BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

AT&T'S COMMENTS AND REQUESTS FOR CLARIFICATION REGARDING THE INITIAL ORDERS FINDING QWEST'S NONCOMPLIANCE ON INTERCONNECTION, COLLOCATION AND RESALE ISSUES

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit these Comments and Requests for Clarification Regarding the Initial Orders Finding Qwest's Non-compliance on Interconnection, Collocation and Resale Issues.

COMMENTS AND REQUESTS FOR CLARIFICATION

With respect to the disputed issues discussed during the workshops on the above-noted issues and the resolutions thereto, AT&T will limit these comments to those resolutions or outstanding issues that require additional discussion or clarification. Such limitation, however, should not be taken to mean that AT&T intends to forego or waive any appropriate future argument on any interconnection, collocation or resale disputes

with either the Washington Commission or the Federal Communications Commission ("FCC").

Generally, the discussion that follows is organized by Checklist Item categories (*e.g.*, interconnection, collocation, and resale) and then, within those categories, the issues and clarification requests are discussed by SGAT section proceeding *seriatim* unless a general SGAT topic warrants combining a group of SGAT sections to avoid redundant discussion.

I. INTERCONNECTION

There are four areas of concern related to the Initial Order regarding interconnection. They are: (A) clarification regarding Qwest's single point of interconnection or "SPOP" product and the resolution related thereto; (B) the conclusion regarding 50-mile limitation on all interconnection trunks; (C) clarification of the "ownership" of specially constructed interconnection trunks; and (D) clarification of interconnection at the access tandem resolution.

A. SPOP (Issue WA-I-8)

At the center of this dispute is a fundamental problem that runs far deeper than this particular issue. It is that Qwest's SGAT says one thing while its current conduct, as revealed in its product and policy offerings, is contrary to the SGAT and the law. The SGAT claims to allow CLECs an opportunity to designate a single point of interconnection ("POI") or presence within a LATA. SGAT § 7.1.2. Prior to its development of the SPOP product, Qwest was simply refusing to follow the law and demanding that competitors establish interconnection trunks to each end office they

wished to serve within a local calling area.[1] Although Qwest had access tandems in these areas and interconnection there would have been more efficient for the CLECs, Qwest would not allow interconnection at such tandems. Along with deleting its InterLCA SGAT provision, Qwest developed the SPOP product primarily as a response to AT&T's discussion of the inefficient interconnection trunking problems during the Colorado § 271 workshop, which pre-dated the Washington workshop. And despite the fact that the SPOP product is discussed in conjunction with the prohibition on access tandem interconnection, it really is not an issue that should be confused with such interconnection. That is, Qwest has a legal obligation to allow CLECs to select a single point of interconnection within a LATA, whether that point is at the access tandem or anywhere else.[2]

The SPOP product under which a CLEC may allegedly obtain such a point, however, reveals Qwest's continuing refusal to accept the FCC's and this Commission's determination that a CLEC may interconnect at any technically feasible point and as a result may choose a single point of interconnection. To deter CLECs from establishing a single POI, Qwest has developed its SPOP product, which—among other things—requires CLECs to convert their chosen point(s) of interconnection to the CLEC point of presence ("POP") and "not [at] the Qwest serving wire center (SWC) as has traditionally been the case with interconnecting carriers" or "keep[] their existing trunking in tact."[3] As a condition of employing the SPOP product, it further requires that: (a) the CLEC's

[1] Boykin Colorado Affidavit at 9.
[2] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Rel. 30, 2000) at ¶ 78 [hereinafter "***SWBT Texas 271 Order***"].
[3] WA Exhibit 473 at 1.

interconnection at the access tandem be limited; (b) the CLEC employ separate trunks for local and long distance traffic while disallowing all ISP traffic on those trunks; and (c) the CLEC end office trunk anywhere the access tandem is "at, near, or forecasted to be at exhaust."[4] In order for CLECs to obtain legally mandated interconnection if they choose to interconnect via a single point, Qwest demands that they surrender a whole host of other rights as described by the SPOP offering.

