BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 272 OF THE TELECOMMUNICATIONS ACT OF 1996	)))))	**DOCKET NO. UT- 003022**

REBUTTAL TESTIMONY

OF

MARIE E. SCHWARTZ

ON BEHALF OF

QWEST CORPORATION

REGARDING 272 ISSUES

JUNE 21, 2001

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Marie E. Schwartz and my business address is 1314 Douglas-On-The-Mall, Floor 10, Omaha, Nebraska 68102.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed supplemental direct testimony on May 16, 2001.

II. PURPOSE OF REBUTTAL TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. In my rebuttal testimony, I will address issues raised by AT&T's witness Cory Skluzak in an affidavit filed on June 7, 2001. I will show that Qwest Corporation ("QC" or "the BOC") does have the appropriate controls and processes in place to enable it to meet the Section 272 rules as required by the FCC, once granted interLATA relief. Although I have chosen to address only the more substantial of AT&T's arguments, that does not infer that I agree with any AT&T statements that are not specifically addressed here.

III. SUMMARY OF REBUTTAL TESTIMONY

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. In my rebuttal testimony, I provide additional evidence and information regarding the controls and processes that the BOC has in place to ensure that it is compliant with Section 272 rules. I address the transitional period from the merger until the current time period and how transactions during that transitional period are not indicative of ongoing compliance. I also address issues raised by AT&T regarding Section 272(b) structural and transactional requirements, Section 272(c) regarding non-discrimination issues, Section 272(e) regarding the imputation of access charges, and Section 272(g) on joint marketing activities.

Q. DOES THE BOC AGREE THAT THE STATE COMMISSION MUST CONSIDER QWEST LONG DISTANCE'S HISTORY AND MUST USE SUCH PAST HISTORY AS A PREDICTIVE INDICATOR OF SECTION 272 COMPLIANCE?

A. Yes. The BOC agrees that the state Commission must review the past history of Qwest Long Distance ("Qwest LD") as a predictive indicator of Section 272 compliance. Qwest LD has a long history of compliance with Section 272 rules, beginning in 1996. The Commission must also look at present practices in addition to past practices to get a complete picture of a company's compliance. These present practices include the current processes and controls in place with QCC since March 26, 2001 when Qwest Communications Corporation (QCC) became a 272 Affiliate. Since analysis of the transactions with the new Section 272 Affiliate began primarily in March, the BOC has agreed to make the transactions with QCC available as they occur each month until the workshops are completed in order to provide additional evidence upon which to base a finding of compliance.

Q. HAS THE BOC DEMONSTRATED THAT IT HAS PROCESSES IN PLACE FOR QWEST LD TO COMPLY WITH SECTION 272?

A. Yes. Since Qwest LD became the designated 272 Affiliate, the BOC has had processes in place to ensure that all Section 272 compliance requirements were met. For example, Qwest LD is a separate entity with separate officers and employees, all transactions with Qwest LD are documented and posted to an Internet website, creditors of Qwest LD have no recourse to BOC assets, and other controls to ensure compliance. The processes and controls in place with Qwest LD have now been duplicated for the new 272 Affiliate, QCC, to ensure that the BOC remains in compliance with Section 272 requirements for QCC. Qwest LD continues as a 272 Affiliate, though not the primary designated 272 Affiliate, which is now QCC.

Q. HAS QC PROVIDED TO AT&T THE INFORMATION THAT AT&T HAS REQUESTED?

A. Yes. AT&T mentioned in its affidavit some difficulties it had in obtaining data, but the BOC has responded to all AT&T data requests and made documents available as requested. AT&T has visited the BOC's offices a number of times to review volumes of data regarding transactions between the BOC and Qwest LD or QCC. The BOC is not aware of any data request from AT&T that it has not addressed, and AT&T has not identified any requests which are still outstanding.

IV. COMPLIANCE WITH 272(b) – STRUCTURAL AND TRANSACTIONAL REQUIREMENTS

Q. IS THE BOC CURRENTLY ABLE TO MEET THE FCC REQUIREMENTS FOR IDENTIFYING, ACCRUING, BILLING AND POSTING TRANSACTIONS WITH QCC?

A. Yes. The BOC has appropriate processes in place, including identification and training of employees who perform the affiliate transaction functions, regularly scheduled conference calls with those employees to discuss affiliate transaction issues, and monthly reconciliation of the QCC affiliate billing. Qwest has expended large amounts of resources to ensure that its affiliate transactions are now Section 272 compliant and will remain so.

Q. WHAT ABOUT THE BILLING ISSUES IDENTIFIED BY AT&T IN ITS AFFIDAVIT?

A. Many of the transactional issues identified by AT&T in its Affidavit, such as timely accruals and billing, were a direct result of the strategic changes caused by the merger of two major corporations and the major activity associated with consolidating operations, eliminating duplicate functions, employee turnover, realignment of responsibilities and other merger changes. The merger period occurred between July, 2000 and December, 2000. Another transition occurred which was the identification of a new 272 Affiliate in January 2001, and a three-month process ensued to bring the new affiliate into 272 compliance which concluded on March 26, 2001. I referenced these two periods of time in my direct testimony as the "transitional period" which is a necessary and reasonable time to merge two very large and complex companies, and to put processes in place to comply with the 272 requirements.[1] As a result of the merger activities, identifying affiliate transactions with the merged Qwest entities was hampered, and until those transactions could be identified, the accruals, posting and billing could not be completed. Qwest takes its compliance responsibilities seriously, which is precisely why the BOC supplemented its staff with accounting professionals from Arthur Andersen ("AA") to assist in transition efforts.[2]

[1] Supplemental Testimony of Marie E. Schwartz dated May 16, 2001 ("Schwartz Testimony") at page 8,line 8.
[2] Schwartz Testimony at page 24, line 19.

