

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 272 OF THE)
TELECOMMUNICATIONS ACT OF 1996)**

DOCKET NO. UT- 003022

SUPPLEMENTAL DIRECT TESTIMONY

OF

MARIE E. SCHWARTZ

ON BEHALF OF

QWEST CORPORATION

REGARDING 272 ISSUES

MAY 16, 2001

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1

I. IDENTIFICATION OF WITNESS

2 **Q. PLEASE STATE YOUR NAME AND EDUCATIONAL BACKGROUND.**

3 A. My name is Marie E. Schwartz and my business address is 1314 Douglas-
4 On-The-Mall, Floor 10, Omaha, Nebraska, 68102. I am a director in FCC
5 Regulatory Accounting at Qwest Corporation ("The BOC") and am
6 responsible for ensuring Qwest Corporation's regulatory accounting
7 compliance with Section 272 of the Telecommunications Act of 1996 ("the
8 Act").

9 I hold a Bachelors Degree in Business Administration from the University of
10 Nebraska at Omaha as well as a Certified Management Accountant
11 certificate from the Institute of Management Accountants.

12 **Q. PLEASE DESCRIBE YOUR WORK HISTORY AND EXPERIENCE.**

13 A. I have over 13 years experience in the telecommunications and high tech
14 industries, concentrating in regulatory compliance, finance, and accounting.
15 In 1989, I began my career with U S WEST Communications, Inc., now
16 Qwest Corporation, in the Tax Department. In 1990, I began working in FCC
17 Regulatory Accounting where I had responsibilities in Part 64 cost allocation
18 and Part 32.27 affiliate transactions compliance for six years, during which
19 time I chaired an industry task group representing those areas. From 1996-
20 1999, I gained further accounting and finance experience in the high tech

1 industry in California. I resumed my career at U S WEST Communications,
2 Inc., now Qwest Corporation, in 1999.

3 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?**

4 A. Yes, I filed direct testimony on August 7, 2000 and supplemental direct
5 testimony on August 29, 2000.

6 **II. PURPOSE OF TESTIMONY**

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of this testimony is to demonstrate that Qwest Corporation is
9 prepared to satisfy all of the relevant requirements of Section 272 of the Act,
10 and related FCC rules, following Qwest Corporation's receipt of in-region
11 interLATA authority in Washington.

12
13 My testimony addresses the primary requirements of Section 272 of the Act
14 and the Company's ongoing efforts to satisfy them. Section 272 contains
15 eight statutory requirements designed to prohibit anti-competitive behavior,
16 discrimination, and cost shifting between a Bell Operating Company (BOC),
17 like Qwest Corporation (formerly U S WEST Communications, Inc.), and its
18 long distance affiliate.

1 To satisfy its Section 271 obligations, the FCC requires a BOC to
2 demonstrate “that it will comply with the requirements of Section 272.”¹ My
3 testimony will address each of the eight requirements in Section 272 and
4 how Qwest Corporation’s Section 271 authorization “will be carried out” in
5 compliance with Section 272, and therefore satisfy the FCC’s requirements.²
6 I will also review the employee training and awareness efforts that Qwest
7 Corporation has undertaken to ensure that the requirements of Section 272
8 continue to be followed.

9 Throughout my testimony, I refer to several different companies within the
10 Qwest Corporate family. Three companies, however, are discussed
11 repeatedly: (1) Qwest Services Corporation (QSC); (2) Qwest
12 Communications Corporation (QCC) and (3) Qwest Corporation (QC).
13 Given the similarity of the acronyms, it might be difficult to review the
14 testimony if the companies were referred to in that manner. As a result,
15 throughout the testimony I will refer to QSC, the parent of QC and QCC, as

¹ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to provide In-Region, interLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, (rel. Dec. 22, 1999), ¶ 403 (“Bell Atlantic New York Order”),*

² *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services Inc. d/b/a/ Southwestern Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, Inter-LATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. June 30, 2000), ¶ 394 (“SBC Texas Order”), Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services Inc. d/b/a/ Southwestern Long Distance for Provision of In-Region Inter-LATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, (rel. January 22, 2001), ¶ 256 (“SBC Kansas/Oklahoma Order”)*

1 the "Services Company", QCC as the Section "272 Affiliate," and QC as the
2 "BOC." This should eliminate any confusion. See Exhibit MES-10 for an
3 illustration of this structure.

4 **Q. DOES YOUR TESTIMONY ALSO PROVIDE ANSWERS TO THE**
5 **QUESTIONS THE COMMISSION ASKED IN THE SUPPLEMENTAL AND**
6 **INTERPRETIVE POLICY STATEMENT ISSUED IN DOCKET NO. UT-**
7 **970300 ON MARCH 15, 2001?**

8 A. Yes. In Appendix A, Section VII, the Commission asked eight questions
9 regarding the requirements of Section 272 of the Act. My direct testimony
10 addresses all of these questions. I have prepared Exhibit MES-11 which is a
11 matrix of the questions and the location in my supplemental testimony and
12 the exhibits attached thereto where the answers to those questions can be
13 located.

14 **III. EXECUTIVE SUMMARY**

15 **Q. PLEASE IDENTIFY THE EIGHT PROVISIONS INCLUDED IN SECTION 272**
16 **OF THE TELECOMMUNICATIONS ACT.**

1 A. The specific provisions of Section 272 include:

- 2 • Section 272(a), Separate Affiliate Requirement;
- 3 • Section 272(b), Structural and Transactional Requirements;
- 4 • Section 272(c), Nondiscrimination Safeguards;
- 5 • Section 272(d), Biennial Audit Requirement;
- 6 • Section 272(e), Fulfillment of Requests for Telephone Exchange
- 7 Service;
- 8 • Section 272(f), Sunset Provisions;
- 9 • Section 272(g), Joint Marketing; and
- 10 • Section 272(h), Transition Provisions.

11 **Q. WHAT ARE THE REQUIREMENTS OF EACH OF THE EIGHT SECTIONS?**

12 A. Section 272(a) requires the BOC to provide in-region interLATA long distance
13 services through a separate long distance affiliate. The BOC will offer such
14 long distance services, upon Section 271 approval, through its long distance
15 affiliate, Qwest Communications Corporation (“the 272 Affiliate”).

16 Section 272(b) requires that the BOC and Section 272 Affiliate operate
17 independently; maintain separate books, records, and accounts; have their
18 own directors, officers, and employees; and, conduct all transactions on an
19 arm’s length basis, with all such transactions reduced to writing, and available
20 for public inspection. Moreover, the 272 Affiliate cannot obtain credit that will

1 provide recourse to the assets of the BOC. The BOC is prepared to satisfy
2 these requirements of the Act.

3 Section 272(c) prohibits the BOC from discriminating between the 272
4 Affiliate and any other entity in the provision or procurement of goods,
5 services, facilities, and information, or in the establishment of standards. The
6 BOC is prepared to satisfy this requirement of the Act.

7 Section 272(d) requires that, once the BOC obtains Section 271 authority,
8 that it obtain and pay for a joint Federal/State audit every two years to
9 determine whether the company has complied with the requirements of
10 Section 272 and the regulations promulgated under Section 272. In
11 particular, the audit will determine whether the company has complied with
12 the separate accounting requirements of Section 272(b). The BOC will
13 adhere to this provision of the Act.

