

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for)
Arbitration of)
)
AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST AND TCG)
SEATTLE,) **Docket No. UT-033035**
)
With)
)
QWEST CORPORATION)
)
Pursuant to 47 U.S.C. Section 252(B))
_____)

DIRECT TESTIMONY OF

DAVID L. TALBOTT

ON BEHALF OF AT&T COMMUNICATIONS OF THE

PACIFIC NORTHWEST, INC. AND TCG SEATTLE

ON DISPUTED ISSUES 3, 17-19, and 21

SEPTEMBER 25, 2003

I. INTRODUCTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q. MR. TALBOTT, PLEASE STATE YOUR FULL NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A. My name is David L. Talbott. I am employed by AT&T Corp. (“AT&T”) in the Local Services Access Management group in AT&T Network Services as a District Manager. My business address is 3737 Parke Drive, Edgewater, Maryland 21037.

Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR PRESENT POSITION?

A. My current responsibilities are the development and negotiation of interconnection agreements between AT&T and incumbent local exchange carriers (“ILECs”) under the Telecommunications Act of 1996 (“Act”),¹ focusing on network interconnection and inter-carrier compensation issues.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND?

A. I graduated from the University of Maryland – College Park in 1975 with a Bachelor of Arts Degree from the Communications Department.

Q. MR. TALBOTT, WHAT IS YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY?

A. I started with AT&T Long Lines Department in 1976. From 1979 through 1988, I held various management positions in engineering related to the design and implementation of private line services. From 1988 through 1998, I was responsible for developing and managing numerous business relationships

¹ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

1 between AT&T and selected competitive access providers and competitive local
2 exchange carriers (“CLECs”). These responsibilities required resolving both
3 technical and business issues, including the interconnection of the respective
4 networks and compensation arrangements.

5 During 1999, I was the Business Development Manager for AT&T’s Internet
6 Protocol Cable Telephony Project. These responsibilities included the assessment
7 of the technical capabilities of selected vendors and contracting the best-qualified
8 vendors to assist AT&T in its development of Internet Protocol cable telephony
9 technology.

10 As mentioned above, most recently I have been involved in negotiating various
11 interconnection agreements between AT&T and ILECs.

12 **Q. HAVE YOU APPEARED AS A WITNESS IN OTHER REGULATORY**
13 **PROCEEDINGS?**

14 A. Yes. I have provided testimony before the Federal Communications Commission
15 (“FCC”), the California Public Utilities Commission, the Connecticut Department
16 of Public Utility Control, the Delaware Public Service Commission, the Florida
17 Public Service Commission, the Georgia Public Service Commission, the Kansas
18 Corporation Commission, the Maryland Public Service Commission, the
19 Michigan Public Service Commission, the New York State Public Service
20 Commission, the New Jersey Board of Public Utilities, the North Carolina
21 Utilities Commission, the Public Utilities Commission of Ohio, the Texas Public
22 Utility Commission, and the Wisconsin Public Service Commission.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q. PLEASE DESCRIBE THE PURPOSE AND SCOPE OF YOUR**
3 **TESTIMONY IN THIS PROCEEDING.**

4 A. In general, my testimony describes interconnection and network disputes as they
5 pertain to Issues 3, 17-19 and 21 on the Disputed Issues List (“DIL”).

6 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

7 A. My testimony is organized numerically by issue number. I will begin with a
8 discussion of disputed Issue 3.

9 **III. DISPUTED ISSUES**

10 **A. Issue 3. Section 4: Definition of Tandem Office Switch**

11 **Q. PLEASE DESCRIBE ISSUE 3.**

12 A. There are two parts to this issue. First, is the question of the proper definition of
13 tandem office switch. Second, is the factual determination of whether AT&T’s
14 switches meet the proper definition. Resolution of the second part of the dispute
15 concerning the definition of tandem office switch will determine the rate at which
16 Qwest will compensate AT&T for traffic that AT&T terminates on behalf of
17 Qwest. Consistent with the law, AT&T’s position is that Qwest should pay the
18 tandem interconnection rate because AT&T’s switches serve a comparable
19 geographic area to the area served by Qwest’s tandem switches. This is the
20 standard specified in 47 C.F.R. § 51.711(a)(3). At bottom, Qwest’s position is
21 that AT&T must demonstrate that it “actually serves” and actually performs
22 tandem-switching functions within a comparable geographic area in order to

1 charge Qwest the tandem rate for termination of Qwest's traffic. AT&T's

2 proposed language reads as follows:

3 "Tandem Office Switches" - CLEC end office Switch(es) shall be
4 considered Tandem Office Switch(es) for the purpose of
5 determining reciprocal compensation rates to the extent such
6 Switch(es) is (are) capable of serving a comparable geographic
7 area as Qwest's Tandem Office Switch. If the Parties have not
8 already agreed that CLEC's switches meet the definition of
9 Tandem Office Switches, a fact based consideration of geography,
10 when approved by the Commission or mutually agreed to by the
11 Parties, should be used to classify any Switch on a prospective
12 basis. In addition, "Tandem Office Switches" are used to connect
13 and switch trunk circuits between and among other End Office
14 Switches. Access tandems typically provide connections for
15 exchange access and toll traffic, and Jointly Provided Switched
16 Access traffic while local tandems provide connections for
17 Exchange Service (EAS/Local) traffic. CLECs may also utilize a
18 Qwest Access Tandem for the exchange of local traffic as set forth
19 in this Agreement. For purposes of this Agreement, AT&T's
20 [TCG's] switches in the State are Tandem Office Switches.

21 **Q. HAVE AT&T AND QWEST AGREED THAT AT&T'S AND TCG'S**
22 **SWITCHES IN THE STATE ARE TANDEMS FOR PURPOSES OF**
23 **RECIPROCAL COMPENSATION?**

24 A. No.

25 **Q. PLEASE EXPLAIN WHY IT IS APPROPRIATE IN THIS PROCEEDING**
26 **FOR THE COMMISSION TO DETERMINE THAT AT&T'S AND TCG'S**
27 **SWITCHES ARE TANDEMS FOR PURPOSES OF RECIPROCAL**
28 **COMPENSATION.**

29 A. There are two reasons. First, the express language in both parties' proposals for
30 this definition state, "If the Parties have not already agreed that CLEC's switches
31 meet the definition of Tandem Office Switches, a fact based consideration of
32 geography, when approved by the Commission or mutually agreed to by the
33 Parties, should be used to classify any Switch on a prospective basis." As stated

1 above, Qwest has not agreed that AT&T's and TCG's switches in the state are
2 tandems for purposes of reciprocal compensation. As a result, I have included the
3 data with this testimony with which the Commission can and should make the fact
4 based consideration of the geographic coverage of the AT&T and TCG switches
5 for purposes of compensation at the tandem rate. In addition, AT&T has
6 proposed a last sentence to its definition that affirms the finding AT&T
7 anticipates the Commission will make. The second reason is practical. If the
8 Commission does not determine now that AT&T's and TCG's switches are
9 tandems for purposes of reciprocal compensation, Qwest will not pay AT&T and
10 TCG the tandem rate when this contract is implemented and AT&T will have to
11 come back before this Commission to have it make the very determination AT&T
12 seeks in this proceeding. In order to give the parties a clear start under the new
13 interconnection agreement and to efficiently use the Commission's and the
14 parties' resources, the determination should be made now.