Perhaps because of the confusing nature of the discussion during the workshops and the way in which this issue has unfolded, the Initial Order seems to confuse the right to interconnect at the tandem (whether it be the access tandem or the local tandem) and the right to select a single point of interconnection per LATA. By adopting the Joint CLEC language in regard to the SPOP product,[5] the Order creates confusion between the appropriate language for interconnection at the access tandem described in relation to SGAT § 7.2.2.9.6 on pages 41 through 43 and Qwest's obligations to allow a single POI per LATA under SGAT § 7.1.2. That is, resolution of the SPOP issue requires simply that Qwest be ordered not to limit the CLECs rights to obtain a single point of interconnection per LATA. The SPOP product should not govern over the SGAT nor should Qwest's legal obligations be undermined by such product offerings. Rather, the terms and conditions of obtaining a single POI should be spelled out in the SGAT and not in some unilateral product offering in which Qwest further limits the CLECs' rights. Likewise, interconnection at the access tandem should be dealt with in relation to SGAT § 7.2.2.9.6 as discussed in greater detail below.

[4] *Id*. at 1 – 2. Reading the SPOP product offering reveals still other inconsistencies with Qwest's legal obligations and its SGAT.
[5] Initial Order at 29.

B. 50 Mile Limit (Issue WA-I-16)

A fundamental tenet of § 271 compliance that Qwest repeatedly attempts to defy, is that the FCC has declared that CLECs may "choose any method of technically feasible interconnection at a particular point on the incumbent LEC's ["ILECs"] network. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements."[6]

Qwest proposes an addition to its SGAT that artificially limits its interconnection obligation under the Act and shifts the burden to build Qwest's network to the CLEC.[7] The proposal arbitrarily turns all interconnection trunks over 50 miles into mid-span meet arrangements where neither the CLEC nor Qwest have facilities in place. Qwest justifies this proposal providing an extreme and unsubstantiated example of a CLEC that might demand hundreds of miles of direct trunk transport to interconnect its network to Qwest's network.[8]

Nevertheless, the Act clearly states that it is Qwest's obligation to: "provide … interconnection with the local exchange carrier's network … for the transmission and routing of telephone exchange service and exchange access."[9] According to the FCC, "[s]ection 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing

[6] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Rel. Dec. 22, 1999) at ¶ 66 [hereinafter "***FCC BANY Order***"].
[7] SGAT at § 7.2.2.1.5.
[8] 12/18/00 Multistate Tr. at p. 111.
[9] 47 U.S.C. § 251(c)(2)(A).

carriers *must compensate* incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."[10]

Simply put, Qwest's 50-mile limitation on its interconnection obligation violates the Act and the FCC's pronouncements. Moreover, Qwest has not presented even a single real case wherein it was required to construct such extremely long direct trunk transport (a/k/a interconnection trunks), nor has it presented even a shred of evidence that it would not recover the costs to do so. Thus, the Initial Order should reject Qwest's attempt to artificially limit its legal obligations by requiring that Qwest remove § 7.2.2.5.1 from the SGAT.

C. Ownership (Issue WA-I-30)

"Ownership" of specially constructed interconnection trunks is more a question of fair compensation than ultimate ownership. In fact, it was AT&T's impression that this issue would be taken up in a cost docket and not in the workshop. Nevertheless, the problem that Qwest did not describe in its brief is as follows: If a CLEC pays the entire cost for constructing the trunk and pays monthly recurring charges for its use, then Qwest is more than fairly compensated for the trunk. This is analogous to paying the full construction costs of a house and then paying rent to live in it.

Furthermore, if the CLEC discontinues use of the trunk and Qwest either uses the trunk itself or sells its use to another CLEC, then Qwest again is more than fairly compensated for the trunk—in fact, it enjoys quite a windfall while the original CLEC

[10] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996) at ¶ 209 (emphasis added) [hereinafter "***First Report and Order***"].

that paid to build the trunk has lost any depreciation or value remaining in the trunk completely.

If the CLEC must "foot" the bill to build the trunk, then it ought to enjoy at least some benefit of that payment for the duration of the useful life of the trunk. All benefit should not flow to Qwest, who in this instance, doesn't appear to be out even a dime. Moreover, if Qwest is allowed to require special construction in every instance where, for example, it must build a trunk 51 miles long or more, then Qwest will have successfully transferred its network construction and interconnection costs in those cases onto the CLECs.

In short, this situation violates the law, but more importantly, it is simply unfair to CLECs.

D. Interconnection at the Access Tandem (Issue WA-I-37 & WA-I_57)

SGAT § 7.2.2.9.6 describes the conditions under which Qwest will allow CLECs to interconnect at access tandems. These conditions, quite like Qwest's previous ban on interconnection at the access tandem, cause inefficient interconnection trunking and increased costs for the CLECs.

