

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	
U S WEST COMMUNICATIONS, INC.'s ¹)	DOCKET NO. UT-003022
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	
_____)	
In the Matter of)	DOCKET NO. UT-003040
U S WEST COMMUNICATIONS, INC.'s)	COMMISSION ORDER ²
Statement of Generally Available Terms)	ADDRESSING WORKSHOP
Pursuant to Section 252(f) of the)	ONE ISSUES: CHECKLIST
Telecommunications Act of 1996)	ITEMS NO. 3, 7, 8, 9, 10, 12,
_____)	AND 13.

I. SYNOPSIS

1 In this Order, the Commission determines Qwest's compliance with certain provisions of Section 271 of the Telecommunications Act of 1996. Included in this decision are issues relating to Checklist Items No. 3 (Poles, Ducts, and Rights of Way), 7 (911, E911, Directory Assistance, Operator Services), 8 (White Pages Directory Listings), 9 (Numbering Administration), 10 (Databases and Associated Signaling), 12 (Dialing Parity), and 13 (Reciprocal Compensation).

¹ Since the inception of this proceeding, U S WEST has merged and become known as Qwest Communications, Inc. For consistency and ease of reference we will use the new name Qwest in this order.

² This proceeding is designed, among other things, to produce a recommendation to the Federal Communications Commission regarding Qwest's compliance with certain requirements of law. This order addresses some of those requirements. The process adopted for this proceeding contemplates that interim orders including this one will form the basis for a single final order, incorporating previous orders, updated as appropriate. The Commission will entertain motions for reconsideration of this order so that issues may be timely resolved.

II. BACKGROUND AND PROCEDURAL HISTORY

- 2 This is a consolidated proceeding to consider the compliance of Qwest Communications, Inc. (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST), with the requirements of section 271 of the Telecommunications Act of 1996 (the Act),³ and to review and consider approval of Qwest's Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act.
- 3 On March 22, 2000, Qwest filed with the Commission in Docket No. UT-003022 its initial prefiled testimony and exhibits for the first workshop in the Commission's review of Qwest's compliance with the requirements of section 271. Qwest made this filing pursuant to filing deadlines established in the Commission's March 2000 Supplemental Interpretive and Policy Statement on Process and Evidentiary Requirements, in Docket No. UT-970300. The Supplemental Interpretive and Policy Statement adopted a process and standards for facilitating the Commission's review of Qwest's compliance with section 271(c) of the Act. The Commission established a series of adjudicative workshops designed to allow the Commission and interested parties to review and comment on Qwest's compliance with section 271(c).
- 4 Qwest also filed its proposed SGAT with the Commission on March 22, 2000, in Docket No. UT-003022, requesting Commission approval under Section 252(f)(2). By letter dated April 14, 2000, the Commission rejected Qwest's request to review the SGAT within Docket No. UT-003022. On April 28, 2000, Qwest refiled its SGAT with the Commission in Docket No. UT-003040, again requesting Commission approval. On May 19, 2000, the Commission held a workshop for interested persons to discuss the process by which the Commission would review Qwest's proposed SGAT. Following the workshop, the Commission entered an order consolidating the SGAT and Section 271 proceedings. At its June 16, 2000, open meeting, the Commission allowed Qwest's proposed SGAT to go into effect, and stated that it would further review the SGAT provisions in Docket No. UT-003040.
- 5 The Commission convened a prehearing conference on June 16, 2000. On June 21 – 23, 2000, the Commission convened the first of four planned workshops in Olympia, Washington, to address the issues related to Checklist Items No. 3 (Poles, Ducts, Conduits, and Rights-of-Way), 7 (911/E911, Directory Assistance and Operator Service), 8 (White Pages Listings), 9 (Numbering Administration), 10 (Signaling and Associated Databases), 12 (Dialing Parity), 13 (Reciprocal Compensation), and provisions of the SGAT addressing these issues. The Commission convened a follow-up workshop on July 6, 2000, in Seattle, Washington, to address unresolved issues from the June workshop session. Administrative Law Judges C. Robert Wallis

³ Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

and Ann E. Rendahl presided over the prehearing conference and the first and follow-up workshops.