15 **Q. ARE THEIR FCC REGULATIONS REGARDING THIS ISSUE?**

16 A. Yes. The FCC regulations recognize that there may be parity between the costs a
17 competitive local exchange carrier ("CLEC") incurs to terminate traffic from its
18 end office switch and the costs an incumbent local exchange carrier ("ILEC")
19 incurs to transport and terminate traffic from its tandem switch. They state that
20 when the CLEC's switches provide comparable geographical coverage to the
21 ILEC's tandem switches, the ILEC is to compensate the CLEC at the tandem rate

1 for the termination of traffic through those CLEC switches. The specific
2 regulation, set forth in, 47 C.F.R. § 51.711 (a)(3), states:

3 Where the switch of a carrier other than an incumbent LEC
4 serves a geographic area comparable to the area served by
5 the incumbent LEC's tandem switch, the appropriate rate
6 for the carrier other than an incumbent LEC is the
7 incumbent LEC's tandem interconnection rate.

8 **Q. WHAT IS THE FCC'S STATED RATIONALE FOR ADOPTING THE**
9 **"TANDEM RATE RULE?"**

10 A. The FCC's tandem rate rule recognizes that while new entrants may adopt
11 network architectures that differ from those of incumbents, the new entrants
12 nonetheless are entitled to be compensated for their costs of terminating traffic.²
13 Indeed, in order to achieve the same scale economies as incumbents, CLECs must
14 deploy switches that serve a comparatively broader geographic area, because they
15 lack the concentrated, captive customer base that the incumbents enjoy. If
16 Qwest's interpretation of the FCC rule were adopted, CLECs would be hard
17 pressed to achieve that customer base. Qwest's proposal would have the effect of
18 penalizing CLECs entering the market, because they would not yet have had
19 sufficient time to build their customer bases to be "comparable" to the size and
20 scope of Qwest's. Indeed, without earning the higher tandem rate that
21 compensates the CLEC for its costs of termination and for deploying an
22 architecture designed to serve an area comparable to the incumbent's, CLECs
23 would be unable to recoup their costs to terminate Qwest's traffic and would

1 thereby be precluded from entering certain markets altogether. Thus, the
2 underlying point of the FCC's tandem rate rule is to establish a proxy for the
3 interconnecting carrier's costs when it terminates a call from an ILEC to a CLEC
4 customer.

5 **Q. HAS THE FCC SPECIFICALLY ADDRESSED THIS REGULATION IN**
6 **ANY OF ITS ORDERS?**

7 A. Yes, several times, and each time the outcome has clearly supported AT&T's
8 position in this case. First, in the *Local Competition Order*, the FCC stated:

9 We find that the "additional costs" incurred by a LEC when
10 transporting and terminating a call that originated on a
11 competing carrier's network are likely to vary depending
12 on whether tandem switching is involved. We, therefore,
13 conclude that states may establish transport and termination
14 rates in the arbitration process that vary according to
15 whether the traffic is routed through a tandem switch or
16 directly to the end-office switch. In such event, states shall
17 also consider whether new technologies (*e.g.*, fiber ring or
18 wireless networks) perform functions similar to those
19 performed by an incumbent LEC's tandem switch and thus,
20 whether some or all calls terminating on the new entrant's
21 network should be priced the same as the sum of transport
22 and termination via the incumbent LEC's tandem switch.
23 Where the interconnecting carrier's switch serves a
24 geographic area comparable to that served by the
25 incumbent LEC's tandem switch, the appropriate proxy for
26 the interconnecting carrier's additional costs is the LEC
27 tandem interconnection rate.³

28 Despite this statement in the *Local Competition Order*, there still remained some
29 controversy as to whether it was necessary to also examine the functionality of a

² *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, 172, 176 (1996) ("*Local Competition Order*") at ¶¶ 1090-1091.

1 CLEC switch as well as its geographic coverage when determining whether a
2 CLEC was entitled to the tandem rate. The FCC has laid this controversy to rest
3 in two pronouncements. The first is in its *Intercarrier Compensation NPRM*,
4 where the FCC stated,

5 In addition, section 51.711(a)(3) of the Commission's rules
6 requires only that the comparable geographic area test be
7 met before carriers are entitled to the tandem
8 interconnection rate for local call termination. Although
9 there has been some confusion stemming from additional
10 language in the text of the *Local Competition Order*
11 regarding functional equivalency, section 51.711(a)(3) is
12 clear in requiring only a geographic area test. Therefore,
13 we confirm that a carrier demonstrating that its switch
14 serves "a geographic area comparable to that served by the
15 incumbent LEC's tandem switch" is entitled to the tandem
16 interconnection rate to terminate local telecommunications
17 traffic on its network.⁴

18 The FCC reiterated this clarification in a May 9, 2001 letter relating to a Sprint
19 PCS request on this same issue. In that letter the Commission cited the above
20 quoted statement from the *Intercarrier Compensation NPRM* and reiterated that
21 the geographic comparability test is the only applicable rule.⁵

22 **Q. HAVE THERE BEEN COURT DECISIONS ON THIS ISSUE?**

23 A. Yes. The U.S. Court of Appeals for the Ninth Circuit also addressed the issue
24 reversing a ruling by this Commission to find that AT&T Wireless must be

³ *Local Competition Order* at ¶1090 (emphasis added).

⁴ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, CC Docket No. 01-92 (Rel. Apr. 27, 2001) at ¶ 105 ("*Intercarrier Compensation NPRM*") (emphasis added).

⁵ Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC, to Charles McKee, Senior Attorney. Sprint PCS (May 9, 2001).

1 compensated at the tandem rate because its switches serve a comparable
2 geographic area to U.S. West's tandem switches.⁶

3 Thus, it is clear the sole test for determining entitlement to the tandem rate is
4 comparable geographic coverage. Functionality of the switch is irrelevant.

5 Therefore, any suggestion that AT&T must actually prove tandem-switching
6 functionality before it can charge Qwest the tandem rate is inconsistent with
7 federal rules should be rejected by this Commission.

