

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH §271(C) OF THE) DOCKET NO. UT-003022
TELECOMMUNICATIONS ACT OF 1996.)
_____)

DIRECT TESTIMONY OF
LARRY B. BROTHERRSON
ON BEHALF OF
QWEST CORPORATION
REGARDING GENERAL TERMS AND CONDITIONS

May 16, 2001

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1

I. QUALIFICATIONS

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Larry B. Brotherson. I am employed by Qwest Corporation
5 ("Qwest") as a director in the Wholesale Markets organization. My
6 business address is 1801 California Street, Room 2350, Denver,
7 Colorado, 80202.

8 **Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

9 A. In 1979, I joined Northwestern Bell Telephone Company. I have held
10 several assignments within Northwestern Bell, and later within Qwest,
11 primarily within the Law Department. Over the past 20 years, I have
12 been a state regulatory attorney in Iowa, a general litigation attorney,
13 and a commercial attorney supporting several organizations within
14 Qwest. My responsibilities have included evaluating and advising the
15 company on legal issues, drafting contracts, and addressing legal issues
16 that arise in connection with specific products. With the passage of the
17 Telecommunications Act of 1996 ("the Act"), I was assigned to be the
18 attorney in support of the Interconnection Group. In that role, I was
19 directly involved in working with competitive local exchange carriers
20 ("CLECs") negotiating contract language implementing various sections
21 of the Act, including the Act's reciprocal compensation provisions. In
22 1999, I assumed my current duties as director of wholesale advocacy.

23 My current responsibilities include coordinating the witnesses for all
24 interconnection arbitrations and for hearings related to disputes over
25 interconnection issues. Additionally, I work with various groups within

1 the Wholesale Markets organization of Qwest to develop testimony
2 addressing issues associated with interconnection services.

3 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

4 A. I have two degrees: a Bachelor of Arts degree from Creighton University
5 in 1970; and a Juris Doctorate degree from Creighton University in 1973.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN WASHINGTON?**

7 A. I have filed testimony in the Sprint arbitration, Docket No. UT-003006, a
8 case that was submitted on the record. I also filed testimony in Docket
9 No. UT-003013; Kathy Malone subsequently adopted that testimony.

10 **II. PURPOSE OF TESTIMONY**

11 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR TESTIMONY.**

12 A. My testimony describes certain portions of the Statement of Generally
13 Available Terms and Conditions ("SGAT") for services provided by
14 Qwest to a CLEC pursuant to Section 252(f) of the Telecommunications
15 Act of 1996. The SGAT fulfills Qwest's obligations under Sections 222,
16 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act
17 and the Federal Communications Commission's ("FCC") rules and
18 regulations. As with any contractual arrangement between two parties,
19 there are certain standard provisions, often referred to as "boilerplate,"
20 that protect each party's rights under the contract. I will describe these
21 general terms and conditions that protect the rights and define the
22 obligations of each party that accepts the SGAT in lieu of negotiating an
23 interconnection agreement.

1

III. TESTIMONY

2 **Q. WHAT IS THE SGAT?**

3 A. The Statement of Generally Available Terms and Conditions (SGAT) is
4 an offer for an agreement between Qwest and any requesting CLEC. It
5 sets forth the terms, conditions and pricing under which Qwest will offer
6 network interconnection, access to unbundled network elements
7 (“UNEs”), ancillary services, and telecommunications services available
8 for resale within the geographical areas in which both Parties are
9 providing local exchange service at that time, and for which Qwest is the
10 incumbent Local Exchange Carrier within a State for purposes of
11 providing local telecommunications services. A copy of the proposed
12 language for the SGAT is attached to as Exhibit LBB-2.

13 **Q. WHICH SECTIONS OF THE SGAT WILL YOUR TESTIMONY**
14 **ADDRESS?**

15 A. In this testimony I generally address Sections 1, 2, 3, 5, 11, 16, 17, 18,
16 19, and 22. I will also address the Individual Case Basis (“ICB”)
17 provisions within Section 8, Collocation, and Section 9, Unbundled
18 Network Elements. Section 1 is General Terms of the SGAT, Section 2
19 is Interpretation and Construction, Section 3 is Implementation
20 Schedule, Section 5 is Terms and Conditions, Section 11 is Network
21 Security, Section 17 is Bona Fide Request Process, Section 18 is Audit
22 Process, Section 19 is Construction Charges, and Section 22 is
23 Signature Page.

24 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 1 OF THE SGAT.**

1 A. Section 1 of the SGAT is the General Terms section. This section
2 identifies the parties and describes the nature of the SGAT and the
3 procedure for accepting its terms and conditions. When the CLEC signs
4 the SGAT and delivers it to Qwest pursuant to the notice provisions, it
5 becomes the interconnection agreement between the Parties. Section 1
6 describes the method to modify or amend the interconnection agreement
7 after the interconnection agreement becomes effective.

8 **Q. WHAT IS THE METHOD TO MODIFY OR AMEND AN**
9 **INTERCONNECTION AGREEMENT AFTER IT BECOMES EFFECTIVE?**

10 A. I will first address when amendments to an interconnection agreement
11 are appropriate for UNE combinations and then if amendments should
12 be required for new service offerings in general. This latter issue is
13 sometimes referred to as "productization."

14 Qwest has identified pre-defined UNE combinations in the SGAT to
15 simplify the ordering and provisioning processes both for the CLEC and
16 for Qwest. In the UNE workshops Qwest agreed, however, that CLECs
17 are not limited to the pre-defined UNE combinations in the SGAT.
18 Pursuant to the terms of the SGAT, Qwest will provision UNE
19 combinations not specifically identified in the SGAT without requiring an
20 amendment to a CLEC's interconnection agreement, provided that all of
21 the individual UNEs making up the UNE combination are contained in
22 the CLEC's interconnection agreement. In this case, CLECs can order
23 other UNE combinations through the Special Request Process, which I
24 address below.