Qwest has admitted that interconnection at the access tandem is technically feasible.[11] And the FCC has concluded that interconnection at the tandem is appropriate and technically feasible.[12] Moreover, the 9th Circuit Court of Appeals has upheld interconnection at the access tandem.[13]

[11] 12/19/00 Multistate Tr. at p. 5.
[12] *First Report and Order* at ¶ 210.
[13] *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

Qwest's legal obligation is quite clear— the CLEC may select the point or points at which to interconnect.[14] 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."[15] Qwest cannot prove to this Commission or any other that interconnection at the access tandem is technically infeasible.

Qwest typically alleges, without proof, that somehow interconnection at the access tandem forces inefficient use of or a threat to its network. Even more remote, Qwest implies that CLECs choose interconnection points solely in an effort to increase Qwest's cost—yet Qwest did not provide even a single instance of such behavior. Considering that other RBOCs allow such interconnection quite successfully, Qwest has utterly failed to show technical infeasibility such that a Commission could uphold the restrictive conditions Qwest places on interconnection at the access tandem.

Thus, Qwest should be ordered to allow interconnection at the access tandem without all the conditions it attempts to place on CLECs in its SGAT. AT&T's proposed language accomplishes this very simple goal; it states:

> 7.2.2.9.6 The Parties shall terminate Exchange Service (EAS/Local) traffic ~~exclusively~~ on ~~local~~ tandems or end office switches, at CLEC's option.[16]

The Initial Order appears to adopt this language, but in referencing the Joint CLECs' argument regarding low traffic volumes, it also injects some confusion into the resolution. If traffic volumes warrant, Qwest should increase its switch capacity just like any other carrier would do; it should not be able to avoid its interconnection obligations

[14] *First Report and Order* at ¶ 172; *SWBT Texas 271 Order* at ¶ 78.
[15] *SWBT Texas 271 Order* at ¶ 78 (emphasis added); 47 C.F.R. § 51.305(e).
[16] Wilson Interconnection Affidavit at p. 38.

by demanding that CLECs engage in less efficient trunking methods simply because Qwest does not want to increase capacity to meet demand. Furthermore, CLECs are not going to select interconnection at the full access tandem and increase their own costs and delay interconnection, when a local tandem serving the same area is available. In short, CLECs have a vested interest in obtaining timely, efficient, cost effective interconnection. This motive is precisely the one the FCC relied upon in determining that CLECs should be able to select their point or points of interconnection unfettered by the dictates of the ILEC. While it appears that the Initial Order indeed adopts this view, AT&T simply requests that the Commission clarify its position.

II. COLLOCATION

There are four areas of concern related to the Initial Order regarding collocation. They are: (A) clarification on Qwest's use of new collocation products to delay CLEC collocation; (B) clarification of the order on Qwest's limitation of the collocation applications it will fill in the required intervals; (C) resolution of the dispute regarding the content of the internet document on Qwest's filled collocation spaces; and (D) resolution of the disputed collocation interval issues.

A. "New" Collocation Products Issue WA-1C-1

Curiously, in its brief Qwest argues that "[i]t would be unreasonable to require Qwest, or any other provider, to offer a new product or service without prior agreement to the terms and conditions pursuant to which the product or service is offered."[17] Yet, for those products or services that Qwest does offer in its SGAT or through interconnection agreements, Qwest—through its new "policies"—routinely and unilaterally issues new terms and conditions (including prices) that purport to override

[17] Qwest Brief at pp. 5 - 6.

previous agreements.[18] On the other hand, Qwest won't allow CLECs to purchase allegedly new collocation products without first agreeing to all of Qwest's unilaterally determined terms and conditions, many of which undermine previous agreements and Qwest's compliance with the Act.[19]

If it seems as though the CLECs are being whipsawed by Qwest's double standards, they are in fact as well as in theory, frequently subjected to Qwest's erratic and anticompetitive double standards.[20] Qwest has a habit of creating "new products," which are in fact services previously covered by interconnection agreements, but now under the guise of "new products" describe how Qwest will offer that which it has resisted providing, sometimes for years, and these "new" offerings are generally provided under terms that would otherwise violate the Act, the SGAT or the agreements. To make matters even more confusing, Qwest occasionally issues new terms and conditions as "policies" instead of new products.

