

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH §271(C) OF THE) DOCKET NO. UT-003022
TELECOMMUNICATIONS ACT OF 1996.)
_____)

REBUTTAL AFFIDAVIT OF
LARRY B. BROTHERRSON
ON BEHALF OF
QWEST CORPORATION
REGARDING GENERAL TERMS AND CONDITIONS

June 21, 2001

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IDENTIFICATION OF WITNESS

My name is Larry B. Brotherson. I am employed by Qwest Corporation (“Qwest”) as a director in the Wholesale Markets organization. I provided additional personal information in my Direct Testimony submitted in this docket on May 16, 2001.

PURPOSE OF TESTIMONY

In this rebuttal testimony I will address the Affidavit of Michael Hydock on Behalf of AT&T Regarding General Terms and Conditions dated June 7, 2001 (“AT&T Testimony”), the Direct Testimony of Michael W. Schneider on Behalf of WorldCom Addressing General Terms and Conditions dated June 7, 2001 (“WorldCom Testimony”) and the Workshop 4 Response Testimony of Rex Knowles on Behalf of XO Washington, Inc., dated June 7, 2001 (“XO Testimony”).

As I explained in direct testimony, Qwest's Statement of Generally Available Terms and Conditions (“SGAT”) is an offer for an agreement between Qwest and any requesting CLEC. It sets forth the terms, conditions and pricing under which Qwest will offer, for purposes of providing local telecommunications services, network interconnection, access to unbundled network elements (“UNEs”), ancillary services, and telecommunications services available for resale within the geographical areas in which both parties are providing local exchange service and for which Qwest is the incumbent Local Exchange Carrier (“ILEC”).

1 A copy of the SGAT with the revisions proposed in my testimony, as well as
2 those proposed in the testimony of Barbara J. Brohl and Barry Orrel, is attached as
3 Exhibit LBB-4 to my testimony.

4 INTRODUCTION

5 AT&T prefaces its discussion of the specific sections of the SGAT with its review
6 of the standards that Commissions should utilize in approving specific checklist items.
7 General terms and conditions are not checklist items nor are they items that must be
8 considered as a part of the approval process under Section 252(f) of the
9 Telecommunications Act of 1996 (the "Act"). That section only refers to compliance
10 with Sections 252(d) and 251. True general terms and conditions (often referred to as
11 boilerplate) are not Section 252(d) or Section 251 requirements. Qwest believes that
12 these items are better addressed through negotiations between the parties and has
13 offered to spend as much time as is required to attempt to resolve as many issues as
14 possible. Although WorldCom has indicated interest in negotiations, schedules
15 allowing, AT&T has been more reticent.

16 Qwest does appreciate that general terms and conditions play a role in achieving
17 the appropriate balance of risk between the parties. There are also important deferred
18 issues as well as access to operational support systems ("OSS") and maintenance and
19 repair which Qwest has addressed in its testimony filed on May 16, 2001. However, as
20 has been and will be made perfectly clear, AT&T and WorldCom's proposals do not
21 achieve an appropriate balance, but rather would seriously tip the scales in favor of

1 those two companies. Perhaps most importantly, it is an unauthorized attempt by two
2 strategic competitors to control Qwest's business operations in a manner not required
3 nor even contemplated by the Act. Qwest has every intention of standing behind the
4 services that it provides under the SGAT and has substantial inducements to do so,
5 including Performance Indicator Definitions ("PIDs") and the possibility of the FCC re-
6 opening its approval of Qwest's 271 authority if there is proof of substantial
7 nonconformance under Section 271(6) of the Act.

8 Qwest's proposed SGAT provisions and its acknowledgement of the validity of
9 some of the proposals of AT&T, XO and WorldCom in these comments provide a fair
10 and balanced means of resolving disputes between the parties, amending
11 interconnection agreements, and complying with the Act's pick-and-choose
12 requirements, not only to reflect changes in law but also to accelerate access by CLECs
13 to new services offered by Qwest.

14 Since I was involved in the first round of negotiations with MCI (now WorldCom)
15 and AT&T beginning in 1996, I know that most of WorldCom's proposals are based
16 upon its template agreement, which it used in those early negotiations. The world has
17 moved on, but WorldCom has not. WorldCom's proposed Section 20.1 (Network
18 Security) provides an excellent example. This section deals with network OSS
19 interfaces and is starkly out of date, as is evidenced by the references to 1996
20 standards. By contrast, Section 12 of the SGAT and the testimony of James H. Allen
21 and Barbara J. Brohl provide an up-to-date discussion and resolution of these issues. It

1 is also noteworthy that MCI agreed in negotiations with U S WEST (now Qwest) and
2 other ILECs to different language.

3 Also, unlike AT&T which redlined Qwest's language, WorldCom frequently
4 juxtaposed its proposed boilerplate making it very difficult to make comparisons,
5 particularly since WorldCom referenced its own template sections, not the SGAT.
6 WorldCom also juxtaposed some provisions in the wrong place and dropped in others
7 that are not addressed in Qwest's SGAT. Consequently, Qwest may have inadvertently
8 failed to address some of WorldCom's issues and reserves the right to do so at the
9 Workshop. Furthermore, in many cases WorldCom failed to give any justification
10 whatsoever as to why the Commission should accept its language. WorldCom simply
11 states that its language is better. This bald assertion does not provide a sufficient
12 factual basis for this Commission to reject Qwest's language in favor of that of
13 WorldCom.

14 As with AT&T's, XO's, and WorldCom's comments, my testimony will generally
15 be organized to follow the numerical sequence of Qwest's SGAT, and all references in
16 my testimony will be to the sections of the SGAT unless otherwise indicated.

17 **SECTION 1.0 -- GENERAL TERMS**

18 WorldCom has suggested an introductory clause that is appropriate for a
19 template interconnection agreement rather than an SGAT. Since this document is an
20 SGAT, it becomes an interconnection agreement when a CLEC executes it and delivers

1 it to Qwest pursuant to Section 252(f)(1) of the Act. This concept has been incorporated
2 into the SGAT in Section 1.4. WorldCom has also suggested a series of WHEREAS
3 clauses by way of preamble. While Qwest does not seriously quarrel with most of these
4 clauses, they are appropriate for a template interconnection agreement, not an SGAT.
5 Qwest does object to the references to ancillary services and the use of Combinations
6 of Network Elements for itself in the fourth WHEREAS clause and to the use of the
7 terms "Parity" and "third party" in the fifth clause. However, subject to working through
8 these issues, Qwest does not seriously object to including WHEREAS clauses. On the
9 other hand, WorldCom's proposed NOW THEREFORE clause is a statement of mutual
10 consideration appropriate to a template interconnection agreement but not an SGAT
11 and should not be included.

12 **A. Sections 1.2 and 1.3 (Offer of Services)**

13 Although neither AT&T nor XO commented on Section 1.2, Qwest would like to
14 delete this section since it pertains to Qwest's template negotiations agreement and not
15 the SGAT. Similarly, Section 1.3, should be changed to refer to the SGAT instead of an
16 agreement. The changes proposed by Qwest are reflected in the following:

17 ~~1.2 If this document is being used as the basis for negotiations of an~~
18 ~~Interconnection Agreement, it is between _____, ("Competitive Local~~
19 ~~Exchange Carrier" or "CLEC") a Colorado corporation and Qwest~~
20 ~~Corporation ("Qwest"), a Colorado corporation, pursuant to Section 252(f)~~
21 ~~of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's~~
22 ~~obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other~~
23 ~~relevant provisions of the Act and the rules and regulations promulgated~~
24 ~~thereunder. Intentionally left blank.~~

1
2 1.3 This ~~Agreement~~SGAT sets forth the terms, conditions and pricing
3 under which Qwest will offer and provide to any requesting CLEC network
4 Interconnection, access to ~~u~~Unbundled ~~n~~Network ~~e~~Elements, Ancillary
5 services, and Telecommunications Services available for resale within the
6 geographical areas in which both Parties are providing local exchange
7 service at that time, and for which Qwest is the incumbent Local Exchange
8 Carrier within the State of Washington for purposes of providing local
9 Telecommunications Services. This ~~Agreement~~SGAT is available for the
10 term set forth herein.

11 **B. Section 1.7 (Modifications to the SGAT)**

12 AT&T argues that this section is not in compliance with the Act. It then proposes
13 alternate language that would virtually freeze Qwest's business in place to the benefit of
14 no one. The alternate language does not comply with the Act since Qwest has the
15 authority to submit changes to the SGAT. Nonetheless, to address AT&T's concern
16 about unilateral changes to the SGAT, Qwest proposes the following:

17 ~~1.7 Following the date this SGAT is approved or allowed to take effect,~~
18 ~~Qwest may file amendments to this SGAT, which shall be approved or~~
19 ~~permitted to take effect pursuant to the Schedule for Review set forth in~~
20 ~~Section 252(f) of the Act. At the time any amendment is filed, the section~~
21 ~~amended shall be considered withdrawn, and no CLEC may adopt the~~
22 ~~section considered withdrawn following the filing of any amendment, even~~
23 ~~if such amendment has not yet been approved or allowed to take effect.~~
24 Once this SGAT is approved or permitted to go into effect, any
25 amendment or modification to the SGAT by Qwest will be accomplished
26 through Section 252 of the Act. When Qwest files an amendment to the
27 SGAT with the Commission, Qwest shall provided notice of such filing
28 through the Co-Provider Industry Change Management Process
29 ("CICMP"). Qwest shall also request that the Commission notify all
30 interested parties of the filing. In addition, any amendment to the SGAT
31 filed by Qwest shall have no effect on the SGAT (either to withdraw or
32 replace effective provisions) until such amendment is approved by the
33 Commission or goes into effect by operation of law.

1 Once CLEC executes Section 22 and delivers a signed copy to Qwest
2 pursuant to the notice provisions of this SGAT, the currently-effective
3 SGAT will become the Interconnection Agreement between the CLEC and
4 Qwest ("this Agreement") and shall be subject to the same rules and laws
5 as other Interconnection Agreements in effect in this state. Once this
6 SGAT becomes the Interconnection Agreement between CLEC and
7 Qwest, this Agreement can only be amended in writing, executed by the
8 duly authorized representatives of the Parties.

9
10 This change to Section 1.7 should also satisfy XO's concern about Qwest
11 unilaterally changing the SGAT. See XO Comments at page 9.

12 Furthermore, through my direct testimony of May 16, 2001, Qwest has proposed
13 as Section 1.7.1 a new amendment process for accelerated access to new services to
14 address CLECs' concerns about speed to the market. Since then, Qwest has been
15 discussing this issue with CLECs and is proposing language that will address their
16 concerns. This new Section 1.7.1 provides as follows:

17 1.7.1 Notwithstanding the above, or anything contained in Section 1 of
18 this SGAT, if the Commission orders, or Qwest chooses to offer and
19 CLEC desires to purchase, new Interconnection services, access to
20 additional Unbundled Network Elements, additional ancillary services or
21 Telecommunications Services available for resale which are not contained
22 in this SGAT, no formal amendment to the Interconnection Agreement is
23 necessary. Qwest will notify CLEC of the availability of these new
24 services through the product notification process through the Co-Provider
25 Industry Change Management Process ("CICMP"). CLEC must first
26 updatecomplete the relevant section(s) of the New Product Questionnaire
27 to establish ordering and billing processes. Then by placing its orders,
28 CLEC agrees to abide by all of the then current rates, terms and
29 conditions as set forth in Qwest's the then current template CLEC
30 Interconnection agreement applicable to such new services.

31 1.7.1.1 If CLEC wishes to negotiate an amendment with

1 different terms and conditions than defined in Qwest's then current
2 CLEC Interconnection template agreement, CLEC agrees to abide
3 by those terms and conditions by executing an interim amendment
4 based upon Qwest's then current CLEC Interconnection template
5 agreement. The interim amendment will terminate when the final
6 amendment is approved. The rates, and to the extent practicable,
7 other terms and conditions contained in the final amendment will
8 relate back to the date the interim amendment was executed. No
9 new product offering will be construed to limit, eliminate or add to
10 any rates, terms or conditions existing in this Agreement.

11
12 AT&T complains that this proposal fails to address situation in which a CLEC
13 does not agree with the terms and conditions that Qwest imposes with its new product.
14 To the contrary, this section permits the CLEC to negotiate an amendment with terms
15 and conditions different from those proposed by Qwest, though it must abide by Qwest's
16 terms and conditions until the amendment is approved and a letter agreement is
17 executed. Presumably, the negotiations – and the amendment and letter agreement --
18 could include making the terms and conditions retroactive to the time the CLEC began
19 ordering the new services.

20 Qwest is also proposing a new Section 1.7.2 to address concerns raised by
21 AT&T under Section 5.30:

22 1.7.2 Either Party may request an amendment to the Agreement at any
23 time by providing to the other Party in writing information about the desired
24 amendment and proposed language changes. If the Parties have not
25 reached agreement on the requested amendment within sixty (60)
26 calendar days after receipt of the request either Party may pursue
27 resolution of the amendment through the Dispute Resolution provisions of
28 this Agreement.

1 **C. Section 1.8 (Pick and Choose)**

2 AT&T expresses several concerns about Qwest's pick-and-choose process.
3 Qwest does not disagree with AT&T's statement of the law absent the hyperbole. AT&T
4 does not take issue with the SGAT language, which is not surprising since AT&T and
5 other CLECs have negotiated and agreed to this language in these proceedings.
6 Rather, it questions Qwest's implementation of that language.

7 AT&T first takes offense at Qwest's policy of limiting CLECs' use of any chosen
8 provision to the remaining time that the provision would have existed under the original
9 agreement which contains it. Rather than being "ludicrous" as AT&T indicates, Qwest's
10 position is soundly based upon the FCC's decision in *In re Global NAPs, Inc.*, CC
11 Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999). In that case, Global Naps
12 complained that Bell Atlantic-New Jersey would not allow it to opt into a 1996
13 interconnection agreement between Bell Atlantic—New Jersey and MFS. The issue
14 before the FCC was whether it should preempt the New Jersey Board because of its
15 alleged failure to take timely action on the recommendation of the arbitrator. Because
16 the Board did eventually take action, the FCC declined to do so. In making its ruling,
17 however, the FCC made a number of comments pertinent to the issue of pick-and-
18 choose and "opt-in" rights under Section 252(i) and the implementing FCC rules (47
19 C.F.R. §51.809). In footnote 25, the FCC stated that there should be a streamlined
20 process for opting-in and went on to state:

1 In such circumstances, the carrier opting-into an existing agreement takes
2 all the terms and conditions of that agreement (or portions of the
3 agreement), including its original expiration date.

4 Not only is AT&T's proposed language clearly not required, it is inconsistent with
5 the law.

6 AT&T moves on to complain about two examples of Qwest's actions which
7 allegedly demonstrate bad faith in the implementation of the provision. The first
8 instance cited relates to AT&T's request to be able to opt-into Section 7.2.2.9.1.1 of the
9 SGAT so that it would receive "blocking reports" behind tandem switches where it
10 interconnects. It has now been discovered that there was a fair amount of
11 miscommunication between the parties. Qwest believed that AT&T had really intended
12 to ask for the reports included in 7.2.2.8.7. Qwest and AT&T have now cleared up the
13 confusion and will enter into an amendment incorporating 7.2.2.9.1.1 into the AT&T
14 agreements.

15 In the second instance cited by AT&T, AT&T wants to pick and choose specific
16 sections from the current Wyoming multi-state SGAT. Specifically, AT&T wants to pick
17 and choose Sections 7.1.1 through 7.1.2.5, which primarily focus on securing provisions
18 relating to the right to have a Single Point of Interconnection or Presence ("SPOP") in a
19 LATA. Qwest has asked AT&T to pick other sections from the SGAT that are
20 legitimately related to these provisions.

21 In contrast to what AT&T argues is arbitrary behavior, the legitimately-related
22 requirement is expressly stated in Section 1.8, the pick-and-choose section of the

1 SGAT. It is also clearly set forth in the FCC's pick-and-choose discussion in
2 *Implementation of the Local Competition Provisions in the Telecommunications Act of*
3 *1996 Interconnection between Local Exchange Carriers and Commercial Radio Service*
4 *Providers*, First Report and Order on Local Competition, CC Docket No. 96-98 & 95-185
5 (rel. Aug. 8, 1996) ("First Report and Order") at ¶1315.

6 Perhaps more importantly, in upholding the FCC's pick-and-choose rules the
7 United States Supreme Court specifically cited the "legitimately related" concept:

8 The Commission has said that an incumbent LEC can require a
9 requesting carrier to accept all terms that it can prove are "legitimately
10 related" to the desired term. First Report & Order ¶1315. Section 252 (l)
11 certainly demands no more than that.

12 *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721, 738 (1999).

13 AT&T is seeking to "pick and choose" language dealing with trunking throughout
14 an entire LATA. It is appropriate to include the language in Section 7.2.2.9.3.2 on
15 separate trunking in the amended language because it is an integral part of Qwest's
16 SPOP offering and is designed to minimize the impact upon Qwest's network, which
17 employs separate local and toll trunking.

18 To further support the language in the SPOP amendment, the SGAT language in
19 Section 7.2.2.9.6 on accessing the appropriate tandem switches is essential to ensure
20 the efficient use of Qwest's local and toll network so that none of Qwest's customers,
21 including the CLECs, will incur additional blocking.

1 While the terms of Qwest's SPOP offer are in dispute, it is important to look at the
2 language in Section 1.8, to which AT&T agreed in negotiations. It is prefaced by the
3 phrase: "Because this SGAT is Qwest's standard contract offer. . . ." While these issues
4 remain in dispute, the concepts included in these provisions are Qwest's standard
5 contract offer, and Qwest is perfectly within its rights to insist that they are legitimately
6 related and must be included in the Amendment.

7 **SECTION 2.0 -- INTERPRETATION AND CONSTRUCTION**

8 **A. Section 2.1**

9 AT&T notes that the SGAT references "other instrument[s] (including Qwest or
10 other third party offerings, guides or practices)," as well as statutes, regulations, rules,
11 and tariffs. AT&T argues that Qwest "should not be allowed to make unilateral
12 changes" to "any document outside the SGAT that Qwest controls including, but not
13 limited to, tariffs, product descriptions, processes, Technical Publications and methods
14 and procedures," that would "affect CLECs' obligations under the SGAT." AT&T
15 Comments at page 17. AT&T suggests that the problem could be solved "through a
16 process by which CLECs are provided notice and the opportunity to participate in all
17 such changes" or by stating in the SGAT that any changes to external documents after
18 the Agreement is adopted are only effective as to the Agreement if the CLEC consents
19 to such changes. *Id.* XO also expresses concern about Qwest's IRRG (now known as
20 PCAT). XO Comments at page 13.

1 To satisfy CLEC concerns in this area, Qwest has developed the Co-Provider
2 Industry Change Management Process ("CICMP"). James H. Allen discussed the
3 CICMP in depth in his direct testimony filed May 16, 2001. In short, the CICMP will
4 allow CLECs to provide input regarding changes to Qwest's products and processes,
5 fostering the free flow of information and the participation of the CLECs in changes to
6 such documents.

7 Moreover, CLECs are provided notice and an opportunity to participate in any
8 change to a tariff. Tariffs are public documents subject to investigation and approval by
9 state commissions. CLECs, therefore, have ample opportunity to participate in any
10 changes to tariffs.

11 Because safeguards are in place to ensure that CLECs are afforded an
12 opportunity to participate in any changes to external documents referenced in the
13 SGAT, there is no need to revise this aspect of the SGAT language. However, to
14 address the CLECs' concerns, Qwest has offered a new Section 2.3, which I described
15 in my Supplemental Testimony. This section basically states that to the extent there are
16 conflicts between these external documents and the SGAT, the SGAT will prevail.

17 In Exhibit MWS-2, WorldCom also proposes language regarding the significance
18 of the headings and numbering of the SGAT. Because WorldCom does not cite any
19 corresponding language from the SGAT, this is presumably a provision that WorldCom
20 determined was not included in Qwest's SGAT. In fact, Section 2.1 of the SGAT
21 contains a provision regarding the meaning and import of headings:

1 The headings used in this Agreement are inserted for convenience of
2 reference only and are not intended to be a part of or to affect the
3 meaning of this Agreement.

4 WorldCom's proposal, meanwhile, reads as follows:

5
6 The headings and numberings of Sections, Parts and Attachments in this
7 Agreement are for convenience only and will not be construed to define or
8 limit any of the terms in this Agreement or affect the meaning or
9 interpretation of this Agreement.

10 Although the language of the competing provisions is similar and WorldCom
11 offers no reason why its proposal should be adopted, Qwest is willing to revise the
12 SGAT to incorporate WorldCom's language with one exception. WorldCom's proposal
13 refers to "Parts, and Attachments" to the SGAT. The SGAT itself refers to "Exhibits" in
14 numerous places. The words "Parts, and Attachments" has no meaning in the SGAT.
15 Therefore, Qwest is willing to revise the SGAT as follows:

16 2.1 This Agreement ("Agreement") includes this Agreement and all
17 Exhibits appended hereto, each of which is hereby incorporated by
18 reference in this Agreement and made a part hereof. All references to
19 Sections and Exhibits shall be deemed to be references to Sections of,
20 and Exhibits to, this Agreement unless the context shall otherwise require.
21 The headings and numbering of Sections and Exhibits used in this
22 Agreement are inserted for convenience of reference only and will not be
23 construed to define or limit any of the terms in ~~are not intended to be a part~~
24 of or to affect the meaning of this Agreement or affect the meaning and
25 interpretation of this Agreement. Unless the context shall otherwise
26 require, any reference to any agreement, other instrument (including
27 Qwest or other third party offerings, guides or practices), statute,
28 regulation, rule or Tariff applies to such agreement, instrument, statute,
29 regulation, rule or Tariff as amended and supplemented from time to time
30 (and, in the case of a statute, regulation, rule or Tariff, to any successor
31 provision).

1 **B. Section 2.2**

2 **1. WorldCom Testimony**

3 WorldCom proposes four specific changes to Section 2.2 of the SGAT: (1)
4 adding "state rules, regulations, and laws to the definition of "Existing Rules"; (2) stating
5 that the SGAT is "in compliance" with, rather than "based on," the Existing Rules; (3)
6 deleting the references to specific rulings "for more generic language"; and (4) adopting
7 WorldCom's proposed additional language stating that any reference to a tariff is a
8 reference to the terms that existed on the date the Agreement became effective and,
9 absent the CLEC's consent and amendment of the Agreement, not any subsequent
10 modifications to the tariff. I will address each proposed change in turn.

11 Although it is unnecessary, Qwest is willing to add "state rules, regulations, and
12 laws" to the definition of "Existing Rules" and a statement that the Agreement is "in
13 compliance" with the Existing Rules. Both of those changes are shown below. With
14 respect to suggestion 3, WorldCom justifies its suggestion by noting that Section 2.2
15 "identifies some specific rulings, but obviously not all." WorldCom Testimony at page 3.
16 It would be impossible to identify all rulings. Although WorldCom fails to offer an
17 example of "more generic language," Qwest is willing to delete the references to
18 specific rulings.

19 Qwest sees no need to adopt WorldCom's proposed additional language
20 regarding subsequent modifications to tariffs. In support of its argument, WorldCom
21 argues that the Act gives CLECs the right to negotiate the rates, terms and conditions of

1 its interconnection agreements with incumbent LECs. "There is nothing in the federal
2 Act that even implies that this statutory right may be exercised only where the
3 incumbent has not filed tariffs for various telecommunications services or network
4 elements. In fact, Section 252 is the proverbial exception to the rule. It requires parties
5 to negotiate in a regulatory environment that has been otherwise strictly governed by
6 the 'filed rate doctrine.'" WorldCom Testimony at pages 3 to 4. WorldCom misses the
7 point. Qwest is not taking the position that a CLEC is only entitled to an interconnection
8 agreement where no tariff exists. Rather, the SGAT language on this issue recognizes
9 that both tariffs and interconnection agreements may co-exist. Also, the revised Section
10 2.3, which I discuss later in my testimony, should ameliorate this concern.

11 WorldCom further asserts:

12 WorldCom's right under the federal Act would be devoid of any meaning if
13 Qwest were permitted to simply cross-reference its filed state tariffs on the
14 subject. Allowing tariff prices and conditions to 'float' with the tariff would
15 allow the Qwest [*sic*] to enjoy an undue, improper and very nearly
16 unilateral control over a fundamental and critical component of the
17 interconnection agreement -- pricing. Defaulting to filed tariffs gives
18 Qwest the power to change the interconnection agreement with
19 WorldCom without WorldCom's consent or approval, thereby depriving
20 WorldCom of its lawful rights as well as the business certainty that is
21 derived from having fixed prices for the life of the contract.

22 WorldCom Testimony at page 4 (footnotes omitted).

23
24 WorldCom's concerns should not affect the SGAT language. First, Section 2.3
25 addresses this concern. Second, the SGAT language applies to the extent that the
26 SGAT references tariffs. Obviously, the Agreement contains the terms and conditions

1 governing the parties' relationship. It makes sense to refer to the most recent versions
2 of tariffs because the tariffs often will reflect more updated technical or operational
3 information. To "freeze" the tariffs at the time of execution would be counterproductive.

4 Further, and perhaps more importantly, WorldCom drastically misstates the
5 ability of CLECs to participate in tariff proceedings. Tariffs are public documents that
6 are subject to investigation and approval by state commissions, particularly as they
7 concern costs and pricing. In my experience, cost dockets are some of the most
8 contentious, thoroughly litigated Commission proceedings, and CLECs are well
9 represented in such proceedings. This Commission is well aware of the substantial
10 time and effort that all parties, and the Commission, routinely spend in cost dockets.
11 Further, it is safe to say that state commissions often reach results regarding costs and
12 prices that are not what Qwest requested. It is patently absurd, therefore, for
13 WorldCom to claim that Qwest has "nearly unilateral control" over pricing and that
14 CLECs are deprived of their lawful rights to participate in these proceedings.