8 **Q. HAS THE FCC ADDRESSED WHETHER A CLEC HAS TO BE**
9 **“ACTUALLY SERVING” OR “CAPABLE OF SERVING” IN ORDER TO**
10 **MEET THE TEST SPECIFIED IN 47 C.F.R. § 51.711(a)(3)?**

11 A. Yes, the FCC addressed that very issue in the *Virginia Arbitration Order*.⁷ In that
12 proceeding, Verizon argued that AT&T must demonstrate that its switches are
13 actually serving comparable areas before AT&T may receive the tandem rate.
14 That is Verizon asserted that AT&T must be actually serving a certain, but
15 unspecified, number of subscribers distributed across a comparable geographic
16 area. This is precisely the same argument Qwest is making in this proceeding. In
17 response to Verizon's arguments, the FCC ruled “[w]e agree with AT&T and
18 WorldCom, therefore, that the requisite comparison under the tandem rate rule is
19 whether the competitive LEC's switch is capable of serving a geographic area that

⁶ *U.S. West Communications, Inc v. Washington Utilities and Transportation Commission, AT&T Wireless Services, Inc.*, CV-97-05686-BJR, No. 98-36013 (July 3, 2001). The Court cited both the *Local Competition Order* and the May 9, 2001 letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC to Charles McKee, Senior Attorney, Sprint PCS in its ruling.

⁷ *In the Matter of the Petition of 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.*, Memorandum Opinion and Order, CC Docket No. 00-251 (Rel. July 17, 2002) (“*Virginia Arbitration Order*”)

1 is comparable to the architecture served by the incumbent LEC's tandem
2 switch."⁸ The FCC noted that "[a]lthough Verizon has conceded that the tandem
3 rate rule does not have a functionality requirement, it continues to assert that the
4 competitive LEC switch must actually serve a geographically dispersed customer
5 base in order to qualify for the tandem rate." But the FCC concluded, "[w]e agree,
6 however, with AT&T and WorldCom that the determination whether competitive
7 LEC's switch 'serves' a certain geographical area does not require an examination
8 of the competitor's customer base."⁹ That would involve a measure of how
9 successful AT&T is in the marketplace rather than its network costs. Based on
10 the evidence AT&T provided in that proceeding, which is the same evidence
11 AT&T is providing to the Commission in this proceeding, the FCC found that
12 AT&T had met the test specified in 47 C.F.R. § 51.711(a)(3) in Virginia.¹⁰ Thus,
13 the FCC has interpreted its own rule and rejected exactly the same argument
14 Qwest is making here.

15 **Q. ARE AT&T'S SWITCHES IN WASHINGTON CAPABLE OF SERVING A**
16 **GEOGRAPHIC AREA COMPARABLE TO QWEST'S TANDEM**
17 **SWITCHES?**

18 A. Yes, they are. Because AT&T's switches are capable of serving customers within
19 geographic areas comparable to Qwest's tandem switches in Washington, the
20 Commission should order Qwest to pay the applicable tandem interconnection
21 rates for the termination of local traffic at each AT&T switch.

⁸ *Id.* at ¶ 309 (emphasis supplied).

⁹ *Id.*

¹⁰ *Id.*

1 AT&T offers service in Washington utilizing two separate networks. One
2 network is operated on behalf of AT&T Communications of the Pacific
3 Northwest, Inc. (“AT&T Communications”). A second network is operated on
4 behalf of TCG Washington, Inc. (“TCG”). These networks provide distinct
5 services and products to distinct classes of customers and are not integrated. For
6 this reason, each network may be judged independently for purposes of
7 determining whether such network meets the standard under 47 C.F.R. § 51.711
8 (a)(3).

9 AT&T Communications has deployed 4ESS switches, which function primarily
10 as long distance switches, and 5ESS switches, which act as adjuncts to the 4ESS
11 switches.

12 TCG provides local exchange services using Class 5 switches.

13 **Q. HAVE YOU PREPARED ANY DOCUMENTATION THAT SUPPORTS**
14 **YOUR CLAIM THAT THESE SWITCHES COVER A GEOGRAPHIC**
15 **AREA COMPARABLE TO THE AREA COVERED BY QWEST’S**
16 **SWITCHES?**

17 A. Yes. To assist the Commission in resolving this issue, we have prepared a series
18 of maps that are identified as Exhibits DLT-1 through DLT-4.¹¹ The first map,
19 **Exhibit DLT-2**, provides the number of tandem switches Qwest currently

20

¹¹ Statewide and LATA-specific maps were created by using data contained in the Local Exchange Routing Guide (“LERG”). The LERG, produced by Telcordia Technologies, contains routing data that supports the current local exchange network configuration within the North American Numbering Plan (NANP) as well as identifying reported planned changes in the network. The LERG data in conjunction with MapInfo V-4.1.1.2, a commercial mapping software package, was used to prepare the attached statewide and LATA-specific maps.

1 operates and the areas these switches serve in Washington on a LATA-by-LATA
2 basis. The second map, **Exhibit DLT-3**, shows the number of switches AT&T
3 Communications currently operates and the areas these switches serve in
4 Washington on a LATA-by-LATA basis. The third map, **Exhibit DLT-4**, shows
5 the number of switches TCG currently operates and the areas these switches serve
6 in Washington in on a LATA-by-LATA basis. Finally, **Exhibit DLT-5** shows the
7 same three maps on a single page, for easier comparison.

8 When all three maps are viewed together, it becomes clear that AT&T
9 Communications and TCG switches cover a comparable geographic area as that
10 covered by the corresponding Qwest tandem switches.

11 In addition to the maps, AT&T's switches serve a comparable number of Qwest's
12 Washington rate centers that are served by the Qwest tandem switches and the
13 AT&T Communications and TCG switches. Whether one compares the
14 geographic rate center coverage on a LATA-by-LATA or a statewide basis, both
15 the AT&T Communications and TCG switches serve a comparable or greater
16 number of rate centers as the Qwest tandem switches.

17 This evidence demonstrates that the AT&T Communications and TCG networks
18 each meet the requirement of the FCC tandem rate rule, 47 C.F.R. § 51-711(a)(3).
19 The Commission should affirm that AT&T Communications and TCG are entitled
20 to receive the tandem rate for terminating Qwest's traffic.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

2 A. The Commission should adopt AT&T's definition because it is consistent with the
3 law. And the Commission should make the fact-based determination that
4 AT&T's and TCG's switches are capable of serving a comparable geographic
5 area to Qwest's tandem switches.