- 6 The parties filed briefs with the Commission on July 6, 2000, addressing their dispute over compensation for traffic bound to Internet Service Providers (ISPs) and access to the Inter-network Calling Name, or ICNAM, database. On July 17, 2000, parties filed briefs on remaining disputed issues. Staff served a Draft Initial Order on the issues on August 8, 2000, and a Revised Initial Order on August 31, 2000, after receiving comments from the parties. The parties argued disputed issues to the Commission on September 18, 2000. This Order resolves the issues raised by the parties in briefs, comments, and oral argument to the Commission regarding matters in the Revised Initial Order.

III. PARTIES AND REPRESENTATIVES

- 7 The following parties and their representatives participated in the first workshop: Qwest, by Lisa Anderl, attorney, Seattle, WA, Kara M. Sacilotto, attorney, Washington, D.C., and Steven R. Beck, Denver, CO; AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), by Mary B. Tribby, Rebecca DeCook, and Dominick Sekich, attorneys, Denver, CO; WorldCom, Inc. (WorldCom) by Ann Hopfenbeck and Thomas F. Dixon, attorneys, Denver, CO; Sprint Communications Company, LP (Sprint) by Eric S. Heath, attorney, Las Vegas, NV and Andrew Yorra, attorney, Portland; NEXTLINK Washington, Inc. (NEXTLINK), Electric Lightwave Inc. (ELI), and Advanced TelCom Group, Inc. (ATG), Focal Communications Corporation (Focal), The Association of Local Telecommunications Services (ALTS), Global Crossing Telemanagement, Global Crossing Local Services, New Edge Networks, North Point Communications, McLeod USA Telecommunications Services, Inc. (McLeod), and JATO Communications (JATO), by Gregory J. Kopta, attorney, Seattle, WA; TRACER, Teligent Services, Inc., Rhythms Links Inc., and Broadband Office Communications, Inc. by Arthur A. Butler, attorney, Seattle, WA and Lisa Rackner, attorney, Portland, OR; Covad Communications, Inc (COVAD) by Clay Deanhardt, attorney, Santa Clara, CA and Brooks E. Harlow, attorney, Seattle, WA; ICG Communications, Inc. (ICG), MetroNet Services Corporation (MetroNet), and MGC Communications, Inc., d/b/a Mpower Communications Corp. (Mpower) by Brooks E. Harlow and Terry F. Berman, attorneys, Seattle, WA; Eschelon Telecom of Washington (Eschelon), by Dennis Ahlers and Karen Clauson, attorneys, Minneapolis, MN; and Public Counsel by Simon ffitich and Robert Cromwell, Assistant Attorneys General.

IV. DISCUSSION

- 8 The Revised Initial Order addressing disputed issues from the first workshop stated findings and conclusions on all material facts inquired into during the course of this

workshop. The Commission restates and adopts the findings and conclusions entered in the Revised Initial Order, with the modifications discussed below.

A. Checklist Item No. 3: Private Right-of-Way Agreements

- 9 In Section 10.8 of its SGAT, Qwest states certain terms and conditions under which it represents that it will grant CLECs access to agreements with private land or building owners, including multiple dwelling units (MDUs), that may include rights-of-way. Qwest's proposal at oral argument would require CLECs to: (1) obtain landowner consent prior to Qwest's disclosure of the non-public right-of-way or MDU agreements; (2) negotiate with the landowner to allow Qwest to cure any CLEC breaches of right-of-way access; and (3) record any private right-of-way agreement provided to the CLEC.⁴
- 10 The Revised Initial Order proposed that Qwest's proposal was unacceptable as it placed significant burdens on CLECs seeking to obtain access to poles, ducts, and rights-of-way. *Revised Initial Order at ¶ 46*. In particular, the Revised Initial Order noted that the point at which CLECs must begin negotiations with property owners remains in dispute between the parties. *Id.* The order directed the parties to continue their ongoing negotiations on the issue and advise the Commission of the results of their progress.
- 11 In argument on review, Qwest insisted that MDU agreements do not convey rights-of-way, but argued that CLECs must record the agreements if they believe the agreements convey a property interest. Qwest stated that it does not believe the issue is properly raised in the context of Checklist Item No. 3, but argues that if the issue is raised at all it should be addressed during workshops on Checklist Item No. 2, concerning subloops.
- 12 AT&T and WorldCom argued that the issue concerns whether Qwest owns or controls any interest in property or any access right in an MDU. *Tr. 901*. AT&T and WorldCom argue that a "right-of-way" under the Act is not limited to something that conveys a property interest. The CLECs requested that the Commission defer ruling on the issue until after the FCC decides whether MDU agreements convey right-of-way under the Act, and until the Commission addresses subloop issues for Checklist Item No. 2.
- 13 The CLECs also argue that they should not have to obtain landowner consent to view the agreements. If an agreement does not contain a confidentiality provision, then the landowner should not have an expectation of privacy in the agreement. If there is a confidentiality provision in the agreement, the parties should be able to enter into a protective order to protect the necessary confidential portions of the agreement.