25 If Qwest develops additional UNE combination products, CLECs may
26 order these products without using the Special Request Process, but

1 CLECs may need to submit a New Product Questionnaire, formerly
2 known as a CLEC Questionnaire Amendment.

3 **Q. HAS THIS ISSUE BEEN RESOLVED IN WORKSHOPS IN OTHER**
4 **STATES?**

5 A. Yes, in other jurisdictions, this issue was resolved when Qwest agreed
6 to revise Section 9.23.2 to state as follows:

7 UNE Combinations are available in, but not limited to,
8 the following standard products: a) UNE-P in the
9 following form: (i) 1FR/1FB Plain Old Telephone
10 Service (POTS), (ii) ISDN – either Basic Rate or
11 Primary Rate, (iii) Digital Switched Service (DSS), (iv)
12 PBX Trunks, and (v) Centrex; b) EEL (subject to the
13 limitations set forth below). If CLEC desires access to
14 a different UNE Combination, CLEC may request
15 access through the Special Request Process set forth
16 in this Agreement. Qwest will provision UNE
17 combinations pursuant to the terms of this Agreement
18 without requiring an amendment to CLECs
19 interconnection agreement, provided that all UNEs
20 making up the UNE Combination are contained in
21 CLECs interconnection agreement. If Qwest
22 develops additional UNE combination products, CLEC
23 can order such products without using the Special
24 Request Process, but CLEC may need to submit a
25 CLEC questionnaire amendment before ordering such
26 products.

27 **Q. HAVE OTHER AMENDMENT ISSUES BEEN RAISED IN**
28 **WORKSHOPS?**

29 A. Yes. Qwest has also been exploring the need for formal amendments to
30 an interconnection agreement when it develops new interconnection
31 services, access to additional UNEs, additional ancillary services, or
32 telecommunications services available for resale. CLECs have
33 expressed concerns that they are unable to take immediate advantage

1 of new service offerings because of the necessity of executing and
2 gaining Commission approval of a formal amendment to an
3 interconnection agreement.

4 **Q. HOW IS QWEST ADDRESSING THIS CONCERN?**

5 A. About a year ago, Qwest adopted a concept called "parallel processing"
6 that includes amendments to non-SGAT-based interconnection
7 agreements. Under this concept, a CLEC with an existing
8 interconnection agreement may execute an amendment for a new
9 product. If the CLEC also executes a letter agreement setting forth the
10 rate, terms and conditions related to the new product, the CLEC may
11 begin placing orders as soon as the letter agreement is executed,
12 without waiting for the amendment to be approved. The letter
13 agreement addresses what will occur if the Commission does not
14 approve the amendment.

15 **Q. WHAT IS QWEST PROPOSING IN THIS PROCEEDING TO ADDRESS**
16 **THIS ISSUE?**

17 A. In an effort to continuously improve the services that it offers to CLECs
18 to support their entry into local markets, Qwest proposes a more
19 streamlined approach to offering new services via the SGAT. If a CLEC
20 adopts the SGAT as its interconnection agreement, no amendments will
21 be required to order new products and services.

22 **Q. HOW WILL QWEST INTRODUCE NEW PRODUCTS TO THE CLECS?**

23 A. Qwest will introduce new products through the product notification
24 process that is a part of the formal change control process ("CICMP"). It
25 will post the applicable terms and conditions for the new product in its

1 Template Agreement available at
2 http://www.qwest.com/wholesale/customerService/clec__nta.html. If a
3 CLEC is interested in this offering, it will need to first complete a New
4 Product Questionnaire for the service. Then by placing its orders, the
5 CLEC agrees to be bound by the specific rates, terms, and conditions in
6 the Template Agreement under the umbrella of its interconnection
7 agreement, but without the necessity of a formal amendment.

8 **Q. CAN A CLEC NEGOTIATE DIFFERENT TERMS AND CONDITIONS**
9 **FOR A NEW PRODUCT?**

10 A. Yes, the CLEC has the option of negotiating different terms and
11 conditions.

12 **Q. WHAT SGAT LANGUAGE IS QWEST PROPOSING TO**
13 **ACCOMMODATE ITS STREAMLINED PROCESS FOR NEW PRODUCT**
14 **OFFERINGS?**

15 A. To further facilitate a CLEC's provisioning of local services to its end
16 users while providing a framework that will protect the interests of both
17 parties, Qwest proposes the following new SGAT language as
18 subsection 1.7.1:

19 1.7.1 Amendments

20 1.7.1 Notwithstanding the above or anything
21 contained in Section 1 of this SGAT, if the
22 Commission orders, or Qwest chooses to offer and
23 CLEC desires to purchase, new Interconnection
24 services, access to additional Unbundled Network
25 Elements, additional Ancillary Services or
26 Telecommunications Services available for Resale
27 which are not contained in this SGAT, no formal
28 amendment to the Interconnection Agreement is

1 necessary. Qwest will notify CLEC of the availability
2 of these new services through the product notification
3 process through the Co-Provider Industry Change
4 Management Process ("CICMP"). CLEC must first
5 update the relevant section(s) of the New Product
6 Questionnaire to establish ordering and billing
7 processes. Then by placing its orders, CLEC agrees
8 to abide by all of the then current rates, terms and
9 conditions as set forth in the then current Template
10 Agreement applicable to such new services. If CLEC
11 wishes to negotiate an Amendment with different
12 terms and conditions than defined in the then current
13 Template Agreement, CLEC agrees to abide by those
14 terms and conditions until the Amendment is
15 approved and a parallel processing letter agreement
16 is executed.

17 **Q. HOW DOES THIS PROCESS APPLY TO A CLEC THAT CURRENTLY**
18 **HAS AN INTERCONNECTION AGREEMENT THAT DOES NOT HAVE**
19 **THIS PROVISION?**

20 A. If a CLEC currently has an interconnection agreement, the CLEC will
21 require only one amendment to its interconnection agreement to adopt
22 the proposed language contained in Section 1.7.1.