6 **C. Issue 17. Sections 7.3.1.1.3.1 and 7.3.2.2.1: Reduction Of Direct**
7 **Trunked Transport Rate Element When 2-Way Trunking Is**
8 **Established For Reciprocal Compensation And Exclusion/Inclusion Of**
9 **ISP-Bound Traffic**

10 **Q. PLEASE DESCRIBE ISSUE 17.**

11 A. In Sections 7.3.1.1.3.1 and 7.3.2.2.1, the parties have generally agreed to share the
12 cost of the dedicated transport facility supporting the two-way trunk groups used
13 by the Parties, however, there remains disagreement on three points.

14 First, these provisions by their terms refer only to Entrance Facilities and Direct
15 Trunked Transport. Qwest agrees that there are other flat-rated transport facilities
16 for which AT&T and Qwest will share the cost. For example, if AT&T purchases
17 UNE dedicated transport from Qwest, the parties will share the cost of this
18 facility. AT&T has added parenthetical language to make clear that these cost
19 sharing provisions are not limited solely to Entrance Facilities and Direct Trunked
20 Transport, but apply also to other comparable facilities providing equivalent
21 functionality. Presumably, Qwest opposes AT&T's language because AT&T's
22 parenthetical language would include the private line facilities.

1 Second, Qwest wishes to exclude “Internet Related” traffic from the computation
2 of the cost sharing for these facilities. AT&T believes that there is no lawful basis
3 to do so and disagrees.

4 Finally, the Parties disagree on the retroactive true-up period if the initial relative
5 use factor of fifty percent (50%) is found to be in error.

6 **Q. WHAT IS A “RELATIVE USE FACTOR” AND WHY IS IT EMPLOYED**
7 **HERE?**

8 A. The “relative use factor” is a method carriers employ to designate each party’s
9 usage of a trunk group and the related transport facility that supports the trunk
10 group. In other words, the factor designates the percentage of trunks in the trunk
11 group that are required to carry each Party’s traffic. In this case, Qwest and
12 AT&T have agreed that the relative use factor shall start with the assumption that
13 each party is using 50% of the trunks in the trunk group, *i.e.*, 50% of the trunk
14 group’s capacity, for its traffic. Where the agreement falls apart is: (a) over what
15 type of facilities may be used for the trunk group, (b) what type of traffic should
16 be included in calculating the relative use factor, and (c) how true-up of the
17 relative use factor should operate.

18 **Q. HOW SHOULD THE COMMISSION RESOLVE THE FIRST POINT**
19 **REGARDING THE APPLICABILITY OF THE RELATIVE USE FACTOR**
20 **WHEN PRIVATE LINE FACILITIES ARE USED FOR THE TRUNK**
21 **GROUP?**

22 A. The Commission should resolve this issue in AT&T’s favor because AT&T’s
23 position is fair by requiring that both parties pay for their respective use of the

1 special access facility¹² or portion of the UNE dedicate transport facility used for
2 the trunk group and AT&T's language is consistent with requirements of both 47
3 C.F.R. § 51.703(b) and 47 C.F.R. § 51.709(b). AT&T's clarification under these
4 sections is consistent with the agreed to language in 7.3.1(b). AT&T's proposals,
5 here, make clear that the cost sharing provisions are not limited solely to Entrance
6 Facilities and Direct Trunked Transport, but apply also to other comparable
7 facilities providing equivalent functionality. This is consistent with other agreed
8 to provisions in the Proposed Interconnection Agreement.

9 **Q. TURNING TO THE SECOND ISSUE, WHY SHOULD INTERNET**
10 **TRAFFIC BE INCLUDED WHEN CALCULATING THE RELATIVE USE**
11 **FACTOR?**

12 A. Internet traffic should be included because the law requires it, and Qwest cannot
13 act in contravention of the law. Under the law, each party is financially
14 responsible for (1) transporting to the POI traffic originating on its own network,
15 and (2) paying for transport and termination of the traffic to the end user on the
16 terminating Party's network. This responsibility is clearly spelled out in 47
17 C.F.R. § 51.703(b) and 47 C.F.R. § 51.709(b), respectively, as follows:

18 47 C.F.R. § 51.703(b) states:

19 A LEC may not assess charges on any other telecommunications
20 carrier for local telecommunications traffic that originates on the
21 LEC's network.

22 Further, 47 C.F.R. § 51.709(b) states:

¹² Section 7.3.1.1.2 of the Proposed Interconnection Agreement already recognizes that if Private Line facilities are used for local interconnection, those facilities should be priced at interconnection rates. If

1 The rate of a carrier providing transmission facilities dedicated to
2 the transmission of traffic between two carriers' networks shall
3 recover only the costs of the proportion of that trunk capacity used
4 by an interconnecting carrier to send traffic that will terminate on
5 the providing carrier's network.

6 Neither 47 C.F.R. § 51.703(b) nor 47 C.F.R. § 51.709(b) contain exceptions
7 allowing a carrier to exclude Internet related (ISP-bound) traffic from its
8 obligations to be financially responsible for traffic originating on its network. If
9 there was any question, it was laid to rest by the FCC's pronouncements in
10 paragraph 1062 of its *Local Competition Order* and paragraph 52 in its *Virginia*
11 *Arbitration Order*.

12 In its *Local Competition Order*, the FCC addressed this fundamental rule that
13 each party bears financial responsibility for the costs of transporting its own
14 traffic. Specifically, the FCC explained:

15 The amount an interconnecting carrier pays for dedicated transport
16 is to be proportional to its relative use of the dedicated facility. For
17 example, if the providing carrier provides one-way trunks that the
18 inter-connecting carrier uses exclusively for sending terminating
19 traffic to the providing carrier, then the inter-connecting carrier is
20 to pay the providing carrier a rate that recovers the full forward-
21 looking economic cost of those trunks. The inter-connecting
22 carrier, however, should not be required to pay the providing
23 carrier for one-way trunks in the opposite direction, which the
24 providing carrier owns and uses to send its own traffic to the inter-
25 connecting carrier. Under an alternative scenario, if the providing
26 carrier provides two-way trunks between its network and the inter-
27 connecting carrier's network, then the interconnecting carrier
28 should not have to pay the providing carrier a rate that recovers the
29 full cost of those trunks. These two-way trunks are used by the
30 providing carrier to send terminating traffic to the interconnecting
31 carrier, as well as by the interconnecting carrier to send
32 terminating traffic to the providing carrier. Rather, the inter-

they are used as two-way facilities, the cost should be shared, consistent with the parties' general agreement about cost sharing with local interconnection facilities.

