing method that allows the re-homing of individual numbers to other switches through use of a database and signaling network. *Id.* With LRN, each public network switch is assigned a ten-digit LRN that identifies the address of the switch, and each telephone number is matched in a regional database with the LRN for the switch serving the number. *Id.* A third party, Neustar, currently administers the regional database serving Washington state. *Id.*
- 185 Under LNP, an Advanced Intelligent Network (AIN) trigger, also referred to as the "ten-digit unconditional trigger," launches a query to the local LNP database to determine the new routing address and sends the call to the switch that currently serves the number for call completion. *Id. at 11-12*. Qwest explains that when it receives an order for LNP, it presets an AIN trigger for the number to be ported. This allows the CLEC to control activation of number portability on the due date, or frame due time, or prior to the start time of an unbundled loop cutover. *Id. at 12*. In those situations where the trigger cannot be set automatically, a managed cut is required. *Id. at 13*. A managed cut involves manual LNP activation and coordination by both Qwest and CLEC personnel. *Id.* Qwest has documented this process in its Wholesale

Markets' Interconnect and Resale Resource Guide (IRRG), available on Qwest's website, and has made training available to CLECs. *Id. at 14.*

186 The ROC has developed two performance measures for number portability: OP-8B – “Coordinated Local Number Portability Timeliness (percent)” and OP-8C – “Non-coordinated LNP Triggers Set on Time (percent).” *Id. at 4.* Coordinated LNP involves the coordination of Qwest and the CLEC for unbundled loop cutovers, whereas non-coordinated LNP does not. *Id. at 17.* Qwest asserts that third party testing of these performance measures will provide further evidence of Qwest's compliance.

AT&T

187 Through the affidavit of Kenneth L. Wilson, AT&T asserts that Qwest has not demonstrated that it is legally bound and practically capable of providing CLECs with number portability in accordance with the FCC's requirements. *Ex. 381, at 3.* Primarily, AT&T asserts that Qwest's SGAT does not provide sufficient detail to satisfy Qwest's obligations for providing number portability. *Id. at 6.* AT&T also asserts that it has experienced a high percentage of problems with Qwest's number portability. *Id.* Mr. Wilson recommends changes to SGAT language to address issues with the SGAT and to address problems experienced by AT&T.

188 AT&T objects to SGAT section 10.2.1, asserting that the section addresses coordinated cutovers for number ports only when Qwest unbundled loops are involved. AT&T believes the section should also provide for coordinated cutovers where the CLEC is self-providing the loop. *Id. at 7-8.* AT&T believes the SGAT provides insufficient detail on Qwest's responsibility to comply with FCC rules and industry guidelines. *Id. at 8-10.* AT&T also objects to proposed due date intervals for LNP in SGAT section 10.2.6. AT&T asserts that the intervals are too long, given the automated OSS-driven process for number portability. *Id. at 10.*

189 AT&T proposes that Qwest include SGAT language allowing for managed cutovers for number portability, as Qwest has proposed including such a process in other states. *Id. at 11-13.* AT&T recommends that Qwest add a provision addressing the charges Qwest may make for LNP database queries. *Id. at 13-14.* AT&T also recommends language concerning out-of-hours cutovers, joint administration of Service Management Systems, LNP on weekends and off-business hours, ordering and cutover processes, porting unassigned numbers, mass calling numbers, and DID block numbers, and processes for excluded numbers. *Id. at 14-19.*

190 Based on its experience with porting numbers from Qwest for residential and commercial customers, both with and without unbundled loops, AT&T asserts that

Qwest does not satisfy its obligations for number portability. *Id. at 20*. AT&T identifies a number of problems it has experienced with Qwest's number porting processes. First, AT&T asserts that its customers have experienced loss of outbound and inbound service, caused by Qwest's premature loop disconnection. *Id.* AT&T also describes its experiences with (1) loss of inbound service caused by late porting, (2) poor notification by Qwest of cutovers and cutover problems, (3) Qwest's failure to address problems with the interaction of Qwest switch features and ported numbers, (4) problems in testing during and after cutovers, (5) problems with IMA in ordering number portability, (6) improper billing after cutovers, and (7) the reassignment of ported numbers. *Id. at 19-27*. Specifically, AT&T objects to Qwest personnel advising AT&T customers that problems would be resolved if they switched their service back to Qwest. *Id. at 24*.

WorldCom

191 Through the testimony of Leilani J. Hines, WorldCom raises concerns over certain SGAT provisions, as well as what WorldCom perceives as omissions in the SGAT. WorldCom asserts that the SGAT does not accurately describe Qwest's obligations to provide LNP and does not fully describe the query process. *Ex. 321, at 3, 4*. In addition, WorldCom objects to Qwest's reference to the IRRG in the SGAT without providing any ordering details, as the potential exists for Qwest to impose additional requirements on CLECs outside of the SGAT. *Id. at 4-5*. WorldCom also disputes language in the SGAT allowing Qwest to set intervals on an individual case basis. *Id. at 5-6*.

192 WorldCom proposes other changes to the SGAT to address what it believes is an incomplete description of LNP processes. These changes include adding language to (1) facilitate accurate routing and call termination, (2) ensure certification with the Number Portability Administration Center (NPAC) to verify compliance with industry standards, (3) describe Qwest's obligation to employ a 10-digit trigger, (4) ensure changes are made to the 911/E911 databases following number porting, and (5) ensure that CLECs are able to meet the particular needs of customers for porting thousand-number blocks, porting reserved and unassigned numbers, and relocating when porting numbers to a new carrier. *Id. at 6-10*.

XO Washington

193 Through the testimony of Kaylene Anderson, XO Washington, like AT&T, expressed concern that Qwest has failed to coordinate implementation of LNP with cutovers of unbundled loops, leaving customers without service. *Ex. 325, at 15*. However, XO Washington believes the issue is more appropriately addressed in the third workshop concerning unbundled loop issues, and that provisioning issues are more

appropriately addressed when the Commission evaluates Qwest's performance after the ROC third party testing is complete. *Id.*

Qwest's Response

194 Through the Rebuttal Testimony of Ms. Bumgarner, Qwest proposed modifications to its SGAT to address many of the concerns raised by AT&T, WorldCom, and XO Washington. Specifically, Qwest added language concerning (1) description of number portability and LNP, (2) terms and conditions, (3) standards and guidelines for number portability, (4) excluding certain numbers from porting, (5) identification of central office codes (NXXs) available for porting, (6) porting of DID numbers, (7) process issues concerning LIDB services, (8) reassignment of NXX codes, (9) updating 911 databases, (10) porting of reserved numbers, (11) geographic relocation while porting to a new carrier, and (12) maintenance and repair. *Ex. 290, at 84-92, 105-6.* Qwest has also added new language to address concerns about Qwest's Service Management System, charging for database queries, ordering, and managed cuts. *Id. at 95-98.*

195 Qwest objects to AT&T's proposal to add coordination of CLEC provisioned loops with LNP service, but does agree to allow CLECs the option of requesting managed cuts for such loops. *Id. at 87.* Further, Qwest objects to AT&T and WorldCom's suggestions concerning (1) porting of unassigned numbers, (2) setting the LRN trigger at the request of the CLEC, (3) intervals, and (4) some of AT&T's suggestions concerning managed cuts. *Id. at 93-95, 98-105.*

196 Qwest asserts that the problems that AT&T has experienced are anecdotal and that Qwest has resolved most of the problems. *Id. at 106-14.* Further, Qwest asserts that it sets the unconditional 10 digit trigger based on the CLEC's request, and that the CLEC controls the activation of the port by sending a message to the NPAC to broadcast to all service providers' LNP databases that the port is activated. *Id. at 107.* Qwest asserts that it is the CLEC's responsibility to notify Qwest if there is a need to delay or cancel the order, and that the problem with loss of service due to "premature disconnection" is caused by CLECs, not Qwest. *Id. at 108-9.*

Impasse Issues

197 During the workshops held on November 6-10, 2000 and January 3-5, 2001, the parties resolved some number portability issues. *See Ex. 279.* The parties resolved an issue deferred from the first workshop concerning the effect of number porting on number reassignments. *See Revised Initial Order, ¶ 327.* However, the parties remain at impasse on SGAT language concerning (1) loop provisioning coordination and the extent of coordination for CLEC-provided loops and (2) standard due date

intervals. On January 10, 2001, Qwest filed with the Commission an updated version of SGAT section 10.2, incorporating all changes to provisions concerning number portability during the second workshop 2. *See Ex. 271.*

1. *Loop Provisioning Coordination; Cutovers and Porting (Issues WA-11-1, WA-11-5, WA-11-6, and WA-11-11)*

Joint Intervenors' Position

198 SGAT section 10.2.2.4 addresses how Qwest will coordinate number portability with the provisioning of a Qwest-provided loop, or unbundled loop, and a CLEC-provided loop. *See Ex. 271.* Section 10.2.5.3 describes how Qwest will set the 10-digit trigger, and the circumstances under which CLECs may use a “flow through” or “managed cut” process for LNP. *Id.* The Joint Intervenors object to certain language in both sections and propose new language to address their concerns.