23 **Q. WHAT OTHER ISSUE ARE YOU ADDRESSING IN SECTION 1?**

24 A. Section 1 also includes the "pick and choose" language that has been
25 discussed by Qwest and CLECs in several state workshops. A CLEC
26 with existing interconnection agreements may use the "pick and choose"
27 provisions of Section 1.8 to amend its interconnection agreement by
28 adopting specific SGAT language. Qwest and CLECs have reached
29 agreement on the language of Section 1.8 in workshops held in several
30 states, including Arizona, Colorado, and Washington.

31

1 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 2 OF THE SGAT.**

2 A. Section 2 describes the contents of the SGAT, which include appended
3 attachments and agreements, e.g., Exhibit A - Rates. This section
4 describes the Existing Rules under which the SGAT was constructed
5 and allows amendment or modifications to the SGAT to the extent the
6 Existing Rules are changed, dismissed, stayed or modified.

7 **Q. WHAT DOES THE SGAT PROVIDE FOR IN THE EVENT THAT THERE**
8 **IS A CONFLICT BETWEEN THE PRODUCT CATALOGUE ("PICAT")**
9 **OR TECHNICAL PUBLICATION AND THE SGAT?**

10 A. Section 2.3 states that in cases of conflict between Qwest's PICAT,
11 formerly known as the Interconnect and Resale Resource Guide
12 ("IRRG"), product descriptions, methods and procedures, or a Technical
13 Publication, and the SGAT, the rates, terms and conditions of the SGAT
14 shall prevail over such product descriptions, methods and procedures, or
15 a Technical Publication. This language is as follows:

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

21 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 3 OF THE SGAT.**

22 A. Section 3 describes the requirements needed to jointly develop an
23 implementation schedule to begin the ordering process for services
24 offered under the SGAT.

25

1 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 5 OF THE**
2 **SGAT.**

3 A. Section 5 is captioned "TERMS AND CONDITIONS." This section
4 contains many of the provisions that define the business relationship
5 between the parties as opposed to provisions dealing with specific
6 network elements or interconnection elements. Section 5 is the largest
7 section that I address. It contains several subparts.

8 **Q. WHAT PROVISIONS ARE INCLUDED IN SECTION 5 'TERMS AND**
9 **CONDITIONS'?**

10 A. Terms and Conditions include the following Sections: Section 5.1
11 General Provisions; Section 5.2 Term of Agreement; Section 5.3 Proof
12 of Authorization; Section 5.4 Payment; Section 5.5 Taxes; Section 5.6
13 Insurance; Section 5.7 Force Majeure; Section 5.8 Limitation of Liability;
14 Section 5.9 Indemnity; Section 5.10 Intellectual Property; Section 5.11
15 Warranties; Section 5.12 Assignment; Section 5.13 Default; Section 5.14
16 Disclaimer of Agency; Section 5.15 Severability; Section 5.16
17 Nondisclosure; Section 5.17 Survival; Section 5.18 Dispute Resolution;
18 Section 5.19 Controlling Law; Section 5.20 Responsibility for
19 Environmental Contamination; Section 5.21 Notices; Section 5.22
20 Responsibility of Each Party; Section 5.23 No Third Party Beneficiaries;
21 Section 5.24 Referenced Documents; Section 5.25 Publicity; Section
22 5.26 Executed in Counterparts; Section 5.27 Compliance; Section 5.28
23 Compliance with the Communications Assistance Law Enforcement Act
24 of 1994; Section 5.29 Cooperation; Sections 5.30 Amendments; and
25 Section 5.31 Entire Agreement.

1 **Q. WILL YOU ADDRESS EACH OF THESE SECTIONS IN YOUR DIRECT**
2 **TESTIMONY?**

3 A. No. Many of the sections are self-explanatory and generally impose
4 reciprocal obligations on the parties. Most have not been the subject of
5 dispute in negotiated interconnection agreements. I will address the few
6 sections that have been of the most interest to CLECs, however.

7 **Q. SPECIFICALLY, PLEASE DESCRIBE THE PROVISIONS OF SECTION**
8 **5.3.**

9 A. Section 5.3 describes the requirement for a Proof of Authorization
10 ("POA") that demonstrates that the end user has requested a change of
11 its local service provider.

12 **Q. WHY DOES QWEST REQUIRE A PROOF OF AUTHORIZATION?**

13 A. The POA is required to ensure that end users are properly transferred
14 from one local service provider to another. The intent is to deter the
15 unauthorized transfer of end users between local service providers. The
16 FCC, as well as state commissions, have received many complaints
17 regarding slamming, the unauthorized transfer of an end user's
18 interexchange carrier to another interexchange carrier. This section will
19 avoid similar complaints for local services and complies with the FCC's
20 rules found 47 C.F.R. Section 64.100 et seq.

21 **Q. DOES THE FCC REQUIRE PROOF OF AUTHORIZATION FOR**
22 **INTEREXCHANGE CARRIERS?**

23 A. Yes. Qwest's requirement for POA is similar to the FCC's rules to
24 prevent slamming for long distance services. The FCC requires

1 confirmation that an end user has requested a change in carrier before
2 the change is executed.

3 **Q. WHY IS THERE A CHARGE FOR FAILURE TO PRODUCE A POA?**

4 A. The charge for failure to produce a POA is required because, as the
5 FCC has concluded, the most effective way to deter slamming is to
6 remove the profit from slamming. Qwest proposes a charge if the CLEC
7 or Qwest cannot provide a POA. This process should help to protect
8 end users in Washington from the billing and conversion headaches that
9 slamming causes.

10 **Q. WHAT OTHER POA CHANGES DOES QWEST PROPOSE?**

11 A. Qwest is proposing a change to this section so that the end user's
12 authorization can be provided electronically, for example, through e-mail.
13 Thus Qwest would change Section 5.3.1.1 to read as follows:

14 5.3.1 Where so indicated in specific sections of this
15 Agreement, each Party shall be responsible for
16 obtaining and having in its possession Proof of
17 Authorization ("POA"). POA shall consist of
18 documentation of the end user's selection of its local
19 service provider. Such selection may be obtained in
20 the following ways:

21 5.3.1.1 The end user's electronic or
22 written Letter of Authorization.