Q. WHAT WAS THE ROLE OF AA DURING THE TRANSITION PHASE?

A. AA provided loaned employees as additional staff that the BOC used to identify affiliate transactions. These personnel worked under the supervision of the BOC, and their work was limited to conducting interviews with BOC personnel to identify any services being provided between the BOC and 272 Affiliate. After AA completed the interviews, the interview information was given to the BOC so that the BOC could ensure any transactions identified were documented, posted and billed. Contrary to AT&T's footnote,[3] AA did not develop additional affiliate procedures, or have any involvement in the booking of these transactions.

Q. DOES AT&T MENTION THAT MANY OF THE TRANSACTIONS HIGHLIGHTED IN ITS AFFIDAVIT OCCURRED DURING THIS ABNORMAL PERIOD?

A. No. To the contrary, AT&T portrays the transactions as indicative of a lack of compliance, without any acknowledgment that Qwest was going through a major company reorganization at the time, or that these transactions relate to a new 272 Affiliate which was just decided a few months ago. Section 272(h) of the Act allowed the BOC one year to become 272 compliant, therefore it is not surprising that Qwest did not have all 272 compliance issues resolved immediately when the new 272 Affiliate was announced and needed a

[3] Affidavit of Cory W. Skluzak dated June 7, 2001, paragraph 40, footnote 43 ("Skluzak Affidavit").

transitional period. This transitional period concluded on March 26, 2001 and required postings to the Internet website followed on March 26, 2001.

Q. PLEASE CLARIFY THE TIMING AND THE ROLES OF QWEST LD AND QCC.

A. Although Qwest LD is no longer operational (all employees have been terminated from Qwest LD), Qwest LD has been and today remains a 272 Affiliate. Qwest LD became a 272 Affiliate in 1998, but due to FCC rules, all transactions with Qwest LD were identified and posted back to 1996. Therefore, Qwest LD has been 272 compliant for several years. Some time during the latter half of 2001, Qwest LD will be merged into QCC.

QCC was identified in January, 2001 to become the Company's designated 272 Affiliate. Although the BOC had notified the states in the fall of 2000 that the 272 workshops should be put on hold because changes were being contemplated for our 272 strategy, it was not until January, 2001, that Qwest made the decision that QCC would become the new 272 Affiliate. Between September and January, the BOC did not know who would ultimately be the 272 affiliate. After three months of extensive transitional activities[4] from January through March, 2001, QCC became operational as a 272 Affiliate on

[4] Schwartz Testimony at page 10, line 4.

March 26, 2001.

Until Qwest LD is merged into QCC, the BOC will have two 272 Affiliates. Both Qwest LD and QCC are in compliance with FCC rules regarding 272 Affiliates – for example, both companies have 272 web sites identifying and posting all transactions with the BOC.

Q. WHEN WERE THE TRANSACTIONS FROM THE TRANSITIONAL PHASE POSTED TO THE WEB SITE?

A. The new 272 Affiliate website for QCC became available on March 26, 2001 at the time the BOC filed testimony in Arizona. In January, 2001, QCC was identified as a 272 Affiliate, and by the end of March, the new website was created with all of the transactions posted which had been identified at that time. AT&T's claims that the BOC should have been posting transactions with QCC since the merger are incorrect – there was no obligation to post until QCC became the 272 Affiliate. QCC was "turned up" as the 272 Affiliate on March 26, 2001, and the BOC did post the transactions at that time.

The website for Qwest LD, the former 272 Affiliate, has been available for several years. However, when the QCC website was being created, some confusion caused errors to be made on the Qwest LD website, which have now been corrected. For example, in 2001, all transactions with Qwest LD were inadvertently moved to the terminated section, but there are still some current transactions. So, although the transactions were all posted, they were designated incorrectly on the website. That error has been corrected. Also, Qwest now realizes that the language on the website regarding the beginning dates for QCC and ending dates for Qwest LD may have been confusing to some and has been clarified.

Q. PLEASE EXPLAIN THE "INTERIM" SERVICES POSTED ON THE INTERNET WEBSITE.

A. The Interim Services shown on the Internet website pertain to services which were being provided between the BOC and the 272 Affiliate before employee realignments were completed. These services generally covered the time period between the merger (June 30, 2000) and March 2001 when over 7,500 employees changed payrolls in order for Qwest to become Section 272 compliant. Many of the examples in AT&T's Affidavit, such as Interim Common Supervision, were the result of transitional activities and are no longer being provided. In an effort to be very conservative, the BOC identified all transactions with the 272 Affiliate back to the merger date, even before QCC was identified to be the 272 Affiliate, and posted them to the website.