199 First, the Joint Intervenors argue that Qwest must provide more coordination of loop provisioning and number porting to avoid loss of service to customers caused by “premature disconnection.” The Joint Intervenors also request that Qwest extend the time it sets the trigger so that the switch translations associated with the end user’s telephone number are not removed until 11:59 p.m. of the day after the due date. Second, the Joint Intervenors assert that Qwest should make the same coordinated cutover process available to CLECs when provisioning a Qwest unbundled loop as when the CLEC provisions its own loop combined with number porting.⁴⁷

200 AT&T asserted during the workshop and also in brief that it has experienced problems with Qwest prematurely disconnecting the Qwest loop before the loop has been cutover to AT&T. *Joint Brief at 6; Tr. at 1166-67.* AT&T explains that if the number is ported before the loop is cutover, the customer’s service is disconnected. This occurs because the Qwest switch stops providing service to the customer’s line before the AT&T switch has dial tone available for the line. The result is that a customer will be unable to place or receive calls. *Joint Brief at 6-7.* AT&T believes the problem can be corrected by “proper coordination during the LNP conversion,” and proposes the additional language to sections 10.2.2.4 and 10.2.5.3. *Id. at 7.*

201 AT&T acknowledges that during the number porting process, Qwest sets a trigger for transferring the number from one switch to another, and that the CLEC activates the trigger in order to port the number. *Id. at 8.* AT&T also acknowledges that the primary reasons for Qwest’s “premature disconnect” are due to customer or CLEC

⁴⁷ Cutovers are defined as “the physical changing of lines from one phone system to another, or the installation of a new system.” *Newton’s Telecom Dictionary*, 212 (15th ed., 1999).

problems, *e.g.*, the customer does not keep an appointment or an installer is delayed or has problems with the installation. *Id. at 9*. However, AT&T argues that Qwest's SGAT must provide greater coordination to avoid customer outages, as Qwest has a legal obligation to ensure that LNP with loop cutovers is provided with minimum service disruptions and without impairment of quality. *Id. at 7*. AT&T asserts that the issue is of particular concern as AT&T is one of the only CLECs to expand into the residential mass market in Washington.

202 Specifically, AT&T proposes that Qwest provide more coordination on conversions and include an automated verification process to ensure that the CLEC has activated the port before Qwest disconnects the loop. *Id. at 9, 10*. AT&T asserts that the FCC required such coordination in its *Second BellSouth Louisiana Order*. In that order, in the context of interim number portability, the FCC stated:

[A] BOC must provide unbundled access to loops on a nondiscriminatory basis. To meet this standard, 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.⁴⁸

203 In addition, AT&T requests that Qwest extend the 10-digit trigger and customer translations in place until 11:59 p.m. of the day after the arranged date for porting. AT&T argues that this will protect customers from Qwest prematurely disconnecting its loop. AT&T argues that both Qwest and the CLECs should do everything possible to minimize service disruptions, because when customers are out of service they cannot access 911 emergency service. *Joint Brief at 18*. AT&T asserts, in response to Qwest's arguments, that the proposal is technically feasible, would not result in late updates to the 911 database, and that any billing issues are administrative problems that Qwest can easily resolve. *Id. at 18-19*.

204 AT&T also objects to Qwest's requirement in the SGAT that CLECs use the more elaborate and expensive "managed cut" process when porting a number to a CLEC-provided loop, rather than the more automated "coordinated cutover" process. AT&T argues that such a proposal is discriminatory, anticompetitive, and impossible to implement in a mass-market entry context. *Joint Brief at 11*.

⁴⁸ *Second BellSouth Louisiana Order*, ¶ 279.

205 Section 10.2.2.4 provides that Qwest will use a coordinated cutover process when porting a number in conjunction with the provisioning of a Qwest unbundled loop, but that CLECs may use the “managed cut” process when a CLEC-provided loop is involved. In the coordinated cutover process, Qwest sets the trigger, the CLEC activates the trigger to port the number, and Qwest disconnects the loop at 8 p.m. on the due date of the conversion. *Tr. at 1161-62, 1172.* In a managed cutover process, both Qwest and the CLEC will have personnel on a conference bridge to ensure that the cutover process goes smoothly. *Tr. at 1163, 1168-69.* AT&T maintains that the managed cut process is primarily used for large business customers, and is very costly. *Id. at 1168-69.* AT&T asserts that using such a process for cutovers for the residential mass market would be infeasible. *Id.* AT&T asserts that there is no technical reason that Qwest cannot provide the same coordination for CLEC loops as it does for its own unbundled loops.

206 AT&T maintains that Qwest cannot meet the requirements of Checklist Item No. 11 until Qwest revises its SGAT and number portability processes (1) to better coordinate LNP with loop provisioning to avoid loss of service to customers, and (2) to allow CLECs to use a coordinated cut process when provisioning their own loops.

Qwest’s Position

207 Qwest objects to AT&T’s proposed changes to SGAT sections 10.2.2.4 and 10.2.5.3 arguing that Qwest does not disconnect its loop prematurely, but according to schedule. *Qwest Brief at 33.* Qwest argues that the problem is with CLEC processes, not Qwest’s. *Tr. at 1173-74.* Qwest asserts that it relies on the CLEC to complete its work on time. If there is a problem, the CLEC must notify Qwest 4 hours prior to 8:00 p.m. on the due date of the conversion, or Qwest will disconnect its loop as scheduled. *Qwest Brief at 33; Tr. at 1172-73.* Qwest notes that the time could be extended to 11:59 p.m. of the due date if the CLEC requested additional time. *Tr. at 2524.*

208 Qwest asserts that the FCC does not require BOCs to take extra measures in provisioning LNP, and that AT&T’s suggested proposals are costly and contrary to accepted industry practice. *Qwest Brief at 33-34.* Qwest states that there is no requirement for it to take extra measures in provisioning LNP. *Id. at 33.* Qwest argues that disconnecting its loop after 8 p.m. on the due date would cause downstream problems with billing and updating the 911 database, contrary to standards set by the National Emergency Number Association (NENA). *Id. at 34.*

209 Qwest asserts that it has successfully deployed LNP according to the Act, as well as the FCC’s rules and schedule. Qwest asserts that it has documented its processes and

procedures for implementing number portability and continues to change its processes to improve provisioning of number portability. *Id. at 37.*

Discussion and Decision

- 210 Section 251(b)(2) of the Act requires Qwest to “provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.” The FCC has held that BOCs must provide number portability in a manner that allows users to retain existing telephone numbers “without impairment in quality, reliability, or convenience.”⁴⁹
- 211 AT&T’s concerns about SGAT sections 10.2.2.4 and 10.2.5.3 raise legitimate questions about whether Qwest is offering and providing number portability in a way that seriously affects service to customers or may impede competition in the local or intraLATA market. First, does Qwest have an obligation to coordinate LNP and loop provisioning to ensure that a customer’s service is not interrupted? Second, must Qwest provide the same methods for loop provisioning coordination for CLEC provided loops as its makes available for Qwest unbundled loops?
- 212 AT&T argues that Qwest has an obligation under FCC rules and orders to provide greater coordination or to verify that the CLEC has provisioned the loop and ported the number before disconnecting its loop. Qwest counters that it is the CLEC’s responsibility to notify Qwest if the CLEC is not ready to port the number or provision the loop. There are competing concerns present here: The BOC can be responsible only for its own processes, not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment. Similarly, the CLEC can be responsible only for its own porting processes and communicating to customers the consequences of missed appointments, but not the actions of Qwest.
- 213 Both AT&T and Qwest present anecdotal or unsubstantiated data about how frequently customers lose service because Qwest disconnects its loop before the CLEC has ported the number or provisioned a loop. Given AT&T’s claim that it is one of the only CLECs expanding into the residential mass market, and Qwest’s statements that AT&T is one of two CLECs experiencing the problem, there is some credibility to AT&T’s complaint. However, until the third-party testing of the ROC performance measures is complete, the Commission is not able to evaluate Qwest’s performance in actually providing number portability.
- 214 AT&T proposes that Qwest include in SGAT section 10.2.2.4 language requiring Qwest to confirm whether the CLEC loop has been installed before disconnecting

⁴⁹ *Second BellSouth Louisiana Order*, ¶ 276.

Qwest's the loop. AT&T asserts that such a testing procedure has been discussed in other states. *Tr. at 1167*. Qwest asserts that the software or technology to perform such verification does not yet exist. *Id. at 1170-71*. Developing such a verification or test query system will likely improve both Qwest's and AT&T's performance in provisioning loops while porting numbers. However, given that they do not yet exist, having such systems in place is not a requirement for finding Qwest in compliance with Checklist Item No. 11. Qwest need not amend SGAT section 10.2.2.4 to include such a requirement.

- 215 Although such testing and verification systems are not necessary, AT&T's proposal to extend the time of 10-digit trigger and customer translations is a reasonable alternative. The Commission is concerned that customers will not be able to access 911 service when service disruptions occur. In order to prevent service outages to customers should there be problems with porting a number or the coincident cutover of a loop, Qwest should wait until 11:59 p.m. of the day following the scheduled port before disconnecting a customer's previous service.
- 216 As AT&T states, notification of database changes to 911 providers should take place automatically when ports are made. If the Qwest customer translations are still in place, the customer will receive 911 service through the information provided by Qwest to NENA. Likewise, once the number is ported successfully, the CLEC will report the proper information to the 911 system. The service order completion and billing issues are administrative problems that Qwest should be able to resolve. The additional cost born by Qwest to accomplish these objectives cannot be used as a justification for not providing them, according to the "revenue neutral" language of section 251(e)(2). After a reasonable period of time, after more confidence is built up in these procedures, depending upon the data from the ROC third party testing process, and once the post-entry performance plan is available for review, this safety cushion might be reduced or eliminated.
- 217 Concerning the issue of CLEC use of coordinated or managed cutovers, discussion during the workshop sessions indicates that CLECs do not have the option to use the "coordinated cutover" process for CLEC-provided loops. *Ex. 271; Tr. at 2454*. In fact, the discussion indicates that a CLEC must always use the managed cut process when provisioning its own loop and porting a number. *Id.* AT&T's argument is persuasive that such treatment for CLEC-provided loops is discriminatory and anti-competitive. Qwest has not sufficiently explained why CLECs may not use the less time-intensive and less expensive "coordinated cutover process" when provisioning their own loops. CLECs should have the option to decide whether a managed cutover or coordinated cutover process meets their needs.

218 In its most recent orders granting approval to provide in-region, interLATA service, the FCC found that the BOC provided hot cuts⁵⁰ in compliance with the requirements for Checklist Item No. 4 (loops) because it provided two options for CLECs to choose from: fully coordinated hot cuts and frame due time hot cuts.⁵¹ These options appear to be equivalent, if not similar to Qwest's "coordinated" and "managed" cutover processes. Given the FCC's analysis in these two decisions, this issue should also be addressed during the workshop discussing unbundled loops, as XO Washington suggested in its testimony. *Ex. 325, at 15.*

219 However, this is also an issue of Qwest's compliance with Checklist Item No. 11. Congress enacted the number portability provisions of the 1996 Act because "number portability is essential to meaningful competition in the provision of local exchange services."⁵² Requiring CLECs to use more involved and expensive processes than necessary to provision CLEC loops when porting numbers will likely negatively impact the CLEC's ability to compete with Qwest, as the processes will favor Qwest's unbundled loop product over CLEC-provided loops. Qwest must modify SGAT section 10.2.2.4 to allow CLECs the option of using either the "coordinated" or "managed" cut processes when provisioning their own loops.

