Attachment

18, 19, 20, 21

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BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

AFFIDAVIT

OF

MARGARET S. BUMGARNER

CHECKLIST ITEM 12 – DIALING PARITY

October 24, 2001

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AFFIDAVIT

OF

MARGARET S. BUMGARNER

Checklist Item 12 – Dialing Parity

Margaret S. Bumgarner states as follows:

My name is Margaret S. Bumgarner. My business address is 1600 Seventh Avenue, Seattle, Washington, 98191. I am a Director in the Policy and Law organization at Qwest Corporation ("Qwest"). I submit this affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. Specifically, this affidavit demonstrates Qwest's compliance with Checklist Item 12, local dialing parity, of the Telecommunications Act of 1996 ("1996 Act" or "Act").[1]

I base this affidavit on professional experience, personal knowledge, and information available to me in the normal course of my duties, including records kept by Qwest in the regular course of business.[2]

I. EXECUTIVE SUMMARY

As demonstrated in this affidavit, Qwest satisfies the requirements of Sections 271(c)(2)(B)(xii) and 251(b)(3) of the 1996 Act regarding dialing parity. Specifically, Qwest provides dialing parity to competitive providers of telephone exchange service and telephone toll service. Qwest does not discriminate against competitive local

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[1] 47 U.S.C. § 271(c)(2)(B)(xii).

exchange carriers ("CLECs") with respect to the number of digits dialed, post-dialing delays, or quality of service. Qwest has concrete and specific legal obligations to provide dialing parity pursuant to its Statement of Generally Available Terms and Conditions ("SGAT") and its Commission-approved interconnection agreements.

Customers of competing carriers dial the same number of digits that Qwest's customers dial to complete any given type of call. Specifically, both CLEC and Qwest customers dial the same number of digits without any access codes for local and toll telephone calls and to access operator and directory assistance services.

Qwest also provides CLECs with the same quality of service that Qwest provides to its own end users with no additional post-dialing delays. This is so, first, because Qwest does not impose any requirement or technical constraint that would cause CLEC customers to experience longer post-dialing delays or inferior quality of service. Second, the design of Qwest's systems and processes ensures the equal treatment of all end user calls. The processing of calls in Qwest central offices is the same for both CLEC and Qwest customers. Qwest's network does not distinguish between calls from CLEC end users and calls from Qwest end users.

Qwest has participated in Section 271 collaborative workshops addressing Checklist Item 12 in Arizona, Colorado, Oregon, Washington and in the Multi-State proceeding involving state commissions from Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. During these workshops, Qwest agreed to several

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[1] Professional experience, education and other biographical information are set forth in Exhibit MSB-DIAL-1.

modifications to its SGAT to accommodate CLECs' competitive concerns. All of these modifications have been included in the South Dakota SGAT. In the Multi-State Paper Workshop Final Report the workshop Facilitator states that "there are no unresolved issues concerning this checklist item."[3]

For these reasons, Qwest provides dialing parity in compliance with the 1996 Act and the FCC's rules. The South Dakota Commission should find that Qwest satisfies the requirements of Checklist Item 12.

II. QWEST PROVIDES DIALING PARITY IN COMPLIANCE WITH THE 1996 ACT AND THE FCC'S RULES IN SOUTH DAKOTA.

Section 271(c)(2)(B)(xii) of the 1996 Act requires a Bell Operating Company ("BOC") to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."[4] Section 251(b)(3) imposes upon all local

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3 Paper Workshop Final Report at 8 (Multi-State Workshop Mar. 19, 2001).

4 Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, 15 FCC Rcd 18354, ¶ 373 (rel. June 30, 2000) ("SBC Texas Order"); Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, 15 FCC Rcd 3953, ¶ 372 (rel. Dec. 22, 1999) ("Bell Atlantic New York Order"). Based on the FCC's view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, or local), the FCC adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. SBC Texas 271 Order, ¶ 373, n.1040, *citing* Implementation of the Local

exchange carriers ("LECs") "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays."[5] Section 153(15) of the Act defines "dialing parity" as follows:

> . . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation . . . .[6]

Qwest has concrete and specific legal obligations to make local dialing parity available. Qwest provides dialing parity pursuant to Section 14 of its SGAT and its Commission-approved interconnection agreements. Qwest's SGAT has been updated as the result of consensus reached in collaborative workshop processes, conducted on

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Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185 and 92-237, FCC 96-333, 11 FCC Rcd 19392, ¶ 25 (rel. Aug. 8, 1996) ("Local Competition/Area Code Relief Second Report and Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, First Order On Reconsideration, CC Docket No. 96-98, 95-185 and 92-237, FCC-99-170, 14 FCC Rcd 16559 (rel. July 19, 1999) ("Local Competition/Area Code Relief First Order on Reconsideration").

[5] SBC Texas Order, ¶ 373; Bell Atlantic New York Order, ¶ 372, *citing* 47 U.S.C. § 251(b)(3).

[6] 47 U.S.C. § 153(15).

an open basis with full, active, and equal participation by competitors and state commission staffs. Specifically, Qwest's SGAT has been updated with the input of competitors and commission staffs through collaborative Section 271 workshops in Arizona, Colorado, Oregon, Washington, and the seven-state joint Section 271 workshops involving Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming.

With respect to intraLATA toll dialing parity (1+ equal access dialing), the South Dakota Commission ordered the implementation of the FCC's dialing parity rules for intraLATA toll calls by July 22, 1999.[7] In accordance with this order, Qwest completed the implementation of toll dialing parity for intraLATA toll calls pursuant to a Commission-approved plan in South Dakota on July 22, 1999.[8] Qwest implemented intraLATA toll dialing parity in all of its switches in South Dakota using the "full 2-PIC" subscription method for intra- and interLATA presubscribed carriers. All of Qwest's switches in South Dakota, therefore, provide local and toll dialing parity to competitors.

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7 South Dakota Commission order in Docket No. TC99-030, In the Matter of the FCC Order Establishing New Deadlines for Implementation of IntraLATA Dialing Parity by Local Exchange Carriers, issued June 22, 1999.

8 The FCC granted Qwest's (formerly U S WEST) Petition for Waiver in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of U S WEST Communications, Inc. for Waver of Dialing Parity Dates Established in March 23, 1999, Dialing Parity Order, CC Docket No. 96-98, NSD File No. 98-L-121, 1999 FCC LEXIS 4863, (rel. Oct. 1, 1999 ("Dialing Parity Order"). The FCC allowed Qwest to delay implementing intraLATA toll dialing parity in 3 central offices until November 30, 1999. Qwest actually completed implementation in these 3 central offices October 18, 1999.

A. CLEC Customers Dial the Same Number of Digits that Qwest Customers Dial to Complete Telephone Calls.

Under the FCC's rules implementing the dialing parity requirements of Section 251(b)(3) of the Act, customers of competing carriers must be able to dial the same number of digits as the BOC's customers dial to complete a local telephone call.[9] Consistent with these rules, there are no differences in the number of digits that Qwest or CLEC customers must dial to complete any given type of call, regardless of the identity of the service provider of either the calling party or the called party. Qwest does not impose any requirement or technical constraint that requires CLEC customers to dial access codes or a greater number of digits than Qwest customers dial to complete the same type of call. From a customer's perspective, the interconnection of Qwest's network and the networks of CLECs is seamless.

CLEC and Qwest customers dial the same number of digits without any access codes, and can use the same dialing patterns, to place calls to a Qwest customer, a CLEC customer, directory assistance, or operator services. Moreover, Qwest provides dialing parity for access to operator and directory assistance services not only when Qwest provides those services for a CLEC, but also when a CLEC uses customized routing to provide operator and directory assistance services itself or by using a third party provider.[10]

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9 SBC Texas Order, ¶ 374; Bell Atlantic New York Order, ¶ 373, *citing* 47 C.F.R. §§ 51.205, 51.207.

10 Customized routing is available in SGAT § 9.12.

B. Qwest Does Not Discriminate Against CLECs With Respect to Post-Dialing Delays or Quality of Service.

The FCC's rules implementing the dialing parity requirements of Section 251(b)(3) of the Act also state that customers of competing carriers must not suffer inferior quality of service, such as unreasonable dialing delays, as compared to the BOC's customers.[11] Consistent with these rules, Qwest provides CLEC end users with the same quality of service that Qwest provides to its own end users with no additional post-dialing delays. This is so, first, because Qwest does not impose any requirement or technical constraint that would cause CLEC customers to experience longer post-dialing delays or inferior quality service.

Second, the design of Qwest's systems and processes ensures equal treatment of all end user calls. The processing of calls in Qwest's central offices is the same for both CLEC and Qwest customers. Calls from all types of service providers, including Qwest, are intermingled on Qwest's switching facilities. Calls from CLEC end users to a central office are processed in accordance with the same technical requirements and standards as calls from Qwest end users.[12] Dialed digits transmitted or received by Qwest's switches utilize the same translations and routing tables for completing a call,

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11 47 C.F.R. § 51.207 (requiring same number of digits to be dialed) and Local Competition/Area Code Relief Second Report and Order, ¶¶ 4-15. The FCC also has stated that local dialing parity is achieved through the implementation of interconnection, number portability, and nondiscriminatory access to telephone numbering under Section 251 of the 1996 Act. Local Competition/Area Code Relief Second Report and Order, ¶ 71. Qwest demonstrates its compliance with these requirements in other affidavits submitted with the instant application.

12 Telcordia's Technical Requirements LSSGR TR-NWT-000505 Call Processing and Special Report SR-TSV-002275, BOC Notes on the LEC Networks.

regardless of whether the call originates on Qwest's network or a CLEC's network. Qwest's switches cannot distinguish between calls from CLEC end users and calls from Qwest end users.[13] The design of Qwest's network, therefore, ensures that all customers receive the same dialing intervals and quality of service, regardless of who the customer's service provider may be. As a result, participants in the Regional Oversight Committee ("ROC") collaborative workshops developing performance metrics and OSS testing requirements determined that performance metrics and testing are not necessary for this Checklist Item. The FCC has also determined that performance measures are not necessary for this Checklist Item.[14]

III. RESOLUTION OF ISSUES IN THE MULTI-STATE WORKSHOPS

Qwest has participated in Section 271 collaborative workshops addressing Checklist Item 12 in Arizona, Colorado, Oregon, Washington and in the Multi-State proceeding involving state commissions from Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. The Multi-State 271 workshop for this Checklist Item was conducted as a "paper" workshop. CLECs, other interested parties, and commission staffs participated in the paper workshop. The interested parties and Qwest filed testimony regarding Qwest's compliance with Checklist Item 12. In the Multi-State Paper Workshop Final Report the workshop facilitator states that ". . . the FCC determined that performance measures are unnecessary for this checklist item, and

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13 Indeed, to discriminate against CLECs in this area, Qwest would have to make costly and difficult modifications to its network that would require the cooperation of third party vendors and be readily apparent to network users and observers.

therefore, the ROC has not established any for it. Therefore, there are no unresolved issues concerning this checklist item."[15] In addition, other states have reached a similar conclusion that Qwest satisfies the requirements for Checklist Item 12.[16] Thus far, every state commission to consider Qwest's compliance with Checklist Item 12 has found that Qwest complies with this Checklist Item.

IV. SUMMARY AND CONCLUSION

Qwest satisfies the requirements of Section 271(c)(2)(B)(xii) of the Act regarding dialing parity. All customers – regardless of whether local service is provided by a CLEC or Qwest – are able to dial the same number of digits to originate local calls, with the same quality of service. There are specific legal commitments in the SGAT and other Commission-approved interconnection agreements making local dialing parity

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14 Local Competition/Area Code Relief Second Report and Order, ¶ 162.

15 Paper Workshop Final Report at 8 (Multi-State Workshop Mar. 19, 2001).

16 *E.g.*, Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996, Docket No. UT-003022/UT-003040, Commission Order Addressing Workshop One Issues: Checklist Items No. 3, 7, 8, 9, 10, 12, and 13, at 13 (WUTC June 11, 2001); Investigation into the Entry of Qwest Corporation, formerly known as U S WEST Communications, Inc., into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996, Docket UM 823, Workshop 1 Findings and Recommendation Report of the Commission, at 14 (Ore. PUC April 16, 2001); In the Matter of U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. T-00000A-97-0238, Decision No. 62344, Findings of Fact, (A.C.C. March 6, 2001); In the Matter of U S WEST Communications, Inc., Denver, Colorado, Filing of its Notice of Intention to File Section 271(c) Application with the FCC and Request for Commission to Verify U S WEST Compliance with Section 271(c), Application No. C-1830, Factual Findings and Partial Verification, at 44-45 (NE PSC Apr. 9, 1999).

available to CLECs. Therefore, the South Dakota Commission should find that Qwest satisfies Checklist Item 12.

Being first duly sworn upon oath, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this __15th_ day of October, 2001.

Margarett S. Bumgarner
Margaret S. Bumgarner

STATE OF WASHINGTON

COUNTY OF KING

Subscribed and sworn to before me this _15th_ day of October, 2001.

Elizabeth M. Weber
Notary Public

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

EXHIBITS to the AFFIDAVIT

OF

MARGARET S. BUMGARNER

CHECKLIST ITEM 12 – DIALING PARITY

October 24, 2001

INDEX TO EXHIBITS

QUALIFICATIONS OF MARGARET S. BUMGARNER

My name is Margaret S. Bumgarner. My business address is 1600 Seventh Avenue, Seattle, Washington, 98191. I am a Director in the Policy and Law organization at Qwest Corporation ("Qwest").

I received a Bachelor of Science Degree in Education/Biology from Washington State University. In 1973, I started working for Pacific Northwest Bell as a supervisor in the network organization. I held several management positions in the network organization, including installation, assignment, installation and repair service centers, network budget analysis, switching operations and network administration staff. In 1982, I began working in the Planning and Engineering department doing network planning for divestiture under the Modified Final Judgment, preparing the network equal access compliance plan filed with the Department of Justice, and supervising the staff for switch engineering and network design. In 1986, I became U S WEST's representative to the national industry forums addressing technical network compatibility issues and numbering issues and also managed the network planning groups responsible for numbering and common channel signaling. In recent years, I was responsible for a wide range of federal public policy issues, including numbering, access reform, and interconnection.

I am currently a Director in the Policy and Law organization responsible for several Section 271 checklist items and Qwest's filing with the Federal Communications Commission ("FCC"). I base this affidavit on professional experience, personal knowledge, and information available to me in the normal course of my duties, including records kept by Qwest in the regular course of business. Specifically, my experience has allowed me to develop an expertise in several Section 271 checklist areas such that I have testified in the Section 271 workshops in Arizona, Colorado, Oregon, Washington, and the joint seven-state ("Multi-State") workshops involving Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. I also participated in the Section 271 proceedings in Nebraska.

Through my testimony in the Section 271 workshops, I have directly participated in the development and evolution of the terms and conditions of Qwest's Statement of Generally Available Terms and Conditions ("SGAT"). These workshops and proceedings were part of a collaborative process, conducted on an open basis with the full, active, and equal participation by CLECs and state commission staffs. A significant part of this process has involved responding to issues and concerns raised by competitive local exchange carriers ("CLECs") and revising the SGAT when possible to address their needs. I have also been responsible for ensuring that the resolution of issues raised by CLECs have been integrated into the documentation of Qwest's processes, methods and procedures provided to CLECs, that apply in each state of Qwest's 14-state region.

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

AFFIDAVIT

OF

THOMAS R. FREEBERG

CHECKLIST ITEM 13 – RECIPROCAL COMPENSATION

OCTOBER 24, 2001

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AFFIDAVIT

OF

THOMAS R. FREEBERG

Checklist Item #13 – Reciprocal Compensation

Thomas R. Freeberg states as follows:

My name is Thomas R. Freeberg. My business address is 301 W. 65th St., Room 100, Richfield, Minnesota 55423-1559. I am a Director of Wholesale Markets at Qwest Corporation ("Qwest"),[1] with responsibilities for supervising Qwest's efforts to comply with Sections 251, 252, and 271 of the Communications Act of 1934, as amended (the "Act"), and managing related regulatory undertakings.

I base this affidavit on professional experience, personal knowledge, and information available to me in the normal course of my duties. As part of Qwest's work to ensure its compliance with Section 271, I have participated extensively for more than one year in all of the collaborative state workshops addressing this checklist item in Arizona, Colorado, Oregon, Washington, and the seven-state joint Section 271 workshops, involving Idaho, Iowa, Utah, Montana, North Dakota, Wyoming, and New Mexico. Each of these five workshop processes were collaboratives, conducted on an open basis with full, active, and equal participation by competitors and state commission staffs.

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1 Professional experience, education and other biographical information is in Exhibit TRF-RECIP-1.

I. EXECUTIVE SUMMARY

Qwest complies with the Federal Communications Commission ("FCC") reciprocal compensation requirements in South Dakota. As a general matter, Qwest's Statement of Generally Available Terms and Conditions ("SGAT") provides for Qwest and interconnecting local carriers to pay one another symmetrical rates for the transport and termination of local telecommunications traffic. To my knowledge, no competitive carrier in South Dakota has made a forward-looking cost showing with regard to its own network costs to justify higher transport and termination rates.

For transport, interconnecting local carriers may choose either Qwest's Direct Trunked Transport, Tandem Switched Transport, or a combination of the two. Each option provides transmission of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch or equivalent facility. For Direct Trunked Transport, when Qwest fulfills a competitive local exchange carrier ("CLEC") request for two-way trunk groups used for transport of interconnected traffic, Qwest's cost recovery emulates one-way trunking. A "relative use factor" reduces Direct Trunked Transport charges by reflecting only the proportion of traffic that flows to Qwest from the CLEC over the trunk.

Qwest also provides Tandem Switched Transport to enable interconnecting carriers to complete local calls to and from every Qwest end office connected to a Qwest tandem by establishing just one new trunk group. Qwest's approach to single point of interconnection ("POI") per LATA interconnection is very similar to that offered by Verizon and SBC in the states where those ILECs demonstrated checklist satisfaction.

Tandem Switched Transport is a per-minute charge to recover the cost of tandem switching, and to recover the cost of transport from the Qwest tandem office to the Qwest end office, since trunks between these offices are used in "common" with other services. A per-minute, mileage-sensitive rate also applies to common transport from Qwest host switching offices to Qwest remote switching offices in a host-remote switching cluster.

Call Termination charges help recover the cost of switching of local telecommunications traffic at the terminating carrier's end office switch (or equivalent facility) for delivery to the called party's premises. Qwest has charged, and has paid, a per-minute rate for the use of the end office terminating switch. With respect to Internet-bound traffic, it is subject, going-forward, to unique inter-carrier compensation rules.

In addition to the above, Qwest offers transit service that allows CLECs to interconnect indirectly with other local carriers using Qwest's tandem, thus avoiding the CLEC's investment in facilities otherwise necessary to exchange local calls with non-Qwest local carriers. The Transit Traffic rate element includes tandem switching and transport charges and applies to all usage between CLECs that transit Qwest's tandem switch.[2] The originating carrier is responsible for paying the appropriate rates to two carriers: Qwest and the terminating CLEC. Qwest and the terminating carrier often

[2] Transit traffic may also flow between a CLEC and wireless local carrier or between a CLEC and a non-Qwest independent ILEC.

exchange traffic records to enable the terminating carrier to collect reciprocal compensation from the originating carrier.

Finally, Qwest properly records, bills, and pays for reciprocal compensation via systems that ensure reciprocal compensation is handled properly.

II. QWEST SATISFIES THE FCC'S RECIPROCAL COMPENSATION REQUIREMENTS IN SOUTH DAKOTA

Qwest complies with Section 251(b)(5) of the Act, which requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications," and Qwest, therefore, satisfies the Section 271(b)(2)(B)(xiii) requirement of offering "reciprocal compensation arrangements in accordance with Section 252(d)(2)." Specifically, as part of its commitment to interconnection, Qwest provides reciprocal compensation arrangements under terms and conditions that "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and that are "a reasonable approximation of the additional costs of terminating such calls."[3]

The FCC has defined reciprocal compensation as consisting of two components, "transport" and "termination." When two carriers collaborate to complete a local call, the originating carrier is compensated by its end user, and the terminating carrier is entitled to compensation from the originating carrier pursuant to Section 251(b)(5) of the Act.

[3] *See* 47 U.S.C. § 252(d)(2)(A).

Reciprocal compensation is the payment between Qwest and interconnecting carriers for the transport and termination of local traffic on their respective networks.

Qwest is under a specific and concrete legal obligation to provide reciprocal compensation to CLECs and other local carriers in South Dakota under its commission-approved interconnection agreements and SGAT. As of September 1, 2001, Qwest had exchanged local calls with six local carriers in South Dakota. Agreements with three of these carriers provide for standard reciprocal compensation, and agreements with the other three carriers provide for bill-and-keep versions of reciprocal compensation. The South Dakota Public Utilities Commission has approved all of these agreements pursuant to Sections 252(a) and/or 252(b) of the Act.

Qwest's SGAT and its interconnection agreements have evolved on not only on a state-by-state basis, but holistically across its 14-state region. This is the result of workshops and proceedings that were part of a collaborative process, conducted on an open basis with the full, active, and equal participation by competitive local exchange carriers ("CLECs") and many state commission staffs. A significant part of this process has involved Qwest's responding to reciprocal compensation concerns raised by CLECs and revising the SGAT to align with regulators' advice. Qwest is now re-filing its South Dakota SGAT to reflect collaboration between Qwest and CLECs as a result of these workshops in eleven other Qwest states.

The Nebraska PSC on September 5, 2001, released an Order declaring that Qwest had demonstrated satisfaction of checklist item 13. The Nebraska and South

Dakota SGATs are very similar. The SGAT includes terms and conditions for reciprocal compensation that are available to all interconnecting local carriers.[4]

Notably, CLECs seeking new reciprocal compensation arrangements from Qwest as part of a negotiated interconnection agreement can, piecemeal or completely, integrate the provisions of the SGAT into their interconnection agreements. Any CLEC that already has an interconnection agreement with Qwest may replace reciprocal compensation provisions in its agreement with more favorable reciprocal compensation provisions of the SGAT, if the CLEC so desires.[5]

Qwest's SGAT provides for Qwest to pay CLECs symmetrical rates for transport and termination, which as noted above are the two key elements of reciprocal compensation.[6] The SGAT complies with Section 51.711(a) of the FCC's rules, which provides that "[r]ates for transport and termination of local telecommunications traffic shall be symmetrical," which means that the interconnecting local carrier is entitled to charge Qwest rates for the transport and termination of local telecommunications traffic that are identical to Qwest's rates. While Section 51.711(b) of the FCC's rules permits interconnecting local carriers to charge a higher rate if they have made a forward-looking cost demonstration regarding their own network costs, to my knowledge, no carrier has made such a cost showing in South Dakota.

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[4] *See generally* SGAT § 7.3.

[5] *See* 47 U.S.C. § 252(i); *see also* SGAT § 1.8 *et seq.*

[6] *See* SGAT §§ 7.3.2.2. (symmetrical compensation for direct-trunked transport); SGAT §§ 7.3.4, 7.3.7.1 (symmetrical compensation for termination).

A. Qwest Reciprocally Provides the "Transport" Component of Transport and Termination.

For reciprocal compensation purposes, Section 51.701(c) of the FCC's rules defines the "transport" component of transport and termination as "the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC."[7]

Local carriers may choose to use either Direct Trunked Transport, Tandem Switched Transport, or a combination of the two, for sending and receiving interconnected local traffic to and from Qwest. Qwest uses these same approaches to routing in its own local network. This routing is explained more fully below. While Qwest makes available transport arrangements over one-way interconnection trunking facilities as well as over two-way facilities,[8] 94% of the existing interconnection trunking between Qwest and local carriers in South Dakota is two-way. The Parties may purchase transport services from each other, a third party, or from a third party that has leased a Private Line Transport Service facility from Qwest.[9]

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[7] 47 C.F.R. § 51.701(c).

[8] SGAT, § 7.2.2.1.2.1.

[9] SGAT, § 7.2.2.1.2.2.

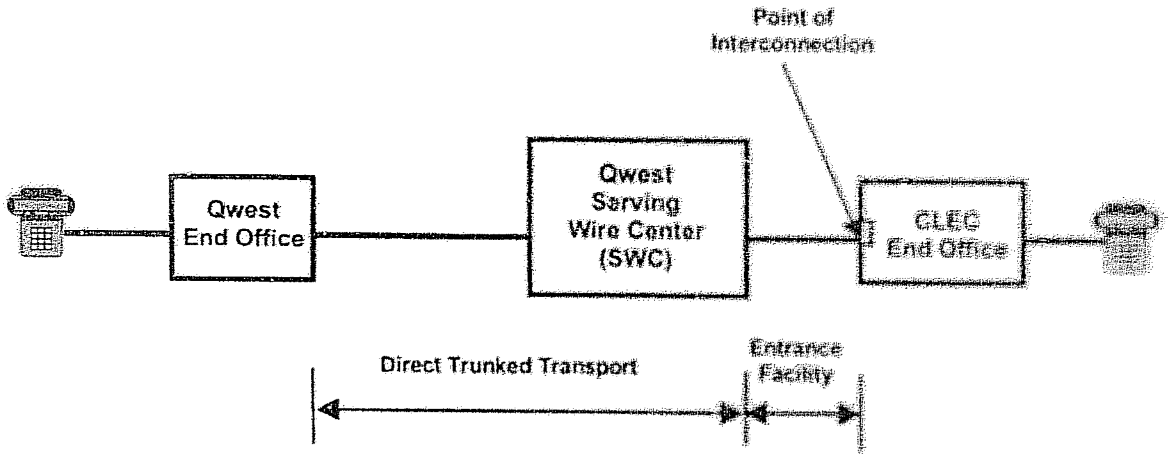
1. Direct Trunked Transport

Overview. Direct Trunked Transport is a reciprocal compensation charge for Qwest's provision of an uninterrupted path between the switches of two different carriers. Direct trunks can link a Qwest end office to another Qwest end office or to a CLEC end office. Direct Trunked Transport extends from a Qwest Serving Wire Center near the carriers' point of interconnection to the terminating call's tandem or end office switch. Switching is not generally performed at a Qwest Serving Wire Center. The rates for Direct Trunked Transport are listed in Exhibit A of the SGAT.

1. Direct Trunked Transport

Overview. Direct Trunked Transport is a reciprocal compensation charge for Qwest's provision of an uninterrupted path between the switches of two different carriers. Direct trunks can link a Qwest end office to another Qwest end office or to a CLEC end office. Direct Trunked Transport extends from a Qwest Serving Wire Center near the carriers' point of interconnection to the terminating call's tandem or end office switch. Switching is not generally performed at a Qwest Serving Wire Center. The rates for Direct Trunked Transport are listed in Exhibit A of the SGAT.

Direct Trunked Transport



Rate Elements. Direct Trunked Transport has two rate elements: (1) a fixed, per month charge, and (2) a fixed, per mile charge. The latter charge varies with the length of the dedicated facility (based on airline mileage), as measured from the Serving Wire Center to the tandem or end office. Different charges for Direct Trunked Transport apply for the DS1 and DS3 signal levels.

Symmetry. Qwest's SGAT complies with Section 51.709(b) of the FCC's rules, which provides that "[t]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."[10] Consistently, the SGAT provides that when, in response to a CLEC request, Qwest provides two-way trunking

[10] 47 C.F.R. § 51.709(b).

for transport of local traffic, the rate Qwest recovers for the cost of such facilities is reduced by a "relative use factor" reflecting the proportion of local traffic that flows from Qwest to the CLEC over the trunk.[11]

For example, if 70% of the local traffic over the trunk flows from Qwest customers to CLEC customers and 30% flows from CLEC customers to Qwest customers, then Qwest will be responsible for 70% of the forward-looking cost of the transport. Thus, when Qwest provides the local transport, the rate a CLEC pays is the cost-based rate of the trunk, less 70%, which effectively places responsibility for 30% of the cost on the CLEC just as if it were providing its own one-way trunks. Conversely, if the CLEC provides the transport facilities for two-way trunk groups used in an interconnection arrangement, Qwest pays for a proportion of the transport cost reflecting its relative use of the capacity (*i.e.*, the proportion of the capacity used for local traffic from Qwest customers to CLEC customers, 70% in this case).[12]

2. Tandem Switched Transport

Overview. Tandem Switched Transport allows calling between a CLEC's switch and a Qwest end office through an intermediate switch. This path may be an alternate route or the only route for a call between two carriers' networks. When Tandem Switched Transport is requested, a dedicated transport facility extends from the Serving

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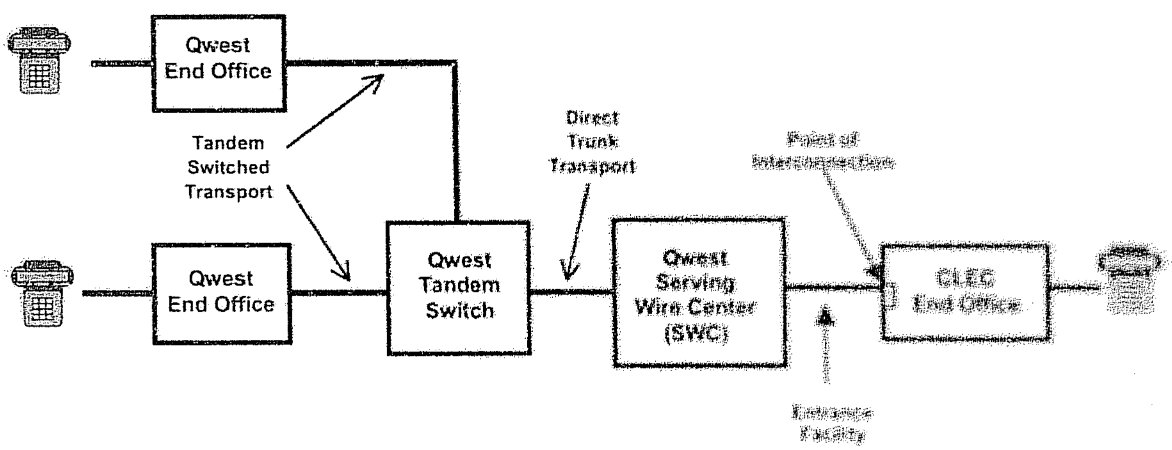
11 *See* SGAT § 7.3.1.1.3.1 (two-way entrance facilities); § 7.3.2.2(a) (two-way direct-trunked transport).

12 Sections 7.3.1.1.3.1 and 7.3.2.2.1 of the SGAT include in the calculation of the "relative use factor" only local telecommunications traffic, and exclude traffic that is connected to the Internet. This is consistent with the SGAT's treatment of Internet-bound traffic.

Wire Center at the point of interconnection between the carriers' networks to the Qwest local tandem switch. Common trunks connect the tandem switch to many end office switches in the LATA. These trunks are considered common trunks because the trunks are not dedicated to one CLEC's use, but instead are used "in common" by many carriers, including Qwest retail, independent local exchange carriers, wireless carriers, and CLECs. The combination of tandem switching and common transport is "Tandem Switched Transport." Tandem Switched Transport enables an interconnecting carrier to complete local calls to and from every Qwest end office connected to a Qwest tandem by establishing just one new trunk group. Tandem transmission rates apply to common transport from the tandem office to the end office.

Tandem Switched Transport



Common Transport from Host Offices to Remote Offices. The SGAT provides that when a party "terminates traffic to a remote switch, tandem transmission rates will be applied to the mileage between the host switch and the remote switch when the identity of each is filed in the NECA 4 Tariff."[13] This treatment recognizes that trunks between a host and remote central office switch are "common," like the trunks between tandems and end offices. The same treatment would symmetrically apply to traffic terminating to a CLEC. The tandem switching rate is not charged for the switching of the call at the host switch because the host is not (usually, or de facto) a tandem. This mirrors the interexchange access tariff handling of the same circumstance.

Treatment of Certain CLEC Facilities as Tandem Switches. Qwest's SGAT is consistent with Section 51.711(a)(3) of the FCC's rules, which provides that, "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."[14] Specifically, the SGAT defines CLEC switches to be Tandem Office Switches "to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch."[15] A Commission's fact-based consideration of geography is used to classify a CLEC switch. Local calls routed through either carrier's tandem switch originate and terminate in the same local calling area. The SGAT further provides that traffic delivered to Qwest is subject to the tandem switching rate and the tandem transmission rate, as well as the end office call termination rate, if Qwest

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13 SGAT § 7.3.4.2.3.

14 47 C.F.R. § 51.711(a)(3).

15 SGAT § 4 (definition of "Tandem Office Switches").

switches the traffic at both the tandem switch and the separate end office switch.[16] If a CLEC terminates the traffic at a switch that meets the definition of a Tandem Office Switch, tandem switching rate and the tandem transmission rate, as well as the end office call termination rate apply to all calls that originate and terminate in the same local calling area. All the relevant rates are included in Exhibit A of the SGAT.

B. Qwest Reciprocally Provides the "Termination" Component of Transport and Termination.

1. Local Telecommunications Traffic

The FCC defines "termination" as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises."[17] In the Local Competition Order, the FCC clarified that "non-traffic sensitive costs [such as loops] should not be considered" part of reciprocal compensation.[18] The only rate element for Call Termination is a per minute charge for the use of the end office terminating switch. This rate is reflected in Exhibit A of the SGAT.

2. Bill and Keep

Qwest's interconnection agreement with McLeod provides for reciprocal compensation through a bill-and-keep arrangement. Qwest's agreements with AT&T

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16 SGAT § 7.3.4.2.1.

17 47 C.F.R. § 51.701(d). *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 1057 (1996) ("Local Competition Order").

18 *Id.*

and Black Hills Fiber also include forms of bill-and-keep arrangements that allow for conversion to standard reciprocal compensation when traffic balance is lopsided.

3. Internet-Bound Traffic

Qwest has implemented the FCC's April 2001 order on inter-carrier compensation for Internet-bound traffic.[19] Under Section 7.3.4.3 of the SGAT, Qwest elects to exchange all Internet-bound traffic at the FCC-ordered rate, and Qwest makes clear that the rate for Internet-bound traffic applies in lieu of End Office call termination and Tandem Switched Transport rates.[20] Because Qwest has elected to exchange Internet-bound traffic at the rates ordered in the FCC ISP Order, for usage-based intercarrier compensation configurations exchanging traffic pursuant to interconnection agreements as of the FCC ISP Order's April 18, 2001, adoption, Internet-bound traffic compensation is paid at the rates specified in that Order. This is pursuant to the presumption set forth for identifying ISP-bound traffic, and subject to the Order's growth ceilings for Internet-bound traffic.[21] Based on a CLEC's election, Qwest will exchange EAS/Local traffic at the state-ordered ISP rate or at the ISP rate.[22] Where bill-and-keep applies in an interconnection agreement, Qwest exchanges all Section 251(b)(5) and all

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19 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation For ISP-Bound Traffic, CC Docket No. 96-98, Order on Remand/Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("FCC ISP Order").