⁴ Qwest has since notified the Commission that it has withdrawn its recording requirement.

AT&T and WorldCom also argue that it is Qwest's responsibility to negotiate the opportunity to cure a breach.

- 14 On October 6 and 11, respectively, Qwest and AT&T and WorldCom filed with the Commission copies of briefs filed in Colorado concerning disputed Checklist Item No. 3 issues. In its filing, Qwest reports that the parties have agreed that a decision on compliance with Checklist Item No. 3 need not be deferred over the issue of access to MDU agreements. Qwest notes that the parties continue their dispute over Qwest's proposed terms and conditions for access to rights-of-way and MDU agreements that: (1) CLECs obtain landowner consent prior to viewing the agreements; and (2) CLECs negotiate with landowners for Qwest's right to cure a CLEC breach.
- 15 AT&T and WorldCom jointly argue, contrary to Qwest's suggestion, that the Commission should not resolve the issues concerning Checklist Item No. 3 until the Commission has addressed issues of "field collocation" and subloops in later workshops, and until the FCC issues an order on MDU issues and access to rights-of-way. AT&T and WorldCom reassert their prior position that Qwest's proposed terms and conditions for access to MDU and right-of-way agreements are anti-competitive, discriminatory, and place unreasonable burdens on CLECs.
- 16 On October 25, 2000, the FCC released an order concerning the provision of services to telecommunications customers in multiple tenant environments (MTEs), also known as MDUs, including access to MTEs and rights-of-way in MTEs.⁵ The FCC declined to decide whether MTE owners must provide nondiscriminatory access to their premises.⁶ However, the FCC did prohibit telecommunications carriers from entering into contracts with MTE owners and managers that restrict access to competing carriers, and determined that access mandated by Section 224 of the Act includes access to rights-of-way controlled by a utility within MTEs.⁷ The FCC issued its order to "reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs."⁸ The FCC specifically determined that the term "right-of-way" can have a variety of meanings, not just a property interest such as a

⁵ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Fifth Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 00-366 (rel. Oct. 25, 2000) (*Fifth Report and Order*).

⁶ *Id.* at ¶ 2.

⁷ *Id.* ¶¶ 1, 76, 82.

⁸ *Id.* at ¶ 7.

lease, license, or easement, and further defined the meaning of the term “right-of-way” under Section 224 of the Act.⁹

- 17 Under the Act, Qwest must “provide non-discriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” 47 U.S.C. § 224. Qwest must also make available for inspection and copying all “relevant data” concerning inquiries about rights-of-way.¹⁰ In view of the FCC’s recent ruling on access to multiple tenant environments, we find persuasive the arguments of AT&T and WorldCom that Qwest’s proposed terms and conditions for access to rights-of-way and multiple dwelling units would impede the ability of CLECs to obtain non-discriminatory access to poles, ducts and rights-of-way.
- 18 The Revised Initial Order recommended that Qwest’s requirements for (1) landowner approval prior to CLEC review of an agreement in which Qwest may own or control right-of-way, and (2) CLEC negotiation of a Qwest right to cure CLEC breaches of right-of-way agreements, present significant and unreasonable burdens on CLECs when negotiating with the landowner.
- 19 The Commission adopts the initial order’s recommendation. CLECs will have to enter into negotiations with the landowner to obtain access to a right-of-way. Qwest’s proposal creates a burden for CLECs in their efforts to determine whether Qwest owns or controls a right-of-way, and in trying to negotiate an agreement with the landowner. Qwest must eliminate these terms for access to MDUs and rights-of-way before the Commission will consider Qwest in compliance with Checklist Item No. 3, and before the Commission will approve Qwest’s SGAT.
- 20 Consistent with the parties’ agreement, we defer the issue of access to multiple dwelling unit sub-loops to the workshop for Checklist Item Nos. 2 and 4.