For example, Qwest recently issued a collocation "Decommissioning Policy" and its "Collocation Change of Responsibility Policy".[21] Both allegedly override all agreements and the SGAT and impose upon CLECs a payment scheme that allows Qwest to double recover its costs and violates the FCC's orders. That is, the *FCC's Expanded Interconnection Order* states, in pertinent part,

> We find that when an interconnector pays a nonrecurring charge for interconnector-specific construction or equipment and the interconnector discontinues taking service before the end of the useful life of these assets, the initial interconnector must receive a pro rata refund for the undepreciated value of the assets, if a subsequent interconnector takes

[18] Qwest recently issued several new Collocation Policies, which state: "[t]his policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement."
[19] *See* XO Exhibits admitted by motion after the workshops and maybe marked as Exhibits 328-330.
[20] 01/23/01 CO Tr. at pp. 117-119; *see also,* general discussion at pp. 111-149.
[21] *See supra* footnote 17.

> service and uses the assets or the LEC uses the assets. That is, if the LEC uses an asset for which an interconnector has paid after that interconnector discontinues service, the LEC will be responsible for paying the interconnector for the undepreciated value of the asset.[22]

Examination of Qwest's policies reveals that it intends to keep 100% of the payments with no intention of refunding anything. Clearly, Qwest should be bound by the law and its SGAT; its policies and product should also.

Turning from policies to products and assuming for argument's sake that Qwest actually comes up with a "new" type of collocation not already contemplated by the FCC and covered under the terms of its SGAT[23] or existing interconnection agreements, the problem is a CLEC cannot obtain the collocation without either being subjected to unreasonable terms and conditions or going through a *bona fide* request process, which in the experience of many CLECs creates unwarranted delay in the CLECs' ability to serve customers, thereby creating enormous operational delays and impeding competition.[24] Furthermore, considering that the FCC's § 271 investigations include whether RBOCs have taken the necessary steps to ensure that collocation options are timely implemented and available to CLECs,[25] the assumption that the SGAT is currently insufficient to provide concrete and specific terms and conditions of all its products, including allegedly "new" collocation products, is a most astounding admission on Qwest's part.

Finally, Qwest always demands that an interconnection agreement be amended regardless of whether the CLEC accepts, hook-line-and-sinker, the terms and conditions

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[22] *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation and Special Access and Switched Transport*, Second Report and Order, CC Docket No. 930162, FCC 97-208 (Rel. June 13, 1997) at ¶ 54 ("***FCC Expanded Interconnection Order***").
[23] The SGAT is over 200 hundred pages long and covers at length the primary terms and conditions for all interconnection and collocation.
[24] 01/23/01 CO Tr. at pp. 93-95.
[25] *BANY 271 Order* at ¶ 73.

described in the new offering.[26] And recall the experience of such amendment process so well described by WorldCom witness, Jill Wicks' testimony in Colorado. It described in great detail the obstacles presented by Qwest's decision to "productize" a service, in this case managed cuts that had been provided to WorldCom for over two years under its interconnection agreement.[27] WorldCom's experience demonstrates that a CLEC, faced with Qwest's demand that it amend its interconnection agreement to incorporate additional terms and conditions associated with a "new" product offering or policy, has only two choices – either accept Qwest's terms no matter how impractical or unreasonable in order to timely take advantage of the new "product," or engage in months of extended negotiations that may or may not prove to be productive.

The mere existence of policies or product offerings that contradict the Act, interconnection agreements and the SGAT clearly undermines the validity of the SGAT as purported evidence of Qwest's *present* compliance with its § 271 obligations. Qwest's actual conduct and not just what its SGAT purports to offer (*e.g.*, SGAT § 8.1.1's "immediate" amendment provision that allows amendment of terms and conditions that generally prove to be contrary to the original agreement) should be considered in judging its compliance or lack thereof.

B. Order Volume Limitations (Issue WA-1C-57)

In its SGAT § 8.4.1.9, Qwest had hoped to limit all CLEC collocation applications – whether small, large, augments to existing collocations or complex

[26] Qwest Brief at p. 7; *see also,* transcript cites previously noted in AT&T's Closing Brief.
[27] 01/25/01 CO Tr. at pp. 42-60.

collocation requests – to five applications per CLEC per week.[28] Whether a CLEC issuing its sixth application will obtain timely provisioning intervals is unknown.

Because Qwest's language does not conform to the FCC's order that Qwest's brief cites (e.g., "we believe that an incumbent LEC has had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet this deadline [national default interval] absent the receipt of an extraordinary number of *complex collocation applications* within a limited time frame"[29]) nor the Washington rules, it cannot stand. Moreover, it is not reasonable for Qwest to fail to make provisioning intervals for collocation applications that require so little effort (e.g., augments to existing collocations) that no other purpose but deterring or slowing competition is accomplished. Therefore, AT&T requests that the Commission revise this portion of the proposed Initial Order.