20 SGAT § 7.3.4.3

21 SGAT §§ 7.3.6.1-7.3.6.2.

22 SGAT § 7.3.4.4.

Internet-bound traffic under the bill-and-keep arrangement. Compensation for interconnection configurations not exchanging traffic pursuant to interconnection agreements prior to April 18, 2001, are on a bill-and-keep basis until further FCC action on inter-carrier compensation.[23] This includes CLEC expansion into markets not previously served.

C. Qwest Provides "Transit" Service to Interconnecting Carriers

Qwest also offers to switch and transport traffic to allow CLECs to interconnect indirectly with other local carriers using Qwest's facilities. Qwest's transit service allows one CLEC to send traffic to another local carrier's network through Qwest's tandem, thus avoiding the cost of investing in facilities otherwise necessary to interconnect to all other local carriers in a local calling area.

The Transit Traffic rate element includes tandem switching and tandem transmission charges and it applies to all usage between CLECs that transit Qwest's tandem switch.[24] On a transit call, the originating carrier is responsible for paying the appropriate rates to both the terminating carrier and the transit carrier. The Transit Traffic rate element applies when calls do not originate with (or terminate to) a Qwest end user subscriber. The SGAT also provides for Qwest and the CLEC to exchange

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[23] SGAT § 7.3.6.2.3.4.

[24] SGAT § 7.3.7.1. Transit traffic may also flow between a CLEC and wireless local carrier or between a CLEC and a non-Qwest ILEC independent company.

traffic records to enable the terminating carrier to collect reciprocal compensation from the originating carrier.[25]

III. QWEST PROPERLY RECORDS, BILLS, AND PAYS FOR RECIPROCAL COMPENSATION.

A. Qwest Systems Ensure That Reciprocal Compensation Is Handled Properly.

Qwest records, bills, and pays reciprocal compensation in accordance with the SGAT and its various interconnection agreements. Certain types of calls or types of interconnection require the exchange of special billing records including, for example, alternate-billed and toll-free service calls. To the extent these calls are not local, CLEC procedures are the same for those that have existed in the past between Qwest and other carriers. All call types routed between the networks must be accounted for and settled between CLECs and Qwest. Qwest uses its CroSS7 Platform to collect and format call detail from messages on Signaling System Seven (SS7) links that are associated with interconnection trunk groups. Familiar accounting and settlement systems are used to exchange call records and bills.

Qwest has developed detailed processes that support reciprocal compensation billing and payments to CLECs. Qwest's performance with respect to reciprocal compensation is measured, and can be evaluated, using two key Performance Indicator Definitions ("PIDs") developed collaboratively by Qwest and CLECs in the Regional

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25 SGAT §§ 7.3.8, 7.6.

Oversight Committee ("ROC") process.[26] First, the PID labeled BI-3 evaluates the accuracy with which Qwest bills CLECs, focusing on the percentage of billed revenue adjusted due to errors. BI-3 measures the billed revenue minus amounts adjusted off bills due to errors, as a percentage of total billed revenue. Specifically, BI-3B makes the measurement for reciprocal compensation minutes of use, but excludes billing adjustments resulting from CLEC-caused errors.

The PID labeled BI-4B measures the completeness with which Qwest bills non-recurring and recurring charges for UNEs and resale associated with completed service orders, as well as the completeness with which Qwest bills the revenue for local minutes of use associated with local interconnection for purposes of reciprocal compensation. Specifically, BI-4B measures the percentage of revenue associated with local minutes of use appearing on the correct bill.[27]

Qwest's average February-July 2001 performance for Billing Accuracy was 99%. This is well above the 95% benchmark established by the ROC. The average February-July 2001 performance for Billing Completeness was 77%. While this measure falls short of the benchmark, it is the result of mis-routed traffic from one party. So that calls were not blocked, Qwest has compensated for the mis-routing. At the same time, Qwest has advised the party of the need to correct the routing and that the billing

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26 The affidavit of Michael G. Williams contains a complete description of Qwest's PIDs and their development in ROC proceedings. The PIDs are Exhibit MGW-PERF-6 to Mr. Williams' Affidavit.

27 The PIDs are attached to the Affidavit of Michael G. Williams as Exhibit MGW-PERF-6.

problem was created by the mis-routing. Unfortunately, Qwest was not certain that the ROC would allow that this circumstance could be excluded from collection of this performance data for this performance measure.[28] The party has since agreed to correct the mis-routing. When the BI-4B results are recalculated to exclude this effect, each month shows a 99 or 100% rating.

A CLEC or Qwest may request an audit of reciprocal compensation billing. Section 18.0 of the SGAT defines the terms and conditions of the audit process. The party requesting the audit may review the non-requesting party's records, books, and documents.

Through the SGAT, Qwest has established a concrete and legal obligation to pay reciprocal compensation in a timely fashion. The SGAT states, "Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date)."[29]

B. Qwest Fully Complies With Its Reciprocal Compensation Obligations

Qwest has fulfilled its obligation to bill and pay reciprocal compensation to CLECs and other interconnecting carriers. These amounts, based on traffic exchanged with six operating CLECs, reflect the following typical tally of minutes of traffic exchanged between Qwest and CLECs during August, 2001 in South Dakota:

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28 Qwest's recent performance data are attached to this Affidavit as Exhibit TRF-RECIP-2.

29 SGAT § 5.4.1.

	Qwest Originated	CLEC Originated	Total
Local traffic			
End Office	37,388,833	11,757,859	
Tandem	983,680	217,250	
Total	38,372,513	11,985,110	
Transit traffic	1,638,765	1,047,455	
End Office total	38,490,885	12,323,928	
Tandem total	1,520,393	708,636	
Total	40,011,278	13,032,564	**53,043,842**

The Parties have billed and paid each other for the transport and termination of this traffic when the interconnection agreement called for payment. Disputes, when they have arisen, have typically been associated with a CLEC's classification of Internet-bound traffic as local when Qwest classified it as toll or a CLEC's classification of all traffic on a trunk group as toll when, by Qwest's records, some portion was local. Disputes such as these between wholesale carriers are not uncommon industry-wide.

IV. SUMMARY AND CONCLUSION

Qwest has a concrete and specific legal obligation to provide reciprocal compensation for the transport and termination of local exchange traffic under its commission-approved interconnection agreements and SGAT. Qwest is currently exchanging traffic and subject to reciprocal compensation with six South Dakota CLECs. Qwest is providing reciprocal compensation in compliance with the negotiated PIDs developed by the ROC. Accordingly, Qwest satisfies the reciprocal compensation requirements of checklist item 13 in South Dakota.

Being first duly sworn upon oath, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 10TH day of Oct, 2001.

Thomas R. Freeberg

Thomas R. Freeberg

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Subscribed and sworn to before me this 10th day of Oct, 2001.

Notary Public

ERIC J. SUNSDAHL
Notary Public
Minnesota
My Commission Expires Jan. 31, 2005

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

EXHIBITS to the AFFIDAVIT

OF

THOMAS R. FREEBERG

CHECKLIST ITEM 13 – RECIPROCAL COMPENSATION

OCTOBER 24, 2001

INDEX TO EXHIBITS

QUALIFICATIONS OF THOMAS R. FREEBERG

Mr. Freeberg holds a Bachelor of Science degree in Civil Engineering from the University of Minnesota, Institute of Technology, and is a Registered Professional Engineer in Minnesota, Licence Number 16738 MN.

Excluding a two-year break, he has worked for Qwest and its predecessors since 1979 in various engineering, construction, administration, planning, and operations positions. As part of Qwest's construction operation, Mr. Freeberg directly supervised cable placement and splicing for interoffice and loop facilities. As part of Qwest's order provisioning operation, he 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, he 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 wholesale operation, Mr. Freeberg directly supervised the development and documentation of provisioning and maintenance processes associated with new resale, interconnection, and unbundled local services. These efforts were intended to ensure that basic provisioning and maintenance were in place to support the initial rollout of local wholesale services.

Mr. Freeberg has actively participated in the state proceedings in which Qwest is seeking approval to provide interLATA services within its 14 state region. He has submitted affidavits and participated in workshops in every state with ongoing proceedings, including South Dakota.

ride the light

Qwest
Performance Results

South Dakota
March 2001 - August 2001

October 2, 2001

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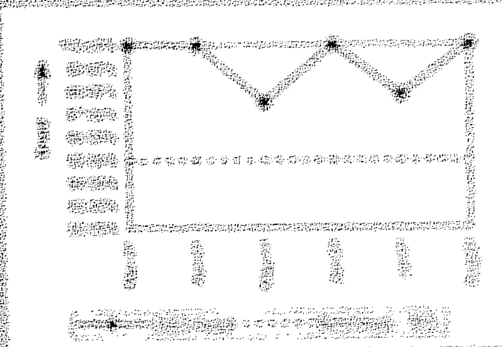
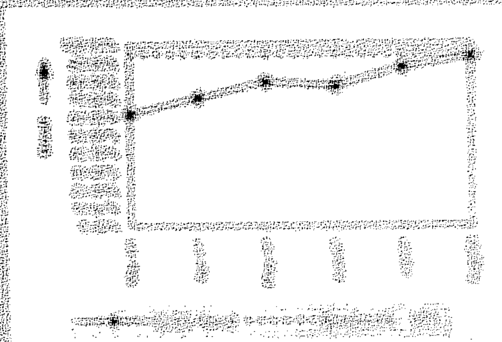
Section	***Page Number***

Checklist #13 - Reciprocal Compensation

Billing Accuracy - Adjustments for Errors (Percent) Reciprocal Compensation			
Date	CLEC Num	CLEC Denom	CLEC Result
Mar-01	103402.73	103402.73	[illegible]
Apr-01	7515.96	7515.96	100.00%
May-01	6312.08	6473.44	97.51%
Jun-01	7367.91	7367.91	100.00%
Jul-01	7538.2	[illegible]	[illegible]
Aug-01	6538.65	[illegible]	[illegible]



Billing Completeness (Percent) Reciprocal Compensation			
Date	CLEC Num	CLEC Denom	CLEC Result
Mar-01	3778.29	6078.37	[illegible]
Apr-01	4573.65	6448.69	[illegible]
May-01	4166.07	5238.32	79.53%
Jun-01	4782.64	6179.87	77.39%
Jul-01	5183.16	[illegible]	[illegible]
Aug-01	4324.36	4634.19	[illegible]



BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 14 -- RESALE

OCTOBER 24 2001

CONTINUATION

[1]

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AFFIDAVIT

OF

LORI A. SIMPSON

Checklist Item 14 -- Resale

Lori A. Simpson states as follows:

My name is Lori A. Simpson. My business address is 301 West 65th Street, Minneapolis, Minnesota. I am Director – Legal Issues for Qwest Corporation ("Qwest"). I submit this affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this affidavit, I show that Qwest has complied with checklist item number 14 of Section 271 of the Telecommunications Act of 1996 ("1996 Act" or "Act") concerning resale.[1]

I base this affidavit on professional experience, personal knowledge, and information available to me in the normal course of my duties, including records regularly kept in the course of business by Qwest.[2]

I. EXECUTIVE SUMMARY

The purpose of my affidavit is to demonstrate how Qwest has complied with item number 14 of the checklist contained in Section 271(c)(2)(B) of the 1996 Act concerning resale.

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[1] *See* 47 U.S.C. § 271(c)(2)(B)(xiv).

[2] A description of my professional experience and education is included in Exhibit LAS-Resale.1 to this Affidavit.

Qwest provides its retail telecommunications products and services to competitive local exchange carriers ("CLECs") for resale to end users on terms and conditions that are reasonable and nondiscriminatory. Qwest's South Dakota Statement of Generally Available Terms and Conditions ("SGAT") and its commission-approved resale agreements demonstrate that Qwest has undertaken a legally binding obligation to offer for resale by CLECs telecommunications services that are equal in quality to, and provided in substantially the same time and manner as, the telecommunications services that Qwest provides to itself and its retail end users. The only limitations Qwest places on the resale of its products and services by CLECs are those permitted by the South Dakota Public Utilities Commission and the FCC.

As of August 31, 2001, Qwest provides 13,987 resold local access lines to eight South Dakota reseller CLECs, as well as numerous other resold services. Qwest's resale performance measures demonstrate that Qwest provides telecommunications services for resale in a timely manner, consistently delivering them to requesting CLECs within the intervals they request. Resale performance measures also show that Qwest provisions, and maintains and repairs resold telecommunications services in a manner that is in parity with the provision, and maintenance and repair of the equivalent services Qwest provides to retail end users.

In sum, Qwest's compliance with the FCC's requirements for resale, its legal obligations to provide services for resale by CLECs, and its resale performance for CLECs in South Dakota demonstrate its commitment to satisfying the requirements of checklist item 14.

II. QWEST HAS COMPLIED WITH THE FCC'S RESALE REQUIREMENTS IN SOUTH DAKOTA

A. Obligation to Offer Telecommunications Services for Resale

The term "resale" means the sale, by a CLEC, of Qwest's finished retail telecommunications services to an end user. Qwest actually delivers the service to the CLEC's end user, but Qwest's customer of record is the CLEC, and all Qwest contacts and interactions regarding the service take place between Qwest and the CLEC. The CLEC's end user interacts only with the CLEC, not with Qwest.

Section 271(c)(2)(B)(xiv) of the Act requires a Bell Operating Company ("BOC") to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."[3]

Section 251(c)(4) established the resale obligations of local exchange carriers:

> RESALE -- The duty -- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers . . .

In accordance with the requirements of section 271(c)(2)(B)(xiv) and the specific obligations imposed by section 251(c)(4)(A) and 252(d)(3), Qwest has undertaken a legally binding obligation to offer for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers.[4]

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3 *See* 47 U.S.C. § 271(c)(2)(B)(xiv).

4 *See* SGAT § 6.1.1.

Qwest makes contract service arrangements ("CSAs") available for resale.[5] CSAs are contractual agreements made between Qwest and a retail end user customer, typically a high-volume or long-term user of telecommunications services, or Qwest and a reseller CLEC. Such agreements may be tailored to an end user customer's individual needs, including special or customized service arrangements, or may be a volume-specific or long-term agreement for services. Resellers may aggregate traffic and usage from multiple end user customers located at the same geographic location to satisfy any volume requirements contained in a particular CSA. If a Qwest retail end user terminates a CSA early in order to change to a reseller CLEC for provision of the end user's local service, or if or a reseller with a CSA terminates it early, early termination liability terms and conditions contained in the agreement apply.[6]

As required by the FCC, grandfathered services are also available for resale. A reseller CLEC may resell existing grandfathered services to the same end user customer that currently purchases the grandfathered service from Qwest.[7]

Pursuant to FCC rules, Qwest provides services to requesting telecommunications carriers for resale that are substantially similar in quality, subject to the same terms and conditions, except for prices, and provided within the same

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[5] *See* SGAT § 6.2.2.7.

[6] *See* SGAT § 6.2.2.7.

[7] *See* SGAT § 6.2.2.8.

provisioning and repair intervals that Qwest provides equivalent services to others, including its retail end users.[8]

B. Wholesale Discounts for Resold Services

Section 252(d)(3) of the Act established the resale pricing obligations of incumbent local exchange carriers:

> WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES. -- For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

The wholesale rates Qwest charges for resold services are those approved or set by the Commission, as required by the FCC. The wholesale discount rates offered for resale in Exhibit A to the South Dakota SGAT are the rates determined by the Commission in its arbitration decision as to the interconnection and resale agreement between Qwest and AT&T.

C. Restrictions on Resale

Section 251(c)(4) of the Act allows for certain limited restrictions on resale terms and conditions:

> . . . (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

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8 See 47 C.F.R. § 51.603(b).

As outlined in the South Dakota SGAT, and in accordance with the Commission and FCC rules, Qwest imposes very limited, reasonable, and nondiscriminatory restrictions on the resale of telecommunications products and services by South Dakota CLECs.[9]

D. Provisioning and Maintenance Processes and Intervals for Resale

The FCC requires that a local exchange carrier provision resale orders "within the same provisioning intervals that the LEC provides these services to others, including end users."[10] Qwest's processes and procedures for providing resold services to CLECs do not discriminate between CLECs and Qwest's retail end user customers.[11] The very design of Qwest's processes for resold services prevents discrimination. Specifically, preordering and ordering processes and functions undertaken by CLECs reselling Qwest's retail telecommunications services are the same as the preordering and ordering processes and functions used for the same services by Qwest's retail operations.

Additionally, Qwest's maintenance and repair processes and systems for services resold by CLECs are the same as Qwest's maintenance and repair processes and systems for its retail services.[12]

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[9] *See* SGAT § 6.2.2.

[10] *See* 47 C.F.R. § 51.603(b).

[11] *See* SGAT § 6.4.8 ("Intervals provided to CLEC shall be equivalent to due dates Qwest provides itself.")

[12] *See* SGAT § 6.4.3.

Qwest is providing substantial commercial resale volumes to CLECs in South Dakota. As of August 31, 2001, Qwest provides 13,987 resold lines, including 5,282 residential lines, 8,650 business lines, and 55 Centrex lines, to eight reseller CLECs in South Dakota. As of the same date Qwest provides 687 resold private lines, including 613 analog, 35 DS0, and 39 DS1 private lines, and three resold Qwest DSL services, to reseller CLECs. Qwest provides resold services in South Dakota in a nondiscriminatory manner.

In order to measure it performance in providing, and maintaining and repairing services resold by CLECs, Qwest has implemented resale performance measurements. The performance measurements, also called "peformance indicators," were developed under the auspices of the ROC Third Party Operational Support System (OSS) Tests. The third party test participants decided to use a "parity" standard, comparing resale performance to Qwest retail performance, for each of these resale performance indicators.

On September 25, 2001, the Liberty Consulting Group, an independent third party retained as part of the ROC OSS Test, completed its audit of Qwest's performance indicators and performance indicator definiitons (PIDs) and issued its "Final Report on the Audit of Qwest's Performance Measures." Liberty reported that resale provisioning and maintenance performance indicators[13] passed the audit. Liberty

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[13] Liberty found that performance indicators for provisioning and maintenance of resold services measured what they purported to measure. *See* "Final Report on the Audit of Qwest's Performance Measures," dated September 25, 2001, at pp 58-

concluded that "the audited performance measures accurately and reliably report actual Qwest performance."[14] Qwest has offered to have Liberty verify its audit by conducting data reconciliation with any CLEC that believes Qwest's performance data is inaccurate.

Performance Results for Resold Services.[15] The performance indicators for resale measure Qwest's performance for twelve products: residential lines, business lines, Centrex, Centrex 21, PBX, Basic ISDN, Qwest DSL, Primary ISDN, DS0, DS1, DS3 and higher, and Frame Relay Service. There are numerous measurements for Qwest's performance in providing and maintaining each product, and there are numerous categories within each measurement, as described below. The standard for resale performance is parity with Qwest retail service, and Qwest achieves parity in the vast majority of resale performance measures in South Dakota.

Performance for Provisioning Resold Services. During the vast majority of the past year for which performance results are available, July, 2000, through August, 2001, Qwest's performance for provisioning resold services for CLECs was better for CLECs or was at parity with Qwest retail. For only a small handful of months, for a only handful of measurements, was the performance for resold services arguably not at parity with Qwest's performance for the same services for Qwest retail.

103, available at http://www.nrri.ohio-state.edu/oss/master/pid/sept/pmafinalreport.pdf.

[14] *Id.* at 2-3.

[15] Resale performance indicators and their definitions (PIDs), and resale performance results, are attached as an Exhibit to Mr. Mike Williams' Affidavit filed in this matter.

Looking specifically at resale provisioning results for the most recent four months reported, May, 2001, thorugh August, 2001,[16] the CLEC results show parity with Qwest retail results, and very often the results reveal that Qwest provided *better* service for CLECs, for all four months for all 58 of the following measurement categories:

Residence service for:

- installation commitments met with dispatches within and outside of Metropolitan Statistical Areas ("MSAs"),
- average installation intervals with dispatches within and outside of MSAs,
- delayed days for facility reasons with no dispatches, and with dispatches within and outside of MSAs,
- delayed days for non-facility reasons with no dispatches, and with dispatches within and outside of MSAs,
- interval for pending orders with delay past due date;

Business service for:

- installation commitments met with dispatches outside of MSAs,
- average installation intervals with dispatches within and outside of MSAs,
- delayed days for facility reasons with no dispatches, and with dispatches within and outside of MSAs,

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[16] *See* Performance Results Exhibit of Mr. Mike Williams: Installation Commitments Met, OP-3; Installation Interval, OP-4; New Service Installation Quality, OP-5; Delayed Days for Non-Facility Reasons,OP-6A; Delayed Days for Facility Reasons, OP-6B; and Interval for Pending Orders Delayed Past Due Date, OP-15A.

- delayed days for non-facility reasons with no dispatches, and with dispatches within and outside of MSAs,
- interval for pending orders with delay past due date;

Centrex service for:

- installation commitments met with no dispatches, and with dispatches within MSAs,
- average installation intervals with dispatches within and outside MSAs,
- delayed days for facility reasons with no dispatches, and with dispatches within and outside MSAs,
- delayed days for non-facility reasons with no dispatches, and with dispatches within and outside MSAs,
- new service installation quality;

Centrex 21 service for:

- installation commitments met with no dispatches, and with disptaches within and outside of MSAs,
- average installation intervals with disptaches within and outside of MSAs,
- new service installation quality;
- interval for pending orders with delay past due date;

PBX service for:

- installation commitments met with no dispatches, and interval zone two,
- average installation intervals, interval zone two,

- delayed days for non-facility reasons, interval zone two;

Basic ISDN for

- installation commitments met with no dispatches, and interval zone two,
- average installation intervals, interval zone two,

Qwest DSL for:

- installation commitments met with no dispatches, and interval zone two,
- average installation intervals with no dispatches, and interval zone two,
- new service installation quality, intervals zones one and two;

DS0 for:

- installation commitments met, interval zone two,
- average installation intervals. Interval zone two,
- new service installation quality, intervals zones one and two,
- interval for pending orders with delay past due date; and

DS1 for:

- installation commitments met, interval zone two,
- average installation intervals, interval zone two,
- new service installation quality, intervals zones one and two;

For those few resale installation categories where there are any results that indicate the performance for CLECs was below parity during these same four months, such results must be considered in context. For example, results for CLECs in meeting residence service installation commitments with no dispatch, although not statistically at parity with retail for three of the months, range between 99.14% and 99.73%[17] - excellent results by any standard. Similarly, results for the same service for two of the four months for average installation intervals were 1.94 days for CLECs and 1.35 days and 1.42 days for Qwest retail[18] - a statistically significant difference but not a significant difference in real time. For residence service installation quality, during only one of the four months was this performance result below parity for CLECs. For another of the four months a non-statistically-significant difference was noted, and for the remaining two of the four months performance for CLECs was *better* than for Qwest retail.[19]

Similarly, the performance results for business service must be considered as a whole. Specifically, for business service, installation commitments met with dispatches within MSAs, during a single month, May, 2001, of the most recent four months measured, results were below parity for CLECs. However, during the subsequent three months of June, July, and August, 2001, Qwest's performance was *better* for CLECs than for Qwest retail.[20] Similarly, for business service for average installation interval with no dispatches, during two of the four months, May and June, 2001, the results were below parity for CLECs. However, during the subsequent two months, July and August, 2001, Qwest's performance was *better* for CLECs than for Qwest retail.[21] For business

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17 *Id.*, Installation Commitments Met, OP-3, Residence, No Dispatches.

18 *Id.*, Installation Interval, OP-4, Residence, No Dispatches.

19 *Id.*, New Service Installation Quality, OP-5, Residence.

20 *Id.*, Installation Commitments Met, OP-3, Business, Dispatches Within MSAs.

21 *Id.*, Installation Interval, OP-4, Business, No Dispatches

service installation quality, during only one of the four months was performance below parity for CLECs. For one of the four months a non-statistically-significant difference was noted, and for two of the four months, the results show a *better* result for CLECs than for Qwest retail. [22]

For Centrex service, for average installlation interval with dispatches outside MSAs and no dispatches, for only one of the four months, June, 2001, did the results show nonparity; results for July and August, 2001, show parity. [23] For only one month, July, 2001, do performance results for Centrex, for interval for pending orders delayed past due date, show a nonparity result. August, 2001, results indicate a non-statistically-significant difference in performance. [24] For Centrex 21 service, for average installation interval with no dispatches, during two of the four months, May and June, 2001, the results were below parity for CLECs. However, for July, the performance result shows better service for CLECs than for Qwest retail, and in August, 2001, results indicate a non-statistically-significant difference in performance.[25]

The performance results for PBX service, for new service installation quality, for two of the most recent four months measured, June and July, 2001, show non-parity with Qwest retail. Again, however, these results must be considered in the context of

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22 *Id.*, New Service Installation Quality, OP-5, Business.

23 *Id.*, Installation Interval, OP-4, Centrex, Dispatches Outside MSAs and No Dispatches.

24 *Id.*, Interval for Pending Orders Delayed Past Due Date, Centrex, OP-15A.

25 *Id.*, Installation Interval, OP-4, Centrex 21, No Dispatches,

Qwest's overall performance, and the non-parity results are not repeated during the month of August, 2001, nor did they occur in May, 2001.

Performance Results for Maintenance and Repair of Resold Services. During the entire past year for which performance results are available, July, 2000, through August, 2001, Qwest's performance for maintaining and repairing resold services for CLECs is most often better for CLECs or at pairty with Qwest retail. For only a small handful of months is the performance for resold services arguably not at parity with Qwest's performance for the same services for Qwest retail.

Looking specifically at resale repair results for the most recent four months reported, May, 2001, thorugh August, 2001,[26] the CLEC results show parity with Qwest retail results, and very often the results reveal that Qwest provided *better* service for CLECs, for all four months for all 93 of the following measurement categories, where there was activity:

Residence service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches within and outside of Metropolitan Statistical Areas ("MSAs"),
- all troubles cleared within 48 hours with dispatches within and outside

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[26] *See* Performance Results Exhibit of Mr. Mike Williams: Out of Service Cleared Within 24 Hours, MR-3; All Troubles Cleared Within 48 Hours, MR-4; All Troubles Cleared Within 4 Hours, MR-5; Mean Time to Restore, MR-6; Repair Repeat Report Rate, MR-7; Trouble Rate, MR-8; and Repair Appointments Met, MR-9.

of MSAs,

- mean time to restore with no dispatches, and with dispatches within and outside of MSAs,
- repair repeat report rate with no dispatches, and with dispatches outside of MSAs,
- repair appointments met with dispatches within and outside of MSAs;

Business service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches outside of MSAs,
- all troubles cleared within 48 hours with no disptaches,
- mean time to restore with no dispatches,
- repair repeat report rate with dispatches within MSAs,
- repair appointments met with no dispatches, and with dispatches within and outside of MSAs;

Centrex service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches outside of MSAs,
- all troubles cleared within 48 hours with no disptaches, and with dispatches within and outside of MSAs,
- mean time to restore with no dispatches, and with dispatches outside of MSAs,
- repair repeat report rate with no dispatches, and with dispatches outside

of MSAs,

- repair appointments met with no dispatches, and with dispatches within and outside of MSAs;

Centrex 21 service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches within and outside of MSAs,
- all troubles cleared within 48 hours with no disptaches, and with dispatches within and outside of MSAs,
- mean time to restore with no dispatches, and with dispatches within and outside of MSAs,
- repair repeat report rate with no dispatches, and with dispatches within and outside of MSAs,
- repair appointments met with no dispatches, and with dispatches within and outside of MSAs,
- trouble rate;

PBX service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches within MSAs,
- all troubles cleared within 48 hours with no disptaches, and with dispatches within MSAs,
- mean time to restore with no dispatches, and with dispatches within and outside of MSAs,

- repair repeat report rate with no dispatches, and with dispatches within and outside of MSAs,
- repair appointments met with no dispatches, and with dispatches within and outside of MSAs,
- trouble rate;

Basic ISDN service for:

- all trouble cleared within 24 hours with no dispatches, and with dispatches within and outside of MSAs,
- all troubles cleared within 48 hours with no disptaches, and with dispatches within and outside of MSAs,
- mean time to restore with no dispatches, and with dispatches within and outside of MSAs,
- repair repeat report rate with no dispatches, and with dispatches within and outside of MSAs,
- repair appointments met with no dispatches, and with dispatches within and outside of MSAs,
- trouble rate;

Primary ISDN service for:

- all troubles cleared within 4 hours, interval zone 2,
- mean time to restore, interval zone 2,
- repair repeat report rate, interval zone 2,
- trouble rate, interval zones 1 and 2;

DS0 service for:

- mean time to restore, interval zone 2,
- repair repeat report rate, interval zone 2,
- trouble rate, interval zones 1 and 2;

DS1 service for:

- mean time to restore, interval zone 2,
- repair repeat report rate, interval zone 2,
- trouble rate, interval zones 1 and 2; and

DS3 and higher service for:

- all troubles cleared within 4 hours, interval zone 2,
- mean time to restore, interval zone 2,
- repair repeat report rate, interval zone 2.

For the most recent four month period measured, for only a handful of measurments is there a performance result for resale repair that indicates non-parity. In each case except one, the non-parity result occurs for a *single* month. The overwhelming majority of results for resale repair, for all measures, for all months, are at parity for CLECs and Qwest retail, and are frequently showing *better* performance for CLECs than for Qwest retail.

E. Ancillary Services Provided with Resold Services

CLECs may resell Qwest's operator services and directory assistance service to the end users to whom they resell Qwest's local exchange line services.[27] In the alternative, if a reseller CLEC wishes to do so, it can provide its own or a third party's directory assistance service and operator services to its end users. To do this, the CLEC would purchase use of customized routing and its end users' calls would be routed to the directory assistance and/or operator services platform of it choice.[28]

Qwest provides directory listings with resold services. The same listings options that are available to Qwest's retail end users are available to reseller CLECs.[29]

Qwest provides the same access to 911/E911 service to reseller CLECs' end users as it provides to its retail end users.[30]

F. Billing for Resold Services

Qwest provides CLECs with a monthly summary bill that includes billing for all the services the CLEC has resold, as well as a breakdown of resold services for the CLECs' individual end users.

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27 See my Affidavit filed in this matter concerning checklist item number 7, as it relates to Operator Services and Directory Assistance Service, for additional information.

28 See my Affidavit filed in this matter concerning checklist item number 6, Unbundled Network Elements – Switching (which includes customized routing), for additional information.

29 See my Affidavit filed in this matter concerning checklist item number 8, White Pages Directory Listings, for additional information.

III. RESOLUTION OF ISSUES IN MULTI-STATE AND OTHER STATE WORKSHOPS

A collaborative 271 workshop was conducted for this checklist item as part of multi-state 271 proceedings, and it included participation by CLECs, by other interested parties, by the commission staffs from the states of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. All interested parties made written and oral comments concerning Qwest's compliance with the Act's and the FCC's requirements for resale, and seeking changes to numerous SGAT provisions. Qwest collaborated with and made concessions to CLECs on many issues and made numerous SGAT changes. Very few resale issues remained open and at 'impasse' at the end of the workshop process. The facilitator for the 271 multi-state resale proceedings issued a report in which he recommended specific resolution concerning open resale issues. Qwest agreed to accept the facilitator's proposals and modified its seven state SGATs as recommended.

Additionally, Qwest, CLECs, commission staffs, and other parties participated in 271 collaborative workshops concerning resale in Washington, Oregon, Colorado, and Arizona, as well as in a hearing in Nebraska. Qwest received many requests from CLECs for changes to SGAT language concerning resale during the course of most of those proceedings. Qwest collaborated with and made concessions to CLECs resulting in changed SGAT language.

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[39] *See* the Affidavit of Ms. Margaret Bumgarner filed in this matter concerning checklist item number 7, as it related to Access to 911E/911 service, for additional information.

Thus far, all state commissions that have considered Qwest's compliance with Checklist Item 14 have found that Qwest satisfies the requirements subject to satisfactory performance in the ROC OSS test.

Finally, all SGAT changes agreed to in other states for resale have been included in the South Dakota SGAT filed on the same date as this affidavit was filed.

IV. CONCLUSION

Qwest satisfies the resale requirements of section 271(c)(2)(B)(xiv). Qwest provides telecommunications services for resale under rates, terms, and conditions that are reasonable and nondiscriminatory through its SGAT and individual interconnection agreements with CLECs in South Dakota. Qwest's resale processes and performance have enabled CLECs to compete in South Dakota.

For the foregoing reasons, Qwest satisfies the requirements of Section 271(c)(2)(B)(xiv) of the Act -for resale. The South Dakota Public Utilities Commission should conclude that Qwest has satisfied this checklist item.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 8th day of September, 2001.

Lori A. Simpson

Lori A. Simpson

STATE OF MINNESOTA

ELAINE R GARLEY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES [illegible]

COUNTY OF HENNEPIN

Subscribed and sworn to before me this 28th day of September, 2001.

Elaine R Garley

Notary Public

BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

EXHIBITS of the AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 14 – RESALE

OCTOBER 24, 2001

INDEX TO EXHIBITS

QUALIFICATIONS OF LORI A. SIMPSON

I have been employed by Qwest Corporation, formerly Northwestern Bell Telephone Company and U S WEST Communications, for 28 years. During that time I have worked in the network organization, the carrier organization, Operator and Information Services, the large and small business retail organizations, as well as the residence retail organization. Prior to my work on the 271 team, I most recently held positions related to the Company's legal and regulatory compliance.

I have a Bachelor of Arts degree from the University of Minnesota in Minneapolis, Minnesota, and a Juris Doctor degree from William Mitchell Law School in St. Paul, Minnesota.

I base this affidavit on professional experience, personal knowledge, and information available to me in the normal course of my duties, including records regularly kept in the course of business by Qwest. As part of Qwest's work to ensure its compliance with Section 271, I have participated extensively for more than one year in all of the collaborative state workshops addressing this checklist item in Arizona, Colorado, Oregon, Washington, and the seven-state joint Section 271 workshops involving Idaho, Iowa, Utah, Montana, North Dakota, Wyoming, and New Mexico. Each of these five workshop processes were collaborative, conducted on an open basis with full, active, and equal participation by competitors and state FCC staffs. I also participated in the Section 271 proceedings in Nebraska.

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

AFFIDAVIT

OF

DAVID L. TEITZEL

REGARDING PUBLIC INTEREST

OCTOBER 24, 2001

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AFFIDAVIT

OF

DAVID L. TEITZEL

Public Interest

David L. Teitzel declares as follows:

My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., as Director-Product and Market Issues. My business address is 1600 7th Avenue, Room 2904, Seattle, Washington, 98191.[1]

I. EXECUTIVE SUMMARY

This affidavit describes the status of local exchange competition in South Dakota since the enactment of the Federal Telecommunications Act of 1996 (1996 Act or "Act") and establishes that because competitors are providing services to both residential and business subscribers, either exclusively or predominantly over their own facilities, via one or more interconnection agreements, Qwest satisfies the requirements of "Track A" under 47 U.S.C. § 271(c)(1)(A). This affidavit focuses on Competitive Local Exchange Carriers ("CLECs"), how and where they operate in South Dakota, and the market segments in which they are competing. All information is as of August 31, 2001, unless otherwise noted.

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1 See Exhibit DLT-1 for professional experience and education.

Section 271(d)(3)(C) of the Act also requires Qwest to demonstrate that Qwest's entry into the interLATA long distance business in South Dakota is in the public interest. As discussed in this affidavit, there is clear evidence in states in which the FCC has granted the incumbent Local Exchange Carrier Section 271 relief that competitive intensity in the local market is stimulated immediately following relief, and consumers are thereby presented an expanded array of competitive choices. A similar response can be anticipated in Qwest's service territory, and the public interest will be served by Qwest's entry into the interLATA long distance market in South Dakota.

Qwest Satisfies Track A of the Act

Section 271 of the Act provides two options or "tracks" for meeting its requirements. Track A is available when facilities-based competitors have entered the local exchange market and are providing services to residential and business customers. Track A requires Qwest to demonstrate that it has signed binding interconnection agreements with one or more facilities-based competitors – a category that includes competitors leasing unbundled network elements from Qwest – that collectively are providing telephone exchange service to business and residential customers in South Dakota. The FCC has stated that it will evaluate and consider the existence of resale-based competition in determining whether Track A requirements are met.[2] CLECs have been very successful in penetrating the South Dakota market and

[2] Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, CC Docket No. 00-

are using their own facilities, Qwest's unbundled loops, and resale to provide local service in South Dakota. The presence of successful facilities-based competitors such as Black Hills FiberCom, Northern Valley Communications, and McLeodUSA is clear evidence that Qwest has opened its South Dakota markets to competition and that competition has arrived. This concentrated competitive activity has already resulted in significant losses of both residential and business customers for Qwest in South Dakota. Over 27,000 residence and over 38,000 business access lines are currently served by Qwest's competitors in South Dakota. About 50,000 of these access lines are provided by facilities-based providers[3], with the remainder provided via resale. On a percentage basis, CLECs have captured approximately 22% of the local exchange market in South Dakota, as shown on Exhibit DLT-6. When SBC filed its Texas Section 271 petition with the FCC, the Department of Justice estimated CLEC market

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217, FCC 01-29, 16 FCC Rcd 6237, n. 101 (rel. Jan. 22, 2001). ("SBC Kansas Oklahoma Order"). The FCC has clarified that "reading the statutory language to require that there must be facilities-based service to both classes of subscribers [business and residential] to meet Track A could produce anomalous results, and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language. In particular, if all other requirements of section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region interLATA market solely because the competitors' service to residential customers is wholly through resale.", Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, CC Docket No. 98-121, FCC 98-271, 13 FCC Rcd 20599 ¶48 (Oct. 13, 1998) ("BellSouth Louisiana II Order"). However, in South Dakota there is abundant evidence of facilities-based competition in both the business and residential markets.

[3] This category includes CLECs utilizing unbundled loops and CLEC-owned loops to provide local exchange services.

share to be approximately 8%, less than half of the share CLECs have captured in South Dakota.[4] This figure is more astounding when viewed from the perspective that SBC had approximately 9.6 million retail lines in Texas[5] compared with Qwest's 232,000 retail lines in South Dakota[6], so CLECs have a much larger incentive to develop a competitive presence in the much larger Texas market. Later in this affidavit I will describe in more detail why the above estimates of CLEC access lines are conservative (i.e., low).

All of the evidence presented in this affidavit – including existing interconnection agreements, substantial network deployments by CLECs, and competitive losses to both facilities-based providers and resellers – demonstrate that Qwest has satisfied the requirements of Track A.

Qwest's Entry is in the Public Interest

CLECs have entered the local market in South Dakota in many areas of the state. However, full service, one-stop shopping is not available to all customers because Qwest is not allowed to offer in-region, interLATA long distance services and CLECs have not yet elected to offer local exchange service ubiquitously in South

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4 Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, 15 FCC Rcd 18354, ¶5 and n. 7 (rel. June 30, 2000) ("SBC Texas Order").

5 SBC-Texas Order, n. 7.

6 *See* Confidential Exhibit DLT-2.

Dakota. Until Qwest obtains Section 271 authority, these customers will continue to be denied the benefits of one-stop shopping, a benefit which flows directly from the 1996 Telecommunications Act.

Qwest is prepared to offer the benefits of one-stop shopping to customers when the South Dakota Public Utility Commission ("Commission") recommends approval of Qwest's Section 271 application and, ultimately, the FCC approves Qwest's Section 271 application to provide interLATA service in this state. Such FCC approval is the final step in fulfilling the express purpose of the Act, the opening of all telecommunications markets to all competitors, to the benefit of all consumers. As Senator Pressler stated when the Act was signed into law, "This bill attempts to get everybody into everybody else's business and let in new entrants." Later in this affidavit, I will explain how competitive options for all customers will occur only after Qwest is allowed into the interLATA business.

In addressing the public interest standard, this affidavit briefly discusses the analysis conducted by the FCC to determine if a Bell Operating Company's ("BOC") entry into the interLATA long distance business is in the public interest. This affidavit presents evidence that the local market is open to competition which is more fully established in the affidavits and evidence presented regarding compliance with the competitive checklist. Further, this affidavit establishes that sufficient safeguards exist to protect competitors and prevent Qwest from engaging in discriminatory actions. These safeguards include the implementation of a Performance Assurance Plan to prevent "backsliding" once the local markets are open, the FCC's enforcement mechanisms contained in Section 271(d)(6) of the Act, as well as the creation of a separate subsidiary, as required by Section 272 of the Act, which will offer Qwest's interLATA long distance services once Qwest obtains Section 271 approval.

In light of the evidence presented, Qwest requests that the Commission issue a finding that:

- Qwest has satisfied the requirements of Track A, and
- It is in the public interest to grant Qwest authority to enter the interLATA long distance market in South Dakota.

II. PURPOSE OF AFFIDAVIT

The purpose of my affidavit is to support Qwest's Section 271 filing by:

- Showing that Qwest has met the requirements of "Track A" as outlined in 47 U.S.C. §271(c)(1)(A) of the Telecommunications Act of 1996;
- briefly describing the FCC's public interest analysis and the various safeguards in place to ensure that competition in the interLATA market will not be harmed by Qwest's entry into the interLATA long distance market; and
- describing the status of local exchange competition in the state of South Dakota; and
- explaining why the public interest will be served by Qwest's entry into the interLATA long distance market.

In my affidavit I will first describe the Track A requirements and the evidence which establishes that Qwest has met these requirements, thus making it eligible for entry into the interLATA long distance market in South Dakota. Second, I will briefly describe the FCC's public interest analysis as well as safeguards in place to ensure that the local markets will remain open after Qwest's entry into the interLATA long distance business. Finally, I will discuss why the public interest will be served by Qwest's entry into the interLATA long distance market, which will bring expanded competitive benefits to consumers for both local and long distance services.

III. TRACK A REQUIREMENTS AND EVIDENCE

To secure Section 271 approval from the FCC and the Commission, Qwest must first establish that one of two standards of Section 271, referred to as "Track A" or "Track B", has been satisfied. Track A requires Qwest to demonstrate that it has signed binding interconnection agreements with one or more facilities-based competitors – a category that includes competitors leasing unbundled network elements from Qwest[7] – that collectively are providing telephone exchange service to business and residential customers in South Dakota.[8] "Track B" – Section 271(c)(1)(B) – applies only where no CLEC has recently requested access and requires a different showing.

Qwest is making this Section 271 filing under Track A because competitors with whom Qwest has approved interconnection agreements are providing facilities-based local service to residential and business subscribers in various markets in South Dakota.

Section 271(c)(1)(A) reads in its entirety:

> PRESENCE OF A FACILITIES-BASED COMPETITOR.--A Bell operating company (BOC) meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section

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[7] SBC Kansas Oklahoma Order, ¶40-¶41.

[8] SBC Texas Order, ¶59.

> 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

The FCC has clarified that in the context of Track A compliance, it will evaluate and consider the existence of competitors' service to residential customers through resale.[9] In addition, the FCC said, "[I]f all other requirements of Section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale."[10] Even though South Dakota has multiple carriers providing facilities-based competition, the FCC has determined that this Commission should still consider competition from resellers in evaluating the extent of competitive presence and compliance with Track A.

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9 SBC Kansas Oklahoma Order, n. 101.

10 SBC Kansas Oklahoma Order, n. 101 (citing BellSouth Louisiana II Order, ¶48); *See also* Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC-99-404, 15 FCC Rcd 3953, ¶427 (rel. Dec. 22, 1999) ("Bell Atlantic New York Order").

The FCC provided further clarification of the Track A requirements in its review of the Ameritech-Michigan Section 271 application when it divided the Track A requirement into four sub-parts.[11] In that application, the FCC found that Ameritech satisfied Track A. The FCC's four-part Track A analysis consists of the following:

* existence of one or more binding interconnection agreements that have been approved under Section 252;

* provision of access and interconnection with unaffiliated competing providers of telephone exchange service;[12]

* provision by competitors of telephone exchange service to residential and business subscribers somewhere in the state; and

* offer by competing providers of telephone exchange service either exclusively or predominately over their own telephone exchange service facilities in combination with resale.[13]

I will review each of these four requirements in more detail in the following sections.

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11 The FCC released its Memorandum Opinion and Order in CC Docket No. 97-137 (Ameritech Michigan Order) on August 19, 1997. Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, Inter-LATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298, 12 FCC 20,543, [illegible] (Aug. 19, 1997). Although the FCC denied Ameritech's Section 271 Application, it found that Ameritech had fully satisfied the Track A requirement.

12 It is also significant that the FCC recognized that Congress prohibited it from requiring any specific level of geographic penetration by a competing provider and imposing a geographic scope requirement. In other words, the Act prohibits imposition of a market share loss test. SBC Texas Order, ¶419; Bell Atlantic New York Order, ¶427.

13 Ameritech Michigan Order, ¶70.

A. Binding Interconnection Agreements

The first requirement is to show the existence of one or more binding interconnection agreements that have been approved under Section 252. Qwest has entered into a number of binding interconnection agreements in South Dakota. As of August 31, 2001, the Commission has approved, in accordance with Section 252 of the Act, 20 wireline interconnection agreements entered into between Qwest and other carriers.[14] The FCC concluded in the Ameritech-Michigan order that agreements approved by a state commission are "binding" and define the obligations of each party.[15] Thus, these 20 Commission-approved interconnection agreements are binding on Qwest.

In the Ameritech-Michigan decision, several parties argued that Ameritech's agreements did not satisfy Track A because not every checklist element was contained within each approved agreement. The FCC dismissed this argument and determined that Track A contains no such requirement.[16] Moreover, in addition to the Commission-approved interconnection agreements, Qwest has submitted a comprehensive

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14 A "wireline" interconnection agreement generally refers to an agreement that covers facilities-based interconnection, purchase of UNEs and ancillary services, and resale of Qwest services. A "resale" interconnection agreement generally only provides for resale of Qwest services. In addition to the 20 approved wireline interconnection agreements, Qwest also has 5 approved resale interconnection agreements, 6 approved wireless agreements, and 3 approved paging interconnection agreements in South Dakota for a total of 34 (as of August 31, 2001).

15 Ameritech Michigan Order, ¶72.

16 Ameritech Michigan Order, ¶72.

Statement of Generally Available Terms ("SGAT") in South Dakota that contains terms, conditions, and prices applicable to the provision of all of the checklist items. Qwest relies on all of these documents as the basis for its Section 271 application.

Qwest has met the first subpart requirement of Track A because it has entered into 20 binding and approved wireline interconnection agreements pursuant to Section 252 of the Act in South Dakota. Additionally, Qwest also relies on its SGAT filed in South Dakota to establish compliance with the Track A requirements. Provisions in Qwest's SGAT are available to CLECs either as a complete agreement or pursuant to "pick and choose" provisions in Section 272(l) of the Act.

B. Unaffiliated Competing Providers

Qwest fulfills the next part of the FCC's interpretation of Track A requirements because it provides access and interconnection with unaffiliated competing providers of telephone exchange service. Of its Commission-approved interconnection agreements, all 20 are with CLECs unaffiliated with Qwest.[17]

The FCC determined that a CLEC qualifies as a "competing provider" so long as it provides service "somewhere in the state."[18] Furthermore, the FCC found that Track A does not impose minimum geographic scope requirements before CLECs are deemed competing providers. No set market share losses are required.[19] The FCC

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17 Some CLECs can have multiple interconnection agreements.

18 Ameritech Michigan Order, ¶76.

19 Ameritech Michigan Order, ¶77.

rejected arguments that the majority of customers in the state must have a choice of local service providers.[20]

Based upon the FCC's definition of a "competing provider," there are such competitors providing local exchange service in South Dakota. Exhibit DLT-3 provides a list of all certified CLECs in South Dakota. Confidential Exhibit DLT-4 lists the CLECs in South Dakota that are actively purchasing wholesale services from Qwest "somewhere in the state". In addition, Confidential Exhibit DLT-4 indicates the type of service the CLEC is purchasing from Qwest. For purposes of this affidavit, any CLEC purchasing a UNE or using its own facilities to provide local exchange service is considered a facilities-based provider. This is consistent with the FCC's decision.[21]

Unaffiliated competing providers fall into two basic categories: facilities-based competitors and resellers. A facilities-based competitor is a carrier that predominantly uses its own facilities or UNEs purchased from Qwest to provide local exchange service. Under Commission-approved interconnection agreements, Qwest offers and provides local interconnection trunks, unbundled loops, unbundled transport and switching, unbundled directory assistance services and operator services, 911 service, collocation, poles, ducts, conduits, right-of-way, number portability, and/or white page listings to facilities-based CLECs. As the term implies, resellers provide service to their end-user customers using telecommunications services they have purchased via their

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[20] Ameritech Michigan Order, ¶77 and ¶78.

[21] Ameritech Michigan Order, ¶94 - ¶101.

interconnection agreements with Qwest. See Exhibit DLT-5 for a profile of selected CLECs in South Dakota, which is attached as an exhibit for brevity but should be viewed as an integral part of this affidavit.

In summary, there is sufficient competition in South Dakota to support Qwest's long distance entry. While some competitors may assert that even more competition is required before Qwest is granted interLATA relief, the FCC found that Track A does not allow it to impose a geographic penetration test or a market share loss test.[22] These arguments must be summarily rejected for the same reasons the FCC rejected them in its Ameritech-Michigan decision and other FCC decisions.

Competing providers need only be in the market and operational. In other words, they need only be accepting requests for service and providing service for a fee.[23] CLECs are now actively offering local exchange services for a fee in South Dakota. For example, Black Hills FiberCom, offering service in Rapid City and numerous northern Black Hills communities, advertises its residential basic exchange line at $16.95 per month, a package of 7 residential Custom Calling features for $9.95 per month, and

22 Ameritech Michigan Order, ¶76-¶77; Bell Atlantic New York Order, ¶427; SBC Texas Order, ¶419; SBC Kansas Oklahoma Order, n.78; Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks, Inc. For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130, 16 FCC Rcd 8988, ¶235 (rel. April 16, 2001) ("Verizon Massachusetts Order").

23 Ameritech Michigan Order, ¶78.

voice mail for $3.95 per month.[24] Northern Valley Communications, another competitor providing service in Aberdeen, offers a residential dial tone line at $14.50 per month and a business dial tone line at $27.95 per line per month for business accounts with 1-3 lines.[25] Clearly the activities of the competitive providers listed in Confidential Exhibit DLT-4 meet this requirement: they are in the market, operational, and are providing service for a fee.

C. CLEC Market Entry in South Dakota

This section, as well as Sections D, E and F following, clearly demonstrate that the third and fourth elements of the FCC's Track A guidelines outlined in its Ameritech-Michigan Order are met: CLECs are now providing local exchange service to residential and business subscribers in South Dakota, and they are doing so "exclusively or predominantly over their own telephone exchange service facilities in combination with resale." Local exchange competition is thriving in South Dakota. In fact, the competition in South Dakota is so vibrant that Qwest estimates competitors have captured approximately 22%[26] of the access lines in Qwest's service territory. This amount is more than 175% higher than SBC's CLEC market share estimate of 8% for Texas when it filed its 271 application with the FCC on April 5, 2000.[27] This figure is

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24 www.blackhillsfiber.com/phonerate.html, Visited August 22, 2001.

25 www.nvc.net/dialtone.html, Visited August 22, 2001.

26 Exhibit DLT-6.

27 SBC Texas Order, ¶5 and n. 7.

more astounding when viewed from the perspective that SBC had approximately 9.6 million retail lines in Texas[28] compared with Qwest's nearly 232,000 retail lines in South Dakota.[29] Thousands of business and residential customers have already obtained local telephone service from facilities-based CLECs in South Dakota, and several CLECs are serving both business and residential customers over their own facilities and continuing to make significant gains in attracting new customers.[30]

In this affidavit I refer to several different raw data sources, each of which serves as a conservative indicator of the volume of facilities-based service currently being provided by CLECs in South Dakota. However, regardless of the measure used, the conclusions are certain:

- CLECs are providing service to many thousands of residence and business subscribers;
- Many CLECs are using their own facilities (either exclusively or predominantly) to serve customers;
- CLECs are using a variety of deployment strategies, including facilities bypass, UNE and resale;
- CLECs are extending their services into rural, outlying or smaller communities; and
- CLECs are active (on a facilities or a resale basis) in the majority of Qwest wire centers in South Dakota.

Table 1

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28 SBC Texas Order, n. 7.

29 Confidential Exhibit DLT-2.

30 CLEC's "own facilities" includes the use of leased unbundled network elements (UNEs). *See* Ameritech-Michigan Order at ¶101 (1997).

**Competitive Statewide Coverage in South Dakota
As of August 31, 2001**

Total Qwest Wire Centers	Qwest Wire Centers w/CLEC Operations	Percent Wire Centers Served
42	28	66.7%

Specifically, as previously discussed in my affidavit and displayed in Exhibit DLT-3, there are 58 CLECs certified by the South Dakota Public Utilities Commission to operate in South Dakota as of August 29, 2001.[31] Additionally, as of August 31, 2001, Qwest has entered into 20 approved wireline and 5 approved resale Interconnection agreements with CLECs in South Dakota.

As discussed below, Qwest uses four separate data sources (see Table 2 below), each of which serves as a conservative competitive indicator of the volume of facilities-based subscriber service currently provided by CLECs in South Dakota.

[31] www.state.sd.us/puc/Telecomm.html, Visited August 27, 2001.

Table 2
Data Indicators of Facilities-Based CLEC Service in Qwest's South Dakota Service Areas

	Quantity
Raw Data Source 1: CLEC E911 Records[32]	26,904
Raw Data Source 2: Interconnection Trunks[33]	7,049
Raw Data Source 3: CLEC Ported Numbers[34]	22,678
Raw Data Source 4: CLEC White Pages Directory Listings Associated with Facilities-Based CLECs[35]	27,468

It is important to note that each of these service elements are used by CLECs **only** to provide local exchange service via CLEC-owned facilities or via stand-alone unbundled loops purchased from Qwest. The data compels the conclusion that Qwest meets the requirements of Track A because facilities-based CLECs are vigorously competing in South Dakota for both business and residential customers.

Notwithstanding that South Dakota is a less populous and less urban state than Texas,[36] the level of current competition in South Dakota is much greater than that

32 *See* Confidential Exhibit DLT-7 for detailed backup.

33 *See* Confidential Exhibit DLT-8 for detailed backup.

34 *See* Confidential Exhibit DLT-9 for detailed backup.

35 *See* Confidential Exhibit DLT-10 for detailed backup.

36 The Census Bureau reports that as of 1990 (the most recent estimate), 80.3% of Texas' population was urban, while only 50.0% of South Dakota was urban. http://www.census.gov/population/www/censusdata/ur-def.html *SELECTED*

found in Texas when the 271 application for Texas was filed with the FCC. Moreover, in the last year alone (August 2000 through August 2001), the growth in each of the above competitive indicators has been significant. Specifically, the number of interconnection trunks in service has grown almost 53%, the volume of telephone numbers ported by facilities-based CLECs has grown by an astounding 258%, and the volume of facilities-based white pages directory listings has grown by 128%. In addition, the number of E911 records in South Dakota has increased by almost 207% between August 2000 and September 2001.

Competition is spreading throughout Qwest's service area, with CLECs operating in the majority of Qwest's central offices in South Dakota. See Table 1, above. In fact, facilities-based competitive alternatives are now available in many larger as well as smaller communities throughout South Dakota as shown in Table 3 below.

Table 3
Facilities-Based CLEC Presence in Selected South Dakota Cities

City	Population[37]	Facilities-Based CLECs Active
Rapid City	59,607	Black Hills FiberCom MidContinent Communications
Aberdeen	24,658	Northern Valley Communications
Yankton	13,528	Dakota Telecommunications Group/McLeod
Sturgis	6,442	Black Hills FiberCom

HISTORICAL CENSUS DATA Urban and Rural Definitions and Data; the Census Bureau also reports that in 2000, Texas ranked 2nd in terms of population and South Dakota ranked 46th (*see* Exhibit DLT-18).

37 http://factfind.census.gov/bf/ (Data set: Census 2000 Summary File 1 (SF1) 100-Percent Data), Visited 9/25/01.

		Dakota Telecommunications Group/McLeod
Canton	3,110	Dakota Telecommunications Group/McLeod
Elk Point	1,714	Dakota Telecommunications Group/McLeod

Exhibit DLT-11 to this affidavit contains numerous advertisements by CLECs soliciting customers in South Dakota. These advertisements demonstrate that CLECs are actively competing with Qwest to obtain local exchange customers in South Dakota. Whether in rural or urban areas, competitors are ready, willing, and able to compete for residence and business subscribers.

D. Facilities-Based Competitive Local Exchange Carriers

Facilities-based competitive local exchange carriers are providing service in South Dakota by either building their own networks or leasing unbundled network elements ("UNE") from Qwest, or some combination thereof.

As detailed below, CLEC self-reported records in Qwest's E911 database, CLEC interconnection trunk usage, the quantity of ported phone numbers, and the quantity of CLEC-serviced phone listings in the white pages directory assistance database provide four useful yet conservative indicia of the number of access lines currently served by facilities-based CLECs in South Dakota. Additionally, CLEC collocation instances further serve to identify the number of lines potentially available to CLECs for future service.

1. CLEC Facilities-Based Lines: E911 Database (Data Source 1)

Facilities-based CLECs that utilize their own switches for providing service to their end users are responsible for directly inputting telephone numbers for those customers into the E911 database. Facilities-based carriers are identified in the E911 database by an ID Code that is unique to each CLEC. Among other things, this ID Code allows the emergency services organization to contact the serving CLEC for emergency services such as line interrupt and call trace. CLECs utilizing their own switches also obtain specific NXX codes assigned solely for their use. Using the CLEC's assigned NXX code (which is specific to the CLEC's switch) and Company ID Code, the E911 database identifies which CLECs are providing local service from their switches.

E911 customer records associated with CLECs are associated only with customers served by the CLEC via CLEC-owned loop facilities or stand-alone UNE loops purchased from Qwest, and are records reported directly by the CLEC to the E911 database administrator. These records are not estimates; they are actual records of access lines in service as self-reported by the CLECs. The CLEC E911 database records contain no listings associated with independent telephone companies, wireless carriers, resellers, or CLECs utilizing UNE-P service to serve end users. The E911 CLEC records data presented in this affidavit represents only customer data associated with facilities-based, wireline CLECs currently operating in South Dakota.

Based on E911 information, as of September 30, 2001, facilities-based CLECs provided service to customers using at least 26,904 distinct telephone numbers in South

Dakota, of which 15,589 are associated with CLEC facilities-based residential local exchange service, as shown on Confidential Exhibit DLT-7. However, because E911 listings only represent those customer lines from which outbound calls can be made, business customers such as call centers, reservationists, telemarketing centers, and Internet providers will have few of their lines represented in the E911 database. Accordingly, the number of lines reflected in the E911 database is a conservative indicator and understates the actual number of local subscriber lines in service.[38] Since these E911 records only reflect numbers related to CLEC full facilities-bypass lines or service provided via stand-alone UNE loops, the number of CLEC full facilities-bypass lines can be determined by subtracting the number of stand-alone unbundled loops. In South Dakota, the number of stand-alone unbundled loops is 1,392.[39] When the stand-alone unbundled loops are subtracted from the total CLEC E911 listings (26,904), the total of distinct telephone numbers providing facilities-based service via facilities owned by CLECs is 25,512 (26,904 – 1,392).

The CLEC market share, using the E911 records as a basis, can be developed by adding UNE-Platform loops and resold lines in service to the E911 records total, then dividing this value by total local exchange lines (Qwest plus CLEC) in service, as

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[38] Additionally, as with the discussion of interconnection trunks above, E911 listings do not include CLEC service provided through UNE-P arrangements, since these lines continue to be served from a Qwest switch.

[39] *See* Confidential Exhibit DLT-17, Page 2.

follows: $[(26{,}904^{40} + 16{,}411^{41} + 16{,}801^{42}) / (231{,}707^{43} + 60{,}116^{44})] =$ <u>20.6%</u>. Since E911 records do not contain all CLEC access lines in service, this percentage is a conservative estimate of the actual CLEC market share in South Dakota.

2. CLEC Facilities-Based Lines: Interconnection Trunks (Data Source 2)

Interconnection trunks, or Local Interconnection Service ("LIS") trunks, are used by facilities-based CLECs to connect their switching facilities to Qwest's wire center or tandem switch for the purpose of passing traffic between CLEC and Qwest customers. LIS trunks are **only** used by CLECs to exchange traffic generated by the CLECs' local exchange customers connected to the CLEC switch via CLEC-owned loop facilities or stand-alone UNE loops purchased from Qwest. LIS trunk in-service quantities, therefore, provide another means of estimating the number of CLEC customer access lines. As of the end of August 2001, CLECs in South Dakota utilized 7,049 interconnection trunks. Confidential Exhibit DLT-8 provides a detailed listing of LIS trunks in service, by central office. Specific CLEC names are masked on this exhibit to protect carrier confidentiality.

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[40] This number is reflected in Confidential Exhibit DLT-7.

[41] This number is reflected in Confidential Exhibit DLT-17.

[42] This number is reflected in Confidential Exhibit DLT-15.

[43] This number is reflected in Confidential Exhibit DLT-2.

[44] Total CLEC lines derived from the numerator of this equation.

While it is not possible to precisely determine how many CLEC access lines are serviced by these interconnection trunks, since the line/trunk ratio will vary based upon the unique characteristics of each CLEC, the telecommunications industry often uses line-to-trunk ratios to determine the number of trunks required for delivering traffic to and from a telecommunications network. For example, US LEC Corp., a switch-based CLEC providing local and long distance services to businesses in several states, employs a ratio of 5 to 1 (lines-to-trunks) to estimate the number of lines in its own network.[45] In the United States Telecom Association's ("USTA") UNE Fact Report, filed with the FCC during the UNE Remand proceeding, USTA noted that, based on ILEC engineering experience, a single trunk can support up to approximately 10 facilities-based lines. However, because CLEC networks may not yet be engineered with a high level of efficiency, USTA found it conservative to assume that CLEC trunks are serving between 2.5 and 5 facilities-based lines per trunk.[46]

Qwest has calculated estimates of facilities-based CLEC lines in service using a factor of 2.75 lines per LIS trunk, which was the factor used by SBC in its successful Section 271 applications in Texas, Kansas, and Oklahoma, as well as a factor of 5.0, as employed by US LEC Corp. Multiplying the number of LIS trunks in service by the 2.75 factor, and deducting the actual number of stand-alone UNE loops in service, yields a

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45 US LEC Corp., Equivalent Access Lines, http://www.uslec.com/equiv.htm. Visited May 10, 2001.

46 *See USTA UNE Fact Report* at III-14, attached to Comments of the United States Telecom Association, Implementation of the Local Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (filed May 26, 1999).

very conservative estimate of the number of facilities-based CLEC lines served via **CLEC-owned** facilities in South Dakota, as follows: 7,049 X 2.75 – 1,392 = 17,993. If a factor of 5.0 is selected, as was found reasonable by USTA, the estimated number of lines served via CLEC-owned facilities would be: 7,049 X 5.0 – 1,392 = 33,853.[47]

Moreover, because UNE-Platform ("UNE-P") traffic and resale traffic are not transported between a CLEC and a Qwest switch and is therefore not served by a local interconnection trunk, any estimation based on interconnection trunk usage is necessarily conservative because it does not account for access lines which a CLEC provisions using UNE-P arrangements. Therefore UNE-P and resale lines must be added to the estimate to capture a conservative count of the CLEC lines in service.

An approximate CLEC market share percentage can be calculated by using either of the line/trunk ratios discussed in this section, then adding total UNE-Platform loops and resold lines to this value, and dividing the result by total local exchange lines (Qwest plus CLEC) in service. A CLEC share estimate, using the 2.75 line/trunk factor, is calculated as follows: [((7,049[48] x 2.75) + 16,411[49] + 16,801[50])) / (231,707[51] +

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47 2.75 is the same factor used by SBC when it used this same LIS trunk estimation in its successful 271 applications in Texas, Kansas, and Oklahoma. *See* Exhibit DLT-12 for these calculations. *See also* Affidavit of John S. Habeeb, SBC Texas Brief. *See also* SBC Kansas Oklahoma, ¶42.

48 This number is reflected in Confidential Exhibit DLT-8.

49 This number is reflected in Confidential Exhibit DLT-17.

50 This number is reflected in Confidential Exhibit DLT-15.

51 This number is reflected in Confidential Exhibit DLT-2.

52,597[52])] = <u>18.5%</u>. Using the 5.0 line/trunk factor, the CLEC share estimate is: [((7,049 X 5.0) + 16,411 + 16,801)) / (231,707 + 68,457)] = <u>22.8%</u>.

By applying either of the factors discussed above against the 7,049 interconnection trunks currently utilized by CLECs in South Dakota, the conclusion is unmistakable: there is clearly a significant amount of facilities-based competition now present in South Dakota.

3. CLEC Facilities-Based Lines: Ported Numbers (Data Source 3)

The two data indicators described above (interconnection trunks and E911 records) were used by SBC in its successful 271 applications for Texas, Kansas, and Oklahoma.[53]

In addition, Qwest presents an additional, conservative estimation method based on ported numbers. The Facilitator in the Seven-State Collaborative determined that Qwest's ported number methodology was logical and conservative.[54]

To estimate the total quantity of business access lines served via CLEC-owned facilities in South Dakota, I used "ported numbers" as a basis in this method. Ported numbers are existing Qwest telephone numbers that customers often elect to retain

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[52] Total CLEC access lines derived from the calculation in the numerator of this equation.

[53] *See* Exhibit DLT-13 for the Joint Affidavit of J. Gary Smith & Mark Johnson, SBC Joint Brief (Appendix A, Tab 1). *See also* SBC Kansas Oklahoma Order, n. 96.

[54] The Facilitator held that "Qwest's explanation of the relationship [between ported telephone numbers and the number of CLEC bypass access lines] was logical." The Facilitator also acknowledged that Qwest's ported number methodology was conservative, "producing results that [are] substantially less than what it could have claimed." See Facilitator's Report at 79.

when leaving Qwest for a competitor. It is important to note that ported numbers are only used by a CLEC to serve customers from the CLEC's central office switch via CLEC-owned loop facilities or via stand-alone UNE loops purchased from Qwest. In other words, ported numbers are only used by CLECs to provide facilities-based local exchange service to their customers, and the use of ported numbers is therefore another reasonable means of estimating the quantity of facilities-based business CLEC loops in service. Numbers are not ported to CLECs serving customers via UNE-P or resale. I have conservatively assumed that a ratio exists of two ported numbers for each CLEC loop (both CLEC-owned and Qwest-provided stand-alone unbundled loops) in service[55], and followed a simple process for deriving the approximate number of business CLEC-owned loops in service, as follows:

- The total number of ported numbers in service in South Dakota as of August 31, 2001, was divided by two, consistent with the assumption that two ported numbers exist per physical loop in service. This calculation is as follows: 22,678[56] / 2 = 11,339.

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55 A ratio of one ported number per physical loop in service will never exist due to reasons such as Custom Ringing applications (which have two telephone numbers associated with each access line), disconnect of the CLEC customer's access line while the number remains ported to the CLEC, etc. This means of estimating CLEC access lines served via CLEC-owned facilities is clearly conservative, since it assumes that each CLEC access line in service was formerly a Qwest access line with an associated telephone number ported from Qwest to the CLEC. In fact, customers often disconnect Qwest service and subscribe to service of a CLEC without porting the preexisting Qwest telephone number, or are new customers who were never Qwest customers of record before subscribing to a CLEC's service, in which instance no telephone number exists to port from Qwest to the CLEC. The ported number method does not account for these access lines at all.

56 This number is reflected in Confidential Exhibit DLT-9.

- The number of stand-alone unbundled loops in service in South Dakota[57] (a number that Qwest tracks and measures) was then deducted from the number derived in Step 1. The residual number represents ported numbers associated only with CLEC-owned loops. This calculation is as follows: 11,339 – 1,392[58] = 9,947.

This approach yields another conservative view of the total number of CLEC-owned loops currently in service, in addition to estimates developed using methods used by SBC and Verizon in Section 271 applications they have presented.[59] This estimating process does not take into account CLEC customers served by non-ported telephone numbers and likely underestimates the actual number of CLEC access lines in service.

Additionally, it should be noted that many numbers used by facilities-based CLECs in South Dakota are "new" phone numbers, which have not been ported from Qwest, and some customers do not opt to port their existing Qwest telephone number to a CLEC when converting to a CLEC's service. For this reason, the total of ported numbers in service likely understates the actual number of facilities-based CLEC business lines in service.

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57 The stand-alone and platform unbundled loops in service totals are displayed on Confidential Exhibit DLT-17.

58 This number is reflected in Confidential Exhibit DLT-17.

59 In the joint affidavit of J. Gary Smith and Mark Johnson filed in October 2000, with the FCC in support of Southwestern Bell's Section 271 application in Kansas and Oklahoma, CLEC access line estimates were developed on the assumption that a ratio of 2.75:1 exists for CLEC access lines per local interconnection trunk in service. The number of local interconnection trunks in service (also known as

To estimate the quantity of CLEC-owned residential loops, I assumed the total number of residential white page listings associated with facilities-based CLECs as an estimate for actual access line counts.[63] As of August 31, 2001, a total of 22,217 residential white pages listings associated with facilities-based CLECs were in service in South Dakota. These totals are shown in Confidential Exhibit DLT-10. This is also a conservative estimate, as households with more than one line often use additional lines for purposes such as data modems or additional lines for children living in the home, and these lines are typically not listed in the white pages. White page listings were not used to estimate business facility-based lines in service, and ported numbers were used in this calculation instead, due to the wide and irregular variation between listings and actual business lines in service. For example, a large business with 50 access lines may only list the primary line in its system in the directory. The combination of the actual total of facilities-based CLEC white pages residential listings and the calculated number of CLEC-owned business loops represents a conservative estimate of total CLEC-owned loops in service in South Dakota. These calculations are displayed in Exhibit DLT-6, which also reflects a calculated CLEC market share of <u>22.4%</u> using this method.

Local Interconnection or LIS trunks) is taken from Exhibit DLT-8. *See* Exhibit DLT-13 for the Smith/Johnson joint affidavit.

[63] To develop the total number of residential white page listings associated with facilities-based CLECs, the number of residential white pages listings associated with resold telephone service was subtracted from the total number of residential white pages listings in service.

4. CLEC Facilities-Based Lines: White Pages Listings (Data Source 4)

As with E911 records discussed above, telephone numbers belonging to facilities-based CLEC customers can be readily identified in the Qwest white pages listings database, keeping in mind that only telephone numbers customers elect to list in the Qwest Dex directory appear in the database. Any white pages listing order placed by a CLEC that uses its own switch is entered directly into Qwest's Listing Services System.[20] As shown on Confidential Exhibit DLT-10, there were 27,468 white page listings associated with local exchange lines provided by nine separate facilities-based CLECs in South Dakota as of August 2001. Of these, 5,251 were business listings and 22,217 were residential. Confidential Exhibit DLT-14 shows a subset of residential and business white page listings associated with certain CLEC-specific prefixes in the state of South Dakota and provides actual counts of listings for facilities-based CLEC access lines served by Black Hills FiberCom, McLeodUSA, and Northern Valley Communications in selected South Dakota communities. Collectively, a total of 13,123 residential and 615 business white pages listings are now associated with facilities-based local service provided by these three CLECs alone via prefixes dedicated exclusively to them.

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[20] By contrast, any listings request from a reseller CLEC or from a CLEC using UNE-P (as well an order from Qwest itself) is released as a service order into Qwest's service order processor ("SOP"). Orders received from facilities-based CLECs are not processed by the SOP.

As with the other data sources used by Qwest to estimate the volume of facilities-based CLEC service in South Dakota, the number of white pages listings is an extremely conservative measure. This is especially true for business listings, where it is often the case that a business with several access lines and a multitude of assigned telephone numbers will only list certain key phone numbers in the white pages database. Additionally, it is common for residential customers to elect non-listed numbers for privacy reasons or to minimize inbound calls to lines serving computer modems.

Another conservative means of estimating CLEC market share is by adding white pages listings associated with facilities-based CLECs to the current actual number of resold lines in service, then dividing this value by the total local exchange lines (Qwest plus CLEC) in service, as follows: [(27,468[62] + 16,801[63]) / (231,707[64] + 44,269[65])] = 16.0%.

Regardless of whether estimates of facilities-based competition are based on interconnection trunk usage, E911 records, ported numbers, or white pages listings, the conclusion is inescapable – significant facilities-based CLEC competition exists for both residential and business service in South Dakota. Competing providers have established themselves as a significant and growing presence in the South Dakota local

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62 This number is reflected in Confidential Exhibit DLT-10.

63 This number is reflected in Confidential Exhibit DLT-15.

64 This number is reflected in Confidential Exhibit DLT-2.

65 Total CLEC lines derived from the numerator of this equation.

phone service market and South Dakota consumers are currently enjoying a real choice of local service providers.

E. Collocation

Qwest also provides collocation to several facilities-based CLECs. These carriers use collocation as one means of obtaining interconnection and access to stand-alone UNEs. The existence of collocated CLECs – and the locations selected by those carriers for their collocation – provides a strong indicator of the existence of, and the potential for, facilities-based competition.

Not every collocation facility is used for voice telephone service – some are used for providing data services, private line services, and/or services for other companies. Nevertheless, each collocation represents an advance in the development of a facilities-based CLEC's competitive network. As of August 2001, there were 14 completed physical collocations and 1 completed virtual collocation in the state of South Dakota.

Additionally, as set out in Table 4 below, CLECs have chosen to collocate in South Dakota wire centers that serve a large portion of the business and residential lines provided by Qwest. Thus, through collocation, facilities-based CLECs have positioned themselves to directly compete for a significant number of the customers – both business and residential – currently served by Qwest.

CONTINUATION

[2]

Scan ~ ~ # Pgs [ ]

Table 4
Total Lines versus Lines in Collocation Wire Centers
in Qwest South Dakota Service Area as of August 31, 2001

	All Wire Centers	Collocation Wire Centers	Percent of Total
Number of Wire Centers	42	5	12%
Access Lines[58]			
Business	74,683	39,366	52.7%
Residence	157,024	77,672	49.5%
Total	231,707	117,038	50.5%

F. Resale Providers

In addition to the facilities-based CLECs, numerous resale providers also offer service in Qwest's service territory to residential and business customers as described in Confidential Exhibit DLT-15. This exhibit displays current counts of specific categories of resold service, by wire center, in South Dakota. CLEC identity is masked in the exhibit to protect carrier confidentiality. Specifically, as of August 2001, South Dakota resellers were providing a total of 16,801 access lines, of which 11,153 were business and 5,648 were residential. These numbers are the sum of the "wholesale resale" quantities from Confidential Exhibit DLT-15, which represent lines resold under terms of wholesale interconnection agreements, and "retail resale" quantities shown on Confidential Exhibit DLT-2, which are lines resold directly from the Qwest retail tariffs.

58 Excludes Official Company Service ("OCS") and Public Coin lines.

Based on the evidence presented, Qwest complies with the requirements of Track A in South Dakota.

IV. PUBLIC INTEREST

The FCC orders granting 271 relief outline the following three-step analysis for the public interest requirement:

- determination that the local markets are open to competition,[67]
- assurance of future compliance by the BOC,[68] and
- identification of any unusual circumstances in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to the public interest.[69]

A. Determination that the Local Markets are Open to Competition

1. Compliance with the 14-Point Checklist

Based on previous FCC rulings in other 271 applications, compliance with the competitive checklist, also known as the "14-point checklist" "is, itself, a strong indicator that long distance is consistent with the public interest."[70] Complying with the competitive checklist requirements, which embody the critical elements of market entry under the Act, means that "barriers to competitive entry in the local market have been

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67 Bell Atlantic New York Order, ¶427; SBC Texas Order, ¶416. See also SBC Kansas Oklahoma Order, ¶268.

68 Bell Atlantic New York Order, ¶422-¶423; SBC Texas Order, ¶416-¶417.

69 Bell Atlantic New York Order, ¶423; Verizon Massachusetts Order, ¶233.

70 Bell Atlantic New York Order, ¶422; SBC Texas Order, ¶416.

removed and [that] the local exchange market today is open to competition."[71] As the FCC points out, this approach reflects the Commission's many years of experience that has shown that consumer benefits flow from competitive telecommunications markets.[72] Each of the checklist items is being discussed in separate affidavits and based on the record created from these affidavits, Qwest will demonstrate that it is in compliance in South Dakota with the competitive checklist as outlined in the Act. Based on the FCC's analysis, compliance with the competitive checklist evidences that the local markets are open to competition and that Qwest's entry into the interLATA long distance market is in the public interest. Therefore, the Commission should find Qwest in compliance with the first element of the FCC's analysis.

2. State-Specific Data Demonstrating the Local Market is Open to Competition

In addition to the data sources previously discussed in the Track A section of my affidavit, the following supplemental facts demonstrate that Qwest has opened its local exchange markets to competitors in South Dakota as intended by the Act:

- Qwest has 31 interconnection agreements pending Commission approval in South Dakota (as of August 31, 2001).

- Qwest has 16 competitors actively interconnecting with it in South Dakota (as of August 31, 2001).

- Qwest has 8 competitors purchasing resold services in South Dakota (as of August 31, 2001).

71 Bell Atlantic New York Order, ¶426; SBC Texas Order, ¶419.

72 Bell Atlantic New York Order, ¶422; SBC Texas Order, ¶416.

- Qwest filed a Statement of Generally Available Terms ("SGAT") on November 22, 2000, in South Dakota that establishes that Qwest has a specific, concrete, and legal obligation to make the checklist items available upon request. This SGAT was simultaneously updated with this filing.

- In the month of August 2001, Qwest exchanged 62,685,701 minutes of usage ("MOU") between itself and CLECs over their local interconnection trunks in South Dakota.

- Qwest directories contain a total of 46,299 white page directory listings provided on behalf of both facilities-based and resale competitors in South Dakota (as of August 31, 2001).

- 100% of South Dakota's access lines have local number portability ("LNP") available and 22,678 telephone numbers in South Dakota are "ported" to competitors enabling customers to leave Qwest and retain their telephone number (as of August 31, 2001).

See Confidential Exhibit DLT-4 and Exhibit DLT-16 for the South Dakota-specific data discussed above. Also see the previous discussion in the Track A section of this affidavit.

B. Assurance of Future Compliance

The FCC has repeatedly explained that one factor it may consider, as part of its public interest analysis, is whether a BOC would continue to satisfy the requirements of Section 271 after entering the long distance market.[73] The FCC has consistently looked to an acceptable Performance Assurance Plan ("PAP")[74] and the FCC's enforcement authority under Section 271(d)(6)[75] as assurances of future compliance.

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73 Bell Atlantic New York Order, ¶429; SBC Texas Order, ¶420.

74 Bell Atlantic New York Order, ¶429-¶430; SBC Texas Order, ¶420-¶421.

75 Bell Atlantic New York Order, ¶429-¶430; SBC Texas Order, ¶421.

1. Acceptable Performance Assurance Plan

A performance assurance plan ("PAP") is a performance monitoring and enforcement mechanism that provides a BOC, such as Qwest, with a meaningful incentive to maintain a high level of performance after its 271 application is granted. It is designed as an anti-backsliding mechanism.

The theory behind backsliding is that once it enters the in-region, interLATA long distance market, a BOC such as Qwest will have no incentive to provide parity of service to CLECs. The purpose of Qwest's Performance Assurance Plan ("QPAP") is to provide incentive for the BOC to ensure service quality is maintained and backsliding does not occur.

Concurrent with the filing of this affidavit, Qwest is filing its QPAP and the affidavit of Mr. Mark Reynolds that discusses it. The Reynolds affidavit will address the QPAP in detail and I will not try to recreate that testimony in my affidavit.

2. FCC's Continuing Enforcement Authority Under Section 271 (d)(6)

The FCC has repeatedly held that "it is not necessary that a state monitoring and enforcement mechanism alone provide full protection against potential anti-competitive behavior by the incumbent."[76]

While the FCC has considered other factors for assurance of future compliance, it is has determined that the most significant factor, other than the PAP, is the FCC's

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76 Bell Atlantic New York Order, ¶430 and ¶435; SBC Texas Order, ¶421.

enforcement authority under Section 271(d)(6).[77] The FCC notes that Section 271(d)(6) already provides incentives for a BOC to ensure continuing compliance with its Section 271 obligations.[78] If at any time after the FCC approves a 271 application, it determines that a BOC has ceased to meet any of the conditions required for such approval, Section 271(d)(6) provides the FCC enforcement remedies including imposition of penalties, suspension or revocation of 271 approval, and an expedited complaint process. These factors provide the Commission with additional assurance of Qwest's future compliance.

C. Identification of Any Unusual Circumstances

The FCC has consistently held that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[79] In fact, in the context of its public interest analysis, the FCC has specifically identified some of the factors previously raised by CLECs that do not warrant denial of the public interest standard, as follows: 1) the low percentage of total access lines served by CLECs; 2) the concentration of competition in densely populated urban areas; 3) minimal competition

77 *Id.*

78 *Id.*

79 Bell Atlantic New York Order, ¶428; SBC Texas Order, ¶419.

for residential service; 4) modest facilities-based investment; and 5) prices for local exchange service at maximum permissible levels under the price caps.[80]

Rather than give consideration to such arguments from incumbent long distance providers or other intervenors, the FCC has mandated that Section 271 approval is conditioned "solely on whether the applicant has opened the door for local entry through full checklist compliance, not on whether competing LECs actually take advantage of the opportunity to enter the market."[81] Additionally, the FCC specifically declined to adopt a market share or similar test for a BOC's entry into the interLATA long distance market.[82] The current level of competition in South Dakota, as I have reviewed in earlier sections of this affidavit, is ample evidence that the South Dakota market is open to competition, and that many CLECs have successfully entered this market.

D. Other Public Interest Considerations

It is clear that Qwest has opened its local exchange markets to competitors as required by the Act because there are now many competitors who have chosen to enter South Dakota local exchange markets and compete with Qwest for new and existing customers. Many customers are enjoying the opportunity to choose from among competing providers of local exchange and long distance services. These customers can choose to get all of their telecommunications services – local, long distance, and

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80 Bell Atlantic New York Order, ¶426; SBC Texas Order, ¶419.

81 Bell Atlantic New York Order, ¶427.

82 Bell Atlantic New York Order, ¶427; SBC Texas Order, ¶419; Verizon Massachusetts Order, ¶235.

data services – from a single provider other than Qwest. Alternatively, they can choose to spread their purchases among several providers.

This competition has implications for both Qwest and its customers. Customers who make calls that cross Local Access and Transport Area ("LATA") and/or state boundaries are prohibited from selecting Qwest to carry these calls. Qwest is the only local exchange carrier not allowed to compete for such intrastate, interLATA business. Qwest should not be barred from providing an additional choice to these customers. In fact, customers should be afforded the benefits of expanded choices, as intended by Congress when it drafted the Act.

Upon receiving Section 271 approval, Qwest is poised to enter the interLATA market to give all of its customers the opportunity to select a full service provider of local and long distance services and enjoy one-stop shopping. This additional level of service and choice is clearly in the public interest. This proceeding initiates the actions that will ultimately lead to Section 271 approval. The Commission should support and encourage Qwest's interLATA entry to assure that all customers share in the benefits of competition.

Some of our opponents might say that the interLATA long distance market is already fully competitive and thus there is little to be gained by allowing one more competitor like Qwest into the market. This is not the case. If there were nothing to gain by Qwest's entry, the other long distance competitors would be taking a neutral position regarding Qwest's 271 applications. In view of their opposition, the competitors clearly consider Qwest a threat to their market position and the profit margins they currently enjoy. These concerns should confirm to the Commission that there are still significant gains to be had for residence and business customers.

When Qwest enters the interLATA market in South Dakota, it will have no market share and will be contesting the existing range of interLATA providers for a portion of the market. Qwest intends to do this by delivering superior value to the customer through a combination of needs-based packaging and competitive pricing. Qwest believes this heightened level of competition in the interLATA market will elicit competitive responses from current providers that will benefit consumers in general.

1. COMPETITIVE BENEFITS

a. Market Experience Demonstrating Consumer Benefits

Now that the FCC has approved several 271 applications and has seen the growth in competition in both the local and long distance markets that these approvals have triggered, it is evident that opening the long distance market in South Dakota will provide significant advantages to South Dakota's consumers.

Actual market experience in New York, where Verizon (formerly Bell Atlantic) has been permitted to provide interLATA long distance service, demonstrates that competitive pressures result in increased consumer benefits. For example, as a result of Verizon's entry into the interLATA long distance business, local and long distance prices have declined significantly. In fact, recent surveys by the Telecommunications Research & Action Center ("TRAC") – an independent consumer group that, among other things, compiles information about long distance rates – concluded that New Yorkers will save hundreds of millions of dollars annually on long distance and local telephone service as a result of Verizon's entry into the interLATA market in New York. In September 2000, TRAC estimated the savings to consumers from additional competition in long distance and local markets in New York to be somewhere between $112 and $217 million. A May 2001 update of TRAC's estimates concludes that New York consumers are poised to reap a savings of up to $700 million annually,[83] savings TRAC attributes directly to additional competition stimulated by Verizon's entry into the interLATA long distance market in that state.

The May 2001 study concludes that residential customers will save up to $284 million annually after switching long distance companies, and up to $416 million annually after switching local phone companies. The study also concludes that the consumer electing to change long distance service saved up to $13.94 per month and up to $12.83 per month by changing local service. Overall, the study predicts that competition in the long distance and local markets will bring between $84 to $324 of savings annually for each New York telephone customer. The study also revealed that roughly 3 million New Yorkers now subscribe to carriers other than Verizon for local service, and that about 1.7 million have switched to Verizon for long distance service.

Based on New York TRAC observations, it is reasonable to predict that Qwest's reentry into the interLATA market will bring increased competitive intensity to the local and long distance markets in South Dakota, resulting in savings for South Dakota

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83 "TRAC Estimates New York Consumers Save Up To $700 Million A Year On Local And Long Distance Calling," TRAC, May 8, 2001. http://trac.policy.net/proactive/newsroom/release.vtml?id=18740

consumers. Additionally, Dr. Jerry Hausman of MIT has independently developed a study, based upon his assessment of competition in New York and Texas, that suggests South Dakota customers can save as much as $16.6 million a year when Qwest enters the interLATA market. Using Dr. Hausman's formula to calculate customer savings, Qwest calculates that the average South Dakota residential customer will save at least $88 per year in local and long distance charges, while the average small business customer will save more than $46 per year.

In addition to these studies, the FCC recently issued its latest data on local telephone competition.[84] Not surprisingly, the states with 271 approval show the greatest competitive activity. Findings of note include:

- CLECs have captured 20% of the market in the state of New York. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year – an increase of over 130% from the time the FCC granted Bell Atlantic-New York's 271 application in December 1999 to December 2000.[85]

- CLECs have captured 12% of the market in Texas, gaining over a half-a-million end user lines in the six months since the FCC granted SBC-Texas 271 application – an increase of over 60% in customer lines since June 2000.[86]

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84 "Local Telephone Competition: Status as of December 31, 2000", Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, May, 2001. (www.fcc.gov/ccb/stats).

85 http://www.fcc.gov/Daily_Releases/Daily_Digest/2001/dd010521.html. Visited May 23, 2001.

86 *Id.*

It is reasonable to assume that consumers in South Dakota will experience similar benefits and proportionate savings if Qwest is allowed to offer interLATA long distance services.

If Qwest is not afforded an opportunity to be a viable full service competitor, customers will have a narrower range of service options. Local exchange carriers that want to be healthy, viable companies need to offer what customers want: attractive packaging of local service, intraLATA long distance and interLATA long distance, calling features, data services, Internet connectivity, and other choices.[87] Qwest's competitors can do that today and have chosen to do so in certain markets.

b. Other Consumer Benefits

As I discussed earlier in my affidavit, Qwest plans to make one-stop shopping available to all residential and business customers. As the incumbent local service provider in South Dakota, Qwest already offers consumers a wide array of local services. Being able to offer interLATA long distance service will allow Qwest to combine those services with existing local services to create integrated bundles or packages of service that customers have been asking for. Qwest will be able to provide these packages not only to customers in geographic areas currently targeted by competitive providers, but to other customers throughout Qwest's South Dakota service territory as well.

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[87] S. Schmelling, "Bundling Takes on New Meaning," *Telephony*, July 13, 1998, p. 20.

Being able to offer consumers packages of services will allow Qwest to compete on a level playing field with competitive providers who already offer customers bundles of local and long distance services. Without the ability to offer bundled services, including an interLATA long distance component, Qwest will be significantly disadvantaged in its ability to compete in virtually all markets since customers are increasingly demanding robust packages, not just stand-alone offerings. Consumers in South Dakota will ultimately benefit by having not only a choice of service providers but also more variety in packages from which to chose. Further, as firms compete for customers, consumers should see additional benefits due to lower prices and more competitive choices.

Qwest's entry into the interLATA market will serve the public interest by encouraging competition not only in the interLATA market, but <u>also</u> in the intraLATA market and the local exchange markets as well, based upon the research findings of TRAC and Dr. Hausman as discussed earlier in this section. The market dynamics are similar for everyone. If Qwest is allowed to aggressively compete in all market segments, it is reasonable to expect other carriers to begin to focus more attention on the residential local exchange market, as has been seen in New York and Texas following Section 271 approvals.

Based on all these facts, it is in the public interest to allow Qwest to serve the interLATA markets in South Dakota. Qwest's competitors are taking advantage of Qwest's interLATA restriction at a time when the telecommunications markets in South Dakota are expanding. Unless the interLATA restriction is lifted, many customers in

South Dakota will not have the choices promised them when Congress passed the Act in 1996. The Commission should find that Qwest's 271 application is in the public interest.

V. CONCLUSION

This affidavit establishes that "one or more unaffiliated competing providers of telephone exchange service are providing retail local exchange services to residential and business subscribers" in South Dakota. Numerous CLECs provide these services either exclusively or predominantly over their own facilities. In fact, South Dakota features a very significant level of CLEC presence in relation to other states in which Section 271 petitions have been considered and approved. By any of the measures of competitive presence in South Dakota outlined in this affidavit, the Track A provisions of the Telecommunications Act have been satisfied. In addition, CLEC competition is present in nearly 70% of Qwest's wire centers in South Dakota. The benefits of competition are evident and pervasive, and Qwest should now be permitted to enter the long distance market in South Dakota.

Being first duly sworn upon oath, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 16 day of October, 2001.

David L. Teitzel

David L. Teitzel

LORI L. WHITE
COMMISSION EXPIRES
NOTARY PUBLIC
STATE OF WASHINGTON

STATE OF WASHINGTON

COUNTY OF KING

Subscribed and sworn to before me this 16th day of October, 2001.

Lori L. White

Notary Public

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

EXHIBITS TO THE AFFIDAVIT

OF

DAVID L. TEITZEL

REGARDING PUBLIC INTEREST

OCTOBER 24, 2001

INDEX TO EXHIBITS

EXHIBIT DLT-1

PROFESSIONAL EXPERIENCE AND EDUCATION

Mr. David L. Teitzel was awarded a Bachelor of Science degree from Washington State University in 1974. Since then, Mr. Teitzel has been continuously employed by Qwest and its predecessor company, U S WEST Communications, Inc. Mr. Teitzel has held a number of management positions in various departments, including Regulatory Affairs, Network, and Marketing. As a Marketing Product Manager, Mr. Teitzel was responsible for product management of basic exchange (local), CENTREX, and intraLATA long distance services. Mr. Teitzel has also served as a Market Manager for Qwest Dex (formerly U S WEST Dex). Mr. Teitzel was named to the Director-Product and Market Issues position in March 1998.

Mr. Teitzel based this affidavit on professional experience, personal knowledge, and information available to him in the normal course of his duties, including records kept by Qwest in the regular course of business. Specifically, Mr. Teitzel's experience has allowed him to develop an expertise such that he has filed testimony on the subject of Public Interest and Track A in Arizona, Colorado, Idaho, Iowa, Montana, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming. Further, he has participated in workshops on this subject in Arizona, Colorado, Washington, and Oregon as well as the multi-state workshops for Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming.

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-2

271 Access Line Report by Wire Center by Channel by Product

EXHIBIT DLT-3

LIST OF CLECs CERTIFIED BY THE SOUTH DAKOTA UTILITIES COMMISSION[1]

	CLEC Name	Date Certified	Service Area
1	@link Networks, Inc.	2/23/2000	USWC (Qwest) areas
2	Adelphia Business Solutions Operations, Inc.	7/20/2000	Nonrural areas
3	Advanced TelCom, Inc.	9/19/2000	Nonrural areas
4	Arrival Communications, Inc.	10/20/2000	Nonrural areas
5	AT&T Communications of the Midwest, Inc.	10/22/1996	Nonrural areas
6	Atlas Communications, Ltd.	1/13/1998	USWC (Qwest) areas
7	Avera Communications, L.L.C.	9/6/1999	USWC (Qwest) areas
8	Black Hills FiberCom, L.L.C.	8/5/1998	USWC (Qwest) areas
9	CCCSD, Inc. d/b/a Connect!	8/26/1999	USWC (Qwest) areas
10	CommChoice, LLC	6/10/1997	USWC (Qwest) areas
11	Comm South Companies, Inc.	1/24/2001	Nonrural areas
12	Concert Communications Sales LLC	9/14/1999	USWC (Qwest) areas
13	DIECA Communications, Inc., d/b/a Covad Communications Company	11/18/1999	USWC (Qwest) areas – no dial tone
14	DSLnet Communications, LLC	7/16/1999	USWC (Qwest) areas
15	Easton Telecom Services Inc.	6/29/1997	USWC (Qwest) areas
16	EMeritus Communications, Inc.	10/17/1997	USWC (Qwest) areas
17	Essex Communications, Inc. d/b/a eLEC Communications	1/10/2001	Nonrural areas
18	Excel Telecommunications, Inc.	12/17/1996	Nonrural areas
19	FairPoint Communications Solutions Corp.	4/24/2001	Nonrural areas
20	FiberComm, L.C.	3/30/1999	USWC (Qwest) areas
21	GLD, Group Long Distance, Inc.	12/1/1997	USWC (Qwest) areas
22	Global TeleLink Services, Inc. d/b/a South Dakota GTS	1/24/2001	Nonrural areas
23	HickoryTech Long Distance	8/27/1997	USWC (Qwest) areas
24	HJN Telecom, Inc.	6/25/1999	USWC (Qwest) areas

1/ www.state.sd.us/puc/Telecomm.html, Visited August 27, 2001.

EXHIBIT DLT-3

LIST OF CLECs CERTIFIED BY THE SOUTH DAKOTA UTILITIES COMMISSION (continued)

	CLEC Name	Date Certified	Service Area
25	Integra Telecom of South Dakota, Inc.	8/25/2000	Nonrural areas
26	Ionex Communications North, Inc.	10/22/1996	Nonrural areas; except for Gregory, Clearfield, Witten, Tabor, Lesterville, Centerville, Viborg, Hudson and Sisseton where Ionex is restricted to current customers.
27	IPVoice Communications, Inc.	9/19/2000	Nonrural areas
28	JATO Operating Two Corp.[2]	9/14/1999	USWC (Qwest) areas
29	KMC Telecom V, Inc.	2/15/2001	Nonrural areas
30	LCI International Telecom Corp d/b/a Qwest Communications Services	10/3/1997	USWC (Qwest) areas
31	Level 3 Communications, LLC	11/2/1999	USWC (Qwest) areas
32	Maxcess, Inc.	7/20/2000	Nonrural areas
33	MCImetro Access Transmission Services, Inc.	7/2/1997	USWC (Qwest) areas
34	MCI WorldCom Communications, Inc.	10/17/1997	USWC (Qwest) areas
35	McLeodUSA Telecom Development, Inc.	10/22/1996	Nonrural areas, Centerville and Viborg
36	McLeodUSA Telecommunications Services, Inc.	10/22/1996	Sioux Falls, North Sioux City, Rapid City, Aberdeen, and Pierre; USWC (Qwest areas)
37	Metromedia Fiber Network Services, Inc.	7/21/2000	Nonrural areas

[2]/ JATO has discontinued operations but remains certified as a CLEC by the South Dakota Utilities Commission.

EXHIBIT DLT-3

LIST OF CLECs CERTIFIED BY THE SOUTH DAKOTA UTILITIES COMMISSION (continued)

	CLEC Name	Date Certified	Service Area
38	Midcontinent Communications, Inc.	9/19/2000	U S WEST (Qwest) areas
39	Midstate Telecom, Inc.	4/24/2001	Nonrural areas
40	MVX.COM Communications, Inc.	8/25/2000	Nonrural areas
41	New Edge Network, Inc. d/b/a New Edge Networks	12/8/1999	Nonrural areas
42	NewPath Holdings, Inc.[3]	4/19/2000	Nonrural areas
43	Northern Valley Communications, Inc.	5/26/1998	USWC (Qwest) areas
44	PAM Oil, Inc. d/b/a PAM Communications	12/17/1998	Nonrural areas
45	Pathnet, Inc.	6/28/2000	Nonrural areas
46	Premier Communications Group	9/19/2000	Nonrural areas
47	Premiere Network Services, Inc.	12/7/2000	Nonrural areas
48	Quintelco, Inc.	4/6/1998	USWC (Qwest) areas
49	ServiSense.Com, Inc.	9/19/2000	Nonrural areas
50	Sprint Communications Company L.P.	4/28/1997	Nonrural areas
51	1-800-Reconex, Inc.	11/4/1998	USWC (Qwest) areas
52	Talk.com Holding Corp. d/b/a The Phone Company, Inc.	6/15/1997	Nonrural areas
53	Telera Communications, Inc.	10/20/2000	Nonrural areas
54	Telergy Network Services, Inc.	12/7/2000	Nonrural areas
55	Telicor Inc.	11/16/2000	Nonrural areas
56	360Networks (USA) Inc.	12/7/2000	Nonrural areas
57	Western CLEC Corporation d/b/a Business Services by Cellular One	6/5/1998	USWC (Qwest) areas
58	Z-Tel Communications, Inc.	3/9/2001	Nonrural areas

[3]/ Filed Chapter 11 Bankruptcy 4/01 – status of assets uncertain.

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-4

Active Contracts of Competitors in South Dakota as of August 31, 2001

EXHIBIT DLT-5

PROFILE OF SELECTED CLECs IN SOUTH DAKOTA

Black Hills FiberCom

Black Hills FiberCom ("FiberCom") is a locally owned and managed competitive telecommunications provider deploying state-of-the-art fiber optic and hybrid fiber coaxial network.[1] It provides services in South Dakota to business and residential customers in Qwest's service territory over its own facilities in South Dakota. It is a subsidiary of Black Hills Corporation, an energy and communications company headquartered in Rapid City, South Dakota. FiberCom offers a variety of services to both residential and business customers – local and long distance, cable television, digital music, and high-speed Internet access – which are available in discounted packages along with the convenience of just one monthly bill.[2] [3] In fact, FiberCom sets prices for their services to be competitive in the market and targeted at attracting new customers.[4] Because the company is not subject to price regulation of the South Dakota Public Utilities Commission or any other regulatory body, FiberCom is free to set

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1/ www.blackhillsfiber.com/faqs.html, Visited August 22, 2001.

2/ www.blackhillsfiber.com/faqs.html, Visited August 22, 2001.

3/ www.blackhillsfiber.com/phone.html, Visited August 22, 2001.

4/ www.blackhillsfiber.com/faqs.html, Visited August 22, 2001.

its own pricing and service packages.[5] FiberCom's residential rates are very comparable to those of Qwest's. As an example, FiberCom's residential basic exchange line is priced at $16.95 per month, a package of 7 residential Custom Calling features is available for $9.95 per month, and voice mail can be purchased for $3.95 per month.[6] In addition, FiberCom offers a package called "The Basics". For a monthly charge of $44.95, a customer gets basic local and long distance telephone service plus enhanced basic cable TV service (including Pay-Per-View and Digital Music) and 18 digital channels.[7] Beyond offering discounted packages and a single bill, the company emphasizes the fact that they are a local company that can offer quick and friendly service over the best digital network available.[8] [9]

FiberCom's service offerings are available within the communities of Rapid City and the Northern Black Hills communities of Black Hawk, Piedmont, Sturgis, Lead, Deadwood, Spearfish, Belle Fourche, and Whitewood; extended area service lets customers call anywhere in the Northern Hills without toll charges.[10] [11] [12] In fact,

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5/ www.blackhillsfiber.com/faqs.html, Visited August 22, 2001.

6/ www.blackhillsfiber.com/phonerate.html, Visited August 22, 2001.

7/ www.blackhillsfiber.com/onebill.html, Visited August 22, 2001. This package is available in limited service areas. A minimum 1-year commitment is required. Price does not include sales tax, access charges, and other applicable charges. Monthly fee does not include monthly long distance charges.

8/ www.blackhillsfiber.com/phonesvcs.html, Visited August 22, 2001.

9/ www.blackhillsfiber.com/phone.html, Visited August 22, 2001.

10/ www.blackhillsfiber.com/faqa.html, Visited August 22, 2001.

FiberCom has been allocated four prefixes to serve customers: 720 for the Sturgis area; 721 for the Rapid City area; 722 for Spearfish, Deadwood, and Lead; and 723 for Bell Fouche with 719 to be added to Rapid City at a later date.[13] The company began serving its first customers in early September 1999 and plans to continue a phased build-out program from neighborhood to neighborhood through the end of 2001.[14] Initially, service will be available only to customers within these communities (eligible customers must be within Qwest's service area); service outside of those communities will be offered only when it is cost-effective to do so.[15] In a January 20, 2000, press release, Dan Landguth, Chairman and Chief Executive Officer of Black Hills Corporation stated, "The broadband technology Black Hills FiberCom is deploying is rare in rural areas. We built 200 miles of fiber optic backbone and more than 100 miles of fiber coax distribution plant during 1999, and we will continue to expand with another 300 miles or more of distribution this year. Our technology provides enough bandwidth to provide a full suite of bundled services and allows for future services such as voice-over-IP."[16] Ron Schaible, Senior Vice President and General Manager of Communications for Black Hills Corporation was quoted as saying, "Our business customers appreciate the

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11/ www.blackshillsfiber.com/map.html, Visited August 22, 2001.

12/ BlackHills FiberCom advertisement, Rapid City Journal, May 21, 2000, page B12.

13/ Rapid City Journal, "Black Hills awash in phone prefixes", February 23, 2000.

14/ www.blackhillsfiber.com/faqa.html, Visited August 22, 2001.

15/ www.blackhillsfiber.com/faqa.html, Visited August 22, 2001.

16/ www.blackhillsfiber.com/012000.html, Visited August 22, 2001.

higher bandwidth capacity of the network, and our residential customers recognize the value of the bundled services…people have been excited to get the services we're offering."[17] He also stated that "Our governor called it [advanced broadband network] **the most advanced network on the planet.'"**[18] According to Mr. Schaible, more than 10,000 business and residential customers have partnered with FiberCom as of February 2001.[19]

FiberCom believes they can replicate the technical model created in the Black Hills market in other markets, especially in cities of under 100,000.[20] In a subsequent interview, Mr. Schaible stated "This is really a template for bringing communications to rural America. We've kinda gotten to be the poster child as a result of our endeavor here."[21]

<u>Northern Valley Communications</u>

Northern Valley Communications ("NVC") was co-founded in March 1997 by James Valley Telecommunications of Groton and Northern Electric Cooperative of Bath as equal partners with the purpose of bringing state-of-the-art telecommunications,

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17 www.blackhillsfiber.com/012000.html, Visited August 22, 2001.

18 Rapid City Journal, "An open letter from Black Hills FiberCom…", February 25, 2001.

19 Rapid City Journal, "An open letter from Black Hills FiberCom…", February 25, 2001.

20 www.blackhillsfiber.com/012000.html, Visited August 22, 2001.

21 www.msnbc.com/local/KNBN/15702.asp, Visited February 18, 2000.

Internet, and video services to Aberdeen.[22] [23] NVC is providing facilties-based service to both residential and business customers in Qwest's service territory in South Dakota. NVC received authority from the South Dakota Public Utilities Commission to provide telecommunications services in South Dakota in May 1999, focusing primarily on business applications; in 2000 the company started expanding into residential offerings.[24] Like a number of other South Dakota CLECs, NVC is a locally owned and operated company focusing on quality local customer service and local economic development for the Aberdeen trade area.[25] According to Dennis Hagny, Northern Electric Cooperative Manager, "Our past history is to provide services that are not currently provided to meet underserved needs or to provide competitive choices."[26] NVC is northeastern South Dakota's largest and most diversified ISP providing 56k dial-up service in 36 communities surrounding Aberdeen. It began providing wireless Internet service to customers within a 25-mile radius of Aberdeen.[27] The company is also in it's third season of constructing a new digital fiber optic telecommunications

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22 www.nvc.net/aboutnvc.html, Visited August 22, 2001.

23 www.nvc.net/pressownership.html, Visited August 22, 2001.

24 www.nvc.net/presstelecommunications.html, Visited August 22, 2001.

25 www.nvc.net/aboutnvc.html, Visited August 22, 2001.

26 American News, "Northern Electric Co-op: 'Serve the underserved'", January 1, 2000.

27 "Wireless Internet Available", American News, June 24, 2000.

network to provide local and long distance telephone service and high-speed Internet to Aberdeen residential customers in direct competition on a facilities basis with Qwest.[28] [29]

NVC's telecommunication services include local dial tone, long distance, local calling features such as Call Waiting and Caller ID, Internet, ISDN, ADSL, Centrex, and ATM. NVC also offers wireless voice, data, and video telecommunications services.[30] NVC's residential and business dial tone line are comparable to those of Qwest -- $14.50 per line per month for a residential customer and $27.95 per line per month for business accounts with 1-3 lines.[31] Along with lower prices, which NVC chief executive officer Doug Eidahl says are 10 percent under Qwest's, NVC offers local service customer service.[32] The company advertises itself as providing "Affordable phone service from a local company!"[33] Further, according to a residential telephone network expansion survey sent to Aberdeen customers in early 2000, the sole mission of NVC is to bring advanced telecommunications, Internet and video service to Aberdeen and to provide quality local customer service to the area.[34] Attachment A contains three

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28 www.nvc.net/pressgrandopening.html, Visited August 22, 2001.

29 www.nvc.net/pressownership.html, Visited August 22, 2001.

30 www.nvc.net/presstelecommunications.html, Visited August 22, 2001.

31 www.nvc.net/dialtone.html, Visited August 22, 2001.

32 www.nvc.net/pressntca.html, Visited August 22, 2001.

33 www.nvc.net/services.html, Visited August 22, 2001.

34 Residential Telephone Network Expansion Survey from Northern Valley Communications addressed to Aberdeen Resident (no date).

pictures taken in Aberdeen in the summer of 2000 showing Qwest and Northern Valley facilities side by side as well as a Northern Valley fiber hut.

From all indications, NVC is succeeding and growing in the Aberdeen area. By the end of 2000, NVC expected to spend $6.2 million in telecommunications and Internet infrastructure in Aberdeen and surrounding areas.[35] The company recently added its own telephone prefix – 725 – so Aberdeen customers who chose NVC for their local service have the option of keeping their current phone number or choosing a new "725" number.[36] On July 12, 2001, NVC held a ribbon cutting ceremony at their new, larger building which was needed to accommodate the company's growing staff and inventory and expanded telecommunications services.[37] According to Mr. Eidahl, "Our response from Aberdeen has been beyond our best expectations."[38] In fact, since NVC's customer base has continued to grow, the company was able to decrease its basic rate for residential dial tone service from $16.25 to $14.50 per line in June 2001.[39] As further evidence of NVC's success, Mr. Eidahl also reported "...NVC has been receiving a lot of calls from residents asking when NVC will be available in their neighborhoods. We have been encouraging people to have patience until we can get

35 www.nvc.net/pressntca.html, Visited August 22, 2001.

36 www.nvc.net/dialtone.html, Visited August 22, 2001.

37 www.nvc.net/pressgrandopening.html, Visited August 22, 2001.

38 www.nvc.net/presstelecommunications.html, Visited August 22, 2001.

39 www.nvc.net/pressgrandopening.html, Visited August 22, 2001.

there.[40] Although the work in Aberdeen will possibly take three to five years, NVC is looking at the possibility of expanding to Redfield.[41]

Beyond being known for its new telephone prefix, NVC is also well-known in Aberdeen for its local Internet service, Northern Valley Net. Northern Valley Net was one of the first local dial-up Internet providers in the Aberdeen area. In fact, according to Mr. [illegible], NVC has become the fourth largest Internet provider in South Dakota.[42] In addition, NVC is the only company in Aberdeen that provides ADSL service that it calls "X-Stream ADSL."[43] They currently offer a residential X-Stream package for [illegible] per month that includes X-Stream ADSL, 256kbps, a dial tone line, 3-Way Calling, Call Waiting, Caller ID, Call Transfer, and 900 Call Block.[44] According to James [illegible], general manager of finance and administration, the response from the community has been "unbelievable" and added "They love the fact that they have a choice."[45]

Dakota Telecommunications Group[46]

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40. www.nvc.net/presstelecommunications.html, Visited August 22, 2001.
41. www.nvc.net/presstelecommunications.html, Visited August 22, 2001.
42. www.nvc.net/presstelecommunications.html, Visited August 22, 2001.
43. www.nvc.net/presstelecommunications.html, Visited August 22, 2001.
44. www.nvc.net.services.html, Visited August 22, 2001.
45. www.nvc.net/pressntca.html, Visited August 22, 2001.
46. Dakota Telecommunications Group is buying services from Qwest but no contract is on record.

Dakota Telecommunications Group ("DTG") has a long history in the state of South Dakota dating back to 1902 when the company was formed as the Hurley Telephone Company and subsequently reorganized as a telephone cooperative in 1952.[47] Consistent with its commitment to bring state-of-the-art technology to rural communities, DTG was the first facilities-based carrier in South Dakota and was one of the first CLECs to build new facilities in the smaller communities in South Dakota, Iowa, and Minnesota.[48] [49] [50] DTG is the largest independent Internet service provider in the state and the region's leader in data networking services.[51] In 1998, DTG completed four new systems in Centerville, Vigorg, Harrisburg, and Tea, South Dakota, and at the time was in the process of building a new system in Canton.[52] Attachment B contains two pictures taken in Tea in the summer of 2000 showing Qwest and DTG/McLeod facilities positioned side-by-side. DTG offers a variety of integrated communications products including facilities-based local and long distance telephone services, cable

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47/ www.dtg.com/CorpInfo/DTGStory/Firsts.html, Visited August 29, 2001.

48/ www.dtg.com/CorpInfo/DTGStory/Future.html, Visited August 29, 2001.

49/ www.dtg.com/CorpInfo/News/McleodDTG.html, Visited August 29, 2001.

50/ www.dtg.com/CorpInfo/News/DTGMcleod.html, Visited August 29, 2001.

51/ www.dtg.com/CorpInfo/News/DTGMcleod.html, Visited August 29, 2001.

52/ www.dtg.com/CorpInfo/News/McleodDTG.html, Visited August 29, 2001.

television, Internet access services, wireless communications including paging and cellular, and computer networking services.[53]

Today DTG is a wholly-owned subsidiary of McLeodUSA ("McLeod"), operating under the DTG name, after successful completion of their merger in March 1999.[54] [55] With the merger, McLeod gained approximately 300 route miles of fiber optic network, 7,300 facility-based local access lines, 5,900 cable television subscribers, and 6,800 Internet accounts.[56] The company has offices in Aberdeen, Irene (headquarters), Pierre, Rapid City, Sioux Falls, Viborg, and Yankton.[57] McLeod has publicly stated that it is committed to the expansion of DTG's current network to small communities throughout the region.[58] In an October 28, 1998, press release Steve Gray, President and Chief Operating Officer of McLeodUSA stated, "This acquisition fits hand in glove with our overall strategy. DTG operates in three of our key upper Midwest states, offering nearly identical fiber optic-based services in third and fourth-tier cities. The management team at DTG shares our commitment to bringing state-of-the-art communications to smaller markets where the incumbent phone and cable television

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53/ www.dtg.com/CorpInfo/News/McleodDTG.html, Visited August 29, 2001.

54/ www.mcleodusa.com/html/ir/singleStory.php3?pid=10&type, Visited August 29, 2001.

55/ www.dtg.com/CorpInfo/News/DTGMcleod.html, Visited August 29, 2001.

56/ www.dtg.com/CorpInfo/News/McleodDTG.html, Visited August 29, 2001.

57/ www.mcleodusa.com/company_info/salesoffices.php3, Visited August 29, 2001.

58/ www.dtg.com/CorpInfo/News/DTGMcleod.html, Visited August 29, 2001.

companies often fail to invest in new technologies and system upgrades."[59] In late 1999, DTG was granted a competitive cable franchise from Huron and is planning to complete a telecommunications network in that community as well as in Mitchell sometime during the fall of this year.[60]

Midcontinent Communications

Midcontinent Communications ("Midcontinent") is a subsidiary of Midcontinent Media, Inc., that provides cable television, local and long distance telephone service, high-speed Internet access and hosting, paging, cable advertising, and data network services in communities in South Dakota.[61] Midcontinent is the single operating group that resulted from a recent convergence of Midcontinent Media's cable, phone, data, and cable advertising services groups.[62] Like Black Hills FiberCom, Midcontinent is a locally owned and operated provider.[63] The company provides facilities-based local telephone service primarily in Qwest's service areas.[64]

59/ www.dtg.com/CorpInfo/News/DTGMcleod.html, Visited August 29, 2001.

60/ Huron Daily Plainsman, "DTG delays work on Huron cable TV service until 2001", January 26, 2000.

61/ www.midcocomm.com/about.html, Visited August 22, 2001.

62/ www.midcocomm.com/press_release9.html, Visited August 28, 2001.

63/ www.midcocomm.com/localtelephone.html, Visited August 22, 2001.

64/ www.state.sd.us/puc/Telecomm.html, "Telecommunications – Competitive Local Exchange Carriers", Visited August 27, 2001.

Midcontinent has been growing and expanding its operations in South Dakota in the last several years. For example, as shown in Exhibit DLT-11, a July 2000, Midcontinent advertisement in the Rapid City Journal announced that it had recently acquired the cable system in that city with the mission of building the most advanced cable system available in the nation. Its goal is to provide over 200 cable channels, high-speed cable Internet and local and long distance telephone service as quickly as possible.[65] Further, in August 2000, Midcontinent Media, Inc. and AT&T Broadband and Internet Services entered an agreement to create an equally-owned partnership serving approximately 200,000 customers in South Dakota, primarily in the Black Hills, as well as in North Dakota, Northern Nebraska, Minnesota, and Montana.[66] With this partnership, Midcontinent provides services in competition not only with Qwest but FiberCom as well. Larry Bentson, Chairman and CEO of Midcontinent Media, Inc., was quoted as saying, "It [the agreement] will allow us to continue to meet the advanced telecommunications needs of the region by combining our knowledge and experience gained by serving people in our region for fifty years, with AT&T BIS's technical expertise and resources as well as a superb reputation for quality."[67]

ionex telecommunications, inc.

65/ "Midcontinent Communications Guarantees Rapid City The Finest Cable System In The Nation!", Advertisement in the Rapid City Journal, Sunday, July 23, 2000.

66/ www.midcocomm.com/press_release9.html, Visited August 28, 2001.

67/ www.midcocomm.com/press_release9.html, Visited August 28, 2001.

ionex telecommunications, inc. ("ionex") is a privately owned CLEC that provides a variety of communications services primarily for small-to-medium sized businesses. ionex, formerly known as Compass Telecommunications, Inc., was formed in March 1999 and is based in Dallas, Texas.[68] This integrated communications provider ("ICP") currently serves more than 60,000 customers in 14 Mid-America states, including South Dakota. The company provides its customers with not only local and long distance services such as calling features and voice mail but a full range of broadband services voice, data, video, Internet, e-commerce, DSL, ISP, Web hosting, and custom business solutions; advanced communications traditionally affordable only for large enterprises.[69] ionex advertises itself as a "next generation" CLEC that is deploying an advanced broadband package network to meet the needs of business customers.[70] In July 2000, ionex announced the first installation in Dallas of an innovative network designed to simultaneously carry digital voice and data transmissions on the same infrastructure.[71]

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[68]/ wysiwyg://232/http://www2.ionex.com/portal/index.jsp?page_content_milestones.html, Visited October 12, 2001.

[69]/ wysiwyg://228/http://www2.ionex.com/port…t=news&secondary_content=news_07_17_2000.html, Visited October 12, 2001.

[70]/ wysiwyg://228/http://www2.ionex.com/port…t=news&secondary_content=news_07_17_2000.html, Visited October 12, 2001.

[71]/ wysiwyg://228/http://www2.ionex.com/port…t=news&secondary_content=news_07_17_2000.html, Visited October 12, 2001.

ionex was certified as a CLEC in the state of South Dakota on October 22, 1996, and is authorized to provide service in all nonrural areas in the state.[72] In December 1999, ionex purchased a local Sioux Falls business, FirsTel/Advanced Communications with plans to expand its telephone network.[73] In a July 6, 2001, press release, ionex announced the availability of its high-speed digital subscriber line ("DSL") Internet service in Sioux Falls which will allow businesses there to subscribe to complete communications packages including local, long distance, and Internet services from one company on a single bill.[74] To date, ionex has rolled out its DSL service in 20 U.S. markets and continues to expand.[75]

72/ www.state.sd.us/puc/Telecomm.html, Visited August 27, 2001. Although ionex is authorized to provide service in all nonrural areas in the state, it is restricted to current customers in Gregory, Clearfield, Witten, Tabor, Lesterville, Centerville, Viborg, Hudson, and Sisseton.

73/ Argus Leader, "Dallas Firm Buys FirsTel Service", December 1, 1999.

74/ wysiwyg://225/http://www2.ionex.com/port...t=news&secondary_content=news_07_06_2001.html, Visited October 12, 2001.

75/ wysiwyg://225/http://www2.ionex.com/port...t=news&secondary_content=news_07_06_2001.html, Visited October 12, 2001.

EXHIBIT DLT-5

Attachment A

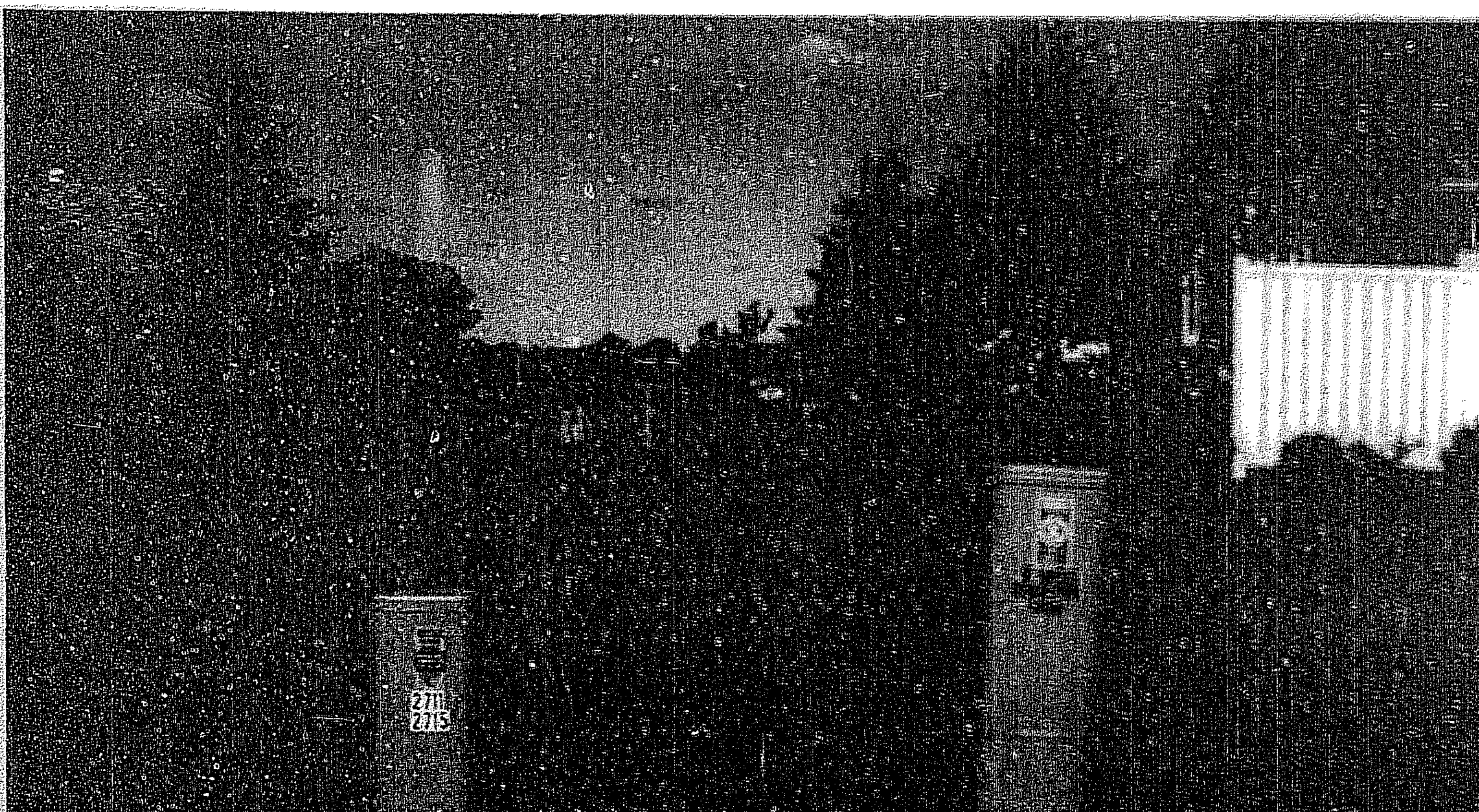
PICTURES FROM ABERDEEN, SOUTH DAKOTA OF QWEST AND NORTHERN VALLEY COMMUNICATIONS PEDESTALS AND NORTHERN VALLEY COMMUNICATIONS FIBER HUT

Residence - 1008 Roosevelt Street

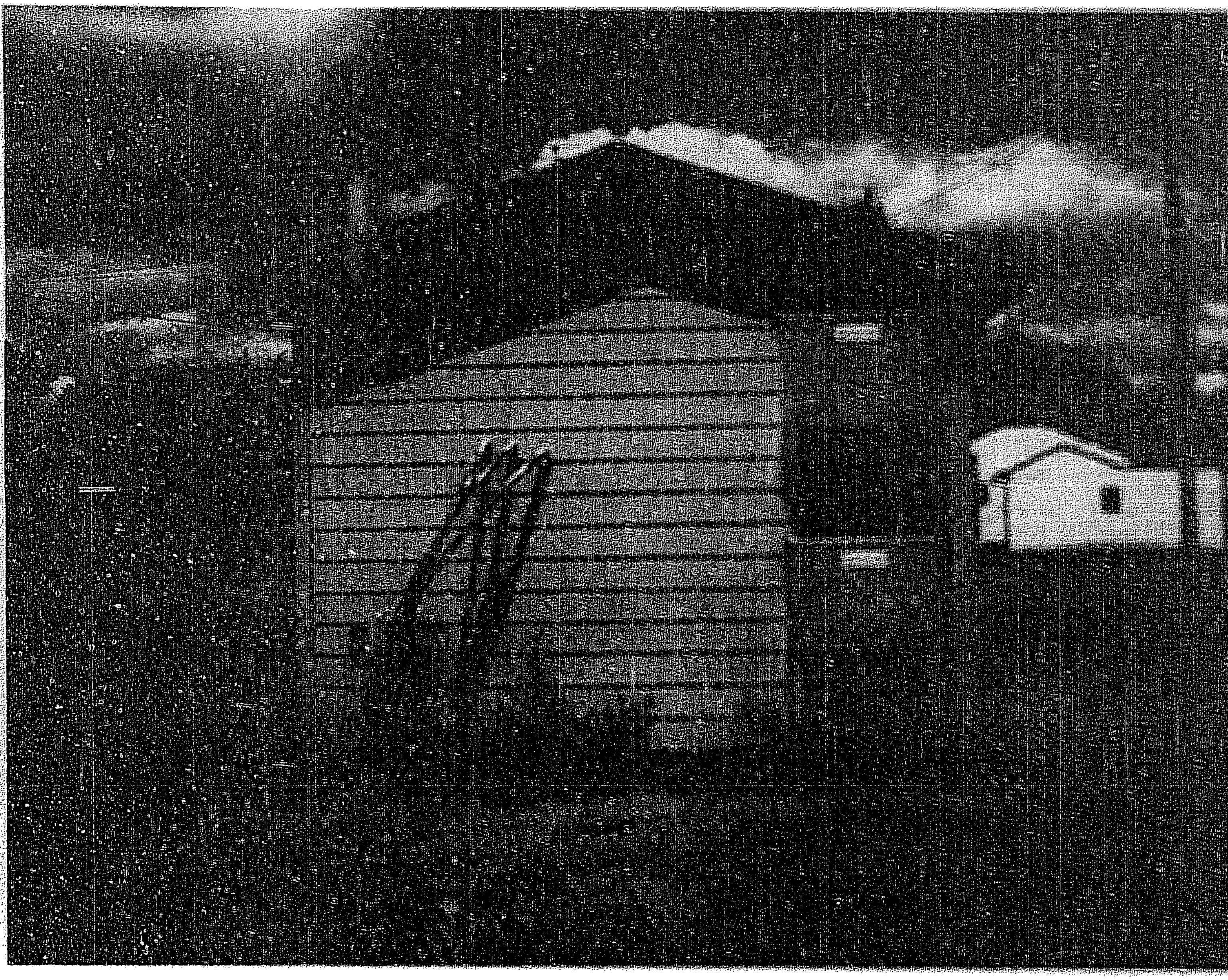
Residence - 2314 Crystal Avenue

Fiber Hut – 202 East Melgard Road

1008 Roosevelt Street - Aberdeen, South Dakota



2314 Crystal Avenue - Aberdeen, South Dakota



202 East Melgard Road – Aberdeen, South Dakota
NVC Fiber Hut

EXHIBIT DLT-5

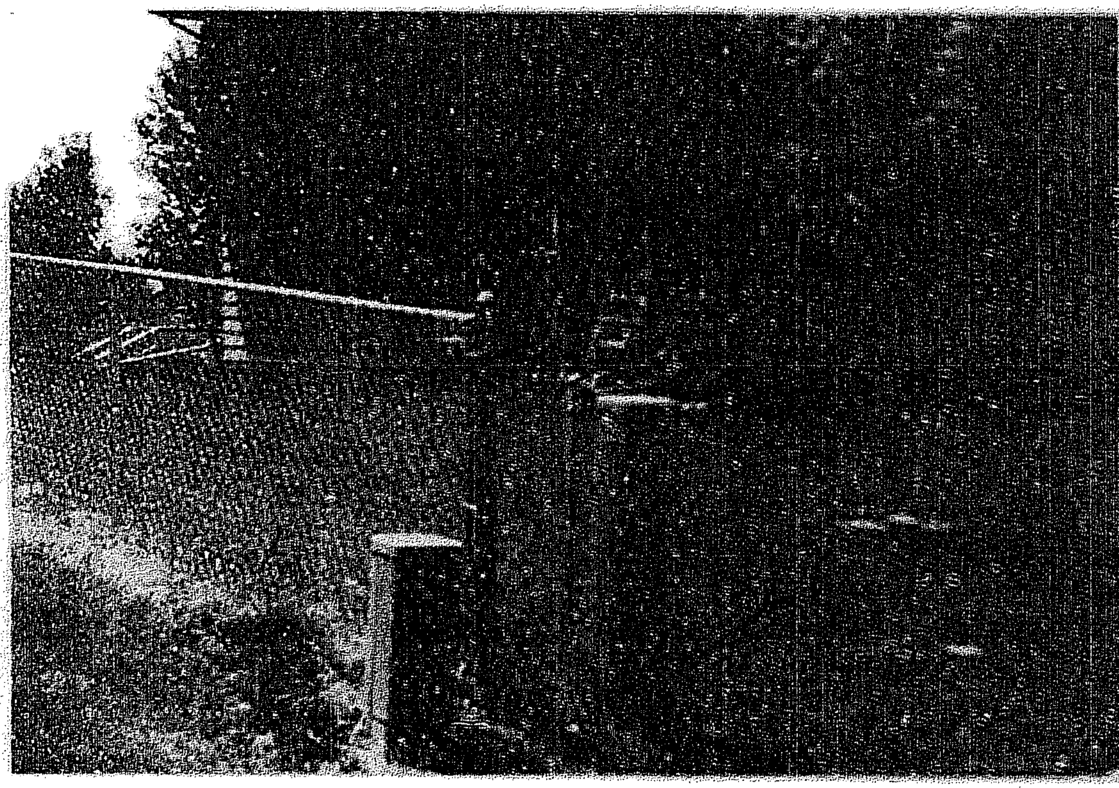
Attachment B

PICTURES FROM TEA, SOUTH DAKOTA OF QWEST AND DTG/MCLEOD FACILITIES

600 South Mary Drive

601 West Charish

600 S. Mary Drive South Side of Tea, SD



601 W Charish St. West side of Tea, SD
Terminals side by side and SHI's side by
Side on house.

South Dakota Business and Residential Lines
Served by Competitors
as of August 2001

Unbundled Loops In Service	17,803			
Estimated Facility Bypass Competitive Lines in Service	32,164			
Residence Facility Bypass Lines **(EST)**	22,217			
Business Facility Bypass Lines **(EST)**	9,947			
Resold Access Lines				
Residential Lines	5,648			
Business Lines (includes Centrex)	11,153			
Resold Line Total	**16,801**			
Total CLEC UNE, Resold and Facilities-Based Lines In Service	**66,768**			
CLEC residential lines	**27,865**			
CLEC business lines	**38,903**			
Access Lines in State				
Qwest business lines in service	74,[illegible]			
CLEC business lines in service	38,903			
Total business lines in service	113,[illegible]			
% CLEC business lines	[illegible]			
Qwest residential lines in service	157,424			
CLEC residential lines in service	27,865			
Total residence lines in service	184,[illegible]			
% CLEC residential lines	15.1%			
Tot. Qwest res/bus lines	**231,707**			
Tot. CLEC res/bus lines	66,768			
Tot. Qwest/CLEC res/bus lines	298,475			
% CLEC res/bus lines	**22.4%**			
NOTES:				

1. Business full facility bypass access line counts are based on the assumption that an average of two ported numbers exists per UNE/bypass loop (UNE-P/UNE-Star do not involve number porting). **This number is a conservative estimate, and assumes that 100% of ported numbers are not being used to serve customers at any given time.**
2. Residential full facility bypass access line counts are based on August 2001 white pages listings associated with facilities-based CLECs
3. Qwest access line counts exclude Official Company Service (OCS) quantities.
4. All quantity data is as of August 2001

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-8

South Dakota Interconnection Trunks in Service

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-9

South Dakota Ported Telephone Numbers in Service

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-10

White Pages Listings Counts Associated with Facilities-Based CLECS in South Dakota

EXHIBIT DLT-11

ADVERTISEMENTS BY CLECs OFFERING SERVICE IN SOUTH DAKOTA

An open letter from Black Hills FiberCom...

- Offering local (toll free) and [illegible] services in the Northern Hills market
- Video entertainment
- High speed Internet via cable modem
- Data services to a combination of business & residential customers

FIBERCOM HAS CONTRIBUTED TO:
- The Allied Arts Fund
- American Cancer Society
- Legion Baseball
- Rapid City, Lead, Deadwood, Spearfish, Belle Fourche, Sturgis Chamber of Commerce Memberships
- Girls & Boys Scouts
- Soccer Clubs
- Little Leagues
- Star Teacher Award
- United Way
- YMCA

and many more

- First telecommunication provider to treat all of the Northern Hills as a local call
- First to offer high-speed Internet access
- First to provide real value in cable television service with more channels and better programming for Black Hills residents
- First to create and offer the service bundles you wanted like "The Basics", "The Upgrade" and "The Works" which offer more features and even better values

Black Hills FiberCom

No One Else Has Our Connections

P.O. BOX 2115 • 809 Deadwood Avenue • Rapid City, SD 57709

ph. (605) 721-2000 • fax (605) 342-1693

www.blackhillsfiber.com

February 23, 2001

Dear Neighbor:

At Black Hills FiberCom, we understand that competition is a good thing. We believe that the Rapid City and Northern Hills market were being neglected by the incumbent communications companies. For that reason, Black Hills Corporation created Black Hills FiberCom and **"Pulled the Trigger"** to build a state-of-the-art broadband communications network. We brought many **"Communication Firsts"** to the Black Hills region in a very short time. Black Hills FiberCom is one of the fastest growing communications companies in the world, thanks to you. Now, approximately 75% complete, we are the first and only provider of **Advanced Broadband Communications** services in this, our only market.

I would, however, like to take a minute to set the record straight.

We have built the most fiber rich, high capacity, versatile, advanced broadband communications system anywhere in the country. Our governor called it **"the most advanced network on the planet."** This advanced broadband network is designed for high-speed data including residential Internet. Don't be fooled by claims our competitors may make or by advertising designed for some other market. Our competitors are forced to use refurbished or retro-fitted networks in an attempt to advertise "like" services. In addition to your cable modem, it is the network capability and the Internet connection that determines your **Internet Performance as a user.**

We are a South Dakota company truly concerned about the economic development of our communities. Black Hills FiberCom is the only locally owned and managed communications company in the Black Hills. The decision makers are your neighbors, and all of the employees are dedicated to making the community **a better place for all of us to live.**

Our mission is to be the premier communications provider offering the best service, features and value for our customers in Rapid City and the Northern Black Hills. To accomplish that, we have bundled our services into **"Value Packages"** that bring true value and savings to our customers.

The result is that more than 10,000 of you, both business and residential customers, have partnered with us and are already enjoying our services. New customers are joining our family as fast as we can make the service available to them. We still have some work to do and greatly appreciate your patience as we enter into the homestretch. And as a way to thank you for your overwhelming and enthusiastic support of our project, we're offering **Free Installation through March 31, 2001** for any and all of our services. We truly value your business and the opportunity to be of service to you.

Sincerely,

Ronald Schaible

Sr. Vice President, Communications, Black Hills Corporation

Sr. Vice President & General Manager, Black Hills FiberCom

Cable TV • Local and Long Distance Telephone • High-Speed Internet

The Basics

$44.95*

The Upgrade

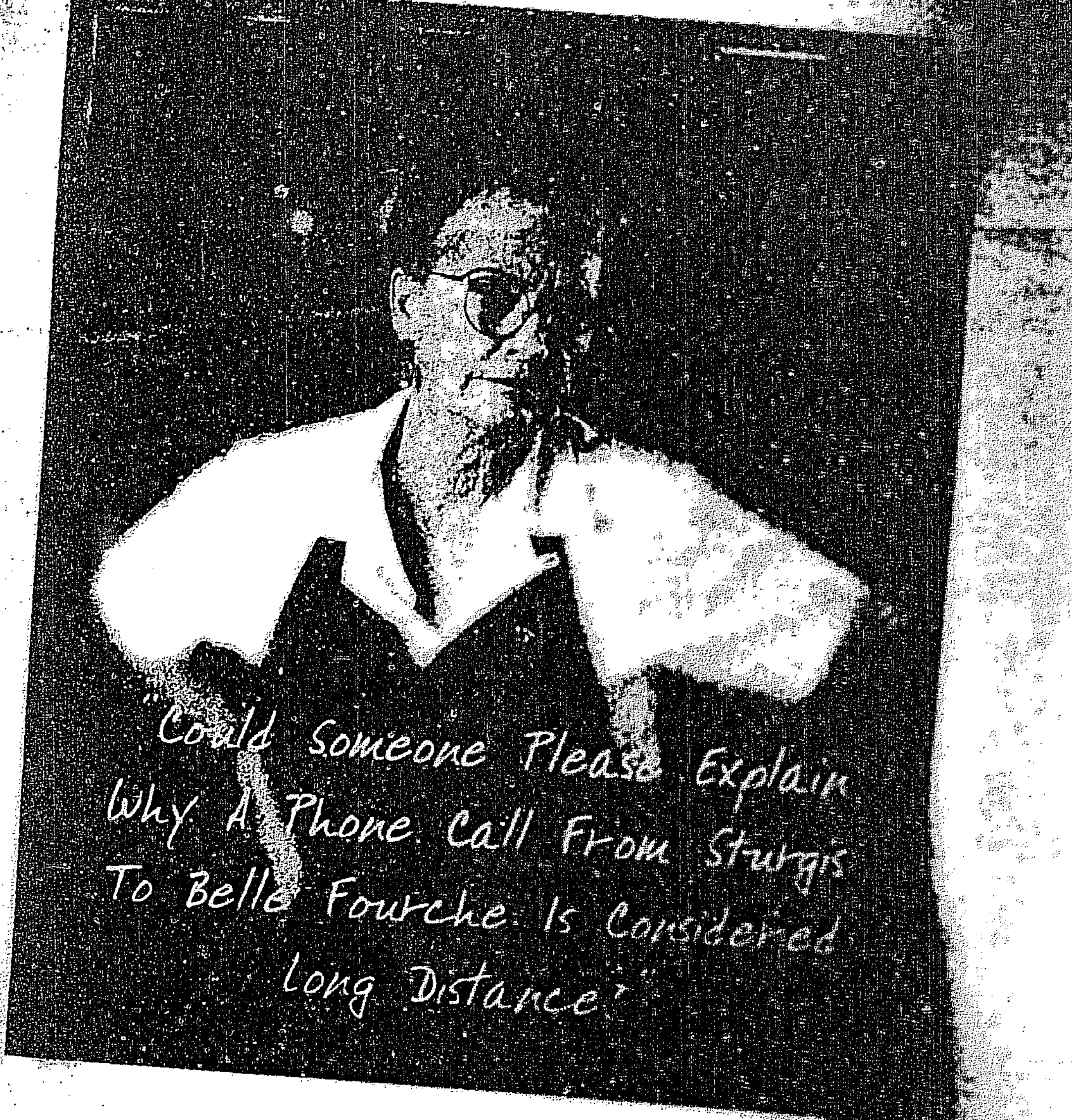
$74.95*

The Works

$99.95*

Rapid City Journal Page A3

Sunday, February 25, 2001



Only Black Hills FiberCom™ Lets You Call *Anywhere* In The Northern Hills—*Without Toll Charges.*

It took a local phone company to make local phone service better. Black Hills FiberCom.

- Our Extended Area Service lets you make phone calls from Rapid City to Belle Fourche, and to all communities in-between, *without toll charges.**
- Our phone service is delivered over the best digital network available.
- Choose our Basic Line service or add as many options as you want from among our 20 Custom Calling features. Or treat yourself, with our Custom Calling packages, including Voice Mail and Caller ID.

Now, doesn't all this have a nice ring to it?
It's your call. Continue to pay more for less.
Or call 721-2000 today. And pay less for more.

Add A Second Phone Line For Just:
$9.95 per month*

Plus Long Distance For Just:
9.9¢ per minute†

Black Hills FiberCom

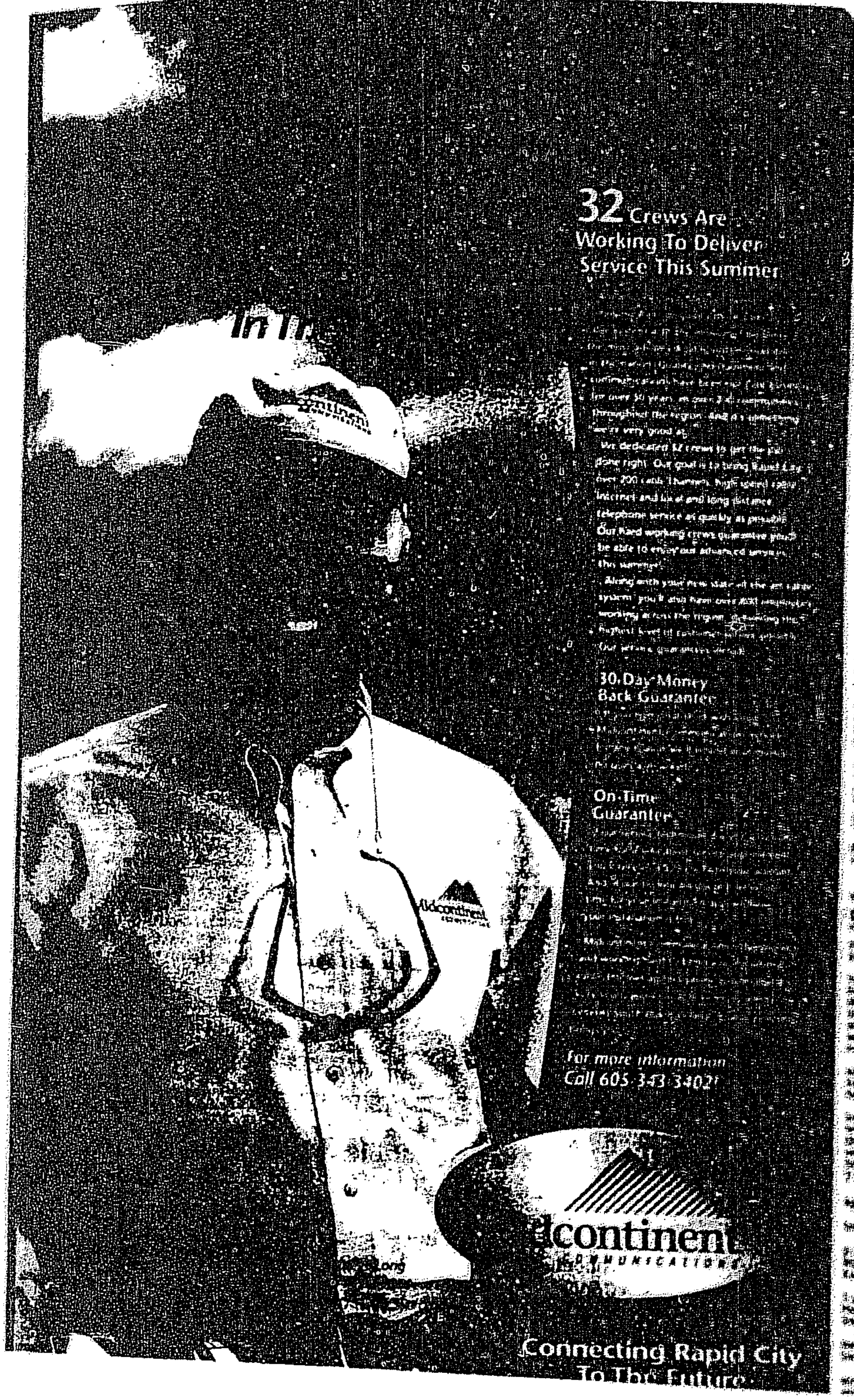
No One Else Has Our Connections™

CABLE TV   LOCAL AND LONG DISTANCE TELEPHONE   INTERNET

809 DEADWOOD AVENUE, RAPID CITY 57702   721-2000/TOLL FREE [illegible]   [illegible]

*Our toll-free Extended Area Service (EAS) incorporates Rapid City to Belle Fourche and all communities in between. [illegible] lower than what other phone companies charge. Pricing and availability subject to change without notice. [illegible] monthly long distance phone charges. Toll calls (calls made outside our Extended Area Service) are [illegible]

†Other long distance phone companies may charge less per minute, but restrict those savings to certain times per day, charge more at other times, [illegible] 24 hours a day throughout the 48 contiguous states. Also enjoy great low rates to Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. [illegible]

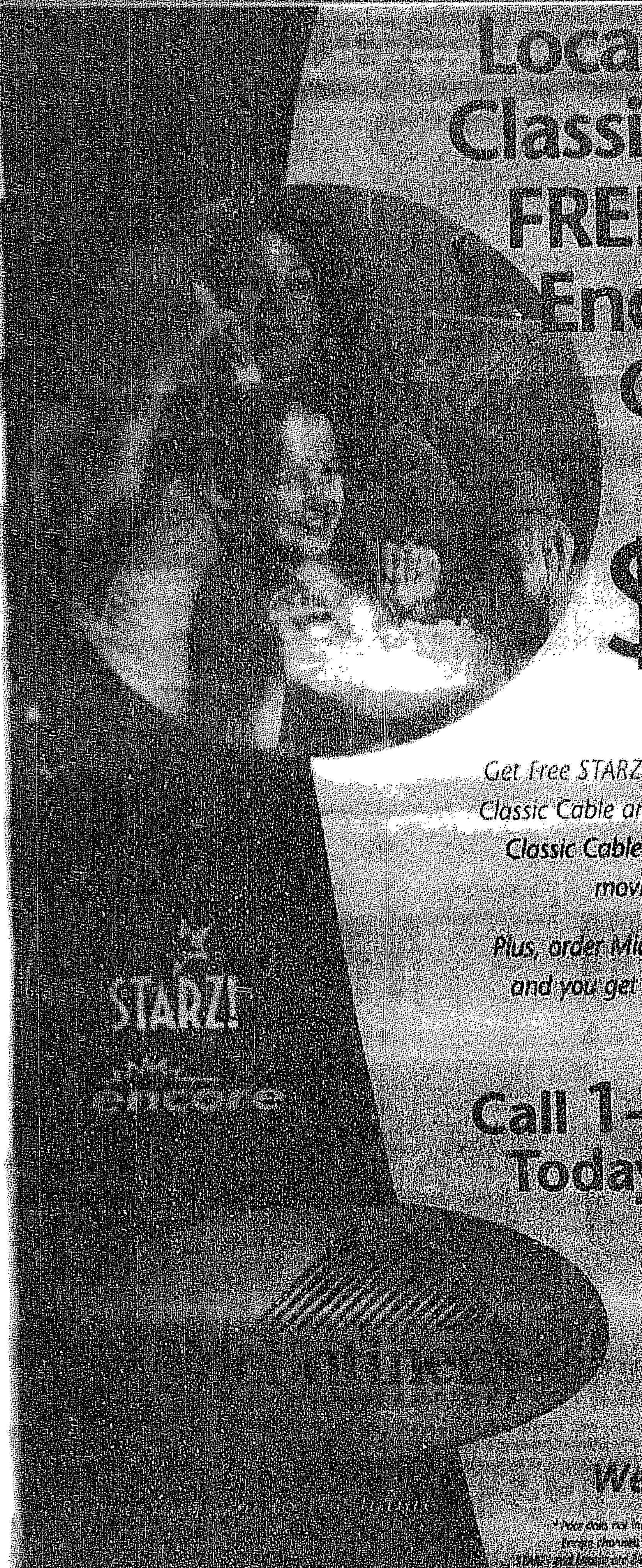


Sturgis board to discuss vendors

Deadwood m… Main Street for motorcycl…


You'll
Flip
over Black Hills FiberCom's
BIG
3-2-1
SPECIAL
3 FREE PAY-PER-VIEW MOVIES
2 FREE Domino's Pizza LARGE PIZZAS
1 GREAT VALUE PACKAGE

Rapid City Journal Oct. 14, 2001



Local Telephone, Classic Cable, plus FREE STARZ! & Encore Movie Channels

All for just

$43.95*

a month

Get Free STARZ! and Encore Channels when you order Classic Cable and telephone service from Midcontinent. Classic Cable includes 77 basic channels of sports, movies, news and entertainment.

Plus, order Midcontinent@Home high-speed Internet, and you get all three services for just $69.95/mo.

Call 1-800-888-1300 Today and You'll Get

- ☑ FREE Installation
- ☑ 30-Day Guarantee
- ☑ Best Service & Best Value

We've Got You Covered!

* Price does not include taxes, fees and equipment. Deposit may be required for telephone service. Free STARZ! and Encore channels promo ends December 31, 2002. STARZ! and Encore are analog only channels on 11 and 14.

EXHIBIT DLT-12

SOUTH DAKOTA ACCESS LINE ESTIMATES

EXHIBIT DLT-12

SOUTH DAKOTA ACCESS LINE ESTIMATES

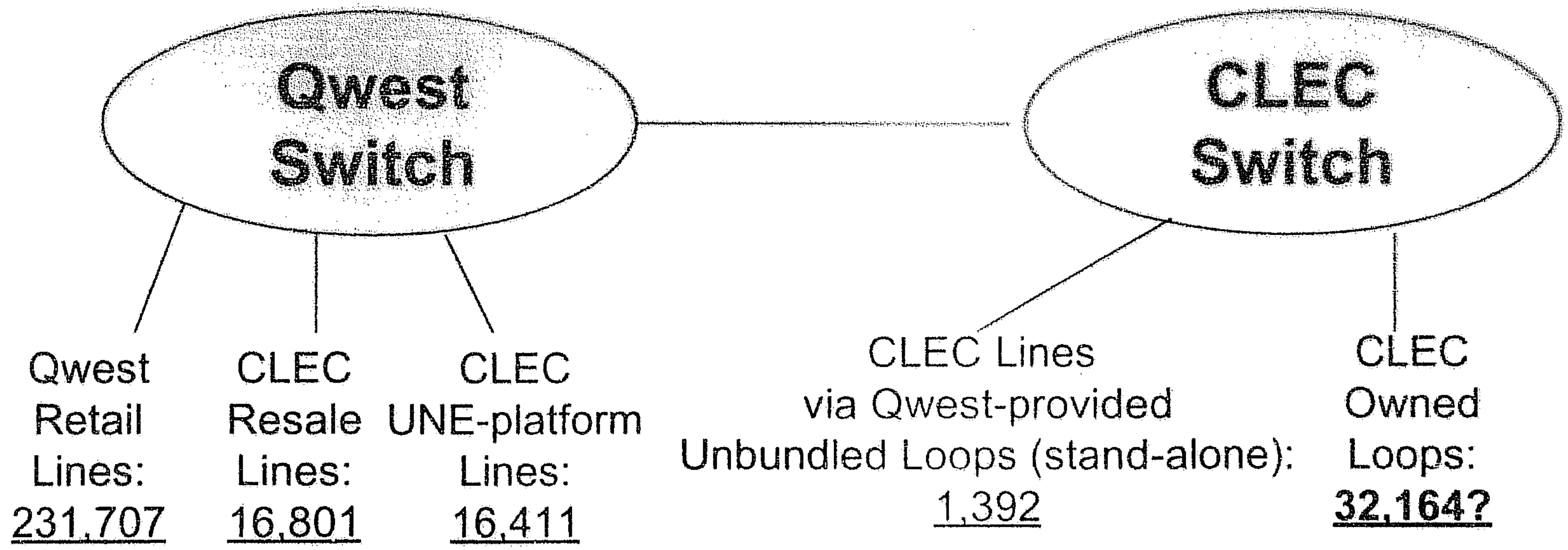
CONTINUATION

[3]

Scan ~ ~ # Pages [ ]

South Dakota Access Lines: Qwest and CLEC

August 2001 Quantities



<u>Estimate of CLEC-Owned Loops</u>:		
Step 1: Ported numbers (LNP+INP)/2: (22,678/2)		**11,339**
Step 2: Subtract stand-alone UNE loops	**-**	**<u>1,392</u>**
CLEC-owned Business loops		**9,947**
Step 3: Add Facilities-Based White Pages Res. Listings	**+**	**<u>22,217</u>**
Total CLEC-owned Loops		**32,164**

LIS Trunk Method: (LIS trunks * line/trunk ratio) - Stand-alone UNE loops = CLEC-owned loops

((7,049*2.75) - 1,392) = <u>17,993</u>

((7,049*5.0) - 1,392) = <u>33,853</u>

CONTINUATION

[4]

S # Pgs [ ]

EXHIBIT DLT-13

JOINT AFFIDAVIT OF J. GARY SMITH & MARK JOHNSON
SBC JOINT BRIEF (APPENDIX A, TAB 1, KANSAS/OKLAHOMA)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Joint Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services,	)	CC Docket No. ________
Inc. d/b/a Southwestern Bell Long Distance for	)	
Provision of In-Region, InterLATA Services in	)	
Kansas and Oklahoma	)	

JOINT AFFIDAVIT OF J. GARY SMITH & MARK JOHNSON

STATE OF TEXAS)
)
COUNTY OF DALLAS)

TABLE OF CONTENTS
STATE OF COMPETITION AFFIDAVIT

J. Gary Smith & Mark Johnson, being of lawful age and duly sworn upon our oaths, do hereby depose and state as follows:

1. My name is J. Gary Smith. My title is Area Manager – Competitive Analysis for Southwestern Bell Telephone Company (SWBT). My business address is 311 S. Akard, Room 1840.02, Dallas, Texas.
2. My name is Mark Johnson. My title is Area Manager – Competitive Analysis for SWBT. My business address is 311 S. Akard, Room 1840.01, Dallas, Texas.

PROFESSIONAL EXPERIENCE

J. GARY SMITH:

3. I began employment with SWBT in June 1977. I started in the engineering department and in 1978 was reassigned to outside plant positions, which included Customer Services Supervisor and Construction Foreman. In 1981, I worked as a Network Services Supervisor – Acquisition and Reapplication in Kansas City. From there, in 1984, I was transferred to the Switched Services Department. In 1987, I worked as an Area Manager – Switched Services Planning. This position involved either the direct responsibility or supervision of employees responsible for developing the current and long range plans of the SWBT Missouri interoffice network.
4. In 1992, I was appointed to my current position, Area Manager – Competitive Analysis. In this position I am responsible for preparing competitor profiles for assigned competitors, evaluating product and revenue impacts from competitive losses, advising management of strategic and policy issues raised by competitive activities, and testifying on 271 related issues in Kansas and other states.

MARK JOHNSON:

5. I have been employed by Southwestern Bell Telephone since 1978 in a variety of positions in the Network, Finance, Marketing and External Affairs departments. In 1997 I was appointed to my current position, Area Manager-Competitive Analysis. I received my Bachelors in Economics from Southern Illinois University at Edwardsville in 1981, and my Masters in Economics in 1985 (also from Southern Illinois University at Edwardsville). In addition, I have taken post-graduate studies in Economics at St. Louis University. I am a member of the Society of Competitive Intelligence Professionals (SCIP), Dallas Chapter Coordinator for SCIP, a member of the National Association for Business Economics (NABE), and of the Dallas Economists Club.

6. I am employed by SWBT as Area Manager – Competitive Analysis. In this position I am responsible for preparing competitor profiles for assigned competitors, evaluating product and revenue impacts from competitive losses, advising management of strategic and policy issues raised by competitive activities, and testifying on 271 related issues in Oklahoma and other states.

<u>PURPOSE OF AFFIDAVIT</u>

7. Our affidavit describes the status of local exchange competition in the States of Kansas and Oklahoma since the enactment of the Federal Telecommunications Act of 1996 (1996 Act) and proves that SWBT has met the requirements of "Track A" under 47 U.S.C. § 271(c)(1)(A). This affidavit will focus specifically on Competitive Local Exchange Carriers (CLECs), how and where they operate in Kansas and Oklahoma, and the market segments in which they are competing. All information is as of August 2000, unless otherwise noted. <u>See</u> Attachment A.

CLEC MARKET ENTRY IN KANSAS AND OKLAHOMA

8. It is beyond dispute that Local Exchange competition is thriving in Kansas and Oklahoma. Thousands of customers have obtained local telephone service from facilities-based CLECs in Kansas and Oklahoma. Facilities-based CLECs make significant gains every month. Several CLECs are serving both business and residential customers over their own facilities in both states. See Attachments E and F. Various methods are used to estimate the number of business and residence access lines served by CLECs, as will be discussed in the pages which follow. Regardless of estimation technique, however, the conclusions are inescapable:

- CLECs are providing service to many thousands of residence and business subscribers;
- CLECs are using their own facilities (either exclusively or predominantly) to serve customers;
- Competition is being promulgated using a variety of innovative technologies and deployment strategies, including fixed wireless, cable, fiber, DSL, UNE and resale;
- CLECs are extending their services into rural, outlying or smaller communities; and
- CLECs are active (on a facilities or a resale basis) in nearly every county that Southwestern Bell serves in Kansas or Oklahoma, and in nearly every wire center (See Table 1 below).

Table 1
Competitive Statewide Coverage
As of August 2000

	Total SWBT Wire Centers	SWBT Wire Centers w/CLEC Operations	% Wire Centers Served	% Counties Served
Kansas	209	209	100%	100%
Oklahoma	216	204	94%	94%

9. As set out in detail below, there is strong and growing competition in Kansas and Oklahoma for both business and residential customers by resellers and facilities-based providers. A list

of the 135 CLECs in Kansas and 105 CLECs certified to operate in Oklahoma appears as Attachment B to this affidavit. As of August, SWBT has entered into 100 approved Interconnection and Resale agreements with CLECs in Kansas, and 79 such agreements in Oklahoma. Interconnection and Resale agreements appear in Attachment C.

10. Nearly every measure of competition in Kansas and Oklahoma is growing rapidly. Facilities-based E911 listings have grown 62% in Kansas and 36.7% in Oklahoma between January and August, 2000. Over that period, collocated wire centers in Kansas and Oklahoma have grown 81% and 153%, and UNE Loops have grown 453% and 164%, respectively. Operational collocation instances are up over 300% in both states in that 7 month interval. See Attachment G.

11. In this application, Southwestern Bell estimates the facilities-based subscriber access lines served by CLECs in Kansas and Oklahoma using three separate approaches, using both local interconnection trunks and E911 listings. Using each of these estimates, and including UNE loop and port combinations – considered by the FCC as facilities-based competition[1] – the total amount of facilities based competition in Kansas and Oklahoma is estimated as follows:

[1] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC 20,543, 20,598 ¶ 101 (1997).

Table 2
Facilities-Based CLEC Lines in
SWBT's Service Areas as of August 2000

Method Used	Number of CLEC Access Lines in SWBT Territory		
	Residential	Business	Total
KANSAS			
Interconnection Trunks 2.75:1 Ratio + UNE-P	1,449	96,699	98,148
E911 Lines + UNE-P	709	37,078	37,787
Interconnection Trunks 1:1 Ratio + UNE-P	527	46,009	46,536
OKLAHOMA			
Interconnection Trunks 2.75:1 Ratio + UNE-P	10,217	104,261	114,478
E911 Lines + UNE-P	12,126	49,057	61,183
Interconnection Trunks 1:1 Ratio + UNE-P	3,724	41,966	45,690

12. Most significantly, the level of competition in Kansas and Oklahoma is comparable to that which existed in Texas when the 271 application was initially filed with the FCC. Notwithstanding that both Kansas and Oklahoma are smaller, less urban states,[2] the level of competitive entry is, by some measures, even greater than Texas faced at a similar point in the regulatory process.

[2] The Census Bureau reports that as of 1990 (the most recent estimate), 80.3% of Texas' population was urban, while only 69.1% of Kansas was urban, and 67.7% of Oklahoma was urban.
http://www.census.gov/population/www/censusdata/ur-def.html
SELECTED HISTORICAL CENSUS DATA Urban and Rural Definitions and Data

Table 3
CLEC Access Lines (Incl. Resale)
Percent of Market when 271 is filed

Method Used	Estimated Market Coverage		
	Kansas (Aug. 2000)	Oklahoma (Aug. 2000)	Texas (Jan. 2000)
Interconnection Trunks 2.75:1 Ratio + UNE-P	12.6%	9.0%	14.0%
E911 Lines + UNE-P	9.0%	6.3%	8.1%
Interconnection Trunks 1:1 Ratio + UNE-P	9.5%	5.5%	8.4%

13. The most conservative of these estimates meets the requirements of Track A, and evidence provided in this affidavit demonstrates that even the higher-end estimates provided here may fall short of the true volume of competitive penetration. Including resale, CLECs currently serve between 9.0% and 12.6% of the total access lines in SWBT's Kansas service area, and between 5.6% and 11.4% of total access lines in SWBT's Oklahoma service area.

14. Although facilities-based CLECs have concentrated their activity in urban areas, it is clear that competition is spreading throughout SWBT territories in Kansas and Oklahoma. CLECs are operating in almost every SWBT central office in both states. *See* Table 1, above. In addition, competitive alternatives are being made available in smaller communities as well as central urban areas. For example, CLECs are currently serving customers on a facilities-basis in Goddard, KS (pop. 1,917); Benton, KS (pop. 837); Whitewater, KS (pop. 714); Arcadia, OK (pop. 320); and Tuttle, OK (pop. 2,807).[3]

15. Attachment D to this affidavit contains numerous advertisements by CLECs soliciting customers in Kansas and Oklahoma. These advertisements demonstrate that the Kansas and

[3] Based on E911 listing data.

Oklahoma markets are open, that CLECs are actively competing with SWBT, and that they are rapidly expanding their markets.

16. Whether in rural or urban areas, competitors are ready, willing and able to compete for residence and business subscribers.

FACILITIES-BASED PROVIDERS

17. Facilities based carriers are providing service in Kansas and Oklahoma by building their own networks, leasing unbundled network elements (UNEs) from SWBT, or combining those two approaches.

18. Table 4 below identifies 26 Kansas and 27 Oklahoma facilities-based carriers providing service. Of these, 15 carriers in Kansas and 15 carriers in Oklahoma currently appear to provide local voice service to customers. The remaining carriers appear to provide facilities-based services such as DSL or data services for Internet Service Providers. CLECs thus have demonstrated their ability to provide a variety of services to Kansas and Oklahoma consumers. Further, as discussed in more detail later in this affidavit, the choice by some of these CLECs to provide data or DSL services in no way prevents them from deploying voice grade service when they choose to avail themselves of that option.

19. SWBT, of course, does not have access to an exact accounting of access lines served by CLECs in Kansas or Oklahoma over their own facilities. Nor does SWBT have access to detailed inventory of CLEC network arrangements unless those arrangements are provisioned by SWBT. Only the CLECs themselves have access to such data. However, as set out in detail below, CLEC records in SWBT's E911 database and CLEC interconnection trunk orders provide two means of estimating the number of access lines currently served by facilities-based carriers in Kansas and Oklahoma. CLEC collocation instances further serve to identify the number of lines potentially targeted by those carriers for service in the future.

Table 4

Facilities-based Carriers in Kansas and Oklahoma and Their Methods of Providing Service - as of August 2000

Facilities Based Carriers	Kansas		Oklahoma	
	Use Own Facilities	Lease UNEs	Use Own Facilities	Lease UNEs
@Link Networks Inc.				
Adelphia Business Solutions/Hyperion				
AT&T				
Birch Telecom, Inc.				
Broadspan Communications, Inc.				
Brooks / WorldCom				
Caprock Communications				
Chickasaw Telecommunications				
ConnectSouth				
Covad Communications Company				
Cox Oklahoma Telcom				
Digital Teleport				
Dobson Wireless, Inc.				
DSL.NET				
E.Spire				
Feist Long Distance Service, Inc.				
Frontier / Global Crossing				
Gabriel Communications				
Harvest Telecom DBA Primary Ntwk Comm of Oklahoma				
IP Communications				
JATO Communications Corp.				
KMC Telecom				
Logix Communications				
Maverix.net Inc.				
Navigator Telecommunications				
New Edge Networks				
Newpath Holdings, Inc.				
Northpoint Communications				
Prism Communications				
Rhythms LINKS Inc				
Sprint				
Teligent				
WinStar				
Vectris Communications				
EXOP of Missouri				

Note 1 – CLEC not a facilities-based carrier in this State

CLEC FACILITIES-BASED LINES: E911 DATABASE

20. Facilities-based CLECs that utilize their own switch(es) for providing service to their end users are responsible for directly inputting telephone numbers for those customers into the E911 database, and for designating whether the service provided to those telephone numbers is business or residential. Because facilities-based CLECs themselves are responsible for listing all of the numbers they serve in the E911 database, the E911 database contains information on numbers served by facilities-based CLECs that is not available through any other SWBT database or system. The E911 database therefore is a good indicator for conservatively measuring the number of local subscriber lines served by facilities-based carriers.

21. Facilities-based carriers are identified in the E911 database by a specific Company ID Code. Among other things, this CLEC-specific ID Code allows the emergency services organization to contact the serving CLEC for emergency services such as line intercept and call trace. CLECs utilizing their own switches also obtain specific NXX codes assigned solely for their use. Using the CLEC's assigned NXX code and Company ID, the E911 database identifies which CLECs are providing local service from their switches (since the NXX codes are specific to the CLEC's switch), and whether service to a particular telephone number has been designated as business or residential by the CLEC.[8]

22. Based on E911 information provided by the CLECs themselves, as of August 2000 CLECs served at least the following business and residential subscriber lines in Kansas and Oklahoma using their own facilities:

[8] There are a few NXX code exceptions. For example, when a number is ported from an ILEC such as SWBT to the new serving CLEC, the NXX code will remain the ILEC's NXX code. Although this is an access line served out of the CLEC's switch, it will not appear as such in the E911 database. This is one example that the E911 database is not comprehensive, but rather provides only a conservative estimate of total facilities-based competition for business and residence customers.

Table 5
E911 Facilities-based CLEC Lines in Kansas and Oklahoma
as of August 2000

	KANSAS	OKLAHOMA
Business Lines	20,033	42,783
Residence Lines	709	12,112
Total	20,742	54,895

23. While E911 listings indicate the number of facilities-based lines served by competitors, SWBT does not "police" CLECs to assure that all telephone numbers are entered into the E911 database, or that the service provided is correctly designated as business or residential in nature. Further, E911 listings only represent those customer lines from which outbound calls can be made. As a result, business customers such as call centers, [illegible], telemarketing centers, and Internet providers will have few of their access lines represented in the E911 database. This means that the number of business lines reflected in the database may be understated. In addition, CLEC E911 listings will not include lines which the CLEC provides by leasing SWBT UNE ports or UNE-P arrangements, since these are still physically served off of the SWBT switch. Accordingly, the listings in the E911 database provide only a conservative estimate for the number of business and residential listings served by facilities-based CLECs.[5]

24. Nonetheless, this estimate is extremely important, because the CLECs themselves report these records to the database and it is the CLECs' own designation of the portion of their customers which are residential or business in nature. Further, the implicit liability and public hazard which would result from mis-reporting of records to the E911 database

[5] Another measure of facilities-based competitors' lines would be based on Facilities-Based White Page Listings. For August 2000 in Kansas, that measure shows 2,045 residential lines, compared to 709 facilities-based residential E911 listings. This is yet another indicator that the estimates of competitive lines provided by SWBT in this proceeding are extremely conservative.

mandate accuracy in this important data source. Consequently, any CLEC access line estimate that is LOWER than the E911 estimate should be suspect.

INTERCONNECTION TRUNKS

25. Interconnection Trunks are used by facilities-based CLECs to connect their switching facilities to SWBT's End-Office or Tandem switch for the purpose of passing traffic from their customers to SWBT's or vice versa. Interconnection Trunk usage, therefore, provides another means of estimating the number of customer lines served over the CLEC's network. As of the end of August 2000, CLECs in Kansas utilize 29,491 interconnection trunks and CLECs in Oklahoma utilize 39,342 Interconnection trunks.

26. Communications professionals use trunk to line ratios to determine the number of trunks required for delivering traffic to and from telecommunications networks. US LEC Corp. states that management experience indicates the use of a 5 to 1 lines-to-trunk ratio.[6] In its UNE Fact Report filed with the FCC during the UNE Remand proceeding, the United States Telecom Association (USTA) noted that, based on ILEC engineering experience, a single trunk can support up to approximately 10 facilities-based lines. However, because CLEC networks may not yet be engineered with a high level of efficiency, and CLECs may target individual customers, such as ISPs, that require a high number of interconnection trunks, USTA found it conservative to assume that CLEC trunks are serving between 2.5 and 5 facilities-based lines per trunk.[7]

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[6] US LEC Corp., Equivalent Access Lines, http://www.uslec.com/equiv.htm. Visited October 6, 2000.

[7] See, e.g., the United States Telecom Association's UNE Fact Report filed with the FCC during the UNE Remand proceeding: "First, we can estimate CLEC lines based on the number of interconnection trunks CLECs are using. Facilities-based CLECs do not obtain trunks unless they have local lines and traffic to support and use such trunks. Based on ILEC engineering experience, a single trunk can support up to approximately 10 facilities-based lines. Since CLEC networks may not be engineered for maximum efficiency (i.e., to serve the most efficient number of customers per trunk), and since CLECs disproportionately serve heavy-use Internet lines, we can conservatively assume that CLEC trunks are serving between 2.5 and 5 facilities-based lines per trunk." UNE Fact Report at III-14, attached to Comments of the United States Telecom Association, Implementation of the Local Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (FCC filed May 26, 1999).

27. Like E911-based estimates, interconnection trunks do not include lines which CLECs provision using UNE-P arrangements. UNE-P arrangements do not require interconnection trunks because the traffic need not be transported from the CLEC switch to the SWBT switch. Consequently, it is appropriate to add UNE-Ps when using line-to-trunk ratios to estimate total facilities-based CLEC access lines.

28. Taking the very conservative approach of 2.75 lines per trunk, the total facilities based CLEC lines served by these trunks is:

- Kansas – 29,491 X 2.75 + 17,048[8] = 98,148 total CLEC lines
- Oklahoma – 39,342 X 2.75 + 6,288[9] = 114,479 total CLEC lines

29. As noted earlier, only the carriers themselves know the number of business and residential lines they are currently serving over their own facilities. However, absent specific data from the CLECs themselves, 98,148 lines in Kansas and 114,491 lines in Oklahoma are conservative estimates based on the capacity for traffic delivery represented by the trunks currently being utilized by the above referenced CLECs.[10]

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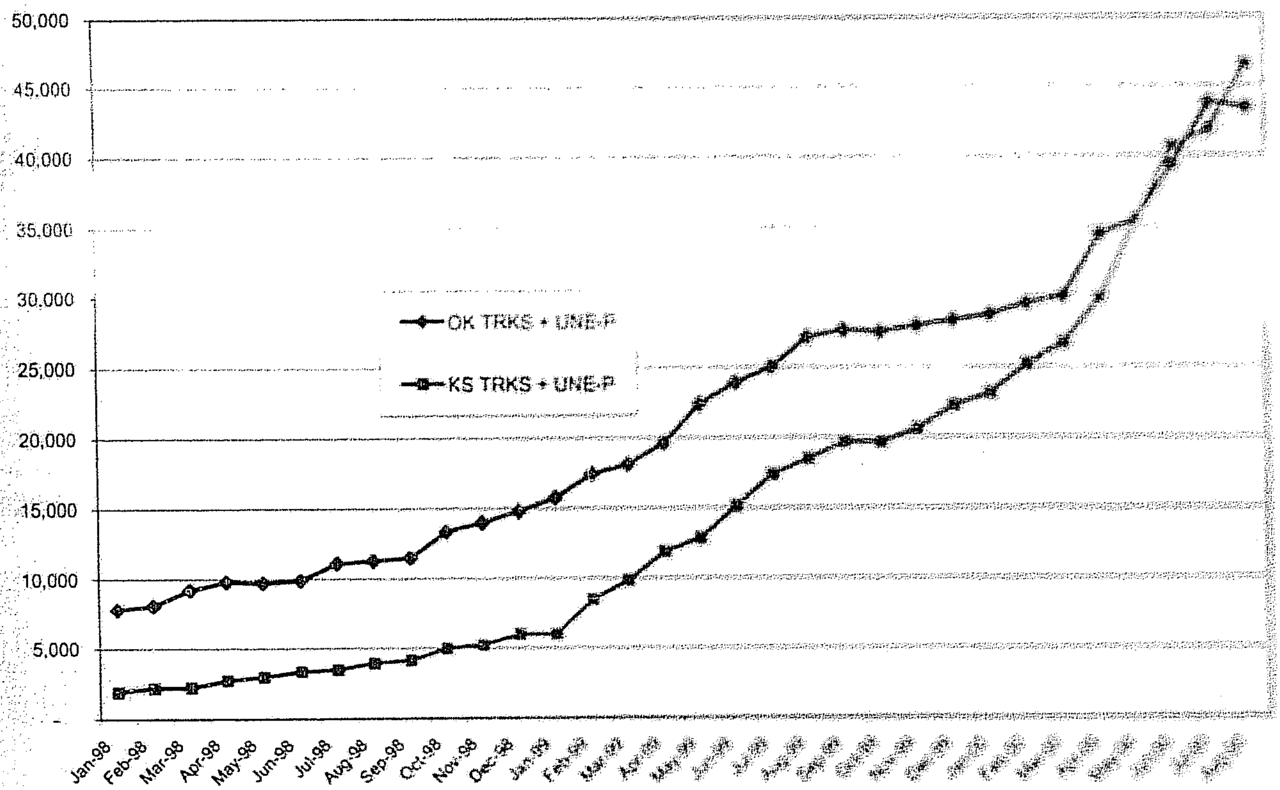
[8] Total UNE loop and port combinations for Kansas as of end of August 2000.

[9] Id. for Oklahoma.

[10] In its comments on SWBT's Texas 271 filing, the Department of Justice (DOJ) disagreed with the 2.75 lines per trunk ratio used by SWBT to estimate the number of access lines being served by facilities based CLECs. The DOJ recommended a 1:1 ratio as a "more reasonable multiplier." See Evaluation of the Department of Justice, CC Docket No. 00-4 February 14, 2000, fn. 15. That ratio is unrealistic. In Oklahoma, for example, it results in an estimate of facilities-based lines that is even LOWER than the conservative E911-based estimate. See Table 3 above for the number of access lines estimated using a 1:1 ratio.

30. Chart No.1 below provides a graphic illustration of the growth in local interconnection trunks plus UNE-P in Kansas and Oklahoma from January 1998 through August 2000. Even though SWBT does not accept a 1:1 line-to-trunk ratio for estimating CLEC access lines, this chart clearly demonstrates that facilities-based CLEC access lines based on the ultra-conservative 1:1 ratio also shows extremely rapid growth.

CHART 1
OK AND KS 1:1 FAC-BASED LINES
LOC INTERCON. TRKS + UNE-P



31. Regardless of whether estimates of facilities-based competition are based on E911 data or on interconnection trunk orders, the numbers demonstrate that customers in Kansas and Oklahoma have a choice in local service providers, and that competing providers have established themselves as a significant and growing presence in the market place.

CLEC SWITCHES

32. While CLEC switches are not useful in quantifying the number of customers and access lines served, it is illuminating to consider the raw capacity contained in CLEC switch deployments. Before the advent of fiber optics, wire center boundaries were primarily determined by the practical distances that copper loops operated. Therefore, the number of SWBT local switches was initially determined by this limitation.

33. Today, through the use of fiber optic networks, switches can serve customers at a much greater distance than before. In addition, remote-switching modules can operate up to 600 miles from the main switch. In today's environment, local switching is limited by capacity, not distance and modern switches are modular so that capacity can be added as needed. As a result, CLECs can place a single switch in a metropolitan area and serve the entire surrounding community. As the following Table shows, the CLEC switches currently installed in Kansas and Oklahoma have more than sufficient capacity to serve more access lines than currently are served by SWBT in those states.

Table 6
CLEC Switches in Kansas and Oklahoma
as of August 2000

State	No. of Operational CLEC Switches	Maximum Capacity of CLEC Switches	SWBT Access Lines in State	% CLEC Access Line Coverage Based On Current Switch Placement
Kansas	13	2,600,000	1,344,287	>100%
Oklahoma	9	1,750,000	1,685,722	>100%

Note: The number of operational CLEC Switches is an estimate only. Additional CLEC switches may be deployed which are not here counted, and these would only further inflate the raw capacity reported above. Switches above are a mix of 5ESS, DMS-250, DMS-500, and capacities are the aggregate of manufacturer's specifications.

34. The competitive significance of CLEC switching capabilities is further revealed when the central offices where CLECs have chosen to collocate are more closely examined, as in the next section.

COLLOCATION

35. SWBT provides collocation to facilities-based carriers. These carriers use collocation as one means of obtaining interconnection and access to unbundled network elements. The existence of collocated carriers – and the locations selected by those carriers for their collocation – therefore provides a strong indicator of both the existence and potential of facilities-based competition.

36. Not every collocation facility is used for voice telephone service. Some are used for providing data services, private line services, and/or services for other companies. Nevertheless, each collocation represents a step in the development of a competitive network by a facilities-based carrier. Table 7 represents the collocations by such carriers in SWBT's Kansas and Oklahoma serving area. The "pending" column includes arrangements where SWBT has provided a price quote, where construction is under way, or where the competitor has already paid part of the cost of collocation. The number of pending physical collocation arrangements is significant because it demonstrates that new CLECs are entering the Kansas and Oklahoma markets and that existing CLECs are expanding. Both indicate an increase in competitor activity in Kansas and Oklahoma.

Table 7
Collocations Through August 15, 2000

	Kansas		Oklahoma	
	Complete	Pending	Complete	Pending
Physical	226	14	356	13
Virtual	8	1	9	0

NOTE: Excludes Advanced Solutions, Inc. (ASI)

37. The significance of collocation as a measure of the competitive activity is particularly demonstrated when the central offices where CLECs have chosen to collocate are more closely examined. As set out in Table 8 below, CLECs have chosen to collocate in Kansas

and Oklahoma wire centers that serve a large portion of the business and residential lines provided by SWBT. Thus, through collocation, facilities-based CLECs have positioned themselves to directly compete for a significant number of the customers – both business and residential – currently served by SWBT.

Table 8
Total Lines versus Lines in Collocation Wire Centers
In SWBT Kansas & Oklahoma Serving Areas

		August-00	August-00	August-00
		All Wire Centers	Collocation Wire Centers	Percent of Total
Kansas	Number of Wire Centers	209	38	18.2%
	Access Lines			
	Business	430,794	340,440	79.0%
	Residence	899,118	665,653	74.0%
	Public	14,375	10,741	74.7%
	Total	**1,344,287**	**1,016,834**	**75.6%**
Oklahoma	Number of Wire Centers	216	66	30.6%
	Access Lines			
	Business	546,617	480,783	88.0%
	Residence	1,119,509	885,425	79.1%
	Public	19,596	16,184	82.6%
	Total	**1,685,722**	**1,382,392**	**82.0%**

38. When currently pending collocations are completed, facilities-based CLECs will be in position to serve:

- In **Kansas** – 76.6 % of the total access lines and 79.8 % of the business lines currently served by SWBT.
- In **Oklahoma** – 83.1 % of the total access lines and 88.7 % of the business lines currently served by SWBT.

39. Several CLECs included in the calculations in Tables 7 and 8 above (@Link Networks, IP Communications, Jato, Maverix.net, New Edge Networks, and others) provide DSL or data services in other states and are now collocating in Kansas and Oklahoma. For example, Jato

provides DSL in Kansas City, Wichita and Topeka, Kansas and in Oklahoma City and Tulsa, Oklahoma.[11] A CLEC's decision to enter the market through data or DSL services in no way prevents that carrier from also providing voice grade telephone service. Further, the collocation activity of these CLECs demonstrates that they are positioning themselves to be able to provide a full range of services to the majority of Kansas and Oklahoma customers in the future. See discussion of other service providers later in our affidavit.

RESALE PROVIDERS

40. In addition to the previously mentioned facilities-based providers, numerous resale providers also provide service in SWBT's service territory. Kansas and Oklahoma resellers have attracted a significant number of residential customers, and several of the facilities-based providers also resell services, as seen in Table 9 below.

Table 9
Resold Lines in SWBT's Kansas & Oklahoma Territory as of August 2000

CLEC	Kansas			Oklahoma		
	Business Lines	Residence Lines	Total	[illegible]	[illegible]	[illegible]
Resale Only Providers	5,006	20,271	25,277	5,585	29,734	32,622
Sub-Total Facilities-based Resale-Only	43,488	25,993	69,481	15,021	4,341	16,367
Total Resale	48,494	46,264	94,758	17,421	37,260	54,681

NOTE: Coin is included in Business Lines

COMPETITIVE BENEFITS

41. SBC filed its Texas 271 Application with the FCC in January 2000. Approval was granted at the end of June, and SBC began offering Long Distance Service to subscribers in Texas on

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[11] Jato Communications, *Check DSL Availability: Service Areas by Cities*, http://www.jato.net/check_availability/check_availability.asp (updated Oct. 1, 2000).

July 10, 2000. The growth in local competition in Texas since SWBT's application was filed has been phenomenal.

Table 10
Growth in Competitive Indicators
Prior to Approval of Texas 271 Application
January to August, 2000

Competition Indicators	Texas
Lines Lost to Facilities Based CLECs	1,243,000 / 1,960,000 (% growth = 58%)
Total Lines Lost (includes resale)	1,590,000 / 2,340,000 (% growth = 47%)
Interconnection Trunks	398,000 / 505,000 (% growth = 27%)
Operational Physical Collocations	1,012 / 2,011 (% growth = 99%)
Unbundled Stand-Alone Loops	49,000 / 98,500 (% growth 99.8%)
Orders Processed (Electronic/Manual)	171,000 / 663,000 (% growth = 288%)
UNE Loop/Port Combinations	148,000 / 569,000 (% growth = 283%)

All numbers January / August 2000
% Growth = January through August 2000

42. Table 10 above shows the increase in CLEC volumes from the time that SWBT filed its Texas 271 application till that application was approved. In the six months leading up to approval of SWBT's Texas 271 Application, AT&T alone increased its UNE Platform combinations by 318%. Although AT&T has not yet entered the local market in Kansas or Oklahoma in a significant way, increased competition from all competitors will be seen as SWBT moves toward long distance approval for Kansas and Oklahoma.

43. For example, subsequent to the approval of the Texas application, Texas consumers joined New York consumers as the only states where AT&T Local One Rate promotional services are offered. This plan – bundling local and long distance into one package offering – was promoted through direct mail and telemarketing in Austin, Dallas, Houston, San Antonio and

south Texas, offering 60 minutes of free long distance to consumers as an incentive to choose AT&T Local One Rate for local and long distance service. Most importantly, as shown in Attachment D, the AT&T Consumer Sales & Services Contacts for AT&T Local Service list only two alternatives: New York – AT&T Local One Rate; and Texas – AT&T Local One Rate. No other states are apparently given these promotional alternatives, ONLY these states in which the incumbent Bell Operating Company has been given access to AT&T's long distance marketplace.[12]

44. In July, coincident with SBC's entry into the Texas long distance market, AT&T also reduced its Texas long distance rates in Texas (offered through the Texas One Rate Plan) by 50% -- from 15¢ a minute to 7¢ a minute. In addition, in a Wall Street Journal article on August 30, 2000.[13] AT&T is cited as launching a separate promotion (excerpted below):

AT&T to Offer Free Cable Telephony In Campaign to Hit Subscriber Goals
AT&T Corp., scrambling to meet a year-end promise to Wall Street to sign up thousands of new cable-telephony customers, plans to offer as many as five months of free local and long-distance service to people who subscribe. The new marketing campaign, which is expected to begin in a number of big cities on Friday, is aimed at boosting the number of AT&T consumers for "cable telephony," industry parlance for phone service over cable-TV lines. The campaign offers free installation and as many as five months of free local and long-distance phone service.

45. Sprint also rolled out new bundled local and long distance service offerings coincident with SWBT's Texas 271 Approval. Sprint offers two such plans: Sprint Local Unlimited with 7¢ Long Distance (unlimited local; 7¢ per minute for interstate, intra state and local toll calls, 24

[12] Three webpages may be consulted for this information: AT&T, *For Home:Customer Service Numbers, AT&T Residential Service*, http://www.att.com/help/callus/home/.; AT&T, *As Advertised: AT&T Local One Rate℠ New York*, http://www.att.com/local_service/ny/. ; and AT&T, *As Advertised: AT&T Local Service in Texas*, http://www.att.com/local_service/tx/. Interestingly, the AT&T Local One Rate promotion began in New York shortly before the FCC granted Bell Atlantic permission to offer long distance in New York. As of October 6, 2000, this promotional offering was not available in any other state.

[13] D. Solomon, *AT&T to Offer Free Cable Telephony in Campaign to Hit Subscriber Goals*, Wall Street Journal at A3 (Aug. 30, 2000).

hours a day 7 days a week; $26 monthly fee) and Sprint Local Unlimited with Nickel Nights (unlimited local; 5¢ per minute night interstate calls; 10¢ per minute other times; 10 ¢ per minute local toll and intrastate long distance; $20 monthly fee). Sprint also has offered promotional benefits to Texas consumers, such as waiving the monthly fee for up to a year for new subscribers.

46. WorldCom responded to SWBT's Texas 271 approval with the introduction of three new rate plans: MCI WorldCom 7¢ Anytime; 9¢ Anytime and WorldCom Weekends. Effective September 7 WorldCom also began offering Texas consumers different options (the One Company Advantage 200 and One Company Advantage 7 plans) for bundling local, local toll and long distance calling, as well as discounts on calling features.

47. These examples are only a sample of the competitive alternatives available to consumers in Texas today as a result of the approval of SBC's Texas 217 application. It is evident that opening the long distance market in Kansas and Oklahoma will further attract competition in both the local and long distance markets, to the significant advantage of the consumers in those states.

CONCLUSION

48. The evidence is clear that CLECs are providing service to "one or more unaffiliated competing providers of telephone exchange service…to residential and business subscribers." These services are provided by numerous CLECs either exclusively or predominantly over their own facilities. The Track A provisions of the Telecommunications Act have been satisfied. In addition, the competition provided by these CLECs has spread to nearly every community in Kansas and Oklahoma. The competitors have enlisted a wide variety of technologies to deploy networks and make advanced services available to both of these states.

49. The benefits of competition are evident and pervasive, and Southwestern Bell should be permitted to enter the long distance market in Kansas and Oklahoma.

50. This concludes our affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 9, 2000

____
Area Manager-Competitive Analysis

STATE OF TEXAS)

COUNTY OF DALLAS)

Subscribed and sworn to before me this ________ day of __________________, 2000.

____
Notary Public

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 9, 2000

____
Area Manager-Competitive Analysis

STATE OF TEXAS)

COUNTY OF DALLAS)

Subscribed and sworn to before me this ________ day of __________________, 2000.

____
Notary Public

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-14

White Pages Listings Counts Associated with Local Exchange Access Lines Served by Facilities-Based CLECs in Selected South Dakota Communities

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-15

Resold Access Line Counts in South Dakota

EXHIBIT DLT-16

SOUTH DAKOTA WHOLESALE VIEW
As of August 31, 2001

Products Provided	South Dakota
Total Number of UNE-P in Service (Cumulative)	16,411
Number of CLECs	5
Total Number of Stand-Alone UNE Loops in Service	1,392
Number of CLECs	6
Number of CLECs Utilizing Unbundled Loops (Stand-alone and Platform)	11
Total Number of Unbundled Dedicated Interoffice Transport (UDIT) in Service	3
Number of CLECs	2
Number of Interconnection Agreements Pending (Includes Wireline, Resale, Wireless, Paging, EAS, Opt Ins)	31
Number of Active Resellers	8
CLECs with LIS Trunks in Service	6
Total Minutes Exchanged (Local, Toll, and Transit)	62,685,701
Number of Completed Collocations	15
Number of Central Offices with Completed Collocations	5
Total Number of CLEC End User White Pages Listings (Cumulative)	46,299
Percent Access Lines with Local Number Portability (LNP) Available	100.0%

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-17

Unbundled Loops in Service in South Dakota

EXHIBIT DLT-18

CENSUS 2000 PHC-T-2, TABLE 1 – STATES RANKED BY POPULATION: 2000

Census 2000 PHC-T-2. Ranking Tables for States: 1990 and 2000
Table 1. States Ranked by Population: 2000

Note: 1990 populations shown in this table were originally published in 1990 Census reports and do not include subsequent revisions due to boundary or other changes.

Source: U.S. Census Bureau
Internet Release date: April 2, 2001

For information on confidentiality protection, sampling error, nonsampling error, and definitions, see http://factfinder.census.gov/home/en/datanotes/expplu.html.

Rank	Area	Census Population		Change, 1990 to 2000	
		April 1, 2000	April 1, 1990	Number	Percent
1	California	33,871,648	29,760,021	4,111,627	13.8
2	Texas	20,851,820	16,986,510	3,865,310	22.8
3	New York	18,976,457	17,990,455	986,002	5.5
4	Florida	15,982,378	12,937,926	3,044,452	23.5
5	Illinois	12,419,293	11,430,602	988,691	8.6
6	Pennsylvania	12,281,054	11,881,643	399,411	3.4
7	Ohio	11,353,140	10,847,115	506,025	4.7
8	Michigan	9,938,444	9,295,297	643,147	6.9
9	New Jersey	8,414,350	7,730,188	684,162	8.9
10	Georgia	8,186,453	6,478,216	1,708,237	26.4
11	North Carolina	8,049,313	6,628,637	1,420,676	21.4
12	Virginia	7,078,515	6,187,358	891,157	14.4
13	Massachusetts	6,349,097	6,016,425	332,672	5.5
14	Indiana	6,080,485	5,544,159	536,326	9.7
15	Washington	5,894,121	4,866,692	1,027,429	21.1
16	Tennessee	5,689,283	4,877,185	812,098	16.7
17	Missouri	5,595,211	5,117,073	478,138	9.3
18	Wisconsin	5,363,675	4,891,769	471,906	9.6
19	Maryland	5,296,486	4,781,468	515,018	10.8
20	Arizona	5,130,632	3,665,228	1,465,404	40.0
21	Minnesota	4,919,479	4,375,099	544,380	12.4
22	Louisiana	4,468,976	4,219,973	249,003	5.9
23	Alabama	4,447,100	4,040,587	406,513	10.1
24	Colorado	4,301,261	3,294,394	1,006,867	30.6
25	Kentucky	4,041,769	3,685,296	356,473	9.7
26	South Carolina	4,012,012	3,486,703	525,309	15.1
27	Oklahoma	3,450,654	3,145,585	305,069	9.7
28	Oregon	3,421,399	2,842,321	579,078	20.4
29	Connecticut	3,405,565	3,287,116	118,449	3.6
30	Iowa	2,926,324	2,776,755	149,569	5.4
31	Mississippi	2,844,658	2,573,216	271,442	10.5
32	Kansas	2,688,418	2,477,574	210,844	8.5
33	Arkansas	2,673,400	2,350,725	322,675	13.7
34	Utah	2,233,169	1,722,850	510,319	29.6
35	Nevada	1,998,257	1,201,833	796,424	66.3
36	New Mexico	1,819,046	1,515,069	303,977	20.1
37	West Virginia	1,808,344	1,793,477	14,867	0.8
38	Nebraska	1,711,263	1,578,385	132,878	8.4
39	Idaho	1,293,953	1,006,749	287,204	28.5
40	Maine	1,274,923	1,227,928	46,995	3.8
41	New Hampshire	1,235,786	1,109,252	126,534	11.4
42	Hawaii	1,211,537	1,108,229	103,308	9.3
43	Rhode Island	1,048,319	1,003,464	44,855	4.5
44	Montana	902,195	799,065	103,130	12.9
45	Delaware	783,600	666,168	117,432	17.6
46	South Dakota	754,844	696,004	58,840	8.5
47	North Dakota	642,200	638,800	3,400	0.5
48	Alaska	626,932	550,043	76,889	14.0
49	Vermont	608,827	562,758	46,069	8.2
(NA)	District of Columbia	572,059	606,900	-34,841	-5.7
50	Wyoming	493,782	453,588	40,194	8.9
(NA)	United States	281,421,906	248,709,873	32,712,033	13.2

CONTINUATION

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Pgs [ ]

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

AFFIDAVIT

OF

MARK S. REYNOLDS

PERFORMANCE ASSURANCE PLAN

OCTOBER 24, 2001

TABLE OF CONTENTS

AFFIDAVIT

OF

MARK REYNOLDS

Performance Assurance Plan

Mark Reynolds declares as follows:

My name is Mark Reynolds. My business address is 1600 7th Avenue, Room 3206, Seattle, Washington 98191. I am Senior Director – Financial Advocacy for Qwest Corporation ("Qwest"). As Senior Director – Financial Advocacy for Qwest, I am responsible for the Qwest Performance Assurance Plan. I am also responsible for a variety of financial matters that come before the state commissions that regulate Qwest.

Education and Professional Experience

My formal education consists of a Bachelor of Arts from Oregon State University (1977) and a Masters of Business Administration (1979) from the University of Montana.

My professional experience in the telecommunications industry spans 23 years working for Qwest and its predecessors, U S WEST Communications (U S WEST) and Pacific Northwest Bell. I have held various director positions in costs, economic analyses, pricing, planning and interconnection for U S WEST in the marketing and regulatory areas. I was responsible for ensuring economic pricing relationships between and among U S WEST's product lines, including telephone exchange service, long distance, and switched/special access services. I represented U S WEST, both as a professional pricing policy witness, and as the lead company representative, in a number of state regulatory and industry pricing and service unbundling workshops.

Next I managed an organization responsible for the economic analyses and cost studies that supported U S WEST's tariffed product and service prices and costs before state and federal regulators.

In the recent past, I managed U S WEST's interconnection pricing and product strategy and the interconnection negotiation teams that were responsible for negotiating interconnection and resale contracts with new local service providers. Also, I managed U S WEST's cost advocacy and witness group which was responsible for providing economic cost representation in telecommunications forums, workshops and regulatory proceedings. Finally, prior to my recent appointment in the Finance organization, I was responsible for a number of 271 related regulatory projects including checklist item performance, data verification, and wholesale product pricing support.

I. EXECUTIVE SUMMARY

As part of the FCC's consideration of Qwest's section 271 application, the FCC will "assess whether the requested authorization would be consistent with the public interest, convenience and necessity."[1] As a part of its analysis, the FCC will consider

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1 Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, 15 FCC Rcd 3953, ¶ 422; (rel. Dec. 22, 1999), *aff'd*, 220 F.3d 607 (D.C. Cir. 2000) ("Bell Atlantic New York Order"); Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Regions, InterLATA Services In Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, 15 FCC Rcd 18354, ¶ 416 (rel. June 30, 2000), *appeal voluntarily dismissed*, AT&T v. FCC, No. 00-1295 (D.C. Cir. Mar. 1, 2001) ("SBC Texas Order").

two factors: (1) whether Qwest has opened its markets to competition, and (2) whether Qwest has provided sufficient assurance that the markets will remain open after the application is granted.[2] The first question is addressed by Qwest's demonstration to the South Dakota Commission that it meets the section 271 checklist. The second question is answered by the presence of a performance assurance plan.

The primary purpose of my Declaration is to demonstrate that Qwest will be subject to a comprehensive self-executing performance measurement and enforcement mechanism, namely Qwest's Performance Assurance Plan (QPAP) and that the QPAP meets the FCC's expectations. The QPAP is voluntarily submitted as Exhibit K of the Qwest Statement of Generally Available Terms and Conditions ("SGAT") for the purpose of demonstrating to this Commission and the FCC that Qwest will have compelling economic incentives to continue meeting the requirements of section 271. By its voluntary terms, Qwest's liability under the PAP will commence once section 271 authorization from the FCC for the state of South Dakota is effective. The plan, based on the FCC-approved SBC-Texas performance assurance plan, was further refined through an extensive collaboration with the ROC representatives, including representatives from the South Dakota Public Utilities Commission, and the CLECs. The QPAP includes a comprehensive set of performance measures and an associated set of liquidated damages payments to the CLECs, as well as payments to either a state fund administered by the Commission or the South Dakota State Treasury, in the event

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2 *See* Bell Atlantic New York Order, ¶ 422-23; SBC Texas Order, ¶¶ 416-17.

Qwest's performance falls below specified levels. The QPAP is provided as Exhibit MSR-QPAP-1 to my testimony.

My Affidavit will also address the extensive background associated with the development of the QPAP. As a sign of Qwest's commitment to offer a rigorous performance assurance plan, Qwest initially adopted the key structural aspects of the FCC-approved Southwestern Bell Telephone Company ("SBC") performance assurance plan for the State of Texas[3]. Qwest then engaged in months of workshop sessions with state staff members and CLECs under the auspices of the Regional Oversight Committee ("ROC")[4]. Through this collaborative process, Qwest demonstrated a willingness to compromise its proposed PAP to take into consideration reasonable proposals from CLECs. The sessions resulted in substantial consensus with many participating CLECs over the three major structural aspects of the QPAP: the performance measurements to be included in the QPAP, the statistical methodology which determines whether the performance meets the standard, and the basis for the

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[3] Nearly identical plans were approved by the FCC for SBC's Kansas and Oklahoma applications. *See* Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, 16 FCC Rcd 6237 (rel. Jan. 22, 2001), *pet. for review filed sub nom.*, Sprint v. FCC, No. 01-10761 (D.C. Cir. filed Feb. 16, 2001) ("SBC Kansas Oklahoma Order").

[4] The Regional Oversight Committee ("ROC") is comprised of the 14 state public utility commissions servicing the states in Qwest's in-region operating territory. The ROC has been played a key role in the evaluation of various aspects of Qwest's 271 evidence including the '3rd Party Test' of Qwest's operational support systems ("OSS"), performance measure development and auditing, and performance assurance plans.

payment amounts to be applied to non-conforming performance results. With its genesis in the FCC-approved SBC-Texas provisions and the revisions resulting from the ROC workshops, the QPAP is a robust performance assurance plan that satisfies the necessary criteria for the Commission to recommend that Qwest's section 271 filing is in the public interest and will provide protection against performance backsliding after Qwest obtains long distance entry.

II. REVIEW STANDARD

The Telecommunications Act of 1996 requires Qwest to provide CLECs with ongoing nondiscriminatory access to the items specified in the 14 point checklist, including access to Operations Support Systems ("OSS"). In connection with the FCC determination of whether section 271 approval is consistent with the public interest, it has considered whether the applicant can demonstrate that the local exchange market will remain open to competition after approval has been granted.

Unlike checklist items that are included in the SGAT, the QPAP represents an undertaking that is not required under sections 251, 252 or 271 of the Telecommunications Act. The FCC has never required Bell Operating Company ("BOC") applicants to demonstrate that they are subject to performance monitoring and enforcement mechanisms as a condition of section 271 approval. However, where a BOC has voluntarily provided a performance assurance plan, the FCC has stated that these mechanisms would constitute "probative evidence" that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest.[5]

In evaluating the QPAP, the Federal Communications Commission's ("FCC") will examine whether the mechanism "fall[s] within a zone of reasonableness" and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."[6] To guide this analysis, the FCC has identified five key characteristics of an acceptable performance assurance plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data are accurate.[7] After reviewing the QPAP, this Commission can determine that the QPAP embodies the

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5 *See, e.g.*, Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4161 ¶ 422 (1999), *aff'd*, 220 F.3d 607 (D.C. Cir. 2000) ("*BA-NY*") and Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, 18559-60 ¶ 420 (2000), *appeal voluntarily dismissed*, AT&T v. FCC, No. 00-1295 (D.C. Cir. Mar. 1, 2001) ("*SWBT-Texas*").

6 Bell Atlantic New York Order, ¶ 433.

7 *See* Bell Atlantic New York Order, ¶ 433.

criteria articulated by the FCC and provide a recommendation that Qwest's application is in the public interest.

III. BACKGROUND

In August 2000, the state regulatory commissions from 11 of Qwest's 14 in-region states invited interested parties to participate with them and Qwest in collaborative workshops to develop a post-271 entry performance assurance plan.[8] This collaborative, which became known as the ROC Post Entry Performance Plan ("PEPP") collaborative, held a series of conference calls and five multi-day workshops between October 2000 and May 2001. Staff members from the 11 states as well as AT&T, WorldCom, New Edge, Z-Tel, Covad, McLeod, Eschelon, XO, Southwestern Bell and other CLECs participated in the workshop process.

In the beginning, the collaborative reviewed Qwest's proposed performance assurance plan, in addition to a number of CLEC proposed plans that had vastly different statistical procedures, payment structures, and administrative provisions. With oversight and guidance provided by the project manager, Maxim Telecom Group ("MTG"), the collaborative engaged in exhaustive presentations and debate of the different elements of the proposed plans. In the end, the CLECs agreed to set their proposed plans aside and focus on the Qwest proposed Performance Assurance Plan.

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8 Participating states included Idaho, Iowa, Nebraska, New Mexico, North Dakota, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. Arizona and Minnesota declined the invitation to participate. Colorado opened Docket 01I-041T on January 24, 2001 to separately consider a Performance Assurance Plan. In a similar parallel process, Arizona has been reviewing a Performance Assurance Plan since June 30, 2000.

Substantial closure was achieved on many essential parameters of a plan. Exhibit MSR-QPAP-2, to this Affidavit is MTG's final report, which lists the agreements reached and the areas in which the parties were unable to reach agreement.[9]

Subsequent to the PEPP collaborative, Qwest engaged in a nine-state review of the QPAP conducted by Mr. John Antonuk, as Facilitator. Qwest has incorporated the concessions it made in that process into the QPAP provided as Exhibit MSR-QPAP-1. The remaining unresolved issues raised in the ROC PEPP collaborative are either appropriately left out of the QPAP or addressed in a way that is consistent with the FCC's expectations. Accordingly, this Commission should accept Qwest's proposed plan, in its entirety, and recommend that the QPAP is in the public interest.

IV. QWEST'S PERFORMANCE ASSURANCE PLAN SATISFIES THE FCC'S REQUIREMENTS

As I demonstrate below, the QPAP satisfies the five key characteristics the FCC has identified for an acceptable performance assurance plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open

9 Appendix C of the MTG report, which contained an earlier version of the Qwest PAP, is omitted, as Qwest has provided its plan in the form of SGAT language

unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data are accurate.[10]

A. Qwest's potential liability under the QPAP provides a meaningful and significant incentive to comply with the designated performance standards.

The QPAP exposes Qwest to substantial financial liability. The FCC approved Bell Atlantic's application for New York and Southwestern Bell Telephone Company's applications for Texas, Oklahoma, and Kansas with those companies placing at risk 36% of net return as calculated from ARMIS data.[11] ARMIS data "represents total operating revenue less operating expenses and operating taxes" and is provided to the FCC on an annual basis.[12] The FCC found that a calculation of "net return" based upon this data was a "reasonable approximation of total profits derived from local exchange service."[13] The FCC considered 36% of net return sufficient incentive for the BOC to

and if reflects changes made to disputed sections made after the PEPP workshops.

[10] *See* Bell Atlantic New York Order, ¶ 433.

[11] *See* Bell Atlantic New York Order, ¶ 435 n.1332; SBC Texas Order, ¶ 424 n.1235; SBC Kansas Oklahoma Order, ¶ 274 n.837. In New York, this amount was subsequently increased due to concerns arising after section 271 approval. See Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, Case Nos. 97-C-0271, 99-C-0949 NY PSC (Nov. 3, 1999), available at http://www.dps.state.ny.us/fileroom/doc6721.pdf ("NY PSC Order").

[12] Bell Atlantic New York Order, ¶ 436; SBC Texas Order, ¶ 424.

[13] *Id.*

"maintain a high level of performance."[14] Qwest's PAP places $15 million annually at risk, an amount that represents 36% of Qwest's 1999 South Dakota net return. Attachment 3 of the QPAP shows the calculation of the $15 million.

CLECs have variously proposed that the cap on payments in the QPAP be raised above 36% of net return and that any "cap" be merely a "trigger" for investigation by the state commission. Those proposals are contrary to the FCC's acceptance of a 36% cap for other BOCs. There is no basis for asking Qwest to offer more. The purpose of the QPAP is to create significant financial incentive to Qwest to ensure against backsliding on service performance once section 271 approval is given to enter long distance markets. Financial risk does not have to be unlimited in order to be significant. The 36% net return standard has already been determined by the FCC to meet the significant financial incentive test.

It must be remembered that CLECs receive Tier 1 payments without a requirement to make a showing of economic harm. The absence of such a requirement is a significant benefit to CLECs that would not otherwise exist. There is no economic justification for CLECs to be given unlimited self-executing payments without the requirement to demonstrate economic harm.

B. The QPAP contains clearly articulated and pre-determined measures and standards that encompass a range of carrier-to-carrier performance.

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[14] Bell Atlantic New York Order, ¶ 435; SBC Texas Order, ¶ 424.

Payments under the QPAP are tied to effective enforcement measurements, which are well defined and comprehensive. The performance measurements defined by the Performance Indicator Definitions ("PIDs") form the foundation of the QPAP. These performance measurements were developed through months of collaboration with CLECs and state staff members in the ROC Operational Support System ("OSS") collaborative and cover Qwest's wholesale performance from preorder through provisioning and billing. Early in the ROC PEPP collaborative process, the parties agreed to take advantage of the ROC developed PIDs, rather than attempt to develop new or different performance measurements. It is appropriate to use these performance measurements given the significant participation, effort and consensus reached in the ROC OSS collaborative. Furthermore, the PIDs represent the very standard against which Qwest will be judged in determining whether it should receive section 271 approval, the precursor to any "backsliding" plan.

The PIDs are used to measure Qwest's wholesale performance in accordance with two types of standards. Where there is a retail analog to a wholesale product or service, Qwest compares the quality of its retail service to the service it provides CLECs. This standard is referred to as "parity" of service. Where comparable retail products, services, or functions do not exist, the wholesale measures are based on benchmarks, or fixed standards, to which the service provided to CLECs is compared.

At the beginning of the ROC PEPP collaborative there was substantial disagreement over which of the PIDs should be included in the QPAP. While the CLECs proposed that almost every measurement be included, Qwest objected because many of the measurements would have result in duplicative payments. In the end, through "give and take" and use of a "family-of-performance-measures" approach, the parties closed on a list of performance measurements. Some performance measurements share a payment opportunity, the so-called family approach, such that only the "family member" that generates the highest payment is paid. Under this approach, the incentive for maintaining conforming performance for all family members is created while reasonably keeping Qwest from paying multiple times for the same performance deficiency.[15] The ROC performance measurements will be finalized shortly after completion of the performance measurement audit in the ROC OSS Test Collaborative States and will be provided as Attachment B to the SGAT.

The QPAP also contains a built-in review mechanism to ensure that the performance measurements continue to be effective measurements of Qwest's wholesale performance. Every six months, the QPAP requires a review of the performance measurements, at which time the Commission and Qwest and participating CLECs may consider changes, additions and deletions to the measurements. This six-month review provision is described in section 16 of the QPAP.[16]

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15 Certain measurements were left out by agreement. Those measurements are ones which are "parity-by-design, are diagnostic, or which overlap other measurements included in the QPAP.

16 In implementing the SGAT language, Qwest has modified the QPAP language from the ROC PEPP version to indicate that PAP revisions can be made only with Qwest's consent.

Notwithstanding the parties' agreement to work from the already developed ROC performance measurements, Qwest subsequently agreed to include additional measurements in the QPAP for change management and local number portability.

All of the wholesale services and functions relied upon for different market entry strategies are measured by the performance measurements included in the QPAP. Resold services are separately measured in many of the pre-order/order, provisioning and repair performance measurements and compared to the services Qwest provides to its own retail customers. Resellers may also use pre-assembled combinations of unbundled network elements (the UNE-Platform or UNE-P), which are also separately measured in pre-order/order, provisioning, and repair measurements.

Some CLECs rely predominantly on their own loop and switching facilities, but require interconnection with Qwest. Interconnection services include LIS trunks and E911 trunks which are separately measured in the pre-order/order, provisioning, and repair measurements. Other interconnection-related functional areas, including collocation, trunk blocking, local number portability, and NXX code activation, are measured by individual performance measurements.

