BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE PETITION FOR ARBITRATION OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST AND TCG SEATTLE WITH QWEST CORPORATION PURSUANT TO 47 U.S.C. § 252(b)	**Docket No. UT-033035**

QWEST CORPORATION'S RESPONSE TO PETITION FOR ARBITRATION

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CONTENTS

1. Pursuant to section 252(b)(3) of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, (the "Act") and the *Interpretive and Policy Statement* issued by the Washington Utilities and Transportation Commission ("Commission") in Docket No. UT-960269,[1] Qwest Corporation ("Qwest") hereby submits this response to the Petition for Arbitration ("Petition") of AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively, "AT&T").

2. As AT&T accurately describes in its Petition, the parties have engaged in extensive negotiations over the proposed terms and conditions of successor interconnection agreements to replace the 1997 agreement between AT&T Communications of the Pacific Northwest, Inc. and Qwest and the 1996 agreement between TCG Seattle and Qwest, both of which are currently in effect in Washington. Upon the conclusion of this arbitration proceeding the parties will execute two separate, but identical, successor agreements. The parties' negotiations, encompassing hundreds of hours in both telephonic and face-to-face meetings, have resulted in the resolution of numerous issues. Indeed, because negotiations were largely successful in achieving the objective of resolving issues completely or narrowing the scope of the disputes considerably, the parties extended by mutual agreement the effective negotiation request dates several times in order to continue negotiations.

3. The parties have not foreclosed further negotiations while this arbitration is pending. Qwest reserves the right to submit revised language for the proposed interconnection agreement to reflect any further negotiations as well as to reflect any changes in existing law during the pendency of this arbitration that may affect the appropriate terms and conditions of the parties' relationship.

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[1] *Implementation of Certain Provisions of the Telecommunications Act of 1996*, Dkt. No. UT-960269, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 1996) ("*Interpretive and Policy Statement*").

I. BACKGROUND

A. The Parties and Negotiation History

4. Qwest does not dispute AT&T's general statement of the parties nor its general summary of the history of the negotiations. To clarify, however, the proposed interconnection agreements will apply only within the geographical areas in which Qwest is the "incumbent local exchange carrier" in Washington as that term is defined in the Act. Qwest agrees that AT&T has timely filed its Petition and that the nine-month period for this Commission to decide the disputed issues, as set forth in section 252(b)(4)(c) of the Act, expires on November 30, 2003.

B. Resolved Issues

5. The proposed interconnection agreement attached to the Petition as Exhibit C contains the contract language negotiated by the parties. AT&T accurately states that Exhibit C was jointly prepared by the parties for AT&T to file with its Petition. Likewise, AT&T accurately states that the terms and conditions in the great majority of the proposed interconnection agreement are agreed upon.

II. UNRESOLVED ISSUES

6. Qwest and AT&T resolved through negotiation numerous substantive issues to their mutual satisfaction. Qwest and AT&T began their negotiations for successor interconnection agreements against the backdrop of their extensive experience in the 271 process – not only in Washington but in every state in Qwest's local service territory. In these 271 proceedings, AT&T exhaustively scrutinized the positions and precise contract language of Qwest's SGATs and serially brought its critique of Qwest's positions and Qwest's contract language to every state commission for a determination that the language and position favored by AT&T should be ordered into Qwest's SGATs.

7. With fresh state commission orders addressing every disputed contract issue AT&T (and other CLECs) raised during the 271 process, Qwest believed that its contract negotiations with AT&T should be generally informed by these commission orders, with allowance for any

changed law, changed facts, or reevaluation of a party's business concerns.[2] Here, where relevant, the Commission's 39th Supplemental Order in Docket Nos. UT-003022 and UT-003040 approving Qwest's 271 application for the state of Washington generally informs Qwest's positions on unresolved issues.[3]

8. As set forth in the Petition, a Joint Issues List, appended to the Petition as Exhibit D, was jointly developed, reviewed, edited and approved by the parties for AT&T to file with the Petition. There are no unresolved issues being withheld from arbitration. With respect to Exhibit A (the price list) to the proposed interconnection agreement, the parties are continuing to discuss Exhibit A with the objective of reaching a mutually satisfactory resolution of any potential issue related to a specific rate in Exhibit A. To date, AT&T has not identified any dispute with respect to Exhibit A.

III. POSITIONS OF THE PARTIES

9. As set forth more fully below, Qwest respectfully submits that Qwest's proposed language on the unresolved issues meets the requirements of the Act and other applicable law, reflects sound public policy, and should be adopted in full here.

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[2] In addition to the commission orders cited by AT&T, the negotiations were influenced by the orders issued by the state commissions of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah and Wyoming on the record developed in the multi-state proceeding jointly undertaken by these commissions.

[3] *In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996; In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Dkt. Nos. UT-003022, UT-003040, 39th Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS, Change Management, and Public Interest (July 1, 2002).

A. Issue 1: AT&T's Ability to Obtain Services from Agreement or Tariff (Section 1.9.1)

10. The parties have resolved Issue 1.[4] Qwest has agreed to include the following AT&T-proposed language in the parties' agreement at Section 1.9.1:

> **1.9.1** Separate from such adoption, CLEC may choose to place orders from a Qwest Tariff. If CLEC does so, but does not choose to incorporate such Tariff terms into this Agreement, such orders shall be governed by the Tariff terms and conditions. When ordering from a Qwest Tariff, if the ordering process used by CLEC and the information contained in the order are both the same as for orders placed under this Agreement, Qwest may not be able to recognize that the order is made under a Qwest Tariff. If Qwest is not able to recognize this distinction, CLEC and Qwest will mutually agree to a process by which CLEC orders placed under a Qwest Tariff can be distinguished by Qwest as being placed under a Qwest Tariff rather than under this Agreement.

B. Issue 3: Definition of Tandem Office Switch (Section 4)

11. Issue 3 concerns the definition of tandem office switches. This definition impacts the rate at which Qwest will compensate AT&T for traffic that AT&T terminates on behalf of Qwest. In the *Local Competition Order*,[5] the FCC determined that the costs of transporting and terminating traffic could vary depending on whether tandem switching is involved.[6] Accordingly, the

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[4] The numbers that Qwest and AT&T have assigned to the unresolved issues are the same issue numbers that Qwest and AT&T are using in their pending interconnection arbitrations in other states. Assigning all issues the same numbers from one state to another will provide a common numbering framework for the parties and the state commissions and should avoid the potential confusion that could arise from assigning the same issue different numbers in different states. Gaps in the issue numbers occur because some issues the parties listed as unresolved in other states are resolved in Washington.

[5] First Report and Order, *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-98, 95-185, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

[6] *Id.* ¶ 1090.

FCC stated that state commissions could adopt different rates for tandem-switched traffic to reflect the additional costs associated with tandem switching.

12. The FCC's rules implementing the *Local Competition Order* state that:

> Where the switch of a carrier other than an incumbent LEC *serves* a geographic area comparable to the area *served* by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. [7]

13. The rule does not state that a CLEC is entitled to tandem compensation solely because its switch "*is capable of serving* a geographic area . . . ." Nevertheless, in its proposed definition of Central Office Switch in Section 4, AT&T seeks to classify switches as tandem switches based on capability alone. Under AT&T's approach, when a switch is "*capable of*" serving a comparable geographic area as Qwest's tandem, it is to be classified as a tandem switch.[8] This position is also inconsistent with FCC Rule 51.711(a)(3), which provides that if a non-ILEC switch "serves" a geographic area comparable to that served by the ILEC's switch, the ILEC's tandem rate will apply to the non-ILEC switch. AT&T is reading the term "serves" out of this rule

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[7] 47 C.F.R. § 51.711(a)(3) (emphasis added).

[8] Loop extension technology, sometimes called subscriber loop carrier, enables a single switch to serve extensive geography, and the FCC contemplated that deployment of this or other loop extension technology by the CLEC to qualify for tandem switching compensation. *Local Competition Order* ¶ 1090. AT&T claims, however, that the basis for demonstrating whether a switch is "capable of serving" a comparable geographic area should not be use of loop extension or any other technology. Instead, AT&T believes it only needs to show that the NXXs assigned to the AT&T switch can be locally dialed from many exchanges. In AT&T's view, if its switch had been assigned NXXs from a wide area (comparable to Qwest's tandem), regardless whether AT&T actually provides telecommunications service to subscribers working and living in those areas or has deployed facilities in those areas, then Qwest should pay the tandem rate for all calls terminated by that switch.