C. Internet Document Identifying Full Premises (Issue WA-1C-33)

The Initial Order does not appear to resolve the disputed issue regarding Qwest's non-compliance with its legal obligation to maintain and update a document on a publicly available internet site, indicating all collocation premises that are full. As stated in AT&T's joint brief on collocation, Qwest's SGAT says one thing while its actual practice is something else.[30] The SGAT in pertinent part, says that Qwest will "maintain a publicly available document, posted for viewing on the Internet … indicating *all Premises that are full*, and will update this document within ten (10) calendar days of the date which a premises runs out of physical space."[31] All "premises" by definition

[28] 1/24/01 CO Transcript at p. 115, ln. 4 - 11.
[29] Qwest Brief at p. 31 citing FCC 00-297 at ¶ 24 (emphasis added).
[30] Joint Position and Brief Regarding Disputed Collocation Issues at pp. 24-27.
[31] SGAT at § 8.2.1.13.

includes wire centers and remote premises, among other things.[32] On its face, the SGAT language is consistent with the FCC's requirements. Qwest's testimony during the workshops, however, reveals that the internet document lists only a subset of wire centers, not all premises that are full and this subset is derived from Qwest's space availability reports.

This issue is more fully discussed in AT&T's joint brief and the workshop transcripts. In short, Qwest's obligation to make this information available is clear in the FCC rule, which states:

> The incumbent LEC *must* maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, *indicating all premises that are full*, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.[33]

Qwest maintains that actually complying with this provision is too burdensome and intends to provide only information on full wire centers where they are discovered to be full from doing space availability reports. Along with supplying language regarding space availability reports, AT&T proposed a compromise on the internet document. Basically that compromise was asking that Qwest at least make known through its internet document all the wire centers (as opposed to all premises) that are full regardless of whether Qwest has actually supplied a space availability report to some CLEC.

Thus, the Initial Order should be revised to resolve this fairly limited issue.

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[32] 47 C.F.R. § 51.5 (definition of "Premises").

[33] 47 C.F.R. § 51.321(h) (emphasis added); *see also, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provision of the Telecommunications Act of 1996,* Order on Reconsideration and Second further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297 (Rel. Aug. 10, 2000) at ¶ 58 ("*In addition to* reporting requirements, we adopt the proposal of Sprint that incumbent LECs must maintain a publicly available document, posted for viewing on the Internet, indicating all premises that are full … .") [hereinafter "***Advanced Services Order***"].

D. Collocation Intervals (Issues WA-1C-59, 60a, 61, 62, 64)

The Initial Order states that "Qwest reports that the parties have reached agreement on all interval provisioning issues as contained in Qwest's SGAT except for the need for additional time to provision collocation where a high volume of applications is received … ."[34] Qwest's report was and is inaccurate, and the transcripts confirm the lack of agreement on at least one other issue related to the intervals. AT&T briefed this issue.[35] This issue remains in dispute even with Qwest's alteration of its SGAT to allegedly incorporate Washington specific provisions in its March 20, 2001 SGAT version.

The disputed issue picks up a few new twists because Qwest has submitted language that is neither compliant with the Washington rules on collocation intervals nor the FCC's rules. Initially, the issue was that where Qwest has the space and power available to fill an order, but the order was not forecasted, could Qwest simply give itself a 120 day interval as it had done in previous versions of the Washington SGAT. Qwest believes it has an unfettered right to tack on additional time to the provisioning process even though such time is not necessary or warranted.

On the other hand, AT&T believes neither the Washington collocation rules nor the FCC's rules allow Qwest to always provide itself the 120 day interval for unforecasted orders, especially where collocation space is readily available. The Washington rules are clear on their face, they say, in pertinent part:

> (3) Provisioning collocation.
>
> (b) If the ordered collocation was included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of

[34] Initial Order at p. 26 citing Qwest's Brief at p. 24.
[35] AT&T Joint Brief at pp. 54-59.