23 This new language is also set forth in Exhibit LBB-2, attached to this
24 testimony.

25

1 **Q. PLEASE DESCRIBE QWEST'S PROPOSED PROVISIONS ON**
2 **LIMITATION OF LIABILITY.**

3 A. Section 5.8 describes the Limitation of Liability provisions of the SGAT.
4 The Limitation of Liability language used to measure damages has been
5 universally used in services offered on the interstate level in FCC tariffs.
6 For example, AT&T, Sprint and MCI have all limited damages for
7 outages in their toll networks to the price of the service. CLECs also
8 routinely use this limitation as a standard measure of damages when
9 dealing with their own customers. Furthermore, state commissions have
10 historically endorsed this measure of damages.

11 **Q. PLEASE DESCRIBE THE SPECIFIC PROVISIONS OF QWEST'S**
12 **LIMITATION OF LIABILITY.**

13 A. As set forth below, these provisions at Section 5.8 reflect standard,
14 reciprocal rights and obligations typical of commercial limitations of
15 liability.

16 Section 5.8.2 states that there is no liability for indirect or consequential
17 damages, including lost profits.

18 Section 5.8.4 states that the limitation of liability does not apply to losses
19 caused by willful misconduct.

20 Section 5.8.5 states that the limitation of liability does not limit
21 obligations under the indemnity provisions, nor does it limit liability for
22 failure to make payments due under the Agreement.

1 Section 5.8.6 addresses the special situation of fraud. Qwest will not
2 take responsibility for CLEC losses due to fraud against the CLEC.

3 **Q. IS QWEST PROPOSING ANY CHANGES TO THE LIMITATION OF**
4 **LIABILITY PROVISIONS?**

5 A. Yes. In response to concerns raised by parties to workshop
6 proceedings in other states, Qwest proposes the following revisions to
7 the Limitation of Liability provisions.

8 First, Qwest proposes modification of Section 5.8.1, including the
9 deletion of the first sentence of Section 5.8.1 (which was not a limitation
10 of liability in any case), the addition of the substance of Section 5.8.3
11 into Section 5.8.1, and the addition of further clarifying language limiting
12 liability for both Parties. All of these provisions are reciprocal:

13 5.8.1 ~~Except for losses relating to or arising out of any act or omission in~~
14 ~~its performance of services or functions provided under this~~
15 ~~Agreement, each Party shall be liable to the other for direct~~
16 ~~damages for any loss, defect or equipment failure including without~~
17 ~~limitation any penalty, reparation or liquidated damages assessed~~
18 ~~by the Commission or under a Commission ordered agreement~~
19 ~~(including without limitation penalties or liquidated damages~~
20 ~~assessed as a result of cable cuts), resulting from the causing~~
21 ~~Party's conduct or the conduct of its agents or contractors. Each~~
22 ~~Party's liability to the other Party for any loss relating to or arising~~
23 ~~out of any act or omission in its performance under this Agreement,~~
24 ~~whether in contract, strict liability, or tort, including (without~~
25 ~~limitation) negligence of any kind, shall be limited to the total~~
26 ~~amount that is or would have been charged to the other Party by~~
27 ~~such breaching Party for the service(s) or function(s) not performed~~
28 ~~or improperly performed. Each Party's liability to the other Party for~~
29 ~~any other losses shall be limited to the total amounts charged to~~
30 ~~CLEC under this Agreement during the contract year in which the~~
31 ~~cause accrues or arises.~~

1 Qwest proposes that Section 5.8.2, the standard exclusion for
2 consequential damages, remain unchanged:

3 5.8.2 Neither Party shall be liable to the other for indirect, incidental,
4 consequential, or special damages, including (without limitation)
5 damages for lost profits, lost revenues, lost savings suffered by the
6 other Party regardless of the form of action, whether in contract,
7 warranty, strict liability, tort, including (without limitation) negligence
8 of any kind and regardless of whether the Parties know the
9 possibility that such damages could result.

10 As noted above, the substance of Section 5.8.3 is moved to Section
11 5.8.1. However, the last clause, governing liability for direct damage to
12 collocated equipment, is deleted for the sake of clarity and consistency.

13 Qwest proposes that Section 5.8.4 be slightly modified to conform to
14 existing tariff language:

15 5.8.4. Nothing contained in this Section 5.8 shall limit either Party's
16 liability to the other for willful ~~or intentional~~ misconduct.

17 Qwest proposes that Section 5.8.5 be modified to clarify that the
18 limitation of liability provisions are not intended to alter the Parties'
19 obligations under the Agreement's payment provisions:

20 5.8.5 Nothing contained in this Section 5.8 shall limit either Party's
21 obligations of indemnification as specified in ~~the Indemnity~~ Section
22 5.9 of this Agreement, nor shall this Section limit a Party's liability
23 for failing to make any payment due under this Agreement.

24 Finally, Qwest proposes two changes to Section 5.8.6 in order to render
25 the provision consistent with existing tariff provisions and to clarify the
26 Parties' respective responsibilities for costs incurred:

27 5.8.6 CLEC is liable for all fraud associated with service to its end-users
28 and accounts. Qwest takes no responsibility, will not investigate,
29 and will make no adjustments to CLEC's account in cases of fraud

1 unless such fraud is the result of any intentional act or ~~gross~~
2 ~~negligence~~ of Qwest. Notwithstanding the above, if Qwest
3 becomes aware of potential fraud with respect to CLEC's accounts,
4 Qwest will promptly inform CLEC and, at the direction and sole cost
5 of CLEC, take reasonable action to mitigate the fraud where such
6 action is possible.