1 connecting carrier shall pay the providing carrier a rate that reflects
2 only the proportion of the trunk capacity that the interconnecting
3 carrier uses to send terminating traffic to the providing carrier.¹³

4 Finally, the FCC addressed this very point in the *Virginia Arbitration Proceeding*.

5 Specifically, the FCC stated:

6 The Commission's rules implementing the reciprocal compensation
7 provisions in section 252(d)(2)(A) prevent any LEC from assessing
8 charges on another telecommunications carrier for telecommunications
9 traffic subject to reciprocal compensation that originates on the LEC's
10 network. Furthermore, under these rules, to the extent an incumbent LEC
11 delivers to the point of interconnection its own originating traffic that is
12 subject to reciprocal compensation, the incumbent LEC is required to bear
13 financial responsibility for that traffic.¹⁴

14 **Q. DOES RULE 47 C.F.R. § 51.703(b) APPLY TO ISP-BOUND TRAFFIC?**

15 A. Yes. 47 C.F.R. § 51.703(b) applies to all telecommunications traffic that is not
16 subject to section 251(g) of the Act, and pursuant to the D.C. Circuit Court of
17 Appeals, ISP-bound traffic is not subject to section 251(g) of the Act.¹⁵

18 **Q. PLEASE EXPLAIN THE FCC'S INTERCARRIER COMPENSATION**
19 **MECHANISM AS IT APPLIES TO ISP-BOUND TRAFFIC.**

20 A. Using its authority under section 201 of the Telecommunications Act,¹⁶ the FCC
21 developed an intercarrier compensation mechanism that provides for two payment
22 options for ISP-bound traffic. An ILEC may offer to exchange traffic subject to
23 section 251(b)(5) and ISP-bound traffic at rate caps established for certain periods
24 – i.e. \$.0015 per minute of use (“MOU”) from June 13, 2001 to December 13,

¹³ *Local Competition Order* at ¶ 1062 (emphasis added).

¹⁴ *Virginia Arbitration Order* at ¶ 52.

¹⁵ *Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2000).

¹⁶ *See*, 47 U.S.C. § 201, Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

1 2001; \$.0010 per MOU from December 14, 2001 to June 13, 2003; and \$.0007
2 per MOU from June 14, 2003 until the Commission issues a further order on
3 intercarrier compensation. If an ILEC chooses not to exchange traffic subject to
4 section 251(b)(5) and ISP-bound traffic under the FCC's rate cap mechanism,
5 then the FCC requires that the carriers exchange ISP-bound traffic at the state
6 adopted reciprocal compensation rate. Neither option permits ILECs to assess
7 access charges for the exchange of ISP-bound traffic.

8 Additionally, the FCC imposed a cap on the total ISP-bound minutes for which a
9 LEC may receive intercarrier compensation. ISP-bound minutes that exceed the
10 cap are exchanged on a bill and keep basis.¹⁷

11 **Q. HAS QWEST OFFERED TO EXCHANGE BOTH SECTION 251(b)(5)**
12 **TRAFFIC AND ISP-BOUND TRAFFIC AT THE RATE CAPS**
13 **ESTABLISHED BY THE FCC?**

14 A. Yes. This is reflected in the undisputed language of Section 7.3.6.2 in the
15 Proposed Interconnection Agreement.

16 **Q. WHAT WAS THE FCC'S BASIS FOR EXCLUDING ISP-BOUND**
17 **TRAFFIC FROM SECTION 251(b)(5) TRAFFIC?**

18 A. The FCC expressly stated that all traffic is subject to reciprocal compensation
19 unless it falls within the exceptions set forth in section 251(g) of the Act. These
20 exceptions are known as the section 251(g) "carve out." The FCC believed that
21 ISP-bound traffic fell within the section 251(g) carve out because ISP-bound
22 traffic was a form of "information access" traffic subject to section 251(g). The

¹⁷ *Id.* at ¶¶ 7 & 8.

1 Commission then established an intercarrier compensation mechanism for the
2 exchange of such traffic.

3 **Q. HAS THE ISP REMAND ORDER¹⁸ BEEN APPEALED?**

4 A. Yes. In May 2002, the D.C. Court of Appeals held that the FCC could not subject
5 ISP-bound traffic to the section 251(g) carve out because this carve out was
6 intended by Congress to preserve certain compensation mechanisms that were in
7 effect when Congress implemented the Act, and was not meant to create new
8 classes of service within the meaning of the section 251(g) carve out.¹⁹ However,
9 the court declined to vacate the FCC's intercarrier compensation mechanism,
10 giving the FCC the opportunity to readdress the issue, which the FCC intends to
11 do in its InterCarrier Compensation NPRM.

12 Accordingly, ISP-bound traffic is "telecommunications" as set forth in 47 C.F.R.
13 § 51.701(b)(1) and is subject to 47 C.F.R. § 51.703(b).

14 **Q. WITH RESPECT TO EXCLUDING INTERNET RELATED TRAFFIC,
15 WHAT DOES QWEST'S PROPOSED LANGUAGE ACCOMPLISH?**

16 A With its proposed language for this issue, Qwest seeks to require the terminating
17 carrier to bear the cost of carrying a certain class of Qwest's originating traffic,
18 specifically ISP-bound traffic. This is directly contradictory to the rules
19 established by the FCC. By proposing to eliminate Internet related traffic from
20 the calculation that determines the relative use of two-way interconnection trunks,

¹⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand & Report and Order, CC Docket Nos. 96-98 & 99-68, FCC 01-131 (Rel. Apr. 27, 2001) ("ISP Remand Order").

1 Qwest is in fact requiring the terminating carrier to bear the cost of carrying
2 Qwest's originating ISP-bound traffic.

3 **Q. PLEASE PROVIDE A SIMPLE EXAMPLE TO ILLUSTRATE THIS.**

4 A. Assume AT&T leases a dedicated transport facility from Qwest and the facility
5 supports a two-way trunk group between a Qwest switch and an AT&T switch.
6 Assume further that the facility has monthly cost of \$500 and Qwest sends AT&T
7 60,000 minutes per month and AT&T sends Qwest 20,000 minutes per month.
8 Based on AT&T's relative use of 25%, Qwest would bill AT&T \$125 per month
9 for its relative use of the facility. Now, assume that 20,000 of the minutes that
10 Qwest is sending to AT&T are Internet related traffic and, under Qwest's
11 proposed language, are excluded from the relative use calculation. AT&T's
12 relative use is now 50% ($20,000 / (60,000 - 20,000)$) and Qwest would bill AT&T
13 \$250 per month for its relative use of the facility. Therefore, under Qwest's
14 proposal, even though it is sending AT&T the same amount of originating traffic
15 to terminate, Qwest is paying less than its proportionate share of the transport
16 facility. Clearly, Qwest's proposed language would shift the financial
17 responsibility for traffic originating on Qwest's network to AT&T and this is not
18 permissible under the Federal Regulations cited above.