2. *Standard Due Date Intervals (Issue WA-11-4)*

Qwest's Position

220 In an exhibit filed prior to the workshop, Qwest proposed a three-day interval for LNP. *See Ex. 285, at 2.* During the follow-up workshop, Qwest proposed new intervals for number portability to apply to all situations, eliminating the categories Qwest had previously established for simple, complex, Centrex and managed out-of-hours conversions. *See Ex. 491; Tr. at 2481-83.* Under Qwest's new proposal, the interval for LNP provisioning depends upon the number of lines involved, i.e., 1 to 24 lines – five business days; 25 to 49 lines – ten business days; over 49 lines- individual

⁵⁰ A hot cut is defined as a "conversion from an old to a new phone system which occurs instantly as one is removed from the circuit and the other is brought in." *Newton's Telecom Dictionary* 383 (15th ed. 1999).

⁵¹ *SBC Texas Order*, ¶¶ 260-61; *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶ 201 (rel. Jan. 22, 2001) (*SBC Kansas/Oklahoma Order*).

⁵² *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997) ¶ 341 (*Ameritech Michigan Order*), (citing *First Number Portability Order*).

case basis (ICB). *Id.* Qwest supports its proposal with Exhibit 492, which purports to show industry recommendations, and intervals used by other ILECs. Qwest asserts that its intervals are governed by time frames set by the NPAC and industry guidelines. *Tr. at 2493-94.* Qwest asserts that the proposed intervals are necessary to allow the company to verify the information contained in LNP orders. *Qwest Brief at 36-37.* Qwest requests the Commission adopt its proposed intervals, asserting that the FCC has approved comparable intervals for Verizon and Bell South. *Id. at 37.*

Joint Intervenors' Position

- 221 The Joint Intervenors argue that the Commission must review the intervals based upon whether they provide a meaningful opportunity to compete. *Joint Brief at 14, citing Ameritech Michigan Order, ¶ 141.* The Joint Intervenors believe the intervals proposed in Exhibit 491 are too long.
- 222 The Joint Intervenors object to the intervals, noting that the new intervals are longer than the present intervals in some instances. *Tr. at 2488.* Further, the Joint Intervenors raise a concern that these intervals may preclude CLECs from providing service in the same time frames that Qwest would, putting the CLECs at a disadvantage. *Tr. at 2491-92.* In particular, they note that, according to WAC 480-120-051, Qwest's installation interval is five days. The Joint Intervenors argue that if they must wait five days for numbers to be ported, it will be impossible for them to perform the additional work involved in providing service, and still provide service in the same five-day interval. *Joint Brief at 14-17.*
- 223 Second, the Joint Intervenors assert that Qwest's proposed intervals should apply only to ports with unbundled loops. *Joint Brief at 16.* The Joint Intervenors argue that the proposed intervals would be discriminatory to CLECs, asserting that there should be separate intervals for LNP provisioning without Unbundled Loops: LNP functions are mostly database work, and do not justify the additional time reflected in the proposed Qwest intervals. *Id. at 16; see also Ex. 381 at 10.* AT&T notes that Qwest has conceded that verification takes place only on complex orders. *Id., n.48, citing Tr. at 2494.* AT&T proposes alternate intervals of 4 business days for simple LNP, for 1 to 50, and 51 or more lines, 5 business days for complex LNP of 1 to 25, and 26 or more lines, and 3 business days for LNP without unbundled loops of 1 to 65 lines. *Id. at 17.*
- 224 The Joint Intervenors argue that the Commission should not rely on Exhibit 492 to support Qwest's proposal. They argue that Qwest's chart showing other RBOC intervals cannot be verified and that Qwest's intervals exceed those listed on the chart.

Discussion and Decision

- 225 Qwest's exhibit identifying other RBOC LNP intervals is not persuasive to establish the reasonableness of the intervals in Qwest's SGAT. The Joint Intervenors raise sufficient doubt about verifying the data in Exhibit 492. In addition, AT&T's argument is persuasive that Qwest only provides verification on complex orders, and that the interval for LNP without unbundled loops can be reduced.
- 226 Having more categories, or granularity, according to type of service in ordering intervals would reflect more accurately the amount of work required by each classification. Requiring less time for LNP without unbundled loops would allow CLECs to perform their additional work after the completion of the port, and still provide installation intervals for their customers comparable to Qwest.
- 227 Qwest must modify its SGAT to include AT&T's proposed intervals, including an interval of three business days for LNP without unbundled loops of 1 to 65 lines.

Verification of Compliance

- 228 In order to meet the requirements of Checklist Item No. 11, Qwest must comply with the Act and FCC rules concerning number portability. Through its testimony and exhibits, Qwest has demonstrated that it has met the deployment schedule for long-term number portability set by the FCC. Qwest asserts that it has documented its processes and procedures for implementing number portability. Qwest also asserts that its SGAT and interconnection agreements establish legally binding obligations for Qwest to provide number portability in conformance with the Act and FCC rules.
- 229 Qwest must modify its SGAT in several ways before it may rely on the SGAT to support its application to provide in-region interLATA service, and before the Commission will approve the SGAT. First, Qwest must extend the time that the 10-digit trigger and customer translations are removed to 11:59 p.m. of the day following the due date. Second, Qwest must allow CLECs the option of using the coordinated cutover or the managed cutover process when provisioning CLEC provided loops and porting numbers. Third, Qwest must revise its SGAT to include AT&T's proposed LNP intervals, including LNP provision within 3 business days when there is no unbundled loop involved. When Qwest makes these modifications, Qwest may rely on the SGAT to demonstrate Qwest's legally binding obligations to provide number portability in conformance with the Act and FCC rules.
- 230 Notwithstanding any modifications to the SGAT, Qwest must also demonstrate through commercial experience and a review of the audited results of relevant performance measures that it is providing number portability with minimum service

disruptions and without impairment of quality. Performance data is not yet available from the ROC third party testing process to determine if Qwest is meeting its own standards for providing number portability. Until the Commission reviews and evaluates the audited performance data, the Commission cannot yet verify whether Qwest has met the requirements of this checklist item.

CHECKLIST ITEM NO. 14 – RESALE

FCC Requirements

- 231 Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”⁵³ Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”⁵⁴ Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on resale, with the exception that “a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”⁵⁵
- 232 The *Local Competition First Report and Order* contains several rules regarding the scope of the resale requirements and permissible restrictions on resale that a LEC may impose. In general, resale restrictions are presumed to be unreasonable unless the LEC “proves to the state commission that the restriction is reasonable and nondiscriminatory.”⁵⁶

Washington Evidentiary Requirements

- 233 The Supplemental Interpretive and Policy Statement identifies the following specific evidentiary requirements that Qwest must meet to demonstrate its compliance with Checklist Item No. 14:
1. How is Qwest providing telecommunications resale services in accordance with the requirements of sections 251(c)(4) and 252(d)(3)?

⁵³ 47 U.S.C. § 271(c)(2)(B)(xiv).

⁵⁴ 47 U.S.C. § 254(c)(4)(A).

⁵⁵ 47 U.S.C. § 254(c)(4)(B).

⁵⁶ 47 C.F.R. § 51.613(b).

2. What services are offered for resale to CLECs? What services are not?
3. What is the level of wholesale discount for each service offered for resale?
4. Which vertical features are offered for resale to CLECs? Which are not?
5. What nonrecurring charges, if any, does Qwest impose on resellers?
6. Does Qwest impose changeover charges? If so, under what circumstances?
7. What has been Qwest's operational experience (other than order processing) in providing each service for resale?
8. Will Qwest brand resold operator call completion and directory assistance services at the reseller's request, or are those services offered on an unbranded basis only? What limitations does Qwest impose on branding?
9. Does U S Qwest provide all operator functions (i.e., operator billing options, rate quotes) on resold operator call completion services?
10. Does Qwest route, at a reseller's request, operator and directory assistance calls to the reseller's own facilities?
11. Have all retail services (including Centrex and other central-office based switching services) offered by Qwest after January 1, 1996, been made available for resale? If not, describe any restrictions, including the "grandfathering" of such services.
12. Per discussions in the Bell South/ South Carolina Order, is Qwest offering Contract Service Arrangements (CSAs) at discount rates? With CSAs, does Qwest use cancellation penalties? What written complaints, if any, has Qwest received about CSAs? What resolution has been reached, if any, for CSA complaints?

234

In compliance with the Supplemental Interpretive and Policy Statement, Qwest filed exhibits purporting to document Qwest's compliance with the general and specific evidentiary requirements for Checklist Item No. 14. *See Exs. 412 and 413.* Similarly, AT&T filed responses to Appendix B questions for Checklist Item No. 4. *Ex. 372.* Qwest and AT&T provided the information to supplement written testimony and exhibits.

Parties' Positions

235 The parties dispute Qwest's compliance with this checklist item and object to Qwest's proposed SGAT provisions on resale in several respects. This order first addresses Qwest's general compliance and then discusses the CLECs' specific concerns. Specifically, the CLECs have concerns with the following : 1) Qwest's proposals regarding the payment by Qwest to CLECs for quality of service problems caused by Qwest; 2) Qwest's reluctance to furnish CLECs with OSS volume and transaction capability information; 3) Qwest's SGAT provision regarding the handling of calls by CLEC customers to Qwest offices; 4) the lack of restrictions in the SGAT on resale ordering information being used for marketing purposes; 5) whether Qwest's Megabit service is available for resale, and on what terms; and 6) issues surrounding Qwest's resale of Centrex services.