AT&T's position encourages CLECs to hoard precious numbering resources to qualify their switches for compensation at higher rates. CLECs may obtain NXXs without any intention of actually using the numbers to provide service to customers in the NXX areas, yet still receive tandem switching compensation. Thus, AT&T's proposed definition further exacerbates the dilemma posed by "virtual NXX," discussed under Issue 5, by enabling AT&T to obtain even higher reciprocal compensation payments without actually serving any customers in certain geographic areas.

and attempting to replace it with "capable of serving." Moreover, such a standard removes any incentive for AT&T to actually provide services to customers across a wide area. Under AT&T's proposal, AT&T could maintain switches with tandem *capabilities* without ever offering services to customers across a broad area while charging Qwest tandem switching rates as if it had widely dispersed customers.[9]

14. Qwest's definition is consistent with the language in Qwest's Washington SGAT and this Commission's ruling in the 271 proceedings. In fact, at the request of AT&T and WorldCom, the Commission specifically determined that a switch must "serve" a comparable geographic area in order to qualify for tandem compensation:

> [A] terminating party need only demonstrate that its switch *serves* a geographic area comparable to that of Qwest's tandem switch to receive

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[9] AT&T relies upon a determination of the FCC's Wireline Competition Bureau ("WCB") in the *Verizon Virginia Arbitration Order* for its position. *See* Memorandum Opinion and Order, Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, CC Dkt. Nos. 00-218, 00-249 and 00-251, 17 FCC Rcd 27039 (2002) ("*Verizon Virginia Arbitration Order*"). In the *Verizon Virginia Arbitration Order*, the WCB was sitting in the place of the Virginia state commission in an arbitration between Verizon and several Virginia CLECs because the Virginia commission declined to exercise its authority to arbitrate the parties' dispute. The WCB was serving as the arbitrator to resolve the disputes as then-framed between the parties before it for that particular arbitration only based on the evidence those parties presented and its interpretation of existing FCC rules. The WCB was not conducting an industry-wide rulemaking proceeding. Moreover, the WCB's decision did not change the straight-forward language of the FCC rule. Furthermore, other state commissions and at least one federal court, *MCI Telecommunications, Inc. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768 (E.D. Mich. 1999), have declined to adopt AT&T's proposed standard. The Texas Commission held that the competitive LEC must demonstrate it is actually serving, rather than merely capable of serving, the comparable geographic area in order to receive the tandem rate. *See Re Reciprocal Compensation*, Dkt. No. 21982, 203 P.U.R. 4th 419 (Tex. P.U.C. July 14, 2000). The California Commission also rejected a speculative "capable of serving standard." *See* Decision No. 02-11-032, *Application of AT&T Communications of California, Inc. (U 5002 C), for Arbitration of an Interconnection Agreement with Pacific Bell Tel. Co (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application No. 00-01-022, 2002 Cal. PUC LEXIS 690 (Cal. P.U.C. Nov. 7, 2002).

the tandem switching rate and tandem transmission rate in addition to the end office termination rate.[10]

15. Qwest's position is also preferable as a policy matter. Adopting AT&T's language would send the wrong message to CLECs and provide no incentive to CLECs to build out facilities to different local calling areas. In establishing the standard that a CLEC must serve a comparable geographic area to receive tandem switching compensation, the FCC plainly intended that CLECs should not qualify for tandem compensation regardless of the networks they have deployed. Had it intended for all CLEC switches to be entitled to tandem compensation as a matter of course, it would simply have said so. AT&T's proposed language renders Rule 51.711(a)(3) meaningless and would enable a CLEC to reap a tandem switching windfall. If CLECs are able to receive the higher tandem compensation even though they do not have the ability to return a call to the originating local calling area, they would have no incentive to build facilities to local calling areas. Tandem switching compensation is designed to provide an incentive to build facilities in order to actually serve a comparable area. AT&T's proposed definition undercuts that incentive.

16. Qwest's definition tracks the language for 47 C.F.R. § 51.711(a)(3) and is consistent with the language in Qwest's Washington SGAT. As such, Qwest's proposed definition of "Tandem Office Switch" should be adopted.

C. Issue 5: Definition of Exchange Service (Section 4)

17. Issue 5 concerns the definitions of "Exchange Service" or "Extended Area Service (EAS)/Local Traffic," which is local traffic that originates and terminates within the same local calling area. Local calling area boundaries in Washington are set by the Commission.[11]

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[10] Twenty-Fifth Supplemental Order; Order Granting In Part and Denying In Part Petitions for Reconsideration of Workshop One Final Order, *The Investigation Into U S WEST Communication's Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996; U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act,* Dkt. Nos. UT-003022, UT-003040, ¶¶ 15-19 (Feb. 8, 2002)(emphasis added).

18. Qwest proposes that the parties define "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" in Section 4 of their agreement as "traffic that is originated and terminated within the same Local Calling Area as determined for Qwest by the Commission." AT&T proposes to define Exchange Service traffic as that "originated and terminated within the same Local Calling Area as determined by the calling and called NPA/NXXs." AT&T's proposed language would allow AT&T to convert calls that should be and currently are treated as toll calls into local calls solely based upon the assignment of the NPA/NXX. Clearly, this proposed definition would render the local calling areas established by this Commission irrelevant in determining whether or not a call is local.

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[11] The FCC recognizes and has preserved the state's role in defining local calling areas. For example, in the *Local Competition Order*, the FCC held that except for traffic to or from a CMRS network, "state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), *consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges*." *Local Competition Order* ¶ 1035 (emphasis added). The FCC further concluded that as a legal matter, transport and termination of local traffic is different from exchange access service. "The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic." *Id.* ¶ 1033. The *ISP Remand Order* made no change in this regime. *See* Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-98 & 99-68, FCC 01-131, 16 FCC Rcd 9151 ¶ 37 n.66 (2001) ("*ISP Remand Order*"), *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) ("In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms") (citing *Local Competition Order*). Thus, this Commission's definitions of local calling areas and local exchange service govern the proper definition for the parties' agreement and require adoption of Qwest's definition.

1. AT&T's proposed definition of Exchange Service would impermissibly redefine local calling areas, eliminate access charges due to Qwest and require that reciprocal compensation be paid by Qwest.

19. AT&T proposes to treat so-called "virtual NXX" ("VNXX")[12] calls as if they were local, despite the fact that they originate and terminate in different local calling areas. By virtue of assigning VNXX numbers to a customer in calling areas in which the customer has no physical presence, AT&T can establish for its customer a "local presence" in every local calling area in the LATA or state. And, under its proposed definition, calls to or from that customer would be treated as local calls even though the calls are not originated or terminated within the same local calling area. Thus, AT&T's proposal creates LATA-wide local calling for customers to whom AT&T assigns VNXX numbers, and is a near functional equivalent of AT&T's now-withdrawn LATA-wide local calling proposal.[13]

20. AT&T's proposal is inconsistent with the Commission's rules, which state that a "'Local calling area' means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges."[14] All calls to rate centers that incur long distance charges are outside the Commission-defined local calling area. Thus, when AT&T assigns an NPA-NXX code

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[12] A "virtual NXX" occurs when a CLEC assigns a "local" rate center code to a customer physically located in "foreign" rate center. For example, a customer physically located in Spokane might order a phone number from a CLEC with an Olympia NXX rate center code so that calls from Spokane end users to customers in Olympia would "appear" to be "local" when, in fact, they are not. While the Commission had opened a docket to consider VNXX issues, the docket was recently closed without making any statement or ruling. *See* Notice of Docket Closure, *Developing an Interpretive or Policy Statement Relating to the Use of Virtual NPA/NXX Calling Patterns*, Dkt. No. UT-021569 (July 21, 2003).

[13] Until recently, AT&T took the position that the parties' new interconnection agreement must abolish local calling areas and provide for LATA-wide local calling. AT&T has since withdrawn this novel and unsupportable position.

