BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996	Docket No. UT-003022
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-003040

QWEST'S COMMENTS REGARDING DRAFT ORDER:

INTERCONNECTION, COLLOCATION, LNP AND RESALE

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INTRODUCTION

Qwest appreciates the opportunity to provide additional comments on the Draft Order concerning Interconnection, Collocation, LNP and Resale. As noted below, Qwest is prepared to accept a significant number of the findings and conclusions reached in that Draft Order, notwithstanding the fact that Qwest respectfully disagrees with many of them as being necessary to demonstrate checklist satisfaction. Qwest further recognizes that with regard to many of the issues, reasonable minds can disagree, and reaching closure and finality is often as important as having one's own view prevail. Accordingly, unless Qwest believes that the Draft Order relies to a substantial degree upon an incorrect fact or misunderstanding, or alternatively, fundamentally misapplies a well-established principle of law, Qwest will accept the resolution of the issue set forth in the Draft Order.

There are some issues that Qwest believes quite strongly have been decided in error. With respect to those findings or conclusions, Qwest will attempt to clarify and in some instances reiterate its position to support what it believes would be a more appropriate resolution of the issue.

CHECKLIST ITEM 1: INTERCONNECTION

A. Entrance Facilities and Ratcheting (SGAT §§7.1.2.1 and 7.2.2.9.3.2)

This issue has two components: first, can entrance facilities be used to access unbundled network elements; and second, if allowed, can CLECs further be allowed to "ratchet" such use to secure lower payments for those facilities than would otherwise be required. Qwest is willing to agree to adopt the resolution proposed by the Washington ALJ, such that access to UNEs will be allowed, but ratcheting of rates will not.

In the ALJ's remarks at paragraphs 137 to 139 of the Draft Order, the ALJ recommends that Qwest remove SGAT section 7.2.2.9.3.2. This paragraph prohibited the commingling of

local and Interexchange Carrier toll calls on the same trunk group. Qwest conceded this matter in its January 25, 2001 brief and the judge noted that commingling is technically feasible and not prohibited by the FCC.

In response to the judge's recommendation, Qwest is willing to change the SGAT language at section 7.2.2.9.3.2 to permit, expressly, commingling of traffic. Here, and at section 7.3.9, Qwest makes clear that it will expect that "percent local use" factors (or call juridictionalization factors based on calling party number data) will be used on trunk groups with mixed traffic to apportion per minute of use charges such as Call Termination. Qwest expects that transport charges would not be apportioned in the same manner.

Qwest notes that transport charges were addressed virtually identically in both the Washington and Oregon Orders associated with the first set of collaborative workshops. This discussion involved how transport will be changed when different types of traffic are commingled, often referred to as "ratcheting." Ratcheting is the discounting of a Private Line Transport Service charge at the point in time when it begins to carry local traffic. In particular, the Washington recommendation at the end of paragraph 251 noted:

> Given their willingness to purchase spare capacity for economic reasons even at the higher private line rate, the CLECs are in essence saving the cost of purchasing separate entrance facilities in addition to private line facilities. We will therefore allow Qwest to leave section 7.3.1.1.2 of the SGAT unchanged.

The reciprocal compensation section of the SGAT at section 7.3.1.1.2 states:

> If CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs, the rates from those tariffs will apply.

The ALJ found that CLECs still received considerable benefits under the present SGAT language "…because it gives the CLECs the ability to achieve the network efficiency they say they want. Given their willingness to purchase the spare capacity for economic reasons even at

the higher private line rate, the CLECs are in essence saving the cost of purchasing separate interconnection entrance facilities in addition to the private line facilities."[1] The Oregon Commission's ALJ stated: "I concur with the Washington ALJ and recommend that the language in Section 7.3.1.1.2 of the SGAT remain unchanged. Qwest should be found to have satisfied the requirements of the checklist item in this regard."[2]

In order to eliminate confusion between the August 2000 recommendation on reciprocal compensation, and the February 2001 interconnection trunking recommendation which could be interpreted to allow what the August decision specifically disallowed, at paragraph 70 of the more recent recommendation, the sentence which reads, "CLECs must pay these TELRIC rates for the DS1s used for interconnection, as long as they pay Qwest's private line DS1 rate for the portion used for private lines" should be removed. At the same time, consistent with the August recommendation for section 7.3.1.1.2, Qwest's SGAT at section 7.1.2.1 should not contain language sanctioning this form of ratcheting.

B. Interconnection at the Access Tandem (SGAT §7.2.2.9.6)

One of the key issues in dispute regarding Interconnection was the ability of a CLEC to interconnect in a way that severely stressed Qwest's network, specifically the indiscriminate use of the access tandem as the point of interconnection. Qwest is willing to accept in Washington the balance struck in the Draft Order, which allows such interconnection but also provides some safeguards. Specifically, Qwest is willing to provide the CLECs' interconnect at the access tandem, with the caveats set forth in the Draft Order, which Qwest believes are incorporated in the revised SGAT Section set forth below:

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[1] WUTC Revised Initial Order, Docket No. UT-003022 and UT-003040, In the Matter of the Investigation into US WEST Communications Compliance with Section 271 of the Telecommunications Act of 1966 ("*Revised Initial Order*") at ¶251.

[2] Id. at ¶14.

7.2.2.9.6 CLEC may interconnect at either the Qwest local tandem or the Qwest access tandem for the delivery of local exchange traffic. When a CLEC is interconnected at the access tandem and where there would be a DS1's worth of local traffic (512 BHCCS) between CLEC's switch and those Qwest end offices subtending a Qwest local tandem, CLEC will order a direct trunk group to the Qwest local tandem. ~~With the exception described in paragraph 7.2.2.9.6.1 below~~, As an alternative, the CLEC shall terminate ~~Exchange Service (EAS/Local)~~ traffic on Qwest ~~Local Tandems or~~ End Office Switches. When Qwest lacks available capacity at the access tandem, Qwest will arrange local tandem or end office interconnection at the same cost to the CLEC as Interconnection via the Qwest access tandem.

7.2.2.9.6.1 Qwest will allow 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.[3]

C. Forecasting and Deposits; Underutilization (SGAT §7.2.2.8.6 and §7.2.2.8.13)

Qwest has substantially modified its position on this issue since it was first discussed in Washington, and is currently in discussions with various CLECs to attempt to reach consensus. Given the importance of accurate forecasts, and especially the concern recognized in the Draft Order about the burden on ratepayers if Qwest is forced to build according to CLEC forecasts that result in unused or non-revenue bearing facilities,[4] Qwest respectfully requests that the Washington Commission reevaluate this issue in light of the progress reached in the other states' workshops.

[3] Change pursuant to *Draft Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & UT-003040, February 22, 2001 Workshop 2, at ¶95 ("*Draft Order*")

[4] *Draft Order* at ¶130

Qwest believes that the balance currently struck in the revised SGAT[5] that Qwest has proposed in subsequent workshops in other jurisdictions meets the concerns expressed in the Draft Order. Qwest has made two important changes: first, it has eliminated the need for *any* deposit in those situations where Qwest builds to the lower of the party's forecasts (the SGAT section initially proposed in Washington required, under some circumstances, a deposit even for building to the lower forecast); and second, it has strictly limited the requirement for a deposit only to those situations where a CLEC has consistently overforecast, i.e., has a history of *18 consecutive months* of overforecasting, yet still insists on Qwest building to the higher forecast.

It is important to keep in mind that once a CLEC submits its forecast, it has no obligation to order interconnection trunks consistent with its forecast. This could leave Qwest in the unacceptable position of having incurred cost to build new facilities, which then lay underutilized, or worse dormant or dark. On the other hand, the CLEC is not harmed in any way

[5] SGAT §7.2.2.8.6 as now proposed reads:

> 7.22.8.6 LIS Forecasting Deposits: In the event of a dispute regarding forecast quantities, Qwest will make capacity available in accordance with the lower forecast.

SGAT §7.2.2.8.13 as now proposed reads:

> 7.2.2.8.13 If a trunk group is consistently utilized at less than fifty percent (50%) of rated busy hour capacity each month of any consecutive three (3) month period, Qwest will notify CLEC of Qwest's desire to resize the trunk group. Such notification shall include Qwest's information on current utilization levels. If CLEC does not submit an ASR to resize the trunk group within thirty (30) calendar days of the written notification, Qwest may reclaim the unused facilities and rearrange the trunk group. When reclamation does occur, Qwest shall not leave the CLEC-assigned trunk group with less than twenty five percent (25%) excess capacity. Ancillary trunk groups are excluded from this treatment.

by submitting inaccurate forecasts. The *Draft Order* recognized that "the burden should be a balanced between the two parties, and so it is reasonable that there should be a deposit."[6]

CLECs' utilization rates of interconnection trunks **that they have ordered** is well under 50% in Washington and CLECs ordered a much smaller fraction of what they forecasted. This underutilization has already cost Qwest an unnecessary $300 million region-wide. If the forecasting practices of CLECs continues, this number will only grow.

As noted above, in the time since the Washington Workshop, Qwest has attempted to resolve the impasse by agreeing: (1) to build to the lower of the two forecasts (typically Qwest's) with no deposit; and (2) if a CLEC has failed to utilize its trunks for **18 continuous months** at a rate of at least 50%, Qwest will still build to CLECs higher forecast if CLEC pays a deposit, with the deposit being refunded according to actual trunk usage thereafter; and (3) in light of the more forgiving approach to deposits and forecasts,[7] require CLECs to allow Qwest to reclaim trunks that are significantly underutilized.[8]

1. Qwest is entitled to recover its costs.

While CLECs demand that Qwest build to forecasts, there is no financial mechanism by which Qwest can recover its cost of constructing facilities likely to go unused (based on a CLEC's history of 18 straight months of underutilization) without obtaining a deposit.[9] CLECs do not pay anything for a LIS trunk until they order a trunk. If the order never comes because the CLEC over-forecasts, Qwest builds facilities that the CLEC never utilizes, Qwest never gets paid, and ultimately businesses and consumers may be forced to bear the cost. Similarly, the

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[6] *Draft Order* at ¶129.

[7] See SGAT §7.2.2.8.6.1

[8] The revised language clarifying underutilization ratio calculations and pro rata deposit calculations was provided on March 20, 2001 to the intervenors as part of Qwest's revised SGAT filings.

nonrecurring charges associated with interconnection trunks, if charged or paid at all, are a fraction of the actual cost of constructing the facility. The presumption is that Qwest will be compensated for the trunks through customer usage and reciprocal compensation payments when the trunks become fully utilized. Thus, even when a CLEC orders a trunk, payment is not made in full unless and until the trunk is fully utilized. There can be no dispute that the Act entitles Qwest to recover its costs of providing interconnection.[10] Qwest's requirement that it receive some compensation for trunks it is asked to build ensures that Qwest recovers its costs as the Act requires.

2. The process should provide CLECs the incentive to give Qwest accurate forecasts

AT&T's second argument is that CLECs should be refunded the deposit if Qwest ever has occasion to use the facility. In other words, AT&T is trying to find ways to avoid being financially responsible for its inflated forecasts. More problematic, it is whipsawing Qwest. On the one hand, CLECs demanded that the SGAT contain provisions that Qwest build to their forecasts and reserve capacity. They argue this is necessary for historical reasons because in the past forecasted facilities have not always been available. AT&T makes this demand even though Qwest already has a tremendous incentive to act on CLEC's forecasts; namely, the very real and severe self-executing penalties through the PEPP if Qwest fails to provision trunks in a timely manner and in sufficient volume to avoid trunk blocking. Qwest agreed to the CLECs' demands in this regard.

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[9] Such deposits are commonplace. For example, CLECs pay a 50% deposit on every collocation order. Qwest is only seeking a deposit for interconnection trunks when the CLEC has a history of abusing the forecasting process.

[10] 47 U.S.C. § 252(d)(1)(A); *Iowa Utils. Bd. I*, 120 F.3d at 810 ("Under the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from [requesting carriers].")

On the other hand, CLECs argue against SGAT language and financial incentives to forecast accurately even though, as noted in Qwest's earlier briefs, CLECs' malfeasance on forecasting has cost Qwest $300 million region wide. This historical problem cannot be ignored. The repeated failure of CLECs to provide accurate forecasts should lead to payment of a deposit and, when a deposit is paid, CLECs should be financially responsible if, in the very order where a deposit is required, they continue their history of over-forecasting.

Accordingly, Qwest respectfully requests that the Commission approve the new proposed SGAT language that Qwest has submitted in workshops subsequent to the Washington workshop, since it strikes the balance that the *Draft Order*[11] was striving to achieve.[12]

CHECKLIST ITEM 1: COLLOCATION

Qwest is prepared to accept most of the resolutions of disputed issues as suggested by the ALJ, with a few exceptions. In the interests of brevity and space, Qwest will not reiterate prior arguments that support those decisions and conclusions reached by the ALJ that affirm Qwest's position, nor argue positions that, while it believes are justified, were not adopted by the ALJ's decisions on issues on which Qwest lost and is willing to concede.

1. Qwest's Collocation Products and Policies Comply With the SGAT

Qwest agrees with the ALJ that the rights and responsibilities of the parties have to be

[11] See generally, ¶¶129-130 of *Draft Order*.

[12] Qwest does not address in these comments the issues of IP Telephony (SGAT §§4.39 and 4.57) or the definition of a tandem switch (SGAT §4.11.2). With respect to the former, Qwest has agreed to remove the objectionable language, since it believes that the SGAT is not the appropriate vehicle to resolve that issue; with respect to the latter, Qwest's SGAT provides that in order for a CLECs switch to meet the definition of a tandem switch, the CLEC must switch traffic twice to receive both tandem switching and call termination compensation. Qwest believes that there was no basis for compensating carriers for services they do not perform, and that because Qwest was not asking for such compensation on its own behalf, CLECs should not receive it either. Since the Workshop, Qwest has agreed to amend the SGAT with respect to the geographical aspect of the definition of a tandem switch consistent with the resolution of this issue in the Washington Draft Order.

clearly spelled out and agreed upon, and that neither party should be given unilateral authority to modify the terms and conditions of collocation as contained in the SGAT. Nevertheless, CLECs have repeatedly objected to any requirement that they amend their interconnection agreements. For this reason, Qwest has committed to making new products available to CLECs without the need to amend their interconnection agreements, so long as a CLEC agrees to the terms and conditions under which the product is offered. The ALJ clearly appreciated the importance of not giving CLECs the unilateral right to use new product offerings without some agreement to terms and conditions.

Similarly, Qwest does not seek for itself the right to impose unilaterally new policies that are inconsistent with its obligations under the SGAT. The ALJ recognized that Qwest's policies and performance must be consistent with the SGAT. While the point may be self evident, it bears repeating: to the extent that interim policies or procedures that may be slightly at odds with the SGAT are circulated in draft (or even ostensibly final) form, Qwest is committed to ensuring that all such policies and procedures do in fact comply with the SGAT. Section 2.3 of the SGAT makes this quite clear:

> In cases of conflict between Qwest's IRRG product descriptions, methods and procedures, or a Technical Publication, and this Agreement, the rates, terms and conditions of this Agreement shall prevail over such IRRG product descriptions, methods and procedures, or a Technical Publication.

2. Qwest has no obligation to offer virtual collocation if the equipment can be installed using physical collocation.

The ALJ may have either misunderstood the factual basis of this particular dispute, or misapplied the provisions of the Act and applicable FCC requirements. Factually, there is no dispute that the CLECs will be allowed to install in remote premises the identical equipment

using physical collocation as they would using virtual.[13] The question therefore becomes one of whether Qwest is legally obligated to offer virtual collocation if the CLEC's collocation request can be satisfied through physical collocation.

CLEC's position demanding that Qwest allow them to use virtual collocation even when physical collocation is available completely fails to acknowledge the hierarchy established in the Act and by the FCC concerning collocation. Section 251(c)(6) states quite clearly that virtual collocation is required only "if the local exchange carrier demonstrates to the State commission that physical collocation **is not practical for technical reasons or because of space limitations**" (emphasis added).[14] Plainly, that is not the case here; there is no suggestion that the CLEC's equipment could be collocated virtually, but not physically.[15]

The purpose of this hierarchy is to allow the Incumbent some ability to protect its own equipment by requiring separation of the CLEC's equipment through physical collocation. Only in those circumstances where physical collocation is not available does the Act compromise this right, and require virtual collocation. In this situation, however, Qwest has waived its right to physically separate and protect its equipment in remote premises and agreed to allow CLECs to install any equipment using physical collocation that they would be able to install using virtual (i.e., place its equipment in the available space even if that space is not physically separated from Qwest's equipment).

The real dispute thus is not whether CLECs can collocate their equipment in a particular remote premises; if it can fit, Qwest will permit it to be installed. Rather, the dispute is about

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[13] Testimony of Ken Wilson, Oregon Workshop, UM 823, Feb. 8, 2001, at page 37, lines 17-18. To address those situations where space does not exist for physical (and thus by definition virtual) collocation, Qwest permits CLECs to order adjacent remote collocation: SGAT §8.4.6.1 and §8.4.6.2.

[14] See also 47 CFR § 51.321 (e).

[15] See footnote 1, *supra.*

which party will be responsible for the installation and maintenance of that equipment, and most importantly the provisioning of end user services. Nothing in the Act gives CLECs the right to shift this obligation unilaterally to Qwest. To the contrary, the burden to install and maintain CLEC collocation equipment is imposed on an ILEC only in the limited circumstances where the CLEC cannot perform those functions itself because physical collocation simply is not possible.

Perhaps unintentionally, the ALJ's draft order imposes an obligation that cannot be imposed under the Act: that Qwest install and maintain CLEC equipment and provision the CLEC's services in all of its remote premises, regardless of whether physical collocation is otherwise available. Qwest respectfully submits that such a result is not only not called for under the Act, but in fact conflicts with the Act's clear policy establishing a hierarchy for collocation under which virtual is available only if physical is unavailable.

3. Access to CLEC Collocation Facilities

Qwest has been working diligently with both AT&T and Covad to rewrite its access procedures to meet the CLECs' needs more effectively. Specifically, Qwest now provides 24 x 7 help desk coverage, and an 800 number with a "live" receptionist to field CLEC calls concerning access problems. Qwest believes that these revised procedures will remove any genuine question concerning its compliance with applicable FCC requirements in this regard.

4. Access to the NID

Qwest believes that it has resolved its issues with AT&T on this issue in subsequent subloop workshops.

5. Independent Obligation to Inventory Space

While the ALJ did not address the issue, Qwest submits that the FCC has made it clear that ILECs have no independent duty to inventory space for which no requests for collocation have been received. AT&T has not only failed to rebut Qwest's argument that the plain

interpretation of the FCC's requirement supports Qwest's position, but also that other RBOCs have been granted Section 271 approval using an identical approach.

When read as a unified whole, 47 C.F.R. §51.321(h) requires Qwest to generate a public website of those premises it learns cannot accommodate collocation. The process for developing the list of full premises is initiated, at its inception, from a request made by a CLEC with respect to a particular premise. Qwest maintains such a website. Qwest submits that there is nothing in the FCC regulation charging Qwest with an independent duty to inventory all premises, regardless of whether any CLEC has any interest in any particular premises. A fundamental rule of statutory interpretation is that courts must give, to the extent possible, weight and meaning to each and every word of a statute or rule.[16] AT&T's position renders the first two words of the regulation – "upon request" – meaningless, and therefore violates a fundamental principle of statutory construction. Qwest's duty under the clear language of the regulation is to report when space has been exhausted at a premises, based on information collected as a result of CLEC inquiries.

Had the FCC intended for these two sentences to operate independently of each other, it easily could have done so by separating them into distinct sections. Moreover, there would be no need for CLECs to request a space availability report, as contemplated by the regulation, if

[16] See e.g., *Food and Drug Adm. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 130 (2000) ("In determining whether Congress has specifically addressed [a] question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation"); *Brown v. Gardner*, 513 U.S. 115, 118, (1994) (The meaning – or ambiguity – of certain words or phrases may only become evident when placed in context. "Ambiguity is a creature not of definitional possibilities but of statutory context"); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) (It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."); *Gustafson v. Alloyd Co., 513 U.S. 561, 569 (1995); FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959) (A court must therefore interpret the statute "as a symmetrical and coherent regulatory scheme,. . ."); and "fit, if possible, all parts into an harmonious whole," see *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385, 389 (1959).

Qwest were required to maintain a website with the space availability of each and every premises. The website would already contain this information thereby making such a request unnecessary. AT&T's interpretation of this provision does not give weight to each portion of the regulation.

Furthermore, the FCC's approach in approving the Bell Atlantic-New York ("BA-NY") 271 application renders support to Qwest's position. In its application, BA-NY submitted an affidavit wherein it described its public posting as a listing of central offices that have been requested by CLECs: "BA-NY has posted on its website a listing of central offices where CLECs have requested physical collocation and the collocation options available in each of those offices . . . . Consistent with the FCC's recent collocation ruling, BA-NY will add central offices within 10 business days after BA-NY determines that space is not available. NY P.S.C. Tariff 914."[17]

6. Regeneration Costs

Qwest believes that the findings and conclusion of the ALJ depart from the intent of the legal authority cited by the ALJ,[18] as well as from this Commission's own decision concerning the CLECs' obligation to compensate Qwest for expenses incurred as part of collocation.[19]

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[17] Joint Declaration of Paul A. Lacouture & Arthur J. Troy at 35, Attached to Bell Atlantic New York Order.

[18] The ALJ's decision appears to have been based on precedent that addressed circumstances predating the Act, and under a wholly different context. In the FCC order cited by the ALJ, the issue dealt with interexchange access, and a completely different mechanism for cost recovery, rather than local interconnection which makes clear that the ILEC is entitled to recover its costs. Because the decision cited dealt with the modification of federal tariffs, rather than an interpretation of the requirements of the Act, and completely different underlying assumptions regarding cost recovery, including the ability of the FCC to create subsidies under the tariffs involved, Qwest submits that neither the result nor the rationale apply in the context of the 1996 Act.

[19] *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, Thirteenth Supplemental Order; Part A Order Determining Prices For Line Sharing, Operations Support Systems, And Collocation, Washington Utilities And Transportation Commission, Docket No. UT-003013. ("*Line Sharing Order*")

Qwest emphasizes that it has a duty under the SGAT to provide the most efficient means of interconnection possible.[20] This will ensure, to the maximum extent possible, that CLEC equipment is placed in such a manner as to avoid the need for signal regeneration. Where regeneration is unavoidable, however, CLECs should incur the cost of this service as part of the cost of collocation.

In its recent decision, the D.C. Court of Appeals indicated that "necessary," as it appears in the statute, means "what is required to achieve a desired goal."[21] When the distance from the physical collocation space leased by the CLEC or from the collocated equipment to the Qwest network is of sufficient length, regeneration is "necessary." CLECs are basing their opposition to Qwest's charges on an imaginary situation where Qwest supposedly elects to locate CLEC equipment in a more distant space that requires regeneration, even though closer options are available. There is nothing in the record to support this hypothetical, and this Commission recognized precisely this point in its recent decision on line sharing.[22] In a situation closely analogous to this issue, the Commission noted that the CLECs conceded that "not everyone can be within 25 feet of the MDF."[23] Similarly, in those situations where space has become extremely scarce, both CLECs and Qwest alike may find it necessary to locate equipment in more distant locations, and to paraphrase the observation in the line sharing decision, "not everyone can be located close enough to avoid regeneration."

If regeneration must be provided, the Act requires that it must be paid for. In the *Local Competition Order*, the FCC adopted specific rules to implement the collocation requirements of

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[20] SGAT Section 8.2.3.4 provides that…"Qwest will design the floor space in the most efficient manner possible within each Premises that will constitute CLEC's leased space." See also, SGAT §8.2.1.23.
[21] *GTE Service Corp. v. FCC*, 205 F.3d 416, 423-424 (DC Ct. App. 2000).
[22] *Line Sharing Order*.
[23] Id. at ¶211.

§ 251(c)(6).[24] The Eighth Circuit in *Iowa Utilities Bd. v. FCC* specifically upheld these rules.[25] The Eighth Circuit also found that: "[u]nder the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests."[26] As the Courts have recognized, the parties need to accept the fact that we are not dealing with an imaginary network or facility location where all collocation requests can be accommodated without the need for regeneration. Neither the law nor the constitution requires Qwest to provide services, including regeneration, to CLECs at no cost. Plainly stated, Qwest is entitled to recover its costs associated with collocation.

7. Microwave Collocation

Qwest does not disagree with the resolution of this issue. An appropriate tariff will be filed as required in the Commission's recent order, with terms and conditions incorporated into the SGAT.

8. Provisioning Intervals

There appears to have been some miscommunication on this issue.[27] While the parties reached general agreement as to the appropriate language for these SGAT sections[28] and even with respect to some of the intervals themselves[29] the parties remain at impasse over whether CLECs should be entitled to shortened intervals if they do not submit a forecast. For all of the reasons set forth in Qwest's initial brief, as well as the rationale that supported both the FCC's

[24] *Local Competition Order* at ¶¶555-617.
[25] 120 F.3d at 818.
[26] Id. at 810.
[27] In a March 8, 2001 letter addressed to the Commission, Qwest noted that an agreement on language had been reached in other workshops regarding certain SGAT sections. To the extent that the letter might have been interpreted as suggesting that agreement had been reached regarding *all* intervals for Section 8.4.2, or for *any* intervals for Sections 8.4.3 or 8.4.4, Qwest apologizes for any confusion; these issues remain at impasse. See Exhibit A.
[28] See generally, Qwest's Brief on Collocation at pages 23 to 31.
[29] Id.

and this Commission's decisions affirming the need for forecasts in order to provide the information and lead time critical to meet shortened intervals, Qwest respectfully submits that the provisions in its SGAT concerning the need for forecasts should be approved.

CHECKLIST ITEM 11: LNP

The only disputes remaining with regard to LNP concern the related issues of the timing of the disconnect of the switch translations and the apparent confusion over the relationship between coordinated and managed cuts.[30]

Number portability, unlike most checklist items, is in large part the responsibility of the CLEC. As noted in the *Draft Order*: "The BOC can be responsible only for its own processes,

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[30] While the draft order contains a recommendation concerning resolution of he impasse over intervals depending on the number ports involved, this issue has been resolved by the parties in subsequent workshops, as set forth in SGAT §10.2.5.2 as follows:

10.2.5.2 Standard Due Date Intervals. Service intervals for LNP are described below. These intervals include the time for Firm Order Confirmation (FOC). Orders received after 3:00 p.m. (mountain time) are considered the next business day. The following service intervals have been established for local number portability:

TelephoneNumbers

To Port	Interval*
Simple (1FR/1FB)	
1-5	3 business days (includes FOC 24 hour interval)
6-50	4 business days (includes FOC 24 hour interval)
51 or more	Project Basis
Complex (PBX Trunks, ISDN, Centrex)	
1-25	5 Business days (includes FOC 24 hour interval)
26 or more	Project Basis

* Intervals for LNP with Unbundled Loops shall be governed by Section 9.2.4.6 of the SGAT

AT&T's demand that Qwest develop and implement a hypothetical query or test system to ensure that AT&T has performed its own responsibilities in the number port was correctly rejected in the *Draft Order* at ¶214 ("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"); see also, id. at ¶212 ("[Qwest] 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").

not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment."[31] Qwest must pre-set a "trigger" which notifies Qwest's network that the number will soon be ported. For a CLEC-provided loop everything after that and up until the time of disconnect is in the hands of the CLEC. The CLEC determines the day on which it intends to perform its work and port the number. It is Qwest's practice to remove the switch translations and complete the service order in operational support systems very late (i.e. 11:59 p.m.) on the same day as CLECs due date. This is an industry accepted practice and ensures that updated information is sent to the 911 database, avoids double billing the customer, and updates other operational support systems.

One purpose of LNP is to mechanize the number porting process so that number changes flow through Qwest's systems, thereby eliminating the possibililty of human error. It is for this reason that CLECs must notify Qwest of their inability to port the number before 8:00 p.m. of the due date to provide 4 hours notification before the 11:59 p.m. disconnect because Qwest will have to manually intervene and stop the mechanized process for the disconnect service order processing.

CLECs, and AT&T in particular, raise several related issues with respect to the appropriate time and manner to disconnect the original Qwest line. AT&T's primary argument is that the disconnect should occur at 11:59 p.m. the ***day after*** the due date, instead of 11:59 p.m. the ***day of*** the due date. Qwest disagrees. Qwest submits that this will require manual intervention into an otherwise fully automated flow-through process and is likely to create more problems than the one AT&T hopes it will solve for them.

[31] *Draft Order* at ¶ 212.

Qwest's LNP disconnect process has worked well for all carriers that complete their end-user customer's service provisioning and activation of the number porting on time. Qwest's practice has also worked well for carriers that promptly notify Qwest – any time before 8:00 p.m. – that the CLEC will not complete its scheduled work on the due date. It is only CLECs that fail to complete their work as scheduled **and** fail to timely notify Qwest, and that may have their customer disconnected from Qwest before the number porting is complete. This occurs only two to three percent of the time.[32]

Nonetheless, in those instances where it is critical that close coordination occur between Qwest and the CLECs to ensure the number has ported before the disconnect occurs, Qwest offers a "managed cut." The managed cut process requires Qwest technicians to coordinate with the CLEC technicians during the porting process. Thus, the managed cut offers CLECs a manual process that guarantees that the loop cut-over is completed and the number port activitated prior to the disconnect. AT&T's complaint here is that it does not want to pay Qwest for the additional work required to perform the managed cut. Accordingly, Qwest offers CLECs both a fully automated flow-through-process (traditional LNP) and a manual coordination process (managed cuts) both of which allow the CLEC to stop number porting before the disconnect occurs. Qwest will discuss each of the related sub-issues below.

1. The Smooth Implementation of Number Portability is Primarily the CLECs' Responsibility. Qwest's Current Disconnect Policy of Disconnecting at 11:59 p.m. on the Due Date is Appropriate and Industry Practice (SGAT §10.2.5.3)

To port a number when the CLEC is providing the loop, all Qwest must do is pre-set an

[32] AT&T professes indignation over Qwest's supposed insensitivity to *any* situation in which a customer is left without dial tone. Qwest respectfully submits that the issue is not one of being insensitive, but rather being responsive. With even a minimal amount of coordination with its field technicians and a simple phone call, AT&T can ensure against any disconnection of switch translations even if AT&T fails to meet its stated time of loop provisioning.

AIN trigger on the telephone number in its switch, effectively notifying the network that the number is about to port. The CLEC must then connect its loop to the customer's inside wire and then activate the number port by sending a message to the regional database administered by NeuStar so calls will then be routed to the CLECs' switch to terminate to the customer. In essence, the capability to port numbers is pre-provisioned by Qwest, and Qwest relies on the CLEC to provide its service on time.

When the CLEC cannot complete its work as scheduled, all it must do to avoid problems is notify Qwest that it cannot complete the port before 8:00 p.m. on the due date. The CLEC has virtually all day to notify Qwest. The industry-accepted practice requires at least a minimum of four hours to stop both the processing of the disconnect service order and also stop the removal of the switch translations which disconnect the Qwest-provided service. This is exactly what Qwest provides. Qwest does, however, have people available to take calls even after 8:00 p.m. to attempt to manually interrupt the mechanized process and stop the disconnect or restore service, although it cannot guarantee that this will occur with less than four hours advance notice.

Qwest opposes AT&T's proposals to disconnect at 11:59 p.m. of the day ***after*** the port for several reasons. First, there is no authority that would require Qwest to take this extra measure in provisioning LNP. It is not required of Qwest as a prerequisite to compliance with this checklist item. Second, Qwest would incur substantial cost in providing this service and should be compensated by the CLEC who benefits from the service. Qwest should not be required to provide this costly service for free as AT&T requests. Third, AT&T's suggested alternative is contrary to accepted industry practice. Moreover, the National Emergency Number Association ("NENA") has raised concerns with the FCC's North American Numbering

Council's LNPA regarding updating of the 911 database when numbers are ported. A voluntary NENA standard requires that the 911 database be updated on the business day of Number Portability Administration Center ("NPAC") activation (i.e., service order completion date).[33]

Only two CLECs in Qwest's entire region have experienced difficulties with this process – AT&T is one.[34] Even including these two problem carriers, premature disconnects only occur two to three percent of the time. Although not a part of the record, since the workshop, Qwest has participated in a LNP trial in Utah that reduced this percentage substantially and is preparing to implement the improved communications processes throughout its region.[35] In addition, Qwest is now offering to perform the disconnect at 11:59 p.m. on the day of the port as its standard practice, rather than the previous standard disconnect time of 8:00 p.m. of the due date, to do what it can to improve the process and provide CLECs an additional four hours to notify Qwest to delay the due date or cancel the order and hold the disconnect. Beyond these added precautions taken by Qwest, Qwest asserts that it is the problem carriers like AT&T that must change their processes. Qwest's modified practice is appropriate and comports in all respects with the industry's practice and FCC requirements.

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[33] See NENA's Issue Statement to NANC LNP Administration Working Group, March 27, 2000, www.fcc.gov/ccb/Nanc and www.nena9-1-1.org.

[34] The *Draft Order* apparently assumed that AT&T's unsubstantiated claim that they were one of the only CLEC's ostensibly pursuing the residential market may have had some causal connection to AT&T's problems with number porting. Qwest respectfully submits that this is, at best, a leap of faith unwarranted by the facts. Simply because the port involves a residential customer does not prevent AT&T from knowing whether it has, or has not, provided its own loop by 8:00 p.m. on the day of the port. Likewise, there is nothing unique about a residential customer that prevents AT&T from picking up the phone anytime before 8:00 p.m. – or even after that time, since Qwest technicians will still be available to attempt to stop the port until the very last moment – and notifying Qwest that, for whatever reason, it is not going to provision that loop and requesting that the port not occur on that day. AT&T offered absolutely nothing by way of specific data to establish that the problems it was encountering were not of its own making, or could not be avoided by a simple phone call to Qwest.

[35] Since the start of the test, there have been no disconnections prior to the CLEC providing the loop.

Qwest respectfully disagrees with the notion that holding the switch translations until 11:59 p.m. on the day after the port is either appropriate or reasonably feasible on a large scale basis. As noted, CLECs have not pointed to any FCC approval of a Section 271 application that is conditioned on this "safety net." The reason for that is clear. When one considers the enormous amount of labor intensive resources associated with that additional step from Qwest's perspective (i.e., manually intervening in each and every one of the approximately 4,000 daily ports) to override what would otherwise be a smoothly functioning electonic flow-through, and compares it to the fairly minimal effort that a CLEC would be required to undertake simply to notify Qwest by 8:00 p.m. of the day the port was scheduled that it had not in fact occurred, the unfairness of making Qwest bear the burden of the CLECs failure to perform is obvious.[36]

2. The Provisions for a Coordinated Cut By Definition Cannot Apply When the CLEC Provides the Loop (SGAT §10.2.2.4)

As noted above, in addition to the traditional mechanized process that automatically ports the number and disconnects the Qwest line at 11:59 p.m. on the day of the port, Qwest also offers a manual process that ensures the CLECs' work is completed before the disconnect occurs. This process is called a "managed cut." During a managed cut, Qwest and the CLEC work together over the telephone to coordinate the CLECs' activation of the port and Qwest's disconnect process.

There apparently is confusion, however, regarding this issue in terms of some perceived disparity between "managed cuts" and "coordinated cuts." The two describe different but related

[36] *Initial Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & UT-003040, February 22, 2001, at ¶214 ("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"); see also, id. at ¶212 ("[Qwest] 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").

processes. The "coordinated" cut process (see SGAT section 10.2.2.4) refers to coordinating the provisioning of a Qwest loop with number portability. The "managed cut" process (see Section 10.2.5.4, referenced in SGAT section 10.2.2.4), however, is a process designed for porting a number where the CLEC, not Qwest, provides the loop.[37] In the case of a Qwest provided unbundled loop, a Qwest central office technician physically performs the "lift and lay" or loop cut-over. Whereas in the case of the CLEC-provided loop, no Qwest central office or field technician is involved in the loop provisioning associated with the port; the CLEC, not Qwest, performs the loop cut-over because it, not Qwest, provides the loop. While managed cuts and coordinated cuts are essentially the same in the sense of the number portability work performed, the physical loop cut-over is performed by the respective parties' technicians.

The *Draft Order* was premised on a misunderstanding of these distinctions by suggesting that the process involving coordinated cuts could somehow be made availabe to CLECs as a "lesser" option to a managed cut when the CLEC provides the loop.[38] That premise is factually incorrect. Unlike the situation involving a coordinated cut, Qwest cannot perform the loop cutover as anticipated in the managed cut provision of the SGAT, because it is the CLEC that

[37] It is important also to note that the FCC has given Section 271 Approval both to Bell Atlantic and SBC, neither of which provided dedicated coordination in circumstances involving a CLEC-provided loop. *BellAtlantic New York Order*, Appendix E, LNP Process, notes: "Scenario 2 – PORT OUT of the Bell Atlantic number NOT associated with an Unbundled Loop HOT CUT: . . .Since no hotcut is involved, once the 10 digit trigger is added to the BA telephone number, the CLEC has control of the porting activity and there should be no customer service interruption if the CLEC completes their work by 11:59 p.m. on the confirmed due date. . . . Basically the 10 digit trigger mitigates the need to closely co-ordinate the disconnect of the line with the CLEC, BA activates the 10 digit trigger at least 1 day prior to the porting due date; it is deactivated when the TN translations are removed from the switch. The 10-digit trigger has no other network purpose." Likewise, *SBC Texas Order*, Affidavit of Gary A. Fleming, Page 13, ¶24 states: "Specifically, SWBT has agreed to utilize an unconditional 10-digit trigger (UCT) feature for LNP porting orders. . . . This eliminates the need to coordinate SWBT's disconnect translation with the new service provider'switch translations and with any physical loop work that may be required." This same language was contained in the Affidavit of Gilbert Orozco in the recently approved Section 271 applications for Kansas and Oklahoma at 13, ¶23.

[38] *Draft Order* at ¶219.

provides the loop. In both cases, coordination is provided for the number port. The only difference is whose technician is performing the physical cutover of the loop. In both cases, the parties' technician would notify the appropriate Qwest center that the loop cut-over has been completed or if problems are experienced, that the service order needs to be delayed to a different date or canceled.

To reiterate: Qwest does provide the *same method* of coordination for number portability for CLEC provided loops as it makes available for Qwest unbundled loops, albeit by a different name. The Washington *Draft Order* correctly recognized that Qwest can only be responsible for its own processes, not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment.[39] The Washington Draft Order also correctly recognized that AT&T's proposal to include a requirement for an automated verification process to ensure that the CLEC has cut-over its loop and activated the port does not yet exist.[40]

Accordingly, Qwest respectfully requests that the discussion in the *Draft Order* requiring that Qwest make available coordinated cut procedures (which involve Qwest technicians providing the loop) in situations where it is the CLEC that actually provides the loop, be deleted.

RESALE

Qwest is prepared to accept most of the findings and recommendations of the *Draft Order* with respect to resale, save two: one of which is based on the incorrect premise that CLECs are subject to Qwest's tariffs for purposes of rebates or penalties (and the related provision that allows a windfall to CLECs seeking double recovery for the same incident); and

[39] *Draft Order* at ¶212.
[40] *Draft Order* at ¶214.

the other of which concerns commercial free speech.[41]

A. CLECs Are Not Subject to Qwest's Tariff (SGAT §6.3.1)

With all due respect, Qwest notes that a faulty understanding concerning the applicability of Qwest's tariff to reseller CLECs appears to form the basis for many of the conclusions reached in the *Draft Order* concerning Qwest's obligations to reseller CLECs. This faulty understanding is the notion that CLECs are subject to Qwest's tariff, which requires Qwest to provide credits to end-users or to pay penalties related to the quality of Qwest's service provided to its end-user. CLECs are not required to provide credits to their end users or to pay penalties under any Qwest tariff. Accordingly, the premise that it would be unfair to subject CLECs to the penalty or credit provisions under Qwest's tariff, yet not allow them to recover from Qwest the penalties or credits the CLEC provides to an end-user, is simply not correct.

Rather, to the extent that the Commission believes that Qwest should be responsible for any payments made or credits issued by CLECs to their end-users, that obligation arises out of the business relationship between the parties. Under that business relationship, Qwest is obligated to provide service that CLEC resells, and CLEC in turn is obligated to pay Qwest for that service, receiving as part of the bargain a wholesale discount. In the event a service failure occurs for which Qwest is at fault, a CLEC should be entitled only to the benefit of the bargain it has struck with Qwest – which inherently includes receiving service from Qwest at a wholesale discount. Accordingly, the most a reseller CLEC should be entitled to receive from Qwest in the event of a service failure is the price the CLEC paid for that service. To require Qwest to reimburse a CLEC more than the CLEC paid to Qwest is to award exemplary damages –

[41] Qwest agrees to implement the remainder of the SGAT matters resolved in the *Draft Order* consistent with the discussions contained in the *Order*. Qwest understands, however, that with regard to the issue of assignment of CSAs without subjecting the end-user to termination liability, Qwest understands that such assignments will occur without the wholesale discount. See *Draft Order* at ¶367.

damages that go beyond merely compensating a party by providing it with more than the benefit of its bargain. Such damages are without foundation in the business relationship entered into between Qwest and the CLEC, and run contrary to established notions of fairness – to the extent something more than compensatory damages is ever considered, it typically rquires a finding of something more than mere breach of contract.[42] Furthermore, there is no record in this proceeding upon which to base the award of such exemplary damages, and including such damages into the SGAT without any finding of facts typically associated with exemplary damages goes too far.

B. There is No Legal Justification For Providing CLECs With the Windfall of Double Recovery (SGAT §6.3.1)

The Commission is currently involved in the process of drafting a post-271 PEPP that will subject Qwest to fines and penalties for quality of service violations. Qwest continues to believe that it would be unreasonable and unduly punitive to subject Qwest to two penalties for the same service problem. Absent the limitation contained in Section 6.2.3.1(e), CLEC resellers would be permitted to obtain a windfall by recovering twice: once through the PEPP and once through the SGAT. There is simply no justification for allowing a double recovery to CLECs for the same service quality incidents. Section 6.2.3.1(f) avoids this improper windfall to CLECs through double-recovery.

[42] See *Dempere v. Nelson*, 76 Wash. App. 403, 410, 886 P.2d 219, 221 (1994) ("Washington does not recognize punitive damages. This has been settled Washington law since the rationale underlying punitive damages was first rejected over 100 years ago.") (citations omitted); Restatement of Contracts (Second) §355 (1981) ("Punitive damages are not recoverable for a breach of contract unless the conduct consisting of the breach is also a tort for which damages are recoverable.").

C. The Restrictions Set Forth in the SGAT on Marketing During Misdirected Calls Are Appropriate, and Should be Approved Expressly by the Commission (SGAT §§6.4.1; 6.6.3; and 12.3.6.1.5)

The *Draft Order* did not address the significant constitutional issue presented by the parties concerning Qwest's ability to exercise its rights of commercial speech in those situations where an end-user mistakenly calls Qwest.[43] Instead, the *Draft Order* simply observed that under the pick and chose option open to CLECs, a CLEC could simply opt into the restrictions contained in the Sprint Interconnection Agreement. Qwest respectfully submits that this resolution is not only inappropriate on the merits, but also likely to engender further problems in the future when such agreements expire.[44]

Qwest believes that there are strong legal and policy reasons not to restrict the ability of any service provider to engage in healthy competition. Qwest has already agreed to significant restrictions on its (or CLECs) ability to use misdirected calls as marketing opportunities, including an obligation to advise the caller that Qwest (or CLEC as the case may be) is not the service provider, and not to disparage the competitor or its product. These restrictions comport precisely with the significant body of case law developed in the U.S. Supreme Court in the context of commercial speech.[45]

Beyond what Qwest believes are compelling legal reasons not to restrict its (or a CLECs) ability to engage in commercial speech, there are overriding policy reasons for this Commission to make clear that competitors should be free to compete. Protection of commercial speech is vital not only to Qwest and CLECs as speakers, but also to consumers as the recipients of

[43] These provisions are contained generally in SGAT §§6.4.1, 6.6.3 and 12.3.8.1.5

[44] AT&T announced in the UNE-P workshop in Washington on Monday March 12 that they are concerned that the pick and choose provision has a limited shelf life – namely, the Sprint clause could expire with the Sprint contract, and CLECs would be left with no language to pick and choose.

[45] Qwest will not reiterate the legal precedents fully set forth in its earlier brief on this subject at pages 52 to 57, and hereby incorporates that discussion by reference.

information. Freedom of commercial speech allows the decision-makers (in this case, end-user customers) to be "intelligent" and "well-informed."[46] Qwest proposes to communicate only accurate, nonmisleading information, to which consumers need access to make informed decisions regarding who they will choose as their service provider. End-users who mistakenly contact Qwest will not be misled into believing that Qwest is the only local service carrier – to the contrary, they will already be using the services of another LEC.

The Commission's purpose and interest in regulating the provision of telecommunications services is to promote competition and protect consumers. The record in these proceedings is devoid of any showing that limiting the particular speech that Qwest wants to disseminate during customer-initiated calls to Qwest advances the state interest of fostering a competitive market or protecting consumers.

In fact, AT&T's proposed restrictions affirmatively *disserve* Washington's goals. Prohibiting Qwest or any other carrier for that matter from asking consumers whether they want to hear about Qwest's services will not further the operation of a competitive market. Similarly, prohibiting an accurate description of Qwest's telecommunications services, or the price of Qwest's service, does not foster a competitive environment. It is axiomatic that competition is furthered through the exchange of full information on price, discounts, conditions, and product availability because this type of information gives consumers the tools to make informed choices.

AT&T's position assumes that customers are incapable of deciding for themselves whether they even want to hear what Qwest has to say, and if told, might find the message persuasive. The Supreme Court repeatedly has rejected these paternalistic arguments as a basis

[46] *Virginia Pharmacy*, 425 U.S. at 765, 96 S. Ct. at 1827.

for sustaining bans on truthful, nonmisleading, and lawful commercial speech. They should likewise be rejected here.

More to the point, AT&T's position rests on speculation. AT&T did not even attempt to put anything into the record (beyond speculation) about the harms that could flow from Qwest marketing to CLEC customers. As the United States Supreme Court has instructed, "a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."[47] That burden "is not satisfied by mere speculation and conjecture,"[48] or by "anecdotal evidence and educated guesses."[49] Qwest's supposed advantage and so-called "captive audiences" are irrelevant under the First Amendment. Indeed, the classic case of a "captive audience" are customers of electric utilities, yet the Supreme Court has made clear that electric utilities have full First Amendment rights in communicating with their customers.[50]

In sum, the Commission should reject AT&T's proposed language that would limit Qwest's ability to market its products and services to end-users who call Qwest inadvertently. Regardless of the caller's intent, Qwest's ability to communicate truthful and nonmisleading information to him or her is protected by the First Amendment right to free commercial speech.

CONCLUSION

Qwest believes that, on balance, the *Draft Order* generally provides a reasoned justification for the decisions reached therein, notwithstanding the fact that Qwest respectfully disagrees with several of those decisions. There are a small number of exceptions, however,

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[47] *Edenfield*, 507 U.S. at 770-71, 113 S. Ct. at 1800 (1993).
[48] Id.
[49] *Rubin*, 514 U.S. at 490, 119 S. Ct. at 1593.
[50] See *Central Hudson*, 447 U.S. at 567-68, 100 S. Ct. at 2352 (1980) ("Even in monopoly markets, the suppression of advertising reduces the information available for consumer decisions and thereby defeats the purpose of the First Amendment . . .).

where Qwest strongly believes that the balance has not been properly struck, and requests that those situations be re-evaluated. These include situations where the SGAT itself has fundamentally changed (such as limiting the requirement for deposits only when CLECs demand that trunks be built to unrealistically high forecasts), or where the reasoning in the *Order* is based on factual or legal misunderstandings (for example, the notion that a coordinated cut could in some way act as a substitute for a managed cut, or that reseller CLECs are subject to Qwest's tariff). In these limited number of areas, Qwest respectfully requests that the *Draft Order* be modified accordingly.

Dated this 19th day of April, 2001.

Respectfully submitted,

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