B. Checklist Item No. 3: Time for Qwest to Respond to Requests for Access

- 21 Sections 2.1 and 2.2 of Qwest’s SGAT state that Qwest will provide access to pole attachments, ducts, or rights-of-way, or a response to a request for access, within 45 days for “standard inquiries” of “one hundred (100) poles or fewer, thirty (30) utility hole sections or fewer, or two (2) miles of linear rights-of-way or less.” *See Ex. 106, SGAT Exhibit D, Sections 2.1 and 2.2.* For larger requests, Qwest proposes response times of up to 115 days, and for requests of more than 500 poles, 150 manholes, or 10 miles of linear rights-of-way, Qwest proposes that the time limit be negotiated. *Id.* Other parties oppose the proposal, contending that Qwest’s proposed response intervals for large quantity access are too long.

⁹ *Id.* at ¶¶ 82, 83.

¹⁰ *Local Competition First Report and Order*, ¶ 1223.

- 22 The dispute between the parties centers on the interval in which Qwest must respond to requests for, or provide access to, poles, ducts, conduit, or right-of-way, when a CLEC makes a request for access for more than 100 poles, ducts, conduit or rights-of-way. Both sides base their arguments on the FCC's rule and its interpretations of that rule. The Revised Initial Order recommended the Commission find Qwest not in compliance with Checklist Item No. 3 and not approve Qwest's SGAT until Qwest modified these SGAT provisions to require Qwest to allow access or respond to all requests within 45 days.
- 23 AT&T, WorldCom, and the Joint CLECs (NEXTLINK, ELI, and ATG) assert that the FCC's rules require BOCs to respond to requests for access to poles, ducts, conduits, and rights-of-way within 45 days, regardless of the size of the request: "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day." 47 C.F.R. § 1.403.3(b).
- 24 AT&T and WorldCom assert that the FCC has already addressed the issue of how BOCs must handle large orders in *In the Matter of Cavalier Telephone, L.L.C. v. Virginia Electric and Power Co.*, Order and Request for Information, DA 00-1250, File No. PA 99-005, (rel. June 7, 2000). There, the FCC stated:
- Our rules require Respondent to grant or deny access within 45 days of receiving a complete application for a permit. . . . We have interpreted the Commission's rules, 47 CFR § 1.1403(b), to mean that a pole owner "must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted." We conclude that Respondent is required to act on each permit application submitted by Complainant within 45 days of receiving the request. *To the extent that a permit application includes a large number of poles, respondent is required to approve access as the poles are approved, so that complainant is not required to wait until all poles included in a particular permit are approved prior to being granted any access at all.* Respondent shall immediately grant access to all poles to which attachment can be made permanently or temporarily, without causing a safety hazard, for which permit applications have been filed with Respondent for longer than 45 days.
- 25 *Cavalier Telephone*, ¶ 15 (*emphasis added*).
- 26 Qwest argues that the Company should be able to offer a flexible time schedule beyond a flat 45 days for granting or denying requests for access to poles, ducts, and rights-of-way based on size. Qwest argues that the FCC rule, 47 C.F.R. § 1.403(b), does not address the size of the request, and "can easily be interpreted to mean that a utility must respond to a request for access to a single pole or manhole within 45 days." *Qwest's Brief*, at 14.