Q. DID THE MERGER TRANSITION OR THE TRANSITION TO THE NEW 272 AFFILIATE AFFECT THE 272 COMPLIANCE ACTIVITIES WITH REGARD TO QWEST LD?

A. No. The activities with Qwest LD have remained business as usual. The BOC has continued to accrue, bill and post the transactions with Qwest LD in accordance with the policies and procedures that were already in place. The transition activities only impacted transactions between the BOC and QCC, the new 272 affiliate. Qwest has always had a compliant Section 272 Affiliate in place.

Q. CAN THE TRANSITIONAL PERIOD BE USED TO CONCLUDE HOW THE BOC WILL MEET THE 272 REQUIREMENTS ON AN ONGOING BASIS?

A. No. It would be completely unreasonable to look only at this transitional period and conclude that the BOC will not meet the Section 272 rules going forward under more typical circumstances. The BOC has taken significant steps to ensure that QCC transactions will be processed accurately and in a timely manner going forward. These steps include hiring AA as loaned staff to assist in assuring that transactions were identified, retroactive billing back to the merger date when needed, extensive employee training and other measures as discussed in my supplemental direct testimony. The transitional period was a one-time event which is not indicative of on-going operations or future behavior.

Q. IS MONTHLY BILLING TAKING PLACE?

A. Yes. In April 2001, the BOC issued approximately 30 invoices to QCC. Many of these invoices dated back to the merger, and were the “catch-up” billing to bring the transactions current. Now that the immense work has been completed to identify and price all of the transactions, billing can and will occur regularly as specified in the affiliate agreements posted on the Internet. QCC billing for the month of May has been completed, and June billing is in progress. Monthly billing for Qwest LD has been taking place on a regular monthly basis throughout the merger and transition period.

Q. SINCE BILLING TO QCC WAS DELAYED DUE TO MERGER ACTIVITIES, DID QCC RECEIVE ADVANTAGEOUS TREATMENT?

A. No. Because of the unusual circumstances which caused a delay in billing, and therefore a delay in QCC paying for the services it received, the BOC has calculated interest retroactive to when the services were provided and should have been billed. This interest was accrued on the BOC's books in May, and will be billed to the 272 Affiliate in June. Also, the Services Agreement and the Master Services Agreement between the BOC and the 272 Affiliate inadvertently left out the clause dealing with interest payments. Both agreements will be amended to include the charging of interest.

Interest charges are already included in the BOC agreements with Qwest LD, and the BOC has been charging interest to Qwest LD for late payments that occurred over the past years.

Q. DO OCCASIONAL MANUAL ERRORS IN THE DATA OR IN POSTINGS ON THE INTERNET MEAN A COMPANY DOES NOT HAVE SUFFICIENT PROCESSES IN PLACE TO COMPLY WITH SECTION 272?

A. No. Data collection and posting processes contain some elements of manual effort. Therefore, human errors occur from time to time. This does not mean the company is out of compliance with Section 272. The company's efforts to correct occasional discrepancies through accounting controls in a timely manner should also be a consideration in determining whether they are in compliance with Section 272 requirements. The ability to find and correct errors is evidence that the company's controls are in place and working. As noted in the FCC's order approving Southwestern Bell's Texas application, the FCC says that, "In its application, SWBT demonstrates that it has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with Section 272."[5] Also, in the Bell Atlantic-New York order the FCC found that "the value of the posting discrepancies is small, totaling less that the amount of the discrepancies at issue in the Second BellSouth Louisiana Order. Given these factors, we conclude that these isolated instances are not sufficient to show systemic flaws in Bell Atlantic's ability to comply with section 272(b)(5)."[6]

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[5] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc. d/b/a/ Southwestern Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, Inter-LATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. June 30, 2000), ¶398 ("SBC-Texas Order").

[6] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to provide In-Region, interLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, (rel. Dec. 22, 1999), ¶412 ("Bell Atlantic-New York Order").

Q. HAS THE BOC IDENTIFIED POSTING DISCREPANCIES IN THE QCC TRANSACTIONS?

A. Yes, the BOC discovered posting discrepancies during the first month of QCC billing which took place in April, for charges through March. For that month of billing, the BOC's controls identified that transactions equaling approximately 12% of the total dollar value of the transactions posted did not match the web site in some manner. Those errors are not surprising in that it was the first month's billing to QCC which involved new processes and numerous personnel throughout the BOC who were issuing invoices for the first time. Based on these errors, the BOC took immediate steps to reinforce the training and controls in place, and in the month of May there was less than one percent posting discrepancies. June billing, based on the invoices submitted as of the date of this rebuttal, is also estimated to have less than one percent posting discrepancies.

Q. PLEASE CLARIFY SOME OF THE OTHER ISSUES RAISED BY AT&T IN ITS AFFIDAVIT.

A. In its affidavit, AT&T lists some specific examples of invoices between the BOC and the 272 Affiliate, and raises issues regarding that billing. For example, in Paragraph 109, item a, AT&T mentions "high bill rates".[7] However, the bill rates used in that example appear very reasonable. According to invoice QC002, QCC billed at a Fully Distributed Cost ("FDC") of

[7] Skluzak Affidavit, ¶109.