Qwest's Position Generally

236 Through the Direct Testimony and Supplemental Direct Testimony of Lori A. Simpson, Qwest states that it satisfies the requirements of Checklist Item No. 14 through the provisions of its SGAT. *Ex. 405, at 41.* Qwest describes its legal obligations to provide resale services, as reflected in its SGAT. It discusses the processes used to provide resale services to CLECs, including training and other assistance for CLECs and the ordering, preordering, maintenance and repair processes for CLECs compared to Qwest retail services. Qwest states that its processes are designed to be nondiscriminatory and require Qwest retail representatives to complete the same preordering and ordering steps as CLECs. *Id. at 12.* Qwest states that CLEC trouble reports are handled in the same way that Qwest end users' trouble reports are handled. *Id. at 16.* Qwest provides over 31,800 resold lines to 28 active reseller CLECs in Washington. *Id. at 9.* Qwest also stated that it is tracking twelve different performance measures for resale relating to the installation and provisioning or the repair and maintenance of resold services. *Id. at 18.* These performance measures will be audited through the ROC third-party OSS testing process. *Id. at 17.* Qwest provided performance data results for the period January through May, 2000. *See Ex. 409-C.*

AT&T

237 Through the affidavit of Kenneth D. Wilson, AT&T states that the volume of resold Qwest services in Washington is small. *Ex. 371, at 86.* AT&T recommends that the Commission not rely on Qwest's unaudited performance measure data. *Id.* Mr. Wilson objects to numerous provisions in SGAT Section 6 relating to resale. Generally, he objects to limitations of services for resale subject to the wholesale discount; information required of resellers; and incorporation by reference to

documents and manuals not provided as a part of the SGAT. AT&T provided a matrix incorporating the information requested in Appendix B of the Supplemental Interpretive and Policy Statement, which appears to show that AT&T does not purchase resold services from Qwest. *See Ex. 372.*

WorldCom

238 WorldCom's witness Dayna D. Garvin adopted the prefiled testimony of Thomas T. Priday. *See Exs. 391 and 392.* Through the prefiled testimony of Mr. Priday, WorldCom stated that it had limited experience with Qwest's resold products and services. *Ex. 391, at 37.* WorldCom stated that in 1997 it initiated a test of Qwest's provisioning systems and processes under the direction of the Colorado Public Utilities Commission. *Id.* The test included placing resale orders and placing orders to migrate accounts back to Qwest or to disconnect service. *Id.* WorldCom stated that problems surfaced in processing orders for migration and disconnect, and that outstanding billing problems associated with the test customers have yet to be resolved. *Id. at 38.* WorldCom concludes that final approval of Qwest's compliance with Checklist Item No. 14 must wait for the successful completion of the third-party OSS testing. *Id.* WorldCom also expressed concerns about, and offered amended language for, SGAT sections concerned with restrictions on services to be resold, information CLECs are required to submit to Qwest, restrictions on unbranded services, and disconnection policies. *Id. at 39-44.* WorldCom did not provide a matrix reflecting its answers to the questions contained in Appendix B to the Supplemental Interpretive and Policy Statement.

MetroNet

239 Witnesses Kenneth L. Wilson and Greg Bogus filed supplemental responsive testimony on behalf of MetroNet on October 31, 2000. *Exs. 383 and 421.* Mr. Wilson testified that Qwest's tariffs and price lists discriminate against resellers and restrict resale in an unreasonable and discriminatory manner. He states that Qwest's SGAT prohibits aggregation of reseller customer locations for purposes of receiving volume discounts. He asserts that this restriction discriminates against resellers. Mr. Bogus testified that Qwest Centrex products created unreasonable and discriminatory conditions and limitations on the resale of those services. He asserts that Qwest is violating the requirements of the Commission's Twenty-Third Supplemental Order in Docket Nos. UT-911488, UT-911490, and UT-920252 by preventing CLECs from purchasing dial tone for Centrex separately from vertical features. He also testified that Qwest's errors in billing resale services to MetroNet results in improper restrictions on resale. MetroNet submitted a series of confidential exhibits, Exhibits 475-C through 486-C, to support its contention that Qwest has restructured the rates for Centrex service offerings in part to discourage resale of the Centrex service.

Qwest's Response

240 On October 20, 2000, Qwest filed rebuttal testimony from Lori A. Simpson regarding resale issues. Qwest proposed numerous revisions to its SGAT in response to concerns raised by AT&T, WorldCom, and other CLECs. *Ex. 414, 2-35; Ex. 416*. In discussing the WorldCom resale testing, Qwest noted that the testing was performed three years ago, and that the outcome of the third-party OSS testing performed under the auspices of the ROC will provide more comprehensive and timely performance data. *Ex. 414, at 36-37*.

241 At the workshops, Qwest presented further revisions to the SGAT, some of which settled more resale issues. *See Ex. 271*. Issues that remain at impasse are discussed below.

Impasse Issues*1. Quality of Service Credits and Penalties (Issue WA-14-4)**Qwest's Position*

242 Qwest proposes language in SGAT section 6.2.3 to govern how and when service credits and penalties are applied to resold services. Section 6.2.3.1 addresses service credits; 6.2.3.2 pertains to fines and penalties. According to Qwest witness Ms. Simpson, the SGAT was drafted to be applicable in all of Qwest's 14 states. *Tr. at 2600*. In section 6.2.3, Qwest agrees to reimburse the CLEC for credits or fines and penalties assessed against the CLEC as a result of Qwest's failure to provide service to the CLEC. *Ex. 271*.

243 Both SGAT sections contain an almost identical set of restrictions on applying credits or penalties to resold services. These are:

- Credits or penalties are subject to the wholesale discount.
- Qwest is not required to pay credits or penalties for service failures that are the CLEC's fault;
- Qwest is not liable to pay credits or penalties to the CLEC if the CLEC is not subject to the Commission's service quality credit requirements or penalty requirements;

- Qwest will not be liable to pay credits to the CLEC if the CLEC does not provide service quality credits to its end user;
- The credit or penalty amount will not exceed the amount Qwest would pay its own end user, less any applicable wholesale discount; and
- Qwest will not provide duplicate reimbursement or payment to the CLEC for any service quality failure incident.

244 Qwest asserts that it should not pay to a CLEC more in a credit than it has received from the CLEC. *Qwest Brief*, at 47. Qwest explained that the intent of this condition is to insure that Qwest pays to a CLEC customer in a service quality credit no more than the amount Qwest received from that customer for the service. Qwest did not elaborate in the workshop on how this restriction would operate in the case of a loaner cellular phone or pager. Qwest's brief was silent on the reason a wholesale discount would be applied to penalties. During the January workshop, Qwest stated that the company may wish to look further at the rationale behind reducing penalty payments by the wholesale discount. *Tr. at 2618, 2619*. However, later in the workshop, Qwest stated that CLECs would be reimbursed for fines or penalties "and not a discounted amount if the CLEC wasn't liable for a discounted amount." *Tr. at 2622*.

245 During the workshops, Qwest asserted that service credits were meant to reimburse customers for a service for which they have paid, but did not receive. *Tr. at 2615, 2617*. Qwest's witness did not know if there were other reasons the service quality credits were being applied.

Joint Intervenors' Position

246 The Joint Intervenors argue that payment of less than the credit paid to Qwest end users is unfair and not at parity with the way Qwest treats its end user customers with respect to service quality. *Joint Brief at 60*. They characterize Qwest's condition as an unreasonable and discriminatory limitation on resale, pointing out that payment of a partial credit leaves the reseller liable to its end user customer for the full cost of the end-user's service. That cost is likely to be more than the credit Qwest would pay to the reseller. *Id.*

Discussion and Decision

247 The Commission established Qwest's wholesale discounts on the basis of the costs that Qwest avoids when reselling its retail services. The costs that Qwest avoids are

for functions that the reseller performs with respect to the end user of the service, e.g., billing and collection, and customer contact.

248

In Washington, Qwest is subject to several quality of service requirements. First, Qwest's network services tariff WN U-40, Section 2.B contains Qwest's Customer Service Guarantee Programs. These programs require:

1. Missed Appointment/Commitment Credit: a \$50 credit for missed appointments or commitments.
2. Delayed Primary Basic Exchange Alternative: For delays in establishing primary basic service for more than five business days, Qwest must provide: credit equivalent to the monthly basic local service charge; waiver of the nonrecurring installation charge, provision of remote call forwarding, calling card, and a directory listing at no charge, and one of four options, which include a \$100 credit for each month or partial month service is delayed; or paging service, voice messaging service, or a loaner cellular telephone for the period service is delayed.
3. Out of Service Trouble Condition Credit: For a no dial tone condition, a credit of \$5 if the condition is not cleared in 2 days, and a credit equal to the monthly service rate if the condition lasts more than 7 days.
4. No Dial Tone Credit: For any month in which dial tone is not provided within 3 seconds on at least ninety percent of calls placed in a wire center during a normal busy hour, a credit equal to the monthly service rate for customers served by that wire center.
5. Trouble Report Rate Credit: For any month in which a Qwest exchange has a trouble report rate greater than the maximum allowed, a \$0.25 per line credit for all customers served by that exchange.

249

Qwest is also subject to quality of service requirements under a program approved in its merger with U S WEST.⁵⁷ Finally, Qwest will be subject to a post-entry performance plan which will include self-enforcing payments by Qwest should it fail to meet certain performance requirements. These requirements will be discussed

⁵⁷ In re Application of U S WEST, Inc. and Qwest Communications International, Inc. For an Order Disclaiming Jurisdiction or, in the Alternative, Approving the U S WEST, Inc. – Qwest Communications International, Inc. Merger, Ninth Supplemental Order Approving And Adopting Settlement Agreements and Granting Application, Docket No. UT-991358, Appendix A.

further below. For ease of discussion, the parallel provisions of SGAT sections 6.2.3.1 and 6.2.3.2 are discussed separately below.

6.2.3.1(a) and 6.2.3.2(a) - Application of Wholesale Discount to Credits and Penalties

250 SGAT sections 6.2.3.1(a) and 6.2.3.2(a) state that credits or penalties paid to CLECs will be reduced by the wholesale discount.