> the order, the ILEC must complete construction of, and deliver, the ordered collocation space and related facilities within forty-five calendar days after the CLEC's acceptance of the written quote … .
>
> (c) If the ordered collocation space was not included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the Commission declines to apply the forty-five calendar day interval in (3)(b) and the national standards adopted by the FCC shall apply.[36]

The FCC's rules require Qwest to, among other things, provision all collocation orders within 90 calendar days of receiving the orders for collocation.[37] In regard to Qwest's ability to lengthen its collocation intervals under the FCC's rules, the FCC clarified that Qwest's interim waiver limited Qwest to:

> increase the provisioning interval for a proposed physical collocation arrangements no more than 60 calendar days in the event a competitive LEC fails to timely and accurately forecast the arrangement … . We expect Qwest to use its best efforts to minimize any such increases … .[38]

Qwest, therefore, was given no more than an additional 60 days for provisioning unforecasted requests *on an interim basis*, and it was further expected to minimize that time period. Setting aside whether the interim waiver even applies in the case where a State has its own rules, Qwest's obligations in Washington are to provision all collocation orders, forecasted 90 days prior to order, within 45 days of acceptance and partial payment of the quote. All other collocation orders, including those forecasted within a lesser time than 90 days, must be provisioned according to the FCC's rules. Again assuming that the interim waiver applies, Qwest must minimize or endeavor to meet the 90 day interval for all unforecasted collocation orders.

[36] WAC 480-120-560(3).
[37] *Advanced Services Order* at ¶ 5 *et seq.*
[38] *Memorandum* at ¶ 19.

The SGAT §§ 8.4.2, 8.4.3 and 8.4.4 do not comply with either the Washington rules or the FCC's requirements. For example, SGAT § 8.4.3 automatically gives Qwest a 120 calendar day interval from the quote acceptance for provisioning all unforecasted orders.[39] Apparently, if the CLEC provides a forecast to Qwest between 60 and 90 calendar days before the order, Qwest may comply with the FCC's rules by meeting a 90 day interval. There are similar problems with the way in which Qwest has revised its SGAT to allegedly provide Washington specific compliance. AT&T has taken the March 20th version of these SGAT provisions and has edited them consistent with the law and AT&T's previous position on the disputed issues as described in its Joint Brief. [40] AT&T's proposals are attached hereto as **Exhibit A.**

AT&T requests that the Commission resolve this issue by adopting the proposals set out in the attached exhibits. At a minimum, Qwest's SGAT proposals on collocation intervals are inconsistent with Washington law and must, therefore, be rejected.

III. RESALE

There is one area of concern related to the Initial Order regarding resale. It is the Initial Order's resolution of the dispute related to misdirected CLEC customer calls (Issue WA-14-7). Recall that Qwest would like to turn calls from CLEC customers that are erroneously received by Qwest into solicitation opportunities for itself.

The Initial Order suggests that the CLECs' ability to pick and choose coupled with the existence of the Sprint/Qwest interconnection agreement, which prohibits Qwest from turning misdirected calls into solicitation opportunities, is sufficient resolution of

[39] SGAT §§ 8.4.3.4.3 & 8.4.3.4.4.
[40] In addition to the sections expressly discussed above, AT&T has also modified certain other Qwest Washington specific proposals to more closely resemble agreements previously reached in the collocation workshops related to the previous SGAT versions.

this issue.[41] Under a rational interpretation of the pick and choose requirements this resolution would, indeed, be sufficient. However, Qwest is interpreting its pick and choose obligations to limit a CLEC's use of any chosen provision to the duration of time that provision would have existed under the original agreement from which it came.[42] That is, if Sprint's contract with Qwest is to terminate next week, then the CLEC that picks and chooses the misdirected call provisions from that contract could only avail itself of that provision until next week.

Clearly such an interpretation is ludicrous and would create untenable interconnection contacts with individual provisions expiring or terminating at differing intervals throughout the life of the agreement. Qwest's interpretation also violates the spirit and express provisions related to its pick and choose obligation, revealing once again the anticompetitive behavior of the local monopolist.

In summary, a more direct resolution is required. All the cases cited by Qwest in its brief recognize that commercial speech may be regulated to protect a substantial government interest. That interest is the opening of the local telecommunications markets to competition. Allowing Qwest to undermine its competitors erects barriers to competition and ultimately destroys competition. AT&T merely asks this Commission to ensure that Qwest plays fair by prohibiting it from interfering in the business relationships that CLEC resellers have with their customers.

[41] Initial Order at p. 74.
[42] 3/27/01 Multistate Tr. at pp.20 – 21; attached hereto as **Exhibit B.**

CONCLUSION

For the foregoing reasons, AT&T requests that the Commission revise and clarify its Initial Orders on Interconnection, Collocation and Resale consistent with the suggestions provided herein.

Respectfully submitted on this 20th day of April, 2001.

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

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