$75.20 per hour. That FDC includes direct costs such as salary, benefits, office space, and computers, as well as corporate overhead loadings such as Executive, HR, and IT. QCC's FDC rate is very similar to the rate that the BOC charges for the same salary grades. Therefore, the billing rate used is not "high."

In item b, AT&T states that supervisors were billed at $307 per hour. These supervisors were Executive Vice Presidents. The rate billed is reasonable for the level of employees performing the work.

In item e, AT&T mentions an untraceable account code, and is concerned that a transfer of assets could be occurring. Those concerns are unfounded. The Task Order posted on the Internet website clearly states that the BOC receives no ownership in the lines being leased. The account code used on the invoice is a Field Reporting Code which directs those expenses to book to Account 6423.2, Buried Cable Expense. This Field Reporting Code is listed in the Chart of Accounts under Plant Specific Operations Expense, page 5, which was attached as Exhibit MES-12C to my Supplemental Direct Testimony. There is no basis for concerns regarding asset transfers for this transaction.

As these examples point out, many of the concerns and issues of AT&T are unfounded or overstated, and can be reasonably explained.

Q. DO THE BOC AND THE 272 AFFILIATE HAVE SEPARATE ACCOUNTING SOFTWARE MAINTAINED AT SEPARATE LOCATIONS?

A. Yes. QCC uses an accounting system and general ledger that is separate from the BOC. Each company basically uses the same system they were using prior to the merger. The QCC ledger system is based in Virginia, and the BOC's is based in Colorado. In addition, the feeder systems for the two companies differ. Therefore, QCC and QC use separate accounting software maintained in separate locations. As AT&T acknowledges, the BOC and the 272 Affiliate have separate Charts of Accounts.[8] There is substantial evidence that the BOC maintains books, records and accounts which are separate from the 272 Affiliate.

Q. DOES THE BOC USE ACCRUAL ACCOUNTING TO PROPERLY RECORD EXPENSES IN THE PERIOD INCURRRED IN ACCORDANCE WITH GAAP?

A. Yes. The BOC follows GAAP which requires accrual accounting. The audit opinion of our external auditors, Arthur Andersen, confirms the Company follows GAAP in all material respects. The BOC did accrue for approximately $1.5 million of revenue as a receivable from QCC in the year 2000 for affiliate services which had been identified. As a result of the merger transition, no expenses were accrued as a payable to QCC because services being provided by QCC had not yet been identified. Whereas the BOC already had a policy to accrue known and measurable affiliate transactions at the end of the year to ensure they were reflected in the correct financial period, the BOC has now strengthened that policy to require accruals each month for any 272 transactions over $25,000 not billed in the current month.

Q: DOES THE BOC COMPLY WITH THE FCC'S DEFINITION OF A "TRANSACTION" FOR PURPOSES OF SECTION 272?

A. Yes. In the Accounting Safeguards Order, the FCC describes the requirement of 272(b)(5) "transactions" as follows:

> To satisfy Section 272(b)(5)'s requirement that transactions between Section 272 affiliates and the BOC of which they are an affiliate be "reduced to writing and available for public inspection," we require the separate affiliate, at a minimum, to provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page. [9]

The FCC also provided examples of what constituted a transaction in the Accounting Safeguards Order:

> We note, however that once the BOC and its affiliate have agreed upon the terms and conditions for telephone exchange and exchange access such agreement would constitute a "transaction." For clarification, we also find that agreements between a BOC and its

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[8] Skluzak Affidavit ¶37

[9] In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. December 24, 1996) ¶122 ("Accounting Safeguards Order").

> affiliate for the provision of unbundled elements and facilities pursuant to explicit terms and conditions also constitutes a 'transaction.'[10]

The BOC complies with this definition by posting the agreements between the BOC and the 272 Affiliate, which contain the terms and conditions for the services provided, and posting work orders and task orders which contain specific descriptions and information about each service provided. For example, the Shared Space Work Order posted on the Internet website contains a description of the service, the effective dates, the basis for pricing, special equipment required, the number of personnel providing the service with their title and level of expertise, the frequency of the service, as well as the rate per square foot charged at each building location.

Nowhere does the FCC require that individual billings be construed as "transactions" that must be posted on the Internet as AT&T has suggested in its testimony. In the shared space example, the individual billings would show the number of square feet that QCC is being billed for in each of the buildings. In the Bell Atlantic-New York Order, the FCC "likewise reject[ed] AT&T's assertion that Bell Atlantic's Internet postings do not contain sufficient detail to show that Bell Atlantic will comply with section 272(b)(5). As required by [its] section 272(b)(5) rules, [the FCC concluded that] Bell Atlantic discloses 'the number and type of personnel assigned to the project, the level of expertise of

[10] Id.,¶124.

such personnel, any special equipment used to provide the service, and the length of time required to complete the transaction."[11]

The BOC's Internet postings contain those same FCC required components of information, i.e., rates, terms, conditions, frequency, number and type of personnel, and level of expertise. Additional billing detail is not required to be posted. AT&T contends that "failure to post actual transactional details means that Qwest fails to comply with section 272(b)(5)…,"[12] but those contentions are not consistent with the FCC's rulings. The BOC has, however, made additional billing detail available to AT&T on a confidential basis through responses to data requests. The BOC also has a control in place each month to compare the actual invoices issued, to the information posted to the web site, and any discrepancies are corrected the following month. Therefore, AT&T and others can be assured that the billing being issued to QCC does match what is publicly available on the web site. Also, this invoice reconciliation will be included in the Biennial Audit, which will further ensure that the BOC's web posting match the billing being issued. With all of the controls in place, there is no need for the BOC to post the actual billing each month.