251 In a fully competitive market, a CLEC receiving bad service from Qwest would be able to purchase wholesale service from another supplier. Under those circumstances, the CLECs would have to pay twice for service in the same month, at a wholesale price. Using this logic, the CLEC should only receive a service credit for the discounted portion of the retail service it is purchasing from Qwest. However, the situation is not that simple. In purchasing Qwest retail service, the CLEC is subject to the terms and conditions contained in Qwest's tariff, including the requirements to credit end user customers the equivalent of their monthly service charge for some types of degraded service. In the case where the degraded service is caused by Qwest, limiting the service credit Qwest pays to the CLEC to a wholesale amount, while at the same time requiring the CLEC under the Qwest tariff to credit the end user the retail monthly service charge, punishes the CLEC for service problems not of its making. Therefore, Qwest must not limit its service quality credits payable to CLECs to a wholesale amount. Qwest must credit to the CLEC the lesser of Qwest's monthly service charge or the monthly service charge the CLEC pays to its end user. If the quality problem is not due to Qwest's action, but is caused by the CLEC, Qwest will not be required to credit the CLEC.

6.2.3.1(c) and 6.2.3.2(c) - Payment Conditional on CLECs Being Subject to Commission Service Quality Rules

252 Section (c) of SGAT sections 6.2.3.1. and 6.2.3.2 states that Qwest will not be liable to provide service credits or pay fines and penalties to a CLEC if the CLEC is not subject to the Commission's requirements for service quality credits, fines or penalties. At the January workshops, Qwest stated that it would not pay credits or penalties pertaining to resold services to a CLEC if the CLEC were not subject to the Commission's service quality requirements. Qwest stated that this language would allow it to avoid payments under the quality of service requirements Qwest stipulated to in the merger agreement, since the CLECs are not subject to the merger-related service quality requirements. *Tr. at 2602.*

253 Through its SGAT and interconnection agreements, Qwest offers resale of its retail services at the terms and conditions contained in its price lists and tariffs. CLECs

choosing to resell Qwest retail offerings that are subject to the quality of service provisions in Qwest's tariff are also required to follow those terms and conditions. Therefore, Section (c) above would not apply in those circumstances.

254 As noted above, Qwest is also subject to a Service Quality Performance Program approved in the US WEST – Qwest merger proceeding, Docket No. UT-991358. The program requires the establishment of baseline performance levels in eight performance areas, against which performance will be measured and reported to the Commission on a monthly basis. These reports will be the basis for calculating the amount of credits payable to customers each month. The December report will include a calculation of any calendar year credits due to customers under the Service Quality Performance Program, subject to a petition for mitigation based on demonstrable unusual or exceptional circumstances that Qwest will have the burden to show. The maximum credit Qwest must pay ranges from \$83,333 to \$333,333 for each of the eight performance measures. Credits payable under the program would be paid to current customers as a bill credit on all Qwest exchange access lines. Qwest is prohibited from recovering the expense of these penalties through its regulated rates.

255 The merger agreement does not exclude Qwest's resale customers from eligibility to receive payments under the Service Quality Performance Program for retail services they purchase. Qwest may not use section (c) to exclude resold services from the retail services covered under the program.

6.2.3.1(d) and 6.2.3.2(d) - Credits and Penalties Conditioned on Pass-Through to End-User

256 SGAT sections 6.2.3.1 (d) and 6.2.3.2.(d) provide that Qwest will pay credits to CLECs only if the CLECs pay credits to their end user customers. At the January workshop, Qwest stated that the reason for service quality rules "is that the end user who's experienced the loss is reimbursed for that loss." *Tr. at 2609-10*. Qwest asserted that it provides service to the end user, not to the CLEC, and therefore had no reason to pay service quality credits to a CLEC if the CLEC was not going to pass them on to the end user. *Id.*

257 Qwest's position appears to reflect its view that the reselling CLEC is not its real customer. Qwest is wrong. In the case of resale, Qwest's customer is the CLEC. The service quality credits payable to customers under the Commission's rules, Qwest's tariff, and the merger agreement apply to *all Qwest's retail services, including resold retail services*. CLEC customers purchasing retail services for resale are not excluded from these programs and rules. Qwest may not condition payment of credits to CLEC customers on what the CLEC does with the credit, any more than it can with any other business or residential customer. If a CLEC receives a credit

and chooses not to pass it through to the end user customer, it will place itself at a competitive disadvantage and will risk losing business to companies that do pay service quality credits. Sections 6.2.3.1(d) and 6.2.3.2(d) impose unreasonable restrictions on resale and must be stricken from the SGAT.

6.2.3.1(e) – Limitation on Maximum Amount of Qwest Credits to CLEC

258 In this section, Qwest attempts to set a ceiling on the amount Qwest must pay in quality service credits to CLECs. The Commission has already ruled that credits may not be subject to the wholesale discount. Therefore, this SGAT section must be deleted.

6.2.3.1(f) and 6.2.3.2(e) – No Duplicate Reimbursements or Payments to CLECs

259 According to Qwest, these provisions are designed to prevent a CLEC from receiving payment or credit for the same service quality failure incident from more than one program, including a performance plan associated with the performance indicators. *Tr. at 2601*. Later, Qwest stated that this provision was not intended to apply to payments under any post-271 performance assurance plan, but only intended to apply to a state's service quality plan. *Tr. at 2621-22*.

260 Credits due under Qwest's Service Quality Performance Program, discussed above, are not mitigated or reduced by credits paid under the Customer Service Guarantee Program tariff provisions discussed previously.

261 Qwest will also be subject to a post-271 performance plan, which would include performance requirements in a number of operational areas, including detailed descriptions of how such requirements are measured. It also would identify the self-enforcing payments Qwest may pay if it fails to meet the performance requirements of the plan. As discussed above under the first interconnection issue, Issue WA-I-2, such a plan is currently being developed through a collaborative multi-state process, in which Washington is a participant.

262 Given that the post-271 performance assurance plan is still under development, it is premature for Qwest to impose restrictions that could affect payments under that plan. Furthermore, the provisions of Qwest's tariff and the Service Quality Performance Program associated with the merger are not meant to be mutually exclusive. CLECs and other customers may receive credits or payments under the tariff and the Service Quality Performance Program for the same outage, delay, or other service quality incident. Qwest must therefore delete sections 6.2.3.1(f) and 6.2.3.2(e) from its SGAT.

2. *Handling of Calls by CLEC End Users to Qwest Offices (Issue WA-14-7)*

263 This issue involves CLEC end users who mistakenly call Qwest offices regarding ordering or repair. It is addressed in SGAT section 6.4.1 for ordering and 6.6.3 for repairs. The relevant sections of the SGAT read as follows:

Section 6.4.1: CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local exchange service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party.

Section 6.6.3: CLEC and Qwest will employ the procedures for handling misdirected repair calls as specified in Section 12.3.8 of this Agreement.

Section 12.3.8.1.5: In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit end users to market services. Either U S WEST or the CLEC may respond with accurate information in answering end-user questions.

264 Qwest asserts that it should be able to market its services and products to CLEC customers who call Qwest by mistake, stating that any restriction of these activities interferes with its right to commercial free speech. *Qwest Brief, at 51*. AT&T and WorldCom argues that Qwest's position as the dominant reseller and underlying service provider would make such conduct anticompetitive, and request that the limitation on marketing to CLEC end users be narrowly drawn to only apply to misdirected or erroneous calls. *Joint Brief at 61-62*.

265 Under the FCC's pick-and-choose rules and consistent with this Commission's Interpretive and Policy Statement issued in Docket No. UT-990355, a CLEC could adopt a provision from any approved interconnection agreement that has not expired. We note that Qwest's interconnection agreements contain provisions regarding Qwest's response to CLEC customers that call Qwest by mistake. For example, Qwest's interconnection agreement with Sprint includes a provision that prohibits Qwest from marketing its products during inadvertent contacts from CLEC customers

to Qwest. *Ex. 234, at 164.* CLECs are free to adopt such a provision in place of either the SGAT provision or provisions in their own agreements.

3. *Restriction on Using Resale Ordering Information for Marketing Purposes (Issue WA-14-8)*

266 AT&T raised this issue at the November workshop on resale. AT&T suggested language to be added to the SGAT to prohibit Qwest from using information received during a CLEC request for subscriber information or its order submissions for marketing purposes. *Ex. 371, ¶ 272; see Tr. at 1718.* Qwest suggested placing the language at one location in the SGAT rather than having it in several SGAT sections. At the January follow-up workshop, the parties agreed that they were at impasse on the language as well as its location. *Tr. at 2649.*

267 Section 222 of the Act requires the protection of customer information and restricts its use by carriers to the purpose for which it is intended.⁵⁸ Section 222(b) provides:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

268 Given that the SGAT is one means by which Qwest demonstrates its compliance with the terms of the Act, the Commission believes language to this effect should be included in the SGAT; however, since the requirement pertains to any telecommunications service and not resale only, Qwest should place the language in the general section of the SGAT.

4. *Megabit Resale (Issue WA-14-12)*

269 At the January workshop, AT&T asked for clarification on whether a reseller can provide Qwest's Megabit service without providing the underlying voice service. *Tr. at 2652-53.* Qwest's witness replied that retail Megabit services are available for resale at the wholesale discount. *Tr. at 2653.*

270 The Commission observes that Megabit services are included in Qwest's Tariff WN U-39 at Section 8, which sets forth the terms and conditions under which Megabit services are offered in Washington. The parties should look to those tariff provisions to resolve this issue. The parties should look also to the Thirteenth Supplemental

⁵⁸ 47 U.S.C. § 222.

Order in Part A of Docket No. UT-003013 in which the Commission determined that the high frequency portion of a loop is an unbundled network element.⁵⁹

5. *Per Location Pricing (Issue WA-14-13)*

MetroNet's Position

271 MetroNet takes issue with SGAT sections 6.2.2.9.1. and 6.2.2.9.2, which contain per location restrictions on Centrex pricing. MetroNet asserts that Qwest's per location pricing of the NAC (network access channel) for Centrex Prime is a violation of Commission orders in Docket No. UT-950200. It states that Qwest's pricing of Centrex services was designed and intended to restrict resale. MetroNet asserts that Qwest has not offered cost or other justification for per location pricing of Centrex, but that the entire purpose for the pricing scheme was to restrict resale. MetroNet offers Exhibits 475-C through 486-C to support its contention. *Post-workshop Brief of MetroNet Services Corporation on Disputed Resale Issues, at 8 (MetroNet Brief)*.