¹⁹ *WorldCom, Inc. v. FCC* at 430-432.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS INTERNET**
2 **PORTION OF ISSUE 17?**

3 A. The commission should adopt AT&T's proposed language, which strikes Qwest's
4 language that employs only non-internet related traffic in the calculation of the
5 relative use factor.

6 **Q. FINALLY, CONCERNING THE THIRD POINT, PLEASE EXPLAIN THE**
7 **PARTIES' DISAGREEMENT REGARDING THE RETROACTIVE TRUE**
8 **UP OF THE RELATIVE USE FACTOR.**

9 A. The parties have agreed to start by assuming an initial relative use factor of fifty
10 percent (50%), for a minimum of one quarter. The initial relative use factor will
11 continue for both bill reduction and payments until the Parties agree to a new
12 factor, based upon actual minutes of use data. Qwest believes that any true up of
13 the billing should only be applicable to the first quarter's charges while AT&T
14 believes the true up should be applicable during the quarter or quarters governed
15 by the initial relative use factor.

16 **Q. WHY IS AT&T'S PROPOSED LANGUAGE APPROPRIATE?**

17 A. AT&T's language recognizes that the parties may actually use the initial relative
18 use factor for more than one quarter for any number of reasons. Therefore,
19 AT&T's language simply provides that the true up covers the quarters that the
20 initial relative use factor was used for billing. This is fair to both parties.

21 **Q. HOW SHOULD THE COMMISSION RESOLVE THE QUESTION OF**
22 **RETROACTIVE TRUE UP?**

23 A. The Commission should adopt AT&T's proposed language. It is reasonable and
24 fair to both parties.

1 **D. Issue 18. Section 7.3.4.1.2: Reciprocal Compensation And Calculation**
2 **Of Tandem Transmission Rate**

3 **Q. PLEASE DESCRIBE ISSUE 18.**

4 A. During negotiations, the Parties were unable to agree on whether AT&T was
5 entitled to include an assumed number of miles in its calculation of the Tandem
6 Transmission rate component of AT&T's tandem reciprocal compensation billing
7 to Qwest.

8 Qwest's tandem rate includes three rate components: the End Office Call
9 Termination rate, the Tandem Switching rate and the Tandem Transmission rate.
10 Pursuant to 47 C.F.R. §51.711(a), the rates the Parties charge each other for
11 reciprocal compensation must be symmetrical. Therefore, AT&T is permitted by
12 Federal Regulations to charge Qwest tandem reciprocal compensation rates that
13 are symmetrical with the rates Qwest charges AT&T. Therefore, if Qwest's
14 Tandem Transmission rate is mileage sensitive, then AT&T should charge Qwest
15 a Tandem Transmission rate based on the average mileage contained in Qwest's
16 billing to AT&T, or as otherwise agreed by the Parties.

17 **Q. IS THIS ISSUE APPLICABLE IN WASHINGTON AT THIS TIME?**

18 A. Yes. Qwest's current Tandem Transmission rate is mileage sensitive. Please
19 refer to Section of 7.6.2.1 of Exhibit A, Prices, to the Proposed Interconnection
20 Agreement.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

2 A. The Commission should adopt AT&T's proposed language for Section 7.3.4.1.2
3 to insure that the parties charge each other a fully reciprocal rate for tandem
4 switching, as required by Federal law.

5 **E. Issue 19. Sections 7.3.6.1 and 7.3.6.2.1: ISP-Bound Traffic, UNE-P**
6 **Minutes And The 3:1 Ratio Of Terminating To Originating Traffic.**

7 **Q. PLEASE DESCRIBE ISSUE 19.**

8 A. In accordance with the FCC's *ISP Remand Order*, the Parties have agreed to
9 adopt a rebuttable presumption that traffic that exceeds a 3:1 ratio of terminating
10 to originating traffic is ISP-bound traffic.²⁰ However, the Parties disagree on
11 whether the ratio should include Unbundled Network Elements-Platform (UNE-P)
12 minutes of use.

13 AT&T's position is that UNE-P originating and terminating minutes of use should
14 be included in the 3:1 ratio that applies when determining whether traffic is to be
15 compensated at the transitional rates for ISP-bound traffic that the FCC
16 established in the *ISP Remand Order* or at the reciprocal compensation rates
17 established by this Commission. Qwest disagrees.

18 **Q. HAS THE FCC ADDRESSED THIS ISSUE?**

19 A. Yes, the FCC addressed this issue in the *Virginia Arbitration Proceeding* and
20 therefore we have the benefit of the FCC's pronouncement of the minutes of use
21 to be included in the 3:1 ratio. In the *Virginia Arbitration Order*, the FCC stated,

²⁰ *ISP Remand Order* at ¶ 79.

1 “The *ISP Intercarrier Compensation Order* does not distinguish between UNE-
2 platform traffic and originating interconnection trunk traffic in its application of
3 the 3:1 ratio. We conclude, therefore, that both categories of traffic should be
4 included in this calculation.”²¹

5 **Q. DOES IT MAKE SENSE TO INCLUDE UNE-P MINUTES OF USE?**

6 A. Yes. There is no difference between a CLEC’s UNE-P and facility-based traffic
7 for compensation purposes and both should be included. When a CLEC leases
8 UNE-P from Qwest, the CLEC is leasing loops, switches, and transport in order to
9 provide telecommunication services. Thus the CLEC uses UNE-P to emulate a
10 facility-based carrier. The CLEC pays compensation to Qwest for terminating
11 either type of traffic and similarly the CLEC is entitled to collect compensation
12 when it terminates calls to its customers served by its switches or by UNE-P.

13 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

14 A. The Commission should find that the FCC’s *ISP Remand Order* does not
15 distinguish between facility-based and UNE-P traffic and therefore both types of
16 traffic should be included in the calculation of the 3:1 ratio of terminating to
17 originating traffic. Accordingly, the Commission should adopt AT&T’s proposed
18 language in Section 7.3.6.2.1.

²¹ *Virginia Arbitration Order* at ¶ 267.

1 **F. Issue 21. Section 7.3.8: Billing For Traffic That Does Not Carry The**
2 **Calling Party Number (“CPN”) – If The Originating Party Passes CPN**
3 **On Less Than 95% Of Its Calls, Should Those Calls Passed Without**
4 **CPN Be Billed As IntraLATA Switched Access Or Based On A**
5 **Percentage Local Usage (“PLU”)?**

6 **Q. WHAT IS CALLING PARTY NUMBER OR “CPN?”**

7 A. When a call is set up using the SS7 signaling network, included in the Initial
8 Address Message (“IAM”) is the Calling Party Number and a two-bit indicator,
9 called the Presentation Indicator (“PI”).²² The CPN portion of the IAM is simply
10 the phone number of the originating caller. Whichever way the message traverses
11 the network (*i.e.* local, intrastate, or interstate), the CPN indicates to the
12 terminating LEC’s switch where the message originated and whether or not to
13 pass the CPN along to the called party by use of the PI. Federal law requires
14 carriers to transmit CPN on interstate calls using SS7 and offering or subscribing
15 to services based upon SS7 signaling.²³ It is important to note that the use of CPN
16 was intended for Caller ID services, not for jurisdictional billing purposes.