[14] WAC 480-120-021.

in a rural Washington exchange to an AT&T customer physically located in a different, metropolitan exchange, AT&T unilaterally extends the Qwest local calling area to the metropolitan exchange for those Qwest customers in the rural exchange who call the AT&T customer in the metropolitan exchange and vice versa. Under the Commission's rules, Qwest, not AT&T, establishes each exchange by geographic area.[15] There is no authority for AT&T's proposed definition that would expand local calling areas far beyond those authorized by the Commission for either Qwest or AT&T.

21. In impermissibly redefining Qwest's local calling areas, AT&T's proposed definition also would eliminate the charges that are due to Qwest for calls that terminate outside the local calling area and require instead that Qwest pay reciprocal compensation for such calls. Again, there is no authority for converting charges that would be *due from AT&T to Qwest* into reciprocal compensation charges *payable by Qwest to AT&T*. Similarly, AT&T provides no analysis or study of the impact its proposed definition would have upon access revenues that support universal service, or the impact upon other Washington carriers, such as independent local exchange carriers or other interexchange carriers. Against this backdrop, there is no evidence that AT&T's definition is in the public interest or nondiscriminatory. Accordingly, it should be rejected here.

2. Qwest's proposed definition is consistent with the Act's definitions.

22. Not only does Qwest's proposed definition track the Commission's definition of local calling area and longstanding classification of exchange by geographic area, but Qwest's definition is entirely consistent with the definitions in the 1934 Communications Act, as amended by the Telecommunications Act of 1996 ("the Act"), which set forth the regulatory framework within which all carriers have long operated. The Act defines "exchange access," "telephone exchange service" and "telephone toll service" as follows:

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[15] *Id.* ("'Exchange' means a geographic area established by a company for telecommunications service within that area.")

> The term "exchange access" means the offering of access to *telephone exchange services* or facilities for the purpose of the origination or termination of telephone toll services.
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> * * *
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> The term "telephone exchange service" means (A) service *within a telephone exchange,* or within a connected system of telephone exchanges *within the same exchange area* operated to furnish to subscribers intercommunicating service of the character *ordinarily furnished by a single exchange,* or (B) *comparable service* provided through a system of switches, transmission equipment, or other facilities (or a combination thereof) by which a subscriber can originate and terminate a telecommunications service.[16]
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> * * *
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> The term "telephone toll service" means telephone service *between stations in different exchange areas* for which there is made *a separate charge* not included in contracts with subscribers for exchange services.[17]

23. Under the Act, telephone exchange service is a service provided to subscribers that enables a particular subscriber to originate *and* terminate calls *within a single exchange* or within an area *ordinarily served by a single exchange,* or *comparable* service. Telephone toll service, in contrast, applies when a customer places a call to end users located beyond the calling area covered by Qwest's basic exchange service tariff. Such calls are subject to additional charges designed to compensate the toll provider or exchange access providers for carrying calls over what could be considerable distances. Here, unambiguously, AT&T is attempting to change the mapped local service area that Qwest offers its customers for monthly basic residential and business local exchange services. Unambiguously, the effect of AT&T's proposed definition is to eviscerate local calling areas and re-classify inter- and intraLATA toll calls as local calls.

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[16] 47 U.S.C. § 153(47) (emphasis added).

[17] *Id.* § 153(48) (emphasis added).

24. In summary, Qwest's proposed definition of "Exchange Service" aligns with Commission rules and federal law and should be adopted here.

D. Issue 17: Reduction of Direct Trunked Transport Rate Element When 2-Way Trunking is Established for Reciprocal Compensation and Exclusion/Inclusion of ISP-Bound Traffic (Sections 7.3.1.1.3.1 and 7.3.2.2.1)

25. Issue 17 involves whether a relative use factor should apply to interconnection facilities that are used to carry unidirectional, non-local, non-telecommunications traffic bound for the Internet in the same way the factor applies to local traffic mutually exchanged between the parties. Although Qwest acknowledges that the Commission recently required the application of such a relative use factor in Qwest's arbitration with Level 3,[18] Qwest continues to oppose this requirement as inconsistent with governing law and sound public policy. Moreover, AT&T's proposals in this proceeding raise issues that were not present in the Level 3 arbitration and which support a different determination here.

1. Internet-bound traffic should not be included in the relative use factor applicable to interconnection facilities.

26. First, the adoption of Qwest's language on the relative use factor issue is consistent with, and compelled by, the Act and FCC rulings relating to Internet traffic. Qwest's interconnection rights and obligations are defined in sections 251(a)(1) and 251(c)(2) of the Act. Section 251(a)(1) imposes on Qwest and other ILECs the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers," and section 251(c)(2) explains that this obligation includes providing interconnection "for the transmission and routing of telephone exchange service and exchange access." There is a critical relationship between this obligation and section 252(d)(2), the Act's cost recovery provision. Indeed, in

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[18] *Petition for Arbitration of an Interconnection Agreement between Level 3 Communications, LLC, and Qwest Corporation Pursuant to 47 U.S.C. § 252*, Dkt. No.UT-023042.

defining the ILECs' cost recovery rights, section 252(d)(2) expressly refers to the obligation of state commissions to establish "just and reasonable" rates "for the interconnection of facilities and equipment *for purposes of subsection (c)(2) of section 251*."[19] Accordingly, section 252(d)(1) of the Act requires the Commission to set rates for interconnection and network element charges that are "just and reasonable" and based on "the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element.'[20]

27. Second, in its *ISP Remand Order*, the FCC ruled that Internet traffic is properly characterized as interstate access[21] and has repeatedly ruled that Internet traffic is not subject to the reciprocal compensation obligations imposed by section 251(b)(5) of the Act.[22] Nevertheless, the

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[19] 47 U.S.C. § 252(d)(2) (emphasis added).

[20] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 810 (8th Cir. 1997), *aff'd in part, rev'd in part, remanded, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (emphasis added).

[21] *See* Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-86, 99-68, 16 FCC Rcd 9151 ¶ 57 (2001) ("*ISP Remand Order*") (emphasis in original); *see also id.* ¶¶ 52, 65.

[22] *See, e.g.*, Memorandum Opinion and Order, *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Dkt. No. 02-67, 17 FCC Rcd 12275 ¶ 160 (2002) ("AT&T and XO also argue that Verizon's refusal to pay reciprocal compensation for Internet-bound traffic violates checklist item 13. The Commission previously determined that whether a BOC pays reciprocal compensation for Internet-bound traffic 'is not relevant to compliance with checklist item 13'") (footnotes omitted); Memorandum Opinion and Order, *Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Dkt. No. 02-35, 17 FCC Rcd 9018 ¶ 272 (2002) ("We reject US LEC's assertions regarding reciprocal compensation for ISP-bound traffic. . . . [U]nder a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2)") (footnotes omitted; emphasis added); Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Dkt. No. 01-138, 16 FCC Rcd 17419 ¶ 119 (2001) ("[w]e continue to find that whether a carrier pays such compensation is 'irrelevant to checklist item 13'") (footnotes omitted); Memorandum Opinion and Order, *Application of Verizon New York, Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Dkt. No. 01-100, 16 FCC Rcd 14147 ¶ 67 (2001) ("[T]he

argument that AT&T should obtain dedicated transport for free rests on FCC Rule 51.703(b), a reciprocal compensation rule promulgated pursuant to section 251(b)(5) which appears under the title "Reciprocal compensation obligations of LECs."[23] Under the FCC orders relating to this issue, Rule 51.703(b) does not apply to Internet traffic and incumbent LECs are permitted, therefore, to charge for facilities on their side of the POI that carry this traffic.

28. Third, the policies that led the FCC to phase out the payment of intercarrier compensation for Internet traffic requires the exclusion of Internet traffic from the relative-use calculation.[24] In the *ISP Remand Order*, the FCC found that the payment of reciprocal compensation for Internet traffic under the Act causes uneconomic subsidies and improperly creates incentives for CLECs to specialize in serving ISPs to the exclusion of other customers.[25] Specifically, the FCC ruled that reciprocal compensation for this traffic: (1) leads to improper subsidies and uneconomic pricing signals; (2) gives CLECs distorted incentive to specialize in serving only ISPs to the exclusion of residential and other customers; and (3) improperly ignores the ability of CLECs to collect costs from their ISP customers.[26] As the Colorado, Nebraska, and Oregon commissions have ruled, the same concerns that led the FCC to phase out reciprocal

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Commission has found that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2); therefore, whether Verizon modified its SGAT to apply reciprocal compensation to Internet traffic is not relevant to compliance with checklist item 13.") (footnotes omitted).