Qwest's Position

272 Qwest responds that all of its Centrex services are available for resale at the wholesale discount. It states that its Centrex Plus features are competitive services, and that terms and conditions related to such services are therefore presumptively reasonable because a competitive market would not allow unreasonable terms and conditions. *Qwest Brief at 43*.

Discussion and Decision

273 The Act does not presume that restrictions on resale of competitive services are presumptively reasonable. The Act makes no distinction between competitively classified services and those not so classified: it merely requires that "any telecommunications services" be offered for resale. Further, the Commission has expressly stated that competitive service are subject to resale.

274 Qwest's offering of Centrex services has been the subject of several dockets over the past ten years. In the Fourth and Sixth Supplemental Orders in Dockets No. UT-911488, 911490 and 920252, the Commission found that the Centrex station line or NAC was a bottleneck monopoly service.⁶⁰ Qwest was ordered to unbundle the

⁵⁹ See ¶¶ 22, 23, 25, 32, 66, and 67.

⁶⁰ *Washington Utilities and Transportation Commission v. U S WEST Communications, Inc.*, Fourth Supplemental Order Denying Complaint; Accepting Tariffs Conditionally; Requiring Tariff/Price List Refiling, Docket Nos. UT-911488, 911490, 920252, at 15-16 (Nov. 18,

station line or NAC and the competitively-classified features, and to include the NAC rate in its tariff as a separate offering. In Docket UT-950200, the Commission found that Qwest had not complied with this requirement and concluded that the existing arrangements were discriminatory and in practice operated to benefit Qwest. It ordered Qwest to unbundle Centrex elements and also ordered it to remove the station location requirement.⁶¹ Qwest's current tariff WN U-40 contains the rates for Centrex station lines. These lines are priced on a per system basis; there are no per location restrictions pertaining to this offering.⁶²

275 Consistent with the Commission's previous orders on this topic, a per location restriction on the provision of the station line for resale purposes is an unreasonable restriction on resale, and cannot be included in Qwest's SGAT. With respect to Centrex features, the Commission approved the lifting of the per location restriction for Centrex features included in Qwest's price list in May 1997.⁶³ Based on the record before us, we see no reason to require a change to this price list offering. It is available to resellers on the same terms and conditions as retail Centrex users. Per location pricing restrictions on Centrex features need not be removed from the SGAT.

6. *Centrex Prime (Issue WA-14-13)*

MetroNet's Position

276 MetroNet asserts that Qwest discriminates and restricts resale by offering Centrex Prime at secret prices, terms, and conditions that have effectively precluded any reseller from reselling the services. *MetroNet Brief at 2*. MetroNet asserts that Qwest's tariff states that all terms and conditions for the provision of Centrex Prime are subject to a service agreement between the company and the customer, with rates on an ICB basis. *Id. at 16*. MetroNet observes that the prices for Centrex Prime listed on Exhibit 512 are "potential" prices, and that the prices for actual Centrex Prime contract components are filed under a confidential designation. *Id.*

1993); *Washington Utilities and Transportation Commission v. U S WEST Communications, Inc.*, Sixth Supplemental Order, Commission Order Accepting Filings, Docket Nos. UT-911488, 911490, 920252, at 2 (Dec. 2, 1994).

⁶¹ *Washington Utilities and Transportation Commission v. U S West Communications, Inc.*, Fifteenth Supplemental Order, Commission Decision and Order Rejecting Tariff Revisions; Requiring Refiling, Docket No. UT-950200, at 126-127 (April 11, 1996).

⁶² See Qwest Tariff WNU-40, Sec. 9.1.16. With respect to the per location pricing of Centrex Prime, the Commission does not find those restrictions to be unreasonable. Resellers wishing to avoid the per location restrictions may do so through purchase of the Centrex station lines from Qwest's tariff.

⁶³ See Docket No. UT 970673, effective May 1, 1997.

Qwest's Position

277 Qwest responds that it offers Centrex Prime for resale at the Commission-ordered discount. *Qwest Brief at 38.*

Discussion and Decision

278 The Commission finds that the manner in which Qwest offers Centrex Prime service results in unreasonable restrictions on resale in violation of Section 251(c)(4) of the Act.

279 First, Qwest's failure to publish or provide its standard pricing scheme to resellers makes it virtually impossible for resellers to avail themselves of this service for similarly-situated customers. While Qwest's sales personnel have access to Qwest's standard prices for Centrex Prime components, resellers do not. Centrex Prime is offered on an ICB basis. The "essential terms and conditions" section of Qwest's ICB contracts for Centrex Prime do not contain enough detail to allow CLECs to know what Centrex features are being provided, how many station lines are at each location, how many locations are being served, what prices are being charged for the lines and features at each location, and other essential information. Therefore, Qwest's failure to provide its standard pricing schedule for Centrex Prime to resellers constitutes an unreasonable restriction on resale. In order to remove this restriction, Qwest must publish its standard pricing schedule for Centrex Prime, either in its tariff or in the SGAT.

7. *Qwest Rebate Program (Issue WA-14-13)*

280 Confidential records provided by Qwest under order in this proceeding reveal a rebate program to certain Centrex customers. *See Ex. 511-C.* These records show evidence of anticompetitive behavior as well as violation of Washington statutes concerning publication of tariffed rates and contracts filed with the Commission.⁶⁴ Qwest must correct these deficiencies in the way it offers Centrex for resale in order to be in compliance with the resale requirements under Section 251(c)(4) of the Act.

8. *Termination Liability (Issue WA-14-13)*

Qwest's Position

281 In the workshops on January 5, 2001, the parties discussed the application of termination liabilities of existing ICB contracts between Qwest and retail customers

⁶⁴ See RCW 80.36.110; RCW 80.36.130; RCW 80.36.150.

that a CLEC might seek to resell before the contract term has expired. Qwest would impose a termination liability on a customer if the customer sought to transfer its ICB contract with Qwest to a reseller. *Tr. at 2696*. Qwest asserts that its termination liability provisions have been approved in customer specific arrangements (CSAs) and are similar to those used by other incumbent LECs for which the FCC has approved applications for in-region interLATA authority under Section 271. *Qwest Brief at 39-40*.

Discussion and Decision

- 282 The issue of termination liability provisions and their effect on resale of services has been addressed in other jurisdictions. The FCC's recent order concerning SBC Communications Inc.'s Section 271 application in Kansas and Oklahoma stated that termination liabilities do not constitute a restriction on resale under Checklist Item No. 14 if termination liabilities are not triggered by the assignment of a contract to a competitive LEC.⁶⁵
- 283 Several issues are at play here. First, the end user customer has presumably received a reduction in rates from Qwest in exchange for purchasing services under a term CSA agreement. It is unreasonable to allow such a customer to terminate its CSA early without penalty when it has received benefits under the arrangement. Conversely, it is unreasonable to allow Qwest to receive a termination liability payment for a contract offering from which it continues to receive revenues.
- 284 It is not clear, either from the record in this proceeding or from Qwest's current tariffs and price lists, whether Qwest routinely allows assignment of CSAs without termination penalties. MetroNet states that the SGAT precludes assignment without penalty. *MetroNet Brief at 15*. MetroNet also asserts that Qwest's termination liabilities on Centrex contracts can approach 60 percent of the remaining payments over the unexpired term of the contract, and that the amount of termination charges on such a contract would probably exceed the wholesale discount available to it. *Tr. at 2682*. Qwest's termination liabilities appear high compared to termination liabilities for Centrex in other states.⁶⁶ Qwest has been silent in this proceeding on whether it allows assignment of contracts without penalty. It has not provided evidence that its application of termination liabilities, or their amount, constitute reasonable restrictions on resale.

⁶⁵ SBC Kansas/Oklahoma Order, ¶ 253.

⁶⁶ In New York, the FCC found that termination liabilities for Centrex service was limited to the difference between what the customer would have paid under the shorter term and what the customer actually paid under the long-term contract. *Bell Atlantic New York Order*, ¶ 387.

285 End users should be entitled to assign their CSAs to another party without triggering a termination penalty. The absence of such an arrangement constitutes a presumptively unreasonable restriction on resale. Under such an assignment arrangement, Qwest would continue to receive revenue under the CSA for the rest of the contract term and would not be harmed. The end user would continue to receive service at the same rate without incurring a penalty. The CLEC would be afforded the opportunity to establish a relationship with the end user until the term of the contract expires, and could then negotiate a new arrangement with the end user as a reseller of Qwest retail services using the available wholesale discount, or as a facilities-based provider.

Verification of Compliance

286 In order to meet the requirements of Checklist Item No. 14, BOCs must comply with the Act and FCC rules concerning resale. Through its testimony and exhibits, Qwest asserts that all of its retail offerings are available for resale in compliance with the Act and FCC rules. It asserts that its SGAT and interconnection agreements establish legally binding obligations to provide resale under the Act and the FCC. Based on the Commission's review of the record regarding resale in this proceeding, Qwest is not in compliance with the requirements of Checklist Item No. 14.

287 First, Qwest must modify its SGAT, tariff, and price list, as applicable, to comply with Commission requirements on the issues of quality of service credits and penalties; general restrictions on use of ordering information; per location pricing; Centrex Prime pricing information, and termination liabilities. Second, Qwest must make any and all of its retail services, including rebate programs, available for resale under terms and conditions that comply with the Act, FCC rules, and Commission statutes and regulations. Third, Qwest's compliance is also subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's actual performance following the ROC OSS regional testing process, as well as Commission review and evaluation of Qwest's post-271 performance plan.