14 Section 272(e) requires the BOC to fulfill requests from unaffiliated entities for
15 telephone exchange service and exchange access within the same period,
16 under the same terms and conditions, and at an amount that is no more than
17 that for which it provides such services to its 272 Affiliate, or imputes
18 exchange access services to itself (if the BOC is using the access for the
19 provision of its own services). The BOC will satisfy these requirements of the
20 Act.

1 Section 272(f) contains sunset provisions, which state that the separate
2 affiliate requirements on manufacturing and long distance will end three years
3 after entry in a given state unless extended by FCC rule or order. In addition,
4 Section 272(f) preserves the existing authority of the FCC to prescribe
5 safeguards consistent with the public interest, convenience, and necessity.
6 The BOC will adhere to this section as required by the FCC.

7 Section 272(g) permits the BOC to join in the marketing and sale of the 272
8 Affiliate's in-region interLATA service once the 272 Affiliate is authorized to
9 provide in-region interLATA services under Section 271(d). The joint
10 marketing of services will be exempt from the nondiscrimination provisions of
11 Section 272(c). Section 272(g) also provides that the 272 Affiliate may not
12 market or sell the BOC's telephone exchange services unless other similar
13 entities are permitted to do the same. The BOC will adhere to these
14 provisions of the Act.

15 Finally, Section 272(h) gave the BOC one year to conform to the
16 requirements of Section 272 to the extent that it was already engaged in any
17 interLATA long distance or interLATA information services in February 1996.
18 Because the BOC was not engaged in any such activities, this transitional
19 period did not apply to the BOC.

1

IV. TRANSITION TO NEW SECTION 272 AFFILIATE

2 **Q. WHAT EVENTS OCCURRED THAT CAUSED QWEST TO RE-EVALUATE**
3 **ITS 272 STRATEGY?**

4 A. On June 30, 2000, U S WEST, Inc. merged with Qwest Communications
5 International, Inc. Prior to the merger, U S WEST, Inc. planned to offer in-
6 region interLATA services as a reseller, through U S WEST Long Distance,
7 now named Qwest Long Distance. In August 2000, Qwest decided to
8 reevaluate the appropriate entity to serve as its Section 272 affiliate. This
9 prompted notification to several state commissions asking that Section 272
10 workshops be delayed.

11 In January 2001, Qwest Communications International, Inc. decided to offer
12 in-region interLATA services as a facilities-based provider, instead of as a
13 reseller. QCC fit this strategy because it had interLATA expertise and
14 offered facilities-based functionality. Therefore, it was determined that
15 Qwest would transition from Qwest Long Distance to QCC as the Section
16 272 Affiliate.

17 **Q. WAS U S WEST 272 COMPLIANT BEFORE THE TRANSITION FROM**
18 **QWEST LONG DISTANCE TO QCC?**

19 A. Yes, prior to the merger, U S WEST filed testimony to demonstrate that U S
20 WEST Long Distance, now Qwest Long Distance, was Section 272

1 compliant. As a result of the new strategy, it was necessary to put
2 processes in place to prepare QCC as the new Section 272 affiliate. Hence,
3 a transitional period commenced.

4 **Q. IS THE NEED FOR A TRANSITION PERIOD UNCOMMON?**

5 A. No, Congress recognized the need for a transition period when it passed the
6 Act in 1996. Section 272(h) specifically allowed BOCs one year from the
7 date of enactment to comply with the requirements of Section 272. Similarly,
8 the FCC has recognized that a non-272-compliant affiliate may properly
9 transition to 272 compliance by simply complying “with the separate affiliate
10 requirements of section 272 and the Commission’s rules.”³ Qwest has
11 undergone a similar transitional period.

12 **Q. PLEASE EXPLAIN.**

13 A. The Qwest family of companies has spent the last four months transitioning
14 QCC to be Section 272 compliant so that it could serve as its new Section
15 272 subsidiary. Transition activities commenced immediately after the
16 decision was made to make QCC the new Section 272 affiliate. These
17 activities included such things as realigning employees from the BOC and

³ *In re Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules*, CC Docket No. 98-141, *Memorandum and Order*, FCC 99-279 (rel. Oct. 8, 1999) (“*SBC/Ameritech Merger Order*”), *Appendix C* at n. 40 (contemplating that the structure of the advanced services affiliate contemplated by the

1 the 272 Affiliate to the Services Company who would be providing
2 governance and administrative services to the family of Qwest companies,
3 writing contractual arrangements between the BOC and the 272 Affiliate,
4 evaluating transactions, reviewing pricing, ensuring posting, training
5 employees about the 272 affiliate rules, and meeting all other requirements
6 of Section 272 as soon as possible. The BOC now has processes in place
7 to meet all eight statutory requirements in Section 272 for QCC, the 272
8 Affiliate.

9 **V. SECTION 272**

10 **A. The BOC Complies with Section 272(a) – Separate Affiliate**
11 **Requirement**

12 **Q. PLEASE DESCRIBE SECTION 272(a) AND EXPLAIN HOW THE BOC**
13 **COMPLIES WITH THIS SECTION OF THE ACT.**

14 A. Section 272(a) of the Act states that any interLATA long distance service
15 that originates from a BOC customer in a state within its region shall be
16 provided through an affiliate that is separate from the BOC. The BOC
17 complies with the separate affiliate requirement of Section 272(a).

18 Qwest Corporation is a BOC within the meaning of the Act. Therefore, the
19 BOC will not provide in-region interLATA services originating within the BOC

order is not sufficient to serve as a section 272 affiliate, but that such an affiliate may be brought into compliance and serve as the 272 affiliate upon receipt of 271 approval).

1 14 state region as long as the structural separation obligation of Section 272
2 applies to this activity. In fact, the 272 Affiliate is already the fourth largest
3 interLATA provider nationwide. Nonetheless, because of the merger with U S
4 WEST, Qwest Communications International, Inc. was required to divest itself
5 of all of its in-region interLATA business.⁴

6

⁴ See *In re Qwest Communications International Inc. and U S WEST, Inc.; Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, *Memorandum Opinion and Order*, FCC 00-231 (rel. June 26, 2000), (“Divestiture Order”)

1 When the BOC receives Section 271 approval from the FCC, interLATA long
2 distance service originating from within Washington will be offered exclusively
3 through the 272 Affiliate. The 272 Affiliate, a wholly owned subsidiary of the
4 Services Company, is fully separate from the BOC. The Services Company
5 is a wholly owned subsidiary of Qwest Communications International, Inc.
6 The BOC owns no stock in the 272 Affiliate; nor does the 272 Affiliate own
7 any stock of the BOC. See Exhibit MES-10 for an illustration of the BOC
8 structure. The testimony of Ms. Judith L. Brunsting contains further
9 explanation of the structure and organization of the 272 Affiliate.

10 **B. The BOC is Prepared to Comply with Section 272(b) – Structural and**
11 **Transactional Requirements**

12 **Q. PLEASE DESCRIBE SECTION 272(b) OF THE ACT.**

13 A. Section 272(b) places five structural and transactional requirements on the
14 interactions between the BOC and 272 Affiliate. These separate affiliate
15 requirements are addressed in further detail in CC Docket 96-149, the Non-
16 Accounting Safeguards Orders,⁵ and CC Docket 96-150, the Accounting
17 Safeguards Order.⁶

18 **Q. WHAT ARE THE FIVE REQUIREMENTS OF SECTION 272(b)?**

⁵ See *In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-489 (rel. December 24, 1996).