15 WorldCom also argues that "the tariffs litigated in such proceedings represent the
16 general rates, terms and conditions available to the population of Washington CLECs.
17 The tariffs are neither intended nor designed to address the needs of individual CLECs
18 with particularity." WorldCom Testimony at page 9 (emphasis in original). I would like
19 to point out that the SGAT is a Statement of *General* Terms and Conditions that are
20 available to CLECs. It is not designed to address the particular needs of individual
21 CLECs. If a CLEC desires an interconnection agreement that addresses its particular

1 needs, it is free under Section 252 of the Act to negotiate an interconnection agreement
2 with Qwest that contains terms and conditions that specifically meet its needs. The
3 purpose of these proceedings is not to satisfy the individual needs of each CLEC;
4 rather, it is to ensure that Qwest provides *universal* terms and conditions that satisfy the
5 Act. The SGAT satisfies those general concerns, and so there is no reason to adopt
6 WorldCom's language.

7 **2. AT&T Testimony**

8 AT&T argues that the SGAT should contain a "process" to apply where parties
9 interpret the change in law differently and where the parties disagree on how that
10 change is to be implemented, if at all. The SGAT already requires the parties to use the
11 alternative dispute resolution process if they cannot agree on implementing a change in
12 law. Because AT&T has provided no compelling reason to replace the language of
13 Section 2.2 as currently written, Qwest sees no need to revise it by incorporating the
14 changes suggested by AT&T.

15 Based on WorldCom's testimony, Qwest is willing to revise Section 2.2 of the
16 SGAT as follows:

17 2.2 The provisions in this Agreement are intended to be in compliance
18 with and based, ~~in large part,~~ on the existing state of the law, rules,
19 regulations and interpretations thereof, including but not limited to state
20 rules, regulations, and laws, as of the date hereof (the "Existing Rules").
21 ~~Among the Existing Rules are the results of arbitrated decisions by the~~
22 ~~Commission, which are currently being challenged by Qwest or CLEC.~~
23 ~~Among the Existing Rules are certain FCC rules and orders that are the~~
24 ~~subject of, or affected by, the opinion issued by the Supreme Court of the~~

1 ~~United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on~~
2 ~~January 25, 1999. Many of the Existing Rules, including rules concerning~~
3 ~~which Network Elements are subject to unbundling requirements, may be~~
4 ~~changed or modified during legal proceedings that follow the Supreme~~
5 ~~Court opinion. Among the Existing Rules are the FCC's orders regarding~~
6 ~~BOCs' applications under Section 271 of the Act. Qwest is basing the~~
7 ~~offerings in this Agreement on the Existing Rules, including the FCC's~~
8 ~~orders on BOC 271 applications.~~ Nothing in this Agreement shall be
9 deemed an admission by Qwest or CLEC concerning the interpretation or
10 effect of the Existing Rules or an admission by Qwest or CLEC that the
11 Existing Rules should not be changed, vacated, dismissed, stayed or
12 modified. Nothing in this Agreement shall preclude or estop Qwest or
13 CLEC from taking any position in any forum concerning the proper
14 interpretation or effect of the Existing Rules or concerning whether the
15 Existing Rules should be changed, vacated, dismissed, stayed or
16 modified. To the extent that the Existing Rules are materially changed,
17 vacated, dismissed, stayed, or materially changed or modified, then this
18 Agreement ~~and all contracts adopting all or part of this Agreement~~ shall be
19 amended to reflect such legally binding modification or change of the
20 Existing Rules. Where the Parties fail to agree upon such an amendment
21 within sixty (60) days from the effective date of the modification or change
22 of the Existing Rules or if any time during such sixty (60) day period the
23 Parties shall have ceased to negotiate such new terms for a continuous
24 period of fifteen (15) days, it shall be resolved in accordance with the
25 expedited Dispute Resolution provision of this Agreement. It is expressly
26 understood that this Agreement will be corrected, or if requested by CLEC,
27 amended as set forth in the section 2.2, to reflect the outcome of generic
28 proceedings by the Commission for pricing, service standards, or other
29 matters covered by this Agreement. Any amendment shall be deemed
30 effective on the effective date of the legally binding change or modification
31 of the Existing Rules for rates, and to the extent practicable for other terms
32 and conditions, unless otherwise ordered. ~~This Section shall be~~
33 ~~considered part of the rates, terms and conditions of each Interconnection,~~
34 ~~service and network element arrangement contained in this Agreement,~~
35 ~~and this Section shall be considered legitimately related to the purchase of~~
36 ~~each Interconnection, service and network element arrangement~~
37 ~~contained in this Agreement.~~ For purposes of this section, "legally
38 binding" means that the legal ruling has not been stayed, no request for a
39 stay is pending, and any deadline for requesting a stay designated by
40 statute or regulation has passed.

1 Qwest believes that it has accounted for the Section 2.2 concerns expressed by
2 XO in its changes to Section 1.7, discussed above.

3 **C. Section 2.3**

4 Concerning Section 2.3, AT&T suggests that Qwest "add language that ensures
5 extraneous terms and conditions, which properly belong in the SGAT but are found in
6 these other documents [incorporated by reference in the SGAT], are non-binding unless
7 incorporated into the SGAT." AT&T Comments at pages 19 to 20. As described
8 above, Qwest is implementing the CICMP, which provides CLECs an opportunity to
9 comment on changes to certain Qwest documents. There is no need to adopt such
10 language.

11 WorldCom also recommends changes to Section 2.3. Although Qwest is willing
12 to adopt some of the language suggested by WorldCom, Qwest cannot agree to many
13 aspects of the provision. For example, the term "any other Qwest information or
14 documentation, including but not limited to Product Notifications" is too broad to include
15 in an agreement like the SGAT. The point of Section 2.3 is to *specifically* identify the
16 potential documents that could conflict with the SGAT. Therefore, in keeping with that
17 theme, Qwest is willing to add "Product Notifications" to the list of documents, but not to
18 expand the list to include any information or documentation. Further, the term "that
19 purport to address matters that are addressed in this Agreement" is too vague to
20 provide any real guidance. Qwest will revise the SGAT to include documents that
21 "pertain to offerings in this SGAT." Finally, as discussed above, Qwest has developed

1 the CICMP to allow CLECs to have input into changes to certain Qwest documents.
2 The CICMP has been described in James Allen's testimony, is included in Section 12 of
3 the SGAT, and addresses WorldCom's concerns about amending documents that are
4 referenced in the SGAT.

5 Accordingly, Qwest is willing to revise Section 2.3 as follows:

6 2.3 Unless otherwise specifically determined by the Commission, in
7 cases of conflict between the SGAT and Qwest's Tariffs, IRRGPCAT
8 product descriptions, methods and procedures, or a technical publications,
9 or policies, or product notifications or other Qwest documentation that
10 pertain to offerings relating to Qwest's obligations under this SGAT, and
11 this Agreement then, the rates, terms and conditions of this
12 Agreement SGAT shall prevail, over such IRRGPCAT product
13 descriptions, methods and procedures, or a Technical Publications or
14 Product Notifications. Cases of conflict may include the addition of rates,
15 terms or conditions.

16
17 Contrary to the fears expressed by XO, see XO Comments at pages 9 to 13,
18 Qwest does not seek for itself the right to impose unilaterally new policies that are
19 inconsistent with its obligations under the SGAT. As Qwest pointed out when XO raised
20 this concern in another workshop, the SGAT is a standard contract offering not
21 designed to address each and every possible scenario that may arise. Some policy
22 clarifications are inevitably going to be necessary to address evolving market
23 conditions, and the documents XO cites are just that. If Qwest circulates in draft (or
24 even ostensibly final) form interim policies or procedures that may be slightly at odds
25 with the SGAT, Qwest is committed to ensuring that all such policies and procedures do
26 comply with the SGAT. Moreover, as the SGAT makes abundantly clear in Section 2.3,

1 both before and after the clarification that Qwest offered above, if there is any
2 inconsistency between the SGAT and other internal Qwest documents, the SGAT
3 controls. Finally, a CLEC can always invoke the dispute resolution process in the very
4 unlikely event that all attempts at reaching some reasonable resolution have failed.

5 **SECTION 3.0 -- IMPLEMENTATION SCHEDULE**

6 Both WorldCom and AT&T has expressed concerns about the implementation
7 schedule requirements in this section. Since these schedules have not been negotiated
8 in practice, Qwest is removing this provision. To better describe the contents of this
9 section, Qwest has changed the header to "CLEC INFORMATION." AT&T also
10 requests that other provisions requiring CLEC to provide an Implementation Schedule
11 prior to Qwest performance such as Section 8.4.1.1 should be deleted. Qwest has
12 accordingly deleted Section 8.4.1.1.

13 Both companies also comment on the CLEC Questionnaire. WorldCom notes
14 that since the parties need to work together to complete the questionnaire, Qwest
15 should do so within one day of an oral request. Reasonable business people need to
16 coordinate schedules to set up meetings, and Qwest commits to doing so.

17 AT&T also comments on the CLEC Questionnaire. Contrary to AT&T's
18 statement, Qwest does not require it to sign the CLEC Questionnaire. AT&T also
19 protests having to update the questionnaire. Qwest has been working to address
20 concerns that CLECs have expressed about the questionnaire, particularly for new

1 services. Qwest has broken down the questionnaire into product-specific pieces.
2 Current product specific questionnaires can be found at
3 <http://www.qwest.com/wholesale/clecs/negotiations.html>. The questionnaires ask the
4 CLEC for its identification code, e.g., Access Customer Name Abbreviation ("ACNA"),
5 information and contacts for billing, information if it is not currently receiving a variety of
6 reports, and information as to how it is accessing Qwest's OSS. Qwest needs the
7 information in the questionnaire to establish its ordering and billing processes to ensure
8 that the CLEC can order and receive the product in a timely manner. Qwest believes
9 that the changes it has made to the CLEC Questionnaire address the concerns raised
10 by XO. See XO Comments at pages 15 to 16.

11 Qwest uses the new customer CLEC Questionnaire for the purposes listed in
12 Section 3.2. In order to facilitate CLECs' entry into the local market, Qwest has begun
13 working with the CLECs on this questionnaire prior to executing an interconnection
14 agreement. The removal of the word "Thereupon" in Section 3.1 reflects this process
15 change. Also, to address XO's concerns, a CLEC with an existing interconnection
16 agreement does not need to complete the new customer CLEC questionnaire unless
17 changes have occurred since it completed its original questionnaire.

18 AT&T wants the elements of the CLEC Questionnaire to be specifically identified
19 in the SGAT. This is similar to AT&T's arguments regarding documents in Section 2,
20 and Qwest's response to that section is equally applicable here.

1 WorldCom proposes changes to Section 3.3. Instead, Qwest proposes to
2 eliminate this section.

3 The new Section 3 would read as follows:

4 Section 3.0 - ~~IMPLEMENTATION SCHEDULE~~ CLEC INFORMATION

5 3.1 Except as otherwise required by law, Qwest will not provide or
6 establish Interconnection, Unbundled Network Elements, ancillary
7 services and/or resale of Telecommunications Services in accordance
8 with the terms and conditions of this Agreement prior to CLEC's execution
9 of this Agreement. ~~Thereupon, the~~ The Parties shall complete Qwest's
10 "CLEC Questionnaire," ~~and negotiate an Interconnection implementation~~
11 ~~schedule~~ as it applies to CLEC's obtaining of Interconnection, Unbundled
12 Network Elements, ancillary services, and/or resale of
13 Telecommunications Services hereunder.

14 3.2 Prior to placing any orders for services under this Agreement, the
15 Parties will jointly complete the following sections of Qwest's "CLEC
16 Questionnaire":

- 17 • General Information
- 18
- 19 • Billing and Collection (Section 1)
- 20 • Credit Information
- 21 • Billing Information
- 22 • Summary Billing
- 23
- 24 • OSS and Network Outage Notification Contact Information
- 25
- 26 • System Administration Contact Information
- 27
- 28 • Ordering Information for LIS Trunks, Collocation, and
29 Associated Products (if CLEC plans to order these services)
- 30
- 31 • Design Layout Request – LIS Trunking and Unbundled Loop (if
32 CLEC plans to order these services)
- 33

34 The remainder of this questionnaire must be completed within two (2)
35 weeks for Qwest to continue processing new orders.

1 This questionnaire will then be used to:

2 Determine geographical requirements;

3 Identify CLEC Identification Codes;

4 Determine Qwest system requirements to support CLEC's specific
5 activity;

6 Collect credit information;

7 Obtain billing information;

8 Create summary bills;

9 Establish input and output requirements;

10 Create and distribute Qwest and CLEC contact lists; and Identify
11 CLEC hours and holidays.

12 CLECs that have previously completed a Questionnaire need not fill out a
13 new CLEC Questionnaire if no changes in the information required have
14 occurred. Before placing an order for a new product, CLEC will need to
15 complete the relevant new product questionnaire and either 1) utilize the
16 process set forth in Section 1.7.1 or 2) execute an amendment.

17 ~~3.3— Prior to placing any orders for services under this Agreement, the~~
18 ~~Parties will finalize an Interconnection implementation schedule. Subject~~
19 ~~to the terms and conditions of this Agreement, each Party shall exercise~~
20 ~~reasonable efforts to adhere to the interconnection implementation~~
21 ~~schedule. Intentionally Left Blank.~~

22 ~~3.4— CLEC will provide an initial two-year forecast prior to placing any~~
23 ~~orders for service under this Agreement. During the first year of the term~~
24 ~~of this Agreement, the forecast shall be updated and provided to Qwest on~~
25 ~~a quarterly basis. During the remaining term of this Agreement, CLEC will~~
26 ~~provide updated forecasts from time to time, as requested by Qwest. The~~
27 ~~information provided pursuant to this paragraph shall be considered~~
28 ~~Proprietary Information under the Nondisclosure Section of this~~
29 ~~Agreement. The initial forecast will minimally provide: Intentionally Left~~
30 ~~Blank.~~

31 ~~3.4.1— The date service will be offered (by city and/or state);~~

32 ~~3.4.2— The type and quantity of service(s) which will be offered;~~

1 ~~3.4.3 CLEC's anticipated order volumes; and~~

2 ~~3.4.4 CLEC's key contact personnel.~~

3 **SECTION 4.0 -- DEFINITIONS**

4 Attached as Exhibit LBB-4 is an SGAT Lite, which will include Section 4. This
5 exhibit defines the terms in the SGAT and includes all revisions that were agreed to in
6 the other workshops. If the CLECs have any issues or concerns with the definitions or
7 other changes need to be made, the parties can discuss those issues during the
8 upcoming workshop.

9 **SECTION 5.0 -- TERMS AND CONDITIONS**

10 **A. Section 5.1 General Provisions**

11 WorldCom has juxtaposed its WHEREAS clauses discussed above with Section
12 5.1 of the SGAT. Since these provisions cover different subjects and WorldCom has
13 given no justification as to why the SGAT provisions should not be accepted, Section
14 5.1 of the SGAT should be retained.

15 AT&T has commented in detail concerning this section, and XO has commented
16 concerning only Section 5.1.3. I will address their comments.

17 To address AT&T's concern about Section 5.1.1, Qwest is removing Section
18 5.1.1:

1 5.1.1 ~~Each Party shall use its best efforts to comply with the~~
2 ~~Implementation Schedule provisions that will be mutually agreed upon by~~
3 ~~the Parties.~~Intentionally Left Blank

4
5 Both XO and AT&T comment concerning Section 5.1.3. Although XO agrees
6 that either party should be able to discontinue the specific service or circuit that is
7 causing interference on the other party's network, it believes that Section 5.1.3 could be
8 read to allow a party to discontinue all services. Qwest agrees to modify Section 5.1.3
9 as follows to address XO's concern:

10 5.1.3 Neither Party shall use any service related to or use any of ~~this~~the
11 services provided in the Agreement in any manner that interferes with
12 other persons in the use of their service, prevents other persons from
13 using their service, or otherwise impairs the quality of service to other
14 carriers or to either Party's end users. Each Party may discontinue the
15 specific service that violates this provision or refuse to provide the same
16 service until the violation of this provision has been corrected to the
17 reasonable satisfaction of that Party~~if the other Party violates this~~
18 ~~provision.~~ Upon such violation, either Party shall provide the other Party
19 notice of such violation at the earliest practicable time.

20
21 AT&T seeks to go much further and deny either party the ability to discontinue
22 services even if the offending party has caused impairment of service to other carriers
23 or end-users. In its place, AT&T proposes that "the Parties work cooperatively and in
24 good faith to resolve their differences." AT&T Comments at page 23. This proposal is
25 unacceptable to Qwest. Dozens or even hundreds of CLECs will be using Qwest's
26 services. Qwest must have the ability to promptly protect its network, end-users and
27 other carriers from impairment by CLECs who may lack AT&T's experience and
28 technical capability.

1 AT&T has proposed a clarifying change to Section 5.1.4. Qwest has no
2 objection. As modified, this section would read as follows:

3 5.1.4 Each Party is solely responsible for the services it provides to its
4 end users and to other Telecommunications Carriers. This provision is not
5 intended to limit the liability of either Party for its failure to perform under
6 this Agreement.

7
8 Finally, AT&T objects to Section 5.1.6, fearing that this section somehow
9 provides Qwest with blanket authority to increase prices as it chooses. Qwest
10 disagrees. Section 1.7, as modified, adequately protects CLECs from arbitrary behavior
11 by Qwest.

12 **B. Section 5.2 Term of Agreement**

13 Section 5.2 addresses the term of the Agreement, including the effective date
14 (Section 5.2.1), termination of the Agreement (Section 5.2.2), and the ability of the
15 CLEC to obtain services under the terms and conditions of a then-existing agreement at
16 the conclusion of the two-year term (Section 5.2.2.1).

17 AT&T's only suggested revision to this language is a modification of Section
18 5.2.2.1 that permits the CLEC to replace the SGAT as an interconnection agreement
19 prior to the end of the two-year term of the agreement if the CLEC so chooses. AT&T
20 argues that such a modification is consistent with Section 252(i) of the Act. Qwest
21 agrees with AT&T's suggestion and has stricken SGAT Section 5.2.2.1 accordingly:

1 ~~5.2.2.1 Prior to the conclusion of the term specified above, CLEC~~
2 ~~may obtain Interconnection services under the terms and conditions of a~~
3 ~~then existing agreement to become effective at the conclusion of the term.~~

4
5 Although WorldCom does not offer any testimony regarding Section 5.2, in its
6 comparison of Qwest and WorldCom language it provides (without comment) an entirely
7 new section entitled "Section 3. Term and Termination." WorldCom's proposed
8 language is unacceptable for a number of reasons.

9 First, Section 3.1 of the WorldCom proposal inappropriately limits the ability of
10 either party to request a stay of approval of the Agreement. ("Neither Party may seek a
11 stay of the Commission/Board's approval of this Agreement.") While the circumstances
12 in which such a request may arise are undoubtedly rare, WorldCom's suggested
13 language places an arbitrary limit upon procedural rights that may exist under State law.
14 Moreover, should a party make such a request, the non-moving party will be fully
15 protected by its right to oppose that motion pursuant to State law and the Constitution.
16 Accordingly, the proposed addition should not be made.

17 Second, WorldCom seeks a term of three years rather than two years. (AT&T,
18 by contrast, concurs with the two-year term contained in Qwest's SGAT.) In the
19 telecommunications industry, three years is an unreasonably long term for an
20 interconnection agreement. Conditions and circumstances simply change too quickly
21 for the parties to reasonably expect that their relationship can remain static for such a

1 period. The SGAT's proposed two-year term is more realistic under the existing
2 conditions of this rapidly changing industry.

3 Third, Section 3.1 states that "No earlier than 120 days before the expiration of
4 the Initial Term, either Party may request that the Parties commence informal
5 negotiations to replace this Agreement." By contrast, the Qwest SGAT states that a
6 Party may terminate the Agreement on 160 days notice, "which will be the starting point
7 for the one hundred sixty (160) day negotiation window under Section 252 of the Act."
8 Qwest's language is derived from, and consistent with, the Act itself, which stipulates a
9 160-day negotiation window. WorldCom's proposed 120-day negotiation window is
10 inconsistent with the time frame set forth in the Act.

11 Fourth, WorldCom's proposed Section 3.2, which addresses a CLEC's right to
12 terminate the Agreement, is unacceptable on a number of grounds. The language
13 improperly provides the CLEC a unilateral right to terminate the agreement. By
14 contrast, Qwest's language appropriately provides a bilateral right of termination. In
15 addition, the 30-day notice period for termination fails to accommodate the replacement
16 of the parties' existing interconnection agreement. Qwest's SGAT, by contrast, ensures
17 that a termination provides 160 days' notice, a period which corresponds with the period
18 for the negotiation of a replacement agreement.

19 Fifth, WorldCom's proposed Sections 3.3, 3.4 and 3.6 appear to address issues
20 that have nothing to do with the term of the agreement, but which are more properly
21 addressed in other sections of the SGAT. Sections 3.3 and 3.6 address remedies for

1 breach, which are addressed by Section 5.18 of Qwest's SGAT, "Dispute Resolution."
2 Section 3.4 addresses nonpayment, which is addressed by Section 5.4 of Qwest's
3 SGAT.

4 Finally, WorldCom's proposed Section 3.5 is unacceptable. The first sentence
5 needlessly (and confusingly) states that the parties will comply with their obligations to
6 provide interconnection under the Act notwithstanding the termination of the Agreement.
7 In fact, the Act provides a mechanism for providing interconnection by means of such
8 agreements. As noted above, Qwest's SGAT -- in contrast to WorldCom's proposed
9 language -- ensures that an existing agreement is replaced whenever it is terminated.
10 The second sentence, requiring Qwest "to provide for an uninterrupted transition of
11 services" upon termination, is unclear and in any case is already addressed by Qwest's
12 SGAT, as set forth above.

13 For these reasons, WorldCom's proposal to replace Section 5.2 of the Qwest
14 SGAT with its Section 3 should be rejected.

15 Qwest also proposes revision of Section 5.2.1 to delete language derived from a
16 template negotiated Agreement, not an SGAT. Section 5.2.1 should instead state:

17 5.2.1 When this documents is used for purposes of negotiating an
18 Interconnection Agreement, this Agreement shall become effective upon
19 Commission approval, pursuant to Sections 251 and 252 of the Act. This
20 Agreement shall become effective the date set forth in Section 1 pursuant
21 to 252 of the Act. This Agreement shall be binding upon the Parties upon
22 the Effective Date and for a term of two (2) years and shall terminate on
23 _____.

1 **C. Section 5.3 Proof of Authorization**

2 Both AT&T and WorldCom have filed testimony regarding Proof of Authorization.

3 I will address AT&T's comments first. Qwest's intention in filing its proposed Proof of
4 Authorization language was to mirror the FCC provisions. AT&T points out that the
5 FCC rules in 47.C.F.R. 64.1120 and 64.1140 already address Proof of Authorization
6 and have provided counter language. Qwest notes that 64.1120(b) incorporates local
7 exchange service into the FCC rules, and 64.1140(a) provides for carrier liability for
8 slamming when a carrier fails to comply with the procedures proscribed in the rules.
9 Accordingly, Qwest agrees to AT&T's proposed language with the addition of the
10 change in 5.3.2 to give effect to AT&T's language. These changes will also address
11 XO's concerns. See XO Comments at page 16.

12 ~~5.3.1 Where so indicated in specific sections of this Agreement, eEach~~
13 ~~Party shall be responsible for obtaining and having in its possession Proof~~
14 ~~of Authorization ("POA") as required by applicable federal and state law,~~
15 ~~as amended from time to time. POA shall consist of documentation of the~~
16 ~~end user's selection of its local service provider. Such selection may be~~
17 ~~obtained in the following ways:~~

18 ~~5.3.1.1 The end user's electronic or written Letter of~~
19 ~~Authorization.~~

20 ~~5.3.1.2 The end user's electronic authorization by use of an 8XX~~
21 ~~number.~~

22 ~~5.3.1.3 The end user's oral authorization verified by an~~
23 ~~independent third party (with third party verification as POA).~~

24 ~~5.3.2 The Parties shall make POAs available to each other upon request in~~
25 ~~accordance with applicable laws and rules. A charge of \$100.00 will be~~
26 ~~assessed if the POA cannot be provided supporting the change in service~~
27 ~~provider. If there is a conflict between the end user designation and the other~~

1 ~~Party's written evidence of its authority, the Parties shall honor the designation of~~
2 ~~the end user and change the end user back to the previous service provider.~~

3 5.3.2 The Parties shall make POAs available to each other upon request in
4 accordance with all applicable laws and rules and shall be subject to any
5 penalties contained therein.

6
7 WorldCom also objects because the FCC rules address this matter. By
8 accepting AT&T's language, Qwest should have addressed WorldCom's concerns as
9 well. WorldCom also objects to proposed penalties. However, the very FCC rules that
10 WorldCom relies upon in their testimony also provide for penalties. If AT&T's language
11 is used, any FCC rules regarding penalties would apply to all parties.

12 **D. Section 5.4 Payment**

13 Both WorldCom and AT&T address Section 5.4. They both ignore the fact that
14 this provision is reciprocal, and thus the items that they contest work in their favor when
15 Qwest is paying the CLECs, as for reciprocal compensation. WorldCom proposes a
16 very scaled down version of a payment section that would leave Qwest without
17 adequate remedies when CLECs habitually dispute bills with little or no justification and
18 fail to make timely payments. As usual, WorldCom provides no justification for its
19 proposal.

20 AT&T uniformly seeks to extend the time before Qwest can take remedial action
21 when a CLEC is not paying its bills. It has been Qwest's experience that the longer it
22 waits before taking appropriate remedial action, the less likely it is to eventually receive
23 payment. Also, CLECs receive more than sufficient notice from Qwest that actions

1 must be taken if Qwest does not receive payment. This notice includes an initial call on
2 day 31, a first collection letter on day 35, and a final collection call and letter on day 42.
3 On day 56, Qwest sets end user transfer requirements and will not disconnect the
4 service associated with a particular end user until user transfer to a new provider has
5 occurred.

6 In its comments on Section 5.4.2, AT&T proposes to extend the time before
7 Qwest can discontinue processing orders when CLECs fail to make payments to 90
8 days, rather than the 30 days provided in the SGAT. Qwest disagrees with AT&T's
9 proposal that it must wait 90 days before it can take action. Qwest is entitled to
10 payment for services rendered on time and to take remedial action if risk is apparent.
11 Under Qwest's proposal, an invoice is not due and payable until 30 days after its date
12 and Qwest cannot take action until 30 days from then. Since Qwest rendered its
13 services in the month before the date of the invoice under its own proposal, it cannot
14 take action until nearly three months after it actually provided services. AT&T would
15 extend that period by another two months, thereby significantly increasing Qwest's
16 exposure to uncollectibles.

17 Secondly, AT&T would require Qwest to seek permission from the Commission
18 prior to discontinuing processing of orders. Qwest does notify the Commission before
19 taking action. However, permitting a CLEC to continue to incur debts for months before
20 Qwest can take appropriate action to protect itself is not reasonable. AT&T would
21 increase Qwest's financial exposure even further by requiring it to give the CLEC

1 another ten-day notice if it has not discontinued processing orders within ten days from
2 the date specified on the notice.

3 Furthermore, if the CLEC has a valid, good faith dispute about its bill, it can
4 utilize the dispute resolution process set forth in Section 5.4.4 of the SGAT. While
5 disputing billed amounts, the CLEC is not required to pay those amounts.

6 Qwest does not object to AT&T's addition of charges incurred "under this
7 Agreement" or its last sentence, which allows the CLEC to take other legal actions.

8 AT&T and XO express similar concerns about Section 5.4.3, which provides that
9 Qwest may disconnect services for failure by the CLEC to make full payment, less any
10 disputed amounts, within 60 days of the due date on the CLEC's bill. AT&T's proposed
11 changes to Section 5.4.3 are similar to those it proposes to Section 5.4.2. AT&T
12 proposes to add another 60 days (120 days after the due date) before complete
13 disconnection. With this proposal, AT&T would be guaranteeing Qwest, at minimum, a
14 six-month revenue loss. Again, AT&T would increase Qwest's financial exposure even
15 further by requiring a second ten-day notice if Qwest has not disconnected within ten
16 days of the date for disconnection specified in the notice. AT&T and XO also again
17 suggest that Qwest must obtain Commission approval before disconnection. Qwest
18 does notify the Commission before taking action. However, Qwest should not be
19 delayed in taking appropriate steps to protect itself from continuing to incur financial
20 losses while the Commission considers the matter of disconnection. As noted above,
21 the CLEC with valid disputes regarding its bill, can seek resolution under Section 5.4.4.

1 Also in order to avoid disruption to its end-users' service, CLEC agrees in Section 5.4.9
2 of the SGAT to give it customers notice of the pending disconnection so that they can
3 make other arrangements for service. And as noted above, Qwest works with the
4 CLEC regarding the transfer.

5 As with 5.4.2 above, Qwest does not object to the addition of the words "under
6 this Agreement" or the addition of the last sentence. Qwest does, however, object to
7 AT&T's attempt to have the wholesale discount applied to the reconnection charge.
8 Qwest does not avoid any costs in reconnecting the customer.

9 The revised Section 5.4 would read as follows:

10 5.4.1 Amounts payable under this Agreement are due and payable within
11 thirty (30) calendar days after the date of invoice, or within twenty (20)
12 calendar days after receipt of the invoice, whichever is later ("due date"). If
13 the payment due date is not a business day, the payment shall be
14 made due the next business day.

15 5.4.2 Qwest-One Party may discontinue processing orders for the failure
16 of CLEC-the other Party to make full payment for the relevant service, less
17 any disputed amount as provided for in Section 5.4.4 of this Agreement,
18 for the relevant services provided under this Agreement within thirty (30)
19 calendar days of the due date ~~on CLEC's bill~~. Qwest-The billing Party will
20 notify CLEC-the other Party in writing at least ten (10) business days prior
21 to discontinuing the processing of orders for the relevant services. If
22 Qwest-the billing Party does not refuse to accept additional orders for the
23 relevant services on the date specified in the ten (10) business days
24 notice, and CLEC's-the other Party's non-compliance continues, nothing
25 contained herein shall preclude Qwest's-the billing Party's right to refuse
26 to accept additional orders for the relevant services from the non-
27 complying CLEC-Party without further notice. For order processing to
28 resume, CLEC-the billed Party will be required to make full payment of all
29 past and current charges not disputed in good faith under this Agreement.
30 Additionally, Qwest-the billing Party may require a deposit (or additional
31 deposit) from CLEC-the billed Party, pursuant to this section. In addition to

1 other remedies that may be available at law or equity, CLECthe billed
2 Party reserves the right to seek equitable relief, including injunctive relief
3 and specific performance.

4 5.4.3 ~~Qwest~~The billing Party may disconnect any and all relevant
5 services for failure by ~~CLEC~~the billed Party to make full payment, less
6 any disputed amount as provided for in Section 5.4.4 of this Agreement,
7 for the relevant services provided under this Agreement within sixty (60)
8 calendar days of the due date ~~on CLEC's bill~~. ~~CLEC~~The billed Party will
9 pay the Tariff charge required to reconnect each resold end user line
10 disconnected pursuant to this paragraph. ~~Qwest~~The billing Party will
11 notify ~~CLEC~~the billed Party in writing at least ten (10) business days prior
12 to disconnection of the unpaid service(s). In case of such disconnection,
13 all applicable undisputed charges, including termination charges, shall
14 become due. If ~~Qwest~~the billing Party does not disconnect ~~CLEC's~~the
15 billed Party's service(s) on the date specified in the ten (10) business day
16 notice, and ~~CLEC's~~the billed Party's noncompliance continues, nothing
17 contained herein shall preclude ~~Qwest's~~the billing Party's right to
18 disconnect any or all relevant services of the non-complying ~~CLEC~~Party
19 without further notice. For reconnection of the non-paid service to occur,
20 ~~CLEC~~the billed Party will be required to make full payment of all past and
21 current undisputed charges under this Agreement. Additionally, ~~Qwest~~the
22 billing Party will request a deposit (or ~~additional~~recalculate the deposit),
23 as specified in Section 5.4.5 and 5.4.7 from ~~CLEC~~the billed Party,
24 pursuant to this ~~s~~Section. ~~Qwest~~Both Parties agree, however, that the
25 application of this provision will be suspended for the initial three (3) billing
26 cycles of this Agreement and will not apply to amounts billed during those
27 three (3) cycles. In addition to other remedies that may be available at law
28 or equity, CLECEach Party reserves the right to seek equitable relief,
29 including injunctive relief and specific performance ~~eyes~~.

30
31 Consistent with most of its other efforts to extend the time lines within Section
32 5.4, AT&T seeks to extend the period of time in Section 5.4.4 for a party to identify
33 problems with a bill from 30 days to six months. Qwest offers 45 days which should be
34 more than ample for a party to identify any errors. Accordingly, Qwest proposes the
35 following in Section 5.4.4:

36 5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the
37 monthly billing under this Agreement, the Parties will notify each other in

1 writing within forty five thirty (4530) calendar days of the receipt of such
2 billing, identifying the amount, reason and rationale of such dispute. At a
3 minimum, CLEC and Qwest shall pay all undisputed amounts due. Both
4 CLEC and Qwest agree to expedite the investigation of any disputed
5 amounts and work in good faith in an effort to resolve and settle the dispute
6 prior to initiating any other rights or remedies.

7
8 AT&T proposes to insert "less disputed amounts" in Section 5.4.6 which would
9 mean that these amounts could not be taken into account when determining deposit
10 requirements. Deposits offer Qwest some security that bills will be paid and in this
11 context, Qwest should be entitled to consider the entire bill as disputed amounts may
12 well come due, as well. However, Qwest will agree to exclude disputed amounts when
13 determining satisfactory credit.

14 The revised Section 5.4.6 would read as follows:

15 5.4.6 Interest will be paid on cash deposits at the rate applying to
16 deposits under applicable Commission ~~rules,~~ regulations, ~~or Tariffs.~~ Cash
17 deposits and accrued interest will be credited to CLEC's the billing Party's
18 account or refunded, as appropriate, upon the earlier of the two year term
19 or the establishment of satisfactory credit with Qwest the billing Party,
20 which will generally be one full year of timely payments of undisputed
21 amounts in full by CLEC the billed Party. Upon a material change in
22 financial standing, the billed Party may request and the billing Party will
23 consider a recalculation of the deposit. The fact that a deposit has been
24 made does not relieve CLEC from any requirements of this Agreement.

25 E. Section 5.5 Taxes

26 Section 5.5 addresses payment of taxes. AT&T contends that this provision is
27 "one sided" because it "seem[s] to require that virtually all taxes be paid by the
28 'purchaser' (*i.e.*, CLEC)." This is not correct. Section 5.5 clearly states that the party

1 purchasing services under the Agreement shall pay or be responsible for any applicable
2 taxes "levied against or upon such purchasing Party." It does not impose any
3 obligations of payment beyond those required by law. Thus, AT&T's general concern
4 about CLECs paying for "virtually all taxes" is misplaced; Qwest's SGAT requires no
5 more than is required by applicable law.

6 Qwest agrees with AT&T that the intent of Section 5.5 is (and should be) to
7 require the party who is responsible under applicable law or tariff to pay any given tax.
8 AT&T's language simply appears to be a different way of stating what Qwest's provision
9 already provides. Thus, AT&T's proposal is largely acceptable. However, Qwest
10 modifies AT&T's proposal to clarify that each party has the right to pass tax liability to
11 the purchaser of services where it is legally entitled to do so.

12 AT&T also proposes language that would clarify that "Each Party is responsible
13 for any tax on its corporate existence, status, or income." Qwest agrees with this
14 clarification.

15 WorldCom does not provide commentary but attaches a "Section 26. Taxes"
16 which is evidently WorldCom's proposed replacement of SGAT Section 5.5. WorldCom
17 provides no rationale for its proposal, nor does it suggest any respects in which SGAT
18 Section 5.5 is inadequate. Moreover, WorldCom has in the past adopted contract
19 language virtually identical to the language contained in Section 5.5. Last year, for
20 example, WorldCom adopted an arbitrated agreement between MCIMetro and Verizon

1 for the State of Massachusetts, which contains language very similar to Qwest Section
2 5.5.¹

3 In any case, the concepts that WorldCom seeks to incorporate are already
4 incorporated by the Qwest and AT&T versions of Section 5.5. WorldCom simply
5 phrases the obligations in terms of the each party's responsibilities, rather than
6 reciprocal obligations. However, Qwest has incorporated, with slight modification,
7 WorldCom's suggestion that the SGAT also address the situation in which one party
8 seeks to contest the application of a tax collected by the other party. Under the
9 proposed modification to Section 5.5.1, each party agrees to cooperate with the other
10 party when such a contest occurs, and to reimburse the other party in appropriate
11 circumstances.

12 The following proposed modification of Section 5.5.1 reflects the suggestions of
13 both AT&T and WorldCom:

14 ~~5.5.1 Each Party purchasing services hereunder shall pay or otherwise~~
15 ~~be responsible for all~~ Any federal, state, or local sales, use, excise, gross
16 receipts, transaction or similar taxes, fees or surcharges resulting from the
17 performance of this Agreement shall be borne by the Party upon which the
18 obligation for payment is imposed under applicable law, even if the
19 obligation to collect and remit such taxes is placed upon the other Party.
20 However, where the selling Party is permitted by law to collect such taxes,
21 fees or surcharges from the purchasing Party, such taxes, fees or
22 surcharges shall be borne by the Party purchasing the services. levied
23 ~~against or upon such purchasing Party (or the providing Party when such~~

¹ WorldCom adopted the arbitrated interconnection agreement between MCIMetro and Bell Atlantic-Massachusetts originally approved by the Massachusetts PUC November 1, 1998. WorldCom subsequently adopted this agreement, which was filed March 22, 2000 and approved June 5, 2000.

1 ~~providing Party is permitted to pass along to the purchasing Party such~~
2 ~~taxes, fees or surcharges), except Each Party is responsible~~ for any tax on
3 ~~either its Party's~~ corporate existence, status or income. Whenever
4 possible, these amounts shall be billed as a separate item on the invoice.
5 To the extent a sale is claimed to be for resale tax exemption, the
6 purchasing Party shall furnish the providing Party a proper resale tax
7 exemption certificate as authorized or required by statute or regulation by
8 the jurisdiction providing said resale tax exemption. Until such time as a
9 resale tax exemption certificate is provided, no exemptions will be applied.
10 If either Party (the "contesting Party") contests the application of any tax
11 collected by the other Party (the "collecting Party"), the collecting Party
12 shall reasonably cooperate in good faith with the Contesting Party's
13 challenge, provided that the Contesting Party pays any costs incurred by
14 the collecting Party. The Contesting Party is entitled to the benefit of any
15 refund or recovery resulting from the contest, provided that the Contesting
16 Party is liable for and has paid the tax contested.

17 F. Section 5.6 Insurance

18 Section 5.6 addresses insurance. AT&T and WorldCom have had extensive
19 discussions on this subject and Qwest's proposed language in Section 5.6 reflects the
20 outcome of those discussions.

21 For its part, XO does not propose any language change to Section 5.6, but
22 comments that the requirement that CLECs maintain insurance is too broad and needs
23 to be limited to insurance for CLECs operating on Qwest premises or otherwise
24 accessing Qwest's network. XO also comments that the insurance requirement must be
25 reciprocal.

26 With respect to Section 5.6, XO states that that CLEC insurance should concern
27 Qwest only if the CLEC or its agents are operating on Qwest's premises. XO
28 Comments at page 17. However, XO recognizes that such insurance *is* appropriate (at

1 a minimum) where the CLEC collocates or seeks access to poles, ducts, and rights-of-
2 way. From Qwest's perspective, *because* the SGAT offers terms and conditions for
3 collocation and access to poles, ducts, and rights of way, Section 5.6 is an essential
4 term of the Agreement. Moreover, XO's proposal is unworkable because it would put
5 Qwest in the position of determining whether a CLEC has insurance whenever it enters
6 Qwest's premises, rather than at the beginning of the parties' contractual relationship.
7 Unless the CLEC will agree not to enter Qwest's premises for any purposes under its
8 Agreement, the insurance requirement is entirely appropriate.

9 WorldCom and XO also suggest that the insurance provisions should be
10 reciprocal. Qwest agrees with this suggestion.

11 As revised to reflect other comments addressed above, the insurance revisions
12 would appear as follows:

13 5.6.1 Each Party shall at all times during the term of this Agreement, at
14 its own cost and expense, carry and maintain the insurance coverage
15 listed below with insurers having a "Best's" rating of B+XIII with respect
16 to liability arising from that Party's operations for which that Party has
17 assumed legal responsibility in this Agreement. If either Party or its parent
18 company has assets equal to or exceeding \$10,000,000,000, that Party
19 may utilize an affiliate captive insurance company in lieu of a "Best's"
20 rated insurer. To the extent that the parent company of a Party is relied
21 upon to meet the \$10,000,000,000 asset threshold, such parent shall be
22 responsible for the insurance obligations contained in this Section 5.6.1, to
23 the extent its affiliated Party fails to meet such obligations.~~CLEC shall at~~
24 ~~all times during the term of this Agreement, at its own cost and expense,~~
25 ~~carry and maintain the insurance coverage listed below with insurers~~
26 ~~having a "Best's" rating of B+XIII.~~

27 5.6.1.1 Workers' Compensation with statutory limits as
28 required in the state of operation and Employers' Liability insurance

1 with limits of not less than \$100,000 each accident.

2 5.6.1.2 Commercial General Liability insurance
3 covering claims for bodily injury, death, personal injury or property
4 damage occurring or arising out of the use or occupancy of the
5 premises, including coverage for independent contractor's
6 protection (required if any work will be subcontracted), premises-
7 operations, products and/or completed operations and contractual
8 liability with respect to the liability assumed by each Party CLEC
9 hereunder. The limits of insurance shall not be less than
10 \$1,000,000 each occurrence and \$2,000,000 general aggregate
11 limit.

12 5.6.1.3 ~~Comprehensive Business~~ automobile liability
13 insurance covering the ownership, operation and maintenance of all
14 owned, non-owned and hired motor vehicles with limits of not less
15 than \$1,000,000 per occurrence for bodily injury and property
16 damage.

17 5.6.1.4 Umbrella/Excess Liability insurance in an
18 amount of \$10,000,000 excess of Commercial General Liability
19 insurance specified above. These limits may be obtained through
20 any combination of primary and excess or umbrella liability
21 insurance so long as the total limit is \$11,000,000.

22 5.6.1.5 "All Risk" Property coverage on a full
23 replacement cost basis insuring all of CLEC personal property
24 situated on or within the premises. ~~CLEC may elect to purchase
25 business interruption and contingent business interruption
26 insurance. Qwest has no liability for loss of profit or revenues
27 should an interruption of service occur.~~

28 5.6.2 Each Party CLEC shall will initially provide certificate(s) of insurance
29 evidencing coverage, and annually thereafter will provide such
30 certificate(s) upon request. within ten (10) calendar days of prior to the
31 renewal of any coverage maintained pursuant to this Section. Such
32 certificate(s) shall (1) name Qwest the other party as an additional insured
33 under commercial general liability coverage as respects Qwest's
34 interests; (2) provide Qwest thirty (30) calendar days prior written notice of
35 cancellation of, material change or exclusions in the policy(s) to which
36 certificate(s) relate; (3) indicate that, to the extent Qwest is an additional
37 insured, coverage is primary and not excess of, or contributory with, any
38 other valid and collectible insurance purchased by the other Party Qwest;
39 and (4) provide acknowledge severability of interest/cross liability
40 coverage.

G. Section 5.7 Force Majeure

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Section 5.7 is the "force majeure" provision of the SGAT and addresses the parties' respective liability for failure to perform because of a "Force Majeure Event," an event that is beyond the control of a party. AT&T suggests removing the term "equipment failure" from the list of events that constitute a "Force Majeure Event." In addition to removing the term "equipment failure," XO suggests removing "government regulations" and "inability to secure products or services of the other persons." Although Qwest believes that "equipment failure" is often included as a force majeure event in commercial contracts, Qwest is willing to eliminate that term from Section 5.7. Qwest does not believe it is appropriate to eliminate "government regulations" or "inability to secure products or services of other persons" from the enumerated list of matters beyond a party's control, as these matters are beyond a party's control and commonly recognized as such within the industry.

WorldCom suggests that the SGAT's force majeure provision should be replaced entirely with language from WorldCom's "model interconnection agreement." Consistent with many of WorldCom's other inserted language, WorldCom does not explain why its language is preferable to the language already in the SGAT. Indeed, WorldCom offers absolutely no comments on the SGAT language or WorldCom's proposed language. Again, Qwest believes that, absent a specific, articulated reason, there is no reason to change the SGAT language. As I stated earlier in my testimony, if WorldCom desires language that differs from the SGAT, it is entitled to negotiate such language with Qwest in an interconnection agreement. The Commission should not

1 replace the SGAT language simply because it differs from the language found in
2 WorldCom's "model interconnection agreement."

3 Nevertheless, I have reviewed WorldCom's proposed language and have
4 determined that it is insufficient. It is important to keep in mind that the force majeure
5 provision is reciprocal – it excuses either party from performance if certain events occur.
6 It is in both parties' best interests, therefore, for the provision to cover appropriate force
7 majeure events. Without explaining why, WorldCom removes many events from the list
8 of actions constituting Force Majeure Events, including, among other things, work
9 stoppage, inability to secure products or services of other persons or transportation
10 facilities, and acts or omissions of transportation carriers. I know from my experience,
11 that these events, or similar ones, are often included in force majeure provisions of
12 commercial contracts, and there is no reason to omit them from the SGAT. AT&T does
13 not think they should be removed from the SGAT.

14 Moreover, the SGAT requires "prompt notice" of any delay that is due to a Force
15 Majeure Event. WorldCom's proposal contains no such requirement. The SGAT,
16 therefore, provides more protection to the party whose performance is not affected by a
17 Force Majeure Event. Further, WorldCom's proposal states that the due date for a
18 party's performance will be extended if "there is an excused delay" in performance;
19 however, WorldCom's proposal does not define the term "excused delay." There is no
20 reason to replace the specific language of the SGAT with the vague and undefined
21 language of WorldCom's proposal. Finally, WorldCom proposes removing the SGAT's

1 language requiring the parties to provide service to each other at a level equivalent to
2 the level they provide themselves in the event of a labor dispute or strike and replacing
3 it with a requirement for the "delaying Party" to perform its obligations at a performance
4 level no less than that which it uses for its own operations. WorldCom has offered no
5 reasons to replace the specific SGAT language with its general language, and Qwest
6 sees no reason to adopt the proposed replacement language. Notably, AT&T does not
7 believe this part of the SGAT should be altered.

8 In sum, Qwest is willing to modify to modify Section 5.7 of the SGAT accordingly:

9 5.7.1 Neither Party shall be liable for any delay or failure in performance
10 of any part of this Agreement from any cause beyond its control and
11 without its fault or negligence including, without limitation, acts of nature,
12 acts of civil or military authority, government regulations, embargoes,
13 epidemics, terrorist acts, riots, insurrections, fires, explosions,
14 earthquakes, nuclear accidents, floods, work stoppages, ~~equipment~~
15 ~~failure,~~ power blackouts, volcanic action, other major environmental
16 disturbances, unusually severe weather conditions, inability to secure
17 products or services of other persons or transportation facilities or acts or
18 omissions of transportation carriers (collectively, a "Force Majeure Event").
19 The Party affected by a Force Majeure Event shall give prompt notice to
20 the other Party, shall be excused from performance of its obligations
21 hereunder on a day to day basis to the extent those obligations are
22 prevented by the Force Majeure Event, and shall use reasonable efforts to
23 remove or mitigate the Force Majeure Event. In the event of a labor
24 dispute or strike the Parties agree to provide service to each other at a
25 level equivalent to the level they provide themselves.

26 **H. Section 5.8 Limitation of Liability**

27 AT&T has proposed several modifications to Section 5.8, "Limitation of Liability."
28 AT&T first proposes the deletion of Section 5.8.3 in its entirety, and it similarly proposes
29 the deletion of the first clause in Section 5.8.1, which references the limitation

1 addressed by 5.8.3. As I discussed in my earlier testimony, the purpose of Section
2 5.8.3 is to capture the traditional tariff limitation that limits liability to the cost of services
3 that were not rendered or were improperly rendered to the end user. AT&T expresses a
4 concern that this limitation could mean that recovery is disproportionate to potential
5 damages. However, AT&T's concern is misplaced. AT&T has the ability to impose the
6 same limits upon its own end users. Accordingly, it does not have any legitimate
7 concern about "disproportionality," or exposure to any liability beyond the cost of the
8 service provided. Moreover, to the extent that AT&T may be contractually exposed to
9 liability beyond the cost of providing service, AT&T (and not Qwest) is in the best
10 position to identify that potential liability and to take reasonable steps, through its
11 contract and tariff language, to protect against those risks. By contrast, if the changes
12 AT&T proposes were adopted, AT&T would not have appropriate incentives to protect
13 itself against potential liability to end users.

14 In order to clarify this limitation, Qwest has moved the basic limitation contained
15 in Section 5.8.3 to 5.8.1 and deleted the language relating to liability for direct damages
16 (which does not constitute a limitation of liability). For those losses not addressed by
17 the basic limitation contained in the revised Section 5.8.1, Qwest proposes further
18 clarification of the provision by means of an additional liability cap. All of the provisions
19 of Section 5.8.1 are reciprocal, thus benefiting Qwest and CLECs alike.

20 AT&T expresses a concern that Section 5.8 of Qwest's SGAT might limit Qwest's
21 liability under a "backsliding" plan that requires Qwest to make payments for certain

1 "failures to perform." However, AT&T acknowledges that this issue "may need to be
2 revisited after the Commission adopts a backsliding plan." AT&T Comments at page
3 34. Unless and until such a plan is adopted, the language proposed by AT&T is
4 premature and renders the limitation of liability provision unclear. Accordingly, AT&T's
5 suggestion regarding the modification of Section 5.8.2 should not be adopted.

6 AT&T next proposes certain revisions to Section 5.8.4, which provides an
7 exception to the limitation of liability for willful or intentional misconduct. AT&T suggests
8 that the exception be expanded to include gross negligence, not merely willful and
9 intentional misconduct, and that it also include "bodily injury, death or damage to
10 tangible real or tangible personal property caused by such Party's negligent act or
11 omission or that of their [sic] respective agents, subcontractors or employees." AT&T's
12 suggested modifications reflect a misunderstanding of the purpose of the exception.
13 "Willful and intentional misconduct" is addressed because that is the standard exclusion
14 contained in the parties' tariffs. (However, as set forth below, Qwest proposes that this
15 language be revised to conform more closely to the tariff.) By contrast, the exclusion of
16 liability for gross negligence is inconsistent with most tariff exclusions.

17 AT&T's second proposed modification of Section 5.8.4 has the potential effect of
18 altering state law. Section 5.8.2 excludes liability for consequential damages, an
19 exclusion with which AT&T agrees. Thus, AT&T's proposed *inclusion* of liability for
20 bodily injury or death or for damage to tangible property amounts to a contractual
21 provision stating that these types of losses constitute "direct damages" under the SGAT,

1 and that liability for these damages is not limited by Section 5.8.1. While it is possible
2 that they do constitute "direct damages," the question is a matter of existing state law
3 that should be addressed in accordance with the law of the state when the loss occurs.
4 Moreover, AT&T has provided no basis for excluding such damages from the general
5 limitations of Section 5.8.1.

6 AT&T's argument that Qwest's liability under the SGAT "is directly tied to Qwest's
7 section 271 application because sufficiently high liability and accountability are the only
8 way to continue to insure that Qwest will perform its contractual (and statutory)
9 obligations once its Section 271 application is approved" is without merit. The real issue
10 is whether this provision of the SGAT should be used as a basis for shifting liability to
11 Qwest, regardless of standard industry practices. From a commercial standpoint, such
12 a change cannot be justified.

13 AT&T also proposes certain modifications to Section 5.8.6 that are intended to
14 make Qwest liable for fraud associated with service to CLEC's end users where "Qwest
15 is responsible" for the fraud. AT&T misunderstands this provision, which is intended to
16 specify Qwest's duty to investigate fraud without altering the general limitations of
17 liability set forth in Section 5.8.

18 WorldCom comments on Section 5.8 and submits competing language titled
19 "Section 12, Limitation of Liability." WorldCom's proposal purports to exclude liability for
20 consequential damages. However, WorldCom also proposes that "[a] Party's lost
21 revenue caused by the other Party's breach of this Agreement will not be considered

1 consequential damages." This proposed language is inappropriate and unacceptable.
2 First, lost revenues are plainly not in the nature of direct damages, but are (at most)
3 consequential or indirect damages. WorldCom provides no rationale at all for treating
4 lost revenues as direct damages here. Moreover, Qwest obviously cannot act as an
5 insurer against a CLEC's lost revenues.

6 WorldCom's proposal also is inconsistent with standard industry practices. For
7 example, SBC's "SGAT" language in Texas and Oklahoma and Verizon's agreements in
8 New York and Massachusetts excludes liability for lost revenues. As noted above,
9 AT&T concurs that neither party should be liable for the lost revenues of the other.

10 WorldCom also proposes that, notwithstanding the exclusion of consequential
11 damages, Qwest (but not the CLEC) should be liable for reasonably foreseeable
12 damages resulting from the failure to provide or delay in providing services under the
13 Agreement. Put another way, WorldCom proposes that liability for consequential
14 damages be a unilateral obligation belonging only to the ILEC and not to the CLEC.
15 Again, WorldCom provides no rationale for such a one-sided provision, which as noted
16 above is inconsistent with industry standards.

17 For these reasons, the proposed language presented by WorldCom cannot be
18 accepted.

19 Qwest proposes several clarifications of Section 5.8 of the SGAT. First, Qwest
20 proposes modification of Section 5.8.1, including the deletion of the first sentence of

1 Section 5.8.1 (which was not a limitation of liability in any case), the addition of the
2 substance of Section 5.8.3 into Section 5.8.1, and the addition of further clarifying
3 language limiting liability for both parties. Qwest also proposes language to account for
4 any amounts owing under any Performance Assurance Plan under this Agreement. All
5 of these provisions are reciprocal:

6 5.8.1 ~~Except for losses~~ Each Party's liability to the other Party for any loss
7 relating to or arising out of any act or omission in its performance of
8 services or functions provided under this Agreement, each Party shall be
9 liable to the other for direct damages for any loss, defect or equipment
10 failure including without limitation any penalty, reparation or liquidated
11 damages under this Agreement, whether in contract, warranty, strict
12 liability, or tort, including (without limitation) negligence of any kind, shall
13 be limited to the total amount that is or would have been charged to
14 assessed by the Commission or under a Commission-ordered agreement
15 (including without limitation penalties or liquidated damages assessed as
16 a result of cable cuts), resulting from the causing Party's conduct or the
17 conduct of its agents or contractors. the other Party by such breaching
18 Party for the service(s) or function(s) not performed or improperly
19 performed. Each Party's liability to the other Party for any other losses
20 shall be limited to the total amounts charged to CLEC under this
21 Agreement during the contract year in which the cause accrues or arises.
22 If the Parties enter into a Performance Assurance Plan under this
23 Agreement, nothing in this Section 5.8.1 shall limit amounts due and
24 owing under such Performance Assurance Plan.

25 Qwest also proposes that Section 5.8.2, the standard exclusion for consequential
26 damages, remain unchanged except for the clarification that for purposes of this Section
27 5.8.2, amounts due and owing under a Performance Assurance Plan shall not be
28 considered indirect, incidental, consequential or special damages:

29 5.8.2 Neither Party shall be liable to the other for indirect, incidental,
30 consequential, or special damages, including (without limitation) damages
31 for lost profits, lost revenues, lost savings suffered by the other Party

1 regardless of the form of action, whether in contract, warranty, strict
2 liability, tort, including (without limitation) negligence of any kind and
3 regardless of whether the Parties know the possibility that such damages
4 could result. If the Parties enter into a Performance Assurance Plan under
5 this Agreement, nothing in this Section 5.8.2 shall limit amounts due and
6 owing under such Performance Assurance Plan.

7
8 As noted above, the substance of Section 5.8.3 is moved to Section 5.8.1.
9 However, the last clause, governing liability for direct damage to collocated equipment,
10 is deleted for the sake of clarity and consistency.

11 Qwest proposes that Section 5.8.4 be slightly modified to conform to existing
12 tariff language:

13 5.8.4. Nothing contained in this Section 5.8 shall limit either Party's
14 liability to the other for willful ~~or intentional~~ misconduct.

15 Qwest proposes that Section 5.8.5 be modified to clarify that the limitation of
16 liability provisions are not intended to alter the parties' obligations under the
17 Agreement's payment provisions:

18 5.8.5 Nothing contained in this Section 5.8 shall limit either Party's
19 obligations of indemnification ~~as specified in the Indemnity~~ Section 5.9 of
20 this Agreement, nor shall this Section 5.8 limit a Party's liability for failing
21 to make any payment due under this Agreement.

22 Finally, Qwest proposes two changes to Section 5.8.6 in order to render the
23 provision consistent with existing tariff provisions and to clarify the parties' respective
24 responsibilities for costs incurred:

1 5.8.6 CLEC is liable for all fraud associated with service to its end-users
2 and accounts. Qwest takes no responsibility, will not investigate, and will
3 make no adjustments to CLEC's account in cases of fraud unless such
4 fraud is the result of any intentional act ~~or gross negligence~~ of Qwest. |
5 Notwithstanding the above, if Qwest becomes aware of potential fraud
6 with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at
7 the direction and sole cost of CLEC, take reasonable action to mitigate the |
8 fraud where such action is possible.

9 XO's comments that Section 5.8 "needs to be substantially narrower." XO
10 Comments at page 18. In this regard, XO's only specific fear is that the section appears
11 to exempt Qwest from any quality assurance remedies that exceed the amount of
12 Qwest's recurring and nonrecurring charges. *Id.* As set forth above, the new language
13 at Sections 5.8.1 and 5.8.2 addresses this concern.

14 I. Section 5.9 Indemnity

15 AT&T proposes substantial modification of Qwest's indemnification language in
16 Section 5.9. It proposes the revision of Section 5.9.1.1, the deletion of Sections 5.9.1.2,
17 5.9.1.3, and 5.9.1.4, and the modification of Section 5.9.2.

18 AT&T's fundamental contention appears to be that the indemnification section
19 should expose Qwest to more, rather than less, liability, because otherwise "there will
20 be little incentive left to insure Qwest's performance of interconnection agreements."
21 This is not an appropriate standard for evaluating SGAT indemnification provisions;
22 indemnification provisions are not intended to function as substitute remedies for
23 breach, as AT&T appears to believe. Instead, the indemnification provision of the

1 SGAT should be aimed at reflecting standard practices within the telecommunications
2 industry, consistent with the fair allocation of responsibility between the parties.

3 Furthermore, AT&T erroneously asserts that the proposed indemnification
4 provisions should be rejected since they differ from the Commission-approved language
5 in AT&T's interconnection agreement with Qwest. While it is axiomatic that the
6 Commission has not yet had the opportunity to approve any "new" language now being
7 proposed, the Commission has, in fact, approved many of the SGAT's indemnification
8 provisions in interconnection agreements involving Qwest and CLECs other than AT&T.

9 Regarding specific sections, AT&T first proposes the striking of the first clause of
10 Section 5.9.1.1 on the ground that "there is no basis to exclude CLEC customer claims
11 for which Qwest is responsible." However, the language that AT&T has deleted does
12 *not* exclude CLEC customer claims for which Qwest is responsible. Nevertheless,
13 Qwest can agree to this SGAT modification; Section 5.9.1.2 specifically addresses end
14 user claims. AT&T also adds language stating, "Except as otherwise provided in
15 Section 5.10 . . ." This addition is unnecessary. Section 5.10 is the intellectual
16 property section of the SGAT. As I discuss in my comments regarding that section,
17 indemnification is not appropriate in that context. AT&T also proposes modification of
18 the provision relating to attorneys' fees; these modifications are acceptable, with the
19 exception of the unexplained and unnecessary reference to "accounting fees."

20 AT&T also proposes inclusion of a phrase in Section 5.9.1.1, "or the
21 environment," which could potentially vastly expand the parties' environmental liability.

1 Environmental liability issues are addressed specifically in Section 5.20 and should not
2 be addressed in Section 5.9. On the other hand, AT&T's addition of the words "for
3 breach of" appears to clarify the SGAT, and so can be adopted.

4 The other significant change to 5.9.1.1 that AT&T proposes is a unilateral
5 provision indemnifying a CLEC for infringement issues that arise out of the use by a
6 CLEC or its customer of services provided under the agreement. This provision would
7 dramatically alter, in a one-sided manner, the intellectual property rights and obligations
8 of the parties and cannot be accepted.

9 To further clarify Section 5.9.1.1, Qwest proposes additional language, consistent
10 with the limitations of liability contained in Section 5.8, regarding the limits of each
11 parties' indemnification obligations under Section 5.9.1.1.

12 AT&T states that, based upon its understanding of Section 5.9.1.2, the section
13 does not sufficiently hold Qwest "accountable." As a general matter, Qwest again notes
14 that it is inappropriate for AT&T to use general provisions (such as indemnification
15 language), which should reflect commercial practices, as a means of exposing Qwest to
16 greater potential liability. Qwest intended Section 5.9.1.2 to require both parties to
17 indemnify each other for claims made by their end users, unless the claim is caused by
18 the other party's willful misconduct. Qwest proposes a complete revision of Section
19 5.9.1.2 to clarify its intent.

1 AT&T also proposes the deletion of Section 5.9.1.3 (relating to claims based on
2 the content of a transmission). Assuming that Section 5.9.2 as revised is adopted,
3 Qwest can agree to the deletion of Section 5.9.1.3.

4 AT&T further proposes the deletion of Section 5.9.1.4, which is intended to clarify
5 how claims of this nature (relating to line sharing) should be addressed. Contrary to
6 AT&T's suggestion, the language does *not* "further define when Qwest will not have
7 liability for its failures that impact CLEC customers." However, the language could be
8 clarified, and Qwest proposes a complete revision of Section 5.9.1.4 for that purpose.

9 Finally, AT&T suggests modifications of Section 5.9.2, which it states are
10 intended "to clarify and address certain matters that may occur in the process of
11 handling an indemnified claim." AT&T Comments at page 39. Specifically, the AT&T
12 language spells out how the matter is to be addressed if the indemnifying party chooses
13 not to defend the action. This additional language in Section 5.9.2.2 is acceptable to
14 Qwest. AT&T also adds language regarding the circumstance in which the indemnified
15 Party withholds consent from a settlement. This additional language also appears
16 reasonable and may be accepted.

17 WorldCom contends that Qwest's indemnification language is "heavily weighted
18 in [Qwest's] favor and contains many strategically placed exceptions that absolve it from
19 responsibility for its own actions." WorldCom Comments at page 21. This is incorrect.
20 First, the indemnification language is reciprocal and benefits both Parties. Moreover,
21 the general indemnification language (Section 5.9.1.1) provides indemnification where

1 the cause of the claim is the indemnifying Party's failure to perform under the
2 Agreement. As noted above, Section 5.9.1.2 creates an exception to 5.9.1.1,
3 specifically requiring the Parties to indemnify each other for claims made by their end
4 users -- regardless of fault -- *unless* the indemnifying Party's willful misconduct is the
5 cause. This is an exception to the general rule of 5.9.1.1.

6 Otherwise, WorldCom's suggested language regarding indemnification is
7 generally consistent with Qwest's SGAT language. Accordingly, no additional
8 modifications of Qwest's SGAT language regarding indemnification need be considered.

9 The following are the proposed changes to Sections 5.9.1 and 5.9.2 noted
10 above:

11 5.9.1 ~~With respect to third party claims, t~~The Parties agree that unless
12 otherwise specifically set forth in this Agreement the following constitute
13 the sole indemnification obligations between and among the parties: to
14 indemnify each other as follows:

15 5.9.1.1 ~~Except for claims made by end users of one~~
16 ~~Party against the other Party, which claims are based on defective~~
17 ~~or faulty services provided by the other Party to the one Party,~~
18 ~~e~~Each of the Parties agrees to release, indemnify, defend and hold
19 harmless the other Party and each of its officers, directors,
20 employees and agents (each an "Indemnitee") from and against
21 and in respect of any loss, debt, liability, damage, obligation, claim,
22 demand, judgment or settlement of any nature or kind, known or
23 unknown, liquidated or unliquidated including, but not limited to,
24 reasonable costs and expenses (including attorneys' fees), whether
25 suffered, made, instituted, or asserted by any ~~other party or~~ person
26 or entity, for invasion of privacy, ~~personal~~bodily injury ~~to~~ or death of
27 any person or persons, or for loss, damage to, or destruction of
28 tangible property, whether or not owned by others, up to the total
29 amount that is or would have been charged for services not
30 performed or improperly performed, resulting from the ~~i~~Indemnifying

1 Party's ~~performance, breach of applicable law, or status of its~~
2 ~~employees, agents and subcontractors; or for breach of or failure to~~
3 ~~perform under this Agreement, regardless of the form of action,~~
4 ~~whether in contract, warranty, strict liability, or tort including (without~~
5 ~~limitation) negligence of any kind.~~

6 5.9.1.2 ~~Where the third party claim is made by (or~~
7 ~~through) an end user of one Party against the other Party, which~~
8 ~~claim is based on defective or faulty services provided by the other~~
9 ~~Party to the one Party, then there shall be no obligation of~~
10 ~~indemnity unless the act or omission giving rise to the defective or~~
11 ~~faulty services is shown to be intentional and malicious misconduct~~
12 ~~of the other Party.~~In the case of a claim or loss alleged or incurred
13 by an end user of either Party arising out of or in connection with
14 services provided to the end user by the Party, the Party whose
15 end user alleged or incurred such claims or loss (the "Indemnifying
16 Party") shall defend and indemnify the other Party and each of its
17 officers, directors, employees and agents (collectively the
18 "Indemnified Party") against any and all such claims or loss by
19 its the Indemnifying Party's end users regardless of whether the
20 underlying service was provided or unbundled element was
21 provisioned by the Indemnified Party, unless the loss was caused
22 by the willful misconduct of the (Indemnified) Party.

23 5.9.1.3 ~~If the claim is made by (or through) an end~~
24 ~~user and where a claim is in the nature of a claim for invasion of~~
25 ~~privacy, libel, slander, or other claim based on the content of a~~
26 ~~transmission, and it is made against a Party who is not the~~
27 ~~immediate provider of the Telecommunications Service to the end~~
28 ~~user (the indemnified provider), then in the absence of fault or~~
29 ~~neglect on the part of the indemnified provider, the Party who is the~~
30 ~~immediate seller of such Telecommunications Service shall~~
31 ~~indemnify, defend and hold harmless the indemnified provider from~~
32 ~~such claim.~~Intentionally Left Blank

33 5.9.1.4 For purposes of ~~this~~ Section 5.9.1.2, where the
34 Parties have agreed to provision line sharing using a POTS splitter:
35 "end user" means the DSL provider's end user for claims relating to
36 DSL and the voice service provider's end user for claims relating to
37 voice service."claims made by end users or customers of one Party
38 against the other Party" refers to claims relating to the provision of
39 DSL services made against the Party that provides voice services,
40 or claims relating to the provision of voice service made against the
41 Party that provides DSL services; and "immediate provider of the
42 Telecommunications Service to the end user or customer" refers to

1 ~~the Party that provides DSL service for claims relating to DSL~~
2 ~~services, and to the Party that provides voice service for claims~~
3 ~~relating to voice services. For purposes of this Section, "customer"~~
4 ~~refers to the immediate purchaser of the telecommunications~~
5 ~~service, whether or not that customer is the ultimate end user of~~
6 ~~that service.~~

7 5.9.2 The indemnification provided herein shall be conditioned upon:

8 5.9.2.1 The Indemnified Party shall promptly notify the
9 Indemnifying Party of any action taken against the Indemnified
10 Party relating to the indemnification. Failure to so notify the
11 Indemnifying Party shall not relieve the Indemnifying Party of any
12 liability that the Indemnifying Party might have, except to the extent
13 that such failure prejudices the Indemnifying Party's ability to
14 defend such claim.

15 5.9.2.2 If the indemnifying Party wishes to defend
16 against such action, it shall give written notice to the indemnified
17 Party of acceptance of the defense of such action. In such event,
18 the Indemnifying Party shall have sole authority to defend any
19 such action, including the selection of legal counsel, and the
20 Indemnified Party may engage separate legal counsel only at its
21 sole cost and expense. In the event that the Indemnifying Party
22 does not accept the defense of the action, the Indemnified Party
23 shall have the right to employ counsel for such defense at the
24 expense of the Indemnifying Party. Each Party agrees to
25 cooperate with the other Party in the defense of any such action
26 and the relevant records of each Party shall be available to the
27 other Party with respect to any such defense.

28 5.9.2.3 In no event shall the Indemnifying Party settle
29 or consent to any judgment pertaining to any such action without
30 the prior written consent of the Indemnified Party. In the event the
31 Indemnified Party withholds consent, the Indemnified Party may, at
32 its cost, take over such defense, provided that, in such event, the
33 Indemnifying Party shall not be responsible for, nor shall it be
34 obligated to indemnify the relevant Indemnified Party against, any
35 cost or liability in excess of such refused compromise or settlement.

36
37 XO's comment on Section 5.9 is similar to its comment on Section 5.8. XO
38 raises a concern about being indemnified against any retail service quality penalties or

1 Commission fines the CLEC must pay to retail customers or state treasuries as a result
2 of provisioning or maintenance problems caused by Qwest. Qwest declines to modify
3 Section 5.9.1.2 in the manner suggested by XO. However, the question of payments for
4 provisioning or maintenance problems is a matter that is properly addressed by a
5 Performance Assurance Plan, and not by Section 5.9.

6 **J. Section 5.10 Intellectual Property**

7 AT&T addresses the intellectual property provision contained in Section 5.10.
8 AT&T suggests that Qwest should be required to indemnify CLECs for infringing upon
9 third-party intellectual property rights. In commercial agreements, indemnification
10 clauses are typically negotiated; contrary to AT&T's assertion, there is no "customary"
11 provision. An indemnification obligation is essentially an insurance policy, providing that
12 if the indemnified act occurs (the covered event to continue the analogy to an insurance
13 policy), the indemnifying party will pay the indemnified parties costs. To the extent such
14 costs are predictable and controllable by the supplying party, the supplying party may
15 be willing to provide indemnification. For example, the supplying party may be willing to
16 indemnify if it fails to supply goods which are manufactured in workmanlike manner
17 simply because it controls its manufacturing processes and can, thus, control the extent
18 of liability. However, intellectual property issues are often totally out of the control of the
19 supplying party. For example, it is impossible to know what patent risks may exist with
20 respect to a particular services or goods being offered for sale because patent
21 applications are confidential (for at least 18 months from the filing date). Thus, the

1 supplying party would be insuring against an unknowable and uncontrollable risk if it
2 offered indemnification for all intellectual property claims. Such insurance may be
3 available from Lloyds of London at some (high) cost, but should not be imposed on
4 Qwest.

5 AT&T states that it has proposed certain changes to Section 5.10.3 to more fully
6 capture the FCC's decision on intellectual property rights. In its *Intellectual Property*
7 *Order*, the FCC made certain determinations about facilities, equipment and services
8 that an ILEC provides to a CLEC.² The order specifically calls for the "best efforts"
9 standard set forth in Section 5.10.3 of the SGAT and provides other guidance. It also
10 states that this obligation is an ILEC obligation, not a CLEC obligation, and therefore
11 this provision should not be reciprocal. It should apply to Qwest only. The FCC
12 determined that the ILEC's obligation is directly related to the ILEC's duties under
13 Section 251(c)(3) of Act.³ Qwest agrees with this latter point and will change the
14 section accordingly.

15 AT&T states that the covenants and warranties called for in its proposed Section
16 5.10.3.1 are consistent with the FCC's decision on intellectual property and help to flesh
17 out the "best efforts" standard called for by the FCC. This language calls for
18 assurances from Qwest that it will not engage in behavior that interferes with the right of

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Memorandum Opinion and Order, FCC 00-139 (rel. April 27, 2000) ("*Intellectual Property Order*").

³ *Intellectual Property Order*, ¶9.

1 a CLEC to use the intellectual property contained in facilities, equipment or services
2 provided by Qwest under this Agreement.

3 This clause is wholly unnecessary. The first two sentences state that Qwest will
4 not enter into an agreement that would, effectively, prevent it from performing under this
5 Agreement. Clearly, if Qwest took any action which prevented it from performing its
6 obligations under this Agreement, there would be a resultant breach of this Agreement.
7 It is unnecessary to specifically state all of the various ways in which a party may
8 breach an agreement and have that party specifically agree not to do those things. The
9 third sentence concerns third-party indemnities. The agreement deals separately with
10 indemnities flowing from Qwest to the CLEC. While Qwest may choose to negotiate for
11 whatever indemnities it deems necessary or desirable in negotiations with its vendors,
12 there is no need to tie Qwest's hands in negotiations with its vendors by requiring Qwest
13 to obtain these "flow through" indemnities.

14 AT&T proposes an indemnity provision in its Section 5.10.3.2. Qwest's position
15 on indemnification for intellectual property issues is covered above with respect to
16 Section 5.10.2.

17 AT&T has stricken the first and last parts of Section 5.10.7, stating that these
18 provisions are overly burdensome on the CLEC. In the balance of the provision, AT&T
19 makes the provision reciprocal.

1 The provisions objected to in this paragraph relate directly to rights granted by
2 Qwest to CLECs to use the "Authorized Phrase" in Section 5.10.6. If AT&T agrees to
3 remove the ability of the CLEC to use the Authorized Phrase, then its changes would be
4 acceptable. Otherwise, the provisions of this section are necessary and reasonable to
5 protect Qwest's trademark rights, especially in a situation such as this where it has
6 granted a right to use its name. Because the CLEC has not granted reciprocal rights to
7 use its trademarks, AT&T's proposal to make this language reciprocal is misguided.

8 AT&T has proposed a new Section 5.10.8. This section calls for the disclosure of
9 certain information by Qwest to the CLEC regarding intellectual property. The FCC
10 calls for the disclosure of this information and states that failure by the ILEC to make
11 this disclosure could constitute a violation of Sections 251(c)(1) and 251(c)(3).⁴

12 As discussed above, it is impossible for Qwest to know about all third-party
13 intellectual property associated with unbundled network elements. Thus, the first
14 sentence of the proposed language is overreaching in reciting "all intellectual property
15 owned, controlled or licensed by third parties," and should read "all intellectual property
16 licensed by third parties to Qwest." Further, disclosure of all intellectual property license
17 agreements related to an unbundled network element may be burdensome, and this
18 burden should only be imposed on Qwest when and where there is a demonstrated

⁴ *Intellectual Property Order*, ¶17.

1 need on the part of the CLEC to have access to the agreements. Further, the five-
2 business-day limitation suggested by AT&T is arbitrary. Qwest suggests that a
3 "reasonable period of time" standard be applied. Qwest is also adding language to
4 clarify that Qwest is not obligated to disclose the existence of agreements where the
5 terms of such agreements prohibit disclosure of their existence. This is consistent with
6 language proposed by AT&T recognizing that certain agreements may be subject to
7 such restrictions and requiring Qwest to use best efforts to negotiate with the other party
8 to the agreement to allow disclosure.

9 Now I will turn to WorldCom's proposed Intellectual Property provision. The first
10 sentence in Section 10.1 of the WorldCom proposal essentially states the common law
11 and is unnecessary. The second sentence is substantially the same in scope as
12 Section 5.10.1 of the SGAT, and WorldCom has not presented any reason why its
13 proposal is better. The final portion of the paragraph is essentially dealing with the
14 indemnification issue discussed above with respect to AT&T's proposal.

15 The issues in Section 10.1.2 were discussed in connection with AT&T's proposed
16 changes to 5.10.7 above.

17 The issues in Section 10.2 were discussed above in connection with the
18 indemnification issue discussed above with respect to AT&T's proposal.

19 The changes to Section 5.10 would read as follows:

1 5.10.3 To the extent required under applicable federal and state
2 ~~rules-law, the Party providing access~~Qwest shall use its best efforts to
3 obtain, from its vendors who have licensed intellectual property rights to
4 Qwest in connection with facilities and services provided hereunder,
5 licenses under such intellectual property rights as necessary for ~~the other~~
6 ~~party~~CLEC to use such facilities and services as contemplated hereunder
7 and at least in the same manner used by Qwest for the facilities and
8 services provided hereunder.

9
10 5.10.8 Upon request, for all intellectual property owned or controlled
11 by a third party and licensed to Qwest associated with the unbundled
12 network elements provided by Qwest under this Agreement, either on the
13 Effective Date or at any time during the term of the Agreement, Qwest
14 shall within twenty (20) business days disclose to CLEC in writing (i) the
15 name of the party owning, controlling or licensing such intellectual
16 property, (ii) the facilities or equipment associated with such intellectual
17 property, (iii) the nature of the intellectual property, and (iv) the relevant
18 agreements or licenses governing Qwest's use of the intellectual property.
19 Except to the extent Qwest is prohibited by confidentiality or other
20 provisions of an agreement or license from disclosing to CLEC any
21 relevant agreement or license, within twenty (20) business days of a
22 request by CLEC, Qwest shall provide copies of any relevant agreements
23 or licenses governing Qwest's use of the intellectual property to CLEC, To
24 the extent Qwest is prohibited by confidentiality or other provisions of an
25 agreement or license from disclosing to CLEC any relevant agreement or
26 license, Qwest shall immediately, within twenty (20) business days (i)
27 disclose so much of it as is not prohibited, and (ii) exercise best efforts to
28 cause the vendor, licensor or other beneficiary of the confidentiality
29 provisions to agree to disclosure of the remaining portions under terms
30 and conditions equivalent to those governing access by and disclosure to
31 Qwest.

32 **K. Section 5.11 Warranties**

33 Section 5.11 disclaims express or implied warranties, consistent with Article 2 of
34 the Uniform Commercial Code. AT&T suggests that, to the extent that the warranty
35 language it proposes in Section 5.10.3.1 is adopted, then Section 5.11.1 would need to
36 be modified. Qwest does not concur with AT&T's proposed language for 5.10.3.1.
37 However, the change proposed by AT&T will ensure that, if the agreement contains -- or

1 is later amended to contain -- any warranty provision whatsoever, Section 5.11.1 will be
2 consistent with that warranty. Accordingly, Qwest accepts the change proposed by
3 AT&T for Section 5.11.1.

4 WorldCom, on the other hand, tries to stand the warranty disclaimer on its head
5 by adding detailed, unilateral warranty provisions to the SGAT. WorldCom offers
6 virtually no support for its proposal, other than to state that Section 5.11 is "inadequate"
7 and to contend that Qwest may not "disclaim" performance standards. Of course,
8 Section 5.11 is not intended to, and does not, disclaim any performance standards.

9 WorldCom's proposed "warranty" language cannot be accepted, for several
10 reasons. First, each of the issues addressed by WorldCom -- the standards applicable
11 to interconnection, to UNEs, to ancillary services, and so forth -- is addressed
12 elsewhere in the SGAT (and in these proceedings). If WorldCom seeks to address the
13 applicable standards, it should do so in the context of the relevant portions of the SGAT.
14 Addressing the standards in the context of Section 5.11 of the SGAT is confusing, and
15 may result in internal inconsistencies.

16 To the extent that WorldCom seeks to do something *other* than describe the
17 applicable standards for UNEs and interconnection, then it becomes unclear what
18 WorldCom's intent actually is. For example, if WorldCom's intent is to create obligations
19 for Qwest -- or rights for the CLECs -- that are additional to the performance standards
20 stated elsewhere in the SGAT, then WorldCom misunderstands the warranty concept.
21 A warranty typically applies to goods, and the warranty itself is a statement of fact (or a

1 promise) regarding the quality or character of the goods sold. None of the proposals
2 that WorldCom has made has anything to do with warranties, properly understood.

3 Finally, as Qwest has discussed in the context of other provisions of the SGAT,
4 there is no basis in law for the "warranty" provisions WorldCom proposes. WorldCom
5 misconstrues the proper standards for UNEs, interconnection, and the other services
6 provided. However, Qwest will not address these issues again in the present context.
7 Rather, WorldCom's language should simply be rejected because it is at best
8 superfluous, and at worst inconsistent with the other provisions of the SGAT.

9 Based on the above, the new Section 5.11.1 is as follows:

10 5.11.1 ~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS~~
11 ~~AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS~~
12 ~~MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY,~~
13 ~~EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO~~
14 ~~WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A~~
15 ~~PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES~~
16 ~~PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.~~
17 Except as expressly set forth in this agreement, the Parties agree that
18 neither Party has made, and that there does not exist, any warranty,
19 express or implied, including but not limited to warranties of
20 merchantability and fitness for a particular purpose and that all products
21 and services provided hereunder are provided "as is," with all faults.

22 **L. Section 5.12 Assignment**

23 Both WorldCom and AT&T have addressed the assignment provision. Qwest
24 believes that Section 5.12 can be modified to address their concerns. The following
25 reflects language that AT&T, WorldCom and Qwest have agreed to through discussions
26 in previous workshops. The revised Section 5.12 would read as follows:

1 5.12.1 Neither Party may assign or transfer (whether by operation
2 of law or otherwise) this Agreement (or any rights or obligations
3 hereunder) to a third party without the prior written consent of the other
4 Party. Notwithstanding the foregoing, either Party may assign or transfer
5 this Agreement to a corporate affiliate or an entity under its common
6 control without the consent of the other Party.; ~~however, if CLEC's~~
7 ~~assignee or transferee has an Interconnection agreement with Qwest, no~~
8 ~~assignment or transfer of this Agreement shall be effective without the~~
9 ~~prior written consent of Qwest. Such consent shall include appropriate~~
10 ~~resolutions of conflicts and discrepancies between the assignee's or~~
11 ~~transferee's Interconnection agreement and this Agreement. Any~~
12 attempted assignment or transfer that is not permitted is void ab initio.
13 Without limiting the generality of the foregoing, this Agreement shall be
14 binding upon and shall inure to the benefit of the Parties' respective
15 successors and assigns.

16 5.12.2 ~~Without limiting the generality of the foregoing subsection,~~
17 ~~any merger, dissolution, consolidation or other reorganization of CLEC, or~~
18 ~~any sale, transfer, pledge or other disposition by CLEC of securities~~
19 ~~representing more than fifty percent (50%) of the securities entitled to vote~~
20 ~~in an election of CLEC's board of directors or other similar governing~~
21 ~~body, or any sale, transfer, pledge or other disposition by CLEC of~~
22 ~~substantially all of its assets, shall be deemed a transfer of control. If any~~
23 ~~entity, other than CLEC, involved in such merger, dissolution,~~
24 ~~consolidation, reorganization, sale, transfer, pledge or other disposition of~~
25 ~~CLEC has an Interconnection agreement with Qwest, the Parties agree~~
26 ~~that only one agreement, either this Agreement or the Interconnection~~
27 ~~agreement of the other entity, will remain valid. All other Interconnection~~
28 ~~agreements will be terminated. The Parties agree to work together to~~
29 ~~determine which Interconnection agreement should remain valid and~~
30 ~~which should terminate. In the event the Parties cannot reach agreement~~
31 ~~on this issue, the issue shall be resolved through the Dispute Resolution~~
32 ~~process contained in this Agreement. Intentionally Left Blank~~

33 5.12.3 Nothing in this section is intended to restrict the CLEC's
34 rights to opt into Interconnection Agreements under Section 252(i) of the
35 Act.

36 M. Section 5.13 Default

37 Since AT&T, XO and WorldCom have not filed any testimony regarding this
38 section, it should be retained.

1 **N. Section 5.14 Disclaimer of Agency**

2 Since AT&T, XO and WorldCom have not filed any testimony regarding this
3 section, it should be retained.

4 **O. Section 5.15 Severability**

5 Like many of its other proposals, WorldCom proposes language to replace
6 Section 5.15 of the SGAT, the provision governing severability, without explaining why
7 the SGAT language should be replaced or even explaining how its proposal differs from
8 the SGAT language. Nevertheless, I have reviewed WorldCom's proposal and have
9 determined that the SGAT language is preferable to WorldCom's proposed language.
10 WorldCom's proposed language is as follows:

11 Section 29. Severability

12 29.1 Subject to Section [2] of this Part A, if any part of this Agreement is
13 held to be invalid for any reason, such invalidity will affect only the portion
14 of this Agreement which is invalid. In all other respects this Agreement
15 will stand as if the invalid provision had not been a part of it, and the
16 remainder of this Agreement will remain in full force and effect.

17 Qwest's SGAT language regarding severability states:

18 5.15.1 In the event that any one or more of the provisions contained
19 herein shall for any reason be held to be unenforceable or invalid in any
20 respect under law or regulation, the Parties will negotiate in good faith for
21 replacement language as set forth herein. If any part of this Agreement is
22 held to be invalid or unenforceable for any reason, such invalidity or
23 unenforceability will affect only the portion of this Agreement which is
24 invalid or unenforceable. In all other respects, this Agreement will stand as
25 if such invalid or unenforceable provision had not been a part hereof, and
26

1 the remainder of this Agreement shall remain in full force and effect.
2

3 The material difference between WorldCom's language and the SGAT is
4 WorldCom's omission of the requirement that the parties negotiate a replacement
5 provision for a provision that has been declared invalid or unenforceable. It makes
6 sense to include such a provision. If a significant portion of the SGAT, such as the
7 portion governing access to unbundled network elements, is declared invalid, it is in the
8 parties' mutual interest to negotiate in good faith a replacement provision. Although
9 WorldCom includes a renegotiation provision in its Section 2.2 titled "Regulatory
10 Approvals," that provision relates only to portions of the SGAT that are made unlawful
11 because of a change in the governing law. Qwest's SGAT language in Section 5.15.1 is
12 broader than that language and includes invalidation of a provision for any reason.
13 Because WorldCom's proposed language is unnecessarily narrow, it should be rejected.

14 **P. Section 5.16 Nondisclosure**

15 Both AT&T and WorldCom suggest several changes to Section 5.16, which
16 governs nondisclosure of confidential and proprietary information. I will address AT&T's
17 specific proposed changes first.

18 **1. AT&T's Suggested Changes**

19 **Section 5.16.1.** AT&T suggests including "business or marketing plans" as
20 information that need not be marked confidential or proprietary in order to be subject to
21 the protections from disclosure under Section 5.16. This suggestion is troublesome for

1 several reasons. First, AT&T does not provide a definition of the term "business or
2 marketing plan." Absent a title such as "business plan," it could be difficult to tell
3 whether a document is, in fact, a business plan. The term may mean different things to
4 different people and could cause more problems than it would resolve. Second, it
5 makes more sense to leave it up to the supplying party to mark such plans as
6 "confidential" or "proprietary." To the extent that it is even necessary to supply a
7 "business or marketing plan" to perform under the agreement, it is highly unlikely that
8 the supplying party would fail to mark the plan "confidential" or "proprietary." Indeed, it
9 seems that a business or marketing plan is the *first* thing a CLEC or ILEC will recognize
10 as proprietary before providing it to a competitor. If the supplying party inadvertently
11 fails to mark the plan "confidential" or "proprietary," Section 5.16.1 states that a
12 supplying party may designate information as "confidential" or "proprietary" within ten
13 days after disclosure of that information.

14 This leads me to AT&T's second proposed change to Section 5.16.1. AT&T
15 would add a provision that would allow a party that inadvertently discloses proprietary
16 information to correct that unintentional disclosure within thirty days. AT&T proposes
17 this language "to address the potential situation where one Party fails to identify
18 information as Proprietary at the time of disclosure or within 10 days after an *oral*
19 disclosure." AT&T Comments at page 50 (emphasis added). AT&T's proposal is
20 apparently based on a misreading of Section 5.16.1. The ten-day grace period does not
21 apply only to oral disclosures. Rather, it applies to "[a]ll information . . . (iii)
22 communicated and declared to the receiving Party at the time of delivery, or by written

1 notice given to the receiving Party within ten (10) calendar days after delivery, to be
2 "Confidential" or "Proprietary" . . ." Ten days is a reasonable amount of time to allow
3 for designation of information as "confidential" or "proprietary." The more time that
4 elapses between the disclosure and the designation as proprietary, the more difficult
5 and potentially expensive it is to implement the protections required by the SGAT.
6 Therefore, AT&T's concerns are already adequately addressed by the SGAT, and there
7 is no reason to adopt AT&T's proposed language.

8 **Section 5.16.3.** AT&T suggests adding language to this provision that states
9 that the protections afforded to proprietary information are "In addition to any
10 requirements imposed by Applicable Law, including, but not limited to, 47 U.S.C. §222."
11 In addition, AT&T proposes changes that specifically list who may access proprietary
12 information and under what circumstances that access may occur. For example, AT&T
13 proposes that the party that wishes to disclose proprietary information to third party
14 agents or consultants must execute a mutual written agreement with the disclosing
15 party. AT&T does not explain why it believes that these changes are necessary.

16 There is no reason to adopt AT&T's proposed language. The SGAT already
17 limits the use and dissemination of proprietary information. The SGAT language is
18 modeled upon Section 222 of the Act, 47 U.S.C. §222, which contains Congress'
19 express direction regarding protection of customer and carrier information. AT&T
20 provides no compelling reason, indeed no reason at all, to modify the SGAT. Therefore,
21 I see no need to change the SGAT, and I believe that AT&T's proposed changes should
22 not be adopted.

1 **Section 5.16.5.** The SGAT contains a provision that allows a party to disclose
2 factual information about its network and telecommunications services on or connected
3 to its network to regulatory agencies, as long as "any confidential obligation is
4 protected." AT&T would broaden this provision to allow a party to disclose information
5 about its own network, as well as the proprietary information of the other party, in
6 various administrative, judicial, and investigative forums. Qwest is willing to adopt
7 AT&T's proposed changes and revise Section 5.16.5 as follows:

8 5.16.5 Nothing herein is intended to prohibit a Party from supplying
9 factual information about its network and Telecommunications Services on
10 or connected to its network to regulatory agencies including the Federal
11 Communications Commission and the Commission so long as any
12 confidential obligation is protected. In addition, in Section 5.18.2, either
13 Party shall have the right to disclose Proprietary Information to any
14 mediator, arbitrator, state or federal regulatory body, the Department of
15 Justice or any court in the conduct of any proceeding arising under or
16 relating in any way to this Agreement or the conduct of either Party in
17 connection with this Agreement, including without limitation the approval of
18 this Agreement, or in any proceedings concerning the provision of
19 interLATA services by Qwest that are or may be required by the Act. The
20 Parties agree to cooperate with each other in order to seek appropriate
21 protection or treatment of such Proprietary Information pursuant to an
22 appropriate protective order in any such proceeding.

23
24 **Proposed Section 5.16.7.** AT&T proposes adding a new section to Section 5.16
25 that is devoted to forecasts. The only rationale offered by AT&T is that forecasts are
26 "particularly sensitive" and that AT&T's proposed language addresses "certain
27 concerns" that CLECs have previously raised regarding forecasts. AT&T's Comments
28 at page 52. Qwest has addressed those concerns. Section 7.2.2.8.12 of the SGAT
29 addresses confidentiality of forecasts in the interconnection context. Thomas R.

1 Freeberg addressed interconnection forecasting generally and the confidentiality of
2 interconnection forecasts specifically in his supplemental testimony of May 16, 2001.
3 Similarly, Section 8.4.1.4.1 also addresses the confidentiality of collocation forecasting.
4 Margaret Bumgarner addressed collocation forecasting generally and the confidentiality
5 of collocation forecasting specifically in her supplemental testimony of May 16, 2001.
6 This issue has been resolved to the satisfaction of the parties in different workshops for
7 different provisions of the SGAT. AT&T's concerns are also addressed by section 222
8 of the Act. Therefore, it is inappropriate to consider this issue in this workshop or in this
9 part of the SGAT.

10 **Proposed Section 5.16.8.** AT&T suggests that the SGAT include a provision
11 expressly allowing a party to seek equitable relief to enforce the confidentiality
12 obligations. Qwest recognizes that these clauses are typical in commercial contracts
13 and is willing to adopt AT&T's suggested language with two exceptions. First, it is
14 inappropriate to agree prospectively that a party "*would* be irreparably injured by a
15 breach of this Agreement." Rather, Qwest would agree that a party "*could* be
16 irreparably injured by a breach of this Agreement." Qwest would want the opportunity to
17 address both (a) whether the information claimed to be "proprietary" really was and (b)
18 whether the party was in fact irreparably injured. Second, AT&T intended this clause to
19 protect the confidentiality obligations; therefore, it should be expressly limited to
20 equitable relief for breach of the confidentiality obligations of the SGAT. Accordingly,
21 Qwest agrees to revise the SGAT to include the following new provision, renumbered
22 Section 5.16.7:

1 5.16.7 Each Party agrees that the disclosing Party could be
2 irreparably injured by a breach of the confidentiality obligations of this
3 Agreement by the receiving Party or its representatives and that the
4 disclosing Party shall be entitled to seek equitable relief, including
5 injunctive relief and specific performance, in the event of any breach of the
6 confidentiality provisions of this Agreement. Such remedies shall not be
7 deemed to be the exclusive remedies for a breach of the confidentiality
8 provisions of this Agreement, but shall be in addition to all other remedies
9 available at law or in equity.

10 **2. WorldCom's Proposed Replacement Language**

11
12 In its testimony, WorldCom raises only a single issue with Section 5.16 of the
13 SGAT: WorldCom complains that the SGAT does not specifically identify who may
14 access confidential information. As usual, however, WorldCom does not limit its
15 proposed language to that issue. Rather, WorldCom offers a *complete* replacement of
16 Section 5.16 of the SGAT. WorldCom's "solution" of a discrete alleged problem by
17 throwing out the entire section that contains that purported problem is no solution at all.
18 As I stated earlier, WorldCom's tactic of wholesale replacement of SGAT provisions
19 without any support or apparent rationale other than the mere fact that such provisions
20 are contained in WorldCom's "model interconnection agreement" is contrary to the
21 purpose and spirit of these proceedings.

22 Notwithstanding, I have reviewed WorldCom's proposal and determined that only
23 WorldCom's proposed Section 21.3, which I discuss below, should be adopted in the
24 SGAT. Otherwise, there is no reason to replace Section 5.16, or any part of it, with any
25 of WorldCom's proposed language. I address certain portions of each of WorldCom's
26 proposed sections below but, in the interests of administrative efficiency, I do not

1 address every dispute that Qwest has with every portion of WorldCom's proposed
2 language. Rather, Qwest believes it is incumbent upon WorldCom to provide
3 compelling reasons to replace SGAT language, which WorldCom has not done.

4 **WorldCom Section 21.1.** WorldCom's definition of "confidential information" is
5 unacceptable for the following reasons:

- 6 • There is no requirement in WorldCom's proposed language that the disclosing
7 party even mark information "confidential" or "proprietary." Although Qwest is
8 adept at identifying proprietary information, it is not clairvoyant, and the
9 burden should not fall on the recipient to identify proprietary information in
10 every instance of disclosure. The disclosing party must bear some
11 responsibility for making information "confidential" or "proprietary." Indeed,
12 this obligation becomes even more important when considering some of the
13 other changes suggested by WorldCom. For example, WorldCom's proposed
14 language would purportedly protect confidential or proprietary information of a
15 third party as well as information disclosed or otherwise obtained "incidental
16 to the performance of this Agreement . . ." Exhibit MWS-2, page 30. Absent
17 marking of such information, this language would require the receiving party
18 to assess the confidentiality of information that is not the other party's
19 information and of all information disclosed, whether or not it is obviously in
20 connection with the performance of the Agreement. WorldCom's language
21 would place unwarranted responsibility on the receiving party.
- 22 • Similarly, WorldCom's language that information is confidential and the
23 recipient is liable for breach of the agreement if it discloses information that
24 "should reasonably have been understood by the Recipient because of
25 legends or other markings, the circumstances of disclosure or the nature of
26 the information itself, to be proprietary . . ." unreasonably places the burden

1 on the recipient instead of the disclosing party, where it belongs. Exhibit
2 MWS-2, page 30.

- 3 • WorldCom's list of specific pieces of information constituting confidential
4 information is so broad as to be unworkable. As just one example, WorldCom
5 would add "information that reflects, describes, or otherwise quantifies the
6 volume of services purchased under this Agreement." Exhibit MWS-2, page
7 30. Again, WorldCom has provided no reason why this broad language
8 should replace the specific, detailed definition of confidential information in
9 the SGAT. The remainder of proposed Section 21.1 is similarly overbroad.

10
11 **WorldCom Section 21.1.1.** This proposed section addresses the use and
12 disclosure of confidential information. Section 5.16.3 also addresses the use and
13 disclosure of confidential information, and WorldCom has provided no reason why its
14 overly broad language should replace the SGAT language.

15 **WorldCom Section 21.1.2.** WorldCom's proposed language would prohibit retail
16 employees, affiliates, or independent contractors from accessing confidential
17 information. As I stated above, this topic is the subject of Section 222 of the Act,
18 47 U.S.C. §222. Federal law already outlines the protective measures that must be
19 taken to ensure that wholesale confidential information is not improperly used and
20 disclosed. WorldCom has provided no reason to deviate from federal law and the
21 SGAT, and there is none.

22 **WorldCom Section 21.1.3.** This proposed language would provide exemptions
23 from the restrictions on the use and disclosure of confidential information. Certain

1 exemptions are virtually identical to the exemptions contained in Section 5.16.4 of the
2 SGAT. Because WorldCom provides no reason why its language should replace
3 substantially similar SGAT language, and Qwest sees no reason why it should adopt
4 WorldCom's language, Qwest declines to revise its SGAT. Further, WorldCom omits
5 several important exemptions, such as: (1) independent development of proprietary
6 information by an agent or contractor of the recipient (SGAT Section 5.16.4(d)); (2)
7 disclosure to a third person by the disclosing party without similar restrictions on such
8 third person's rights (SGAT Section 5.16.4(e)); and (3) approval for release by written
9 authorization of the disclosing party (SGAT Section 5.16.4(f)). These are standard
10 exemptions and are important to protect the rights of both the recipient and the
11 disclosing party. AT&T does not object to these exemptions, so Qwest sees no reason
12 to adopt WorldCom's language.

13 **WorldCom Section 21.1.4.** This proposed provision outlines the procedures the
14 parties would follow if one of them is required to disclose confidential information. This
15 topic is covered by Section 5.16.5, which I discuss above. Therefore, there is no reason
16 to adopt WorldCom's proposal.

17 **WorldCom Section 21.1.5.** Qwest has no objection to including an equitable
18 relief provision to enforce the confidentiality obligations in the SGAT. However, the
19 language suggested by AT&T, which I describe above, is preferable to the language
20 proposed by WorldCom because it is more representative of typical equitable relief
21 provisions in commercial contracts. In contrast, WorldCom's language would

1 purportedly allow a party to seek equitable relief for threatened breaches. In my
2 experience, this is not a typical part of equitable relief provisions and may, in fact, be
3 unenforceable because no disclosure has taken place. Further, WorldCom's proposal
4 would allow a party to seek equitable relief "without the necessity of posting a bond."
5 Exhibit MWS-2, page 33. Bonds are integral parts of injunctive proceedings. In the
6 event that a party seeks and obtains an injunction that is later determined to be
7 wrongful, a bond is necessary to ensure that the party that has been wrongfully enjoined
8 is adequately compensated for the wrongful act. Therefore, the language proposed by
9 AT&T is preferable to WorldCom's proposal.

10 **WorldCom Section 21.2.** WorldCom's proposal would prohibit a receiving party
11 from using or disclosing for marketing purposes, "or any purpose other than performing
12 under this Agreement," information "which would constitute CPNI if in the possession of
13 the Disclosing Party." This prohibition would apply even if the receiving party has
14 authorization from a "third-party concerning CPNI that relates to the third party's
15 relationship with the Disclosing Party." Again, WorldCom seeks to deviate from and add
16 to the obligations and restrictions imposed by Section 222 of the Act without providing
17 any justification. WorldCom bears the burden of proving that the SGAT language is
18 insufficient, and it has not done so. There is simply no need to adopt WorldCom's
19 language.

20 **WorldCom Section 21.3.** This proposal states that, except as otherwise
21 provided, the nondisclosure section does not limit a party's rights with respect to its own

1 confidential information or its obligations under Section 222 of the Act. Qwest agrees
2 that nothing in the SGAT affects either party's rights or obligations regarding its own
3 proprietary information or under Section 222 of the Act. Indeed, the SGAT language is
4 consistent with Section 222. Because Section 222 guides the parties' conduct, there is
5 no need to include the phrase "except as otherwise provided." Therefore, Qwest is
6 willing to agree to revise the SGAT to include a new provision as follows:

7 5.16.8. Nothing herein should be construed as limiting either Party's rights
8 with respect to its own Proprietary Information or its obligations with
9 respect to the other Party's Proprietary Information under Section 222 of
10 the Act.

11
12 **WorldCom Section 21.4.** This provision addresses the return or destruction of
13 proprietary information. This topic is already covered in Section 5.16.1 and 5.16.2 of
14 the SGAT, and WorldCom provides no rationale for adopting its language in place of the
15 SGAT language. Notably, AT&T does not suggest any changes to the SGAT language
16 on this issue, and there is no apparent reason to adopt WorldCom's language.

17 **WorldCom Section 21.5.** This proposal states that the confidential information
18 provisions "shall survive any expiration or earlier termination of this Agreement."
19 Section 5.17 of the SGAT governs survival of the obligations of a party regarding
20 proprietary information. WorldCom has not borne the burden of explaining why the
21 SGAT provision is insufficient and its language is preferable. In fact, there is no reason
22 to adopt WorldCom's language. AT&T has not suggested any changes regarding the
23 survivability of confidentiality obligations, and there is none.

1 **Q. Section 5.17 Survival**

2 Section 5.17 addresses "survival" of the SGAT. AT&T suggests that the
3 language of Section 5.17 be clarified to account for the possibility that the SGAT expires
4 (or terminates) either before or after the two-year term of the Agreement. Qwest
5 concurs with this proposal. WorldCom's proposal is substantively identical to Qwest's
6 SGAT 5.17, as revised. Accordingly, the current SGAT may be revised as follows:

7 5.17.1 Any liabilities or obligations of a Party for acts or omissions
8 prior to the termination or expiration of this Agreement~~completion of the~~
9 ~~two-year term~~, and any obligation of a Party under the provisions
10 regarding indemnification, Confidential or Proprietary Information,
11 limitations of liability, and any other provisions of this Agreement which, by
12 their terms, are contemplated to survive (or to be performed after)
13 termination of this Agreement, shall survive cancellation or termination
14 hereof.

15 **R. Section 5.18 Dispute Resolution**

16 Section 5.18 addresses dispute resolution. In order to "expedite" the dispute
17 resolution process, AT&T proposes a 12-page, single-spaced replacement for Section
18 5.18.

19 AT&T does not identify the key respects in which its proposal differs from
20 Qwest's. However, the principal differences between the process outlined by AT&T and
21 Qwest's SGAT Section 5.18 are differences that make the AT&T process more, rather
22 than less, cumbersome than the Qwest process. For example, although both processes
23 incorporate a mechanism for informal dispute resolution prior to any more formal
24 process, the AT&T process requires the institution of an "Inter-Company Review Board"

1 for purposes of the "informal" process. The level of formality of the process outlined by
2 AT&T is likely to lengthen rather than shorten the dispute resolution process. Similarly,
3 both parties' proposals provide for arbitration of the dispute if informal dispute resolution
4 is unsuccessful. However, AT&T's process outlines detailed and burdensome
5 requirements for the arbitration process -- such as the provision that "[t]he Parties may
6 jointly interview, in person or by telephone, each of those [arbitrator] candidates not
7 stricken or challenged in accordance with the foregoing procedures." AT&T's
8 Comments, Exhibit E. This level of detailed process is not likely to lend itself to the
9 inexpensive and expeditious resolution of a dispute. Moreover, the detailed procedures
10 outlined by AT&T are unnecessary, because both AAA and J.A.M.S./Endispute provide
11 detailed procedural rules. The parties need not, in the context of an SGAT, develop
12 detailed procedures for the selection, replacement, duties and powers of arbitrators.

13 Other aspects of the process proposed by AT&T also make it more rather than
14 less cumbersome. For example, under the procedure AT&T proposes, the arbitrator's
15 decision is non-binding, and must be submitted to the Commission for review. This
16 initiates a new process of submission of statements regarding the arbitrator's decision
17 and determination by the Commission about whether to review the matter further. (In
18 addition to providing too much detail regarding the arbitration process, the AT&T
19 process also dictates the *Commission's* process while at the same time
20 underdetermining the flexibility of the dispute resolution process.)

1 The AT&T process also creates yet another process for "service-affecting"
2 disputes, using the J.A.M.S./Endispute "streamlined" arbitration rules rather than its
3 "comprehensive" arbitration rules. These "service affecting" disputes are disputes that
4 "directly affect the ability of a Party to provide uninterrupted, high quality service to its
5 Customers." AT&T's Comments, Exhibit E. Unfortunately, this alternative process is
6 made necessary only because AT&T's dispute resolution process is so cumbersome to
7 begin with. Under the Qwest Section 5.18 process, no *additional* alternative dispute
8 resolution process is necessary. Moreover, even under the streamlined process, the
9 arbitrator's decision is submitted to the Commission for further review.

10 In sum, AT&T's proposed dispute resolution provisions do not provide any
11 advantages over the process already outlined in Qwest's SGAT. To the contrary, the
12 process seems unduly cumbersome and time-consuming. The fact that AT&T's
13 proposal must itself incorporate a separate "streamlined" version of the process strongly
14 suggests that AT&T's basic dispute resolution process is not very streamlined at all.

15 WorldCom likewise proposes replacement language for SGAT 5.18, commenting
16 only that "Qwest's dispute resolution language in Section 5.18 is inadequate and
17 incomplete. WorldCom's language is more complete and should be adopted."
18 However, WorldCom fails to state in what respect its language is "more complete" than
19 Qwest's. Indeed, WorldCom's proposed process is in many respects similar to that
20 contained in the Qwest SGAT, except that the WorldCom language would require the
21 Parties to seek resolution of disputes at the Commission level before recourse to

1 arbitration. This approach appears to be backwards, since it requires Commission
2 intervention in a dispute before the parties have fully utilized alternative dispute
3 resolution. Moreover, the process described by WorldCom does not always permit the
4 Commission to resolve the matters that are presented to it. It apparently permits the
5 parties to file certain claims for arbitration at any time after the claims have been
6 submitted to the Commission -- whether or not the Commission has resolved the claims.
7 WorldCom's process therefore appears to create incentives for the parties to waste the
8 Commission's resources.

9 In sum, WorldCom's proposed replacement language for SGAT 5.18 should not
10 be adopted, largely because it does not create the appropriate incentives for alternative
11 dispute resolution.

12 Both AT&T and WorldCom suggest the use of J.A.M.S./Endispute rather than the
13 AAA, which is the tribunal called for by Section 5.18. Because there may be
14 circumstances in which the parties would wish to use J.A.M.S./Endispute rather than
15 AAA, Qwest proposes additional language stating that, by mutual agreement of the
16 parties, the arbitration may be conducted by J.A.M.S./Endispute rather than by AAA.

17 Finally, AT&T specifically objects to Qwest's SGAT language requiring that the
18 discussions and correspondence between the parties for purpose of negotiating the
19 resolution of the dispute be treated as confidential information that is not admissible in
20 subsequent proceedings. This provision, which is consistent with Rule 408 of the
21 Federal Rules of Evidence ("Evidence of conduct or statements made in compromise

1 negotiations is likewise not admissible."), serves to facilitate negotiations. Contrary to
2 AT&T's suggestion, the confidentiality provision does not make negotiations "less
3 productive," nor is there any basis for asserting that the provision somehow violates
4 "CLECs' rights." Accordingly, the provision regarding the confidentiality of the parties'
5 discussions should be retained.

6 With the modification suggested above, Section 5.18.3 is as follows:

7 If the vice-presidential level representatives have not reached a resolution of the
8 Dispute within thirty (30) calendar days after the matter is referred to them, then
9 either Party may demand that the Dispute be settled by arbitration. Such an
10 arbitration proceeding shall be conducted by a single arbitrator, knowledgeable
11 about the telecommunications industry unless the Dispute involves amounts
12 exceeding one million (\$1,000,000) in which case the proceeding shall be
13 conducted by a panel of three arbitrators, knowledgeable about the
14 telecommunications industry. The arbitration proceedings shall be conducted
15 under the then-current rules of the American Arbitration Association ("AAA").
16 Alternatively, by agreement of the Parties the arbitration may be conducted
17 pursuant to J.A.M.S./Endispute procedural rules. The Federal Arbitration Act, 9
18 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute.
19 All expedited procedures prescribed by the AAA rules shall apply. The
20 arbitrator's award shall be final and binding and may be entered in any court
21 having jurisdiction thereof. Each Party shall bear its own costs and attorneys'
22 fees, and shall share equally in the fees and expenses of the arbitrator. The
23 arbitration proceedings shall occur in the Denver, Colorado metropolitan area or
24 in another mutually agreeable location. It is acknowledged that the Parties, by
25 mutual, written agreement, may change any of these arbitration practices for a
26 particular, some, or all Dispute(s).

27 XO's only comment on Section 5.18 is that the language, in XO's view, does not
28 provide the parties with the option of seeking resolution of a dispute from the
29 Commission. XO Comments at pages 18 to 19. XO is simply incorrect in its reading of
30 the language. Section 5.18 clearly provides that the parties "may" demand that the
31 dispute be settled by arbitration; it does not limit the parties to dispute resolution by

1 arbitration. Accordingly, Section 5.18 accommodates XO's concern that it not be
2 precluded from seeking resolution of a dispute from the Commission.

3 **S. Section 5.19 Controlling Law**

4 AT&T suggests that Section 5.19 be revised to reference "applicable federal law"
5 instead of "the terms of the Act" as controlling law. This replacement, which would
6 apply the entire body of federal law, including the Act as well as FCC rules and
7 decisions, is reasonable. Qwest agrees to revise Section 5.19 as follows:

8 5.19.1 This Agreement is offered by Qwest and accepted by CLEC
9 in accordance with ~~the terms of the Act~~applicable federal law and the
10 State law of Washington. It shall be interpreted solely in accordance with
11 ~~the terms of the Act~~applicable federal law and the State law of
12 Washington.

13 WorldCom also offers changes to Section 5.19. WorldCom offers, without
14 explanation or reason, the "governing law" provision of its "model interconnection
15 agreement." WorldCom would replace Section 5.19 with the following provision:

16 7.1 This Agreement will be governed by and construed in accordance with
17 the Act and the FCC's Rules and Regulations, except insofar as state law
18 may control any aspect of this Agreement, in which case the domestic laws
19 of the {State of _____}, without regard to its conflicts of laws principles, will
20 govern.
21

22 The language proposed by AT&T is preferable to WorldCom's proposed change.
23 WorldCom's proposed language could introduce unnecessary ambiguity and conflict in
24 determining when state law controls an aspect of the Agreement. Further, WorldCom's

1 suggested changes are unnecessary in light of the explicit reference to both federal and
2 state law in Section 5.19 as revised. There is no good reason to adopt WorldCom's
3 proposed language.

4 **T. Section 5.20 Responsibility for Environmental Contamination**

5 Section 5.20 governs issues relating to environmental liability. WorldCom
6 proposes replacement language for the provision. However, Sections 27.1 and 27.2 are
7 substantively identical to SGAT 5.20. The SGAT language should be retained because
8 it is more streamlined. The only substantive difference between the language proposed
9 by WorldCom and the language of SGAT 5.20 is WorldCom's Section 27.3. WorldCom
10 proposes additional language requiring CLECs to comply with applicable law in the
11 presence of suspected asbestos, disclaiming CLEC liability in connection with such
12 asbestos, and requiring Qwest to advise CLECs of potential issues relating to asbestos.
13 The identical language appears in WorldCom's agreement with Verizon in
14 Massachusetts. WorldCom's proposed additional language regarding asbestos is
15 acceptable to Qwest. Accordingly, the following SGAT provision may be added:

16 5.20.2 In the event any suspect materials within Qwest-owned,
17 operated or leased facilities are identified to be asbestos containing,
18 CLEC will ensure that to the extent any activities which it undertakes in the
19 facility disturb such suspect materials, such CLEC activities will be in
20 accordance with applicable local, state and federal environmental and
21 health and safety statutes and regulations. Except for abatement activities
22 undertaken by CLEC or equipment placement activities that result in the
23 generation of asbestos-containing material, CLEC does not have any
24 responsibility for managing, nor is it the owner of, nor does it have any
25 liability for, or in connection with, any asbestos-containing material. Qwest
26 agrees to immediately notify CLEC if Qwest undertakes any asbestos

1 control or asbestos abatement activities that potentially could affect CLEC
2 personnel, equipment or operations, including, but not limited to,
3 contamination of equipment.

4 **U. Section 5.21 Notices**

5 Both WorldCom and AT&T suggest changes to Section 5.21, which governs
6 notices. AT&T's suggested changes, which are shown below, add two optional
7 methods of service of notices and require a change of address or contact information to
8 be given in accordance with Section 5.21. Qwest believes that AT&T's changes are
9 reasonable and is willing to revise the SGAT as suggested by AT&T. WorldCom also
10 suggests adding personal service as a valid method of giving notice under the SGAT as
11 long as the party giving notice by personal service obtains a receipt that such service
12 was made. WorldCom's suggested change also makes sense. Therefore, Qwest is
13 willing to revise the SGAT as follows:

14 5.21.1 Any notices required by or concerning this Agreement
15 shall be in writing and shall be sufficiently given if delivered
16 personally, delivered by prepaid overnight express service, or sent
17 by certified mail, return receipt requested, to Qwest and CLEC at
18 the addresses shown below:

19 Qwest Corporation
20 Director Interconnection Compliance
21 1801 California, Room 2410
22 Denver, CO 80202

23 With copy to:
24 Qwest Attention:
25 Corporate Counsel, Interconnection
26 1801 California Street, ~~54st~~ 49th Floor
27 Denver, CO 80202

28 and to CLEC at the address shown below:

1 Name:

2 _____

3 _____

4 _____

5 If personal delivery is selected to give notice, a receipt
6 acknowledging such delivery must be obtained. Each Party shall
7 inform the other of any change in the above contact person and/or
8 address using the method of notice called for in this Section 5.21.
9

10 The only other difference with WorldCom's proposal is that it would require *any*
11 communication made "under" the SGAT, not just "notices," to be made in writing
12 pursuant to Section 5.21. This provision is simply too broad. When an ILEC and a
13 CLEC enter into an interconnection agreement, they must communicate on a frequent
14 basis – sometimes as often as daily. It would unnecessary and administratively
15 burdensome to require all communications to be made in writing pursuant to Section
16 5.21. Accordingly, Qwest is unwilling to accept WorldCom's proposed language.

17 **V. Section 5.22 Responsibility of Each Party**

18 Since AT&T, XO and WorldCom have not filed any testimony regarding this
19 section, it should be retained.

20 **W. Section 5.23 No Third Party Beneficiaries**

21 Once again, WorldCom proposes language to replace the SGAT language
22 without explaining why WorldCom's language is preferable to the SGAT language. It

1 appears that WorldCom included the replacement language simply because its "model
2 interconnection agreement" contains such a provision, regardless of the fact that
3 WorldCom's language is actually very similar to the SGAT language. I would like to
4 reiterate my prior opinion that this indiscriminate replacement is contrary to the purpose
5 of these proceedings, which is to consider the language of Qwest's SGAT, not one
6 CLEC's model interconnection agreement. Nevertheless, because the two provisions
7 are substantially similar, Qwest agrees to revise its SGAT to accommodate WorldCom's
8 suggested change as follows:

9 5.23.1 The provisions of this Agreement are for the benefit of the
10 Parties and not for any other Person. Unless specifically set forth herein,
11 ~~†~~This Agreement does will not provide and shall not be construed to
12 ~~provide any Person not a Party to this Agreement third parties~~ with any
13 remedy, claim, liability, reimbursement, ~~cause~~claim of action, or other
14 ~~privilege~~right in excess of those existing by reference in this Agreement.

15 **X. Section 5.24 Referenced Documents**

16 WorldCom argues that Section 5.24 "suffers from the same problems discussed
17 in regard to Section 2, namely Qwest's apparent unilateral ability to modify documents
18 incorporated into the SGAT." WorldCom Comments at page 9. WorldCom suggests
19 deleting Section 5.24. Qwest's development and implementation of CICMP, which I
20 described in Section 2, have addressed WorldCom's concerns. Therefore, there is no
21 need to delete Section 5.24.

1 **Y. Section 5.25 Publicity**

2 XO asserts that Qwest's publicity provision is overly broad because it could
3 prevent a CLEC from making public statements about an action it might bring to enforce
4 the Agreement. Qwest does not intend to limit a party's ability to issue public
5 statements with respect to Commission or judicial proceedings. Qwest is willing to limit
6 this language along the lines proposed by XO:

7 5.25.1 Neither Party shall publish or use any publicity materials with
8 respect to the execution and delivery or existence of this Agreement
9 without the prior written approval of the other Party. Nothing in this
10 section shall limit a Party's ability to issue public statements with respect
11 to regulatory or judicial proceedings that it might initiate to enforce this
12 Agreement.

13
14 **Z. Section 5.26 Executed in Counterparts**

15 WorldCom proposes counter language on this section. Since Qwest can discern
16 no meaningful differences between WorldCom's proposal and the Qwest language,
17 Qwest is amenable to either.

18 **AA. Section 5.27 Compliance**

19 WorldCom proposes counter language for this section. Qwest does not object to
20 its Sections 6.1 and 6.2, which deal with complying with the law and obtaining
21 regulatory approvals. WorldCom's Section 6.3 is incorporated in Qwest's Section 2 and
22 will be addressed there. Its Section 6.4 may be problematic if the intent is that Qwest

1 has to obtain rights and privileges for WorldCom's placement of facilities related to such
2 things as subloop unbundling. In the UNE Remand Order, the FCC made it very clear
3 that it is WorldCom's obligations to obtain these rights. *In the Matter of Implementation*
4 *of the Local Competition Provisions of the Telecommunications Act of 1996*, Third
5 Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-
6 98, (rel. November 5, 1999) at ¶213. Also in the Competitive Networks Order, the FCC
7 made clear that "the access obligations of §224 apply when, as a matter of state law,
8 the utility owns or controls the right of way to the extent necessary to permit such
9 access." *In the Matter of Promotion of Competitive Networks in Local*
10 *Telecommunications Market*, First Report and Order and Further Notice of Proposed
11 Rulemaking, CC Docket No. 99-217 (rel. October 25, 2000) at ¶85.

12 **BB. Section 5.28 Compliance with CALEA**

13 Section 5.28 addresses the Communications Assistance for Law Enforcement
14 Act ("CALEA"). Neither AT&T nor WorldCom comments on this language. However,
15 WorldCom proposes language under the heading, "20.3, Law Enforcement Interface."

16 WorldCom's proposed language is out of place; issues relating to wiretaps are
17 addressed generally in Sections 11.35, 11.36, and 11.37 of the SGAT. The SGAT
18 specifically addresses "Law Enforcement Interface" in Section 11.35.

19 In any case, WorldCom's proposal to modify Section 11.35 is not acceptable
20 because it suggests that Qwest's obligations with respect to pen register, trap and trace,

1 wiretap or other lawful interception orders might extend to requests from the CLEC.
2 This is not the case. Qwest will respond to lawful orders to provide assistance to law
3 enforcement, but that assistance function does not extend to CLEC requests for
4 assistance, except as otherwise required by a lawful order.

5 **CC. Section 5.29 Cooperation**

6 Since AT&T, XO and WorldCom have not filed any testimony regarding this
7 section, it should be retained.

8 **DD. Section 5.30 Amendments**

9 Qwest agrees with WorldCom's position that this provision should be deleted
10 because it is covered in Section 1.7. Qwest is, however, unwilling to adopt WorldCom's
11 proposed language on Waivers because it is too restrictive. Qwest would not object to
12 adding AT&T's proposed language regarding going to dispute resolution after 60 days if
13 the parties are unable to reach agreement on a requested amendment. Qwest
14 proposes to add this provision as a new Section 1.7.2, which would read as follows:

15 1.7.2 Either Party may request an amendment to this Agreement at any
16 time by providing to the other Party in writing information about the desired
17 amendment and proposed language changes. If the Parties have not
18 reached agreement on the requested amendment within sixty (60)
19 calendar days after receipt of the request either Party may pursue
20 resolution of the amendment through the Dispute Resolution provisions of
21 this Agreement.

22 With the addition of new Section 1.7.2, Qwest proposes to delete Section 5.30:

1 ~~5.30.1 When this document is being used as an Interconnection~~
2 ~~agreement, it can only be amended in writing, executed by the duly~~
3 ~~authorized representatives of the Parties.~~

4 **EE. Section 5.31 Entire Agreement**

5 As in many cases WorldCom's proposed language uses terms which are not
6 used in the SGAT. Qwest would be agreeable to adding language that would refer to
7 Exhibits being included rather than Parts and Attachment. Most of the rest of the
8 WorldCom's proposal tracks closely with Qwest's. Modified Section 5.31 would read as
9 follows:

10 5.31.1 This Agreement, including all Exhibits and subordinate
11 documents attached to it or referenced within, all of which are hereby
12 incorporated herein, constitutes the entire agreement between Qwest and
13 CLEC and supersedes all prior oral or written agreements,
14 representations, statements, negotiations, understandings, proposals and
15 undertakings with respect to the subject matter hereof.

16 **FF. Section 5.32 Pick and Choose**

17 Qwest proposes to delete this section since it belongs in the template negotiation
18 agreement. Pick-and-choose is covered in Section 1.8.

19 WorldCom's proposed language for this section regarding amendments is
20 addressed in Section 1.7, Amendments, and that regarding change in law, in Section
21 2.2.

1 **GG. Section 5.____ Retention of Records**

2 AT&T proposes to add a new provision regarding retention of records. Not
3 surprisingly, AT&T does not propose that the requirement be reciprocal. To the
4 contrary, only Qwest must retain records under AT&T's plan. Moreover, the proposal is
5 extraordinarily vague and overbroad. Qwest supposedly must retain "information
6 relating to its performance under the Agreement." AT&T Comments at page 58.
7 Virtually all of Qwest's records might fall within this category. AT&T's proposal is
8 unacceptable to Qwest.

9 **SECTION 11 -- NETWORK SECURITY**

10 XO requests that Section 11.3 be reciprocal. Qwest agrees and proposes to
11 modify Section 11.3 to read as follows:

12 11.3 The ~~QwestParties'~~ telecommunications networks ~~is~~are part of the
13 national security network, and as such, ~~is~~are protected by federal law.
14 Deliberate sabotage or disablement of any portion of the underlying
15 equipment used to provide the network is a violation of federal statutes
16 with sever penalties, especially in times of national emergency or state of
17 war. ~~CLEC is~~The Parties are responsible for covering ~~it~~their employees
18 on such security requirements and penalties.

19 I have addressed some of WorldCom's comments to Section 11 in the
20 Introduction. WorldCom's proposed replacement should be rejected because it is
21 obsolete. In response to comments on the other sections, and to reflect agreements
22 reached with some of the other parties in previous workshops, Qwest proposes the
23 following changes to Section 11:

1 11.12 When working on Qwest ICDF Frames or in Qwest
2 equipment line-ups, Qwest and CLEC employees, agents and vendors
3 agree to adhere to Qwest quality and performance standards provided by
4 Qwest and as specified in this Agreement.

5 11.15 Qwest and CLEC ~~employees will shall~~ ensure adherence by
6 ~~its their~~ employees, agents and vendors to all Qwest environmental health
7 and safety regulations. This includes all fire/life safety matters, OSHA,
8 EPA, Federal, State and local regulations, including evacuation plans and
9 indoor air quality.

10 11.18 Qwest and CLEC's employees, agents and vendors ~~will shall~~
11 comply with Qwest Central Office fire and safety regulations, which
12 include but are not limited to, wearing safety glasses in designated areas,
13 keeping doors and aisles free and clean of trip hazards such as wire,
14 checking ladders before moving, not leaving test equipment or tools on
15 rolling ladders, not blocking doors open, providing safety straps and cones
16 in installation areas, using electrostatic discharge protection, and
17 exercising good housekeeping.

18 11.19 Smoking is not allowed in Qwest buildings, Wire Centers,
19 ~~and all or~~ other Qwest facilities. No open flames shall be permitted
20 anywhere within the buildings, Wire Centers or other facilities. Failure to
21 abide by this restriction will result in immediate denial of access for that
22 individual and will constitute a violation of the access rules, subjecting
23 CLEC to denial of unescorted access. Qwest shall provide written notice
24 within fifteen (15) calendar days of the hazardous work activity to CLEC
25 and such notice shall include: 1) identification of the hazardous work
26 activity, 2) identification of the safety regulation violated, and 3) date and
27 location of safety violation. In the event CLEC disputes any action Qwest
28 seeks to take or has taken pursuant to this provision, CLEC may pursue
29 immediate resolution by expedited **Dispute Resolution**.

30 11.22 Except as otherwise provided in this SGAT, CLEC's
31 employees, agents or vendors may not make any modifications,
32 alterations, additions or repairs to any space within the building or on the
33 grounds.

34 11.23 Qwest employees may request CLEC's employee, agent or
35 vendor to stop any work activity that in their reasonable judgment is a
36 jeopardy to personal safety or poses a potential for damage to the
37 building, equipment or services within the facility until the situation is
38 remedied. Qwest shall provide written notice within fifteen (15) calendar
39 days of the non-compliant work activity to CLEC and such notice shall
40 include: 1) identification of the non-compliant work activity, 2) identification

1 of the safety regulation violated, 3) date and location of safety violation,
2 and 4) remedy for safety violation. If such safety violations pose an
3 immediate threat to the safety of Qwest employees, interference with the
4 performance of Qwest's service obligations, or pose an immediate threat
5 to the physical integrity of Qwest's facilities, Qwest may perform such
6 work and/or take action as is necessary to correct the condition at CLEC's
7 expense. In the event CLEC disputes any action Qwest seeks to take or
8 has taken pursuant to this provision, CLEC may pursue immediate
9 resolution by expedited Dispute Resolution if CLEC fails to correct any
10 safety non-compliance within fifteen (15) calendar days of written notice,
11 or if such non-compliance cannot be corrected within fifteen (15) calendar
12 days of written notice of non-compliance, and if CLEC fails to take all
13 appropriate steps to correct as soon as reasonably possible, Qwest may
14 pursue immediate resolution by expedited Dispute Resolution.

15 11.25 CLEC's employees, agents or vendors outside the
16 designated CLEC access area or without proper identification will be
17 asked to vacate the Premises and Qwest Security will be notified.
18 Continued violations may result in termination of access privileges. Qwest
19 shall provide written notice within fifteen (15) calendar days of the security
20 violation to CLEC and such notice shall include: 1) identification of the
21 security violation, 2) identification of the security regulation violated, and 3)
22 date and location of security violation. In the event CLEC disputes any
23 action Qwest seeks to take or has taken pursuant to this provision, CLEC
24 may pursue immediate resolution by expedited Dispute Resolution.

25
26 **SECTION 12 -- ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)**

27 AT&T's questions regarding Qwest's Co-Provider Industry Change Management
28 Process ("CICMP") were covered in detail in James H. Allen's direct testimony of May
29 16, 2001. Mr. Allen also discussed the most recent version of Section 12, Access to
30 Operational Support Systems (OSS), in his testimony. Since then, however, Qwest has
31 made minor changes to Section 12, and Barbara Brohl and Barry Orrel are proposing
32 further revisions to this section. All of these are reflected in the Exhibit LBB-4.

1 **SECTION 17 -- BONA FIDE REQUEST PROCESS**

2 The Bona Fide Request ("BFR") process must be put in perspective when
3 responding to comments about its alleged deficiencies. As I stated in my direct
4 testimony, Qwest developed the BFR process to address those unique situations where
5 the SGAT does not already offer an interconnection service, access to an unbundled
6 network element, or an ancillary service. Qwest's SGAT addresses in detail multiple
7 unbundled elements, numerous collocation possibilities, and various forms of
8 interconnection, ancillary services, and resale issues. In Qwest's experience almost all
9 of a CLEC's needs are met by the number and diversity of these offerings. There are
10 157 CLECs certified in Washington. Since January 1, 2000, Qwest has received from
11 these CLECs only six BFR requests in Washington, none of which was submitted by
12 AT&T, WorldCom or XO. Against this background, I will address their comments.

13 WorldCom sweepingly asserts that Qwest's BFR timelines are "fraught with
14 unreasonable delays" but offers no substantive information as to why it believes that
15 any of the designated timelines are inappropriate. Qwest's timelines are shorter than
16 those of other RBOCs for performing similar tasks, as demonstrated by review of the
17 Web sites for Bell Atlantic, Bell South and SBC, whose 271 applications have been
18 approved:

19 **BellAtlantic (11/15/00)**

20 Acknowledgement: 10 business days

21 Preliminary Feasibility: 30 calendar days from initial receipt

22 Quote: 90 calendar days from initial receipt

1 **BellSouth (10/19/00)**

2 Acknowledgement: NA

3 Preliminary Feasibility: 25 business days from initial receipt

4 Quote: 50 business days from initial receipt

5 **SBC (5/08/01)**

6 Acknowledgment: 10 business days

7 Preliminary Analysis: 30 business days (denials are 20 business days)

8 Quote: 90 business days

9 **Qwest**

10 Acknowledgement: 2 business days from receipt

11 Preliminary Feasibility: 21 calendar days from initial receipt

12 Quote: 45 calendar days from preliminary feasibility

13

14 Qwest's timeline reflects its ongoing commitment to provide CLECs with a timely
15 analysis and response. The BFR process approved in most of Qwest's interconnection
16 agreements in Washington contains a timeline of 30 days from receipt for the
17 Preliminary Feasibility, with an additional 90 days for the Quote. Qwest has reduced
18 this timeline in its proposed language in the Washington SGAT to a Preliminary
19 Feasibility response in 21 days and a Quote in an additional 45 days.

20 It is important to note that the preliminary feasibility analysis is a dual analysis.
21 Since the BFR process is invoked when a CLEC requests that Qwest do something it
22 has not done before, Qwest must respond with two determinations. First, Qwest must
23 determine whether the request falls under the obligations of the Act, such that Qwest is
24 required to provide the requested UNE or service. Second, Qwest must perform a

1 network analysis to determine whether the request is technically feasible. Given the
2 requirement for this dual analysis and the reduction in the time Qwest has already made
3 for performance of its Preliminary Feasibility analysis, Qwest disagrees with
4 WorldCom's unsupported suggestion that this timeline be further reduced to 15 days.
5 The WorldCom proposal is especially unreasonable since it gives WorldCom 60
6 business days simply to accept the quote, cancel the BFR or seek Dispute Resolution,
7 but allows Qwest less than one-fourth that time to determine technical feasibility and
8 obligations under the Act.

9 In its proposed revisions to Section 17.2, WorldCom seeks a provision that
10 Qwest acknowledge receipt of a BFR request within 24 hours. WorldCom's proposed
11 paragraph 24.3 states: "Qwest shall acknowledge in writing such (Inquiry) BFR within
12 24 hours of receipt." Elsewhere in its testimony, WorldCom states that it has negotiated
13 with Qwest for an acknowledgement of receipt of request within 48 hours. While
14 WorldCom's language is somewhat confusing, Qwest has agreed in the Arizona
15 General Terms and Conditions Workshop to acknowledging receipt of a BFR request
16 within two business days rather than the 15 days found in most of Qwest's existing
17 interconnection agreements and will modify the SGAT language accordingly. Qwest
18 notes, however, that while Qwest is certainly willing to acknowledge receipt of the
19 application within two business days, Qwest may require additional information or
20 clarification during the course of evaluating the request. It may not always be clear
21 within the first two business days what technical information will be unclear or
22 incomplete to network or field personnel who determine feasibility. Until the people who

1 actually do the technical evaluation receive the BFR and begin their analysis, Qwest
2 may not always know if it needs additional information to perform the analysis properly.

3 WorldCom also seeks weekly updates on the status of the BFR. Qwest is
4 agreeable to providing such weekly status updates, if requested, and has agreed in
5 Arizona to modify the BFR section accordingly.

6 In Sections 17.4, 17.5, and 17.6, Qwest addresses the technical analysis aspect
7 of the BFR. WorldCom simply asserts without analysis or foundation that “this activity
8 should be completed within 15 calendar days, not 21.” WorldCom also simply asserts,
9 without more, that a price quote should also be completed within these 15 days. As I
10 previously stated, 15 days is simply not sufficient time to conduct a detailed technical
11 analysis as well as a legal analysis. It is certainly unreasonable to provide a quote for
12 new UNEs in that timeframe. Not only must the group that is most directly involved in
13 reviewing the request perform its technical analysis, but the request must then be
14 circulated to cross functional groups, such as switching or records maintenance, to
15 determine if it affects other parts of the company and requires additional changes to be
16 implemented in those departments. Moreover, the current WorldCom contract in
17 Washington on which WorldCom relies upon and quotes elsewhere in its testimony
18 provides Qwest 30 calendar days to perform a Preliminary Feasibility Analysis and 90
19 days to provide a quote.

20 Qwest has already offered in its proposed language to reduce the timeframes
21 from the 30 days now used in Washington to 21 days. WorldCom’s unsupported

1 statement that that 21 days should summarily be reduced to 15 days ignores the
2 realities of the work necessary to perform the process. Also, these are maximum
3 timeframes. Some BFRs are completed in less time and are provided to the CLEC
4 sooner. However, since each request is unique in its complexity and originality, some
5 require the full amount of the time allotted.

6 Section 17.7 provides for 45 days to prepare the price quote. This timeline must
7 remain for the reasons stated above. Qwest does, however, agree with WorldCom's
8 language as proposed in its paragraph 17.12, that "Qwest shall, to the extent possible,
9 utilize information from previously developed BFRs to shorten response timeframes."

10 WorldCom also asks that the BFR process be modified to include requests for
11 access to databases and/or network information. Qwest does not object to the use of
12 the BFR process for requests for unique, non-standard access to the commercial
13 databases that are offered as UNEs by Qwest. Examples of such databases are the
14 LIDB database or 800 database. (Qwest does not own or manage the number
15 portability database.) However, the BFR process is not the appropriate process for
16 access to databases such as Qwest's OSS systems, such as a CRIS billing system
17 database or network databases for trunks. Access to such internal databases is
18 handled through the IMA/EDI Interfaces and the CICMP process discussed in Barbara
19 Brohl's Rebuttal Testimony.

20 WorldCom opposes the requirements found in 17.2(g) and (h) that a CLEC
21 submit documentation to support its entitlement under the Act to a requested unbundled

1 network element. The documentation at issue, however, is grounded in the Act and the
2 UNE Remand Order, which prescribe specific tests for the unbundling of proprietary and
3 nonproprietary unbundled network elements. It is important for Qwest to obtain the
4 information necessary to apply these tests, because Qwest does not have to offer an
5 unbundled network element unless a CLEC meets these tests. While Qwest believes
6 that a CLEC should be willing to provide the documentation demonstrating that its
7 request for the UNE meets the tests specified under the Act, Qwest is willing to drop its
8 request for the documentation from the CLEC. In this case, however, Qwest may not
9 have all of the information that the CLEC believes supports the CLEC's entitlement to
10 the requested UNE. Further, without this documentation, Qwest necessarily must
11 decide without participation by the CLEC whether the CLEC is entitled to the requested
12 UNE.

13 WorldCom has attached proposed language to its testimony. This proposed
14 language raises issues that are not addressed in WorldCom's testimony. I address
15 these additional issues as follows:

16 In Section 24.2 of its testimony, WorldCom seems to be proposing two BFR
17 processes, an "Inquiry BFR" and a "Firm BFR." Only one BFR is needed and in fact
18 only one BFR is appropriate. WorldCom seems to imply, erroneously, that the
19 necessary steps to evaluate the technical feasibility, determine whether the request falls
20 within the obligations of the Act, and the other steps of the process somehow change if
21 the BFR is labeled "Inquiry BFR" instead of "BFR." This is simply not the case. There is

1 one process and all the elements of the process are necessary to respond to the
2 request. Thus, WorldCom's proposed "Inquiry BFR" language should be not be
3 adopted. As a further comment, WorldCom's proposed requirement in Section 24.3 that
4 the acknowledgement of receipt of the "Inquiry BFR" should be 24 hours rather than the
5 48 hours because of the "Inquiry" label, should also be disregarded. Finally,
6 WorldCom's proposed limitation of the charge for performing the BFR analysis to \$200
7 when it carries the "Inquiry" label but requires the same steps as a BFR, is
8 unreasonable and should be rejected along with the reference that would permit
9 WorldCom to avoid the costs of preparing the BFR.

10 WorldCom's Section 24.6 deals with a dual step process that appears to extend
11 the process, not shorten it. Again, dual steps are inappropriate since only one BFR
12 process is necessary.

13 WorldCom's proposed language in Section 24.9 is agreeable in principle to
14 Qwest, and is addressed in the Special Request Process language that CLECs have
15 requested. Section 24.9 is overly broad, however. Specific qualifying language is
16 necessary to define an "identical request."

17 In Section 24.11 and Section 24.12, WorldCom appears to be adding a dispute
18 resolution clause to the BFR process. Qwest is agreeable to a dispute resolution
19 process for disputes involving this SGAT but it is not necessary to add such language
20 after each product or service for disputes involving that product or service. However, if

1 WorldCom continues to request a dispute resolution provision here, language could be
2 added to this section consistent with the SGAT's general Dispute Resolution provision.

3 XO expresses concern that the BFR process is not broad enough to cover
4 Qwest's obligations under Washington law and PUC policy. I disagree, but Qwest
5 would be willing to review specific language that XO might propose to address what I
6 believe to be an unnecessary concern.

7 AT&T's comments regarding BFR address what it considers general deficiencies,
8 specific deficiencies, and a particular Oregon BFR request. I will address AT&T's
9 comments in the order in which they are made.

10 Like WorldCom, AT&T makes broad, general statements that the process is
11 deficient and too lengthy without addressing the specific steps of the process that
12 Qwest must go through to complete a BFR. AT&T also seems to object that there may
13 be a dispute as to whether a request is for a service or product already provided in the
14 SGAT. It is true that a dispute over the interpretation of the Agreement could arise, but
15 AT&T offers no concession to the possibility of good-faith disputes. The SGAT provides
16 for dispute resolution, and the possibility that a dispute may arise in the BFR section or
17 any other is not a reason to do away with the section.

18 AT&T seeks accommodation for "minor" requests that do not require the BFR
19 process. Qwest has responded to this request by the CLECs by offering the Special
20 Request Process ("SRP"), which I addressed in my direct testimony of May 16, 2001.

1 AT&T also raises concern that Qwest makes no affirmative statement that having
2 provided the quote for the requested UNE or interconnection, Qwest will, in fact, provide
3 the requested UNE or interconnection element. This commitment seems obvious on its
4 face, but Qwest will agree to provide the element requested in the BFR if it qualifies. As
5 to specific timetables, implementation of a BFR begins upon acceptance by the CLEC.
6 AT&T attached as Exhibit G to its direct testimony a BFR response from Qwest to
7 AT&T. This AT&T exhibit provides the response to AT&T's concern. The quote
8 provided to AT&T in Oregon states that orders can be processed upon acceptance of
9 terms and rates, along with an Access Service Request ("ASR") order form and the
10 designated telephone numbers needed to technically implement the requested trunks.
11 There is no requirement to initiate an amendment process.

12 With respect to the timelines in Section 17, Qwest is agreeable to a 48-business-
13 hour (two-business-day) notification. Qwest's SGAT significantly reduces, from earlier
14 versions of the template interconnection agreement, the timeframes to determine BFR
15 feasibility and provide a quote (21 days for feasibility versus 30; 45 days for quote
16 versus 90). Moreover, Qwest often cannot determine whether or not additional
17 information is needed until it has undertaken its analysis of possible implementation.
18 This fact is demonstrated by AT&T's Exhibit H, which is a request for additional
19 information that Qwest sent to AT&T six days after receiving the AT&T BFR. The
20 timelines in Section 17 are outside limits, and Qwest makes every effort to move the
21 process along as expeditiously as possible. Each request, however, is unique. A

1 particular request may be more complicated and require a longer analysis to determine
2 if additional information is needed.

3 Finally, AT&T's comments that once a previous BFR has been approved, it
4 should not need to submit further BFRs for similar requests. AT&T is well aware,
5 however, that not all equipment configurations are the same in all locations and that not
6 all switches have the same interfaces or software loads or even the same manufacturer.
7 The issue centers around whether the request truly is identical to a previously approved
8 BFR. If the request is similar in many respects, the evaluation and costing process will
9 go much faster. Qwest has proposed language in the Arizona workshop that
10 "substantially similar" requests would not require a subsequent BFR and would be
11 willing to accept such language here. And as Qwest has committed in Section 17.11, if
12 Qwest is able to provide the response sooner, it will.

13 In response to AT&T specific concerns, the form for requesting a BFR is on the
14 Qwest web site for CLECs at www.qwest.com/wholesale/preorder/bfrsprocess.html.
15 I have attached a copy of the form as Exhibit LBB-5 to my testimony. The application
16 form is designed to obtain the information generally necessary to process any request.
17 However the form also encourages CLECs to provide diagrams, illustrations, technical
18 contacts or any additional information that might be helpful in describing the specific
19 request.

20 AT&T voices considerable concern over Qwest's use of the term "preliminary"
21 analysis in Section 17.4. Qwest is agreeable to striking the word "preliminary" in

1 Section 17.4. As for striking the escalation process in Section 5.18, Qwest believes that
2 escalation to senior officers in the respective companies often avoids or resolves
3 problems quickly between the companies. Moreover, the escalation can often be as
4 simple as a phone call, thus not delaying the arbitration of a dispute. (I separately
5 address AT&T's arbitration process in the arbitration section of my testimony.)

6 XO comments that Section 17 should be modified to encompass any state law
7 requirements imposed upon Qwest to provide access to or interconnection with Qwest's
8 network. To accommodate XO's concern, Qwest will modify Section 17.4.

9 AT&T's characterization of the Oregon BFR process as excessively long simply
10 ignores AT&T's exhibits and its agreement. The facts and timelines are as follows:
11 Mark Miller of Qwest notified Christine Schwartz of AT&T via e-mail on December 6,
12 2000, how to obtain the BFR application form off the web. AT&T submitted the
13 completed form on December 12, 2000. Qwest notified AT&T within six days of receipt
14 that it needed additional information. This request for additional information did not
15 prevent Qwest from responding ahead of the deadlines in the AT&T agreement. As
16 provided in the agreement, the quote was due by May 10, 2001. Qwest provided the
17 quote on March 30, 2001. As of May 10, 2001, AT&T had not accepted or rejected it.

18 AT&T's charges that Qwest has not yet implemented its BFR or provided a
19 delivery date are blatantly misleading. Qwest provided AT&T with a quote on March 30,
20 2001, which states orders can be processed upon acceptance of terms and rates in the

1 quote letter. AT&T has not yet accepted the quote to proceed with its order. Qwest is
2 willing to proceed with AT&T's request. AT&T has itself delayed the implementation.

3 Qwest has attempted to capture the concerns of the CLECs in the following
4 proposed language for Section 17:

5 17.1 Any request for Interconnection or access to an ~~unbundled network~~
6 ~~element~~ Unbundled Network Element or ancillary service that is not
7 already available as described in other sections of this Agreement,
8 including but not limited to Exhibit F, or any other Interconnection
9 Agreement, tariff or otherwise defined by Qwest as a product or service
10 shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR
11 Process to determine the terms and timetable for providing the requested
12 Interconnection, access to UNEs or ancillary services, ~~if available,~~ and the
13 technical feasibility of new/different points of Interconnection. Qwest will
14 administer the BFR Process in a non-discriminatory manner.

15 17.2 A BFR shall be submitted in writing and on the appropriate Qwest
16 form for BFRs. CLEC and Qwest ~~will~~ may work together to prepare the
17 BFR form and either Party may request that such coordination be handled
18 on an expedited basis. ~~This form shall be accompanied by the non-~~
19 ~~refundable~~ Processing Fee specified in Exhibit A of this Agreement.
20 Qwest will refund one-half of the Processing Fee if the BFR is cancelled
21 within ten (10) business days of the receipt of the BFR form. The form will
22 request, and CLEC will need to provide, the following information, ~~as well~~
23 ~~as,~~ and may also provide any additional information that may be
24 reasonably necessary ~~helpful~~ in describing and analyzing CLEC's request:

- 25 (a) a technical description of each requested Network Element
26 or new/different points of Interconnection or ancillary services;
27 (b) the desired interface specification;
28 (c) each requested type of Interconnection or access;
29 (d) a statement that the Interconnection or Network Element or
30 ancillary service will be used to provide a Telecommunications
31 Service;
32 (e) the quantity requested;
33 (f) the specific location requested;
34 ~~(g) if the requested unbundled network element is a proprietary~~
35 ~~element as specified in Section 251(d)(2) of the Act, CLEC must~~
36 ~~submit documentation that demonstrates that access to such~~

1 ~~Network Element is necessary, that the failure to provide access to~~
2 ~~such Network Element would impair the ability of CLEC to provide~~
3 ~~the services that it seeks to offer, and that CLEC's ability to compete~~
4 ~~would be significantly impaired or thwarted without access to such~~
5 ~~requested proprietary element.~~Intentionally Left Blank. ~~and~~
6 ~~(h) if the requested Unbundled Network Element is a non-~~
7 ~~proprietary element as specified in Section 251(d)(2) of the Act,~~
8 ~~CLEC must submit documentation that demonstrates that denial of~~
9 ~~access to such non-proprietary unbundled network element would~~
10 ~~impair the ability of CLEC to provide the services that it seeks to~~
11 ~~offer, and that CLEC's ability to compete would be significantly~~
12 ~~impaired or thwarted without access to such unbundled network~~
13 ~~element.~~Intentionally Left Blank.

14
15 17.3 Within ~~fifteen (15)~~ two (2) business days of its receipt, Qwest shall
16 acknowledge receipt of the BFR and in such acknowledgment advise
17 CLEC of missing information, if any, necessary to process the BFR.
18 Thereafter, Qwest shall promptly advise CLEC of the need for any
19 additional information required to complete the analysis of the BFR. If
20 requested, either orally or in writing, Qwest will provide weekly updates on
21 the status of the BFR.

22 17.4 Within twenty-one (21) calendar days of its receipt of the BFR and
23 all information necessary to process it, Qwest shall provide to CLEC a
24 preliminary analysis of the BFR. The preliminary analysis shall specify
25 Qwest's conclusions as to whether or not the requested Interconnection or
26 access to an Unbundled Network Element complies with the
27 unbundling requirements of the Act or state law.

28 17.5 If Qwest determines during the twenty-one (21) day period that a
29 BFR does not qualify as an unbundled network elementUnbundled
30 Network Element or Interconnection or ancillary service that is required to
31 be provided under the Act or state law, Qwest shall advise CLEC as soon
32 as reasonably possible of that fact, and Qwest shall promptly, but in no
33 case later than the twenty-one (21) day period~~ten (10) calendar days after~~
34 ~~making such a determination~~, provide a written report setting forth the
35 basis for its conclusion.

36 17.6 If Qwest determines during ~~the such~~ twenty-one (21) day period
37 that the BFR qualifies under the Act or state law, it shall notify CLEC in
38 writing of such determination within ten (10) calendar days, but in no case
39 later than the end of such twenty-one (21) day period.

40 17.7 As soon as feasible, but in any case within forty-five (45) calendar
41 days after Qwest notifies CLEC that the BFR qualifies under the Act,

1 Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at
2 a minimum, a description of each Interconnection, Network Element, and
3 ancillary service, the quantity to be provided, any interface specifications,
4 and the applicable rates (recurring and nonrecurring) including the
5 separately stated development costs and construction charges of the
6 Interconnection, ~~unbundled network element~~Unbundled Network Element
7 or ancillary service and any minimum volume and term commitments
8 required, and the timeframes the request will be provisioned.

9 17.8 ~~A~~ CLEC has ~~thirty (30)~~sixty (60) ~~provided, however, one of the~~
10 ~~underlying assumptins does not change during this period~~ business days
11 upon receipt of the BFR quote, to either agree to purchase under the
12 quoted price, or cancel its BFR, ~~or seek mediation or arbitration.~~

13 17.9 If CLEC has agreed to minimum volume and term commitments
14 under the preceding paragraph, CLEC may cancel the BFR or volume and
15 term commitment at any time but may be subject to termination liability
16 assessment or minimum period charges, ~~but in the event of such~~
17 ~~cancellation CLEC will pay Qwest's reasonable development costs~~
18 ~~incurred in providing the Interconnection, Unbundled Network Element, or~~
19 ~~ancillary service to the extent that those development costs are not~~
20 ~~otherwise amortized.~~

21 17.10 If either Party believes that the other Party is not requesting,
22 negotiating or processing any BFR in good faith, or disputes a
23 determination or quoted price or cost, it may ~~seek arbitration pursuant to~~
24 invoke the Dispute Resolution provision of this Agreement.

25 17.11 All time intervals within which a response is required from one Party
26 to another under this Section are maximum time intervals. Each Party
27 agrees that it will provide all responses to the other Party as soon as the
28 Party has the information and analysis required to respond, even if the
29 time interval stated herein for a response is not over.
30

31 17.12 In the event CLEC has submitted a Request for an Interconnection,
32 an Unbundled Network Element or any combinations thereof, or ancillary
33 services and Qwest determines in accordance with the provisions of this
34 Section 17 that the request is Technically Feasible, subsequent requests
35 or orders for substantially similar types of interconnection, Unbundled
36 Network Elements or combinations thereof or ancillary services by that
37 CLEC shall not be subject to the BFR Process. To the extent Qwest has
38 deployed substantially similar Interconnection, Unbundled Network
39 Elements or combinations thereof or ancillary services under a previous
40 BFR, a subsequent BFR shall be not required. Qwest may only require

1 CLEC to complete a New Product Questionnaire before ordering such
2 Interconnection, Unbundled Network Elements or combinations thereof,
3 or ancillary services. ICB pricing and intervals will still apply for requests
4 that are not yet standard offerings. For purposes of this Section 17.12, a
5 “substantially similar” request shall be one with substantially similar
6 characteristics to a previous request with respect to the information
7 provided pursuant to Subsections 17.2.1 through 17.2.6 above. The
8 burden of proof is upon Qwest to prove the BFR is not substantially similar
9 to a previous BFR.

10 17.13 The total cost charged to CLEC shall not exceed the BFR
11 quoted price.

12

13 **SECTION 18 -- AUDIT PROCESS**

14 As a general matter, AT&T questions why Qwest should have the right to audit
15 CLECs. The reason is clear. Both Qwest and the CLECs currently engage in reciprocal
16 exchange of traffic for local and access traffic, which generally is billed by the
17 terminating party. Qwest has the same interests and concerns about the CLECs' billing
18 accuracy and processes as CLECs have concerning those of Qwest. Therefore, the
19 right to audit should be reciprocal.

20 AT&T then notes that Section 18.1 states that an audit means a review of data
21 relating to certain things like billing, provisioning and maintenance. In AT&T's view, this
22 scope is too narrow. It wants the right to audit other aspects of Qwest's performance,
23 such as Qwest's handling of forecasts and local service requests ("LSRs").

24 Qwest believes that the scope of the audit provision is appropriate. The dispute
25 resolution process can be utilized for other questions regarding performance under the
26 Agreement as well as the PIDs. AT&T's concerns about the treatment of forecasting

1 information has been addressed in the discussion above concerning the nondisclosure
2 section of the SGAT (Section 5.16) as well as in other workshops. AT&T's concern
3 about confidential handling of LSRs also is addressed by these nondisclosure
4 provisions.

5 Next AT&T notes that Section 18.2.4 provides that no more than two audits may
6 be requested in any 12-month period. It requests that a calendar year be used rather
7 than a 12-month period and expresses concern that two audits per year may be
8 insufficient if an error is found that needs to be monitored to ensure that Qwest has
9 corrected it.

10 Audits generally require substantial investments of time and personnel to review,
11 gather and analyze data. AT&T's proposal for a "calendar year" basis would deny a
12 potential second audit if a problem was found near the end of a calendar year, but is not
13 particularly objectionable to Qwest. Qwest does not object to more frequent audits
14 under the circumstances to which AT&T refers, but any audit language must be
15 reciprocal to give both parties equal audit rights. When both parties have equal and
16 reciprocal audit rights, the tendency of one party to request an unreasonable number of
17 audits is self-policing.

18 AT&T notes that Section 18.2.7 limits the audit to transactions that occurred in
19 the last 24 months and submits that this time period is insufficient. Instead, it arbitrarily
20 suggests that the appropriate period of time is three years. Two years is the time period
21 that Qwest uses for determining how far back it can bill to collect payment of interstate

1 charges. The FCC and the industry have accepted this period. Two years is a
2 reasonable time to discover a problem and request an audit.

3 AT&T requests that Section 18.2.8 be amended to add language to reflect that
4 Qwest should reimburse a CLEC for its expenses in the event that an audit finds that an
5 adjustment should be made to the charges. The costs of the audit should be borne by
6 the requesting party since it is initiating the action. Also, AT&T's proposed language
7 does not make clear whether the "aggregate" AT&T wants to use to determine whether
8 expenses should be reimbursed applies to each category listed or to the sum of the
9 categories listed. Its proposal should be rejected.

10 In Section 18.2.9, AT&T questions why Qwest should have the right to agree to
11 the independent auditor if the cost is to be paid by the CLEC. Because both parties will
12 be impacted by the ultimate findings of the audit, and an audit imposes significant costs
13 in terms of time and resources on both parties, even without the addition of AT&T's
14 cost-shifting provision, both should agree upon the independent auditor.

15 AT&T requests that Section 18.2.11 be amended so that the parties' disputes
16 regarding audit results will be handled under the dispute resolution section of the SGAT.
17 Qwest agrees to this change.

18 I will turn now to WorldCom's proposed provisions. First as stated above, audit
19 rights must be reciprocal.

1 In its Section 22.1, WorldCom requests four audits per year. With the exception
2 of the circumstances addressed by AT&T, the number of audits should remain at two
3 per twelve-month period due to the resources required to conduct a full audit. Qwest is
4 willing to use WorldCom's definition for Examinations in this section and WorldCom's
5 frequency for "Examinations," as these conform to general practice.

6 In its Section 22.2, WorldCom wants to expand the scope of audits to include
7 performance standards. The PIDs process will adequately address this area. Qwest
8 agrees to the last sentence of this section regarding providing appropriate support for
9 the audit and examinations so long as the obligation is reciprocal.

10 Qwest does not believe that the language contained in WorldCom's proposed
11 Section 22.4 regarding how adjustments are handled is appropriate. Rather, the
12 Dispute Resolution provisions should control how adjustments should be handled, as
13 suggested by AT&T.

14 Qwest can accept the language contained in WorldCom's proposed Section 22.5
15 regarding restrictive statements on checks or otherwise.

16 Qwest agrees with the language in WorldCom's proposed Section 22 regarding
17 the section surviving for two years after the termination of the Agreement, despite the
18 existence of general survivability provisions because of the unique nature of the audit
19 provisions.

1 Based on AT&T and WorldCom's comments, Qwest proposes a new Section 18,
2 which would read as follows:

3 18.1 For purposes of this section the following definitions shall apply:
4 ~~"Audit" shall mean the comprehensive review of:~~

5 18.1.1 ~~Data used in the billing process for services~~
6 ~~performed, including reciprocal compensation, and facilities~~
7 ~~provided under this Agreement; "Audit" means a comprehensive~~
8 ~~review of the books, records, and other documents data used in the~~
9 ~~billing process for services performed, including, without limitation,~~
10 ~~reciprocal compensation, and facilities provided under this~~
11 ~~Agreement.~~

12 ~~18.1.2 Data relevant to provisioning and maintenance for~~
13 ~~services performed or facilities provided by either of the Parties for~~
14 ~~itself or others that are similar to the services performed or facilities~~
15 ~~provided under this Agreement for Interconnection or access to~~
16 ~~unbundled loops, ancillary and finished services. "Examination"~~
17 ~~shall mean an inquiry into a specific element or process related to~~
18 ~~the above. Commencing on the Effective Date of this Agreement,~~
19 ~~either Party may perform Examinations as GLE~~
20 ~~either Party deems~~
 ~~necessary.~~

21 18.2 ~~The data referred to above shall be relevant to any performance~~
22 ~~indicators that are adopted in connection with this Agreement, through~~
23 ~~negotiation, arbitration or otherwise.~~ This Audit shall take place under the
24 following conditions:

25 18.2.1 Either Party may request to perform an Audit or
26 Examination.

27 18.2.2 The Audit or Examination shall occur upon thirty (30)
28 business days written notice by the requesting Party to the non-
29 requesting Party.

30 18.2.3 The Audit or Examination shall occur during normal
31 business hours. However, such audit will be conducted In a
32 commercially reasonable manner and both Parties will work to
33 minimize disruption to the business operations of the Party being
34 audited.

35 18.2.4 There shall be no more than two Audits requested by

1 each Party under this Agreement in any 12-month period. Either
2 Party may audit the other Party's books, records and documents
3 more frequently than twice in any twelve (12) month period (but no
4 more than once in each quarter) if the immediately preceding audit
5 found previously uncorrected net variances, inaccuracies or errors
6 in invoices in the audited Party's favor with an aggregate value of at
7 least two percent (2%) of the amounts payable for the affected
8 services during the period covered by the Audit.

9 18.2.5 The requesting Party may review the non-requesting
10 Party's records, books and documents, as may reasonably contain
11 information relevant to the operation of this Agreement.

12 18.2.6 The location of the Audit or Examination shall be the
13 location where the requested records, books and documents are
14 retained in the normal course of business.

15 18.2.7 All transactions under this Agreement which are over
16 twenty-four (24) months old will be considered accepted and no
17 longer subject to Audit. The Parties agree to retain records of all
18 transactions under this Agreement for at least 24 months.

19 18.2.8 Audit or Examination Expenses

20 18.2.8.1 Each Party shall bear its own expenses occasioned
21 by the Audit, provided that the expense of any special data
22 collection shall be born by the requesting Party in connection
23 with conduct of the Audit or Examination. The requesting Party
24 will pay for the reasonable cost of special data extractions
25 required by the Party to conduct the Audit or Examination. For
26 purposes of this section, a "Special Data Extraction" means the
27 creation of an output record or informational report (from
28 existing data files) that is not created in the normal course of
29 business. If any program is developed to the requesting Party's
30 specification and at that Party's expense, the requesting Party
31 will specify at the time of request whether the program is to be
32 retained by the other Party for reuse for any subsequent Audit
33 or Examination.

34
35 18.2.8.2 Notwithstanding the foregoing, the audited Party shall
36 pay all of the Auditing Party's commercially reasonable
37 expenses in the event an Audit or Examination results in an
38 adjustment in the charges or in any invoice paid or payable by
39 the Auditing Party in an amount that is, on an annualized basis,
40 greater than ten percent (10%) of the difference between the

1 amount billed and the amount determined by the Audit.
2 identifies a difference between the amount billed and the
3 amount determined by the Audit that exceeds five percent (5%)
4 of the amount billed and results in a refund and/or reduction in
5 the billing to the auditing Party.

6
7 18.2.8.2 Notwithstanding the foregoing, the audited Party shall
8 pay all of the Auditing Party's commercially reasonable
9 expenses in the event an Audit or Examination results in an
10 adjustment in the charges or in any invoice paid or payable by
11 the Auditing Party in an amount that is, on an annualized basis,
12 greater than ten percent (10%) of the difference between the
13 amount billed and the amount determined by the Audit.
14 identifies a difference between the amount billed and the
15 amount determined by the Audit that exceeds five percent (5%)
16 of the amount billed and results in a refund and/or reduction in
17 the billing to the auditing Party.

18
19 18.2.9 The Party requesting the Audit may request that an
20 Audit be conducted by a mutually agreed-to independent auditor.
21 Under this circumstance, the costs of the independent auditor shall
22 be paid for by the Party requesting the Audit subject to Section
23 18.2.8.2.

24 18.2.10 In the event that the non-requesting Party requests
25 that the Audit be performed by an independent auditor, the Parties
26 shall mutually agree to the selection of the independent auditor.
27 Under this circumstance, the costs of the independent auditor shall
28 be shared equally by the Parties. The portion of this expense borne
29 by the Auditing Party shall be borne by the Audited Party if the
30 terms of Section 18.2.8.2 are satisfied.

31 18.2.11 Adjustments, credits or payments will be made and
32 any corrective action must commence within thirty (30) days after
33 Qwest's the Parties' receipt of the final audit report to compensate
34 for any errors and omissions which are disclosed by such Audit or
35 Examination and are agreed to by the Parties. The interest rate
36 payable shall be in accordance with Commission requirements.
37 The Parties agree that if an Audit discloses error(s), the Party
38 responsible for the error(s) shall, in a timely manner, undertake
39 corrective action for such error(s). All errors not corrected
40 In the event that any of the following circumstances occur within thirty (30)

1 business days after completion of the Audit or Examination, they
2 shall may be— escalated to the Vice-President level, resolved, at
3 either Party's election, pursuant to the Dispute Resolution Process:
4 (i) errors detected by the Audit or Examination have not been
5 corrected; (ii) adjustments, credits or payments due as a result of
6 the Audit or Examination have not been made, or (iii) a dispute has
7 arisen concerning the Audit or Examination.

8 18.2.12 Neither the right to examine and audit nor the right to
9 receive an adjustment will be affected by any statement to the
10 contrary appearing on checks or otherwise.

11 18.2.13 This Section will survive expiration or termination of
12 this Agreement for a period of two (2) years after expiration of or
13 termination of the Agreement.

14
15 18.2.13 This Section will survive expiration or termination of
16 this Agreement for a period of two (2) years after expiration of or
17 termination of the Agreement.

18
19 18.3 All information received or reviewed by the requesting Party or the
20 independent auditor in connection with the Audit is to be considered
21 Proprietary Information as defined by this Agreement in Section 5.16. The
22 non-requesting Party reserves the right to require any non-employee who
23 is involved directly or indirectly in any Audit or Examination or the
24 resolution of its findings as described above to execute a nondisclosure
25 agreement satisfactory to the non-requesting Party. To the extent an
26 Auditor or Examination involves access to information of other competitors,
27 CLEC and Qwest will aggregate such competitors' data before release to
28 the other Party, to insure the protection of the proprietary nature of
29 information of other competitors.— To the extent a competitor is an
30 aAffiliate of the Party being audited (including itself and its subsidiaries),
31 the Parties shall be allowed to examine such Aaffiliates' disaggregated
32 data, as required by reasonable needs of the Audit or Examination.
33 Information provided in an Audit or Examination may only be reviewed by
34 individuals with a need to know such information for purposes of this
35 Section 18 and who are bound by the nondisclosure obligations set forth
36 in Section 5.16. In no case shall the Confidential Information be shared
37 with the Parties' retail marketing, sales or strategic planning.

1

SECTION 19 -- CONSTRUCTION CHARGES

2

3

Qwest agrees with XO's comment that Qwest's obligations to construct facilities

4

have been addressed in another workshop.

5

SECTION 20 -- SERVICE PERFORMANCE

6

Elsewhere, WorldCom has proposed the addition of language that states that

7

Qwest will become bound by the newly developed performance measures on the date

8

of the Commission order implementing the same. Qwest is agreeable to this change.

9

Section 20 would read as follows:

10

20. Qwest is currently developing performance measure in a Qwest workshop process being conducted by the Commission. Qwest will become bound by the newly developed performance measure on the date of the Commission order implementing the same and amend this Agreement when the Commission's Performance Measures Effort is complete, to incorporate all aspects of the Commission's final decision.

11

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EXHIBIT F -- SPECIAL REQUEST PROCESS

17

I explained the Special Request Process in my direct testimony of May 16, 2001.

18

The Wholesale Product Development Guide has been updated to incorporate a

19

description of when the Special Request Process is used. This website also contains a

20

link to the actual Special Request Process form, which is attached to my testimony as

21

Exhibit LBB-6. The form is clear and provides standard response timeframes.

1 The relevant pages of the Wholesale Product Development Guide are located at
2 www.qwest.com/wholesale/preorder/bfrsprocess.html under the BFR Special Request
3 tab. As I stated in my direct testimony, Qwest developed the Special Request Process
4 at the request of the CLECs originally for features of a switch to be loaded or activated.
5 Qwest later expanded the process to include non-standard combinations of unbundled
6 network elements that Qwest is not currently offering as standard products, and
7 unbundled network elements that have been defined by the FCC or this Commission as
8 a network element to which Qwest must provide unbundled access but for which Qwest
9 has not created a standard product, such as UDIT and EEL between OC-3 and OC-192.
10 These later provisions were also added at the behest of the CLECs.

11 Contrary to AT&T's comments, Qwest's standards for determining when the
12 Special Request Process may be invoked are not vague, nor is the process ill-defined.
13 For that reason, AT&T's suggested revisions to Exhibit F are not acceptable to Qwest.

14 AT&T expresses unfounded fear that CLECs will be penalized or lose time by
15 submitting a Special Request that Qwest determines must be treated instead under the
16 BFR process. Until Qwest has investigated a request, it may not know if the request
17 qualifies as a Special Request or if it must go through the more detailed feasibility
18 analysis described in the BFR process. An example would be if a requested switch
19 feature is neither currently loaded on the switch for Qwest to activate nor available from
20 the switch manufacturer to purchase and load. In that case, a more thorough technical
21 analysis may be needed to determine if or how the capability could be made available.

1 If Qwest determines that the request should have been submitted through the BFR
2 process, Qwest will consider the BFR clock to have started upon receipt of the original
3 Special Request application form, and will utilize any information uncovered during the
4 initial review. The CLEC need not "go back to day one in the BFR process," as AT&T
5 fears. AT&T Comments at page 75.

6 Qwest proposes the following language in Exhibit F to address the concerns
7 raised by the CLECs:

- 8 1. The Special Request Process shall be used for the following requests:
 - 9 a. Requesting specific product feature(s) be made available by Qwest that
10 are currently available in a switch, but which are not activated.
 - 11 b. Requesting specific product feature(s) be made available by Qwest that
12 are not currently available in a switch, but which are available from the
13 switch vendor.
 - 14 c. Requesting a combination of Unbundled Network Elements that is a
15 combination not currently offered by Qwest as a standard product and:
 - 16 i. that is made up of UNEs that are defined by ~~Qwest as products,~~
17 the FCC or the Commission as a network element to which Qwest
18 is obligated to provide unbundled access, and;
 - 19 ii. that is made up of UNEs that are ordinarily combined in the Qwest
20 network.
 - 21 b.d. Requesting an Unbundled Network Element that has been defined by the
22 FCC or the State Commission as a network element to which Qwest is

1 obligated to provide unbundled access, but for which Qwest has not
2 created a standard product, including [OC-192](#) UDIT and EEL between
3 OC-3 and OC-192.

4 ~~2.~~ Any request that requires an analysis of ~~t~~Technical ~~f~~Feasibility shall be treated as a
5 Bona Fide Request (BFR), and will follow the BFR Process set forth in this
6 Agreement. If it is determined that a request should have been submitted
7 through the BFRRE process, Qwest will consider the BFR time frame to have
8 started upon receipt of the original Special Request application form. The BFR
9 process shall be used for, among other things, the following:

- 10
11 ~~a.~~ Requests for Interconnection not already available as described in this
12 Agreement,
13 ~~b.~~ Requests for access to an unbundled network element that has not been
14 defined by the FCC or the State Commission as a network element to which
15 Qwest is obligated to provide unbundled access,
16 ~~c.~~ Requests for UDIT and EEL above the OC-192 level,
17 ~~d.~~ Requests for combinations of Unbundled Network Elements that include UNEs
18 that are not defined by Qwest as products, and
19 ~~e.a.~~ Requests for combinations of Unbundled Network Elements that are not
20 currently ordinarily combined in the Qwest network.

21
22 3.2. A Special Request shall be submitted in writing and on the appropriate Qwest
23 form, which is located on Qwest's website. ~~The form must be completely filled~~
24 ~~out.~~

25
26 4.3. Qwest shall acknowledge receipt of the Special Request within two (2)~~5~~
27 business days of receipt.

28
29 4. Qwest shall respond with an n ~~preliminary~~ analysis, including costs and
30 timeframes, within 15 business days of receipt of the Special Request. In the
31 case of UNE ~~e~~Combinations, the ~~preliminary~~ analysis shall include whether the
32 requested combination is a combination of network elements that are ordinarily
33 combined in the Qwest network. If the request is for a combination of network
34 elements that are not ordinarily combined in the Qwest network, the ~~preliminary~~
35 analysis shall indicate to CLEC that it should use the BFR process if CLEC elects
36 to pursue its request.
37

1

2

INDIVIDUAL CASE BASIS ("ICB")

3

4

5

6

AT&T comments that Qwest's definition of Individual Case Basis ("ICB"), which appears in Section 4.24(a), is too narrow and does not cover the uses for which is available under the SGAT. Qwest agrees and suggests revising this definition as follows:

7

8

9

10

11

4.24(a) Individual Case Basis - (ICB) - Each collocation, UNE or resale product marked as ICB will be handled individually on a pricing and/or interval commitment basis. Where ICB appears, CLEC should contact their account team for pricing, ordering, provisioning or maintenance information.

12

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As is characteristic of its comments, AT&T fears the worst of Qwest and requests that Qwest develop and propose a process that outlines the steps and timeframes that apply to a CLEC's request under an ICB provision. AT&T Comments at page 78. By their very nature, services subject to an ICB provision are unique and not susceptible to uniform treatment. However, where ICB provisions apply to defined products with established quote intervals, Qwest is committed to identifying the ICB price or provisioning intervals within those quote timeframes. Qwest offers a new Exhibit I to the SGAT that provides for the commitment requested by the CLECs. See Exhibit LBB-7.

21

22

23

24

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Qwest.

1 2. ICB Rates

2 a. For those products and services identified in the SGAT that contain
3 a provision for ICB rates, Qwest will provide CLEC with a written
4 quote of the ICB rate within twenty (20) days unless a specific
5 interval for providing the quote is either contained in the SGAT or
6 this Exhibit.

7 b. The purpose of this subsection is to identify those circumstances
8 when the generic twenty 20-day interval in the aforementioned
9 subsection to this Exhibit does not apply. In these specified
10 circumstances, Qwest shall provide CLEC with an ICB quote within
11 the stated specific intervals:

12 1. Quotes for all Bona Fide Requests (BFR) shall be provided
13 in accord with Section 17.

14 2. Quotes for all Special Request Processes (SRP) shall be
15 provided in accord with Exhibit I.

16 3. Quotes for all collocation requests, regardless of the type of
17 collocation, shall be provided in accord with Section 8.

18 4. Quotes for all Field Connection Point requests shall be
19 provided in accord with Section 9.3.

20 5. Quotes for all Advanced Intelligent Network (AIN) requests
21 shall be provided in accord with Section 9.

22 c. Upon request, Qwest shall provide CLEC with its supporting cost
23 data for the Network Element or service that CLEC wishes to order within
24 seven (7) business days, except where Qwest cannot obtain a release
25 from its vendors within (seven) 7 business days, in which case Qwest will

1 make the data available as soon as Qwest receives the vendor release.
2 Such cost data shall be treated as confidential information if requested by
3 Qwest under the non-disclosure sections of this Agreement.

4 3. ICB Intervals

5 a. For those products and services provided pursuant to this SGAT
6 that contain a provision for ICB interval but do not contain a specific
7 provision for when the ICB interval shall be provided, the ICB
8 interval shall be provided within twenty (20) business days of
9 receipt of the order, request or application.

10 b. For ICB intervals for those products and services that require
11 negotiated project time lines for installation, such as 2/4 wire analog
12 loop for more than 25 loops, the Qwest representative shall meet
13 with CLEC's representative within seven (7) business days of
14 receipt of the request from CLEC to negotiate intervals.

15
16 **MISCELLANEOUS ISSUES RAISED BY WORLDCOM**

17 **A. WorldCom Section 2—Regulatory Approvals**

18 Sections 2.1 and 2.2 of WorldCom's proposal are covered in substantially the
19 same manner in Section 2 of the SGAT. WorldCom's proposed Section 2.3 would
20 require that Qwest consult with and obtain WorldCom's consent to form and substance
21 prior to filing any tariff and that such filings be consistent with the SGAT. Qwest has no
22 legal obligation to obtain WorldCom's consent to conduct its business, and it is to
23 nobody's advantage that the terms of the SGAT should, in effect, freeze Qwest's service

1 offerings. WorldCom's Section 2.4 would appear to conflict with its absolute insistence
2 that the SGAT always control. However, WorldCom can always request an amendment
3 if it prefers terms contained in Commission orders or tariffs, and Section 2.2 of the
4 SGAT proposes a process for doing just that.

5 **B. WorldCom Section 16 — Waivers**

6 The concepts contained in WorldCom's proposed Sections 16.1 through 16.3 are
7 covered by Section 5.13 (Default), and those contained in its Section 16.4 are covered
8 by Section 2.2 of the SGAT. Qwest basically agrees with these concepts.

9 **C. WorldCom Section 19 — Discrimination**

10 Standards for complying with the Act's nondiscrimination standards are
11 addressed in the individual sections for the various services. WorldCom's proposal
12 does not comply with the FCC's current nondiscriminatory standards. These provide
13 that: (1) where there is a retail analog, the service shall be provided in substantially the
14 same time and manner as Qwest provides the service to itself; and (2) where there is no
15 retail analog, the service shall be provided in a manner that will allow an efficient
16 competitor a meaningful opportunity to compete. *See, e.g., Verizon Massachusetts*
17 *Order* at ¶11.

1 **D. WorldCom Section 20.2 — Revenue Protection**

2 Section 11.34 of the SGAT already addresses revenue protection. WorldCom's
3 proposal imposes additional unacceptable burdens on Qwest, many of which are
4 beyond Qwest's control. For example, as its Section 20.2.4 would require, Qwest
5 cannot patrol all of its outside plant to prohibit clip-on fraud in its loops. Nonetheless,
6 Qwest has negotiated an additional revenue protection provision with Sprint and would
7 propose it in lieu of WorldCom's proposal. That provision reads as follows:

8 (G)1.2 Revenue Protection - Qwest shall make available to Sprint all
9 present and future fraud prevention or revenue protection features. These
10 features include, but are not limited to, screening codes and call blocking.
11 Qwest shall additionally provide partitioned access to fraud prevention,
12 detection and control functionality within pertinent Operations Support
13 Systems and signaling which include but are not limited to LIDB Fraud
14 monitoring systems.

15 (G)1.2.1 Uncollectable or unbillable revenues resulting from,
16 but not confined to, provisioning, maintenance, or signal network
17 routing errors shall be the responsibility of the party causing such
18 error or malicious acts, if such malicious acts could have
19 reasonably been avoided.

20 (G)1.2.2 Uncollectible or unbillable revenues resulting from the
21 accidental or malicious alteration of software underlying Network
22 Elements or their subtending operational support systems by
23 unauthorized third parties that could have reasonably been avoided
24 shall be the responsibility of the party having administrative control
25 of access to said Network Element or operational support system
26 software.

27 (G)1.2.3 Qwest shall be responsible for any direct uncollectible
28 or unbillable revenues resulting from the unauthorized physical
29 attachment to loop facilities from the Main Distribution Frame up to
30 and including the Network Interface Device, including clip-on fraud,
31 if Qwest could have reasonably prevented such fraud.

32 (G)1.2.4 To the extent that incremental costs are directly
33 attributable to a Sprint requested revenue protection capability,

1 those costs will be borne by Sprint.

2 (G)1.2.5 To the extent that either Party is liable to any toll
3 provider for fraud and to the extent that either Party could have
4 reasonably prevented such fraud, the causing Party must indemnify
5 the other for any fraud due to compromise of its network (e.g., clip-
6 on, missing information digits, missing toll restriction, etc.).

7 **E. WorldCom Section 25 — Branding**

8 The only branding required by the Act or the FCC rules is covered in Section
9 10.5.1.1.1 dealing with branding Directory Assistance and Section 10.7.2.10 dealing
10 with branding of Operator Services. WorldCom's proposal goes far beyond anything
11 required by the Act and includes such items as requiring technicians to identify
12 themselves as representing WorldCom when working at the end user premise (Section
13 25.2), unbranding business cards (Section 25.3), and allowing WorldCom to review all
14 Qwest training on branding requirements. These provisions go totally beyond what is
15 required by law and should be rejected.

16 **CONCLUSION**

17 As I stated in my direct testimony, any contractual arrangement between two
18 parties contains certain standard provisions that protect each party's rights under the
19 contract. The proposed general terms and conditions of the SGAT protect the rights
20 and define the obligations of each party that accepts the SGAT in lieu of negotiating an
21 interconnection agreement in a balanced and fair manner.

22 The general terms and conditions specifically addressed in my testimony are
23 reasonable and generally accepted in the provision of telecommunications services

- 1 throughout the industry. For these reasons, the referenced terms and conditions should
- 2 be adopted as modified.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH §271(C) OF THE)
TELECOMMUNICATIONS ACT OF 1996.)
_____)**

DOCKET NO. UT-003022

EXHIBITS OF

LARRY B. BROTHERRSON

QWEST CORPORATION

GENERAL TERMS AND CONDITIONS

June 21, 2001

INDEX OF EXHIBITS

<u>DESCRIPTION</u>	<u>EXHIBIT</u>
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Exhibit I	LBB-7