[23] In its recent order granting Qwest's application to provide InterLATA services in nine states, the FCC again stated that Internet traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d)(2). *See* Memorandum Opinion and Order, *Application of Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Dkt. No. 02-314, FCC No. 02-332 , 17 FCC Rcd 26303 at ¶ 324 (2002) ("*Qwest 9-State Order*").

[24] *ISP Remand Order* ¶¶ 77-82.

[25] *Id.* ¶¶ 67-76.

[26] *Id.* ¶¶ 66-70.

compensation for Internet traffic require excluding Internet traffic from relative use calculations in this case.[27] Moreover, AT&T's proposal to shift onto Qwest all the costs of dedicated transport ignores the fact that AT&T can recover the costs of these facilities from its ISP customers consistent with the principles the FCC established in the *ISP Remand Order*.[28]

2. AT&T's proposals go far beyond the issues decided in the Qwest/Level 3 arbitration.

29. As noted above, Qwest continues to believe that relative use factor associated with dedicated interconnection facilities should not include Internet-bound traffic as a matter of law and policy. However, even assuming that the issues raised in the Qwest/Level 3 arbitration are settled in Washington, AT&T's proposal raises issues that differ from those considered in the Level 3 arbitration.

30. Unlike AT&T, Level 3 did not propose the transformation of historical definitions of "exchange service" and the inclusion of so-called VNXX service. Rather, Level 3 accepted Section 7 of Qwest's SGAT, challenging only the dedicated transport relative-use language. By

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[27] *See* Initial Commission Decision, *Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Qwest Corporation*, Dkt. No. 00B-601T, Decision No. C01-312, at 31-36 (Colo. P.U.C. March 30, 2001); Decision on Applications for Rehearing, Reargument, or Reconsideration, *Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Qwest Corporation*, Dkt. No. 00B-601T, Decision No C01-477, at 6-8 (Colo. P.U.C. May 7, 2001); Order – Interconnection Agreement Approved as Modified, *Level 3 Communications, LLC of Broomfield, Colorado, Seeking Arbitration to Resolve Issues Relating to an Interconnection Agreement with Qwest Corporation, of Denver, Colorado,* Application No. C-2780, at 3-8 (Neb. P.S.C. April 22, 2003); Commission Decision, *Petition of Level 3 Communications LLC, for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, with Qwest Corporation Regarding Rates, Terms, and Conditions for Interconnection*, Dkt. No. ARB 332, at 3-5 (Ore. P.U.C. Sept. 13, 2001), *aff'd*, Opinion and Order, *Level 3 Communications, LLC v. Public Utility Commission of Oregon, et al.*, CV 01-1818-PA (U.S. Dist. Ct. Or. Nov. 25, 2002). Commissions in the states of Minnesota, New Mexico, and Washington have taken a contrary view.

[28] *ISP Remand Order* ¶ 76.

contrast, AT&T seeks to re-write a key definition in Section 4 and significantly expand the scope of AT&T's relative use factor proposal. Were Qwest required to transport Internet-bound traffic for AT&T under the novel conditions AT&T proposes here, Qwest would be required to supply *any number* of dedicated trunks from any Qwest tandem to any street address (*over any distance*) that the CLEC might name. Adoption of AT&T's approach would foster increased traffic imbalances between Qwest and CLECs in the state and would place greater financial burden on an increasingly smaller base of Qwest retail customers, ultimately requiring Qwest retail rate payers to absorb an even higher share of AT&T's costs of serving ISPs.

31. In sum, Qwest's proposed language is reasonable and it should be adopted. The language is the same in all 14 of Qwest's SGATs, and the FCC has not required Qwest to change it. By contrast, AT&T's proposed language goes beyond what the Commission ordered in the Level 3 arbitration with the ultimate effect of foisting upon Qwest's retail rate payers the cost of the "freight" for AT&T's Internet-bound traffic.

E. Issue 18: Reciprocal Compensation and Calculation of Tandem Transmission Rate (Section 7.3.4.1.2)

32. Issue 18 concerns the calculation of the per minute of use call termination rate for Exchange Service (EAS/Local) traffic. The parties' dispute centers on the appropriate calculation of the tandem transmission rate. AT&T asserts that it is entitled to charge and receive the call termination, tandem switching and tandem transmission rate elements when AT&T's switch meets the definition of a tandem switch under 47 C.F.R. § 51.711(a)(3). AT&T proposes to include an assumed 9 miles of common transport at the tandem transmission rate to determine per minute of use call termination. Qwest opposes the inclusion of an assumed nine miles of common transport because the FCC rule governing calculation of call termination does not include such transport. AT&T's language creates asymmetry of intercarrier compensation and Qwest does not apply such a charge for tandem transmission.

33. First, 47 C.F.R. § 51.711(a)(3) does not specify that an incumbent LEC should pay a CLEC for nine miles of transport (parenthetical three of AT&T's language) in addition to call termination, tandem switching, and the fixed component of tandem transmission. The FCC rule provides that where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier is the incumbent LEC's tandem interconnection rate. Qwest's proposed language reflects the FCC rule.

34. Moreover, AT&T's interpretation of the rule would improperly require not only that all Qwest calls be subject to two switching charges plus a fixed rate for tandem transmission, but also a distance-sensitive charge even though there is no actual common transport mileage involved in terminating the call. By contrast, Qwest charges for common transport only when it actually provides the transport function.

35. Finally, the only time Qwest applies an assumed nine mile charge for tandem transmission is for transiting calls. A transited call is one that is neither originated nor terminated by Qwest. AT&T seeks to apply the assumed mileage rating to non-transited calls, even though AT&T terminates these calls itself. When Qwest terminates local calls, Qwest applies an actual airline mileage. If Qwest's tandem and Qwest's end office are in the same building, Qwest rates tandem transmission at zero-mileage. When AT&T's tandem and end office are in the same building, AT&T should do the same.

F. Issue 19: ISP-Bound Traffic, UNE-P Minutes and the 3:1 Ratio of Terminating to Originating Traffic Section (7.3.6.2.1)

36. In the proposed language for Section 7.3.6.2.1, the parties agree that traffic delivered in excess of a 3:1 ratio of terminating to originating traffic is presumed to be ISP-bound traffic that is subject to the transitional compensation mechanism in the FCC's *ISP Remand Order*. Both parties' proposals also provide that either party may rebut the presumption by providing factual evidence to the Commission regarding the actual ratio of traffic. The parties' disagree,

however, on the treatment of unbundled network elements platform ("UNE-P") minutes for purposes of calculating this ratio: AT&T proposes the inclusion of UNE-P minutes in the calculation of the 3:1 ratio, while Qwest does not.

37. UNE-P traffic should not be included in the 3:1 ratio because this traffic may not utilize interconnection infrastructure and may not even be local traffic. Considerable UNE-P traffic travels over the incumbent LEC's interswitched and intraswitched trunks, not the CLEC's interconnection trunks. UNE-P CLECs in Washington (including AT&T) face no termination costs and do not receive reciprocal compensation for termination of this traffic. Because AT&T does not incur termination costs and does not receive reciprocal compensation for UNE-P traffic, it should not receive credit for this traffic in the calculation of the 3:1 ratio.

38. In addition, AT&T's proposal ignores that not all UNE-P traffic is local, as this traffic may not traverse an interconnection switch. As such, adopting AT&T's approach would artificially inflate the amount of local traffic exchanged between the parties. In the *ISP Remand Order*, the Commission explained that it adopted the interim compensation mechanism in order to "limit the regulatory arbitrage opportunity presented by ISP-bound traffic."[29] While Qwest agrees that the rebuttable presumption in the *ISP Remand Order* is a "proxy," use of minutes in calculating this proxy that may not be local traffic would foster the very economic distortions that the FCC attempt to alleviate in the order.