7 **Q. DOES THE LIMITATION OF LIABILITY LANGUAGE USED TO**
8 **MEASURE DAMAGES REFLECT LANGUAGE USED WITHIN THE**
9 **TELECOMMUNICATIONS INDUSTRY?**

10 A Yes. The Limitation of Liability language used to measure damages is
11 universally used in services offered on the interstate level in FCC tariffs.
12 For example, AT&T, Sprint and MCI all limit damages for outages in their
13 toll networks to the price of the service. CLECs also routinely use this
14 as a standard measure of damages when dealing with their own
15 customers. Furthermore, state commissions have historically endorsed
16 this measure of damages.

17 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 5.9.**

18 A. Section 5.9 is the indemnity section of General Terms in the SGAT. This
19 section reflects standard, reciprocal indemnity provisions which govern
20 the relationship between the parties when a third party, an end user of
21 the telecommunications service, files an action or seeks recovery from
22 one of the contracting parties.

23 **Q. PLEASE DESCRIBE QWEST'S PROPOSED PROVISIONS ON**
24 **INDEMNIFICATION.**

25 A. Section 5.9 describes indemnity with respect to third party claims. This
26 section reflects standard, reciprocal indemnity provisions which govern
27 the relationship between the parties when a third party - in this case the

1 end user of the telecommunications service - files an action or seeks
2 recovery from one of the contracting parties.

3 **Q. PLEASE DESCRIBE THE SPECIFIC PROVISIONS OF QWEST'S**
4 **INDEMNIFICATION.**

5 A. Section 5.9.1.1 sets forth the parties' general obligation of
6 indemnification. Each party agrees to indemnify the other for claims that
7 result from its breach of the agreement, violation of applicable law, or
8 status of its employees.

9 Section 5.9.1.2 addresses the situation where the loss is alleged or
10 incurred by the end user of either party. Where an end user of one party
11 makes a claim based upon faulty services provided by the other party,
12 the party whose end user alleged or incurred the loss shall defend and
13 indemnify the other party against the loss, unless the loss was caused
14 by the willful misconduct of the indemnified party.

15 Section 5.9.1.4 addresses the provision of line sharing through the use
16 of a POTS splitter. Line sharing is addressed separately because it is
17 unique in that both companies provide a service over the same single
18 physical loop. Unlike other situations where one party or the other uses
19 the facility, here two companies each provide service over the same wire
20 at different bandwidths. In such a case, it is important to clarify who the
21 end user is and who the "immediate provider of telecommunications
22 services" is. The language is not intended to modify substantively the
23 rights and obligations set out in Section 5.9.

24 Sections 5.9.2 contains standard indemnification provisions regarding
25 notice, authority to defend and authority to settle.

1 Q. IS QWEST PROPOSING ANY CHANGES TO THIS SECTION OF THE
2 SGAT IN WASHINGTON?

3 A. Yes. In response to concerns raised by parties to workshop
4 proceedings in other states, Qwest proposes the following Indemnity
5 provisions, with the recent revisions noted.

6 5.9.1 ~~With respect to third party claims, t~~The Parties agree that the
7 following constitute the sole indemnification obligations between
8 and among the Parties: to indemnify each other as follows:

9 5.9.1.1 ~~Except for claims made by end users of one Party~~
10 ~~against the other Party, which claims are based on defective or~~
11 ~~faulty services provided by the other Party to the one Party, e~~Each
12 of the Parties agrees to release, indemnify, defend and hold
13 harmless the other Party and each of its officers, directors,
14 employees and agents (each an "Indemnitee") from and against
15 and in respect of any loss, debt, liability, damage, obligation, claim,
16 demand, judgment or settlement of any nature or kind, known or
17 unknown, liquidated or unliquidated including, but not limited to,
18 reasonable costs and expenses (including attorneys' fees), whether
19 suffered, made, instituted, or asserted by any ~~other party or person~~
20 or entity, for invasion of privacy, ~~personal~~bodily injury ~~to or~~ death of
21 any person or persons, or for loss, damage to, or destruction of
22 tangible property, whether or not owned by others, up to the total
23 amount that is or would have been charged for services not
24 performed or improperly performed, resulting from the Indemnifying
25 Party's ~~performance, breach of applicable law, or status of its~~
26 ~~employees, agents and subcontractors; or for breach of or~~ failure to
27 perform under this Agreement, regardless of the form of action,
28 whether in contract, warranty, strict liability, or tort including (without
29 limitation) negligence of any kind.

30 5.9.1.2 ~~Where the third party claim is made by (or through) an~~
31 ~~end user of one Party against the other Party, which claim is based~~
32 ~~on defective or faulty services provided by the other Party to the~~
33 ~~one Party, then there shall be no obligation of indemnity unless the~~
34 ~~act or omission giving rise to the defective or faulty services is~~
35 ~~shown to be intentional and malicious misconduct of the other~~
36 ~~Party, In the case of a loss alleged or made by an end user of~~
37 either Party, the Party whose end user alleged or made such loss
38 (Indemnifying Party) shall defend and indemnify the other Party

1 (Indemnified Party) against any and all such claims or loss by its
2 end users regardless of whether the underlying service was
3 provided or unbundled element was provisioned by the Indemnified
4 Party, unless the loss was caused by the willful misconduct of the
5 other (Indemnified) Party.