1 A. Specifically, Section 272(b) requires that the 272 Affiliate:

- 2 1. Operate independently from the BOC;
- 3 2. Maintain books, records, and accounts in the manner prescribed by
4 the FCC that shall be separate from the books, records, and
5 accounts maintained by the BOC;
- 6 3. Have separate officers, directors, and employees from the BOC;
- 7 4. Not obtain credit under any arrangement that would permit a
8 creditor, upon default, to have recourse to the assets of the BOC;
9 and,
- 10 5. Conduct all transactions with the BOC on an arm's length basis,
11 with all such transactions reduced to writing and available for public
12 inspection.

13 These five requirements formalize some of the well-known tenets of
14 corporate law. They also provide the FCC with measurable indicators that
15 the BOC and the 272 Affiliate operate independently.

⁶ *In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. December 24, 1996).*

1 **1. Section 272(b)(1) - Operate Independently**

2 **Q. PLEASE STATE THE REQUIREMENT OF SECTION 272(b)(1).**

3 A. Section 272(b)(1) provides that the BOC and 272 Affiliate shall operate
4 independently.

5 **Q. DOES THE CORPORATE STRUCTURE PROVIDE ANY BASIS ON WHICH**
6 **TO CONCLUDE THAT THE BOC AND THE SECTION 272 AFFILIATE ARE**
7 **OPERATING INDEPENDENTLY?**

8 A. Corporate law and the theory of corporations as separate independent
9 entities can be traced far back in legal history. This theory of independence
10 provides the presumption that corporations, as separate entities, are able to
11 conduct business and enter into contracts and obligations, while limiting the
12 liability of shareholders and owners. It is very difficult to overcome this
13 presumption of the corporation as a separate entity.

14 In limited, very rare circumstances, courts have relied upon a doctrine known
15 as “piercing the corporate veil” to look beyond the corporate form and hold a
16 parent company responsible for the activities of its subsidiary. The BOC and
17 the 272 Affiliate do not have a parent/subsidiary relationship; rather they are
18 brother/sister corporations. While courts have been willing to impose the
19 liabilities of one corporation upon another, they have been reluctant to do so
20 except in instances where the entities have failed to follow any notion of the

1 requisite corporate formalities. Only when the failure results in such a close
2 relationship between the two companies that one is, in essence, the “alter
3 ego” of the other, have courts imposed the liabilities of one corporation upon
4 the other. Otherwise, as a matter of law, two corporations, each with its own
5 board of directors, are deemed to have an independent existence. Given
6 these basic tenets, the BOC and the 272 Affiliate are clearly two separate
7 and distinct corporations.

8 **Q. PLEASE EXPLAIN HOW THE BOC COMPLIES WITH THIS**
9 **REQUIREMENT.**

10 A. The BOC and the 272 Affiliate currently operate independently and in
11 compliance with the requirements of the Non-Accounting Safeguards
12 Orders. The BOC and the 272 Affiliate do not and will not jointly own
13 telecommunications switching or transmission facilities, or the land or
14 buildings where those facilities are located for so long as such a restriction
15 applies under the rules.

16
17 Not only is there no joint ownership of network facilities, but no switching and
18 transmission facilities have been transferred to the 272 Affiliate. Moreover,
19 on a going-forward basis, the BOC began monitoring asset transfers on a
20 quarterly basis beginning March 31, 2001, to ensure compliance with
21 Section 272(b)(1).

1 Section 272(b)(1) includes the additional rules associated with the
2 performance of operation, installation or maintenance (“OI&M”) functions.
3 Neither the BOC nor any Qwest affiliate performs any OI&M functions on
4 behalf of the 272 Affiliate’s switching and transmission facilities. Similarly,
5 the 272 Affiliate does not perform such functions associated with the BOC
6 facilities. To ensure Qwest continues to meet this requirement, the Services
7 Company conducted extensive training with approximately fifty Network
8 department leaders.

9 The BOC satisfies the Section 272(b)(1) requirement for operational
10 independence and will remain in compliance for as long as this requirement
11 is in effect.

12 **2. Section 272(b)(2) - Separate Books, Records, and Accounts**

13 **Q. PLEASE DESCRIBE SECTION 272(b)(2) AND EXPLAIN HOW THE BOC**
14 **COMPLIES WITH THESE REQUIREMENTS.**

15 A. Section 272(b)(2) requires that the BOC maintain separate books, records,
16 and accounts from the 272 Affiliate in the manner prescribed by the FCC.
17 The BOC and the 272 Affiliate are separate legal entities and as such the
18 accounting records of the two entities are not commingled.

19 **Q. DESCRIBE THE SPECIFIC SAFEGUARDS IN PLACE TO MAINTAIN**
20 **SEPARATE BOOKS, RECORDS AND ACCOUNTS.**

1 A. Several safeguards are utilized to create system security, controls, and
2 procedures that ensure the BOC and the 272 Affiliate's accounting records
3 are separate. The BOC processes its financial transactions on systems
4 designed to recognize the unique entity code assigned to the BOC. It is
5 simply not possible for one entity to enter transactions using an entity code
6 belonging to another entity, such as the 272 Affiliate. Further, the 272
7 Affiliate currently uses a separate general ledger system to create its own
8 set of books.

9 The BOC and the 272 Affiliate do not share a common Chart of Accounts.
10 The BOC Chart of Accounts, which is based on the FCC's Uniform System
11 of Accounts for Telecommunications companies ("USOA"), is attached as
12 Confidential Exhibit MES-12C. See Ms. Judith Brunsting's testimony for the
13 272 Affiliate's Chart of Accounts.

14 Security measures require each employee of the Qwest family of companies
15 to be assigned a unique User ID. Once a User ID is assigned, the employee
16 submits a request form, signed by his or her supervisor, for approval by the
17 system control group before access is granted to any specific financial
18 systems. If the employee has a job that requires access to specific systems,
19 the control group enables the employee's User ID to access the particular
20 data sets or applications needed. System edits are entity-specific requiring
21 that, when accessed, a system will post data only if the correct combinations

1 of User ID, entity code, and account and responsibility code are entered.
2 Additional system edits are designed to provide meaningful controls based
3 on the information and reporting needs of the entity; therefore, data fields
4 that are valid and have meaning for one entity may not be valid for another
5 entity.

6 This combination of system security, controls and procedures ensures
7 separateness by requiring each company to have its own books, keep its
8 own records, and have its own Chart of Accounts. At the same time,
9 processing on common consolidating financial systems permits consolidated
10 reporting at the Qwest Communications International, Inc. level as required
11 for Federal and State tax, as well as Securities and Exchange Commission
12 (“SEC”) purposes and is an acceptable practice under Section 272.⁷

13 **Q. WHAT ADDITIONAL EVIDENCE IS THERE THAT THE BOC AND THE 272**
14 **AFFILIATE MAINTAIN SEPARATE BOOKS, RECORDS AND**
15 **ACCOUNTS?**

16 A. The BOC follows Generally Accepted Accounting Principles (“GAAP”) and
17 regulatory accounting rules as required by the FCC. The BOC’s books,
18 records, and accounts are maintained in accordance with the Code of
19 Federal Regulations, Title 47, Part 32.27, and Part 64.901, Allocation of

1 Costs. Annual reports are filed publicly via the FCC's Automatic Reporting
2 and Management Information Systems ("ARMIS") and are accompanied by
3 the report of independent accountants, Arthur Andersen, L.L.P. ("Arthur
4 Andersen").⁸

5 The testimony of Ms. Judith L. Brunsting further describes the accounting
6 practices of the 272 Affiliate, its Chart of Accounts, and other evidence that
7 establishes that the 272 Affiliate's books, records, and accounts are
8 separate from those of the BOC.