39. Finally, the *Verizon Virginia Arbitration Order* does not support AT&T's proposal here. The incumbent LEC in the Virginia arbitration proceeding conceded that UNE-P traffic should be included in the ratio calculation, argued that interconnection traffic should be excluded, and "provided no reason why" the WCB should treat the traffic differently.[30] Qwest has

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[29] *ISP Remand Order* ¶ 2.

[30] *Verizon Virginia Arbitration Order* ¶ 267.

made not such concessions in this case and will clearly explain why the traffic should be treated differently from local interconnection traffic. Accordingly, the Commission should adopt Qwest's language on this issue

G. Issue 21: Billing for traffic that does not carry CPN (Section 7.3.8)

40. Section 7.3.8 of the parties' proposed agreement addresses the means for rating calls that lack Calling Party Number ("CPN") information. If a call lacks CPN information, retail caller identification service fails and billing systems cannot discern whether the call is transit versus non-transit or local versus toll. For these reasons, "no CPN" traffic is not encouraged, and Qwest and AT&T exchange very small amounts of this traffic type.

41. Qwest proposes a five percent maximum for "no CPN" traffic exchanged between the parties. AT&T seeks to create a larger, 10 percent, loophole for "no CPN" traffic. In other words, AT&T's proposed language will lead to *more* failed caller ID calls and *more* estimation for billing purposes than Qwest's proposed language. AT&T provides no documentation to support doubling the long-standing five percent cap proposed by Qwest.

42. With regard to traffic with CPN that exceeds the cap, the Commission should reject AT&T's overly complex proposed proration of charges between local and toll calls. Given the relatively small amount of "no CPN" traffic currently exchanged, further separating this traffic would be unduly burdensome. Under AT&T's approach, the carriers would be required to employ systems and resources to dissect what is already a very small fraction of all traffic exchanged. Qwest's proposal to charge a single switched access rate does not impose these administrative burdens and serves as an incentive to carriers to minimize "no CPN" traffic.

43. In evaluating Qwest's language and proposal to apply the access charge rate to "no CPN traffic," it is important to recognize that the obligations are reciprocal. Thus, Qwest, too, must meet the five percent cap and would be charged the higher access rate for traffic lacking CPN. Furthermore, since the parties agree that "no CPN traffic" is problematic, applying a higher rate to this traffic incents both parties to ensure that traffic is sent with CPN whenever possible.

44. In short, Qwest's position imposes a reasonable, and achievable, cap on "no CPN" traffic and rates such traffic to ensure both that the carrier handling it is compensated and that the carrier omitting the CPN is incented to include it. Since all parties agree that "no CPN" traffic should be minimized, Qwest's language best serves this goal.

H. Issue 22: Abandonment (Section 8.2.1.31)

45. Issue 22 concerns Qwest's handling of equipment or property abandoned by AT&T. The purpose of section 8.2.1.31 of the interconnection agreement is to create a process for dealing with CLEC equipment that has been abandoned at collocation sites on Qwest property. AT&T objects to certain of Qwest's proposed procedures.

46. As discussed below, the Commission should reject AT&T's language and adopt Qwest's proposed language for Section 8.2.1.31. AT&T faults Qwest's language on two points: (1) that Qwest should not be permitted to make the initial determination of a suspected abandonment of equipment, and (2) that Qwest should "mitigate" its "damages" when a CLEC decides it is easier and cheaper for it to leave its equipment on Qwest premises than dispose of it itself.

47. If AT&T no longer wishes to collocate its equipment in a Qwest central office for whatever reason, the parties' agreement includes agreed-upon provisions for the orderly decommissioning of the collocation site.[31] If AT&T wishes to transfer responsibility for the collocation to another CLEC, the parties' agreement also addresses that option.[32] The purpose of Section 8.2.1.31 of the interconnection agreement is to address the circumstances when AT&T or, another CLEC opting into AT&T's agreement, abandons its equipment at its collocation site without

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[31] AT&T Petition for Arbitration, Exh. C., § 8.2.1.22.

[32] *Id.* § 8.2.9.

availing itself of *either* of these options. Section 8.2.1.31 establishes a predictable and enforceable process for addressing CLEC equipment abandoned on Qwest property at collocation sites.

48. AT&T has no stake in this issue whatsoever. AT&T has admitted in other proceedings that it has never abandoned property at a Qwest collocation and that it does not intend to abandon any of its equipment.[33] Qwest incurs costs when a CLEC abandons its equipment, as several CLECs that have gone out of business have recently done at more than 450 Qwest collocation sites.

49. AT&T claims that because Qwest and AT&T are competitors, Qwest could "abuse" its rights to dispose of abandoned equipment. AT&T's fear is speculative and baseless. First, AT&T has never abandoned equipment at a collocation. Second, AT&T can cite no instance in which Qwest has *claimed* that AT&T abandoned equipment. Third, because Qwest provides advance notice of a possible abandonment, AT&T has the opportunity to protect its interests if Qwest were to contend that AT&T abandoned its equipment. In the unlikely event Qwest believed AT&T had abandoned equipment, AT&T, unlike a CLEC that has gone out of business, can be contacted and would receive notice of any potential abandonment process.

50. AT&T's demand that Qwest "mitigate" its damages and provide an "accounting" and "offset" various costs may be theoretically interesting, but is nonsensical as a practical matter. Qwest should not be required to demonstrate that it has "reasonably" "mitigated" its expenses or incur the additional administrative burden and expense of providing an "accounting" or determining "offset" amounts for equipment the CLEC acknowledges it neither wants nor values and will not remove. Such a process serves only to increase the already burdensome costs Qwest incurs to

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[33] *See, e.g.,* AT&T Response to Qwest IR 38 in the Qwest/AT&T Arbitration proceeding currently underway in Minnesota, *Petition of AT&T Communications of the Midwest, Inc. and TCG Minnesota, Inc. for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996,* MPUC Dkt. No. P-442, 421/IC-03-759, OAH Dkt. No. 12-2500-15429-4 (Minn. P.U.C.) ("*Qwest/AT&T Minnesota Arbitration*").

dispose of the unwanted equipment with no corresponding benefit. Given the reality of abandonment situations, streamlining the disposal of unwanted equipment is far more appropriate.

51. Finally, AT&T's language fails to acknowledge the difference between an abandoned collocation (in which the CLEC has abandoned the site and the equipment at that site without notice to Qwest) and a decommissioning or transfer (in which Qwest and the CLEC work together to address disposition of the space). AT&T's proposed language is unnecessarily burdensome and time consuming, imposes costs on Qwest, and delays making abandoned collocation space available to all carriers. The Commission should adopt Qwest's language for Section 8.2.1.31.

I. Issue 25: Comprehensive Production Testing (Section 12.2.9.3.6)

52. The parties have agreed to resolve this issue by adopting the language agreed upon in Minnesota. This issue can now be considered closed.

J. Issue 27: CABS Compliant Billing (Section 21.1.1.1.1)

53. Issue 27 involves the format in which Qwest provides bills for connectivity charges to CLECs. The Carrier Access Billing Specifications ("CABS") Billing Output Specifications ("BOS"), or CABS BOS, maintained by the Telcordia Technologies Billing group, provide companies with the generic detailed specifications to support the billing function for Interconnect and Access Billing Systems. The specifications are guidelines only; as discussed below, no incumbent LEC in the country has implemented CABS billing in strict accordance with the guidelines. Instead, each carrier maintains a CABS Billing Data Tape Differences List – which is Telcordia's industry standard template designed for this very purpose – to communicate variances from the guidelines.

54. The areas of dispute between the parties relating to this issue have narrowed to two: (1) whether Qwest should be required to populate the adjustment through and from dates on its CABS-formatted bills, and (2) whether specific language regarding the technical specifications for CABS-formatted bills should be included in the interconnection agreement.

55. The first of these issues appears to be based on a misunderstanding. Qwest has already committed within the Change Management Process ("CMP")[34] to implement a change request ("CR") requesting population of the adjustment through and from dates. Indeed, Qwest submitted the CR seeking to make this change before AT&T submitted its CR requesting a similar change. Because Qwest has committed to addressing all of the issues AT&T has raised, there is no need to include AT&T's proposed language purporting to require Qwest to eliminate differences between the way it has implemented CABS-formatted billing and the industry guidelines.