6 5.9.1.3 ~~If the claim is made by (or through) an end user and~~
7 ~~where a claim is in the nature of a claim for invasion of privacy,~~
8 ~~libel, slander, or other claim based on the content of a transmission,~~
9 ~~and it is made against a Party who is not the immediate provider of~~
10 ~~the Telecommunications Service to the end user (the indemnified~~
11 ~~provider), then in the absence of fault or neglect on the part of the~~
12 ~~indemnified provider, the Party who is the immediate provider of~~
13 ~~such Telecommunications Service shall release, indemnify, defend~~
14 ~~and hold harmless the indemnified provider from such claim.~~

15 5.9.1.4 For purposes of this Section 5.9.1.2, where the
16 Parties have agreed to provision line sharing using a POTS splitter:
17 "end user" means the DSL provider's end user for claims relating to
18 DSL and the voice service provider's end user for claims relating to
19 voice service. ~~claims made by end users or customers of one Party~~
20 ~~against the other Party" refers to claims relating to the provision of~~
21 ~~DSL services made against the Party that provides voice services,~~
22 ~~or claims relating to the provision of voice service made against the~~
23 ~~Party that provides DSL services; and "immediate provider of the~~
24 ~~Telecommunications Services to the end user or customer" refers~~
25 ~~to the Party that provides DSL service for claims relating to DSL~~
26 ~~services, and to the Party that provides voice service for claims~~
27 ~~relating to voice services. For purposes of this Section, "customer"~~
28 ~~refers to the immediate purchaser of the Telecommunications~~
29 ~~Services, whether or not that customer is the ultimate end user of~~
30 ~~that service.~~

31 5.9.2 The indemnification provided herein shall be conditioned
32 upon:

33 5.9.2.1 The Indemnified Party shall promptly notify the
34 Indemnifying Party of any action taken against the Indemnified
35 Party relating to the indemnification. Failure to so notify the
36 Indemnifying Party shall not relieve the Indemnifying Party of any
37 liability that the Indemnifying Party might have, except to the extent
38 that such failure prejudices the Indemnifying Party's ability to
39 defend such claim.

1 5.9.2.2 If the indemnifying Party wishes to defend against
2 such action, it shall give written notice to the indemnified Party of
3 acceptance of the defense of such action. In such event, ¶the
4 indemnifying Party shall have sole authority to defend any such
5 action, including the selection of legal counsel, and the indemnified
6 Party may engage separate legal counsel only at its sole cost and
7 expense. In the event that the indemnifying Party does not accept
8 the defense of the action, the indemnified Party shall have the right
9 to employ counsel for such defense at the expense of the
10 indemnifying Party. Each Party agrees to cooperate with the other
11 Party in the defense of any such action and the relevant records of
12 each Party shall be available to the other Party with respect to any
13 such defense.

14 5.9.2.3 In no event shall the indemnifying Party settle or
15 consent to any judgment pertaining to any such action without the
16 prior written consent of the indemnified Party. In the event the
17 indemnified Party withholds consent, the indemnified Party may, at
18 its cost, take over such defense, provided that, in such event, the
19 indemnifying Party shall not be responsible for, nor shall it be
20 obligated to indemnify the relevant indemnified Party against, any
21 cost or liability in excess of such refused compromise or settlement.

22 **Q. WHY IS LINE SHARING ADDRESSED SEPARATELY?**

23 A. Line sharing is unique in that both companies share ownership aspects
24 in a single physical loop. Unlike other situations where one party or the
25 other uses the facility here two companies each provide service over the
26 same wire at different bandwidths. In such case it is important to make
27 clear who is the customer of whom when applying the general indemnity
28 language.

29 **Q. PLEASE DESCRIBE QWEST'S PROPOSED PROVISIONS ON**
30 **INDIVIDUAL CASE BASIS ("ICB").**

31 A. Section 8 and 9 provide for Individual Case Basis ("ICB") provisioning for
32 certain collocation, dark fiber and high capacity loop rate elements. ICB
33 is defined in Section 4.24(a) as follows:

1 Each UNE or resale product marked as ICB will be
2 handled individually on a pricing and/or interval
3 commitment basis. Where ICB appears, CLEC
4 should contact their account team for pricing,
5 provisioning or maintenance information.

6 **Q. WHEN IS ICB USED?**

7 A. ICB pricing and provisioning are used for unique situations where
8 standard pricing, provisioning or maintenance are not appropriate and
9 specific analysis is necessary. For example, ICB provisioning or pricing
10 is provided for in Sections 8.3.1.11.2 (provisioning intervals and costs for
11 direct connection collocation terminations), 9.2.2.3.1 (provisioning and
12 pricing of certain unbundled fiber and high-capacity loops), 9.2.2.4
13 (installation intervals for 25 or more unbundled loops for the same end
14 user address), 9.2.4.5 (service intervals in exceptional situations),
15 9.3.3.7 (non-recurring charges for certain types of MTE terminal subloop
16 access), 9.6.1.2 (access to SONET add/drop multiplexing), 9.7.3.3.1
17 (termination of unbundled dark fiber at an outside plant structure), and
18 9.23.3.7.2.12.7 and 9.23.3.9 (certain aspects of provisioning EEL-Ps).

19 **Q. IS ICB A NEW PROVISION DESIGNED SPECIFICALLY FOR THE**
20 **SGAT?**

21 A. No. ICB provisioning and pricing is a familiar concept to many of the
22 CLECs, such as AT&T, WorldCom and Sprint, as well as to the
23 Commission itself. ICB has been present in state tariffs since the 1980s,
24 and many of the CLECs have been buying products with ICB pricing and
25 provisioning for many years. Qwest's Colorado tariffs currently provide
26 for ICB pricing for services such as protective connecting arrangements,
27 information and billing services, physical collocation, and avoidance.
28 Qwest Colorado tariffs also provide for ICB provisioning intervals for

1 services such as diversity, avoidance, large quantities of access
2 services ordered at the same time, and requests for longer than
3 standard intervals.

4 **Q. WHAT IS THE SPECIAL REQUEST PROCESS?**

5 A. The Special Request Process ("SRP") arose out of earlier workshops
6 where CLECs requested an abbreviated version of the Bona Fide
7 Request ("BFR") process that could be used for requests that do not
8 require a comprehensive technical feasibility analysis. Various
9 provisions within Section 9 (including Sections 9.11.1.2, 9.11.1.5,
10 9.11.1.12.5, 9.11.2.1 and 9.23.3.10) reference Qwest's Special Request
11 Process ("SRP"), which is described at length in Exhibit F of the SGAT.
12 Exhibit F is attached hereto as Exhibit LBB-3. This process is designed
13 for requests for additional switch features, for combinations of unbundled
14 network elements that Qwest is not currently offering as standard
15 products, and for unbundled network elements that have been defined
16 by the FCC or this Commission as a network element to which Qwest
17 must provide unbundled access but for which Qwest has not created a
18 standard product, such as UDIT and EEL between OC-3 and OC-192.

19 **Q. HOW IS A SPECIAL REQUEST PROCESSED?**

20 A. A Special Request may be submitted in writing on the appropriate Qwest
21 form, which is located on Qwest's web site at
22 <http://www.qwest.com/wholesale/preorder/bfrsrprocess.html>. Qwest
23 shall acknowledge receipt of the Special Request within five business
24 days of receipt. Qwest shall respond with a preliminary analysis,
25 including costs and timeframes, within 15 business days of receipt of the
26 Special Request. In the case of UNE combinations, the preliminary
27 analysis shall include whether the requested combination is a

1 combination of elements that are ordinarily combined in the Qwest
2 network. If the request is for a combination of elements that are not
3 ordinarily combined in the Qwest network, the preliminary analysis shall
4 indicate to CLEC that it should use the BFR process if CLEC elects to
5 pursue its request.

6 **Q. WHAT HAPPENS IF A SPECIAL REQUEST DOES NOT MEET THE**
7 **CRITERIA FOR SRP?**

8 A. Requests for services that do not meet the criteria for SRP, such as any
9 request that requires an analysis of technical feasibility and possible
10 legal analysis to determine whether the requested service is required
11 under the Act, shall be treated as a BFR and will follow the BFR Process
12 set forth in Section 17. I address the BFR later in my testimony. If the
13 analysis reveals that the requested service is not available through the
14 SRP, the request may be processed through the BFR process. The
15 Special Request form will be used to initiate the BFR process.

16 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 11 OF THE**
17 **SGAT.**

18 A. Section 11 describes the responsibilities for both parties to the SGAT to
19 insure security, protection and prevention of harm or damage to each
20 other's network. This section is to cooperatively create a safe
21 environment for both parties' personnel and equipment, and insure
22 network security and integrity.

23 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 16 OF THE**
24 **SGAT.**

1 A. Section 16 describes the telephone number referral announcement that
2 is placed on an end user's telephone number whenever an end user
3 does not retain its original telephone number when it changes local
4 service from Qwest to a CLEC or a CLEC to Qwest. With number
5 portability now in place, this is used on a limited basis.

6 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 17 OF THE**
7 **SGAT.**

8 A. Section 17 describes the Bona Fide Request ("BFR") process. This
9 process allows a CLEC to request an interconnection service, access to
10 an unbundled network element or ancillary service that is not already
11 available in the SGAT.

12 **Q. WHEN IS A BONA FIDE REQUEST REQUIRED TO ORDER SERVICES**
13 **OFFERED IN THE SGAT?**

14 A. No, a BFR is not required to order any service offered in the SGAT.

15 **Q. WHEN IS A BONA FIDE REQUEST REQUIRED?**

16 A. A Bona Fide Request is required when a CLEC requests a network
17 interconnection, access to unbundled network element or ancillary
18 service that is not already available in the SGAT. However, certain
19 elements are not required to be unbundled unless they conform to
20 Section 251(d)(2) these requests will be considered on a case by case
21 basis.

22

1 **Q. HOW DOES A CLEC SUBMIT A BFR?**

2 A. The CLEC obtains the BFR form from a number of sources, including
3 the account manager or the Internet, and, works together with Qwest
4 personnel, if needed, to prepare and submit the form to Qwest.

5 **Q. HOW LONG IS THE BFR PROCESS?**

6 A. Within a maximum 15 day interval from the receipt of the BFR, Qwest
7 will acknowledge its receipt and review the BFR for completeness.
8 Within a maximum of 21 days from the receipt of the BFR and all
9 necessary information, Qwest will determine technical feasibility and
10 whether the requested service is required under the Act. Qwest will
11 provide price quotes to the CLEC within 45 days after the CLEC is
12 notified that the service is technically feasible and is required under the
13 Act.

14 **Q. WHAT IS INCLUDED IN THE PRICE QUOTE?**

15 A. The BFR quote will include, at a minimum, a description of each
16 interconnection service, network element, or ancillary service, the
17 quantity to be provided, any interface specifications, and the applicable
18 rates (recurring and nonrecurring) including the separately stated
19 development costs and construction charges of the interconnection
20 service, unbundled network element or ancillary service and any
21 minimum volume and term commitments required. Additionally, Qwest
22 will provide the CLEC with the time frames for the provisioning of the
23 request.

24 **Q. IS IT NECESSARY FOR THE CLEC TO AMEND ITS AGREEMENT TO**
25 **INCLUDE SERVICES PROVIDED UNDER THE BFR PROCESS?**

1 A. No. The BFR process is incorporated into and therefore, a part of, the
2 Agreement.

3 **Q. ARE REQUESTS FOR ADDITIONAL BFR SERVICES CONSIDERED**
4 **NEW REQUESTS?**

5 A. Yes. The services provided via the BFR process are developed on a
6 case-by-case basis and, therefore, the circumstances and costs
7 associated with it are specific to the request. The response timeline for
8 an "identical" BFR service may be streamlined but the individual
9 circumstances for the engineering and costs may not be similar at all.
10 Even a request to add another bay of equipment may not be similar to a
11 prior request at the same location if additions are required.

12 **Q. IS THE BFR USED FOR THE ICB PROCESS?**

13 A. The BFR is not used in lieu of the ICB process. The ICB process is
14 used to determine rates or provisioning intervals for services already
15 available in the SGAT. The ICB process does not require the analysis
16 that a service requested through the BFR process requires.

17 **Q. IS THE BFR PROCESS USED FOR SPECIAL REQUESTS?**

18 A. No. The BFR is also not used in lieu of the SRP. The SRP is designed
19 for requests for additional switch features that are currently available in a
20 switch or can be available from the switch vendor, for combinations of
21 defined unbundled network elements that Qwest is not currently offering
22 as standard products, and for unbundled network elements that have
23 been defined by the FCC or this Commission as a network element to
24 which Qwest must provide unbundled access but for which Qwest has
25 not created a standard product. The BFR process requires analysis for

1 technical feasibility and for legal analysis to determine whether the
2 requested service is required under the Act. This specific difference
3 between the SRP and BFR process allows a faster response time for the
4 Special Request services. The SRP is specifically designed to
5 accommodate CLEC requests that were made during various
6 workshops.

7 **Q. PLEASE DESCRIBE THE PROVISIONS OF SECTION 18 OF THE**
8 **SGAT.**

9 A. Section 18 describes the audit process to allow either party to the SGAT
10 to request billing and performance information to validate billing and
11 performance indicators. Either party may request this information or
12 authorize an independent auditor that is mutually agreed to by the
13 parties to undertake the audit. All information received or reviewed by
14 the auditor(s) are considered proprietary information.

15 The new Section 18 would read as follows:

16 Section 18.0 - AUDIT PROCESS

17 18.1 "Audit" shall mean the comprehensive review of:

18 18.1.1 Data used in the billing process for services
19 performed including reciprocal compensation, and facilities
20 provided under this Agreement; and

21 18.1.2 Data relevant to provisioning and maintenance for
22 services performed or facilities provided by either of the Parties for
23 itself or others that are similar to the services performed or facilities
24 provided under this Agreement for Interconnection or access to
25 unbundled loops, ancillary and finished services.

26 18.1.3 "Examination" shall mean an inquiry into a specific
27 element of or process related to the above. Commencing on the
28 Effective Date of this Agreement, CLEC may perform Examinations
29 as CLEC deems necessary.

1 18.2 The data referred to above shall be relevant to any performance
2 indicators that are adopted in connection with this Agreement,
3 through negotiation, arbitration or otherwise. This Audit shall take
4 place under the following conditions:

5 18.2.1 Either Party may request to perform an Audit.

6 18.2.2 The Audit shall occur upon thirty-(30) business days
7 written notice by the requesting Party to the non-requesting Party.

8 18.2.3 The Audit shall occur during normal business hours.

9 18.2.4 There shall be no more than two Audits requested by
10 each Party under this Agreement in any 12-month period. Either
11 Party may audit the other Party's books, records and documents
12 more frequently than twice in any 12-month period (but no more
13 than once in each quarter) if the immediately preceding audit found
14 previously uncorrected net variances, inaccuracies or errors in
15 invoices in the audited Party's favor with an aggregate value of at
16 least two percent (2%) of the amounts payable for the affected
17 services during the period covered by the Audit.

18 18.2.5 The requesting Party may review the non-requesting
19 Party's records, books and documents, as may reasonably contain
20 information relevant to the operation of this Agreement.

21 18.2.6 The location of the Audit shall be the location where
22 the requested records, books and documents are retained in the
23 normal course of business.

24 18.2.7 All transactions under this Agreement which are over
25 twenty-four (24) months old will be considered accepted and no
26 longer subject to Audit. The Parties agree to retain records of all
27 transactions under this Agreement for at least 24 months.

28 18.2.8 Each Party shall bear its own expenses in connection
29 with conduct of the Audit or Examination. The requesting Party will
30 pay for the reasonable cost of special data extractions required by
31 the Party to conduct the Audit or Examination. For purposes of this
32 section, a "Special Data Extraction" means the creation of an
33 output record or informational report (from existing data files) that is
34 not created in the normal course of business. If any program is
35 developed to the requesting Party's specification and at that Party's
36 expense, the requesting Party will specify at the time of request
37 whether the program is to be retained by the other Party for reuse

1 ~~for any subsequent Audit or Examination. occasioned by the Audit,~~
2 ~~proved that the expense of any special data collection shall be born~~
3 ~~by the requesting Party.~~

4 18.2.9 The Party requesting the Audit may request that an
5 Audit be conducted by a mutually agreed-to independent auditor.
6 Under this circumstance, the costs of the independent auditor shall
7 be paid for by the Party requesting the Audit.

8 18.2.10 In the event that the non-requesting Party requests
9 that the Audit be performed by an independent auditor, the Parties
10 shall mutually agree to the selection of the independent auditor.
11 Under this circumstance, the costs of the independent auditor shall
12 be shared equally by the Parties.

13 18.2.11 The Parties agree that if an Audit discloses error(s),
14 the Party responsible for the error(s) shall, in a timely manner,
15 undertake corrective action for such error(s). All errors not
16 corrected within thirty (30) business days shall be ~~escalated to the~~
17 ~~Vice President level~~ resolved pursuant to the Dispute Resolution
18 Process.

19 18.2.12 Neither the right to examine and audit nor the right to
20 receive an adjustment will be affected by any statement to the
21 contrary appearing on checks or otherwise, unless the statement
22 expressly waiving the right appears in writing, is signed by the
23 authorized representative of the Party having that right, and is
24 delivered to the other Party in a manner sanctioned by this
25 Agreement.

26 18.2.13 This Section will survive expiration or termination of
27 this Agreement for a period of two years after expiration of
28 termination of the Agreement.

29 18.3 All information received or reviewed by the requesting Party or the
30 independent auditor in connection with the Audit is to be considered
31 Proprietary Information as defined by this Agreement. The non-
32 requesting Party reserves the right to require any non-employee
33 who is involved directly or indirectly in any Audit or the resolution of
34 its findings as described above to execute a nondisclosure
35 agreement satisfactory to the non-requesting Party. To the extent
36 an Audit involves access to information of other competitors, CLEC
37 and Qwest will aggregate such competitors' data before release to
38 the other Party, to insure the protection of the proprietary nature of
39 information of other competitors. To the extent a competitor is an