9 The BOC will continue to maintain books, records, and accounts that are
10 separate from the 272 Affiliate and comply with Part 32, Part 64, and the
11 Accounting Safeguards Order for so long as this requirement is in effect.

12 **3. Section 272(b)(3) - Separate Officers, Directors, and Employees**

13 **Q. PLEASE DESCRIBE SECTION 272(b)(3) AND EXPLAIN HOW THE BOC**
14 **COMPLIES WITH THIS SECTION OF THE ACT.**

15 A. Section 272(b)(3) requires that the BOC and the 272 Affiliate have separate
16 officers, directors, and employees. The 272 Affiliate's president is not an

⁷ See *General Standard Procedures For Biennial Audits Required Under Section 272 of the Communications Act of 1934, As Amended, As of December 16, 1998*. ("Biennial Audit Procedures") at Objective II, Procedure 1.

⁸ In FCC Docket No. 99-253, *Report and Order issued In The Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, the FCC changed the requirement that large ILECs obtain an annual financial audit. Instead they

1 officer of the BOC, nor is any BOC officer or employee also an officer or
2 employee of the 272 Affiliate. As long as this requirement of Section 272
3 applies, no officer or director of the BOC will simultaneously be an officer or
4 director of the 272 Affiliate. See Exhibit MES-13 for the officer list of the
5 BOC.

6 The BOC and the 272 Affiliate also have separate employees, paid from
7 separate payrolls. I have overseen the comparison of payroll registers of the
8 BOC and the 272 Affiliate to ensure no employee appears on both payrolls.
9 A comparison of the BOC and the 272 Affiliate officer lists, and a payroll
10 comparison, satisfies the FCC's test for Section 272(b)(3) compliance.⁹

11 **Q. HAS QWEST INSTITUTED ADDITIONAL SAFEGUARDS TO ENSURE**
12 **SEPARATENESS OF EMPLOYEES?**

13 A. Yes, employees at Qwest apply for jobs through a process that is similar to
14 the external hiring process when they move from one organization to another,
15 or from one company to another. In order for an employee to "transfer" from
16 one affiliate to another, the employee must be terminated and re-hired.
17 Employees are required to return assets such as pagers, cell phones, etc.
18 and have them re-issued in accordance with the hiring company's practices.

gave carriers the option of choosing an attest examination or financial audit every two years covering the prior two-year period. The order was effective March 2, 2000, thus the audit engagement for the year 2000 will be combined with 2001 and the report will be issued in 2002.

1 **Q. DO BOC EMPLOYEES PROVIDE SERVICES TO THE 272 AFFILIATE AND**
2 **IF SO, HOW IS SEPARATENESS MAINTAINED?**

3 A. Yes, BOC employees who provide services to the 272 Affiliate do so under
4 contract. These transactions under contract are conducted at “arm’s length,”
5 reduced to writing, and available for public inspection consistent with Section
6 272(b)(5). The Master Services Agreement (“MSA”) constitutes the general
7 agreement for services provided by the BOC to the 272 Affiliate. The MSA
8 requires the BOC to perform its obligations as an independent contractor and
9 not as an agent or employee of the 272 Affiliate. See Article 6 of the MSA,
10 which is included as Exhibit MES-14. The MSA is available on the Qwest
11 Communications International, Inc. Internet Home Page at
12 <http://www.qwest.com/about/policy/docs/qcc.overview.html> as required by the
13 Accounting Safeguards Order.

14 Again, the BOC and the 272 Affiliate currently satisfy the requirement to have
15 separate officers, directors, and employees. The BOC and the 272 Affiliate
16 will continue to do so for as long as required under Section 272.

⁹ *Bell Atlantic New York Order ¶409; SBC Texas Order, ¶401*

1 **4. Section 272(b)(4) - No Recourse to the BOC's Assets**

2 **Q. PLEASE DESCRIBE SECTION 272(b)(4) AND EXPLAIN HOW THE BOC**
3 **COMPLIES WITH THIS SECTION OF THE ACT.**

4 A. Section 272(b)(4) prohibits the 272 Affiliate from obtaining credit under any
5 arrangement that would permit a creditor, upon default, to have recourse to
6 BOC assets. Qwest Communications International, Inc. employs three
7 mechanisms to comply with this requirement.

8 First, the BOC is capitalized separately from other Qwest affiliates.

9 Second, the BOC issues its own direct financial obligations, principally
10 commercial paper, notes, and bonds, to fund its operations. The BOC's
11 commercial paper and long-term debt are rated separately from the other
12 financial obligations of Qwest Communications International, Inc. by the
13 rating agencies, further evidencing the separation between the BOC's
14 funding and that of the rest of Qwest Communications International, Inc.'s
15 operations. Funding for all other Qwest entities, including the 272 Affiliate is
16 provided by financial obligations issued by Qwest Capital Funding, Inc.
17 (QCFI), a separate subsidiary of Qwest Communications International, Inc.,
18 which guarantees the debt issued by QCFI. Neither the debt obligations
19 issued by QCFI nor the guarantee by Qwest Communications International,
20 Inc. provides creditors recourse to the assets of the BOC.

1 Third, neither Qwest Communications International, Inc., nor the BOC, have
2 co-signed a contract or any other instrument that would allow the 272
3 Affiliate to obtain credit in a manner that grants the creditor recourse to the
4 BOC's assets in the event of a default by the 272 Affiliate. The BOC will
5 continue to satisfy this Section 272 requirement for as long as it applies.

6

1 **5. Section 272(b)(5) - Transactions at Arm's Length, In Writing and**
2 **Publicly Available**

3 **Q. PLEASE DESCRIBE SECTION 272(b)(5) AND ITS PURPOSE.**

4 A. Section 272(b)(5) requires that all transactions between the BOC and the 272
5 Affiliate be conducted at arm's length, reduced to writing, and available for
6 public inspection. The purpose for this requirement is to assist the FCC in
7 determining that such transactions are conducted in compliance with FCC
8 accounting rules and to make sure such services are available to third parties
9 consistent with the non-discrimination requirements of Section 272(c).

10 **Q. HOW HAS THE BOC IDENTIFIED AFFILIATE TRANSACTIONS IN ORDER**
11 **TO DEMONSTRATE COMPLIANCE WITH FCC ACCOUNTING RULES**
12 **AND MAKE APPROPRIATE TRANSACTIONS AVAILABLE TO THIRD**
13 **PARTIES?**

14 A: All services provided by the BOC to the 272 Affiliate are either tariffed
15 services or services provided under separate contract. Tariffed services
16 have always been a matter of public record. Contracted services between
17 the BOC and the 272 Affiliate have been identified and priced according to
18 FCC rules. These services were initially identified through the company's
19 affiliate transaction processes. These processes were supplemented during
20 the transition from Qwest Long Distance to the 272 Affiliate by engaging

1 Arthur Andersen as loaned staff to meet Section 271 procedural schedules.
2 Arthur Andersen met with key personnel and conducted over 140 interviews
3 to ensure that all transactions had been identified.

4 **Q. PLEASE DESCRIBE HOW THE BOC AND 272 AFFILIATE ACQUIRE NON**
5 **TARIFFED SERVICES, FACILITIES AND INFORMATION FROM EACH**
6 **OTHER AND EXPLAIN HOW THOSE TRANSACTIONS ARE**
7 **DOCUMENTED.**

8 A. Processes have been established for the 272 Affiliate to acquire non-tariffed
9 products, services, facilities and information (collectively "services") under
10 contract. Such transactions are documented in the form of MSAs and work
11 orders. The MSA, attached as Exhibit MES-14, contains the general articles
12 governing the way the BOC and the 272 Affiliate conduct business when the
13 BOC provides services to the 272 Affiliate. Work orders are the
14 mechanisms used to document the specific transactions provided under
15 these contracts and contain detailed rates, terms, and conditions.

16 Similarly, the SA contains the general articles governing the way in which the
17 272 Affiliate provides services to the BOC. Task orders are the mechanisms
18 used to document the specific transactions provided under these contracts
19 and contain detailed rates, terms, and conditions. Business unit affiliate
20 managers are responsible for administration and billing of services contained

1 in these work orders and task orders. All agreements are subject to FCC
2 Part 32.27 Affiliate Transaction rules.

3 **Q. HAS THE BOC INSTITUTED ADDITIONAL CONTROLS TO REVIEW**
4 **TRANSACTIONS WITH THE 272 AFFILIATE?**

5 A. Yes, the BOC has instituted an additional control to review transactions
6 between the BOC and the 272 Affiliate known as the Compliance Oversight
7 Team. This team is made up of regulatory accounting, legal and public
8 policy experts, of which I am a member. The Compliance Oversight Team
9 reviews these services to ensure compliance with Section 272(b)(5) and the
10 nondiscrimination safeguards included in Section 272(c). The charter of the
11 Compliance Oversight Team, which describes its responsibilities, is included
12 in Exhibit MES-15.

13 **Q. HOW WILL THE TRANSACTIONS BETWEEN THE BOC AND THE**
14 **SECTION 272 AFFILIATE BE MADE AVAILABLE FOR PUBLIC**
15 **INSPECTION?**

16 A. The BOC will post its Section 272 transactions on the Internet within ten (10)
17 days of being executed by both parties, in accordance with the rules of
18 Section 272(b)(5) and the Accounting Safeguards Order. Transactions
19 between the BOC and Qwest Long Distance are located on the Qwest

1 Communications International, Inc. Internet site on the Qwest Long Distance
2 web page.

3 Transactions identified between the BOC and the 272 Affiliate (“QCC”) from
4 the merger date of June 30, 2000 to December 31, 2000 have been posted
5 on the QCC web page. I will refer to these transactions as “Phase I”
6 transactions. These transactions consist of the MSA, Services Agreement
7 (“SA”), work orders, and task orders, as described later in my testimony.

8 New services identified after December 31, 2000, will be referred to as
9 “Phase II” transactions. Transactions processed as a result of the Arthur
10 Andersen interviews are also included in Phase II. All transactions
11 processed to date are available for public inspection and posted on the
12 Qwest Communications International, Inc. internet site on the QCC web
13 page.

14 It is important to note that the BOC has taken a conservative approach
15 concerning transactions with the 272 Affiliate. While QCC (“272 Affiliate”)
16 was not designated a Section 272 affiliate until January 2001, the BOC has
17 identified and posted any transactions identified with QCC (“272 Affiliate”)
18 back to the Qwest–U S WEST merger date on June 30, 2000. This is
19 further evidence of the BOC’s commitment to Section 272 Compliance.

1 Any inter-exchange carrier (IXC) will be able to view the transactions,
2 evaluate the rates, terms and conditions of the offering, and decide whether
3 it is interested in obtaining the same service from the BOC. In addition to
4 contracts, the section labeled "tariff rated services" provides a description of
5 the services that the 272 Affiliate purchases out of the BOC's tariffs. This
6 section also contains a hot link to another Internet site where the tariffs
7 themselves can be found.

8 In addition, posted in the section labeled "terminated transactions" is a
9 reference to prior year or expired transactions. This link refers to records the
10 BOC keeps on file that contain detailed billing information between the BOC
11 and its 272 Affiliate. This billing information is simply back-up detail
12 calculating out the predetermined rates (disclosed on the website) with the
13 basis for pricing, i.e., hours, headcount, level of employee expertise
14 providing the service, etc. (also disclosed on the website.) The back up
15 billing detail is compared to services listed in the Cost Allocation Manual
16 ("CAM") to ensure a complete record and is reconciled to the FCC's ARMIS
17 report. Prior year transactions are available for inspection at the BOC's
18 principal place of business under confidential agreement.

19 Terminated contracts will remain listed in this section under the link labeled
20 "Expired Agreements" for one year after the date of termination. All
21 transactions will be accompanied by testimony of an officer stating that the

1 BOC complies with the Section 272(b)(5) requirement to post and make
2 public all transactions between the 272 Affiliate and the BOC, as required in
3 the Accounting Safeguards Order.

4 To meet the “arm’s length” requirement, the 272 Affiliate will place orders for
5 tariffed services in the same manner as other interexchange carriers, and
6 those orders will be processed by an inter-exchange carrier (IXC) Sales
7 Executive Team account representative in a nondiscriminatory manner.

8 **Q. WILL ALL TRANSACTIONS BE REDUCED TO WRITING, POSTED ON**
9 **THE INTERNET AND AVAILABLE FOR PUBLIC INSPECTION?**

10 A. Yes, the BOC will represent transactions on the Qwest Communications
11 International, Inc. Internet site by posting agreements, work orders and task
12 orders within ten (10) days of being executed by both parties. Collectively,
13 these agreements will contain service descriptions, terms and conditions, as
14 well as the rates used for billing transactions between the BOC and the 272
15 Affiliate for services performed. To date, Qwest Corporation and Qwest
16 Communications Corporation have executed two agreements, thirty work
17 orders, and nine task orders to document the arm’s length relationship. All
18 existing work orders and task orders are available for public inspection and
19 posted on the Internet, as required, at the Qwest Communications
20 International, Inc. Internet Home Page at

1 <http://www.qwest.com/about/policy/docs/qcc.overview.html>, the contents of
2 which are intended to be a part of this record. Past transactions including
3 tariffed services and asset transfers are also posted on this web site.

4 The BOC has made Section 272 transactions available for public inspection
5 since the FCC's Accounting Safeguards Order, issued August 12, 1997.
6 Upon issuance of FCC Order No. 96-150, the BOC captured transactions
7 dating back to February 8, 1996, the date of the Telecommunications Act of
8 1996. Although some transactions have been removed from the web site
9 because they were terminated or superceded by subsequent agreements,
10 the transactions are still available for public inspection at the BOC's principal
11 place of business.

12 **Q. DESCRIBE THE FCC'S TEST FOR EVALUATING COMPLIANCE WITH**
13 **THE POSTING REQUIREMENTS.**

14 A. The FCC evaluates the sufficiency of a BOC's Internet disclosures by
15 referring to its ARMIS filings, CAM and its CAM Audit workpapers.¹⁰ The
16 BOC has performed these reconciliations for Qwest Long Distance for the
17 year ended December 31, 2000 to ensure that they agree. These
18 reconciliations will be performed on an annual basis. In addition, the FCC
19 notes that postings will undergo "a thorough and systematic review in the

¹⁰ *Bell Atlantic New York Order, ¶411, SBC Texas Order, ¶403*

1 Section 272(d) Biennial Audit, which will ensure that any failure to post
2 sufficient detail are identified in time for remedial action”.¹¹

3 **Q. PLEASE SUMMARIZE HOW THE BOC COMPLIES WITH ALL OF THE**
4 **PROVISIONS OF SECTION 272(b).**

5 A. In summary, the BOC and the 272 Affiliate have processes in place to satisfy
6 the provisions of Section 272(b). They operate independently in compliance
7 with the Non-Accounting Safeguards Order, CC Docket 96-149; maintain
8 separate books and records; have separate officers, directors, and
9 employees; and obtain debt financing independently. The BOC also
10 satisfies the FCC’s requirements for affiliate transactions. Transactions
11 between the BOC and the 272 Affiliate are tariffed and/or represented by

12

¹¹ *Bell Atlantic New York Order, ¶412, SBC Texas Order, ¶405, SBC Kansas/Oklahoma Order, ¶260*

1 contracts that are made publicly available and will be posted on the Internet.
2 These transactions are accounted for in compliance with FCC rules as
3 described in Part 32, Section 32.27, and the Accounting Safeguards Order.

4 **C. The BOC has Processes in Place to Satisfy Section 272(c) -**
5 **Nondiscrimination Safeguards**

6 **Q. PLEASE DESCRIBE THE REQUIREMENTS OF SECTION 272(c) OF THE**
7 **ACT.**

8 A. Section 272(c) requires the BOC to treat the 272 Affiliate in the same
9 manner it treats other interexchange carriers.

10 Section 272(c)(1) prohibits the BOC from discriminating between the 272
11 Affiliate and any other IXC in the provision or procurement of goods, services,
12 facilities, and information (collectively "services"), or in the establishment of
13 standards.

14 **Q. HOW DOES THE BOC COMPLY WITH SECTION 272(c)(1)?**

15 A. The BOC is committed to providing its services to the 272 Affiliate on a
16 nondiscriminatory basis. The 272 Affiliate is required to contact its IXC Sales
17 Executive Team representative at the BOC to obtain services available to
18 every interexchange carrier. Standard offerings provided to the 272 Affiliate
19 will be extended to unaffiliated interexchange carriers under the same terms
20 and conditions, and at the same rates. Non-standard services and services

1 that have not previously been offered outside the corporate family undergo a
2 review process before being offered to the 272 Affiliate on a
3 nondiscriminatory basis.

4 The 272 Affiliate does not currently have access to the BOC's Operation
5 Support Systems ("OSS"). These systems are used to support local retail
6 efforts (e.g., ordering and pre-ordering interfaces, repair and maintenance,
7 etc.) related to local exchange services, and are available only to
8 Competitive Local Exchange Carriers ("CLECs"). If the 272 Affiliate were to
9 obtain CLEC status at some time in the future, the BOC would require it to
10 access OSS interfaces in the same manner as other CLECs. This would be
11 in keeping with the BOC's current practice, which requires the 272 Affiliate to
12 access services through its IXC Sales Executive Team representative.

13 **Q. WILL NON TARIFFED SERVICES PURCHASED BY THE SECTION 272**
14 **AFFILIATE BE AVAILABLE TO UNAFFILIATED ENTITIES?**

15 A. Yes, as stated previously, each non-tariffed service available to the 272
16 Affiliate is reduced to writing in a stand-alone contract, or MSA and
17 associated work order. With the exception of joint marketing services, which
18 will not be subject to nondiscrimination, these services will be also available
19 to unaffiliated entities under the same terms, conditions and at the same

1 rates. All future transactions between the BOC and the 272 Affiliate will also
2 be reduced to writing and made available on the Internet.

3 **Q. DOES THE BOC PURCHASE SERVICES FROM AN AFFILIATED**
4 **SERVICES COMPANY?**

5 A. Yes, the BOC purchases services from a shared service affiliate, the
6 Services Company, which provides services to the Qwest family of
7 companies. See Exhibit MES-16 for a current list of shared services
8 provided to the BOC. These services satisfy the FCC's requirements by
9 being accounted for under the appropriate non-structural safeguards.¹²

10 **Q. WHEN THE 272 AFFILIATE PURCHASES SERVICES FROM THE BOC,**
11 **WHAT PROCESSES ARE FOLLOWED?**

12 A. In the normal course of business, when the 272 Affiliate identifies a need for
13 services from the BOC, it submits a service request form to its IXC Sales
14 Executive Team representative. The IXC account representative acts as the
15 Single Point of Contact ("SPOC") on behalf of the BOC. For service
16 requests not covered by an existing tariff, MSA and related Work order, or
17 stand-alone contract, the SPOC submits the request to the FCC/Regulatory
18 Compliance Manager ("Compliance Manager") for review. The Compliance

¹² SBC Texas Order, ¶408, SBC Kansas/Oklahoma Order, ¶261

1 Manager then contacts the 272 Affiliate employee making the request and
2 the affected BOC business unit to gather additional information. Once the
3 service request is clarified, the Compliance Manager facilitates a meeting
4 with the Compliance Oversight team. This Compliance Oversight team
5 evaluates the request and assesses the BOC's nondiscrimination obligation
6 concerning the requested service. The Compliance Oversight team provides
7 an obligation assessment to the affected BOC business unit, which then
8 decides whether it will provide the service to the 272 Affiliate on a
9 nondiscriminatory basis, or not provide it at all. This rigorous review process
10 ensures that the BOC satisfies the requirement to provide services to the
11 272 Affiliate on a nondiscriminatory basis as required under Section
12 272(c)(1) and is illustrated in Exhibit MES-17. This process further ensures
13 that all services provided to the 272 Affiliate are submitted such that a work
14 order can be written and priced accordingly, fulfilling the requirement under
15 Section 272(b)(5).

16 **Q. PLEASE DESCRIBE SECTION 272(c)(2) AND HOW THE BOC WILL**
17 **COMPLY WITH THIS SECTION.**

18 A. Section 272(c)(2) requires the BOC to account for all transactions with the
19 272 Affiliate in accordance with accounting principles designated or
20 approved by the FCC. The BOC satisfies this requirement for transactions
21 with the 272 Affiliate.

1 The BOC's books are kept in compliance with GAAP and regulatory
2 accounting rules as required by the FCC. Affiliate transactions are recorded
3 in compliance with Part 32, Uniform System of Accounts for
4 Telecommunications Companies, and specifically the Affiliate Transactions
5 rules of Part 32.27 as modified by the FCC in the Accounting Safeguards
6 Order, and Part 64, Subpart 1, Allocation of Cost.

7 **Q. PLEASE DESCRIBE THE FCC'S AFFILIATE TRANSACTION RULES.**

8 A. The FCC has promulgated affiliate transactions rules that were amended in
9 the Accounting Safeguards Order. The rules apply the following valuation
10 hierarchy to the BOC's transactions with the 272 Affiliate: 1) tariff rates
11 apply to tariffed services; 2) for non-tariffed services, Prevailing Company
12 Price ("PCP") is presumed for services subject to the nondiscrimination rules
13 of Section 272 because rates must be made available to both the 272
14 Affiliate and third parties on similar terms; and 3) services that are neither
15 tariffed nor offered at PCP are valued at fully distributed cost ("FDC") or fair
16 market value ("FMV"), whichever is higher for services provided to the 272
17 Affiliate by the BOC, and whichever is lower for services provided to the
18 BOC by the 272 Affiliate.

19 **Q. WHAT OTHER EVIDENCE SHOULD BE CONSIDERED REGARDING THE**
20 **BOC'S COMPLIANCE WITH 272(c)(2)?**

1 A. The BOC files reports publicly via the FCC's Automatic Reporting and
2 Management Information Systems ("ARMIS") each year. The audit opinion
3 of the BOC's auditor, Arthur Andersen, which is filed with the ARMIS Report
4 43-03 (also known as the Joint Cost Report), certifies that the BOC complies
5 with GAAP and the FCC accounting rules. While this audit, known as the
6 Joint Cost Audit, does not focus specifically on the relationship between the
7 BOC and the 272 Affiliate, the sample base of affiliate transactions include a
8 review of general administrative type services that are provided between the
9 two companies. Therefore, the statement of compliance rendered by Arthur
10 Andersen as part of that audit is general in nature and concludes, based on
11 the sample, that the BOC complies with the affiliate transactions rules in all
12 material respects. As I indicated earlier in my testimony, the FCC has
13 considered historical results of the annual Joint Cost Audit in order to assess
14 Section 272 Compliance in Section 271 applications.¹³ Neither the FCC's
15 review of the BOC's accounting information nor the audits conducted by
16 independent auditors have revealed discrepancies with the BOC's corporate
17 accounting procedures for affiliate transactions in the past three years.¹⁴

18 Additionally, the BOC files a 10K report with the Securities and Exchange
19 Commission each year. The 10K includes an auditor's opinion stating that
20 the BOC's financial statements are prepared in compliance with GAAP. The

¹³ *Bell Atlantic New York Order*, ¶ 411, *SBC Texas Order*, ¶ 406

¹⁴ *SBC Texas Order*, ¶406

1 BOC also files its CAM with the FCC annually. These filings and the Joint
2 Cost audit provide assurance that the BOC accounts for all transactions in
3 accordance with the accounting principles approved by the FCC.

4 **Q. PLEASE SUMMARIZE HOW THE BOC HAS DEMONSTRATED THAT IT**
5 **WILL COMPLY WITH SECTION 272(c).**

6 A. The BOC has provided evidence that it is prepared to comply with Section
7 272(c). The 272 Affiliate must obtain services like any other IXC. These
8 services are documented, priced, and posted according to the requirements
9 set out in Section 272(b)(5). Therefore, the BOC has sufficiently
10 demonstrated that it has implemented the proper internal controls and
11 processes to satisfy the requirements of Section 272(c).¹⁵

12 **D. The BOC will Satisfy Section 272(d) - Biennial Audit**

13 **Q. PLEASE DESCRIBE SECTION 272(d) AND EXPLAIN HOW THE BOC**
14 **PLANS TO COMPLY WITH THIS SECTION OF THE ACT.**

15 A. Section 272(d) requires that, once the BOC receives 271 authority, it must
16 obtain and pay for a joint Federal/State audit every two years. An
17 independent auditor must determine whether the company has complied
18 with the requirements of Section 272 and the regulations promulgated under

1 Section 272. In particular, the audit is designed to determine whether the
2 company has complied with the separate accounting requirements of
3 Section 272(b). The FCC has chosen to fulfill the audit requirement by
4 selecting a type of audit known in the accounting industry as an “agreed-
5 upon-procedures” audit. A joint Federal/State biennial audit oversight team
6 will determine the scope of each audit. The biennial audit is required in
7 addition to the annual Joint Cost audit. The Biennial Audit procedures are
8 attached as Exhibit MES-18. These procedures will serve as a template or
9 starting point for the Federal/State biennial audit oversight team and the
10 independent auditor.

11

¹⁵ *SBC Texas Order*, ¶410

1 **Q. WHEN WILL THE FIRST BIENNIAL AUDIT BE CONDUCTED?**

2 A. The first biennial audit will be conducted 12 months after the BOC receives
3 its first Section 271 approval. The BOC will engage an independent auditor
4 to conduct the biennial audit according to the audit requirements agreed
5 upon by the Federal/State biennial audit oversight team. The BOC will
6 cooperate to the fullest extent possible in providing any data necessary to
7 assist the auditor in accomplishing its objective. The results of these audits
8 will be provided to the FCC and the Washington Utilities and Transportation
9 Commission as required.

10 **Q. WILL THE FCC AND THE WASHINGTON COMMISSION STAFF HAVE**
11 **ACCESS TO THE RECORDS?**

12 A. Yes, the auditor and the Washington Commission Staff will have access to
13 the financial accounts and records of the BOC and the 272 Affiliate, as
14 necessary, to verify that all transactions conducted between them are
15 appropriate under the specific requirements of Section 272. The FCC and
16 Washington Commission Staff will have access to the working papers and
17 supporting materials of the auditor who performs the audit with appropriate
18 protection for proprietary information.

1 The biennial audit acts as an additional control to ensure the BOC complies
2 with the requirements in Section 272. The FCC has placed reliance on the
3 existence of the biennial audit in consideration of Section 271 applications.¹⁶

4 **E. The BOC Complies with Section 272(e) - Fulfillment of Certain Requests**

5 **Q. PLEASE DESCRIBE SECTION 272(e).**

6 A. Section 272(e) contains four express requirements ensuring that the BOC
7 treats the 272 Affiliate similarly to other IXC's with respect to special and
8 switched access.

9 **Q. WHAT ARE THE FOUR REQUIREMENTS?**

10 A. Specifically, Section 272(e)(1) provides for nondiscriminatory provision of
11 telephone exchange service and exchange access for unaffiliated entities;

12 Section 272(e)(2) prohibits the BOC from providing any facilities, services, or
13 information concerning its provision of exchange access to the 272 Affiliate
14 unless such facilities, services, or information are made available to other
15 providers of interLATA services under the same terms and conditions;

16 Section 272(e)(3) requires the BOC to charge the 272 Affiliate, or impute to
17 itself, rates for telephone exchange service and exchange access that are

¹⁶ *Bell Atlantic New York Order, ¶412, SBC Texas Order, ¶406, SBC Kansas/Oklahoma Order,*

1 no less than the amount that would be charged to any unaffiliated
2 interexchange carrier for such service; and,

3 Section 272(e)(4) allows the BOC to provide in-region interLATA or
4 intraLATA facilities or service to the 272 Affiliate only if such services or
5 facilities are made available to all carriers at the same rate and under the
6 same terms and conditions.

7 **Q. HOW DOES THE BOC COMPLY WITH THE FOUR REQUIREMENTS OF**
8 **SECTION 272(e)?**

9 A. The BOC does not and will not discriminate in favor of the 272 Affiliate in the
10 provision of telephone exchange service or exchange access. Upon
11 obtaining Section 271 approval in Washington, the 272 Affiliate will obtain
12 such services from the BOC under the same tariffed terms and conditions as
13 are available to unaffiliated interexchange carriers. The 272 Affiliate will
14 contact its Sales Executive Team representative for these tariffed services
15 through the same procedures that are available to other interexchange
16 carriers. The IXC representatives will process orders in a nondiscriminatory
17 manner. Finally, when and if the BOC uses exchange access services for
18 the provision of its own services, it will impute to itself the same amount it
19 would charge an unaffiliated interexchange carrier.

1

F. Section 272(f) – Sunset

2 **Q. PLEASE DESCRIBE SECTION 272(f).**

3 A. Section 272(f)(1) provides sunset provisions for manufacturing and long
4 distance. It requires that the provisions of Section 272 (other than
5 subsection (e)) shall cease to apply three years after the date that the BOC
6 or the 272 Affiliate is authorized to provide in-region interLATA services,
7 unless the FCC extends the period by rule or order.