FINDINGS OF FACT

288 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse between the parties and the reasons and bases therefor, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

- 289 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. § 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 290 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, to verify the compliance of Qwest with the requirements of section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under Section 252(f)(2) of the Act.
- 291 (3) Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.
- 292 (4) Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this section, the FCC is required to consult with the State commission of any State that is the subject of a BOC's application under Section 271 in order to verify the compliance of the BOC with the requirements of section 271(c).
- 293 (5) Pursuant to 47 U.S.C. § 252(f)(2), BOCs must submit any statement of terms and conditions that the company offers within the state to the State Commission for review and approval.
- 294 (6) In October 1997 and in March 2000, the Commission issued Interpretive and Policy Statements addressing the process and evidentiary requirements for the Commission's verification of Qwest's compliance with Section 271(c).
- 295 (7) On March 22, 2000 and on April 28, 2000, Qwest submitted its SGAT for review and approval by this Commission.
- 296 (8) On June 6, 2000, the Commission consolidated its review of Qwest's SGAT in Docket No. UT-003040 with its evaluation of Qwest's compliance with the requirements of Section 271(c) in Docket No. UT-003022.
- 297 (9) During the second workshop in this proceeding held on November 6-8, 10, 2000, November 28 and 29, 2000, and January 3-5, 2001, Qwest and a number of CLECs submitted testimony and exhibits to assist the Commission in evaluating Qwest's compliance with the requirements of Section 271(c) of the Act, as well as the review of Qwest's SGAT pursuant to Section 252(f).

Interconnection Findings of Fact

- 298 (10) Qwest's SGAT addresses indemnification in section 5.9 of the general terms and conditions section, but does not address indemnification in Section 7, concerning interconnection.
- 299 (11) SGAT sections 7.1.2.1 and 7.1.2.3 prohibit the use of interconnection through entrance facilities and mid-span meets, to access unbundled network elements, or UNEs, although several of Qwest's interconnection agreements with CLECs in Washington state provide for interconnection at any technically feasible point, including for the purpose of accessing UNEs.
- 300 (12) SGAT section 7.3.1.2.1 prohibits the use of interconnection tie pairs for interconnection service, but allows their use for access to UNEs.
- 301 (13) SGAT section 7.1.2.1 provides that when DS1s or DS3s are used to provision interconnection trunks, entrance facilities will be charged at Qwest's private line rate.
- 302 (14) Paragraph 340 of the Commission's Thirteenth Supplemental Order in Docket No. UT-003013 requires Qwest to file rates for entrance facilities.
- 303 (15) SGAT section 7.1.2.2 provides that when a CLEC chooses to use collocation as the method of interconnection, the CLEC will be charged Expanded Interconnection Channel Termination (EICT) rates for the facility connecting the CLEC's collocation point of interconnection to Qwest's switch.
- 304 (16) SGAT section 7.1.2.3 provides that each party is responsible for providing the facilities up to the point of interconnection.
- 305 (17) Qwest's policy for a single point of presence, or SPOP, allows the exchange of local traffic at the toll tandem and eliminates the interLocal Calling Area facilities proposal made by Qwest during the first workshop. Qwest's SPOP policy is set forth in a different document than the SGAT, although SGAT section 7.2.2.9.6.1 does allow exchange of local traffic at the access tandem under certain circumstances.
- 306 (18) SGAT section 7.2.2.1.2.1 allows interconnection through one-way and two-way trunk groups. Under this section, if a CLEC chooses one-way trunking, Qwest will determine the POI and choose the route of traffic flowing from Qwest to the CLEC.

- 307 (19) SGAT section 7.2.2.1.5 provides that CLECs must build a mid-span trunk on all direct-trunked transport over 50 miles where neither the CLEC nor Qwest have facilities in place.
- 308 (20) SGAT section 7.2.2.6.3 allows CLECs to order interconnection trunks with multi-frequency signaling if the Qwest central office switch does not have SS7 signaling capability.
- 309 (21) Qwest has deployed SS7 signaling capability in all of its central offices in the state of Washington, and each central office equipped with SS7 capability has diverse routing with a minimum of two links to the SS7 network.
- 310 (22) SGAT sections 7.2.2.8.6 and 7.2.2.8.6.1 require CLECs to pay up-front deposits before Qwest will build interconnection trunk facilities if the CLEC's actual trunk utilization over the preceding 18 month period is 50 percent or less of its forecasted trunk utilization. Qwest requires a 100 percent refundable deposit to build trunks at the CLECs forecasted utilization if that forecast is higher than Qwest's.
- 311 (23) Qwest's Exchange and Network Services Tariff, WN U-40, provides that Qwest will retain ownership of facilities constructed at customer expense, e.g., line extensions. Qwest's SGAT does not provide for CLEC ownership of facilities for which CLECs pay deposits or special construction charges.
- 312 (24) SGAT section 7.2.2.9.3.2 prohibits commingling of exchange service traffic with switched access traffic on the same trunk group. However, Qwest has agreed to allow commingling of exchange service traffic with switched access traffic on the same trunk group
- 313 (25) SGAT sections 7.2.2.9.6 and 7.2.2.9.6.1 require CLECs to terminate local traffic either on Qwest local tandem or end office switches and to order trunking to those same points, and allow CLECS to terminate local traffic at Qwest's access tandem switch only if there is no local tandem switch serving an end office.
- 314 (26) SGAT sections 4.11.2 and 7.3.4.2.1 provide that if a switch switches traffic once, a party will receive only the tandem switching rate, whereas if the switch switches traffic twice, the party will receive the tandem rate, the tandem transmission rate, and the end office call termination rate.
- 315 (27) SGAT sections 7.5.4 and 7.6.3 apply a reciprocal charge for certain call and transit records sent in an EMR mechanized format. Interconnection

agreements between Qwest and AT&T and WorldCom include similar provisions.

- 316 (28) SGAT sections 4.5.7, 4.3.9, 7.3.1.1.3.1, and 7.3.2.2 include the term “phone to phone IP telephony” in defining meet-point billing and jointly switched access service.

Number Portability Findings of Facts

- 317 (29) Qwest has deployed long-term number portability within the schedule set by the FCC.
- 318 (30) Some CLEC customers have experienced service outages, including loss of access to E-911 service, when Qwest has disconnected its loop at the predetermined time set by the 10-digit trigger for number porting, because the CLEC loop is not in place or some other problem has occurred.
- 319 (31) Verification and test query systems for better coordination between CLECs and ILECs of loop provisioning and number portability have not yet been developed.
- 320 (32) SGAT section 10.2.2.4 allows for a coordinated cutover process when provisioning a Qwest unbundled loop with number porting, but requires CLECs to use a more involved “managed cutover” process when provisioning CLEC loops with number porting.
- 321 (33) Qwest’s SGAT requires due date intervals for provisioning LNP that do not sufficiently reflect the amount of time required for provisioning LNP for different classifications of service.

Resale Findings of Fact

- 322 (34) FCC rules require BOCs to make telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).
- 323 (35) SGAT sections 6.2.3.1 and 6.2.3.2, concerning quality of service credits and penalties, limit the service quality credits Qwest will pay to a CLEC reseller to a wholesale amount, avoid payment of service quality credits, fines or penalties to CLECs if the CLEC is not subject to Commission requirements for such credits, preclude payments to CLECs unless the CLEC pays a credit to its end-user customer, limit the amount Qwest must pay CLECs in service quality

credits, and preclude CLECs from receiving payment or credit for the same service quality incident from more than one program.

- 324 (36) Qwest's wholesale discount is based on the costs that Qwest avoids when reselling retail services, such as billing and collection and customer contact.
- 325 (37) Qwest is subject to quality of service requirements under its network services tariff WN U-40, a service quality performance program approved in the U S WEST-Qwest merger proceeding in Docket No. UT-991358, and will be subject to a post-271 performance plan under development in ROC-sponsored workshops. Neither the tariff program nor the merger program exclude application to resold services.
- 326 (38) CLECs who resell Qwest's retail offerings are subject to the quality of service provisions in Qwest's tariff.
- 327 (39) SGAT sections 6.4.1 and 12.3.8.1.5 include provisions precluding Qwest or CLECs from discussing products and services, making disparaging remarks about each other, or using calls for marketing purposes when end users calls the other party in error or for repairs.
- 328 (40) Qwest's Interconnection Agreement with Sprint prohibits Qwest from marketing products during inadvertent contacts from Sprint customers.
- 329 (41) Qwest's SGAT does not contain a provision to prevent the use of resale ordering information for marketing purposes.
- 330 (42) SGAT sections 6.2.2.9.1 and 6.2.2.9.2 contain per location restrictions on Centrex pricing.
- 331 (43) The Commission has prohibited per location pricing restrictions for Centrex station lines, but has lifted the restriction on per location pricing for Centrex features.
- 332 (44) Qwest does not publish or provide a standard pricing scheme for Centrex Prime that would allow resellers to determine essential information for offering Centrex Prime at resale.
- 333 (45) Confidential documents provided by Qwest under order reveal a rebate program to certain Centrex customers.

- 334 (46) Qwest's SGAT provides that a customer under a contract with Qwest for a customer specific arrangement (CSA) would pay an early termination liability for switching service to a CLEC, but does not address whether the termination liability would apply if the customer assigns its CSA contract to another party.

CONCLUSIONS OF LAW

335 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 336 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.

Interconnection Conclusions of Law

- 337 (2) The issue of Qwest's obligations to indemnify CLECs is not yet ripe for review, as the matter is more appropriately addressed when considering the general terms and conditions of the SGAT and the review of Qwest's post 271 performance plan.
- 338 (3) Entrance facilities, mid-span meets, and interconnection ties pairs are technically feasible methods of interconnection and of obtaining access to UNEs. Qwest must allow any technically feasible method of obtaining nondiscriminatory access to UNEs at any point requested by the CLEC. Under FCC rules, Qwest may not impose restrictions on the use of UNEs that may impair a CLECs ability to offer service in the manner the CLEC intends. Qwest may not preclude the use of entrance facilities, mid-span meets, and ITPs for interconnection to access UNEs.
- 339 (4) Qwest is responsible for building and paying for the costs of facilities on its side of the point of interconnection, consistent with SGAT section 7.1.2.3. Qwest may not, therefore, charge CLECs for an EICT or ITP on the Qwest side of the POI when the CLEC chooses collocation as the method of interconnection.
- 340 (5) Qwest's performance in provisioning the SPOP is an issue of performance to be discussed in workshop sessions addressing Qwest's post-entry performance plan and the results of the ROC third-party OSS testing.