- 27 Qwest suggests as a worst-case scenario that one CLEC could request access to the 100,000 poles and 348,000 feet of duct that Qwest controls in Washington and that the company would have to respond to the request within 45 days. Qwest suggests that it would be physically impossible to evaluate the condition of all of these facilities in 45 days.
- 28 Specifically, Qwest argues that nothing in Section 251(b)(4) or Section 271(c)(2)(B)(iii) of the Act requires Qwest to meet a 45-day threshold regardless of size of the request. Qwest argues that the FCC's *First Report and Order* states that inflexible blanket rules are inappropriate and that safety and flexibility need to be considered with decisions made on a case-by-case basis.¹¹ Qwest argues that the Revised Initial Order is incorrect in asserting that the FCC rule precludes Qwest from having a rolling approval schedule based on size. In comments filed with the Commission on September 12, 2000, Qwest argues that the FCC held in *Cavalier Telephone* that, for large requests, there may be a rolling response commencing no later than the 45th day. Qwest proposed revised language in its Exhibit D to the SGAT reflecting this position.
- 29 We believe that it is appropriate to require a 45-day response time regardless of the size of the request. While it certainly is true that neither section 251(b)(4) nor section 271(c)(2)(B)(iii) specifies a time limit for granting or denying access to poles, ducts, and rights-of-way, the FCC's rule and subsequent orders require a 45-day limit. RBOCs must comply with relevant FCC rules and orders to be compliant with Section 271.¹² While the FCC's rule is silent as to whether the response time varies depending upon the size of the request, nothing in the rule suggests that the size of the request should alter the 45-day limit. AT&T, World Com, and the Joint CLECs are correct in recognizing that the rule is explicit on the point that "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day."
- 30 The *Local Competition First Report and Order* does suggest that "in evaluating requests for access, a utility may continue to rely on such codes as the NESC

¹¹ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, ¶¶ 1143, 1151 (rel. Aug. 8, 1996) (*Local Competition First Report and Order*).

¹² *In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, ¶ 22 (rel. June 30, 2000) (*SBC Texas Order*).

[National Electric Safety Code] to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.”¹³ However, allowing consideration of these factors in evaluating a request for access, or placing conditions on access, differs from granting or denying the request within a given 45-day period. These standards can form the basis for denying the request, but not for changing the time frame in which the evaluation takes place. The 45-day rule is intended as a “swift and specific enforcement procedure that will allow for competition where access can be provided.”¹⁴ Establishing guidelines for evaluation is not the same as having those guidelines drive the timetable for acting on a properly documented application from a CLEC.

31 The *Local Competition First Report and Order* also includes an expedited process for FCC review of complaints filed in response to a denial notice from the utility¹⁵. This further reinforces our view that the FCC considers time to be of the essence.

32 In its *Local Competition Reconsideration Order*, the FCC reiterated that “because *time is of the essence in access requests*, a utility must respond to a written request for access within 45 days. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45th day.”¹⁶ This statement recognizes that the time frame for approving or denying a request is a primary policy consideration and specifies that the appropriate time frame is 45 days. The FCC further held in its *Local Competition Reconsideration Order* that:

Under the procedures adopted in the order, a utility must grant or deny a request for access within 45 days of a written request. If the utility denies the request, it must do so in writing, and the reasons given for the denial must relate to the permissible grounds for denying access (e.g., lack of capacity, safety, reliability, or engineering concerns).¹⁷

¹³ *Local Competition First Report and Order*, ¶ 1151.

¹⁴ *Id.*, ¶ 1224.

¹⁵ *Id.*, ¶ 1225.

¹⁶ *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266 (rel. Oct. 26, 1999), ¶ 117 (Emphasis added) (*Local Competition Reconsideration Order*).

¹⁷ *Id.* ¶ 17.

33 Again, this seems to be an affirmation of the 45-day limit. It does not preclude the utility from denying the request on reasonable grounds, but it does affirm that the 45-day time frame is appropriate for making these determinations.

34 Finally, concerning the *Cavalier Telephone* case, one of the primary issues in that case was, as Qwest notes, a utility company that delayed access to its poles due to safety and other issues. However, the FCC's decision is clear that the number of poles requested does not alter the requirement to grant or deny access to poles, ducts, or rights-of-way within 45 days.¹⁸ The fact that the FCC goes on to require access to be provided as soon as segments of a large order are approved does not mean that the 45-day limit affirmed in *Cavalier Telephone* is somehow lengthened in those circumstances, or that approval may be made on a "rolling basis," as proposed by Qwest. The very next sentence in the order requires the utility to "*immediately* grant access to all poles . . . for which permit applications have been filed with [the utility] for longer than 45 days."¹⁹

C. Checklist Item No. 3: Third Party OSS Performance Testing

35 In the *Revised Initial Order* at paragraph 61, the Commission stated that Qwest's compliance with Checklist Item No. 3 would be contingent on the Commission's review and evaluation of the results of the OSS testing process review conducted by the ROC. The Commission has learned that none of the processes pertaining to Checklist Item No. 3 will be tested through the OSS testing review being conducted by the ROC.

36 The Commission recognizes that performance under this checklist item is not being measured through the Regional Oversight Committee (ROC) Operation Support System (OSS) regional testing process, and therefore Qwest's compliance with this checklist item is not contingent on the Commission's review and evaluation of audited results of relevant performance measures tested through the ROC process.

D. Checklist Item No. 13: InterLocal Calling Area Facility Proposal

37 By letter filed with the Commission on September 28, 2000, Qwest notified the Commission and all parties of its withdrawal of a proposal in sections 7.1.2.4.1, 7.1.2.4.3, and 7.1.2.4.4 of the SGAT for an InterLocal Calling Area option to allow CLECs to obtain a single point of interconnection in a LATA. Qwest requested that the Commission address during the second workshop new SGAT language concerning how CLECs may obtain a single point of interconnection in a LATA. In paragraph 17 of the Fifth Supplemental Order in this proceeding, the Commission

¹⁸ *Cavalier Telephone*, ¶ 15.

¹⁹ *Id.* (Emphasis added).

granted Qwest's request. Given Qwest's withdrawal of the issue and the discussion of revised language during the second workshop, the Commission need not make findings or conclusions of law regarding the issue.

E. Other Minor Corrections to Revised Initial Order

38 The following corrections should be made to the text of the Revised Initial Order. Other changes will be made as needed to correct typographical or other obvious errors:

Paragraph 24, 4th line: Change "cannot" to "can."

Paragraph 199, 17th line: Change "FCC order precludes" to "the FCC order does not preclude."

V. FINDINGS OF FACT

- 39 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. § 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 40 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, to verify the compliance of Qwest with the requirements of section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Act.
- 41 (3) Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.
- 42 (4) Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this section, the FCC is required to consult with the state commission of any state that is the subject of a BOC's application under section 271 in order to verify the compliance of the BOC with the requirements of section 271(c).
- 43 (5) Pursuant to 47 U.S.C. § 252(f)(2), BOCs must submit any statement of terms and conditions that the company offers within the state to the state commission for review and approval.
- 44 (6) In October 1997 and in March 2000, the Commission issued two Interpretive and Policy Statements addressing the process and evidentiary requirements for the Commission's verification of Qwest's compliance with section 271(c).

- 45 (7) On March 22, 2000, and on April 28, 2000, Qwest submitted its SGAT for review and approval by this Commission.
- 46 (8) On June 6, 2000, the Commission consolidated its review of Qwest's SGAT in Docket No. UT-003040 with its evaluation of Qwest's compliance with the requirements of section 271(c) in Docket No. UT-003022.
- 47 (9) During a workshop held on June 21-23 and July 6, 2000, Qwest and a number of CLECs submitted testimony and exhibits to allow the Commission to evaluate Qwest's compliance with the requirements of section 271(c), as well as to review Qwest's SGAT.
- 48 (10) Aside from the issues of Qwest's proposed SGAT language to provide access to private right-of-way agreements and the time to respond to requests for access, all parties agreed that Qwest has demonstrated that Qwest provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned and controlled by Qwest as required by Checklist Item No. 3.
- 49 (11) Qwest's proposed SGAT language that allows CLECs to obtain access to certain right-of-way agreements with private landowners only after obtaining the consent of the landowner and paying a nominal fee continues to impose an unreasonable burden upon CLECs seeking access to the right-of way agreements to determine whether to request access to the right-of-way.
- 50 (12) FCC rules require ILECs and other utilities to grant or deny a CLEC's request for access to poles, ducts, conduit, and rights-of way within 45 days, regardless of the number of poles, ducts, conduits, or rights-of-way included in the request.
- 51 (13) Qwest's SGAT language allows longer than 45 days to grant or deny a CLEC's request for access to multiple poles, ducts, conduits, and rights-of way.
- 52 (14) Qwest provides CLECs with nondiscriminatory access to 911, E911, Directory Assistance, and operator services as required by Checklist Item Nos. 7(i), (ii), and (iii).
- 53 (15) All parties agree that Qwest provides White Pages Directory Listings for CLEC customers as required by Checklist Item No. 8.
- 54 (16) The parties agree that Local Routing Number, or LRN, issues should be deferred and addressed in Workshop 2 as part of Checklist Item No. 1.