8 Section 272(f)(2) provides sunset provisions for interLATA information
9 services of the BOC four years after the enactment of the Act, unless the
10 FCC extends the period by rule or order.

11 Section 272(f)(3) preserves the authority of the FCC to prescribe safeguards
12 consistent with the public interest, convenience, and necessity under any
13 other section of the Act.

14 The BOC will adhere to the requirements of Section 272(c) through Section
15 272(f) of the Act until those provisions have expired.

16 **G. The BOC is Prepared to Satisfy Section 272(g) - Joint Marketing**

17 **Q. PLEASE DESCRIBE SECTION 272(g) AND EXPLAIN HOW THE BOC**
18 **WILL COMPLY WITH THIS SECTION OF THE ACT.**

1 A. Section 272(g)(1) prohibits the 272 Affiliate from marketing or selling
2 telephone exchange services of the BOC except under the same conditions
3 as are available to other similarly situated entities. The 272 Affiliate will not
4 market telephone exchange services unless the BOC permits other entities
5 offering the same or similar services to market and sell its telephone
6 exchange services.

7 Section 272(g)(2) prohibits the BOC from marketing or selling in-region
8 interLATA services provided by the 272 Affiliate within Washington until the
9 272 Affiliate is authorized to provide in-region interLATA services in that
10 state. However, it is critical to recognize that once the BOC obtains Section
11 271 approval, the BOC and the 272 Affiliate may jointly market services
12 without regard to the nondiscrimination provisions of Section 272(c).

13 In compliance with the terms of the divestiture plan as approved by the FCC
14 on June 26, 2000, Qwest does not currently market or sell in-region
15 interLATA services, and will not until the 272 Affiliate is authorized to provide
16 such services under Section 271. When permitted, the BOC and the 272
17 Affiliate will market and sell in-region interLATA services pursuant to arm's
18 length agreements, reduced to writing, available for public inspection, and
19 accounted for in accordance with the then effective rules required by the
20 FCC.

1 The BOC understands the requirements of Section 272(g) and will comply
2 with these provisions.

3 **H. The BOC Satisfied Section 272(h) – Transition**

4 **Q. PLEASE DESCRIBE SECTION 272(h) AND EXPLAIN WHY THIS**
5 **SECTION DOES NOT APPLY TO THE BOC.**

6 A. Section 272(h) gave the BOC one year from the date of enactment of the
7 Act to comply with the requirements of Section 272. This transition period
8 was provided in the event that the BOC, formerly U S WEST
9 Communications, Inc., was engaged in interLATA information or interLATA
10 long distance services, as well as manufacturing. The BOC has satisfied
11 this section of the Act because U S WEST Communications, Inc. was not
12 engaged in any of these activities in February 1996. Further, because of the
13 Qwest-U S WEST merger, Qwest Communications International, Inc.
14 divested itself of its in-region interLATA business.¹⁷

15 **VI. EDUCATION AND AWARENESS EFFORTS TO ENSURE COMPLIANCE**

16 **Q. PLEASE DESCRIBE THE EDUCATION AND AWARENESS EFFORTS**
17 **THE BOC HAS UNDERTAKEN TO ENSURE EMPLOYEES WILL**
18 **CONTINUE TO COMPLY WITH SECTION 272.**

¹⁷ *Divestiture Order*

1 A. The BOC has instituted process changes to ensure that it conducts business
2 subject to the provisions of Section 272. The BOC has also continued to
3 inform and educate employees about those process changes, as well as the
4 Act and related FCC Orders.

5 Each year employees in the Qwest family of companies are required to
6 undergo annual corporate Code of Conduct training, and to certify their
7 understanding of and compliance with company policies including regulatory
8 requirements. This annual compliance training includes a reference to
9 affiliate transactions, as well as other requirements concerning appropriate
10 employee behavior. See Exhibit MES-19.

11 Annual Code of Conduct training was supplemented with specific Section
12 272 requirements and delivered to the BOC, the 272 Affiliate, and Services
13 Company management employees via email with a link to the company's
14 internal web site and is attached as Exhibit MES-20. This training
15 emphasizes the Section 272 transaction and nondiscrimination requirements
16 and provides an email mailbox specifically for Section 272 related questions
17 called "ask272@qwest.com."

18 The BOC also conducted targeted training to employees who conduct
19 business with the 272 Affiliate, specifically the Sales Executive Team
20 representatives. See Exhibit MES-21. This training reinforced the process

1 the 272 Affiliate must go through to order service from the BOC as detailed
2 earlier in my testimony.

3 BOC employees must treat the 272 Affiliate like any other IXC. To reinforce
4 employee awareness and facilitate nondiscrimination, the BOC employees
5 and 272 Affiliate employees will be physically separated. This separation will
6 be accomplished by using separate buildings, separate floors, or floors with
7 restricted access. In addition, the Services Company has deployed a color
8 coding scheme such that BOC, 272 Affiliate, and Services Company
9 employees display different colors on employee badges and office name
10 plates to indicate the company they work for. The "blue" dot on my badge
11 and nameplate distinguishes me as a BOC employee.

12 **Q. WHAT OTHER PROGRAMS ARE AVAILABLE FOR INFORMING**
13 **EMPLOYEES?**

14 A. Qwest Communications International, Inc. also offers a Corporate
15 Compliance Advice line for reporting all compliance issues, including any
16 suspected violations of Section 272. The hotline number is 1-800-333-8938.
17 Any employee can call this number for answers to corporate compliance
18 questions or to report suspected violations.

19 In 1998, the BOC began implementing an education plan specifically
20 targeted at increasing employee awareness and understanding of Section

1 272 requirements and this education effort is ongoing. In addition, for
2 employees involved in processing affiliate transactions, the Methods for
3 Affiliate Transactions (“MAT”) training manual includes Section 272 specific
4 instructions. The MAT is attached as Confidential Exhibit MES-22C. The
5 Services Company, the BOC, and the 272 Affiliate continue to hold training
6 sessions as needed to focus specifically on the compliance requirements
7 related to Section 272 and the Accounting Safeguards Order.

8 The BOC will continue to ensure that once Section 271 approval is obtained,
9 business with the 272 Affiliate will be conducted in compliance with Section
10 272.

11 **VII. CONCLUSION**

12 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

13 A. The FCC’s stated purpose in developing a record of Section 272 compliance
14 in the BOC’s Section 271 application in the states is to review past and
15 present practices in order to make a predictive judgement that the BOC is
16 prepared to carry out the requirements in Section 272. Present practices as
17 described in my testimony confirm that the BOC’s relationship with the 272
18 Affiliate will be consistent with Section 272 requirements. By providing
19 sufficient evidence that it is prepared to conduct business subject to the

1 rules of Section 272, the BOC has satisfied the FCC's test for Section 272
2 approval.

3 The BOC has demonstrated that it understands its obligations under Section
4 272. In addition, the BOC has demonstrated that it has established
5 sufficient controls to comply with each specific requirement of Section 272
6 upon approval for the 272 affiliate to offer originating interLATA services in
7 Washington.

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes, it does.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 272 OF THE)
TELECOMMUNICATIONS ACT OF 1996)
_____)**

DOCKET NO. UT-003022

EXHIBITS OF

MARIE E. SCHWARTZ

QWEST CORPORATION

MAY 16, 2001

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