

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**IN THE MATTER OF THE PETITION FOR
ARBITRATION OF AT&T
COMMUNICATIONS OF THE PACIFIC
NORTHWEST AND TCG SEATTLE WITH
QWEST CORPORATION PURSUANT TO
47 U.S.C. § 252(b)**

DOCKET NO. UT-033035

DIRECT TESTIMONY OF THOMAS R. FREEBERG

ON BEHALF OF

QWEST CORPORATION

(Disputed Issue Nos. 3, 5, 17, 18, 19, 21, 30, and 34)

September 25, 2003

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.

A. My name is Thomas R. Freeberg. My business address is 301 W. 65th St., Room 100, Richfield, Minnesota 55423-1559. I am a Director at Qwest Corporation ("Qwest"), with responsibilities for directing Qwest's efforts to comply with Sections 251, 252, and 271 of the Communications Act of 1934, as amended.

Q. PLEASE DESCRIBE YOUR EDUCATION BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. I hold a Bachelor of Science degree in Civil Engineering from the University of Minnesota, Institute of Technology. I am a Registered Professional Engineer in Minnesota, License Number 16738 MN. Excluding a two-year period I spent working for a CLEC, I have worked for Qwest and its predecessors since 1979 in various engineering, construction, administration, planning, and operations positions, mostly in Minnesota. As part of Qwest's construction operation, I directly supervised cable placement and splicing for interoffice and loop facilities. As part of Qwest's order provisioning operation, I directly supervised order administrators and facilities specialists who maintained records of idle and working cable and electronics inventories as orders were processed. As part of Qwest's engineering operation, I drafted blueprints for outside plant augments, ran computer models comparing the economics of various network augment options (switching, loop and transport), and developed the cost portion of business cases for potential new services. Finally, as part of Qwest's

1 wholesale operation, I directly supervised the development and documentation of
2 provisioning and maintenance processes associated with new resale, interconnection,
3 and unbundled local services. These efforts were intended to ensure that basic
4 provisioning and maintenance were in place to support the initial rollout of local
5 wholesale services. I actively participated in each of the state proceedings in which
6 Qwest was seeking approval to provide interLATA services across its 14-state ILEC
7 region. I submitted affidavits and participated in workshops in all but one of Qwest's
8 ILEC states.

9 **Q. HAVE YOU PREVIOUSLY APPEARED BEFORE THIS COMMISSION AS A**
10 **WITNESS IN REGULATORY PROCEEDINGS?**

11 A. Yes. I have filed testimony with this Commission on behalf of Qwest in other dockets.

12 **Q. ARE YOU FAMILIAR WITH THE PROCEEDINGS IN WASHINGTON**
13 **RELATING TO QWEST'S WASHINGTON SGAT AND COMPLIANCE**
14 **WITH SECTION 271 OF THE ACT?**

15 A. Yes. I participated in several Washington workshops that evaluated Qwest's satisfaction
16 of the competitive checklist in Section 271 of the Telecommunications Act of 1996 ("the
17 Act") as well as a review of Qwest's Washington Statement of Generally Available Terms
18 ("SGAT"). I also participated in proceedings before the Federal Communications
19 Commission ("FCC") on Qwest's compliance with Section 271 for the state of
20 Washington.

21 **II. PURPOSE OF TESTIMONY**

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

1 A. In my direct testimony, I explain why the Commission should approve Qwest's proposed
2 contract language for the issues I address as well as the basis of Qwest's opposition to
3 language that AT&T proposes for the parties' new interconnection agreement. This
4 testimony addresses interconnection and reciprocal compensation matters upon which
5 Qwest and AT&T failed to reach agreement in negotiation. The issues addressed in this
6 testimony are summarized in the Disputed Issues matrix as Issues 3, 5, 17, 18, 19, 21, 30
7 and 34.¹

8 **III. SUMMARY OF TESTIMONY**

9 **Q. BEFORE TURNING TO A SUMMARY OF YOUR TESTIMONY, HAS THE**
10 **COMMISSION HAD THE OPPORTUNITY TO ADDRESS ANY OF THE**
11 **ISSUES IN THIS ARBITRATION BEFORE?**

12 A. For several issues, yes. Interconnection and reciprocal compensation were extensively
13 addressed by Qwest and AT&T during the 271 workshops and hearing process in all of
14 Qwest's in-region states, including Washington. AT&T was perhaps the most active
15 participant in the Washington proceedings and yet did not raise many of the novel and far-
16 reaching claims that it makes here, such as its proposal to redefine "Exchange Service."
17 Likewise, AT&T did not raise many of these issues in its comments to the FCC on
18 Qwest's compliance with Section 271. Thus, to the extent that AT&T now claims that

¹ I understand that AT&T may attempt to add issues by revising the Disputed Issues List that was filed with the Commission. However, it has not yet done so. Therefore, I address the issues that are identified in AT&T's petition and Qwest's response. If AT&T seeks to revise the list of disputed issues, and the Commission permits it to do so, I reserve the right to respond to those additional issues.

1 certain modifications are required by the Act or FCC rules, neither AT&T, other
2 Washington CLECs, nor this Commission believed modifications to this long-standing
3 definition were necessary for Qwest to meet its obligations under Section 271 of the Act.

4 **Q. PLEASE SUMMARIZE THE ISSUES YOU ADDRESS IN YOUR**
5 **TESTIMONY AND QWEST'S POSITION ON THOSE ISSUES.**

6 A. Perhaps the most sweeping demand that AT&T makes is that the Commission should
7 redefine local exchange service, the parties' dispute under Issue 5. Today, Commission
8 rules define local exchanges and local calling areas based upon geographic areas and rate
9 centers.² AT&T, however, asks this Commission to ignore long-standing definitions and
10 define a local call based solely and strictly upon comparison the calling and called
11 NPA/NXX,³ regardless of where the call originates and terminates. The result of AT&T's
12 language is to redefine a local call, thereby converting calls that historically have been
13 rated as toll calls (for which Qwest collected retail intraLATA toll or switched access
14 charges from the cost-causer under existing rules, tariffs, and interconnection agreements)
15 into local calls for which Qwest would then pay AT&T reciprocal compensation.
16 AT&T's language does not comport with Washington law and Commission rules
17 regarding reciprocal compensation, nor does it align with the Act. Adoption of AT&T's
18 language would have far-reaching public policy consequences for other Washington

² WAC 480-120-021 ("Local calling area' means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charge; "Exchange' means a geographic area established by a company for telecommunications service within that area").

³ NPA stands for Numbering Plan Area (often referred to as area code) and is a defined geographic area identified by a unique three-digit used in the North American Numbering Plan. NXX represents a central office code of three digits that designates a particular central office.

1 LECs. These consequences are being felt nationwide and cannot be fully evaluated in the
2 abbreviated timeframe available for this arbitration, and, accordingly, should not be
3 triggered by ordering the definition of a term in a two-party arbitration.

4 With regard to Issue 3, AT&T proposes an open-ended definition of when a CLEC's
5 switch qualifies for tandem compensation. AT&T contends that if a CLEC's switch is
6 "capable of" serving a geographic area comparable to the incumbent LEC, it should
7 receive tandem compensation even if the CLEC never serves customers or operates
8 loops beyond a limited area near its switch. AT&T's proposed definition is inconsistent
9 with 47 C.F.R. § 51.711(a)(3) and with prior decisions of this Commission in the course
10 of reviewing Qwest's SGAT in the Washington 271 proceedings. AT&T's proposed
11 definition also renders meaningless the FCC rules regarding when a CLEC switch should
12 receive tandem compensation. Qwest's proposed definition, in contrast, is consistent with
13 the letter and spirit of Rule 51.711(a)(3).

14 Issue 17 involves two disagreements. The first relates to AT&T's demand to include
15 traffic not subject to reciprocal compensation in the parties' dedicated transport relative
16 use calculations. Qwest recognizes that the Commission, in the past has reached a
17 different conclusion than Qwest proposes here. The Commission, however, should
18 reevaluate that determination as inconsistent with governing FCC rules that exclude all
19 Internet-bound traffic from all reciprocal compensation obligations. Just as payment of
20 reciprocal compensation for Internet-bound traffic led to distortions in the market,
21 AT&T's proposed language has the effect of creating perverse incentives for Internet
22 Service Providers ("ISPs") and obligating Qwest to provide unlimited quantities of free
23 transport to any location the ISP might name. The second dispute relates to AT&T's

1 proposal to apply a relative use factor to "comparable facilities." This language is unclear,
2 open-ended and could be construed to apply (improperly) to facilities purchased from
3 FCC tariffs and governing law.

4 Issue 18 concerns the proper treatment of tandem transmission when AT&T's switch
5 qualifies as a tandem. Qwest proposes use of actual mileage measurements whereas
6 AT&T proposes a blanket assumption of transmission mileage, even if it provides no
7 transport at all.

8 Issue 19 concerns whether Unbundled Network Element Platform ("UNE-P") originating
9 minutes of use should be included in the 3:1 presumption for the determination of Internet-
10 bound minutes of use. Although Qwest does not agree with AT&T's position, it will not
11 contest this issue in this arbitration. Qwest believes that the parties should move
12 immediately to use of actual data to determine Internet-bound traffic and specifically
13 reserves the right to do so. AT&T does not contest Qwest's right to demonstrate the
14 amount of Internet-bound traffic with actual data.

15 Issue 34 relates to those rare instances in which Qwest is the intraLATA toll carrier, but
16 not the local service provider and not the interLATA carrier, for a specific end user
17 customer. In this specific circumstance, Qwest, the ILEC, does not authorize AT&T to
18 offer Qwest as an intraLATA toll provider option to its customers. If AT&T nevertheless
19 does so, however, Qwest believes AT&T should bill the customer for the intraLATA toll
20 service Qwest provides. AT&T already has a billing relationship with the end user
21 customer, and Qwest bills AT&T a discounted rate to offset the costs AT&T incurs to
22 perform the billing function.

1 As discussed below, Qwest's proposed language aligns with the requirements of the Act,
2 FCC rules, and this Commission's rules. Based on the evidence in this testimony, the
3 Commission should order the parties to include Qwest's proposed language in the parties'
4 new interconnection agreement for the disputed language that I address in my testimony.

5 **IV. DISPUTED ISSUES**

A. Definition Of Tandem Switch (Issue 3).

6 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES?**

7 A. The parties dispute the proper definition of a tandem switch for purposes of reciprocal
8 compensation. My testimony addresses specifically the definitional issue of when a
9 CLEC's switch is entitled to tandem treatment for reciprocal compensation purposes.

10 **Q. WHAT IS QWEST'S PROPOSED DEFINITION OF A TANDEM SWITCH**
11 **FOR SECTION 4 OF THE PARTIES' AGREEMENT?**

12 A. Qwest proposes the following definition of a "Tandem Office Switch":

13 "Tandem Office Switches" – CLEC end office Switch(es) shall be
14 considered Tandem Office Switch(es) for the purpose of determining
15 reciprocal compensation rates to the extent such Switch(es) serves a
16 comparable geographic area as Qwest's Tandem Office Switch. If the
17 Parties have not already agreed that CLEC's switches meet the
18 definition of Tandem Office Switches, a fact based consideration of
19 geography, when approved by the Commission or mutually agreed to
20 by the Parties, should be used to classify any Switch on a prospective
21 basis. In addition, "Tandem Office Switches" are used to connect and
22 Switch trunk circuits between and among other End Office Switches.
23 Access tandems typically provide connections for Exchange Access
24 and toll traffic, and Jointly Provided Switched Access traffic while local
25 tandems provide connections for Exchange Service (EAS/Local) traffic.