- 341 (6) Qwest should be able to determine the POI and the route for one-way trunking flowing from Qwest to the CLEC. No change in the SGAT is necessary to bring Qwest into compliance with Section 271 or FCC rules and orders.
- 342 (7) In paragraph 553 of the *Local Competition First Report and Order*, the FCC recognizes that ILECs have a responsibility of “limited build-out” in mid-span meet arrangements. In balancing the right of CLECs to select interconnection at any technically feasible point, and Qwest’s responsibility for the cost of facilities on its side of a meet point, it is reasonable to impose a distance limit on Qwest’s obligation to build facilities to a meet-point. A distance limit is also consistent with the Arbitrator’s Report and Decision in Docket No. UT-960310, approved by the Commission. No change to the SGAT is necessary to bring Qwest into compliance with Section 271 or FCC rules and orders.
- 343 (8) Qwest’s network provides sufficient diverse routing in every central office such that no additional SGAT language is necessary to address CLEC concerns about signaling failure, or to bring Qwest into compliance with Section 271.
- 344 (9) Both Qwest and CLECs bear a burden to ensure that there is efficient use of resources and sufficient capacity on Qwest’s network to avoid blocked calls. In order to balance the burden between the parties, it is reasonable to require CLECs to provide deposits when forecasting if the CLEC has not met prior forecasts. However, Qwest may not base deposits on underutilization of trunks in other geographic areas. Qwest must guarantee the availability of the forecasted trunks for which CLECs pay a deposit.
- 345 (10) It is reasonable for Qwest to retain ownership of facilities for which CLECs provide forecasts and pay a deposit, and for which CLECs pay special construction charges, as the burden may fall to Qwest ratepayers if Qwest were to build facilities for CLECs that were underused or non-revenue bearing due to poor CLEC forecasts. Consistent with the FCC’s findings in paragraph 258 of its *Local Competition First Report and Order*, no change to the SGAT is necessary to bring Qwest into compliance with Section 271.
- 346 (11) Consistent with the FCC’s conclusions that interconnection at the access tandem is technically feasible and that CLECs may choose the point of interconnection, Qwest must permit interconnection for the exchange of local traffic at the point determined by the CLEC, including the access tandem switch, and must not limit CLECs to interconnection at the local tandem. Qwest must provide interconnection at the access tandem even if capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandem or end office switches

served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.

- 347 (12) Qwest's SGAT sections 4.11.2 and 7.3.4.2.1 concerning treatment of tandem switches preclude the Commission from exercising its judgment with respect to how factors of geography and function of a particular switch may affect its treatment. These SGAT sections do not comply with the requirements of Checklist Item Nos. 1, 13, or Section 252(f)(2).
- 348 (13) Qwest's requirement that parties pay a reciprocal charge when providing certain call and transit records is reasonable given Qwest's experience under existing interconnection agreements. No change to the SGAT is necessary to bring Qwest into compliance with Section 271.
- 349 (14) Consistent with the findings and conclusions made in paragraphs 199 and 200 of the Revised Initial Order in this proceeding concerning the status of ISP traffic and payment for that traffic, Qwest must strike all references in the SGAT to phone to phone IP telephony.
- 350 (15) Until Qwest modifies its SGAT provisions concerning interconnection as discussed above, and subject to Commission review and evaluation of the audited results of the ROC OSS regional testing on performance measures, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(i), Checklist Item No. 1 concerning interconnection, and the Commission will not approve Qwest's SGAT.

Number Portability Conclusions of Law

- 351 (16) Qwest's SGAT provisions concerning coordination of loop provisioning and number porting do not sufficiently allow customers to retain existing telephone numbers without impairment in quality, reliability, or convenience, as required by the FCC.
- 352 (17) Qwest's SGAT provisions concerning coordinated and managed cutovers of loops provisioned with number porting are discriminatory and anti-competitive as they deny CLECs the same option available to Qwest.
- 353 (18) Qwest has not demonstrated that its due date intervals for provisioning LNP are reasonable or provide a meaningful opportunity to compete with Qwest, as required by the FCC.

- 354 (19) Until Qwest modifies its SGAT provisions concerning number portability as discussed above, and subject to Commission review and evaluation of the audited results of the ROC OSS regional testing on performance measures, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xi), Checklist Item No. 11, and the Commission will not approve Qwest's SGAT.

Resale Conclusions of Law

- 355 (20) Qwest's SGAT provisions restricting the application of service quality credits and penalties result in unreasonable restrictions to resale under Section 251(c)(4) and do not provide resale arrangements as required by Section 271(c)(2)(B)(xiv).
- 356 (21) Qwest's SGAT provisions and interconnection agreements provide CLECs with the opportunity to prevent Qwest from using inadvertent calls from CLEC customers for marketing opportunities in compliance with FCC rules, orders and the requirements of Checklist Item No. 14.
- 357 (22) Qwest's SGAT is not consistent with the provisions of 47 U.S.C. § 222 as it lacks any provision preventing the use of ordering information for marketing purposes.
- 358 (23) Qwest's SGAT provision imposing per location pricing on Centrex station lines violates previous Commission orders and is an unreasonable restriction on resale contrary to Section 251(c)(4). Qwest's SGAT provision imposing similar restrictions on Centrex features is consistent with Commission orders and is not an unreasonable restriction on resale.
- 359 (24) Qwest's failure to publish its prices for Centrex Prime sufficiently to allow resellers to determine essential information for offering Centrex Prime at resale is an unreasonable restriction on resale in violation of Section 251(c)(4).
- 360 (25) Qwest's rebate program violates RCW 80.36.110, RCW 80.36.130, and RCW 80.36.150 and constitutes an unreasonable restriction on resale in violation of Section 251(c)(4).
- 361 (26) Unless Qwest's SGAT provides for assignment of CSA contracts without a termination liability, Qwest's SGAT provisions concerning termination liability act as an unreasonable restriction on resale in violation of Section 251(c)(4).

- 362 (27) Until Qwest modifies its SGAT provisions concerning resale as discussed above, and subject to Commission review and evaluation of the audited results of the ROC OSS regional testing on performance measures, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiv), Checklist Item No. 14, and the Commission will not approve Qwest's SGAT.

ORDER

- 363 Based on the findings of fact and conclusions of law set forth above, the Administrative Law Judge enters the following order:

Interconnection Order Provisions

- 364 (1) The issues of Qwest's obligations to indemnify CLECs and its performance in provisioning its policy of a single point of presence are deferred until the workshop addressing general terms and conditions of the SGAT, the results of the ROC third party OSS testing, and the review of Qwest's post 271 performance plan.
- 365 (2) In order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(i), Checklist Item No. 1 - interconnection, and for the Commission to approve Qwest's SGAT, Qwest must modify its SGAT to:
- (a) Allow CLECs to use entrance facilities and mid-span meets for interconnection and to obtain nondiscriminatory access to UNEs at any technically feasible point of interconnection chosen by the CLEC;
 - (b) Apply the rates for entrance facilities ordered in Docket No, UT-003013;
 - (c) Eliminate the application of EICT and ITP rates on facilities on Qwest's side of the POI when a CLEC chooses to use collocation to interconnect and access UNEs;
 - (d) Eliminate the requirement that CLECs make deposits for interconnection trunk facilities based upon the underutilization of trunks in other geographic areas;
 - (e) Guarantee the availability of forecasted trunks for which CLECs pay a deposit;
 - (f) Remove the prohibition on commingling exchange service traffic with switched access traffic on the same trunk group;
 - (g) Permit interconnection for the exchange of local traffic, by any technically feasible method at any point requested by the CLEC, including the access tandem switch, and must not limit CLECs to interconnection at the local tandem;

- (h) Allow for a factually-based consideration of geography and function when determining whether to treat CLECs switches at tandem switches; and
- (i) Remove all references to phone-to-phone IP telephony.

Number Portability Order Provisions

- 366
- (3) In order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xi), Checklist Item No. 11, and for the Commission to approve Qwest's SGAT, Qwest must modify its SGAT to:
 - (a) extend the time that the 10-digit trigger and customer translations are removed until 11:59 p.m. of the day following the due date for number porting;
 - (b) allow CLECs the option of using the coordinated cutover process or managed cutover process when provisioning CLEC provided loops and porting numbers; and
 - (c) include AT&T's proposed due date intervals for provisioning LNP, including provisioning LNP within three business days when no unbundled loop is involved.

Resale Order Provisions

- 367
- (4) In order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiv), Checklist Item No. 14, and for the Commission to approve Qwest's SGAT, Qwest must modify its SGAT to:
 - (a) eliminate the application of the wholesale discount or other limits to service quality credits or fines payable to CLECs, and include a provision allowing a credit to CLECs of the lesser of Qwest's monthly service charge or the monthly service charge the CLEC pays to its end user;
 - (b) eliminate the restriction on payment to CLECs if a CLEC is not subject to the Commission's service quality requirements;
 - (c) eliminate the restriction on paying service quality credits to CLECS only if they pass through the credits to end users;
 - (d) eliminate the provision precluding CLECs from receiving payment or credit for the same service quality incident from more than one service quality program;
 - (e) include language prohibiting Qwest from using for marketing purposes any information received during a CLEC request for subscriber information or ordering;
 - (f) eliminate the provision applying per location pricing restrictions on Centrex station lines for resale; and

- (g) include a provision allowing for assignment of CSA contracts without termination liabilities or penalties.
- 368 (5) In order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiv), Checklist Item No. 14, and for the Commission to approve Qwest's SGAT, Qwest must:
- (a) not apply its SGAT to exclude resold services from the retail services covered under the Service Quality Performance Program approved in the merger between US WEST and Qwest;
 - (b) publish its standard pricing schedule for Centrex Prime either in its tariff or in the SGAT; and
 - (c) correct the way the company offers rebates to Centrex customers to avoid anti-competitive behavior and violation of Washington statutes.
- 369 (6) Qwest must submit to the Commission the audited results of performance testing relating to Checklist Items No. 1, 11, and 14, and associated testimony concerning the audited results as soon as the results are available. The Commission will not find Qwest in compliance with Checklist Items No. 1, 11, and 14 until after its review of the results.
- 370 (7) The Commission retains jurisdiction to implement the terms of this order.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge