BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into U S WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996	)	Docket No. UT-003022
In the Matter of U S WEST COMMUNICATIONS, INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	)	Docket No. UT-003040

WORKSHOP 4 RESPONSE TESTIMONY

OF

REX KNOWLES

On Behalf of

XO Washington, Inc., f/k/a NEXTLINK Washington, Inc.

June 7, 2001

Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Rex Knowles. I am a Vice President Regulatory for XO, 111 East Broadway, Suite 1000, Salt Lake City, Utah 84111.

Q. PLEASE IDENTIFY AND DESCRIBE THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.

A. I am testifying on behalf of XO Washington, Inc., f/k/a NEXTLINK Utah, Inc. ("XO"), a competitive local exchange company ("CLEC") that provides facilities-based local and long distance telecommunications services in Washington in competition with Qwest Corporation, f/k/a U S WEST Communications, Inc. ("Qwest").

Q. ARE YOU THE SAME REX KNOWLES WHO PROVIDED RESPONSIVE TESTIMONY IN WORKSHOP 3 IN THIS DOCKET?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY FOR WORKSHOP 4?

A. The purpose of my testimony is to address Qwest's failure or refusal to provide unbundled loops as required by applicable Washington and federal law, as well as some of the provisions of Qwest's Statement of Generally Available Terms ("SGAT") governing loops. I also discuss some of the general terms and conditions issues, including Qwest's failure to satisfy the requirements of Section 271 through Qwest's unilateral departure from Commission-approved interconnection agreements and some of the general terms and conditions in Qwest's SGAT. In addition, I address public interest issues, specifically Qwest's performance under existing interconnection agreements and

the status of Qwest's proposals for a performance assurance plan to become effective after Qwest is permitted to enter the interLATA market in Washington.

I. UNBUNDLED LOOPS

A. Section 271 Issues

Q. HOW HAS QWEST FAILED TO PROVIDE LOOPS?

A. XO has experienced many of the same problems with DS-1 and DS-3 loops as was described in the testimony prepared by Tim Peters on behalf of Electric Lightwave, Inc., in the previous workshop with respect to unbundled network element ("UNE") combinations, including enhanced extended links ("EELs"). Qwest has stated that it will provide loop facilities as UNEs, including converting existing special access circuits to loops as well as EELs, but even Qwest concedes that it has yet to develop all of the processes by which CLECs may order these facilities. Qwest's promise to provide high capacity loops, therefore, is nothing more than a promise at this point in time.

Q. DOES XO HAVE ANY ADDITIONAL ISSUES WITH RESPECT TO QWEST'S PROVISIONING OF LOOPS?

A. Yes. Qwest fails to provision loop facilities in a timely and efficient manner. XO obtains unbundled loops, high capacity circuits, and other facilities from Qwest to access customer premises via equipment that XO has collocated in Qwest central offices. Of the total number of orders for high capacity circuits that XO submitted to Qwest in its Spokane central offices between April and September 2000, 68% were "held," *i.e.*, not provisioned when due. Of those held orders, the average amount of time that these orders

remained held was 18 days. Approximately 61% of XO's orders for unbundled loops in Spokane for the same time period were held and remained held an average of 7 days.

Increasingly, Qwest claims that the reason it holds or cancels facility orders is because Qwest has insufficient facilities or capacity in existing facilities to provision the orders. I am not aware that this Commission has ever accepted lack of facilities as an excuse for not providing requested service to retail customers, at least when those customers are located within Qwest's service territory. Qwest, however, believes that it may require CLECs to pay "special construction" charges or may refuse altogether to provide facilities to competitor customers, even though Qwest would provide those same facilities to an end-user customer. XO's interconnection agreement with Qwest requires provisioning of loops and other facilities on the same basis that Qwest provides such facilities to itself and makes no reference to any requirement for "special construction." Indeed, the Commission has rejected Qwest's proposal for imposing "special construction" charges. Yet, Qwest is now taking the position that it may nevertheless refuse to provision facilities unless and until Qwest agrees to undertake "special construction" on a case-by-case basis. This issue was discussed in the previous workshop but is a particularly acute problem in the context of unbundled loops.

Q. WHAT ABOUT QWEST'S MAINTENANCE AND REPAIR OF LOOPS PROVIDED TO XO?

A. Even when (or if) Qwest provides the ordered facilities, Qwest has failed to properly

maintain and repair them. Again between April and September 2000, XO opened 187 trouble tickets with Qwest in Spokane for outages or other service interruptions attributable to Qwest on unbundled loops it provides to customer premises. Of those service interruptions, the mean time Qwest took to correct the problem was over 40 hours. XO also opened 124 trouble tickets for Qwest high capacity circuits, with a mean time to repair of 90 hours. During the same time period in Seattle, XO opened 78 trouble tickets for Qwest unbundled loops, with a mean time to repair of 45 hours, and 87 trouble tickets for Qwest high capacity circuits, with a mean time to repair of 90 hours. Service outages of almost two to four days are unacceptable, particularly for business customers with critical telecommunications needs.

Q. DOES XO HAVE MORE CURRENT PERFORMANCE DATA ON QWEST'S LOOP PROVISIONING AND MAINTENANCE?

A. No, not at this time. XO compiled these figures last year in the context of another proceeding. The Commission has not yet reviewed performance data in this proceeding and my understanding is that the Commission will not review such data until after the completion of the Regional Oversight Committee ("ROC") Operational Support Systems ("OSS") test. Accordingly, XO contemplates compiling and providing more current data when the Commission is scheduled to review that data. Until that time, XO is providing the data that is readily available as an illustration of the existence and magnitude of the problems that XO has been experiencing with Qwest's provisioning and maintenance of loop facilities.

Q. IS QWEST IN COMPLIANCE WITH ITS LEGAL OBLIGATIONS TO PROVIDE LOOP FACILITIES?

A. No. Qwest currently is not in compliance with its legal obligations to provide loop facilities and will not be in compliance until Qwest provisions, maintains, and repairs those facilities on the same basis and within the same intervals as Qwest provisions, maintains, and repairs those facilities for its end user customers.

B. SGAT Issues

Q. WHAT ARE XO'S CONCERNS WITH RESPECT TO THE SGAT PROVISIONS GOVERNING UNBUNDLED LOOPS?

A. XO has reviewed Section 9.2 of the SGAT attached as Exhibit JML-2 to the Direct Testimony of Jean M. Liston and has concerns with the following provisions:

Section 9.2.2.1 – Qwest uses the term "substantially the same" to modify its obligation to provide quality and provisioning to CLECs that is at least equal to the quality and provisioning that Qwest provides to itself or its end user customer. While XO believes that the phrase "at least equal to" more accurately reflects the Act and the FCC requirements, XO would not object to the use of the phrase "substantially the same" if Qwest acknowledges on the record that this phrase is intended to reflect current federal law and does not in any way lessen or otherwise alter Qwest's legal obligations as established by the Act and FCC rules and orders.

Section 9.2.2.3.1 – Qwest limits its obligation to provide loops other than those specifically addressed in the SGAT to circumstances when facilities are available and on an individual case basis ("ICB"). This issue of facilities availability arose in workshop 3, and as XO recommended in that workshop, Qwest should be required to construct high capacity loops under the same terms and conditions that Qwest constructs such facilities for its other customers.

Section 9.2.2.10 – This section authorizes the CLEC to order multiplexing for unbundled loops. My understanding based on discussions in the multi-state workshops is that Qwest has yet to establish a process for such orders. XO, therefore, recommends that this section be expanded (or a new provision added to the ordering section) to detail how the CLEC can obtain multiplexing for unbundled loops.

Section 9.2.3.6 – Qwest references "Miscellaneous Charges" that may apply to the ordering and provisioning process, but there are no SGAT provisions that state when these charges apply or how they are calculated. Qwest is not entitled simply to list charges that Qwest will later determine unilaterally when and at what levels those charges will be imposed on the CLEC. If charges other than recurring and nonrecurring charges apply, those charges should not only be identified in the definitions section of the SGAT,

but should be separately listed and described, including the precise circumstances in which they will apply.

Section 9.2.4.3.1.2.4 – As discussed above and in workshop 3, Qwest is not entitled to reject a CLEC order based on lack of facilities unless Qwest is entitled to reject a similar order placed by an end user customer. This section, moreover, merely repeats some of the provisions in Section 9.1.2 and thus is confusingly duplicative. Accordingly, this section should be deleted. I understand that Qwest agreed to delete this section during the multi-state workshops.

Section 9.2.5.2 – XO agrees that it should be responsible for repair problems on its network and facilities, but this section does not accurately reflect that concept. The CLEC certainly is responsible for its collocated equipment, but "cabling" or "cross-connects" in the Qwest central office cover a variety of facilities that may be provided or installed by Qwest, not the CLEC, in which case Qwest, not the CLEC, should be responsible for their repair. In the multi-state workshops, Qwest agreed to modify this language to provide that the CLEC is responsible for repair of only those facilities on its side of the collocation demarcation point, and the same language should be used here.

Exhibit C -- Finally, the SGAT does not include repair intervals for high capacity

unbundled loops, although it provides such intervals for other loops. At a minimum, Exihibit C to the SGAT should include such intervals.

II. GENERAL TERMS AND CONDITIONS

A. Section 271 Issues

Q. WHAT IS YOUR UNDERSTANDING WITH RESPECT TO SECTION 271'S GENERAL REQUIREMENTS WITH RESPECT TO INTERCONNECTION AGREEMENTS?

A. My understanding is that Section 271(c)(2) requires Qwest to demonstrate that it "is providing access and interconnection pursuant to one or more agreements" and that "such access and interconnection meets the requirements of" the 14 point checklist. As Kaylene Anderson and I have stated in previous testimony in this docket, XO's position is that Qwest must prove that it actually *is providing* service in compliance with *existing* Commission-approved interconnection agreements between Qwest and XO and other competing local exchange companies ("CLECs"), and that Qwest cannot rely on its SGAT to meet this obligation. XO does not want the Commission to lose sight of the importance of reviewing Qwest's performance under those agreements during these proceedings, which have focused almost exclusively on the provisions of Qwest's SGAT.

Q. IS QWEST PROVIDING ACCESS AND INTERCONNECTION UNDER ITS INTERCONNECTION AGREEMENT WITH XO IN WASHINGTON AS REQUIRED BY SECTION 271?

A. No. Kaylene Anderson and I have detailed Qwest's noncompliance with specific

obligations in its interconnection agreement with XO in Washington as those checklist subjects have arisen in prior workshops. The issue in this workshop is Qwest's practice of imposing terms and conditions on XO and other CLECs that are not part of their interconnection agreements. Just as Qwest cannot demonstrate it "is providing" access and interconnection if it is violating specific terms and conditions in interconnection agreements, Qwest cannot prove that it "is providing" access and interconnection pursuant to Commission-approved agreements if such access and interconnection is governed by terms and conditions that are not part of those agreements but are unilaterally imposed by Qwest.

Q. HOW DOES QWEST UNILATERALLY IMPOSE TERMS AND CONDITIONS?

A. Qwest has several ways of unilaterally imposing terms and conditions on CLECs. The most common form is via "policy" statements that the Qwest wholesale group distributes to CLECs. Many of these statements are legitimate advisory notices, letting CLECs know about new product offerings or changes to contact personnel, order processes, or other routine intercompany matters. Some of these "policy" statements, however, contain substantive changes to the terms and conditions under which Qwest provides CLECs with access to, and interconnection with, its network.

Recent examples of such "policy" statements include the three notices Qwest sent to CLECs in late February 2001 on collocation issues that XO submitted into the record in

this proceeding following workshop 2. Each of these statements establish substantive terms and conditions for collocation and each states that these terms and conditions "will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement." After XO filed submitted these exhibits, Qwest sent revised "policy" statements which continued to include substantive terms and conditions but stated, "This policy is available to all Co-Providers regardless of whether [this policy] is specifically addressed in the Co-Provider's Interconnection Agreement. If terms and conditions for [this policy] are included in the Co-Providers' Interconnection Agreement, and those terms differ from those set forth in this policy, then the terms of the Interconnection Agreement will prevail." This language change was only cosmetic because few, if any, interconnection agreements include terms and conditions that specifically govern these collocation issues. Qwest, therefore, has effectively added terms and conditions to CLECs' interconnection agreements without CLECs' consent and without revising the agreements and obtaining Commission approval.

Q. HAVE THESE "POLICY" CHANGES HAD ANY PRACTICAL IMPACT?

A. Yes. One of the "policy" statements concerns "Collocation Decommissioning," which "refers to the removal of a specific collocation site, which the Co-Provider desires to be deactivated, which includes the removal of Co-Provider equipment and associated elements from the Qwest central office." The currently effective interconnection agreements between XO and Qwest in Washington and other states contain no provisions

that address decommissioning collocation but usually include a general provision that authorizes Qwest to charge for work not expressly identified in the Agreement on a time and materials basis.

XO recently requested that Qwest decommission a virtual collocation arrangement in one of Qwest's Utah central offices to enable XO to consolidate its facilities and operations in that central office into XO's physical collocation space. Qwest responded with a quote of several thousand dollars for the requested decommissioning based on Qwest's new Collocation Decommissioning Policy, rather than an estimate of a few hundred dollars that would be required on a time and materials basis as authorized in the Parties' interconnection agreement. XO never asked to adopt Qwest's Collocation Decommissioning Policy, nor did Qwest ever propose to amend the interconnection agreement to incorporate this policy. Qwest nevertheless has insisted on applying the terms and conditions in its "policy" statement rather than the terms and conditions of the Parties' interconnection agreement.

Such behavior stands in sharp contrast to Qwest's position when required to provide additional facilities and services. XO has spent months attempting to negotiate an amendment to its interconnection agreement under those circumstances. Qwest generally claims that it must first develop a "product" and then establish appropriate rates, terms,

and conditions, which takes a considerable amount of time. Indeed, Qwest made just such representations during prior workshop sessions in response to CLECs' request for immediate access to new types of collocation or interconnection, and Qwest relied on the sanctity of the interconnection agreements to contend that it could not simply unilaterally change those agreements to add such access. Apparently, Qwest believes that interconnection agreements must be amended only if the CLEC wants a change in the agreement while Qwest may simply adopt a "policy" to modify or add terms and conditions to interconnection agreements.

Q. ARE THE COLLOCATION "POLICY" STATEMENTS YOU HAVE DISCUSSED THE ONLY INSTANCE IN WHICH QWEST HAS UNILATERALLY PURPORTED TO AMEND COMMISSION-APPROVED INTERCONNECTION AGREEMENTS?

A. No. Attached to my testimony as Exhibit RK-1 is a copy of a June 1, 2001, Qwest "notice" that adds additional terms to Qwest's agreements with CLECs with respect to Qwest's provisioning and billing of interconnection trunks. Qwest states that as of July 1, 2001, Qwest will begin billing for Local Interconnection Service ("LIS") trunks if the CLEC has not accepted and turned up those trunks or cancelled the order within 30 business days of the original requested service date. The notice further provides, "Until the CLEC begins to use the trunks for the exchange of actual traffic, full billing will be implemented irrespective of contract specific language that may outline an exception or adjustment, such as a relative use factor." Again, these new requirements are stated to be applicable regardless of the language in Commission-approved interconnection

agreements and are not included in Qwest's SGAT or XO's interconnection agreement with Qwest.

Q. DOES THIS RAISE ANY OTHER CONCERNS?

A. Yes. The SGAT contains multiple references to Qwest's Interconnect & Resale Resource Guide ("IRRG"), now called a Product Catalog ("PCAT"), which is defined in section 4.46(b) of the SGAT as "a Qwest document that provides information needed to request services available under" the SGAT. That definition also states that "Qwest agrees that CLEC shall not be held to the requirements of the PCAT," but Qwest's "policy" statements include a similar limitation and are not so limited in practice. CLECs thus face the devil's alternative of complying with these unilateral Qwest modifications or incurring the expense and delay of dispute resolution just to maintain the status quo and limit Qwest to the terms and conditions in the Commission-approved agreements. Nothing in the SGAT or existing interconnection agreements provides an incentive sufficient to preclude Qwest from putting CLECs in that untenable position. Under these circumstances, Qwest cannot demonstrate that it "is providing" CLECs with access to, and interconnection with, its network pursuant to the terms and conditions in Commission-approved interconnection agreements.

Q. DOES QWEST'S CO-PROVIDER CHANGE MANAGEMENT PROCESS ("CICMP") ADDRESS THESE CONCERNS?

A. No. At least in practice, Qwest's CICMP comes into play only *after* Qwest has unilaterally made "policy" changes that alter its interconnection agreements. XO, for

example, received no notice of Qwest's new collocation or LIS trunk "policy changes" until I received the policy statements announcing that those "policies" would be effective. Nor has Qwest proposed to amend its interconnection agreements with XO to incorporate these "policies." Qwest thus has set up a process that permits CLECs to address Qwest "policies" only after Qwest has implemented them. Qwest thus effectively revises its interconnection agreements unilaterally and places the burden on the CLECs to challenge Qwest's actions. The Commission would not tolerate imposition of new terms and conditions on end user customers that are not contained in Qwest's tariffs. The Commission should not tolerate imposition of new terms and conditions on CLECs that are not contained in Commission-approved interconnection agreements.

B. SGAT Issues

Q. WHAT ARE XO'S CONCERNS WITH RESPECT TO THE SGAT PROVISIONS GOVERNING GENERAL TERMS AND CONDITIONS?

A. XO has reviewed Sections 1-3, 5, 11, 16-19, and 22 of the SGAT attached to the testimony of Qwest witness Larry Brotherson and has been working with Qwest and other parties in the multi-state review process to revise those sections. My understanding is that the agreements reached in other states will be proposed in this proceeding, but in the meantime, I summarize XO's concerns with the following provisions as contained in Qwest's filing in Washington:

Section 1.7 – This section provides, "At the time any amendment is filed, the section amended shall be considered withdrawn, and no CLEC may adopt the section considered withdrawn following the filing of any amendment, even if such amendment has not yet been approved or allowed to take effect." This provision is unacceptable. Qwest should not be entitled unilaterally to remove a portion of a Commission-approved SGAT, any more than Qwest could remove a tariff provision without Commission authority. Accordingly, this section should be amended to provide that all provisions of the SGAT remain in effect until the Commission has approved their removal or replacement.

Section 2.2 – As discussed above, negotiations with Qwest to amend an interconnection agreement to conform to recent FCC or Commission requirements generally take months, which is an unacceptable period of time. XO thus recommends that this section be modified expressly to apply the 60 day negotiation period and dispute resolution process not just to changes in Existing Rules that *reduce* the requirements with which Qwest must comply but to contract amendments necessary to enable the CLEC to obtain *additional* facilities, services, or "products" that Qwest is required, or has decided voluntarily, to offer.

Section 3 – This entire section presumes that the parties have no prior relationship, which often will not be the case. Accordingly, this section should be modified to recognize that

if the parties operated under a prior agreement, they need only amend, as necessary, any prior implementation schedule, including completion of Qwest's "CLEC Questionnaire."

Section 5.1.3 – While XO agrees that either party should be able to discontinue a specific service or circuit that is causing interference on the other party's network, this provision is written much more broadly. The current language would authorize either party to discontinue all service based on any level of interference, even if it were only a single faulty circuit. Accordingly, XO recommends that this section be revised to reflect the intent more narrowly.

Section 5.3.1 – State commission and FCC rules address requirements for proof of authorization to change service providers. Rather than include provisions in the SGAT to establish requirements that may or may not be consistent with these rules, this section should simply cross-reference these rules.

Section 5.4.3 – XO is very concerned with the authority given to Qwest under this section of the SGAT to disconnect any and all services for failure by CLEC to make full payment within 60 days of the due date on any bill Qwest provides to the CLEC. Too many legitimate circumstances could arise that would result in a late payment beyond 60 days of the bill due date, including delivery failure, misplaced bills or payments, or billing

concerns that may not rise to the level of a dispute within 60 days. Qwest should not have automatic and unilateral authority to disconnect service to a CLEC when the result is that hundreds or thousands of end user customers could be put out of service without notice to them. Accordingly, Qwest should not be authorized to disconnect service to a CLEC without greater notice and opportunity to cure or without prior authorization from the Commission.