17 **Q. PLEASE PROVIDE AT&T’S PROPOSAL.**

18 A. AT&T proposes the following language. This is a modified proposal that AT&T
19 made to Qwest on September 15, 2003:

20 7.3.8.1 Qwest and CLEC are required to provide each other the
21 proper signaling information (e.g., originating call party number and
22 destination call party number, etc.) to enable each Party to issue bills in a
23 complete and timely fashion. All CCS signaling parameters will be

²² Signaling System 7. The term Signaling System 7 (SS7) refers to a carrier-to-carrier out-of-band signaling network used for call routing, billing and management. 47 U.S.C. §64.1600(d).

²³ Federal regulations exempt a carrier from the requirement of providing CPN information under certain circumstances. 47 C.F.R. §64.1601(d).

1 provided including originating line information (OLI), calling party
2 category, Charge Number, etc. All privacy indicators will be honored.

3 7.3.8.2 Where SS7 connections exist, each Party shall pass Calling
4 Party Number ("CPN") information, where available, on each EAS/Local
5 and IntraLATA toll call carried over Interconnection trunks. All
6 EAS/Local and IntraLATA Toll calls exchanged without CPN information
7 will be billed as either EAS/Local Traffic or IntraLATA Toll Traffic in
8 direct proportion to the minutes of use (MOU) of calls exchanged with
9 CPN information for the preceding quarter, utilizing a PLU factor
10 determined in accordance with Section 7.3.9 of this Agreement. If the
11 percentage of EAS/Local and IntraLATA Toll calls passed with CPN is
12 less than ninety percent (90%) for a given month, the terminating Party
13 will inform the originating Party that the CPN percentage has fallen below
14 the targeted 90%. The Parties will coordinate and exchange data as
15 necessary to determine the cause of the failure and to assist its correction.
16 If after three (3) consecutive months from the date the terminating Party
17 noticed the originating Party, the percentage of EAS/Local and IntraLATA
18 calls passed with CPN continues to be less than ninety percent (90%), and
19 if the terminating Party has reason to believe that the lack of CPN is not
20 primarily due to legitimate causes consistent with 47 CFR §64.1601(d)
21 (such as customers' requests for privacy indicators, calls originating from
22 payphones, PBX's or Centrex systems), the terminating Party may file a
23 complaint with the Commission in which the terminating Party shall
24 demonstrate that it is appropriate to assess access charges or other
25 penalties relating to the no CPN traffic because the lack of CPN is not the
26 result of legitimate causes. Until and unless a state commission finds that
27 it is appropriate to assess access charges or other penalties to the no CPN
28 traffic, all such calls exchanged without CPN will be billed as either
29 EAS/Local or IntraLATA Toll in direct proportion to the minutes of use of
30 calls exchanged with CPN for the immediately preceding quarter.

31 7.3.8.3 The transit provider will be accountable for transit traffic
32 without CPN unless the transit provider provides information to the
33 terminating Party each month that identifies the carriers that originated the
34 no-CPN traffic, and the no-CPN traffic originated by each carrier. If the
35 transit provider does not provide such information, the no-CPN traffic will
36 be treated consistent with this section and as though the traffic was
37 originated by the transit provider.

38 **Q. WITH THIS BACKGROUND, PLEASE DESCRIBE ISSUE 21.**

39 A. AT&T and Qwest disagree on how to determine the jurisdiction of traffic sent
40 without CPN information. AT&T proposes that the Parties use a factor based on

1 the ratio of local and switched access traffic with CPN to bill for the traffic that
2 does not contain CPN. Thus, if 80% of the traffic with CPN is local and 20% is
3 toll, then 80% of the traffic without CPN would be billed as reciprocal
4 compensation and 20% would be billed as switched access. Qwest believes all
5 traffic without CPN should be billed as switched access.

6 In addition, the parties disagree on whether the requirement for percentage of
7 calls passed with CPN should be 90% or 95%. AT&T believes 90% is
8 appropriate while Qwest believes it should be 95%.

9 **Q. DOES AT&T PROVIDE CPN ON ALL CALLS?**

10 A. No. It is virtually impossible to provide CPN on all calls. AT&T agrees that
11 CPN should be passed wherever possible. All AT&T switches provide CPN on
12 all calls where AT&T has control over provision of CPN.

13 **Q. DOES AT&T HAVE CONTROL OVER THE PROVISION OF CPN IN**
14 **ALL CASES?**

15 A. No. Preliminarily, since it is Qwest's desire to bill all CPN-less traffic as
16 switched access, this assumes that AT&T receives all of its traffic with CPN.
17 This is not the case as traffic is delivered to the AT&T network in a variety of
18 ways, some of which cannot carry CPN. As a primary example, AT&T and
19 Qwest have no control over the lack of CPN when business customers use older
20 customer premise equipment ("CPE") that cannot record the customer's CPN.
21 Since older multi-line business CPE is unable to record CPN mechanically, it will
22 not be able to pass any CPN. In this case, calls without CPN would not

1 necessarily or even primarily be toll calls. If AT&T had a disproportionate share
2 of this type of business customer, it would be unfairly penalized and overcharged
3 by Qwest under Qwest's proposal.

4 There are many other practical reasons why CPN cannot be passed to a
5 terminating LEC. For example, outbound nodal customers that connect to
6 AT&T's network via Multi-Frequency signaling are not assigned telephone
7 numbers; therefore, CPN information is not available to be passed for these
8 customer calls. In order to pass on CPN information, the outbound nodal
9 customers would have to be assigned telephone numbers, which could result in an
10 additional strain on the limited numbering resources available and would be a
11 significant undertaking and expense. Also, Primary Rate Interface ("PRI")
12 customers (e.g. ISDN PRI) often do not pass CPN information to AT&T, who in
13 turn cannot pass that information to the terminating local carrier. Further, AT&T
14 carries traffic that originates from LECs who do not utilize SS7. The terminating
15 LEC may have SS7 with AT&T, but this does not imply that the end-to-end
16 connection is based upon an end-to-end SS7 signaling arrangement.

17 Therefore, AT&T's proposed language states that the parties will coordinate and
18 exchange data as necessary to determine the cause of the CPN failure (or
19 shortfall) and to assist in its correction, but it does not require the originating
20 carrier to pay access charges on all of the calls passed without CPN, which
21 Qwest's language would require.

1 **Q. HOW DOES AT&T PROPOSE TO DETERMINE THE JURISDICTION**
2 **OF THE TRAFFIC THAT LACKS CPN?**

3 A. AT&T believes that in the absence of CPN information, the jurisdiction of the
4 traffic should have a basis in fact, i.e., the percent local usage (PLU) factor, rather
5 than an arbitrary designation of all such calls as toll traffic which is subject to
6 access charges. AT&T and Qwest have employed the PLU method for years, and
7 at present as between these parties, there is no good reason to alter this course of
8 dealing with a less accurate methodology.

9 **Q. WHAT IS THE PERCENTAGE REQUIREMENT TYPICALLY USED IN**
10 **AT&T'S INTERCONNECTION AGREEMENTS?**

11 A. Typically, the parties agree that the percentage of calls passed with CPN will be
12 90% or greater, for example, as set forth in AT&T's interconnection agreements
13 with BellSouth, Verizon and SBC. Thus, Qwest's assertion that the percentage
14 should be 95% is at variance with AT&T's experience in other interconnection
15 agreements.

16 **Q. PLEASE EXPLAIN AT&T'S POSITION REGARDING THE USE OF A**
17 **PLU FACTOR.**

18 A. First, AT&T believes that there is no basis to presume that all traffic without CPN
19 is toll traffic subject to switched access charges. The more balanced approach is
20 the application of the PLU factor proposed by AT&T. With the PLU factor,
21 traffic without CPN is jurisdictionalized based on the traffic with CPN. As
22 explained above, if 80% of the traffic with CPN is local and 20% is toll, then 80%
23 of the traffic without CPN would be billed as reciprocal compensation and 20%
24 would be billed as switched access.

1 Second, AT&T believes that rather than expend the resources to substantiate the
2 reason for every call without CPN, which would be required by Qwest's proposed
3 language to avoid having the call billed as switched access, the parties are better
4 served by using the factoring approach proposed by AT&T.

5 **Q. WHAT SUPPORT HAS QWEST GIVEN FOR ITS LANGUAGE ON THIS**
6 **ISSUE?**

7 A. Qwest has simply suggested that decreasing the required level of CPN from 95%
8 to 90% will create higher occurrences of billing disputes between the parties, but
9 has offered no empirical data to support its assertion.

10 Qwest believes that this provision will protect it against some unscrupulous
11 CLEC stripping or overriding CPN so they can slip toll traffic in as local traffic
12 and pay the lower reciprocal compensation rate instead of the applicable higher
13 access charges. AT&T should not be penalized for the actions that other CLECs
14 might take.

15 **Q. DOES CPN-LESS TRAFFIC FROM ANOTHER CARRIER CROSS**
16 **QWEST'S NETWORK AND END-UP ON AT&T'S NETWORK?**

17 A. Yes; in this case the traffic is called "transit traffic." If AT&T receives such
18 traffic from a Qwest tandem without CPN, AT&T has no way of knowing
19 whether the traffic was originated without CPN or whether Qwest simply did not
20 pass the CPN on to AT&T.

1 **Q. HOW DOES AT&T PROPOSE TO DEAL WITH SUCH TRAFFIC?**

2 A. Because both AT&T and Qwest will experience CPN-less transit traffic, AT&T
3 proposes that the carriers cooperate with each other to identify the source of the
4 transit traffic. If the transit provider does not assist the terminating carrier in
5 determining where such no CPN traffic came from, the transit carrier will be
6 responsible for the terminating charge. AT&T's proposed language set forth
7 above as Section 7.3.8.3 describes how the carriers will resolve the no CPN transit
8 traffic issues.

9 **Q. HAS THE CPN-LESS TRAFFIC ISSUE BEEN ADDRESSED BY THE**
10 **FCC?**

11 A. Yes. This issue was one of WorldCom's issues addressed by the FCC in the
12 Virginia Arbitration Proceeding.²⁴ In that proceeding, Verizon and WorldCom
13 agreed that they would exchange CPN data for at least 90% of the calls but
14 disagreed on what should happen when a party passes CPN information on less
15 than 90% of its originating calls. Verizon proposed to charge access charges for
16 all traffic below the 90% CPN threshold, which is less onerous than Qwest's
17 proposal in this case. Qwest would charge access charges for all calls without
18 CPN. On the other hand, WorldCom proposed that the parties use the PLU
19 factors to jurisdictionalize the traffic below 90%. The FCC adopted WorldCom's
20 proposal.

21 The FCC said:

22 We adopt WorldCom's proposal because it offers a reasonable
23 solution to address those situations in which the parties are unable

²⁴ *Virginia Arbitration Order*, Issue IV-11, Usage Measurement at ¶¶ 186-191.

1 to pass CPN on 90% of their exchanged traffic. Other than
2 indicating concern about unnamed competitive LECs 'stripping
3 off' CPN to receive reciprocal compensation for a call subject to
4 access charges, Verizon offers no real criticism of WorldCom's
5 proposal. However sympathetic we may be to Verizon's concerns,
6 we note that less drastic measures are available to it (i.e., filing a
7 complaint with the Virginia Commission.) We decline to burden
8 WorldCom merely because of the potential for unlawful behavior
9 by other competitive LECs.²⁵

10 Verizon argues in essence that it is preferable to ignore the
11 jurisdiction of calls exchanged by the parties, calls that have been
12 recorded and are subject to audit and, instead, to assume that all
13 unrecorded traffic is subject to access charges. We disagree. Our
14 record is clear that certain older, multi-line business CPE is unable
15 to record CPN mechanically, WorldCom has no residential
16 customers in Virginia⁶²⁸ and, therefore, may be disproportionately
17 affected, or punished, by Verizon's proposal through no fault of its
18 own. For these reasons, we adopt WorldCom's proposed
19 language.²⁶

20 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

21 A. The Commission should adopt AT&T's language. AT&T's proposed treatment
22 of traffic without CPN is reasonable and entirely consistent with the FCC's ruling
23 in the *Virginia Arbitration Proceeding*. On the other hand, Qwest's proposed
24 language is even more draconian than the Verizon language that the FCC rejected
25 in the *Virginia Arbitration Proceeding*. Here, Qwest proposes to assume that all
26 calls without CPN are toll calls and to charge access charges for all such calls.
27 Qwest's proposal is unreasonable and should be rejected by the Commission.

28 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

29 A. Yes, it does.

²⁵ *Virginia Arbitration Order* at ¶190.

²⁶ *Id.* at ¶ 191.