- 55 (17) The parties agree that the effects of number porting on number reassignments should be deferred and addressed in Workshop 2 as part of Checklist Item No. 11.
- 56 (18) Aside from the LRN and number porting issues deferred to Workshop 2, the parties agree that Qwest provides nondiscriminatory access to telephone numbers for assignment to CLEC customers and complies with the NANPA guidelines for numbering administration as required by Checklist Item No. 9.
- 57 (19) With the exception of the issue of access to the ICNAM database, the parties agree that Qwest provides nondiscriminatory access to its call-related databases and associated signaling as required by Checklist Item No. 10.
- 58 (20) Qwest's SGAT provisions regarding access to the ICNAM database are in compliance with FCC rulings and orders.
- 59 (21) None of the parties to the proceeding raised concerns in testimony or at the workshops about Qwest's provision of dialing parity as required by Checklist Item No. 12.
- 60 (22) Based on the testimony and evidence it submitted, Qwest provides nondiscriminatory access to services and information as necessary to allow CLECs to implement dialing parity for local calls to and from CLEC customers compared to Qwest's own customers.
- 61 (23) Based on the testimony and evidence presented during the workshop, Qwest does not provide reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) as required by Checklist Item No. 13.
- 62 (24) Qwest's SGAT provisions relating to reciprocal compensation for ISP-bound traffic are not consistent with existing interconnection agreements or prior Commission decisions on this issue, and do not provide reciprocal compensation arrangements as required by Checklist Item No. 13.
- 63 (25) Qwest's SGAT provisions relating to the definition of whether a CLEC switch is a tandem switch or entitled to tandem treatment are not consistent with existing interconnection agreements or federal court decisions on the issue, and do not provide reciprocal compensation arrangements as required by Checklist Item No. 13.
- 64 (26) Qwest's SGAT provisions requiring compensation for transportation of traffic between a host and remote switch are consistent with FCC rules and network engineering principles.

- 65 (27) Qwest's SGAT Section 7.3.1.1.2 allows CLECs to use capacity on existing private line facilities for interconnection but prices the service based on its private line tariff rather than as local interconnection service. This provision allows CLECs an acceptable alternative to purchasing additional facilities and provides reciprocal compensation arrangements as required by Checklist Item No. 13.
- 66 (28) The CLECs have not provided sufficient evidence to demonstrate that they are entitled to symmetrical or reciprocal compensation for various interconnection facilities, nor that Qwest fails to comply with the requirements of Checklist Item No. 13 for failing to pay symmetrical compensation.
- 67 (29) Through its existing interconnection agreements and its SGAT, Qwest is subject to legally binding commitments to provide access to 911, E911, Directory Assistance, and operator services, White Pages Directory Listings, telephone numbering, access to databases and associated signaling, and dialing parity.
- 68 (30) Any findings of Qwest's compliance with Checklist Items No. 7(i), 7(ii), 7(iii), 8, 9, 10, and 13 are subject to Commission review and evaluation of audited results of relevant performance measures and Qwest's performance following the ROC OSS regional testing process.
- 69 (31) Qwest's compliance with Checklist Items No. 3 and 12 are not subject to Commission review and evaluation of performance measures, as the ROC has not developed such performance measures.
- 70 (32) Several minor errors should be corrected as noted in the body of this Order.

VI. CONCLUSIONS OF LAW

- 71 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 72 (2) Qwest's SGAT provisions concerning access to private right-of-way agreements are not in compliance with the requirements of Checklist Item No. 3.
- 73 (3) Qwest's SGAT provisions concerning the time for responding to CLEC requests for access to poles, ducts, conduits, and rights-of-way are not in compliance with FCC rules, orders, or the requirements of Checklist Item No. 3.