Section 5.6 – This section requires the CLEC to maintain insurance, which should only be of concern to Qwest if CLEC employees or contractors are operating on Qwest Premises or otherwise directly accessing Qwest's network. Such provisions are generally part of specific sections of an interconnection agreement (*e.g.*, part of collocation and access to poles, ducts, conduits, and rights-of-way). If this is to be a general provision, some type of limitation needs to be included. In addition, this provision should be reciprocal to the extent that Qwest has access to the CLEC network (*e.g.*, to CLEC equipment collocated on Qwest Premises).

Section 5.7 – The Force Majeure section lists those occasions on which a Party may be excused from performing its obligations. Qwest, however, includes in that list "government regulations," "equipment failure," and "inability to secure products or services of other persons." Inclusion of these circumstances would excuse virtually any

failure to perform, including service quality standards adopted by the Commission, poor maintenance, and failure to promptly order products and services from third parties. Accordingly, XO recommends either deleting these events or narrowing them to instances that are legitimately beyond a Party's control.

Section 5.8 – XO does not agree with the broad limitation of liability section in the SGAT. Indeed, this section appears to exempt Qwest from any quality assurance remedies that exceed the amount of Qwest's nonrecurring and recurring charges. This section needs to be substantially narrower.

Section 5.9 – XO has the same concerns with the Indemnity section of the SGAT as XO has with the Limitation of Liability section. At a minimum, this section should be modified to require Qwest to "indemnify" the CLEC against any retail service quality penalties or Commission fines the CLEC must pay to retail customers or state treasuries as a result of provisioning or maintenance problems caused by Qwest.

Section 5.18 – The Dispute Resolution section does not provide the Parties with the option of seeking resolution of a dispute from the Commission. Limiting dispute resolution to mediation and AAA arbitration is too narrow. A Party should have the option of seeking Commission resolution, particularly in Washington where the

Commission has established specific procedures for enforcing interconnection agreements. This section should be revised to reflect that option.

Section 5.25 – The Publicity section is overbroad and could potentially require a Party to seek the other Party's consent to issue public statements with respect to Commission or judicial proceedings to enforce the Agreement. Accordingly, XO proposes that the phrase "for commercial purposes" be inserted between "publicity materials" and "with respect."

Section 11.3 – This section should be reciprocal.

Section 17 – The Bona Fide Request ("BFR") process established in this section is improperly limited to CLEC requests for access to unbundled network elements, interconnection, or ancillary services required to be provided under the Act. State law also may require Qwest to provide access to, or interconnection with, Qwest's network, and Washington in particular has adopted such requirements. This section should be modified accordingly.

Section 19 – Qwest's obligation to construct facilities has previously been discussed in Workshop 3, and I will not repeat that discussion here. XO, however, believes that this section should be modified consistent with XO's recommendations in Workshop 3.

III. PUBLIC INTEREST

Q. WHAT ARE XO'S CONCERNS WITH RESPECT TO SECTION 271'S PUBLIC INTEREST INQUIRY?

A. XO's primary concern with respect to the public interest inquiry is the issue of enforcement and ensuring that Qwest is complying, and continues to comply, with its legal obligations. The Commission has previously refused to compel Qwest to include performance remedies or penalties in interconnection agreements. XO, for example, opted into the arbitrated agreement between Qwest and TCG Seattle, and the Commission rejected TCG's proposal in the arbitration to include remedies for Qwest's failure to perform under the agreement. The Commission also initiated but then dismissed a rulemaking to address carrier-to-carrier service quality. The only existing financial incentives for Qwest to provide adequate service to CLECs are the penalties Commission Staff negotiated with Qwest as a condition on Commission approval of the merger between Qwest and U S WEST. These penalties, however, are only effective until December 31, 2002, permit Qwest to delay provisioning facilities for three weeks before paying any significant penalty to a CLEC, and have not had any demonstrable effect on the generally poor quality of service Qwest provides to CLECs.

Q. DOES QWEST ADDRESS THIS ISSUE IN ITS DIRECT TESTIMONY?

A. No, not really. Mr. Teitzel merely refers to the ROC workshops on a performance assurance plan to be implemented after Qwest receives authority to provide interLATA

services and proposes that the Commission defer to the outcome of those workshops.