56. Thus, the only remaining issue is whether specific language regarding the technical specifications for CABS-formatted bills should be included in the interconnection agreement. AT&T's proposal seeks the inclusion of a list of changes sought by change management process ("CMP") CRs that AT&T seeks to include as section 21.1.1.1.1. Qwest objects to this language because the CMP process should be allowed to work without interference in the form of a regulatory mandate that reflects only AT&T's desires, which conflict with the views of the vast majority of CLECs that do business with Qwest.

57. The following language both provides the entire CLEC community with the opportunity to participate within the CMP process and avoids potentially conflicting obligations relating to its CABS-formatted bills:

> Qwest will work with CLEC through Qwest's Change Management Process to address the following CABS format billing items: (i) process bill data and CSRs on the same date; (ii) perform all standard CABS BOS edits on the UNE bills; (iii) populate activity date with the date of the activity associated with the charges; (iv) populate the adjustment thru date with the date through which the adjustment applies; (v) populate adjustment from date with the date from which the adjustment applies; (vi) populate an audit

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[34] Qwest's CMP is The CMP is intended to facilitate a discussion between CLECs and Qwest about product, process or OSS Interface release changes, release life cycles, release notifications, communication intervals, and regularly scheduled CMP meetings. Members include CLEC and Qwest representatives.

number with the reference number provided by AT&T, which a reference number is included in the transaction; (vii) populate recurring/non-recurring charge indicator with a value of "1" for monthly recurring access charges and a value of "2" for non-recurring charges; (viii) populate service established dates with the date on which service was established; (ix) separate taxes and surcharges and populate on the appropriate records per the CABS guidelines; (x) establish and use more descriptive local use phrase codes for UNE charges and adjustments.

58. This language satisfies AT&T's desire for specific language identifying the issues to be resolved. Moreover, as the FCC has found, the CMP process provides for timely resolution of issues. Thus, if AT&T has any concerns regarding the content or timing of the changes as they proceed through the process, CMP not only provides an orderly forum in which AT&T can present its concerns, but also sets forth escalation and dispute resolution procedures for timely resolution of any such issues.

59. Finally, AT&T's proposal to eliminate electronic bill format options in the agreement is misguided. Past experience instructs that it is likely that a number of CLECs will opt-in to AT&T's interconnection agreement. Eliminating the availability of ASCII and EDI formats will disadvantage CLECs because the majority of CLECs ordering UNE-P from Qwest today receive wholesale bills in ASCII format, along with a hard copy. Qwest's proposed language allows AT&T to select only CABS-formatted bill, if it so chooses, but also preserves all available options for other CLECs, as well as for AT&T, in the event it determines that a format other than CABS or paper may suit its needs. Qwest's proposal preserves the available bill format options without restricting AT&T's ability to select any particular option. Accordingly, the Commission should adopt Qwest's proposed language for Section 21.1.1.1.1.

K. Issue 30: Billing for Traffic without CIC Codes (Sections 21.1.2.3.1 & 21.1.2.3.2)

60. Issue 30 concerns whether the party that terminates traffic onto the network of another carrier should be held responsible for providing the Carrier Identification Codes ("CIC") for long distance traffic or Operating Company Numbers ("OCNs") for local traffic.

61. AT&T's proposed language for Sections 21.1.2.3.1 and 21.1.2.3.2 of the parties' agreement addresses those relatively rare circumstances when the parties are unable to provide CICs or OCNs to each other for billing access and local traffic.[35] The parties' dispute centers on assigning financial responsibility for transit traffic that lacks identifying OCN or CIC codes.

62. It is undisputed that the traffic at issue does not originate or terminate on Qwest's network and that Qwest has no control over the traffic's identification. It is also undisputed that Qwest passes on to AT&T all of the identifying information that is provided to Qwest, and complies with all relevant industry standards concerning this information. Further, all agree that the responsibility for properly identifying calls lies with the *originating* carrier and that the best source for the information at issue is the *originating* carrier who sends the traffic at issue to AT&T. Likewise, it is undisputed that AT&T can and has entered into reciprocal compensation arrangements with originating carriers where, in AT&T's business judgment, such arrangements are warranted. Despite these undisputed facts, AT&T proposes to require that Qwest be responsible for paying for traffic that transits Qwest's network without OCN or CIC codes. The Commission should not endorse language that provides an incentive for the originating and terminating carriers to avoid their legal obligations to negotiate arrangements governing traffic that lacks OCN or CIC codes, and disincents originating carriers from fulfilling their obligation to provide proper identifying information on the traffic they originate in the first place. AT&T's proposed language does just that.

63. AT&T's argument that Qwest should be responsible for billing this traffic because Qwest is in a "superior position" to obtain the missing information is simply incorrect. First, Qwest

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[35] CICs are not required in the signaling, routing or billing of local traffic. CICs are assigned to carriers by North American Numbering Plan Administration ("NANPA") for equal access routing for toll calls. CICs are routing codes used by carriers to route traffic from subscribers' Primary Interexchange Carrier ("PIC") to the carrier's network. OCNs are not required in the signaling, routing, or billing of local traffic. OCNs are administrative numbers assigned by National Exchange Carrier Association ("NECA") and Telcordia Routing Administration. OCNs are a method of identifying numbering resource code holders and related information.

is *not* in a superior position to the originating carrier to provide the missing information. Qwest simply performs the service of transiting the call, passing along all identifying information provided it by the originating carrier.

64. Second, Qwest as the transit provider should not be expected to take on the responsibility for researching originating carrier data. AT&T is as capable of researching originating carrier data as Qwest is. Indeed, AT&T has conceded in other proceedings that it has implemented a mechanized process to obtain the identifying information it needs.[36]

65. Neither the Act nor the FCC rules require Qwest to act as a billing intermediary for transit traffic that AT&T exchanges with third-party carriers. AT&T's proposed language for issue 30 should not be included in the interconnection agreement.

L. Issue 33: Alternatively Billed Calls (Section 21.2.4)

66. Issue 33 concerns alternatively billed calls, which are those billed as collect calls, to a third number, or to a credit card.[37] AT&T and Qwest agree that the processing, billing, and collection of alternatively billed calls through the Centralized Message Distribution System ("CMDS"), the intra-region intraLATA equivalent, or some other arrangement, should be the subject of a separate agreement. However, because existing processes (such as the CMDS process) are not workable for UNEs and resale, Qwest has proposed that alternatively billed calls in these cases be billed directly to AT&T and accounted for in the parties' interconnection agreement.

67. Qwest's proposed language, along with the undisputed portions of the interconnection agreement at issue here, sets forth a complete process for handling alternatively

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[36] *See Qwest/AT&T Minnesota Arbitration*, Vol. 1 Tr. (7/14/03) at 116, lines 15-25 (Hydock cross).

[37] This issue relates only to collect calls and calls billed to third parties. Because Qwest does not resell its credit cards, calls billed to credit cards are not subject to the interconnection agreement.

billed calls for UNE and resale customers. Alternatively billed calls for AT&T's UNE and resale customers present a unique situation that arises solely because of the fact that the line is a UNE or resold line. Under the existing CMDS, Qwest receives call usage information for calls that are actually billable to an AT&T customer, with whom Qwest has no billing relationship. This occurs because the company that physically provided the call sends a rated usage record to CMDS, which forwards the record on to the LEC that owns the NPA-NXX code assignment for the billing number based on information contained in an industry prefix database, for example the Local Exchange Routing Guide ("LERG"), detailing which local exchange company owns each prefix.

68. This same process occurs whether the billed-to telephone number is served by Qwest, or is provided via resale or unbundling by a CLEC. This is because there are no industry databases that identify which particular lines within a given prefix are unbundled or resold lines through which a CLEC, rather than Qwest, provides service to the end user. In the absence of that information, the code owner for the prefix in this case, Qwest receives the call information.

69. Under the parties' current practice, for calls alternatively-billed to a resold or UNE-P line, Qwest passes the call on the Daily Usage File ("DUF") to AT&T to allow AT&T to bill its end user customer. Qwest then appropriately bills AT&T for the call on its interconnection bill. For calls originated by other companies and passed to Qwest via CMDS, the DUF provides a method for Qwest to pass information regarding those calls to the CLEC. If Qwest cannot pass such call information on the DUF, Qwest would be faced with processing the call, attempting to recognize that it billed to a CLEC line, and rejecting the call back to CMDS as unbillable. Qwest would not be compensated for this processing. The originating company would then be left to figure out how to get the call billed or, more likely, forced to write the call off as unbillable.