- 74 (4) Until Qwest modifies its SGAT provisions relating to access to private right-of-way agreements and the response time for access to poles, ducts, conduits, and rights-of-way, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(iii), Checklist Item No. 3 concerning access to poles, ducts, and rights-of-way, and the Commission will not approve Qwest's SGAT.
- 75 (5) Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(vii) (I), (II), and (III), Checklist Items No. 7(i), (ii), and (iii) concerning 911/E911, directory assistance, and operator services, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 76 (6) Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(viii), Checklist Item No. 8 concerning white pages listings, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 77 (7) Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(ix), Checklist Item No. 9 concerning numbering administration, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 78 (8) Qwest's SGAT allows CLECs to obtain access to the ICNAM and other databases at a technically feasible point, and is consistent with the FCC's determinations in its *First Report and Order* and *UNE Remand Order*.
- 79 (9) Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(x), Checklist Item No. 10 concerning databases and associated signaling, subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance.
- 80 (10) Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xii), Checklist Item No. 12 concerning dialing parity.
- 81 (11) Qwest's SGAT provisions concerning reciprocal compensation for ISP-bound traffic are not consistent with existing interconnection agreements and Commission decisions on the issue, and are not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 82 (12) Qwest's SGAT provisions concerning the definition of tandem switch and the treatment of CLEC switches are not consistent with Commission arbitration decisions and federal court decisions, and are therefore not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.

- 83 (13) Qwest's SGAT provision requiring CLECs to pay transport charges for transport between Qwest host and remote switches is consistent with FCC rules and network engineering and is therefore in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 84 (14) Qwest's SGAT provision involving commingling of access and interconnection service over a DS-3 facility, and requiring CLECs to pay private line rates when using spare capacity on facilities previously purchased under a private line tariff, allows CLECs an acceptable alternative to purchasing additional facilities. The provision is therefore in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13.
- 85 (15) Until Qwest modifies its SGAT provisions concerning reciprocal compensation as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13 concerning reciprocal compensation, and the Commission will not approve Qwest's SGAT.

VII. ORDER

86 THE COMMISSION ORDERS That:

- 87 (1) Qwest must eliminate provisions from its SGAT that require landowner approval prior to a CLEC viewing agreements in which Qwest may own or control right-of-way, and that require CLECs to negotiate with landowners for Qwest's right to cure a CLEC breach.
- 88 (2) Qwest must modify its SGAT provisions concerning the response intervals to CLEC requests for access to multiple poles, ducts, conduits, and rights-of-way to be consistent with FCC rules requiring a response within a 45-day period in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(iii), Checklist Item No. 3, and for the Commission to approve Qwest's SGAT.
- 89 (3) Consideration of Local Routing Number issues and the effect of number porting on number reassignments shall be deferred and addressed in the second workshop as a part of discussion on Checklist Items Nos. 1 and 11, respectively.
- 90 (4) Qwest must modify its SGAT provisions to require payment of reciprocal compensation for ISP-bound traffic in order for the Commission to find Qwest

in compliance with 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and for the Commission to approve Qwest's SGAT.

- 91 (5) Qwest must modify its SGAT provisions concerning the definition and treatment of CLEC switches as tandem switches to be consistent with prior Commission arbitration decisions and court rulings concerning the factors to be considered and the termination rates to be paid in order for the Commission to find Qwest in compliance with 47 U.S.C. § 271(c)(2)(B)(xiii), Checklist Item No. 13, and for the Commission to approve Qwest's SGAT.
- 92 (6) The parties to this proceeding may submit testimony and evidence in the second workshop on the issue of symmetrical compensation for interconnection facilities to the extent that the matter addresses interconnection and not reciprocal compensation.
- 93 (7) Qwest must submit to the Commission the audited results of performance testing relating to Checklist Items No. 7 (i), (ii), (iii), 8, 9, 10, and 13, and associated testimony concerning the audited results as soon as the results are available.
- 94 (8) As noted in the body of this order, several minor errors are corrected.
- 95 (9) The Commission retains jurisdiction to implement the terms of this order.

DATED at Olympia, Washington and effective this day of June 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES: This is an Interim Order, and, as such, is not subject to the post-Order review processes of the Administrative Procedure Act. The Commission will, however, entertain all requests for clarification or for revision of any substantial error of fact and law. Because the opportunity is afforded at this juncture, parties will be foreclosed from raising such matters on the issues resolved herein without a showing of good cause for failure to raise the matter at this time.