Q. IS QWEST'S PROPOSAL REASONABLE?

A. No. I have participated in the most recent ROC workshops, and that process will not result in a consensus performance assurance plan. To the contrary, the result of the last workshop was a Qwest determination that the workshop process had resolved as many issues as it could and that the remaining disputed issues would have to be resolved by individual state commissions. Not surprisingly, those outstanding issues are the most significant and will determine whether the performance plan will be effective in ensuring Qwest's compliance with its legal obligations.

Q. WHAT ARE SOME OF THE ISSUES THAT THE COMMISSION WILL HAVE TO RESOLVE?

A. Perhaps the most critical issue is the level of financial penalties for Qwest's failure to perform, including whether Qwest's liability should be capped at a certain level and the size of any such cap. Qwest has proposed minimal penalty levels and a low cap, while the CLECs have advocated penalties at uncapped levels that will ensure that performance from Qwest's perspective will be preferable to nonperformance.

Another issue is when the plan will be implemented. Qwest proposes that the plan not take effect until Qwest has been granted authority to provide interLATA services. The CLECs, on the other hand, believe that the plan should be implemented immediately to ensure that Qwest is complying with that plan, as well as its other legal obligations, prior

to Qwest's entry into the interLATA long distance market.

A third issue is whether the plan will apply to special access or private line circuits the CLECs obtain to provide local exchange service. Qwest maintains that provision and repair of these circuits is governed by Qwest's tariffs, rather than interconnection agreements or the performance assurance plan. CLECs counter that special access and private line circuits are no different than unbundled loops or EELs when obtained by CLECs to provide local exchange service and thus should be treated the same, including being subject to the same performance assurance plan. Indeed, special access and private line circuits are the "retail" analog to unbundled loops, making comparison between those circuits and loops meaningless for determining "parity." Qwest's inadequate provisioning and repair of these circuits would mean that Qwest could provide equally inadequate provisioning and repair of unbundled loops and still claim to be in compliance with its parity obligations, even though Qwest's "retail" and "wholesale" customers, in reality, are the same.

Q. WOULD ADDITIONAL WORKSHOPS IN WASHINGTON BE THE APPROPRIATE MEANS OF PRESENTING THESE ISSUES TO THE COMMISSION FOR RESOLUTION?

A. No. The remaining unresolved issues are firmly in dispute, and the most appropriate means of presenting them to the Commission would be through prefiled testimony and adjudicative hearings. The Commission's involvement in this proceeding has been

limited to resolving disputed policy and legal issues developed and narrowed through, and based on a record compiled in, the workshops. The establishment of a performance assurance plan that will be consistent with the public interest in Washington – like the prices Qwest may charge for access to, and interconnection with, its network – requires more direct Commission involvement.

Q. ARE THERE OTHER ISSUES THAT SHOULD BE ADDRESSED IN SUCH A HEARING?

A. Yes. As I mentioned above, the Commission has yet to examine whether, and the extent to which, Qwest actually *is providing* CLECs with access to, and interconnection with, its network under Commission-approved interconnection agreements. The process in this docket thus far has been similar to the arbitrations, in which the Commission simply reviews an administrative law judge's determinations on what Qwest's legal obligations should be. An evaluation of Qwest's actual performance, on the other hand, will require a much more contentious and fact-intensive proceeding to which a workshop process – which is designed to narrow disputed issues and facilitate consensus – is not well suited. Accordingly, XO recommends that the Commission conduct administrative hearings in this docket to establish an appropriate performance assurance plan and to determine whether Qwest currently is providing service in compliance with Commission-approved interconnection agreements.

Q. CAN THE COMMISSION DETERMINE WHETHER QWEST'S ENTRY INTO

THE INTERLATA MARKET IN WASHINGTON WOULD BE CONSISTENT WITH THE PUBLIC INTEREST BASED ON THE RECORD COMPILED TO DATE?

A. No, it cannot. Qwest's performance and performance assurance plan cannot be evaluated based on the record and proceedings to date, and the issues raised cannot be addressed and adequately presented to the Commission for resolution without an adjudicative hearing in which the Commission takes an active role.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.