70. Qwest's proposal is efficient and is consistent with other undisputed portions of the interconnection agreement. Qwest's proposed language adequately addresses both the compensation and the record exchange necessary for handling direct-dialed and alternatively-billed calls. No further agreement is necessary. Qwest's proposal does not preclude AT&T from

entering into agreements with any other provider, but provides for the manner in which alternatively-billed calls for AT&T's UNE or resale customers will be handled if no such agreement exists. The Commission should adopt Qwest's language on this issue.

M. Issue 34: Qwest as the LPIC (Section 21.8)

71. Issue 34 concerns how the parties will handle the very small number of AT&T customers who have chosen Qwest, the incumbent LEC, as their local Primary Interexchange Carrier ("LPIC"). Qwest proposes to require AT&T to bill AT&T's local customers for intraLATA toll calls when Qwest is the LPIC. AT&T proposes that all of the billing arrangements for Qwest's LPIC calling should be subject to a separate agreement.

72. When retail local customers switch from Qwest to an alternative local exchange service provider, the new local service provider generally makes every effort to sell a package of services that includes intraLATA toll service. Because of the high costs of billing intraLATA toll service without also providing local service, Qwest cannot provide competitively-priced intraLATA toll service when the end user switches to a CLEC for local service. Accordingly, Qwest does not attempt to remain the intraLATA toll provider when a customer moves from Qwest to another local carrier.

73. Despite the lack of any Qwest attempts to entice CLEC customers to choose it as the LPIC, some do. Although AT&T proposes requiring Qwest to develop mechanisms to bill these very few end users for this intraLATA toll traffic, it offers no contractual mechanism to provide Qwest the information necessary to do so. AT&T is the only local carrier that knows the current billing name and address for its end users. Under AT&T's proposal, Qwest would require this information to bill the end user; AT&T, however, does not offer any language to provide this information to Qwest. Without this information, Qwest would be unable to bill this call even if it undertook the considerable systems development (and incurred the resulting costs) to implement AT&T's proposal.

74. Given the existing customer and billing relationship between AT&T and the end user, and the potential short-term nature of this problem, the Commission should adopt Qwest's position on this disputed issue.

N. Issue 35: Pricing (Sections 22.1, 22.4 & 22.5)

1. Section 22.1: General Principle

75. This disputed issue relates to Section 22.1, the General Principle section for pricing. Qwest proposes the following straightforward two-sentence section:

> The rates in Exhibit A apply to the services provided by Qwest to CLEC pursuant to this Agreement. To the extent applicable, the rates in Exhibit A also apply to the services provided by CLEC to Qwest pursuant to this Agreement.

Qwest's language plainly states the general principle that the rates in Exhibit A apply to services Qwest provides to AT&T and, to the extent applicable, to the services AT&T provides to Qwest.

76. In stark contrast to Qwest's simple, unambiguous provision, AT&T proposes the following:

> In the event that one Party charges the other for a service provided under this Agreement, the other Party may also charge for that service or functionality. The rates CLEC charges for Interconnection services will be equivalent to Qwest's rates for comparable Interconnection services when CLEC reciprocally provides such a service or functionality, unless higher rates are justified by CLEC's higher costs for providing the service. In order for an amount charged by one Party to be "equivalent to" an amount charged by the other Party, it shall not be necessary that the pricing structures be identical. Rates, terms and conditions for all other services provide by CLEC are set forth in the applicable CLEC tariff, as it may be modified from time to time.

77. In the first sentence of this tortuous provision, AT&T inexplicably seeks to tie its ability to charge Qwest to the services Qwest provides, rather than the services AT&T provides. On its face, this provision appears to allow AT&T to charge Qwest for any service or functionality that Qwest charges AT&T for, without regard to whether AT&T actually provides any such services or functionality. Given that the next sentence in AT&T's proposal appears to provide that

AT&T can charge Qwest rates equivalent to Qwest's rates when AT&T reciprocally provides comparable interconnection services, the meaning of this first sentence is far from clear.

78. AT&T's second sentence almost approaches the simple notion set forth in Qwest's proposal -- that is, the Exhibit A rates apply to services Qwest provides to AT&T and, to the extent applicable, to the services AT&T provides to Qwest -- except that AT&T's version allows AT&T to charge rates that are "equivalent to Qwest's rates for comparable Interconnection services when CLEC reciprocally provides such a service or functionality." Yet nowhere does AT&T identify the "comparable services" to which it refers. Moreover, AT&T then tacks on an open-ended proviso that apparently gives AT&T the right to charge Qwest more if AT&T claims that it has higher costs for providing the service. The proposal sets forth no standards or procedures by which AT&T would establish that "higher rates are justified" and provides no guidance regarding who would make such a determination.

79. To further complicate the issue, AT&T also seeks to insert a definition of "equivalent to" that would allow AT&T to use different pricing structures for charges that would still qualify as "equivalent to" Qwest's charge. AT&T again fails to specify any standard or other requirement of any kind regarding any proposed pricing structure. AT&T claims that its convoluted proposal for section 22.1 is necessary in order for AT&T to bill Qwest for services it provides. However, the language is overly broad and lacks any degree of specificity. Instead, AT&T seeks to insert vague pricing language without specifying any products or services, or any terms and conditions associated with these services.

80. To the extent that AT&T plans to provide services to Qwest, the interconnection agreement is the appropriate mechanism by which the parties should negotiate and document the details regarding each service to be provided, including the terms and conditions under which it will be offered and specific pricing -- just as has been done in the agreement with regard to the services that Qwest will be providing AT&T.

2. Section 22.4: Interim Rates

81. AT&T's proposed language for Section 22.4 raises an issue regarding when Commission-ordered rates will become effective. AT&T's proposed language provides that such rates will become effective on the date of the Commission order establishing the new rates *or* when the Commission orders the rates to become effective, "whichever is earlier." AT&T's language would require the parties to ignore the Commission's determination of an appropriate date on which to implement the order whenever the Commission determines that a given rate should become effective some time after the order setting the rate becomes legally binding. For example, if, on June 1, 2003, the Commission ordered that a given rate should take effect on December 1, 2003, AT&T's language would place Qwest in the untenable position of having to choose between complying with the order or breaching the parties' agreement, because (absent an appeal and stay) the order would be "effective" or "legally binding" before the Commission-ordered effective date of December 1, 2003.

82. In a further effort to contractually set the terms of the Commission's pricing orders, without regard to the mandates of the Act or the Commission's decision in a given case, AT&T seeks to insert language in Section 22.4 mandating that "there *will be* a true-up for such Interim Rates back to the first date on which each such Interim Rate was first charged pursuant to this Agreement." The Commission's generic cost proceedings provide the appropriate forum for consideration of argument, facts, and circumstances relating to the legality and propriety of retroactive "true-ups" of interim prices (those rates *not* previously approved as lawful by the Commission) in a given case. In general, Qwest believes that the Act does not contemplate the retroactive true-up of rates.[38] Regardless of the parties' position on this issue generally, however, the *parties' agreement* should not *mandate* a retroactive true-up of interim prices without regard

[38] *See Local Competition Order* ¶¶ 693, 767-69, 782.

to the legal argument and the facts and circumstances presented to the Commission in a given generic proceeding.

83. Finally, the Commission should reject AT&T's language purporting to give AT&T the unilateral right to open cost dockets on Qwest products. The filing of cost dockets involves complex studies, and is often timed to include the most number of products as possible in one cost hearing. The Commission and Qwest should determine when a cost study should be filed and one CLEC out of the hundreds who purchase services should not be granted control over Qwest's management of this process.

3. Section 22.5: ICB Pricing

84. AT&T's proposed language eliminates all ICB pricing. ICB prices are still necessary in certain instances where the requirements of a particular service offering may vary widely from application to application. In those instances, use of a one-price-fits-all approach is unrealistic. Therefore, Qwest should have the opportunity to justify the need for ICB pricing.

O. Issue 36: Pricing (Exhibit A)

85. To date, AT&T has not identified any specific disputed pricing issues and Qwest has responded to all concerns raised by AT&T regarding pricing. The parties are continuing to discuss Exhibit A with the objective of reaching a mutually satisfactory resolution of any potential issue related to a specific rate. Qwest will not object if AT&T wishes to add to the Joint Issues List a dispute concerning a specific rate, provided that Qwest is accorded sufficient notice of such dispute and a reasonable opportunity to respond in prefiled testimony or other filing that will be part of the fact record upon which the dispute will be decided.

IV. PROPOSED SCHEDULE FOR IMPLEMENTING THE TERMS AND CONDITIONS IMPOSED IN THE ARBITRATION

86. Qwest recommends that upon resolution of the unresolved issues, the Commission direct AT&T and Qwest to finalize the proposed interconnection agreement to conform to the Commission's order and file it within 30 days of issuance of the order.

V. RECOMMENDATION AS TO INFORMATION WHICH SHOULD BE REQUESTED FROM AT&T BY THE ARBITRATOR PURSUANT TO SECTION 252(b)(4)(B)

87. Qwest has no specific recommendation at this time as to information which should be requested from AT&T by the Arbitrator pursuant to Section 252(b)(4)(B). Qwest anticipates that the parties will engage in discovery concerning matters that the parties believe should be brought to the attention of the Arbitrator.

VI. PROPOSED INTERCONNECTION AGREEMENT

88. Qwest respectfully requests that the Commission adopt all of Qwest's proposed contract language in the proposed interconnection agreement attached as Exhibit C to AT&T's Petition.

VII. DOCUMENTATION RELEVANT TO THE DISPUTE

89. AT&T has appended to its Petition the jointly prepared proposed interconnection agreement and Joint Issues List. These documents capture both the agreed-upon language and the disputed language before this Commission for resolution. Qwest anticipates that the parties will jointly update this documentation prior to the arbitration hearing to reflect any changes based upon continuing negotiations or other developments such as changes in the law. Additional documentation relevant to Qwest's positions concerning the unresolved issues will be provided by Qwest in its written, prefiled testimony, including exhibits, and in other submissions as may be required by the prehearing orders and Commission rules governing this proceeding.

VIII. REQUEST FOR A PROTECTIVE ORDER

90. Qwest agrees with AT&T that a protective order is appropriate to protect any privileged, confidential and/or trade secret information that may be exchanged.

IX. STANDARD OF REVIEW AND AUTHORITY AND DISCRETION OF ARBITRATOR

91. Sections 251 and 252 of the Act set forth the standards the Commission must apply in resolving the disputed issues presented for arbitration. As the FCC's Wireline Competition

Bureau has explained, "section 252(c) of the Act sets forth the standard of review to be used in arbitrations by [the FCC] and state commissions in resolving any open issue and imposing conditions upon the parties in the interconnection agreement."[39] Specifically, "any decision or condition must meet the requirements of section 251 and accompanying [FCC] regulations, establish rates in accordance with section 252(d), and provide an implementation schedule."[40]

92. To "meet the requirements of section 251," the provisions of an agreement must relate to the matters covered in subsections (b) and (c) thereof.[41] In addition, the provisions adopted by the arbitrator must be consistent with the terms and objectives of section 251.[42] If competing resolutions and language are equally consistent with law and precedent, then the arbitrator should choose those that are the most "reasonable."[43] In making these determinations, the arbitrator should consider the text of the Act and any relevant FCC regulations, as well as the Act's underlying objectives, as informed by its text as well as FCC and judicial precedent.

93. The Supreme Court and several Courts of Appeals have explained that the Act circumscribes the authority of regulators to impose obligations on incumbent LECs.[44] The

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[39] *See Verizon Virginia Arbitration Order* ¶ 29.

[40] *Id.*, *citing* 47 U.S.C.§ 252(c)(1)-(3). The decision may incorporate rates adopted in other proceedings. To the extent that rates for items included in the agreement have not been adopted in other proceedings, or that rates established in other proceedings do not reflect costs incurred to comply with items or activities required by the arbitrators' decision, then the plain language of § 252(c)(2) requires that rates be established or revised in this proceeding.

[41] *Id.* As held by the Eleventh Circuit, arbitrations under the Act are limited to subjects and issues on which the incumbents are mandated to negotiate, which are set forth in sections 251(b) and (c). *See MCI Telecommunications Inc. v. BellSouth Telecommunications Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002).

[42] *Verizon Virginia Arbitration Order* ¶ 53.

[43] *Id.* ¶ 181.

[44] *See, e.g., Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (vacating the FCC's "superior quality" rules), *aff'd in part, rev'd in part, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

Supreme Court has instructed that the FCC and state commissions must, in interpreting and enforcing the Act, apply "limiting standards" that are "rationally related" to "the goals of the Act."[45] Similarly, federal district courts have recognized that a state commission "does not have the authority to impose terms that extend beyond what is permitted by federal law."[46]

94. The Commission should consider the Act's statement of purposes: "'to *promote competition and reduce regulation* in order to secure *lower prices* and higher quality services for American telecommunications consumers and encourage the rapid deployment of *new telecommunications technologies*.'"[47] It would be inconsistent with the Act's goal to "reduce regulation" to impose on Qwest standards, processes or other requirements that are not necessary to provide AT&T with a meaningful opportunity to compete.[48] The Act's deregulatory objectives mandate a presumption in favor of the least regulatory approach to a particular issue, including reliance on the enforcement process in lieu of prophylactic rules and procedures prescribed in advance.

95. Consistent with the Act's goal of reducing prices, the Commission should consider the costs that may result from proposed procedures or requirements. Costs that are imposed on a carrier are likely to be passed on to consumers, leading to higher not lower prices.[49] The Act

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[45] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 388. As explained *infra*, state law may not be used to expand obligations that are limited by the Act's text.

[46] *Bell Atlantic-Delaware, Inc. v. Global NAPS South, Inc.*, 77 F. Supp. 2d 492, 504 (D. Del. 1999).

[47] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 791, *quoting* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (emphasis added), *aff'd in part, rev'd in part, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

[48] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 428-29 (Breyer, J., concurring) ("'[P]ervasive regulation' occurs where 'regulators, not the marketplace, would set the relevant terms.'")

[49] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) ("[N]othing in the Act appears a license to the Commission to inflict on the economy [the administrative and other

requires that Qwest be compensated for the costs it incurs in providing interconnection, UNEs and other items, and the FCC has specifically held that requiring such compensation will deter CLECs from requesting items that they do not need, and raising ILECs' costs.[50]

96. Although the Act does not prohibit state commissions from establishing or enforcing state law requirements in arbitrating or approving an interconnection agreement, it imposes limitations in this regard. Specifically, the state law requirements cannot be inconsistent with the Act or its purposes.[51] It is important to recognize that, in this context, a requirement or provision is not "consistent" with the Act merely because it is not expressly prohibited. The term "consistent," whether to measure the lawfulness of a requirement imposed under the authority of federal or state law, has a broader meaning. This is confirmed by the application of that term by the FCC and the courts. For example, although the Act does not prohibit the imposition of unbundling and collocation obligations on CLECs, the FCC has held that it would be "inconsistent" for either the FCC or state commissions to impose such requirements.[52]

97. Similarly, although the Act does not expressly prohibit imposing on incumbent LECs the obligation to provide superior quality interconnection, or superior access to UNEs, the Eighth Circuit held that such a requirement would be inconsistent with the Act, which requires only interconnection and access that is "equal" in quality.[53] Finally, the Act embodies a comprehensive scheme for the regulation of local competition, and reflects a careful balance between the interests of new entrants and incumbents, and alternative methods of entry. Accordingly, additional state law requirements that upset that balance would be subject to preemption.

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costs associated with an obligation] under conditions where it had no reason to think doing so would bring on a significant enhancement of competition").

[50] *See, e.g., Local Competition Order* ¶¶ 209, 245, 314.

[51] *See* 47 U.S.C. §§ 251(d)(3), 261(c).

[52] *See Local Competition Order* ¶ 1245.

[53] *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813.

X. CONCLUSION AND REQUEST FOR RELIEF

98. The Commission should enter an order adopting Qwest's proposed language on all unresolved issues.

Respectfully submitted,

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