1 CLECs may also utilize a Qwest Access Tandem for the exchange of
2 local traffic as set forth in this Agreement.⁴

3 **Q. WHAT IS AT&T'S PROPOSED DEFINITION?**

4 A. AT&T proposes the following definition. I have underlined the language that is disputed:

5 "Tandem Office Switches" - CLEC End Office Switch(es) shall be considered
6 Tandem Office Switch(es) for the purpose of determining reciprocal
7 compensation rates to the extent such Switch(es) is (are) capable of serving a
8 comparable geographic area as Qwest's Tandem Office Switch. If the Parties
9 have not already agreed that CLEC's Switches meet the definition of Tandem
10 Office Switches, a fact based consideration of geography, when approved by the
11 Commission or mutually agreed to by the Parties, should be used to classify any
12 Switch on a prospective basis. In addition, "Tandem Office Switches" are used
13 to connect and Switch trunk circuits between and among other End Office
14 Switches. Access tandems typically provide connections for Exchange Access
15 and toll traffic, and Jointly Provided Switched Access traffic while local tandems
16 provide connections for Exchange Service (EAS/Local) traffic. CLECs may
17 also utilize a Qwest Access Tandem for the exchange of local traffic as set forth
18 in this Agreement.

19 **Q. WHAT IS THE BASIS FOR QWEST'S PROPOSED DEFINITION?**

20 A. Qwest's proposed language is based upon 47 C.F.R § 51.711(a)(3) and is the same as
21 the definition in Qwest's Washington SGAT.

22 **Q. WAS THE TANDEM SWITCH DEFINITION REVIEWED IN THE COURSE**
23 **OF THE WASHINGTON 271 WORKSHOPS?**

24 A. Yes.

25 **Q. WHAT DID THE WASHINGTON COMMISSION DECIDE?**

⁴ Agreement § 4. The definition of a "Tandem Office Switch" is a subpart of the definition of a "Central Office Switch."

1 A. In the Commission's Twenty-Fifth Supplemental Order in connection with the Washington
2 271 proceeding,⁵ the Commission reviewed the definition of tandem switch and directed
3 Qwest to adopt the definition reflected in the Washington SGAT. The Commission did so
4 at the urging of AT&T and WorldCom. Qwest's SGAT definition does not include the
5 "capability" language AT&T now seeks.

6 **Q. IS QWEST WILLING TO PAY AT&T THE TANDEM RATE IF AT&T**
7 **ESTABLISHES THAT ITS SWITCH SERVES A GEOGRAPHY**
8 **COMPARABLE TO QWEST'S TANDEM?**

9 A. Yes, Qwest is willing to pay AT&T for local call termination at an appropriate tandem
10 rate when AT&T's switch serves a geography comparable to Qwest's tandem. In
11 negotiation, Qwest proposed a simple test that is Exhibit TRF-2 to this testimony. Upon
12 successful processing of the test, Qwest would pay AT&T at the tandem rate.

13 **Q. WHAT ARE THE FCC RULES THAT RELATE TO THIS ISSUE?**

14 A. In the *Local Competition Order*, the FCC determined that the costs of transporting and
15 terminating traffic could vary depending on whether tandem switching is involved.⁶

⁵ Twenty-Fifth Supplemental Order; Order Granting In Part and Denying In Part Petitions for Reconsideration of Workshop One Final Order, *The Investigation Into U S WEST Communication's Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*; *U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act*, Dkt. Nos. UT-003022, UT-003040, ¶¶ 15-19 (Feb. 8, 2002) ("*25th Supplemental Order*").

⁶ First Report and Order, *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 95-185, 11 FCC Rcd 15499 ¶ 1090 (1996) ("*Local Competition Order*").

1 Accordingly, the FCC stated that state commissions could adopt different rates for
2 tandem-switched traffic to reflect the additional costs associated with tandem switching.

3 In the *Local Competition Order* at paragraph 1090, the FCC said:

4 We find that the "additional costs" incurred by a LEC when transporting and
5 terminating a call that originated on a competing carrier's network are likely to
6 vary depending on whether tandem switching is involved. We, therefore,
7 conclude that states may establish transport and termination rates in the
8 arbitration process that vary according to whether the traffic is routed through a
9 tandem switch or directly to the end-office switch. In such event, states shall
10 also consider whether *new technologies* (e.g., fiber ring or wireless networks)
11 perform functions similar to those performed by an incumbent LEC's tandem
12 switch and thus, whether some or all calls terminating on the new entrant's
13 network should be priced the same as the sum of transport and termination via
14 the incumbent LEC's tandem switch. Where the interconnecting carrier's switch
15 *serves* a geographic area comparable to that served by the incumbent LEC's
16 tandem switch, the appropriate proxy for the interconnecting carrier's additional
17 costs is the LEC tandem interconnection rate.

18 Rule 51.711(a)(3) of the FCC rules⁷ provides that:

19 Where the switch of a carrier other than an incumbent LEC serves a geographic
20 area comparable to the area served by the incumbent LEC's tandem switch, the
21 appropriate rate for the carrier other than an incumbent LEC is the incumbent
22 LEC's tandem interconnection rate.

23 **Q. IS QWEST'S PROPOSED DEFINITION CONSISTENT WITH FCC RULES?**

24 A. Yes. Qwest incorporates the FCC's requirements in its proposed definition. In fact,
25 Qwest's proposed definition of a "Tandem Office Switch" tracks Rule 51.711(a)(3).

26 **Q. IS AT&T'S PROPOSED DEFINITION CONSISTENT WITH THESE RULES?**

⁷ 47 C.F.R. § 51.711(a)(3).

1 A. No. AT&T's position is that its switch need only be "capable of serving" a comparable
2 geographic area as Qwest's Tandem Office switch for the AT&T switch to be considered
3 a tandem switch for purposes of collecting tandem switching compensation. AT&T's
4 "capable of serving" language is inconsistent with the plain language of 47 C.F.R.
5 § 51.711(a)(3). The rule provides that a CLEC's switch will qualify as a tandem switch,
6 "[w]here the switch of a carrier other than an incumbent LEC *serves* a geographic area
7" The rule does not state that a CLEC is entitled to tandem compensation solely
8 because its switch "*is capable of serving* a geographic area"

9 **Q. IS AT&T'S PROPOSED DEFINITION CONSISTENT WITH PRIOR**
10 **COMMISSION DETERMINATIONS?**

11 A. No. In the 25th *Supplemental Order* at paragraph 19, the WUTC advised:

12 Given these decisions by the FCC and the Ninth Circuit, we concur with AT&T
13 and WorldCom that Qwest must modify SGAT section 7.3.4.2.1 to reflect that a
14 terminating party need only demonstrate that its switch serves a geographic area
15 comparable to that of Qwest's tandem switch to receive the tandem switching
16 rate and tandem transmission rate in addition to the end office termination rate.
17 Qwest must also modify SGAT section 4.1.1.2 to delete the word "actually."

18 In early 2002 Qwest made these revisions to the SGAT, and this language remains in the
19 SGAT today.

20 **Q. IS AT&T'S LANGUAGE CONSISTENT WITH THE ACT'S POLICY**
21 **OBJECTIVES?**

22 A. No. AT&T's proposal that a CLEC switch merely be "capable of serving" a comparable
23 geographic area is less specific contract terminology than whether a switch is "serving" a
24 comparable area. Any CLEC could claim that its switch is "capable" of serving a
25 comparable geographic area as Qwest's tandem since, technically speaking, any

1 manufacturer's switch can be programmed to complete calls from many NXXs. Under
2 AT&T's expansive definition, therefore, a CLEC could claim its switch is "capable" of
3 serving a comparable geographic area even if the CLEC is actually serving no comparable
4 area.

5 Adopting AT&T's language also would send the wrong message to CLECs and provide
6 no incentive to CLECs to construct or even to lease at TELRIC the necessary facilities to
7 serve a wide base of customers or to complete calls across the geographic area served by
8 the Qwest tandem. Rule 47 C.F.R. § 51.711(a)(3) is designed to compensate a CLEC
9 for the facilities it needs to serve dispersed customers.

10 Based upon a spreadsheet AT&T provided to Qwest, attached as Exhibit TRF-3, I
11 believe that AT&T contends that if its switch had been assigned NXXs by the number
12 plan administrator from many ILEC rate centers, regardless of whether AT&T provides
13 telecommunications service to subscribers working and living in those areas, then Qwest
14 should pay the tandem interconnection rate for all calls terminated by that switch. Like its
15 "virtual" NXX position, discussed in connection with Issue 5, AT&T's proposal
16 encourages CLECs to acquire and retain precious industry numbering resources simply to
17 qualify their switches for compensation at higher rates. Under AT&T's combined
18 definitions under Issues 3 and 5, CLECs could obtain NXXs without any intent to use the
19 numbers to provide service to customers who live and work in the geographic areas from
20 which the NXXs were assigned. AT&T's proposed language would allow CLECs to be
21 compensated at a higher tandem interconnection rate for terminating calls over short loops
22 when the originating carrier transported the call over much longer distances. The
23 Commission should not encourage this "virtual NXX" (or VNXX) scheme, which is

1 discussed in connection with Issue 5.⁸ If both carriers transport the call over longer
2 distances to accommodate a CLEC's single point per LATA interconnection, the call is
3 truly local in nature and Qwest pays the tandem rate to the CLEC.

4 By establishing exception criteria for classifying a CLEC switch as a tandem switch for
5 intercarrier compensation purposes, the FCC did not intend every CLEC switch to
6 receive tandem treatment. If the FCC had intended this result, it simply would have
7 deemed all CLEC switches to be tandems. AT&T's proposed standard is overly broad
8 and would render Rule 51.711(a)(3), an exception to the general requirements in Rule
9 51.711, meaningless.

10 **Q. ARE THERE ADDITIONAL REASONS FOR REJECTING AT&T'S**
11 **PROPOSED TANDEM SWITCH DEFINITION?**

12 A. Yes. Qwest assesses charges for tandem switching and tandem transmission only when
13 Qwest actually routes the terminating call through the tandem switch and carries the call to
14 a specified end office.⁹ Approximately one fourth of all interconnection traffic sent by a
15 CLEC is subject to Qwest tandem switching charges. By contrast, *all* of the calls that
16 Qwest sends to a CLEC are subject to the higher charge once the CLEC's switch has
17 been classified a tandem. Qwest does not dispute this. During July 2003, Qwest sent 1.8
18 *billion* minutes of calls to Washington CLECs on local interconnection trunks. During the
19 same period, Qwest received 300 million minutes from Washington CLECs. Qwest bills

⁸ Exhibit TRF-4 is a description and discussion of the harms of virtual NXX and a methodology for identifying virtual NXX traffic.

⁹ Agreement § 7.3.4.2.1.

1 CLECs a small fraction of what CLECs now collect from Qwest.¹⁰ AT&T's proposals in
2 all cases seek to create greater imbalance of compensation. Moreover, even if the traffic
3 imbalance between AT&T and Qwest is different or less than the imbalance statewide,
4 AT&T's proposed contract terms would still have the effect of increasing that imbalance.
5 Because other Washington CLECs will undoubtedly opt into the AT&T agreement, the
6 statewide imbalance will surely increase as well.

7 The additional compensation that AT&T now seeks should be limited to the circumstance
8 described in the existing language of the Washington SGAT. The Commission approved
9 Qwest's current SGAT language in the Washington 271 proceedings. To receive tandem
10 switching compensation, a CLEC should serve customers located across a broad area. A
11 CLEC should not collect greater compensation on all calls from the moment the parties
12 execute their interconnection agreement or simply are assigned NXXs.

13 **Q. AT&T HAS CITED THE WIRELINE COMPETITION BUREAU'S DECISION**
14 **IN THE VERIZON VIRGINIA ARBITRATION ORDER IN SUPPORT OF**
15 **ITS LANGUAGE. SHOULD THIS COMMISSION FOLLOW THAT**
16 **ARBITRATION DECISION?**

17 A. No. Qwest was not a party to that arbitration and did not present the evidence or
18 arguments it presents here. Also, this Commission does not have the benefit of all the
19 evidence presented in that arbitration so that it can weigh whether it agrees with that
20 arbitrator's analysis. Finally, this Commission has its own policies and has addressed in
21 previous proceedings what standard should apply to determining whether a CLEC switch

¹⁰ In the past year Qwest billed Washington CLECs approximately \$2 million while paying approximately \$11 million in local interconnection reciprocal compensation.

1 should be treated as a tandem switch. Washington decisions, not those from an
2 arbitration between different carriers in a different state, should inform the Commission in
3 this proceeding.

B. Definition of Exchange Service (Issue 5).

4 **Q. WHAT IS QWEST'S PROPOSED DEFINITION OF "EXCHANGE**
5 **SERVICE"?**

6 A. Qwest proposes that the parties define "Exchange Service" in Section 4 of their agreement
7 as follows:

8 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic"
9 means traffic that is originated and terminated within the same Local
10 Calling Area as determined for Qwest by the Commission.

11 **Q. WHAT IS AT&T'S PROPOSED DEFINITION OF "EXCHANGE SERVICE"?**

12 A. AT&T proposes the following definition of "Exchange Service":

13 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic"
14 means traffic that is originated and terminated within the same Local
15 Calling Area as determined by the calling and called NPA/NXXs.

16 **Q. IS QWEST'S PROPOSED DEFINITION OF "EXCHANGE SERVICE"**
17 **CONSISTENT WITH THE DEFINITION IN QWEST'S WASHINGTON**
18 **SGAT?**

19 A. Yes. Qwest's definition is the same as the definition of "Exchange Service" in Qwest's
20 SGAT.

21 **Q. DID ANY CARRIER IN THE WASHINGTON 271 PROCEEDING OPPOSE**
22 **THIS DEFINITION?**

1 A. No.

2 **Q. DID ANY CARRIER IN THE WASHINGTON 271 PROCEEDING CONTEND**
3 **THAT QWEST'S DEFINITION REQUIRED CHANGES TO THE MEANS BY**
4 **WHICH CARRIERS CURRENTLY IDENTIFY TOLL AND LOCAL**
5 **TRAFFIC?**

6 A. No.

7 **Q. IS QWEST'S PROPOSED DEFINITION OF "EXCHANGE SERVICE"**
8 **CONSISTENT WITH COMMISSION RULES?**

9 A. Yes. Qwest's language references the areas established by the Commission within which
10 LEC's must permit retail customers to complete an unlimited number of calls for one flat
11 monthly charge. None of the Commission's rules defines an exchange on the basis of the
12 NPA/NXX assigned to a particular call; rather, the Commission's rules define an
13 exchange as a specific geographic area.¹¹ An exchange area consists of the associated
14 facilities of one or more wire centers used to provide basic local exchange service. Calls
15 within an exchange area are local calls. A local calling area is the geographic area
16 approved by the Commission as a community of interest in which customers may make
17 calls without payment of a toll charge. In the Commission's rules, a local calling area is
18 defined on the basis of specific rate centers.¹² In addition, the Commission defines
19 "Interexchange" as "telephone calls, traffic facilities or other items that originate in one

¹¹ WAC 480-120-021 ("Exchange' means a geographic area established by a company for telecommunications service in that area").

¹² *Id.* ("Local calling area' means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges").

1 exchange and terminate in another."¹³

2 **Q. HOW DOES QWEST DEFINE LOCAL EXCHANGE SERVICE IN ITS**
3 **WASHINGTON TARIFF?**

4 A. Section 2.1 of Qwest's Exchange and Network Services Tariff, WN U-40, defines an
5 "exchange" as a "specified geographic area established for the furnishing of communication
6 service. It may consist of one or more central offices together with associated plant used
7 in furnishing service within that area." That tariff section defines a "local exchange" as the
8 "[e]xchange in which the customer's premises is located." "Local service" is defined in
9 Section 2.1 of the tariff as "[e]xchange access service furnished between customer's
10 premises located within the same local calling area." A "local service area" is the "area
11 within which exchange access service is furnished under specific rates. This area may
12 include one or more exchanges without the application of toll charges." "Toll service" is
13 defined in Section 2.1 as "[t]elephone service between exchanges or locations for which a
14 toll rate is charged."

15 Section 5.1.1 of Tariff WN U-40, the description of "Exchange Services," defines "local
16 calling" as "calls placed to telephone numbers where message toll charges do not apply.
17 This includes calls placed within an exchange as well as between two or more exchanges
18 that are part of the local calling area"

19 **Q. IS AT&T'S PROPOSED DEFINITION OF "EXCHANGE SERVICE"**
20 **CONSISTENT WITH WASHINGTON RULES?**

21 A. No. AT&T claims that a local call should be defined by whether the NPA/NXX of the

¹³ *Id.*

1 called and calling party match, regardless of the parties' physical location. Thus, under
2 AT&T's definition, a call that originates in Yakima and terminates in Spokane would be
3 considered a local call even though the called and calling parties are located 200 miles
4 from each other. AT&T's definition divorces classification of a call from the geographic
5 area within which the call is made. In addition, under AT&T's definition, a call that under
6 Washington law is "Interexchange" traffic would be rated as local because it would be
7 irrelevant that the call crosses the geographic boundaries of many jurisdictions so long as
8 the NPA/NXXs matched. To enable AT&T's definition, Commission rules would need
9 to be changed.

10 **Q. DOES AT&T DEFINE EXCHANGE SERVICES IN ITS WASHINGTON**
11 **PRICE LIST OR TARIFF?**

12 A. Yes.

13 **Q. IS AT&T'S PROPOSED DEFINITION OF "EXCHANGE SERVICE" FOR**
14 **THE PARTIES' INTERCONNECTION AGREEMENT CONSISTENT WITH**
15 **AT&T'S WASHINGTON PRICE LIST OR TARIFF?**

16 A. No, it is not. The Preliminary Statement, Definitions, Rules and Regulations and
17 Schedules in the Price List of AT&T Communications of the Pacific Northwest, Inc.¹⁴ and
18 the schedules in that Price List for local exchange services align with Qwest's proposed
19 definition, not AT&T's.

20 **Q. HOW DOES AT&T DEFINE LOCAL EXCHANGE SERVICE IN ITS**

¹⁴ AT&T Communications of the Pacific Northwest, Inc. Price List for Washington, Preliminary Statement, page 4 (emphasis added) ("*AT&T WA Price List*").

1 **WASHINGTON PRICE LIST OR TARIFF?**

2 A. In the Preliminary Statement, AT&T's Price List describes local service as a service
3 "offered to customers *within a Local Calling Area* for the transmission of voice or data
4 communications." In the Definitions section of the *AT&T WA Price List*, AT&T defines
5 an "exchange" as the "telephone system, including plant and equipment, by which local
6 exchange carrier service is furnished to customers *within a defined area*, and by which,
7 long distance and other services are furnished."¹⁵ Schedule 16 of the *AT&T WA Price*
8 *List* relates to AT&T's Local Exchange Services. According to Section 1.1.1 of
9 Schedule 16, AT&T's local exchange services "are furnished for the use of end-users in
10 placing and/or receiving local telephone calls *within the Local Service area*."¹⁶ Section
11 2.1.1 of Schedule 16, part of Schedule 16's General Regulations, states that local
12 exchange services "consist of furnishing one-way or two-way communication *to or from*
13 *a demarcation point on the Customer's premises and another demarcation point*
14 *within a Local Service Area as specified in Section 3 of this price list*."¹⁷

15 Section 2.11 of Schedule 16 defines various terms in the schedule. An exchange area is
16 defined by AT&T as follows:

17 An Exchange Area is the geographical area served by a Rate Center.

¹⁵ *Id.*, Definitions, page 7 (emphasis added).

¹⁶ *Id.*, Schedule 16, § 1.1.1 (emphasis added).

¹⁷ *Id.*, § 2.1.1 (emphasis added).

1 The Company concurs in the Incumbent Local Exchange Carriers' exchange
2 areas and exchange maps listed in their respective Local Exchange Tariffs which
3 are on file.¹⁸

4 This same section of Schedule 16 defines the "Local Service Area" as:

5 the region, comprised of one or mor [sic] complete Exchange Area(s), within
6 which a Customer can call another station at the rates and charges as specified in
7 this price list.

8 Lastly, Section 3 of Schedule 16 defines Service Areas as follows:

9 3.1.1. General

10

11 An exchange serves a particular geographical area that the Company designates
12 within the boundaries of Washington for the purpose of providing local exchange
13 service for that area in which it is furnished.

14 3.1.2. AT&T Digital Link Local Service Area

15

16 The AT&T Digital Link Local Service Area is comprised of one or more
17 Exchange Area(s) that: (1) have a Rate Center within 0-18 miles or 0-30 miles
18 as specified in this price list, of the Customer's rate Center within the LATA
19 within the State of Washington, or (2) are outside the Customer's LATA or
20 outside the State of Washington, but within the Customer's local calling area as
21 defined by the Incumbent Local Exchange Carrier.

22 3.1.3. AT&T Commercial Services Local Service Area

23

24 The AT&T Commercial Services Local Serving Area (excluding AT&T Digital
25 Link Local service) is comprised of one or more Exchange Area(s) that have a
26 Rate Center within 30 miles of the Customer's Rate center within the LATA.

27 **Q. IS QWEST'S PROPOSED EXCHANGE SERVICE DEFINITION**

¹⁸ *Id.*, § 2.11.

1 charges designed to compensate the toll provider or exchange access providers for
2 carrying calls over what could be considerable distances.

3 **Q. IS QWEST'S PROPOSED DEFINITION OF EXCHANGE SERVICE**
4 **CONSISTENT WITH FCC RULES?**

5 A. Yes. The FCC recognizes and has preserved the state's role in defining local calling
6 areas. For example, in the *Local Competition Order*, the FCC held that except for
7 traffic to or from a CMRS network, "state commissions have the authority to determine
8 what geographic areas should be considered 'local areas' for the purpose of applying
9 reciprocal compensation obligations under section 251(b)(5), consistent with the state
10 commissions' historical practice of defining local service areas for wireline LECs. Traffic
11 originating or terminating outside of the applicable local area would be subject to interstate
12 and intrastate access charges.²¹ The FCC further recognized that as a legal matter,
13 transport and termination of local traffic is different from exchange access service. The
14 FCC stated that "[t]he Act preserves the legal distinctions between charges for transport
15 and termination of local traffic and interstate and intrastate charges for terminating long-
16 distance traffic."²²

17 **Q. AT&T CLAIMS THAT THE FCC'S *ISP REMAND ORDER* CHANGED THIS**
18 **BODY OF LAW. DO YOU AGREE?**

19 A. No. The *ISP Remand Order* intended no change to this regime. The *ISP Remand*
20 *Order* addressed the proper rate and treatment of traffic bound for ISPs located in the

²¹ *Local Competition Order* ¶ 1035 (emphasis added).

²² *Id.* ¶ 1033.

1 same local calling area as the calling party. The FCC did not convert intraLATA toll
2 traffic into traffic subject to reciprocal compensation, as AT&T contends. Had the FCC
3 intended to take away the states' ability to define local calling areas and what constitutes
4 an intraLATA toll call, it would have done so explicitly. In fact, the FCC recognized that
5 Section 251(b)(5) does not apply to intraLATA toll calls.²³ Thus, this Commission's
6 definitions of local calling areas and local exchange service continue to govern the proper
7 definition for the parties' agreement.

8 **Q. WHAT IS VIRTUAL NXX OR VNXX?**

9 A. Exhibit TRF-4 attached hereto discusses and describes Virtual NXX or VNXX.²⁴
10 VNXX is an arrangement that provides the functionality of 8XX service, but for no extra
11 charge. This scheme requires the assignment of a "virtual" NXX. The NXX is labeled
12 "virtual" because the NXX is assigned a Vertical and Horizontal coordinate in the *calling*
13 *party's* local calling area, rather than the *called* party's local calling area. In other words,
14 the "virtual" NXX does not provide local exchange service in the local calling area to
15 which it is assigned. AT&T's proposed definition implicates and endorses VNXX

²³ *ISP Remand Order* at n.66 ("In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms") (citing *Local Competition Order*).

²⁴ CLECs have actively promoted VNXX to their customers as a means to avoid access charges. *E.g.* www.uslec.com VNXX is "Local Toll-Free Service." Per www.focal.com/prod_serv/multi_exchange.html VNXX is "Multi-Exchange Service". Per www.twtelecom.com VNXX is a "Multi-Location Solution." Per www.pacwest.com/isps/isps/services.cfm#isdn VNXX PacWest can provide its customers numbers from all ILEC rate centers.

1 because AT&T would mandate that the parties classify a call as "local" solely on the basis
2 of the originating and terminating parties' NPA/NXXs rather than on the basis of where
3 the call originates and terminates. This scheme, if the Commission were to adopt AT&T's
4 proposed definition, would convert toll calls to local calls so that the cost-causer receives
5 the equivalent of toll-free service, but at no cost and with the additional benefit of the
6 CLEC being able to charge the originating carrier.

7 **Q. WHAT IMPACT DOES AT&T'S LANGUAGE HAVE ON QWEST?**

8 A. The specific impact on Qwest and other carriers is difficult to quantify in this two-party
9 arbitration. AT&T in other proceedings has acknowledged that it has not analyzed the
10 impact of its proposed definition on Qwest or other local exchange carriers. Although it is
11 difficult to quantify all the potential problems with AT&T's position, I will discuss many of
12 them.

13 Plainly, AT&T's definition deprives Qwest of revenues to which Qwest would be
14 otherwise entitled for the transport it provided. Even though AT&T tariffed its own local
15 calling areas for retail purposes the same as Qwest's local calling areas, through its
16 proposed definition of "Exchange Service," AT&T redefines *Qwest's* local calling areas.
17 Under AT&T's proposal, so long as the NPA-NXX of the calls "match," a call from a
18 Qwest customer to an AT&T customer physically located in another exchange (or
19 another state) would be rated as a local, non-toll charge, even if Qwest would otherwise
20 be bound to charge its customer toll charges under Qwest's tariffs.

21 In a typical VNXX arrangement, a CLEC's switch is located in a centralized, metropolitan
22 area. The CLEC using VNXX offers its end user (typically a business customer) located
23 in the metropolitan area the choice of one or many telephone numbers each listed in the

1 local directory of a distant city. Callers in the distant city then dial the business's "local"
2 telephone number. The ILEC is compelled to transport this call from its point of
3 origination to the CLEC's switch when the CLEC elects to receive all locally-dialed calls
4 there. When the CLEC receives the call that the ILEC has transported over considerable
5 distance, the ILEC expects the CLEC to complete the call by carrying it over a
6 comparable distance back near the point of call origination. This is true because the call
7 was not dialed with a "1" as the first digit, thereby indicating that the endpoints of the call
8 appear near each other. Although this call would, under AT&T's language, be rated as a
9 "local" call, Qwest must transport the call from the rural area to the metropolitan area
10 (where the Qwest tandem is located) and hand the call off to AT&T who terminates the
11 call to the called party (or, in the case of Internet-bound traffic, relays the call to an ISP),
12 who is located in the metropolitan area (since this may be the extent of the CLEC
13 network). In this example, Qwest (i) receives no toll revenue from any party, (ii) incurs
14 the cost of transporting this inter-exchange call, (iii) is billed reciprocal compensation by
15 AT&T on the basis that the call is a "local" call; and (iv) AT&T bills the call to Qwest at
16 the higher tandem interconnection rate, not the end office rate.

17 AT&T's proposed definition discriminates against other carriers. For example, although
18 AT&T would have the ability to redefine local calling areas on a customer-by-customer
19 basis under its proposed definition, other carriers, such as those who do not have single
20 point of interconnection in a LATA, may not have that flexibility. Furthermore, whereas a
21 call to an AT&T VNXX customer would not be subject to access charges, a similarly-
22 routed call involving an interexchange carrier would be and so IXCs are also impacted by
23 AT&T's proposal.

1 **Q. AT&T HAS CLAIMED THAT QWEST'S EXCHANGE SERVICE**
2 **DEFINITION WOULD REQUIRE "MASSIVE" CHANGES IN THE WAY**
3 **CALLS ARE CURRENTLY RATED TODAY. DO YOU AGREE?**

4 A. No. Qwest's proposed definition reflects the status quo. AT&T seeks new language. To
5 my knowledge, Qwest's proposed definition, or its equivalent, is now, and for six years
6 has been, in every interconnection agreement that Qwest has entered into with any local
7 carrier in any of its ILEC states. Qwest's definition fits squarely within the Washington
8 Commission's long-standing definitions of local exchange service. AT&T's does not.
9 Qwest's definition also is consistent with its tariff. AT&T's is not. AT&T acknowledged
10 in the Minnesota arbitration that NPA-NXXs are assigned today on the basis of a
11 presumption that they will be used to provide local exchange service to customers located
12 in the rate centers to which the numbers are assigned. Exhibit TRF-4 also discusses this
13 industry presumption. It is AT&T that suggests upending industry practice and assigning
14 NPA-NXXs without regard to geographic location of rate centers. No "major" system
15 changes are necessary. Exhibit TRF-4 presents a workable methodology for the
16 identification of "VNXX" traffic. This methodology spots egregious carriers of VNXX
17 traffic and not the individual VNXX call. Qwest's status quo proposal does not require
18 the parties to make complicated or expensive systems changes. This methodology allows
19 that the regulator will decide if carriers are properly routing traffic and what remedy
20 should be associated with intentional improper call routing. AT&T's proposed definition
21 of Exchange Service takes control away from the regulator. Qwest lives by the same
22 framework it proposes for all carriers.

23 **Q. AT&T HAS ALSO CLAIMED THAT ITS "VIRTUAL" NXX "SERVICE IS**
24 **THE SAME AS THE TARIFFED FX SERVICE QWEST OFFERS. DO YOU**

1 **AGREE?**

2 A. No. AT&T has been clear that it provides a VNXX as a local service option at no
3 charge to its customers. Qwest, however, does not offer FX service to its retail
4 customers under the same rates, terms, and conditions as Qwest basic local exchange
5 service. As the cost causer, the Qwest customer purchasing FX service pays Qwest at
6 an interexchange rate for the calls it receives. By contrast, AT&T VNXX customers
7 assume the originating caller should pay. Unlike the AT&T VNXX customer, the Qwest
8 FX customer pays a premium for the privilege of establishing a local number in a distant
9 calling area and for having Qwest transport calls between the distant calling areas. While
10 the calling party avoids having to pay a toll charge for calling the number associated with
11 an FX line, the *called* party absorbs that cost. Under AT&T's proposed definition,
12 however, Qwest would receive no compensation from AT&T to carry the call to a distant
13 AT&T customer. Instead, under AT&T's proposed definition, Qwest must pay AT&T at
14 the higher tandem interconnection rate for transporting the terminating call over a short
15 distance. Thus, while an FX call shifts the costs of the toll call to the called party, a
16 VNXX call shifts the cost to a different carrier. Furthermore, an FX call is returned to the
17 originating local calling area by the terminating carrier. In a VNXX call, however, the
18 terminating carrier does not return the call to the originating local calling area.

19 **Q. AT&T HAS CITED THE WIRELINE COMPETITION BUREAU'S DECISION**
20 **IN THE ARBITRATION PROCEEDING INVOLVING VERIZON AND**
21 **SEVERAL CLECS FOR THE STATE OF VIRGINIA IN SUPPORT OF ITS**
22 **VIRTUAL NXX PROPOSAL. SHOULD THIS COMMISSION FOLLOW**
23 **THAT DECISION?**

24 A. No, it should not. This Commission in the past has not felt bound by the determinations of

1 other state commissions. In this instance, it is particularly inappropriate to follow that
2 order. The arbitrator in the Verizon Virginia arbitration did not consider Washington
3 statutes, Washington rules or prior WUTC decisions, nor did it evaluate the evidence that
4 Qwest is presenting in this arbitration. Therefore, that arbitration decision has no bearing
5 on whether Washington law would permit AT&T's definition.

6 Based upon the cursory discussion in the WCB's decision, I do not believe the WCB fully
7 considered the implications of the CLECs' position on virtual NXX. My testimony
8 discusses those implications at length. Several state commissions declined to follow the
9 WCB decision on this issue. I discuss a few of those cases below. I urge this
10 Commission to follow the example of these state commissions and give the WCB decision
11 little weight.

12 **Q. ARE YOU AWARE OF HOW OTHER STATE COMMISSIONS HAVE**
13 **ADDRESSED VIRTUAL NXX ISSUES?**

14 A. Many state commissions have considered virtual NXX traffic, and I am familiar with some
15 of those decisions. I will only discuss a few examples of those decisions here for the
16 Commission's benefit.

17 **Q. PLEASE SUMMARIZE THOSE EXAMPLES.**

18 A. Certainly. In an arbitration between Global Naps and Verizon, the Massachusetts
19 Department of Telecommunications and Energy ("DTE") addressed virtual NXX traffic.
20 In the arbitration, Global Naps claimed that it should be permitted to offer "LATA-wide
21 calling" and, also, that it should be permitted to assign its customers NXXs that were
22 homed to central offices outside the local calling area where the customer resided.²⁵ The

²⁵ Opinion, *Petition of Global NAPs, Inc. pursuant to Section 252(b) of the*

1 DTE rejected both of Global Naps' positions.²⁶ The DTE rejected GNAPs' claim that its
2 VNXX service was indistinguishable from Verizon's FX service. The DTE stated that
3 "FX service does not alter the traditional definitions of local and toll, it merely shifts
4 responsibility for paying the toll charge to the called party."²⁷ The DTE also declined to
5 follow the WCB decision in the *Verizon Virginia Arbitration Order* because that order
6 "was based upon the narrow ground that there was no technically feasible manner of
7 determining the geographic end points of a call . . . ," but Verizon had since developed a
8 means of identifying such calls.²⁸

9 Finally, the DTE also determined that the implications and consequences of permitting
10 virtual NXX traffic were potentially far-reaching and are inappropriately raised in a two-
11 party arbitration.²⁹

12 In arbitration between US LEC and Verizon, the South Carolina commission refused to
13 apply reciprocal compensation to VNXX calls.³⁰ The South Carolina Commission also

Telecommunications Act of 1996, for arbitration to establish an interconnection agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Tel. & Tel. Co. d/b/a Bell Atlantic Massachusetts, D.T.E. 02-45, 2002 Mass. PUC LEXIS 65 (Mass. DTE Dec. 12, 2002) ("GNAPs Massachusetts").

²⁶ *GNAPs Massachusetts*, 2002 Mass. PUC LEXIS 65 at *36-41 (rejecting GNAPs "LATA-wide calling" proposal) and *50-57 (rejecting GNAPs VNXX proposal).

²⁷ *Id.* at *52.

²⁸ *Id.* at *58.

²⁹ *Id.* at *55.

³⁰ Order No. 2002-619, *Petition of US LEC of South Carolina for Arbitration of an Interconnection Agreement with Verizon South, Inc.*, Dkt. No. 2002-181-C, 2002 S.C. PUC LEXIS 10 (S.C. PUC Aug. 30, 2002) ("*US LEC South Carolina*"). The

1 declined to follow the *Verizon Virginia Arbitration Order*. According to that state
2 commission, the WCB "never addressed the basic question whether Virtual FX traffic is
3 subject to reciprocal compensation under federal law. Instead, the Bureau simply
4 suggested that, in the absence of a concrete proposal for distinguishing Virtual FX traffic
5 from local traffic for billing purposes, the parties would not be compelled to give effect to
6 that distinction, irrespective of the requirements of federal law."⁶¹ The South Carolina
7 commission stated that the WCB's "failure to respect the limitations of Verizon's
8 reciprocal compensation obligations was both inconsistent with federal law and
9 unsupported on the record"⁶²

10 The South Carolina commission determined that even if federal law did not support its
11 decision, it would reject US LEC's proposal. The commission noted it was not illegal to
12 structure calls so that the calling party does not incur toll charges "so long as US LEC
13 compensates Verizon appropriately for the service Verizon continues to provide." The
14 commission also said, however, that it would be

15 *deeply inconsistent* with regulatory policy and basic fairness to require Verizon
16 to pay US LEC, when Verizon continues to bear the same costs of originating
17 the interexchange call, when Verizon is deprived of the toll charges that would

South Carolina commission also rejected applying reciprocal compensation to VNXX traffic in an arbitration between Adelphia and Verizon. Order No. 2001-045, *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Dkt. No. 2000-516-C, 2001 S.C. LEXIS 8 (S.C. PUC Jan. 16, 2001) ("*Adelphia South Carolina*").

³¹ *Id.* at *38.

³² *Id.*

1 ordinarily apply, and when US LEC is already receiving compensation from its
2 customers. *US LEC's proposal thus amounts to an extraordinarily clear*
3 *example of attempted regulatory arbitrage – that is, a situation in which*
4 *US LEC will earn revenues (both from its subscribers and from Verizon)*
5 *while Verizon is forced to bear the bulk of the real costs of providing the*
6 *service and is deprived of toll revenues to boot.*³³

7 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON THIS**
8 **ISSUE?**

9 A. The Commission should adopt Qwest's proposed definition of "Exchange Service."

C. Including Internet-Bound Traffic in the Relative Use Calculation (Issue 17).

10 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE 17.**

11 A. Issue 17 involves two disagreements. The first is whether a relative use factor should
12 apply to dedicated³⁴ interconnection facilities that are used to carry non-local, non-
13 telecommunications traffic bound for the Internet in the same way the factor applies to
14 local traffic mutually exchanged between the parties. AT&T seeks to include Internet-
15 bound traffic in the relative use calculations for direct trunk transport and entrance
16 facilities. Qwest opposes this requirement as inconsistent with governing law and sound
17 public policy. The second disagreement is over AT&T's improper suggestion that a
18 relative use factor should be applied not only to TELRIC-based dedicated transport, but
19 also to a "comparable facility providing equivalent functionality." This phrase could
20 wrongly sanction the ratcheting of a circuit purchased from a federal tariff. AT&T's

³³ *Id.* at *40-41 (underline shows emphasis in original; italicized emphasis is added).

³⁴ Originating common transport is supplied by Qwest to the CLEC at no charge to the CLEC.

1 proposals in this proceeding raise concerns that support rejecting AT&T's proposed
2 language.

3 **Q. REGARDING THE FIRST DISAGREEMENT, IS QWEST'S POSITION**
4 **CONSISTENT WITH THE ACT AND FCC RULES?**

5 A. Yes. Qwest's language on relative use is consistent with the Act and FCC rulings relating
6 to treatment of Internet-bound traffic. Qwest's interconnection rights and obligations are
7 defined in Sections 251(a)(1) and 251(c)(2) of the Act. Section 251(a)(1) imposes on
8 Qwest and other incumbent LECs the duty "to interconnect directly or indirectly with the
9 facilities and equipment of other telecommunications carriers," and Section 251(c)(2)
10 explains that this obligation includes providing interconnection "for the transmission and
11 routing of telephone exchange service and exchange access." There is a critical
12 relationship between this obligation and Section 252(d)(2), the Act's cost recovery
13 provision. Indeed, in defining the ILECs' cost recovery rights, Section 252(d)(2)
14 expressly refers to the obligation of state commissions to establish "just and reasonable"
15 rates "for the interconnection of facilities and equipment *for purposes of subsection*
16 *(c)(2) of section 251.*"³⁵

17 **Q. IS INTERNET-BOUND TRAFFIC INCLUDED WITHIN THE FCC'S**
18 **RECIPROCAL COMPENSATION RULES?**

19 A. No. In the *ISP Remand Order* and subsequent FCC 271 Orders the FCC ruled that
20 Internet traffic is not subject to the reciprocal compensation obligations imposed by
21 Section 251(b)(5) of the Act.³⁶ AT&T's argument that it should obtain dedicated

³⁵ 47 U.S.C. § 252(d)(2) (emphasis added).

³⁶ See, e.g., Memorandum Opinion and Order, *Application by Verizon New Jersey Inc.*,

1 transport for free rests on FCC Rule 51.703(b), a reciprocal compensation rule
2 promulgated pursuant to Section 251(b)(5) which appears under the title "Reciprocal
3 compensation obligations of LECs." Under the FCC orders relating to this issue, Rule
4 51.703(b) does not apply to Internet traffic.

5 **Q. WHICH PARTIES' LANGUAGE IS PREFERABLE AS A MATTER OF**
6 **PUBLIC POLICY?**

7 A. Qwest's language is most consistent with the FCC's public policy pronouncements. The
8 policies that led the FCC to phase out the payment of intercarrier compensation for
9 Internet traffic requires the exclusion of Internet traffic from the relative-use calculation. In
10 the *ISP Remand Order*, the FCC found that the payment of reciprocal compensation for
11 Internet traffic under the Act causes uneconomic subsidies and improperly creates
12 incentives for CLECs to specialize in serving ISPs to the exclusion of other customers.³⁷
13 Specifically, the FCC ruled that positive reciprocal compensation payments for this traffic:
14 (1) leads to improper subsidies and uneconomic pricing signals; (2) gives CLECs
15 distorted incentive to specialize in serving only ISPs to the exclusion of residential and

Bell Atlantic Communications, Inc. for Authorization To Provide In-Region, InterLATA Services in New Jersey, WC Dkt. No. 02-67, 17 FCC Rcd 12275 ¶ 160 (2002); Memorandum Opinion and Order, *Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Dkt. No. 02-35, 17 FCC Rcd 9018 ¶ 272 (2002); Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Dkt. No. 01-138, 16 FCC Rcd 17419 ¶ 119 (2001); Memorandum Opinion and Order, *Application of Verizon New York, Inc., Verizon Long Distance for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Dkt. No. 01-100, 16 FCC Rcd 14147 ¶ 67 (2001).

³⁷ *ISP Remand Order* ¶¶ 67-76.

1 other customers; and (3) improperly ignores the ability of CLECs to collect costs from
2 their ISP customers.³⁸

3 The FCC further found that the market distortions caused by reciprocal compensation
4 payments "are most apparent in the case of ISP-bound traffic due primarily to the one-
5 way nature of this traffic, and to the tremendous growth in dial-up Internet access since
6 passage of the 1996 Act."³⁹ By targeting ISP customers with large volumes of exclusively
7 incoming traffic, the FCC found, CLECs are able to reap "a reciprocal compensation
8 windfall."⁴⁰ The same concerns that led the FCC to phase out reciprocal compensation
9 for Internet traffic require excluding Internet traffic from relative use calculations in this
10 case. Adoption of the AT&T language invites Internet service providers to seek CLEC
11 status so that they may demand that the ILEC place large one-way interconnection
12 trunking orders without any corresponding one-way order from the CLEC in kind. Since
13 the ISP/CLEC has no traffic to send, it may argue it need submit no order. Qwest must
14 pay for the order it submits, but the CLEC pays nothing since it submitted no order and
15 no traffic flows from it. While AT&T may not seek to operate in this manner, AT&T's
16 proposal to shift onto Qwest all the costs of dedicated transport is available via pick-and-
17 choose contract amendment to all WA CLECs. The interconnected carriers should
18 recover the costs of these facilities from their ISP customers consistent with the principles
19 the FCC established in the *ISP Remand Order*.⁴¹

³⁸ *Id.* ¶¶ 66-70.

³⁹ *Id.* ¶ 69.

⁴⁰ *Id.* ¶ 70.

⁴¹ *Id.* ¶ 76.

1 **Q. IS AT&T'S POSITION CONSISTENT WITH PAST COMMISSION**
2 **DETERMINATIONS?**

3 A. Yes and no. The WUTC approved Qwest's Washington SGAT, which does not include
4 Internet-bound traffic in the relative use calculations for direct trunk transport and
5 entrance facilities and reached a similar determination in the Washington cost docket. In
6 contrast, in an arbitration between Qwest and Level 3 Communications, the Commission
7 determined that Internet-bound traffic should be included in relative use calculations.
8 AT&T's position in this arbitration, however, is more objectionable than the Level 3
9 position.

10 **Q. WHY DO YOU BELIEVE AT&T'S POSITION IN THIS ARBITRATION IS**
11 **LESS SUSTAINABLE THAN THE POSITION TAKEN BY LEVEL 3?**

12 A. In Qwest's negotiations with Level 3, Level 3 did not propose redefining the scope and
13 nature of local exchange service. AT&T, in contrast, seeks to re-write a key definition in
14 Section 4 and significantly expand the scope of AT&T's relative use factor proposal.

15 Were Qwest required to transport Internet-bound traffic for AT&T under the conditions
16 AT&T proposes for the parties' Washington agreement, Qwest would be required to
17 supply *any number* of dedicated trunks from any Qwest tandem to any street address
18 (*over any distance*) that the CLEC might name. For example, with AT&T's language, a
19 CLEC could choose to locate itself in Yakima while requiring Qwest to provision 200
20 miles of any projected volume (*e.g.*, OC 192) of Qwest-originated Internet-bound traffic
21 collected on common trunks at the Qwest tandem in Spokane. The CLEC may have little
22 or no traffic to send to Qwest. With AT&T's language, Qwest should do this on *any*
23 schedule that AT&T prescribed, expecting that Qwest will make a Performance

1 Assurance Plan payment if Qwest is late. With AT&T's language, once in service,
2 AT&T's nonrecurring and recurring monthly payments for the Qwest-provided Internet-
3 bound transport would be \$0.

4 This scenario is unreasonably open-ended and not far-fetched given the vast imbalance of
5 traffic exchanged between Qwest and CLECs in Washington. Adoption of AT&T's
6 approach here would create greater imbalance and would place greater financial burden
7 on an increasingly smaller base of Qwest retail customers, ultimately requiring Qwest retail
8 rate payers to absorb an even higher share of AT&T's costs of serving ISPs.

9 **Q. WHAT IS THE BASIS OF THE SECOND DISAGREEMENT ASSOCIATED**
10 **WITH ISSUE 17?**

11 A. At Sections 7.3.2.2.1 and 7.3.1.1.3.1 of its proposed language, AT&T seeks language
12 that is unclear and will create future billing disputes. Here, AT&T adds a phrase, "or
13 other comparable facility providing equivalent functionality" to the Qwest-proposed
14 language. AT&T may here seek to lower its exchange access costs. AT&T would have
15 the parties apply a relative use factor, a construct associated with Section 251 reciprocal
16 compensation obligations, to a circuit primarily carrying interexchange traffic subject to
17 Section 201 of the Act. Facilities purchased out of the FCC tariffs are not subject to
18 relative use adjustments, or ratcheting of any kind, and this Commission has no authority
19 to order such adjustments. This Commission reached a similar determination in the
20 context of the 271 proceedings.

21 **Q. PLEASE PROVIDE AN EXAMPLE.**

22 A. For example, AT&T in practice might contend that the "comparable facility providing

1 equivalent functionality" is a DS3 special access private line transport service procured by
2 the CLEC from an ILEC federal tariff. Then, AT&T might contend that the ILEC should
3 apply the relative use factor to the full cost of the DS3 if some portion of the DS3
4 capacity also supports a small quantity of local calls. This demand would conflict with
5 Qwest's FCC tariffs.

6 **Q. COULD AT&T CONTEND THAT THE RELATIVE USE FACTOR SHOULD**
7 **APPLY ONLY TO THE FRACTION OF THE TARIFFED PRIVATE LINE**
8 **THAT IS ASSOCIATED WITH THE EXCHANGE OF LOCAL CALLS?**

9 A. Yes, AT&T might contend that the relative use factor should apply only to the fraction of
10 the tariffed private line that is associated with the exchange of local calls, but then AT&T
11 would be calling for ratcheting. Ratcheting has at least two problems. First, the WUTC
12 has determined in the context of the Washington 271 proceedings that ratcheting should
13 apply only to private lines procured from the ILEC's intrastate tariff.⁴² AT&T supports no
14 such restriction here. The second problem is that the FCC has endorsed commingling,
15 but prohibited ratcheting in the recently released UNE Triennial Review Order.⁴³

16 **Q. ARE THESE REASONS SUFFICIENT BASIS TO REJECT THE AT&T**
17 **PROPOSED LANGUAGE AT 7.3.1.1.3.1 AND 7.3.2.2.1?**

18 A. Yes, the Qwest-proposed version of Sections 7.3.1.1.3.1 and 7.3.2.2.1, which match the
19 Washington SGAT, should become part of the parties' new agreement.

⁴² The carriers have ratcheting language in the proposed agreement at 7.3.1.1.3.

⁴³ FCC 03-36 at paragraph 580.

D. Tandem Transmission Compensation (Issue 18).

1 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR SECTION 7.3.4.1.2?**

2 A. Qwest's proposed language is:

3 For purposes of call termination, CLEC Switch(es) shall be treated as End
4 Office Switch(es) unless CLEC's Switch(es) meet the definition of a Tandem
5 Switch in this Agreement in the Definitions Section. When a CLEC Switch
6 meets the definition, the per minute of use call termination is equal to the sum of
7 (1) the Termination rate as described in Exhibit A of this Agreement and (2) the
8 Tandem Switched Transport rate.

9 **Q. WHAT IS AT&T'S PROPOSED LANGUAGE FOR SECTION 7.3.4.1.2?**

10 A. AT&T seeks the following language for Section 7.3.4.1.2:

11 7.3.4.1.2 For purposes of call termination, CLEC Switch(es) shall be treated as
12 End Office Switch(es) unless CLEC's Switch(es) meet the definition of a
13 Tandem Switch in this Agreement in the Definitions Section. When a CLEC
14 Switch meets the definition, the per minute of use call termination is equal to the
15 sum of (1) the Termination rate as described in Exhibit A of this Agreement, (2)
16 the Tandem Switching rate and (3) the Tandem Transmission rate for nine (9)
17 miles of common transport.

18 **Q. WHY DOES QWEST OPPOSE AT&T'S LANGUAGE?**

19 A. First, 47 C.F.R. § 51.711(a)(3) does not specify that an incumbent LEC should pay a
20 CLEC for nine miles of transport (parenthetical three of AT&T's language) in addition to
21 call termination, tandem switching, and the fixed component of tandem transmission. The
22 FCC rule provides that where the switch of a carrier other than an incumbent LEC serves
23 a geographic area comparable to the area served by the incumbent LEC's tandem switch,
24 the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's
25 tandem interconnection rate.

1 Furthermore, AT&T's interpretation of this rule creates rather than eliminates asymmetry
2 of intercarrier compensation. Symmetry in this case is accomplished when Qwest pays a
3 CLEC for switching the call twice even though it only functionally switched the call once.
4 As stated previously, Qwest charges for tandem switching only when a call is functionally
5 switched there. A small minority of all interconnection traffic is subject to the Qwest
6 tandem charge. In contrast, the FCC rule allows that all calls terminated by the CLEC
7 should be compensated at the tandem interconnection rate once the CLEC's switch has
8 been shown to serve a large geography. AT&T's interpretation would allow not only that
9 all Qwest calls be subject to two switching plus a fixed rate for tandem transmission, but
10 also to a distance-sensitive charge even when there is no actual common transport mileage
11 involved in terminating the call.

12 The only time Qwest applies an assumed nine mile charge for tandem transmission is for
13 transiting calls. A transited call is one that is neither originated nor terminated by Qwest.
14 AT&T seeks to apply the assumed mileage rating to non-transited calls. AT&T itself
15 terminates these calls. When Qwest terminates local calls, Qwest applies an actual airline
16 mileage. If Qwest's tandem and Qwest's end office are in the same building, Qwest rates
17 tandem transmission at zero-mileage. When AT&T's tandem and end office are in the
18 same building, AT&T should do the same.

E. Inclusion of UNE-P Minutes in 3:1 Ratio (Issue 19).

19 **Q: PLEASE DESCRIBE DISPUTED ISSUE 19.**

20 A. This issue involves whether UNE-P originating minutes should be included in the
21 calculation of the 3:1 ratio presumption for determining whether traffic is Internet-bound.

22 **Q: WHAT IS QWEST'S POSITION ON THIS ISSUE?**

1 A. Although Qwest does not agree with AT&T's position, for purposes of this arbitration and
2 interconnection agreement, Qwest will not contest this issue. Qwest believes that the
3 parties should move immediately to identifying the volume of Internet-bound traffic based
4 on actual data, rather than relying on the 3:1 presumption, and expressly and specifically
5 reserves its ability to do so. AT&T does not dispute that Qwest can rebut the
6 presumption by demonstrating the factual ratio to the Commission. Qwest's proposed
7 method of identifying Internet-bound traffic is attached as Exhibit TRF-5.

F. Rating Of No-Calling-Party-Number ("No-CPN") Traffic (Issue 21)

8 **Q. WHAT IS THE PARTIES' DISPUTE RELATING TO ISSUE 21.**

9 A. Section 7.3.8 of the agreement attempts to address the means for rating calls that lack
10 the identity of the originating caller. If a call lacks originating caller identity, (1) retail
11 caller identification service fails and, (2) billing systems cannot discern whether the call is
12 a transit or non-transit or local versus toll.⁴⁴ This makes call rating difficult. Calls that
13 lack CPN are an industry-wide problem. AT&T seeks to rate these calls in a manner
14 that improperly places financial responsibility on Qwest and AT&T seeks to increase,
15 rather than decrease, incentives to initiate no-CPN calls.

16 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL THAT RELATES TO ISSUE**
17 **21?**

18 A. Qwest's current proposal for Section 7.3.8 of the interconnection agreement is identical
19 to the SGAT. It reads as follows:

⁴⁴ Qwest concurs with AT&T's explanation that callers may elect to suppress the forwarding of their number with no risk of creating an intercarrier compensation call rating problem.

1 7.3.8 Signaling Parameters: Qwest and CLEC are required to provide
2 each other the proper signaling information (e.g., originating call party number
3 and destination call party number, etc.) to enable each Party to issue bills in a
4 complete and timely fashion. All CCS signaling parameters will be provided
5 including Calling Party Number (CPN), originating line information (OLI), calling
6 party category, charge number, etc. All privacy indicators will be honored. If
7 CLEC fails to provide CPN (valid originating information), and cannot
8 substantiate technical restrictions (i.e., MF signaling) such traffic will be billed as
9 Switched Access. Traffic sent to CLEC without CPN (valid originating
10 information) will be handled in the following manner. The transit provider will be
11 responsible for only its portion of this traffic, which will not exceed more than five
12 percent (5%) of the total Exchange Service (EAS/Local) and Exchange Access
13 (IntraLATA Toll) traffic delivered to the other Party. Qwest will provide to
14 CLEC, upon request, information to demonstrate that Qwest's portion of no-
15 CPN traffic does not exceed five percent (5%) of the total traffic delivered.

16 Because the parties failed to concur on other Qwest-proposed compromise language,
17 Qwest now defaults to the approved Washington SGAT language.

18 **Q. WHAT IS AT&T'S LANGUAGE PROPOSAL FOR SECTION 7.3.8?**

19 A. AT&T's counter-proposal for Section 7.3.8 is set forth:

20 Signaling Parameters: Qwest and CLEC are required to provide each other the
21 proper signaling information (e.g., originating call party number and destination
22 call party number, etc.) to enable each Party to issue bills in a complete and
23 timely fashion. All CCS signaling parameters will be provided including
24 originating line information (OLI), calling party category, Charge Number, etc.
25 All privacy indicators will be honored. Where SS7 connections exist, each Party
26 shall pass Calling Party Number ("CPN") information, where available, on each
27 call carried over Interconnection trunks. All EAS/Local and IntraLATA Toll
28 calls exchanged without CPN information will be billed as either EAS/Local
29 Traffic or IntraLATA Toll Traffic in direct proportion to the minutes of use
30 (MOU) of calls exchanged with CPN information for the preceding quarter,
31 utilizing a PLU factor determined in accordance with Section 7.3.9 of this
32 Agreement. If the percentage of EAS/Local and IntraLATA Toll calls passed
33 with CPN is less than ninety percent (90%) for a given month, the terminating
34 Party will inform the originating Party that the CPN percentage has fallen below

1 the targeted 90%. The Parties will coordinate and exchange data as necessary
2 to determine the cause of the failure and to assist its correction. The transit
3 provider will not be accountable for transit traffic without CPN as long as the
4 transit provider provides information to the other party each month that identifies
5 no-CPN transit traffic, the carriers that originated the no-CPN traffic, and the
6 no-CPN traffic originated by each carrier. Otherwise, the transit provider will be
7 responsible for such traffic.⁴⁵

8 **Q. WHY DOES QWEST CONTEST AT&T'S PROPOSED LANGUAGE?**

9 A. First, AT&T seeks to make Qwest responsible for no-CPN traffic that Qwest transits
10 to AT&T, rather than those carriers who originate the no-CPN traffic. Qwest objects
11 to AT&T's proposal that the transit provider be financially responsible to the terminating
12 carrier when the originating carrier doesn't provide CPN on a transit call. Second,
13 while each party should take responsibility for traffic that it can control, and limit the no-
14 CPN traffic that it originates, AT&T seeks to raise the threshold for each party's no-
15 CPN traffic from the five percent proposed by Qwest to ten percent. AT&T's
16 proposed doubling of the threshold for each party's no-CPN traffic would simply
17 exacerbate the industry problem, lead to more failed caller ID calls, and more estimation
18 for billing purposes than Qwest's proposed language. Finally Qwest objects to AT&T's
19 formula for dealing with no-CPN traffic. AT&T seeks to apply the ratio of local/toll
20 that exists for identified traffic to the no-CPN traffic. This proposal can result in further
21 abuse as carriers might be incented to make toll traffic appear to be local. Qwest's
22 formula, which simply applies access charges to no-CPN traffic, is more appropriate
23 than the formula that AT&T seeks to use and creates incentives to limit no-CPN traffic.

⁴⁵ I understand that AT&T may offer different language for this issue. I reserve the right to respond to it in my rebuttal testimony if AT&T does so.

1 **Q. TO WHAT EXTENT DO THE CARRIERS NOW EXCHANGE NO-CPN**
2 **TRAFFIC?**

3 A. Qwest and AT&T recognize that because of network and customer-owned equipment
4 limitations, such as MF signaling, some no-CPN traffic is inevitable. Qwest and CLECs
5 send no-CPN traffic in Washington on average for less than 2% of all minutes
6 exchanged.

7 **Q. DOES QWEST MAKE EVERY EFFORT TO FORWARD CPN TO OTHER**
8 **CLECS WHEN QWEST ORIGINATES THE CALL?**

9 A. Yes. Qwest delivers approximately 1.8 billion local minutes of calls to CLECs in
10 Washington each month, and of this volume, less than two percent contained no CPN.

11 **Q. IS AT&T REQUIRED TO CONNECT TO OTHER CARRIERS THROUGH**
12 **QWEST?**

13 A. No. AT&T can connect with other carriers directly and address with those carriers
14 how to deal with no-CPN calls that they may originate. Indeed, AT&T has an
15 obligation under the Act to establish compensation arrangements with the carriers with
16 whom it exchanges traffic. AT&T has made a business decision to use Qwest as a
17 transit provider. When Qwest is handed a no-CPN transit call, it forwards the call
18 without CPN. (This includes AT&T-originated calls that lack CPN and are bound for
19 other carriers). If AT&T chooses to exchange traffic with other carriers through Qwest
20 rather than via direct trunking to other carriers, it should also assume the business risk of
21 no-CPN.

22 **Q. SHOULD QWEST BE RESPONSIBLE FOR NO-CPN CALLS THAT**
23 **TRANSIT QWEST?**

1 A. No. AT&T should not be permitted to simply bill Qwest for this traffic when it chooses
2 to use Qwest as a transit provider rather than deal with other carriers directly. Qwest,
3 as the transit provider, forwards to AT&T whatever CPN is sent to it by the originating
4 carrier. AT&T's language would punish Qwest, regardless of whether Qwest or
5 another carrier failed to provide the caller identification information AT&T seeks.
6 Transiting is neither origination nor termination of a call. Since transport of transit traffic
7 between an originating carrier and a terminating carrier is not the provision of local
8 exchange service, it is not subject to Section 251(c) of the Act. Contrary to AT&T's
9 final paragraph, a terminating carrier cannot, by law, charge a transit carrier for call
10 termination. It must look to the party that originated the call.

11 **Q. WHY DOES QWEST OBJECT TO RAISING THE NO-CPN THRESHOLD?**

12 A. AT&T proposes that no action is required if the carriers exchange ten percent no-CPN
13 traffic or less. Qwest has long proposed five percent as the highest tolerable level of
14 no-CPN traffic. Currently, Qwest and Washington CLECs are operating at 1 to 2%
15 no-CPN. If AT&T has a plan to introduce services that further preclude the consistent
16 forwarding of caller identification information, this is inappropriate justification for raising
17 the no-CPN tolerance threshold. If no-CPN is a problem in the industry, carriers
18 should be committing to hold the amount of no-CPN traffic they generate to the lowest
19 possible minimum, not arguing that they should *increase* the percentage of traffic that
20 has no-CPN.

21 **Q. DOES QWEST AGREE WITH AT&T'S APPROACH FOR RATING NO-CPN**
22 **TRAFFIC?**

23 A. AT&T proposes an overly complex proration of charges. Under AT&T's approach,

1 the carriers would be required to employ systems and resources to dissect what is
2 already a very small fraction of all traffic exchanged. Qwest advocates a simpler
3 approach that is less administratively burdensome and a better motivator of accurate call
4 processing. In addition, applying the exchange access rate to unidentified traffic serves
5 as an incentive for both companies to fully identify as much traffic as possible.

G. Billing For Traffic Without OCN And CIC Codes (Issue 30)

6 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE RELATING TO ISSUE 30.**

7 A. This issue is similar to the no-CPN issue discussed above. Here, the parties dispute the
8 proper treatment of all transit calls, but especially transit calls that have no Carrier
9 Identification Code ("CIC") or no Operating Company Number ("OCN"). Qwest and
10 AT&T could not reach agreement regarding billing for traffic without a CIC or OCN.
11 In its proposed language for Section 21.1.2.3.1 and 21.1.2.3.2, AT&T seeks to make
12 Qwest the clearinghouse for all traffic that transits Qwest's network.

13 **Q. WHAT IS AT&T'S LANGUAGE PROPOSAL FOR SECTION 21.1.2.3.1 AND**
14 **21.1.2.3.2?**

15 A. AT&T's proposal for Section 21.1.2.3.1 and 21.1.2.3.2 is set forth below:

16 21.1.2.3.1 If Qwest does not have an OCN identifier for a local exchange carrier
17 (LEC), including incumbent, competitive, or wireless carriers, or a CIC identifier
18 for an IXC for whom Qwest must supply to CLEC Connectivity Billing records
19 or information pursuant to this Section, Qwest agrees that it will assist the LEC
20 or IXC in obtaining the appropriate identifier (i.e., CIC and/or OCN)
21 expeditiously. Until the LEC or IXC has received its own CIC or OCN
22 identifier, Qwest agrees that it will submit its CIC or OCN, as appropriate, to
23 CLEC on those records for billing and payment. Qwest further agrees that it will
24 then be responsible for obtaining reimbursement for the respective charges from
25 the appropriate carrier.

1 21.1.2.3.2 If CLEC does not have an OCN identifier for a local exchange
2 carrier (LEC), including incumbent, competitive, or wireless carriers, or a CIC
3 identifier for an IXC for whom CLEC must supply to Qwest Connectivity Billing
4 records or information pursuant to this Section, CLEC agrees that it will assist
5 the LEC or IXC in obtaining the appropriate identifier (i.e., CIC and/or OCN)
6 expeditiously. Until the LEC or IXC has received its own CIC or OCN
7 identifier, CLEC agrees that it will submit its CIC or OCN, as appropriate, to
8 Qwest on those records for billing and payment. CLEC further agrees that it will
9 then be responsible for obtaining reimbursement for the respective charges from
10 the appropriate carrier.

11 **Q. WHAT IS QWEST'S LANGUAGE PROPOSAL FOR SECTION 21.1.2.3.1?**

12 A. Qwest has agreed that AT&T may use Qwest as a transit provider to receive traffic
13 from other carriers. It does not agree to be financially responsible to the terminating
14 carrier when Qwest did not originate the traffic. Qwest rejects AT&T's language
15 proposal for section 21.1.2.3.1 and 21.1.2.3.2.

16 **Q. WHY IS AT&T'S PROPOSAL INAPPROPRIATE?**

17 A. Because transit service is not subject to section 251(c) of the Telecom Act, Qwest is
18 not financially responsible to the terminating carrier, and especially not for that traffic
19 lacking proper originating identification. The most accurate way to receive the
20 originating carrier identification that AT&T is seeking is from the carrier who operates
21 the switch *originating* the call, not from a transit carrier.

22 **Q. WHAT IS CIC?**

23 A. CICs are codes assigned by the Number Plan Administrator and the codes are used in
24 the signaling stream of a call by the origination end office of a local carrier to route toll
25 calls to Feature Groups according to a callers' presubscribed Primary Interexchange

1 Carrier ("PIC") choice. CICs are not used in the routing of local calls.⁴⁶ The industry
2 does not forward to the destination of a call the CIC information in the signaling stream
3 of the call. CICs are not used in the signaling, routing or billing of *local* traffic.

4 **Q. WHAT IS OCN?**

5 A OCNs are administrative numbers assigned by National Exchange Carrier Association
6 ("NECA") and Telcordia Routing Administration. OCNs identify local carriers for
7 numbering resource purposes and for other purposes. Qwest follows industry
8 guidelines regarding OCN. Until the industry requires this information to be included in
9 the signaling message associated with local calls, Qwest is in the same position as
10 AT&T and must absorb a percentage of traffic that does not have OCN. Because local
11 telephone companies have unique NXXs from which their customers are assigned
12 telephone numbers, it is possible to associate the NXX of a particular call with a
13 particular local company.⁴⁷ By this manner AT&T has indicated that it has a means to
14 obtain the per-call OCN for the transit traffic it terminates.

15 **Q. WOULD QWEST HAVE TO MAKE CHANGES TO ITS SYSTEMS TO**
16 **OBTAIN THE INFORMATION AT&T IS SEEKING HERE?**

17 A. Yes. There is no disagreement here that Qwest passes to AT&T the information that is
18 passed to Qwest. The issue is whether Qwest, as the transit provider, should be required

⁴⁶ AT&T demands that Qwest provide CIC codes so that AT&T can collect access charges. AT&T also seeks to force Qwest to pay AT&T access charges if Qwest cannot provide the CIC code.

⁴⁷ In those instances where calling party number is not forwarded, the originating number would not be available. As stated earlier less than 2% of all traffic delivered to CLECs is non-CPN, so only a small fraction of all calls will lack the necessary information.

1 to obtain any *missing* information for AT&T. For the small percentage of calls that lack
2 CPN, Qwest would have to develop and implement important system enhancements to
3 obtain an OCN for all transit calls via the flawed approach that AT&T seeks.

4 **Q. IS AT&T WILLING TO PAY QWEST FOR THE COSTS QWEST WOULD**
5 **INCUR TO OBTAIN THE INFORMATION IN THE MANNER AT&T**
6 **SEEKS?**

7 A. No. AT&T has stated in other proceedings that it is unwilling to pay Qwest to develop
8 and implement enhancements to Qwest's systems that would be required for Qwest to
9 obtain the identifying, originating information that AT&T seeks from Qwest.

10 **Q. WHAT IS FLAWED REGARDING AT&T'S APPROACH?**

11 A. For traffic that is transited twice, where for example, an originating company hands a call
12 off to an initial transit carrier which, in turn, hands the call off to Qwest as second transit
13 carrier, which then hands the call off to AT&T for termination, Qwest is *not* "directly
14 interconnected" with the originating carrier. Nevertheless, AT&T would have Qwest bear
15 financial responsibility for such traffic even where Qwest (as the second transit carrier)
16 neither knows nor is able to determine the originating carrier and even though Qwest
17 passes along all of the signaling information it receives from the carrier preceding it in the
18 call path.

19 **Q. DOES AT&T'S LANGUAGE REQUIRE QWEST TO BE FINANCIALLY**
20 **RESPONSIBLE FOR TRANSIT TRAFFIC?**

21 A. Yes. AT&T's language would require the transit carrier, who has no business
22 relationship with either the originating customer nor the terminating customer, to be
23 financially responsible for compensating the terminating carrier if the transit carrier in any

1 way fails to provide a unique transit billing usage record to the terminating carrier.

2 **Q. DOES THE ACT PERMIT THE TERMINATING CARRIER TO SEEK**
3 **PAYMENT FROM THE TRANSIT CARRIER?**

4 A. No. Section 252(d)(2)(i) of the Act precludes the terminating carrier from seeking
5 payment from the transit carrier. As discussed in connection with Issue 21 above,
6 AT&T makes a business decision to use Qwest transit services to exchange traffic with
7 other carriers; AT&T has a duty to establish reciprocal compensation arrangements
8 with the carriers with whom it exchanges traffic. AT&T's language unlawfully
9 encourages carriers to avoid this duty by making the transit provider the guarantor of
10 payment from other companies.

11 **Q. IS QWEST OBLIGATED TO PROVIDE TRANSIT CALL BILLING**
12 **INFORMATION?**

13 A. No. Qwest provides this information, and a CLEC may or may not elect to purchase
14 the information. Significantly, Qwest does not "withhold" information that would permit
15 AT&T to bill the originating carrier. Qwest relays transit traffic with whatever signaling
16 information Qwest is provided by the originating carrier. In acting as a transit provider,
17 Qwest has agreed to route the calls through its switch for completion to AT&T. This is
18 a switching function. This function does not carry with it the role of guaranteeing
19 AT&T's receivables on the traffic transited. AT&T would require Qwest to act as a
20 billing intermediary for transit traffic that AT&T exchanges with third-party carriers.
21 Nothing in the Act requires Qwest to provide such a service. Finally, because no
22 Qwest customer is involved when Qwest transits traffic, it is manifestly unfair for Qwest
23 to become involved in disputes over compensation between AT&T and third-party

1 carriers, or for Qwest to bear any losses as a result of such disputes or failures by
2 AT&T and third-party carriers to create direct trunking or billing agreements. Qwest
3 would consider developing a system to collect billing information on behalf of AT&T.
4 Such a system would require development costs to put the system in place, and
5 recurring costs to provide AT&T with the OCN it seeks, albeit not always reflective of
6 the originating carrier.

H. Qwest as the LPIC (Issue 34).

7 **Q. WHAT IS THE BASIS FOR DISPUTED ISSUE 34?**

8 A. Issue 34 involves how to bill the very small number of AT&T customers who have chosen
9 Qwest, the incumbent LEC, as their preferred intraLATA toll provider. Qwest asks
10 AT&T to bill these few customers for intraLATA toll rather than requiring Qwest to
11 establish a billing mechanism for these few customers who receive intraLATA toll, but not
12 local service, from the incumbent LEC Qwest.

13 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR THIS DISPUTED ISSUE?**

14 A. Qwest proposes the following language for Section 21.8 to address this situation:

15 21.8 Qwest does not authorize CLEC to offer Qwest the ILEC as a Local
16 Primary Interexchange Carrier (LPIC) to its existing or new End User
17 Customers. Where CLEC assigns Qwest as LPIC 5123 to CLEC's existing or
18 new End User Customers, Qwest will bill CLEC at the IntraLATA toll retail rate
19 with the applicable wholesale discount.⁴⁸

⁴⁸ Qwest proposed a version of this language to AT&T in negotiations after AT&T filed its petition, and Qwest filed its response to that petition. Qwest has slightly modified that language as set forth in my testimony to specify Qwest Corporation's LPIC number.

1 **Q. WHAT LANGUAGE DOES AT&T PROPOSE?**

2 A. AT&T proposes the following language:

3 If, during the term of this Agreement, Qwest offers toll service to CLEC's End
4 User Customers, Qwest must establish its own Billing relationship with such End
5 User Customers. Qwest may not bill CLEC, and CLEC shall have no obligation
6 to pay Qwest, for toll service Qwest provides to CLEC's local End User
7 Customer's. In addition, CLEC shall have no obligation to bill CLEC local
8 service End User Customer's for toll service provided by Qwest.

9 **Q. WHAT IS THE BASIS FOR QWEST'S PROPOSED LANGUAGE?**

10 A. Qwest's proposed language relates to provision of intraLATA toll service by Qwest, the
11 ILEC. Under its proposed language, Qwest does not authorize AT&T to offer Qwest
12 intraLATA toll service to AT&T customers when Qwest is not the local service provider.
13 If AT&T chooses to offer Qwest, the ILEC, as an intraLATA toll service option to
14 AT&T Local Service customers, then Qwest will bill AT&T, and AT&T is then required
15 to bill these customers for the service.

16 Currently, Qwest is the intraLATA toll provider to only a very small number of end user
17 customers who have AT&T as their local service provider. When Qwest's long distance
18 affiliate becomes a facility-based provider of intraLATA and interLATA toll service in
19 Washington, the affiliate may provide the intraLATA toll service to other CLECs' local
20 exchange customers. At that time, the end user's Primary Interexchange Carrier ("PIC")
21 may change, and Qwest's long distance affiliate will bill the end user.

22 When retail local customers move from Qwest, the ILEC, to an alternative local service
23 provider, the new local service provider makes every effort to sell a package of services
24 that includes intraLATA toll service. Qwest encourages the end user to obtain its

1 intraLATA toll from its new local carrier.

2 **Q. WHY WOULD QWEST PREFER THAT THE LOCAL CUSTOMER OBTAIN**
3 **INTRALATA TOLL SERVICE FROM ANOTHER CARRIER?**

4 A. Qwest would incur high billing costs if it were to provide intraLATA toll service only. As
5 a result, Qwest cannot provide a competitively priced intraLATA toll only service. For
6 these reasons, very few retail customers retain Qwest as an LPIC, or as their intraLATA
7 toll provider, when they move to a new local carrier. In Washington, to Qwest's
8 knowledge, very few AT&T customers have chosen Qwest as their LPIC.

9 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED**
10 **LANGUAGE?**

11 A. As I mentioned above, Qwest does not authorize AT&T to offer Qwest, the ILEC, as an
12 intraLATA toll option to AT&T customers unless AT&T will perform the billing function
13 for these customers. Therefore, if AT&T chooses to offer Qwest as an LPIC, it assumes
14 the function of billing the end user. Because so few customers retain Qwest as their
15 intraLATA toll provider, and because AT&T has an existing customer relationship with
16 the end user, it is unreasonably burdensome to request Qwest to establish a billing system
17 that addresses only a very few intraLATA toll calls. In this scenario, AT&T is in the best
18 position to minimize the costs for the end user: it is, in other words, the least-cost
19 provider. The cost of Qwest's establishing such a billing system or using a service bureau
20 exceeds the costs of carrying the calls at issue. Furthermore, when Qwest carries
21 intraLATA toll for an AT&T end user customer on a UNE-P line, Qwest bills AT&T at
22 Qwest's applicable wholesale discount rate.⁴⁹ For resale and UNE-P customers, AT&T

⁴⁹ This is true unless AT&T associates the call with Qwest's long distance affiliate's CIC

1 has a billing account established for the end user customer, and Qwest provides the
2 information necessary for AT&T to bill the account via the same Daily Usage Feed
3 stipulated in Sections 12.2.5.2.1 and 21.1.2.1 used to provide other usage information to
4 CLECs. Alternatively, a call may begin on a line associated with an AT&T-owned
5 switch. If AT&T routes this call to Qwest, the ILEC, on a local interconnection trunk
6 group without sending a CIC, Qwest bills AT&T, the CLEC, for having completed an
7 intraLATA toll call at Qwest's intercarrier switched access tariff rate. This rate is
8 considerably lower than Qwest's retail intraLATA toll tariff rate. This approach provides
9 AT&T the opportunity to earn a reasonable profit for end user billing of these calls.
10 Further, CABS industry guidelines, required by AT&T in Section 21.1.1.1, enable
11 carriers to bill these toll calls just as Qwest proposes.

12 Although AT&T would propose forcing Qwest to develop mechanisms to bill the end
13 user, it offers no contractual mechanism to provide Qwest the information necessary to do
14 so.⁵⁰ AT&T is the only local carrier that knows the current billing name and address for
15 its end users. Under AT&T's proposal, Qwest would require this information to bill the
16 end user, but AT&T does not offer any language to provide this information to Qwest.
17 Without this information, Qwest would be unable to bill this call even if it undertook the
18 considerable systems development to implement AT&T's proposal.

19 The concern is also broader than just CLEC customers who choose Qwest, the ILEC, as

and sends the call on a Feature Group that Qwest's long distance affiliate has arranged.
In that case Qwest's long distance affiliate will bill the end user and pay access charges
to AT&T Local Services.

⁵⁰ The CARE process.

1 their intraLATA toll provider. CLEC customers who choose to use Directory Assistance
2 Call Completion services to complete a toll call in circumstances where the CLEC has not
3 elected to purchase Call Completion Link (pursuant to Section 10.5.1.1.4) will also
4 generate Qwest-carried toll charges. In this case, Qwest has no pre-existing relationship
5 with the customer at all. Under AT&T's proposal, Qwest would be powerless to directly
6 recover the costs of the service it provided in good faith to CLEC customers and would
7 be required to pass those CLEC-customer costs onto Qwest retail customers.

8 Finally, and most importantly, this circumstance will be reduced or eliminated at the point
9 in time when Qwest's long distance affiliate is fully operational because Qwest's long
10 distance affiliate will bill AT&T's end user for toll separately.

11

1

V. CONCLUSION

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

3 **A. Yes, it does.**