[11] Bell Atlantic-New York Order, ¶413.
[12] Skluzak Affidavit, ¶112.

Q. DOES THE FCC REQUIRE THE BOC TO DISCUSS REPORTING STRUCTURES TO PROVE COMPLIANCE WITH SECTION 272(b)(3)?

A. No. In fact, in the Non-Accounting Safeguards Order, the FCC states that "the Section 272(b)(3) requirement that a BOC and a Section 272 affiliate have separate officers, directors and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its Section 272 affiliate."[13]

Further, in the BellSouth Louisiana Order, the FCC rejected AT&T's assertion that BellSouth failed to meet the "separate officers, directors, and employees" requirement because BellSouth did not adequately explain the reporting structure of its officers.[14] Thus, there is no such requirement. As the Corporate Officer exhibits for QCC and QC show, each company has separate officers and directors as the rules require.[15]

Q. IS IT PERMISSIBLE FOR THE OFFICERS IN THE BOC AND THE 272 AFFILIATE TO REPORT TO THE SAME OFFICER IN THE PARENT COMPANY?

A. Yes. According to the FCC's Non-Accounting Safeguards Order, the Section

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[13] Non-Accounting Safeguards Order, ¶178.
[14] Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. October 13, 1998), ¶329 ("Bell South - Louisiana Order").
[15] Schwartz Testimony, Exhibit MES-13 and Supplemental Direct Testimony of Judith L. Brunsting dated May 16, 2001, Exhibit JLB-20.

272(b)(3) requirements do not preclude the parent company of the BOC and the Section 272 affiliate from performing functions for both the BOC and the Section 272 affiliate. The FCC states:

> "Instead, we agree with the view that the Section 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its Section 272 affiliate."[16]

Moreover, in the FCC's order on Ameritech's application for 271 authority in Michigan, the FCC declined to condemn a reporting relationship in which officers of both the BOC and its 272 affiliate reported to an officer of the parent; rather, the FCC simply stated that such a reporting relationship "underscores the importance of the separate directors requirements,"[17] so that the officers of the BOC and the 272 Affiliate report to separate boards. Thus, contrary to AT&T's testimony that reporting to the same officer at the parent is a violation of the separate employees requirement, this is a permissible arrangement. Even if the officers of the BOC and the 272 Affiliate report into a common parent, as an officer of each corporation they have a fiduciary responsibility to the company that they represent. Therefore, the officers of QCC and the BOC must by law represent their own companies, even if they report to a common parent. Also, by virtue of being subsidiaries

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[16] Non-Accounting Safeguards Order, ¶182.

[17] Application of Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶362 ("Ameritech-Michigan Order").

of the same corporation, the BOC and the 272 Affiliate will at some point report to a common officer, ultimately the CEO of the corporation. Therefore, common reporting cannot be completely eliminated for subsidiaries of the same corporation.

Q. HAS THE BOC SATISFIED THE FCC'S RECORDED TEST FOR SECTION 272(b)(3) – SEPARATE OFFICERS, DIRECTORS AND EMPLOYEES?

A. Yes. The BOC and the 272 Affiliate have separate officers, directors, and employees. The 272 Affiliate's officers, directors and employees are not officers, directors or employees of the BOC. Additionally, no BOC officer, director or employee is also an officer, director or employee of the 272 Affiliate.

The BOC and the 272 Affiliate have separate employees, paid from separate payrolls.

Q. DOES THE FCC REQUIRE SEPARATE "ADMINISTRATION" OF PAYROLLS OR JUST SEPARATE PAYROLL REGISTERS?

A. The FCC does not require the separate "administration" of payrolls. While separate payroll registers provide evidence of separate books, records and accounts, the "administration" function is an allowable shared service function. Per the Non-Accounting Safeguards Order, the FCC states:

> We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to Section 272(b)(1), a BOC and a Section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services.[18]

As long as the "administration" transaction is provided on an "arms length" basis and reduced to writing and available for public inspection, posted to the Internet website and offered on non-discriminatory terms and conditions, it meets the Section 272 requirements. Qwest complies with these requirements.

Q. ARE EMPLOYEES ON THE BOC PAYROLL THAT PROVIDE SERVICES TO THE 272 AFFILIATE CONSIDERED SHARED EMPLOYEES?

A. No. The FCC's shared employees test is that no employee is on both payrolls at the same time. By comparing payroll registers, the BOC has verified that no employees are on both payrolls and therefore no employees are shared.

As I previously cited, the FCC contemplated and specifically allowed the provision of shared services between the BOC and the 272 Affiliate. The FCC also prohibits "shared employees"; therefore, it must follow that the FCC does not consider shared services to equate to shared employees. There are no prohibitions by the FCC regarding how many services can be provided,

[18] Non-Accounting Safeguards Order, ¶179.

how many employees can be used, or which specific services can be provided (except for rules regarding in-region, interLATA joint marketing, and operating, installation and maintenance services). The services provided back and forth between the BOC and the 272 Affiliate do not violate any shared employee rules.

Q: WHAT ABOUT AT&T'S CONCERNS REGARDING BOC EMPLOYEES WHO ARE LOANED TO THE 272 AFFILIATE?

A: In response to AT&T's concerns, the BOC has instituted a new policy to ensure that loaned employees are not an issue going forward. The new policy is that if a BOC employee is loaned to the 272 Affiliate to perform a special project, those projects will not exceed more than four months out of any year. Services for loaned employees will be priced and posted according to Section 272(b)(5).

Q. IS THE BOC PERMITTED TO PURCHASE FINANCE SERVICES FROM THE 272 AFFILIATE?

A. Yes. The arrangement whereby the BOC purchases Finance services from the 272 Affiliate, and also the 272 Affiliate purchases Finance services from the BOC, is not a compliance issue. Many Finance functions are centralized and performed for the entire Qwest family; the billing back and forth simply reflects the fact that employees on different payrolls are performing these services for all Qwest companies. Finance functions performed by the BOC for the 272 Affiliate are posted on the web and are available to other carriers, such as AT&T, on a nondiscriminatory basis. Also, Finance functions are no longer being performed by QCC for the BOC – the functions were performed at QCC only until those employees could be moved to another organization. At this time, the BOC performs Finance services for the 272 Affiliate, but not vice versa.

Q. DOES THE FCC PLACE ANY LIMITATIONS ON THE NUMBER OF EMPLOYEES THAT MAY TRANSFER BETWEEN A BOC AND A SECTION 272 AFFILIATE?

A. No. There are no explicit limitations from the FCC nor any mention of rules governing the transfer of employees between the BOC and the 272 Affiliate in either the Accounting Safeguards Order or the Non-Accounting Safeguards Order nor in any Section 272 approval order. The biennial audit procedures that AT&T quotes in its testimony are merely procedures to ensure that where transfers occur, internal controls are working. Internal controls such as the Code of Conduct which prohibits the sharing of confidential information, Qwest's policy to physically separate the BOC and 272 Affiliate employees, the extensive efforts undertaken to educate employees on Section 272 rules, and the "dots" that indicate which company an employee works for, are all measures to help ensure that no unauthorized information sharing takes place between the BOC and the 272 Affiliate. Disregard for those company policies can result in disciplinary action up to and including employee dismissal.

Q. HAS THE BOC SATISFIED THE REQUIREMENT TO HAVE A SIGNED OFFICER CERTIFICATION?

A. Yes. The BOC has just executed a new officer certification that was signed by Mark Schumacher, a BOC officer. At the time the previous certification was prepared, the officers at the BOC, the 272 Affiliate and QSC ("Services Company") were in a state of transition. In order not to delay the certification statement, Robin Szeliga, who signed the ARMIS filings, agreed to sign on behalf of the BOC. However, the certification requires signature by a BOC officer, and since Ms. Szeliga is an officer of QSC and not QC, QC has now replaced the certification that was signed by Ms. Szeliga. The new certification is attached as Exhibit MES-24.

Q. HAVE ANY THIRD PARTIES EXPRESSED INTEREST OR ACTUALLY REQUESTED ANY OF THE SERVICES POSTED ON THE INTERNET TO DATE?

A. No. To date, no third party carrier has expressed any interest in purchasing any of the Section 272 services posted on the website. The FCC's intent in requiring posting of Section 272 transactions is to ensure that third party carriers can purchase services provided to the Section 272 Affiliate at the same rates, terms and conditions.[19] However, even though AT&T has spent hours going through and analyzing the posted transactions, as evidenced by the detailed analysis of these transactions contained in AT&T's Affidavit, AT&T has yet to ask to purchase any service.

Q. ARE NON-CASH TRANSACTIONS CONDUCTED BETWEEN THE BOC AND THE 272 AFFILIATE?

A. No. All transactions are on a cash basis. Transactions for services provided are billed, and payments are rendered. Asset transfers follow the same process. Any concerns regarding non-cash transactions are moot, because all 272 Affiliate transactions are done on a cash basis. Processes to review asset transfers are merely another control to ensure that those transactions are identified, posted, invoiced and paid with cash, and that no network assets are transferred between the BOC and the Section 272 Affiliate.

[19] In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 at ¶343 (rel. October 13, 1998), ("BellSouth-Louisiana Order").

V. COMPLIANCE WITH SECTION 272(c) – NON DISCRIMINATION SAFEGUARDS

Q. DOES THE FCC CONSIDER A BOC'S COST ACCOUNTING MANUAL ("CAM") FILINGS AND ARMIS REPORTS WHEN DETERMINING COMPLIANCE WITH SECTION 272(c)(2)?

A. Yes. The FCC has considered historical results of the annual Joint Cost Audit in order to assess Section 272 Compliance in Section 271 applications. In the Bell Atlantic-New York Order, the FCC states: "The Commission evaluates the sufficiency of a BOC's internet disclosures by referring to its ARMIS filings, its Cost Allocation Manuals, and the CAM audit workpapers."[20] In the SBC-Texas Order, the FCC states: "Our review of SWBT's ARMIS data, its CAM, its independent auditor's workpapers, and the Internet disclosures supports SWBT's showing of compliance with the affiliate transactions rules."[21] Both of these orders are more recent than the BellSouth Louisiana Order quoted by AT&T, and contain a more current reflection of the FCC's position.

Q. IS A NON-BOC AFFILIATE THAT PROVIDES SERVICES TO THE 272 COMPANY REQUIRED TO OFFER THOSE SERVICES TO THIRD

[20] Bell Atlantic- New York Order, ¶411.
[21] SBC -Texas Order, ¶406.

PARTIES?

A. No. Section 272 applies only to BOC and Section 272 affiliates. Non-BOC affiliates may provide services to Section 272 affiliates without offering similar services to third parties, so long as the transaction is not a "chaining" transaction involving the BOC. Therefore, the services Advanced Technologies ("AT") provided to Qwest LD are not required to be made available to others, contrary to AT&T's position that "failure to also offer such services and information to an unaffiliated entity constitutes noncompliance with this section."[22]

Q. DID THE SERVICES PROVIDED BETWEEN AT AND QWEST LD CONSTITUTE CHAINING TRANSACTIONS?

A. No. The BOC did not provide any services to AT, which in turn "chained" those services to Qwest LD. The services that AT provided to Qwest LD were not provided by the BOC and did not involve the BOC in any way. Therefore, those services are not subject to the nondiscrimination requirements. AT was a sister company to the BOC and to Qwest LD and performed research and development related activities for all U S WEST companies. AT has now ceased operations and its functions were discontinued or were merged into other entities.

[22] Skluzak Affidavit, ¶128.

Q. DOES THE FCC REQUIRE SPECIFIC NONDISCRIMINATION STATEMENTS REGARDING TRANSACTIONS BETWEEN A BOC AND ITS 272 AFFILIATE?

A. No. The FCC has not issued a required list of statements. Also, many of the nondiscrimination items raised by AT&T concern Section 271 issues such as the processing of PIC orders, interconnection standards, performance standards, measurements, tracking and nondiscriminatory access to OSS and are better dealt with in the 271 forum.

Q. HOW DOES THE BOC PRICE THE SERVICES IT CHARGES TO THE 272 AFFILIATE?

A. The BOC charges the 272 Affiliate the same prices that the BOC would charge any other carrier and does charge its non 272 affiliates. Therefore, there is no issue of discrimination. The pricing used by the BOC for services provided to the 272 Affiliate follows the pricing hierarchy of the rules contained in FCC Part 32.27 and CC Docket 96-150, the Accounting Safeguards order. Methods and procedures are contained in the BOC's CAM which has been approved by the FCC. The BOC's external auditors have reviewed this process in conjunction with their audits, without any findings of non-compliance.

VI. COMPLIANCE WITH SECTION 272(e) – FULFILLMENT OF CERTAIN REQUESTS

Q. HAS THE BOC MADE A SHOWING THAT IT WILL IMPUTE TO ITSELF RATES FOR EXCHANGE AND EXCHANGE ACCESS SERVICES?

A. Yes. The imputation of access rates was specifically addressed in the response to data request AT&T Set 10, Request 105 where the BOC stated, "when and if QC does use exchange access for the provision of its own services, QC will impute to itself the same amount it would charge an unaffiliated interexchange carrier." Since imputation cannot occur until the sunset of 272, which is several years into the future, and then only if the BOC decides to provision its own inter-LATA toll, this issue can be better dealt with at the time that imputation becomes a reality.

Q. WHAT EVIDENCE IS NECESSARY TO PROVE QWEST'S INTENTION TO COMPLY WITH THE REQUIREMENTS OF SECTION 272(e)?

A. AT&T complains that Qwest's assertion that it will comply with Section 272(e)(3) and (4) is not sufficient because "mere words" will not allow the Commission to make a predictive judgment. But such "mere words" are exactly what the FCC has found will suffice in demonstrating future compliance with this section:

> BellSouth states that BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. BellSouth also states that where BST uses exchange

> access for the provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier. Therefore, BellSouth has adequately demonstrated that it will comply with the requirement of Section 272(e)(3).[23]

Furthermore, Qwest does not agree that the Commission should impose additional requirements to ensure QCC does not engage in price squeezes. Indeed, the FCC itself specifically rejected the assertion that such additional requirements should be imposed, concluding that "further rules addressing predatory pricing by BOC Section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem."[24]

VII. COMPLIANCE WITH SECTION 272 (g) – JOINT MARKETING

Q. WHAT GUIDANCE HAS THE FCC PROVIDED WITH REGARD TO SECTION 272(g) IN BOC SECTION 272 APPROVAL ORDERS?

A. The FCC has stated: "We do not require applicants to submit proposed marketing scripts as a precondition for Section 271 approval, nor do we expect to review revised marketing scripts on an ongoing basis once Section

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[23] BellSouth -Louisiana Order, ¶354 (rel. October 13, 1998) (footnotes omitted); see also id. at ¶355 (finding that BellSouth will comply with Section 272(e)(4) because "BellSouth commits that, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates, terms, and conditions and will record any transactions between BST and BSLD in the manner prescribed in the Accounting Safeguards Order.").
[24] Non-Accounting Safeguards Order, ¶258.

271 authorization is granted. Applicants are free to tell us how they intend to joint market, although we do not require them to do so."[25]

Q. HAS THE BOC COMPLIED WITH THIS GUIDANCE?

A. Yes. The BOC has posted to the Section 272 website a copy of all work orders describing the services provided by QC to QCC. When joint marketing services are provided, those services will also be posted to the Internet website. The BOC is not required to provide copies of actual marketing scripts used in the provision of joint marketing services.

Q. DOES THE BOC COMPLY WITH THE NONDISCRIMINATION PROVISION OF PRODUCT PLANNING, DESIGN AND DEVELOPMENT ACTIVITIES BY POSTING THEM TO THE INTERNET AND MAKING THEM AVAILABLE TO THIRD PARTIES?

A. Yes. The BOC has posted services to the Internet website that involve product development and product management. These can be found under the work order labeled "Interim Product Development." All of the services posted to the Internet website are available for third parties to purchase on a nondiscriminatory basis.

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[25] Application of BellSouth Corporation, et. al. Pursuant To Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997), ¶236 ("BellSouth-South Carolina Order").

Q. HAS THE BOC UPDATED THE PUBLIC RECORD WITH A MORE RECENT VERSION OF ITS METHODS FOR AFFILIATE TRANSACTIONS ("MAT")?

A. Yes. The BOC has updated the MAT to reflect the latest methods and procedures regarding affiliate transactions. The new version of the MAT was filed as an exhibit to my supplemental direct testimony. The new MAT no longer contains the wording referenced by AT&T.[26]

Q. IS IT INAPPROPRIATE THAT QWEST WIRELESS HAS A DIFFERENT MARKETING AGREEMENT WITH THE BOC THAN DOES LD?

A. No. There is simply no requirement that prevents a BOC from executing different agreements with different affiliates involving similar services. Indeed, the marketing agreements will pertain specifically to the circumstances regarding each service that is provided. For example, there is a Wireless joint marketing agreement pertaining to sales of BOC products in Wireless retail stores. It is very doubtful a similar agreement will be relevant between the 272 Affiliate and the BOC. Therefore, the joint marketing services provided to different affiliates are likely to vary and a comparison of the services provided has no relevance to Section 272 compliance. The BOC complies with Section 272 by posting the transaction on the Internet.

[26] Skluzak Affidavit, ¶149.

Q. PLEASE COMMENT ON AT&T'S CONTENTION THAT PAST OCCURENCES WHERE A QWEST COMPANY WAS FOUND IN VIOLATION OF SECTION 271 OR 272 RULES SHOULD BE CAUSE FOR ADDITIONAL SCRUTINY OR REQUIREMENTS.

A. AT&T repeatedly refers to prior activities of Qwest which were later found to be out of compliance as evidence that Qwest needs more scrutiny or more controls than the other RBOC's. This is entirely untrue. The examples used by AT&T were in areas where the law or rulings were not clear, and Qwest believed that it could provide a service, but later rulings determined that the service could not be provided. At the time those rulings were made, Qwest ceased those operations immediately. These examples are no evidence that Qwest would knowingly or willingly violate the Act or the FCC rules. Qwest would have no incentive to expend resources and begin operations in areas that it knows would be terminated. Therefore, these examples used by AT&T should be regarded in the proper context of laws or rules that were not clear, and where Qwest made a good faith effort to provide services within the confines of the rules as it interpreted them.

VIII. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. In this rebuttal testimony I have provided additional evidence that the BOC is in compliance with all aspects of Section 272. I have shown that the BOC is in compliance with the separate transaction requirements and has separate accounting systems at separate locations. The BOC and 272 Affiliate meet the test for separate officers regardless of the reporting structure. The transactions posted to the Internet website meet the FCC requirements regarding sufficiency, and the BOC is not required to post the "live" transactions. I have addressed the transitional period that the BOC encountered, and how that period is not representative of ongoing processes. Also, I clarified that there is no FCC requirement regarding the movement of employees between the BOC and 272 Affiliate, no need to have separate payroll administration, or a prohibition regarding administrative services that the BOC and 272 Affiliate may purchase from each other. I have also clarified that there were no chaining transactions occurring in the services provided from AT to Qwest LD. So, those services are not subject to nondiscrimination requirements. I have confirmed that the BOC has stated it will impute access charges when required and that this confirmation meets the FCC's requirement. Lastly, I have addressed the joint marketing issues raised by AT&T and have shown that the BOC has made product development services available by posting them to the Internet website if other parties wish to purchase those services.

By refuting each of the major issues raised by AT&T, I have shown that statements that the BOC does not comply with the 272 requirements are misleading, based on inaccurate data, or focused solely on the transitional period. Therefore, there is a reasonable and rational basis for the Commission to determine that the BOC does have appropriate processes and controls in place to enable it to meet the 272 compliance requirements.

Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.