For CLECs that rely upon unbundled network elements, various performance standards apply depending on the functional areas of service provisioning. For example, all types of unbundled loops (analog, 2-wire non-loaded, 4-wire non-loaded, ISDN capable, ADSL capable, DS1 and DS3 and higher bit rates) are separately measured in the provisioning and repair performance measurements. Unbundled transport at the DS1 and DS3 levels also carry separate measurements.

In addition to the service-specific metrics addressed above, functional measurements are included in the QPAP for OSS electronic gateway access, access to Qwest's interconnection service centers, access to Qwest's repair centers, and for billing functions.

Overall, the performance measurements included in the QPAP are categorized in the following functional areas:

1) Electronic Gateway Availability
2) Pre-Order/Orders
3) Ordering and Provisioning
4) Maintenance and Repair
5) Billing
6) Network Performance
7) Collocation

Performance measurements in each of the above functional areas may include multiple sub-measurements covering different sub-processes, different wholesale services as discussed above, and several geographic disaggregations (i.e., dispatches within an MSA vs. dispatches outside an MSA; urban zone '1' vs. rural zone '2').

Most performance measurements are CLEC and state specific and would be applied at the individual CLEC level and just for the CLEC's South Dakota operations. A limited number of performance measurements are on a region-wide basis because the Qwest operations are regional in nature and state results cannot be separately identified.

The performance measurements that are included in the QPAP are listed on Attachment 1 and in section 7.4 of the QPAP. Mike Williams describes each of the PIDs in greater detail in his Affidavit.

C. The QPAP provides a reasonable structure that is designed to detect and sanction poor performance when and if it occurs.

(1) Payment criteria and structure

Qwest initially adopted the payment structure of the SBC-Texas performance assurance plan, which had been determined both by the Texas Commission and the FCC to be a reasonable structure that was effective in sanctioning poor performance. In the ROC PEPP workshops, Qwest made substantial improvements to the SBC-Texas payment structure that should leave little doubt that the QPAP is an acceptable performance assurance plan.

Like the SBC-Texas plan, the QPAP operates at two levels: Tier 1 operates at the individual CLEC level and provides for self-executing compensatory payments to CLECs and Tier 2 operates at the aggregate CLEC level and provides additional financial incentive payments to the state. Both Tier 1 and Tier 2 payments are based on designated performance measurements, with defined rules for determining whether Qwest meets or fails performance standards, and with clearly delineated steps for calculating payments.

Tier 1: Tier 1 provides payments to CLECs when Qwest fails to meet performance standards. Such a regime of measurements and payments in which an

ILEC, such as Qwest, makes self-executing payments to CLECs is justified only when the payments are a form of compensation. The QPAP is such a regime with an integrated structure of measurements and payments in which payment levels escalate depending upon the degree to which Qwest misses performance standards and the number of consecutive months of such misses.[17]

Each CLEC's South Dakota operating results will be measured and reported monthly against the performance standards defined in the performance measurements listed in Attachment 1 of the QPAP as Tier 1.[18] The performance measurements included in the QPAP are designated as Tier 1, Tier 2, or both, and carry one of three weightings (high, medium, or low).[19] As discussed above, the performance measurements have either "parity" or "benchmark" standards. For parity measurements, the determination of whether Qwest meets the parity standard is made with the aid of statistical tools that determine whether the performance results for the CLEC is statistically different than the performance results for Qwest's retail operations. This statistical evaluation will be performed in accordance with the methods described in sections 4.0 and 5.0 of the QPAP and as discussed further in the next section of this Affidavit. Sections 4.0 and 5.0 have been agreed to by most CLECs who participated in

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17 The Tier 1 Payment levels are identified in Table 2 of the QPAP.

18 The QPAP operates at the lowest level of disaggregation when the performance measurement results are reported by service type and geographic region.

19 Certain Tier 2 measurements are region-wide measurements which do not carry weightings (i.e., high, medium, or low) and for which reporting of specific CLEC results is not possible.

the ROC PEPP collaborative. For benchmark measurements, the determination of whether Qwest meets a benchmark standard is a straightforward comparison of CLEC results to the benchmark.

When Qwest fails to meet a performance standard, the percentage difference between the actual service level and the performance standard is calculated and that percentage is multiplied by the number of CLEC service units measured. The resulting number of units is then multiplied by the appropriate dollar amount specified in Table 2 of section 6.0 of the QPAP to determine the payment to the CLEC for that performance measure. This results in compensatory payments to CLECs for the CLEC's service units that fall short of meeting performance standards.

The payment amounts specified in Table 2 of section 6.0 of the QPAP vary depending upon the high, medium, or low weighting assigned to each performance measurements and the number of consecutive months Qwest may have failed to meet the performance standard for the specific CLEC. The payment amounts increase in value moving from low to high weightings and as the number of consecutive months of failing to meet the performance standard increases.

As a result of the ROC PEPP collaborative, Qwest agreed to incorporate the following Tier 1-related changes that make the QPAP more amenable to CLECs than the SBC-Texas PAP:

The QPAP contains a "step down" function which requires the payment amounts listed in Table 2 of the QPAP to stay at escalated levels rather than to return immediately to their beginning levels. The result is that escalation of payments for consecutive months of non-conforming service will be matched month-for-month with de-escalation of payments, instead of reverting to base levels after one month of conforming service. Thus, payments that had been escalated due to consecutive months of non-conforming service would step down, one month at a time, for every consecutive month of conforming service. This addition has the agreement of all but one CLEC who participated in the ROC PEPP collaborative.

All Tier 1 provisioning ("OP") and repair ("MR") measurements have been given the highest importance weighting. This change was made in response to CLEC claims that Tier 1 payment levels were insufficient.

Qwest agreed to eliminate caps on payments to CLECs for specific performance measurements. Payments to CLECs for failing to meet standards for certain performance measurements were initially capped at specified levels, similar to the SBC-Texas PAP. At the request of CLECs, Qwest considered and removed all caps, except those associated with the billing measurements.

Finally, during the collaborative, CLEC's requested that the ROC collocation performance measurements be used for the business rule definitions and requirements, but that payments would be calculated in accordance with a set schedule of 'per late day' escalating payments. Qwest adopted the proposed CLEC's proposed late-day structure and the corresponding payment. The per day payment schedule is as follows:

Table 1: Proposed Collocation Payment Amounts

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day

21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

The per day payment schedule would be applied to all collocation jobs in which the feasibility study or the completion of the job was later than the scheduled date. The calculation of the payment amount is performed by applying the per day payment amount progressively. Thus, for days 1 through 10, the payment is $150 per day. For days 11 through 20, the payment is $300 per day. For days 21 through 30, the payment is $450 per day. For days 31 through 40, the payment is $600. For days beyond 40, the payment is $1,000 per day.

For a collocation job that was 40 days late, the Tier 1 payment to CLECs would be $15,000, which almost exceeds the value of many collocation jobs. Thus, the CLEC proposed payment table from the ROC PEPP collaborative relates very well with the value of collocation jobs.

Tier 2: Tier 2 is similar in many regards to Tier 1, but serves a different purpose. Tier 2 acts as an additional layer of payments that are strictly incentive in nature.[20] As such, Tier 2 payments are made to either a state fund administered by the Commission or to the South Dakota Treasury, not to the CLECs. The Tier 2 payment structure is also a more limited regime of measurements and payments than Tier 1 and is based upon aggregated rather than individual CLEC performance results.

[20] Tier 1 payments, while compensatory to CLECs, also act as an incentive for Qwest to meet performance standards.

There are two different kinds of Tier 2 measurements. Because Tier 2 payments are made to the State, Tier 2 measurements include those with CLEC results that are aggregated into a state result, such as the provisioning and repair measurements, and those that are reported only a region-wide basis, such as the gateway measurements. Tier 2 measurements are paid on either a per occurrence or a per measurement basis. Tier 2 per occurrence performance measurements are listed on Attachment 1 of the QPAP and carry one of three weightings (high, medium, or low). Tier 2 region-wide measurements have separate provisions which are described in section 7.4 of the QPAP.

As a result of the ROC PEPP collaborative, Qwest changed several aspects of the Tier 2 payment structure for the region-wide performance measurements. CLECs requested a graduated payment structure in which payment levels are pre-specified and increase with the degree that Qwest misses performance standards. Also, in accordance with another CLEC request, Qwest agreed to eliminate the three consecutive month miss requirement for the region-wide measurements. Table 4 in the QPAP reflects these requests.

(2) Statistical methodology and benchmark standards

For performance measurements that have parity standards, the QPAP uses statistical tools to determine whether the service levels Qwest provides to CLECs is statistically different from the service levels Qwest provides to its retail operations. The primary statistical tool is the modified z-test, which is the standard statistical test for evaluating the difference between two means. The modified z-test is used when the

CLEC business volume for the performance measurement being evaluated is greater than 30. When the CLEC business volume is 30 or less, Qwest uses a permutation test. The statistical methodologies are specified in section 4.0 of the QPAP.

Qwest will be judged to have met a performance standard when the monthly performance results are such that the calculated z-test statistics are less than the critical z-values listed in Table 1, section 5.0 of the QPAP.

For performance measurements that have benchmark standards, Qwest will be judged to have met the standard when the monthly performance results equal or exceed the benchmark. If the benchmark is 95% or better, Qwest performance results must be at least 95% to meet standard.

While the statistical methodology, or even whether statistics should be used to determine whether Qwest meets parity performance standards, was vigorously contested in the ROC PEPP collaborative, most of the parties[21] were ultimately able to reach agreement. Participants were concerned with whether the methodology could adequately detect non-conforming performance when CLEC business volumes were small and whether it could be calibrated to differentiate between false failures (Type I errors) and false passes (Type II errors). The participants agreed to a statistical methodology that balances concerns about sample sizes, Type I and Type II errors, and statistical significance. Qwest eliminated the "K table" employed in the SBC-Texas PAP

[21] Only WorldCom and Z-Tel declined to participate in the ROC PEPP statistical agreement.

to account for random variation and agreed to use the critical values specified in Table 1 of the QPAP.

The agreed upon statistical methodology is straightforward. It uses a standard z-test, but adopts a different critical value for certain services. For certain services, the critical value is smaller, thereby making the test most stringent when CLEC volumes are less than 11. The result is a statistical methodology that is acceptable to Qwest and to large and small CLECs. A full description of the statistical methodology is provided in Sections 4.0 and 5.0 of the QPAP.

The determination of whether Qwest meets the parity standard for Tier 2 measurements is made with the aid of statistical tools similar to those used for Tier 1 measurements except that a 1.645 critical value is used rather than the critical values listed in Table 1 of Section 5.0. The determination of whether Qwest meets a benchmark standard is the same as for Tier 1 measurements. The calculation of Tier 2 payments is performed in the same manner as for Tier 1 measurements except that Tier 2 payment amounts are separately specified in Table 3 of the QPAP and Tier 2 payments are due only after missing performance standards three consecutive months.[22] A step-by-step description of calculating Tier 2 per occurrence payments is provided in section 9.0 of the QPAP.

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22 The region-wide measurements listed in section 7.4 of the QPAP are subject to their specific rules specified in section 7.4 of the QPAP.

(3) Quantification of the QPAP

Qwest believes that the QPAP payment structure, once operational, will produce results that are adequate sanctions for nonconforming performance. The QPAP tables[23] of payment amounts are directly from the SBC-Texas PAP. The Tier 1 payment amounts that range upward to $800, $600, and $400 (for high, medium, and low designations at the six-month level, respectively) applied to each CLEC service unit that fails to meet performance standards should be more than fully compensatory to CLECs for Qwest missing performance measurement standards. Furthermore, the additional $500, $300, and $200 Tier 2 payments, in combination with Tier 1 payments, should provide a powerful financial incentive to Qwest to meet performance standards both at the individual CLEC level and at the overall CLEC aggregate level.

The application of actual CLEC performance results to the QPAP payment structure demonstrates that the QPAP, once operational, will sufficiently sanction nonconforming performance. Thus, the Table in MSR-QPAP-3C shows the estimated South Dakota Tier 1 and Tier 2 payments Qwest would have paid for the three month period, May to July 2001, assuming 271 relief had been previously granted.

It should first be noted that Qwest met 93% of all performance measurement standards in South Dakota during May, June, and July 2001. That level of performance is exemplary.

[23] Tables 2 and 3 of the QPAP.

The "number of measurements" for each month represents the number of times Qwest wholesale service performance is measured against a performance standard and, thus Qwest is at risk to make a Tier 1 payment to a CLEC or a Tier 2 payment to either a fund administered by the Commission or the South Dakota Treasury.

The "number of missed measurements" is the number of times Qwest missed the performance standard for the applicable performance measurement. In other words, the number of missed measurements is the number of times Qwest provided non-conforming wholesale service and would make a Tier 1 or Tier 2 payment.

The "percent meets" is calculated from the total number of measurements and the number of measurements missed.

"Tier 1 and Tier 2 payment" is the estimated payment that Qwest would have made if the QPAP had been in effect. For the three-month period, the amount identified in MSR-QPAP-3C-A would have been the approximate Tier 1 payments to individual CLECs. "Payment per missed measurements" is the average Tier 1 and Tier 2 payment divided by the number of missed measurements.

At the average payment shown on MSR-QPAP-3C-B for every time a performance standard is missed, it is clear that the QPAP payment structure will be substantial financial incentive for Qwest to meet performance standards, even when overall service performance is already high, as evidenced by the overall percent meets of 93%. The primary reason is because the underlying wholesale services to which the missed performance standards relate generate far less revenues for Qwest than the payments it would be making. A simple comparison of QPAP payments with the associated wholesale service revenues will signal to Qwest management that it stands to lose money each time it fails to meet performance standards in processing CLEC service requests.[24]

For example, out of 3,107 completed South Dakota orders in May, June, and July, Qwest met the commitment due date 97.3% of the time. Only 5 of the missed commitments were not in conformance with the appropriate parity or benchmark performance standard for the relevant OP-3 measurement.[25] Nevertheless, the QPAP Tier 1 payments for the three provisioning performance measurements (OP-3, Installation Commitments Met; OP-4, Installation Interval; and OP-6, Delayed Days) would total the amount identified in MSR-QPAP-3C-C. Such a significant payment in relation to the few missed due dates indicates the adequacy of the QPAP payment structure.

Of 8,622 Firm Order Confirmation (FOC) notices sent to CLECs, only 76 were not issued on time. The Tier 1 payments to CLECs would have been the amount reflected on MSR-QPAP-3C-D, or approximately the amount reflected on MSR-QPAP-3C per late FOC. Many times the FOC relates to a service for which the CLEC pays Qwest $30 per month or less.

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24 The clear majority of wholesale services covered purchased by CLECs in South Dakota are resale services and unbundled loops that generally generate approximately $30 or less per month of local revenues.

25 The significance of the high percentage of time Qwest meets commitment due dates is that CLECs cannot logically claim economic harm since their retail customers' expectations for timely service were met.

D. The QPAP contains a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.

The QPAP provides for Tier 1 and Tier 2 payments that are self-executing whenever Qwest fails to meet performance standards.[26] CLECs will receive bill credits without any need to prove economic harm or to provide a quantification of such harm. Tier 2 payments will be made automatically to either a state fund administered by the Commission or the South Dakota Treasury via check or wire transfer. Step-by-step descriptions of the calculation of the payments are contained sections 8.0 and 9.0 of the QPAP. Section 14 specifies the timeline by which Qwest will produce and report performance results. Section 11 specifies the monthly due date for payment to the CLECs and the State.

The QPAP provides for limited situations in which Qwest is excused from making payments under the QPAP. Qwest has the burden of demonstrating its right to those exceptions. The relevant provisions are provided in sections 13 and 14 of the QPAP and are based upon the similar provisions of the SBC-Texas plan.[27]

The CLECs' request that Qwest be required to make cash payments to CLECs instead of issuing bill credits is inconsistent with the plans that were adopted as part of the section 271 approval processes in Kansas, Massachusetts, New York, Oklahoma, and Texas.[28] None of the performance plans in those states requires cash payments

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[26] Bell Atlantic New York Order, ¶ 441; SBC Texas Order, ¶427.

[27]

[28] *See, e. g.*, Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance

instead of bill credits. While the CLECs claim that cash is easier to administer than bill credits, they have neither explained nor demonstrated why that is allegedly the case. The financial management at a modern corporation is performed through its accounting system, not through its cash box. Whether paid in cash or by bill credit, CLECs must still enter the payment into its accounting system. Such systems disregard whether the payment originated as a bill credit or as cash. CLECs claim that cash would have a greater impact on Qwest than bill credits. This assertion is simply wrong and is based upon the mistaken view that the modern corporation still relies upon senior management hand-signing all checks. Whether by bill credits or cash, the visibility to Qwest senior management of payments to CLECs under this PAP will be through the monthly profit and loss statement that summarizes Qwest results.

Qwest also believes that bill credits are necessary as a matter of equity between Qwest and CLECs. This is because CLECs are routinely delinquent in paying their bills for local wholesale services rendered by Qwest. It would be inequitable and unfair that Qwest be required to pay CLECs for the installation of services for which Qwest is not receiving timely payments.

Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130, 16 FCC Rcd 8988, ¶ 238 (rel. April 16, 2001) ("Verizon Massachusetts Order"); Bell Atlantic New York Order, ¶ 432.

Specifically, Qwest is currently pursuing payment from two CLECs for completed collocation installations. The CLECs have declined to pay the final 50% of charges[29] because they have since altered their business plans and no longer desire the collocations. Under the penalty requirements of the QPAP, Qwest would be required to make payments to the two delinquent CLECs, had the collocation installation been completed late. If Qwest had been required to make cash payments rather than bill credits, the two CLECs would have pocketed the cash, creating the highly inequitable situation of the CLECs receiving cash from Qwest while refusing to pay Qwest for the collocation installations. Payment by bill credit would avoid this type of inequity.

To further support its position on the use of bill credits, Qwest would note that, on average, CLEC charges that are more than 30 days past due are 96% of current month billings.[30] By comparison, long distance carrier charges that are more than 30 days past due are 26% of current month billings. Qwest should not be required to fund CLECs' operations. Bill credits would avoid inequity and provide incentive to CLECs to pay their bills on time by reducing the amount of the bill.

The CLECs have expressed concern about their ability to account for and track penalty payments coming to them in the form of bill credits. At least a portion of the opposition to bill credits as the vehicle for QPAP payment stems from the CLECs' concern that QPAP payments will simply be lumped in with operational bill credits. In

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[29] Collocation installations require CLECs to pay a 50% down payment at the time the CLECs accepts the quote.

[30] Only about one-third of CLEC charges more than 30 days past due are being disputed by CLECs.

order to allay that concern, Qwest agreed in the ROC workshop to supply detailed statements showing exact QPAP payment calculations. Qwest agreed to provide the CLECs with sample statements showing the level of detail for penalty calculations that will accompany bill credits sent to the CLECs and to accept input from the CLECs relating to the design and lay-out of these statements. At the last ROC workshop, CLECs indicated that this information might eliminate their opposition to bill credits. Qwest provided the sample bill credit through an email sent to CLECs participating in the PEPP collaborative, however, no CLEC has since provided comment to Qwest about the sample bill format.

E. The QPAP provides reasonable assurances that the reported data are accurate.

The QPAP provides for extensive data validation and auditing.[31] Qwest has agreed to allow an independent party to perform a risk based audit of the performance measurements. Such an audit would focus on performance measurements that are at high risk for inaccuracies and which result in material payments. The audit would also focus on measurements that substantially change from manual to mechanized measurement. Qwest has added the risk based audit provisions to section 15.1 of the QPAP. Also, by the time that the QPAP becomes effective in South Dakota, the performance measurements that form the basis of the QPAP will have undergone not one, but two comprehensive audits of its data collection, calculation, and reporting

[31] *See* Bell Atlantic New York Order, ¶ 442; SBC Texas Order, ¶ 428; *see also* SBC Kansas Oklahoma Order, ¶ 278; Verizon Massachusetts Order, ¶ 247.

functions by two different independent auditors.[32] The CLEC audit provisions are patterned after the SBC-Texas plan and are provided in section 15 of the QPAP. Moreover, Qwest has included in its plan an adaptation of the root cause provisions that Texas agreed to incorporate after FCC approval. In Section 15.5 of the QPAP, Qwest has agreed to investigate any second consecutive Tier 2 miss and consecutive aggregate Tier 1 misses to determine the cause of the miss and to identify the action needed to meet the standard. The Qwest provision contemplates an investigation based upon aggregate, rather than individual, CLEC misses, as in the SBC-Texas provision. In Qwest's region, CLEC volumes are small and subject to wider variation. When volumes of orders are that low, a small number of missed orders could lead to a miss of the performance measurement. Requiring root cause analysis for consecutive months of small volume misses would be wasteful. To correct for this small volume, the QPAP root cause analysis provision relies on aggregate data.

The QPAP also provides for audits of the financial system that produces the payments, to be paid for by Qwest. The first audit begins 12 months after the effective date of the QPAP and a second audit 18 months after the first audit is completed. The necessity of any further audits may be considered during the six-month review. Furthermore, the Commission has the option of conducting these audits itself instead. Given these rigorous audit and root cause analysis provisions there is no basis for demanding that Qwest conduct comprehensive annual audits or submit to any

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32 The performance measures included in the QPAP were audited both by Liberty Consulting Group in the ROC OSS collaborative and by Cap Gemini Ernst &

additional audit process. On a related point, while Qwest does not believe that late reporting causes harm to CLECs, it has nevertheless agreed to pay a total of $500 to the State for each business day Qwest misses the reporting deadline.[33] This amount is sufficient in light of the fact that Qwest produces reports for the hundreds of individual CLECs and aggregate reports for each State at the same time. If the need to restate the data or a computer glitch causes late reports, it is likely that reports for all the States will be late. Accordingly, Qwest would be subject to this payment in each of its fourteen states.

V. SUMMARY AND CONCLUSION

For purposes of considering Qwest's South Dakota application, there is ample evidence from which the Commission may conclude that the QPAP is a robust and sufficient performance assurance plan. As its foundation, the QPAP adopted the key statistical methodologies, payment structure, and payment tables from the FCC approved SBC-Texas PAP. The QPAP was further enhanced through a collaborative process with the ROC, and CLECs operating in Qwest's region (including South Dakota). Quantification based upon actual South Dakota performance results

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Young in the Arizona collaborative.

33. The $500 represents the total payment for missing any deadline, rather than a payment per report.

demonstrate that the QPAP will provide substantial financial incentives and will meet the FCC's expectations for a post 271 performance assurance plan.

Being first duly sworn upon oath, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 19th day of October, 2001.

Mark S. Reynolds

Mark S. Reynolds

LORI L. WHITE NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES

STATE OF WASHINGTON)
) ss.
KING COUNTY)

Subscribed and sworn to before me this 19th day of October, 2001.

Lori L. White

Notary Public

My Commission Expires 7/10/03

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

EXHIBITS TO THE AFFIDAVIT

OF

MARK S. REYNOLDS

PERFORMANCE ASSURANCE PLAN

OCTOBER 24, 2001

INDEX TO EXHIBITS

Exhibit K
PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided with Tier 1 payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provides to its own retail customers, or Qwest fails to meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by the state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC is equivalent to that which it provides to its retail customers. The PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC and for Qwest retail analogue result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark is for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when the sample size is 5 or less in which case the rounding will be up to the nearest integer. For example, for a 90% benchmark, the number of allowable misses is 10% times the sample size, rounded to the nearest integer. If the sample size is eight observations, (10% multiplied by 8 = 0.8) is rounded to 1, one miss would be permitted, and the effective benchmark would be 88% (1 minus 1/8).

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth in Attachment 1. Each performance measurement identified is defined in the Performance Indicator Definitions ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, and which are included in the SGAT at Exhibit B. The measurements have been designated as Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The formula for determining parity using the z-test is:

$$z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

$$\text{DIFF} = M_{\text{Qwest}} - M_{\text{CLEC}}$$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root [σ^2Qwest (1/ n $_{CLEC}$ + 1/ n $_{Qwest}$)]

σ^2_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., $M_{CLEC} - M_{QWEST}$.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the z-statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).
Compute and store the z-test score (Z_S) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed.

5.0 Critical Z-Value

CONTINUATION

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5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8. For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for Tier 1 payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "per measurement."

TABLE 2: TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month

High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payment, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per day payment will be applied to any collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will be performed by applying the per day payment amounts as specified in Table 3.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day
21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated in section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrence payments and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.2 Determination of Non-Conforming Measurements: The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2 performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements) and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for parity measurements. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value for three consecutive months. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

7.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4 for the "Per Measurement" category.

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

7.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5: Tier 2 Per Measurement Payments to State Funds.

TABLE 5: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. or less	$1,000	$14,000
	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose that relates to the Qwest service territory that may be determined by the State Commission. If the Commission is not permitted by existing law to receive or administer the payments under a state fund, payments shall be made to the state general fund.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: Qwest shall identify the Tier 2 parity performance measurements that measure the service provided by Qwest to all CLECs for the month in question. The statistical testing procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used.

9.1.2 For each performance measurement that is identified as non-conforming, it shall be determined whether the non-conformance has continued for three consecutive months and whether there are at least 10 data points for each month. If the non-conformance meets these conditions, a Tier 2 payment will be calculated and paid as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard.

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated . The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The average for three months (rounded to the nearest integer) shall be calculated and multiplied by the result of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages for each of the three non-conforming months shall be calculated. The calculation for parity measurement is diff = (CLEC result – calculated percentage). This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period shall be calculated. The calculation is: diff = (CLEC rate – calculated rate). This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step for each month. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, the payment to the State Fund shall be the dollar amount shown on the "per measure" portion of the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayments at the one year Treasury rate. On any overpayments, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the one year Treasury rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be a cap on the total payments made by Qwest for a calendar year for the State. The cap amounts by state are shown in Attachment 3. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same or analogous performance under any other contract, order or rule) and Tier 2 assessments or payments made by Qwest for the same or analogous performance under another contract, order or rule.

12.2 The monthly cap will be determined by dividing the amount of the annual cap by twelve. The monthly cap shall be calculated by applying all payments or credits made by Qwest under this PAP as well as all payments made or credits applied for wholesale service performance pursuant to interconnection agreements, state rules or orders. To the extent in any given month the monthly cap (i.e., the annual cap divided by 12) is not reached, the subsequent month's cap will be increased by an amount equal to the unpaid portion of the previous month's cap.

12.3 In the event the annual cap is reached within a calendar year and Qwest continues to deliver non-conforming performance during the same year to any CLEC or to all CLECs, the Commission may recommend to the FCC that Qwest should cease offering in-region interLATA services to new customers.

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required under the SGAT or state rules; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that Tier 1 payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief. In no event is CLEC entitled to remedies under both the PAP and under rules, orders, or other contracts, including interconnection agreements, arising from the same or analogous wholesale performance. Where alternative remedies for Qwest's wholesale performance are available under rules, orders, or other contracts, including interconnection agreements, CLEC will be limited to either the PAP remedies or the remedies available under rules, orders, or other contracts and CLEC's choice of remedies shall be specified in its interconnection agreement.

13.7 If for any reason Qwest is obligated by any Court or regulatory authority of competent jurisdiction to pay to any CLEC that agrees to this QPAP compensatory damages based on the same or analogous wholesale performance covered by this QPAP, Qwest may reduce such award by the amount of any payment made or due to such CLEC under this QPAP, or may reduce the amount of any payments made or due to such CLEC under this QPAP by the amount of any such award, such that Qwest's total liability shall be limited to the greater of the amount of such award or the amount of any payments made or due to such CLEC under this QPAP. By adopting this QPAP, CLEC consents to such offset.

13.8 Qwest shall not be liable for both Tier 2 payments under the PAP and assessments, sanctions, or other payments for the same or analogous performance pursuant to any Commission order or service quality rules.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds $3 million in a month, or when all CLEC Tier 1 payments in any given month exceed the monthly cap, Qwest may commence a proceeding. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of the threshold amount into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, an application demonstrating why it should not be required to pay any amount in excess of the procedural threshold. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of the applicable threshold amount. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. Upon the Commission's request, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are due after a five business day grace period. This amount represents the total payment for missing any deadline, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

15.0 Audits/Investigations of Performance Results

15.1 After the QPAP is approved in the first of the nine states, Qwest will hire an independent auditor chosen from among the national firms with experience in testing and auditing the ILEC OSS and/or performance measurements and metrics to design a plan to identify and audit performance measurements in the QPAP that have a high risk of inaccuracy and are material. The audit of these measurements will occur over two years. The inclusion of any measurement in this program must be substantiated by the Liberty Audit Report. In addition, Qwest will retain the same auditor to audit measurements that change from substantially manual to substantially mechanized measurements. The same auditor will be chosen to conduct all CLEC audits provided for under the QPAP. None of the audits conducted pursuant to the QPAP, including audits initiated in other Qwest states, shall be duplicative or redundant.

Qwest will create a separate financial system which will take performance results as inputs and calculate payments according to the terms of the PAP. An independent audit of this financial system shall be initiated one year after the effective date of the PAP and a second audit shall be started no later than 18 months thereafter. The auditor will be chosen and paid for by Qwest. Alternatively, the Commission may choose to conduct this audit itself. The necessity of any subsequent audits of the financial system shall be considered in the six-month PAP reviews, based upon the experience of the first two audits. If as a result of the audit, it is determined that Qwest underpaid, Qwest will add bill credits to CLEC and/or make additional payments to the State for the amount underpaid. In the event Qwest overpaid, future bill credits to CLEC and/or future payments to the State will be offset by the amount of the overage. All under and over payments will be credited with interest at the one-year U.S. Treasury rate.

15.2 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The scope of the audit will be limited to performance measurement data collection, data reporting processes, and calculation of performance results and payments for a specific performance measurement. An audit may not be commenced more than 12 months following the month in which the alleged inaccurate results were first reported.

15.3 If an audit identifies a material deficiency affecting results, the responsible party shall reimburse the other party for the expense of the third-party auditor, (assuming the responsible party was not the party initiating the audit). In the event CLEC is found to be responsible for the deficiency, any overpayment made to CLEC as a result of the deficiency shall be refunded to Qwest with interest and any affected portion of future payments will be suspended until CLEC corrects the deficiency. In the event that Qwest is found to be responsible for the deficiency, Qwest will pay CLEC the amount that would have been due under the PAP, if not for the deficiency, including interest.

15.4 Neither CLEC nor Qwest may request more than two audits per calendar year for the entire region composed of the Qwest in-region states. Each audit request shall be limited to no more than two performance measurements per audit. For purposes of these provisions, a performance measurement is a PID, e.g., OP-3, Installation Commitments Met. CLEC agrees that Qwest shall not be required to conduct more than 3 audits at one time for the region composed of the in-region states, notwithstanding who has initiated the audit, and notwithstanding the provisions in this paragraph. This provision shall exclusively govern audits regarding performance measurements. Qwest agrees to inform Commission Staff and all CLECs of the results of an audit.

15.5 Qwest will investigate any second consecutive Tier 2 miss to determine the cause of the miss and to identify the action needed in order to meet the standard set forth in the performance measurements. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against future Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made. The relevant portion of subsequent Tier 2 payments will not be owed until any responsible

CLEC problems are corrected. For the purposes of this sub-section, Tier 1 performance measurements that have not been designated as Tier 2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

16.1 Every six (6) months, Qwest, CLECs, and the Commission shall review the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Changes shall not be made without Qwest's agreement.

16.2 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act.

18.0 Dispute Resolution

This section governs dispute resolution related to the QPAP. Dispute resolution shall be available only for disputes arising under the sections of the QPAP listed in this section 18.0. The mechanism for dispute resolution shall be the dispute resolution procedures specified in sections 5.18.2 through 5.18.8 of the SGAT. Dispute resolution under the procedures provided in those sections of the SGAT shall be the preferred but not the exclusive forum for the disputes specified in this section 18.0. Each party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. The sections of the QPAP for which dispute resolution is available are:

- Disputes arising under sections 13.3 and 13.3.1;
- Application of an offset against future payments under section 13.7;
- Proceedings under section 13.9;
- Payment adjustments for under- and over-payments under sections 15.1 and 15.3; and
- Establishment of good cause under section 15.2.

Attachment 1: Tier 1 and Tier 2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						X
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3			X		X	
Installation Intervals	OP-4[c]			X		X	
New Service Installation Quality	OP-5			X		X	
Delayed Days	OP-6[d]			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17						
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports – Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

6. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

7. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

8. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

9. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records - BI-1 (Tier 1/Tier 2)
Billing Accuracy - Adjustments for Errors - BI-3 (Tier 1)
Billing Completeness - BI-4 (Tier 1/Tier 2)

Attachment 3: Annual Cap on Qwest Payments

The South Dakota annual cap on payments shall be $15 million, based upon 1999 ARMIS reported local earnings:

(Millions)	
Interstate Net Return	$ 16,349
Total Intrastate Operating Revenue	$127,924
Total Intrastate Operating Expense	$ 81,546
Other Intrastate Operating Inc/Losses	$ 36
Total other taxes	$ 4,679
Intrastate Federal Income Taxes	$ 11,131
Net Return (Interstate and Intrastate)	$ 41,591
36% of Net Return	$ 14,973

Post Entry Performance Plan Final Collaborative Summary

June 5, 2001

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Final Collaborative Summary Document Contents

Project Process Overview

Introduction

This report summarizes the progress of the Qwest Post Entry Performance Plan collaboration (PEPP or collaboration). Part 1 provides a summary of the processes used by the PEPP. Part 2 contains a summary of those areas in which the parties reached agreement. Part 3 contains a summary of those areas in which the parties were not able to agree at the conclusion of the collaboration. The revised Qwest PAP will also be released as a part of the final collaborative documentation.

Part 1: Procedural Summary of the PEPP

A. Creation of the Collaboration

The Qwest Regional Oversight Committee (ROC) announced the creation of a collaborative to discuss a post entry performance plan for Qwest on August 9, 2000.[1] Initially, eleven states agreed to participate[2]; subsequently, Colorado withdrew from the collaboration and New Mexico joined.

After the announcement of the collaboration, the ROC solicited parties to participate in the effort. Interested parties were directed to register through a web site maintained by the Montana commission. A mailing list of state commission staff and another mailing list of all parties that registered were maintained for the duration of the project. A list of participants registered to the collaboration mailing list is attached as Appendix B.

The states and Qwest also agreed to contract for assistance in directing the collaboration. Maxim Telecommunications Consulting Group (MTG) and the National Regulatory Research Institute (NRRI) served as consultants to the collaboration under this agreement. The states directed the activities of the contractors through a staff committee; Qwest provided funding and other resources for the consultants and the collaboration.

B. Collaborative Process

The collaboration was set up to serve as a structured negotiation process. The process of creating a plan was broken down into three steps to acquaint parties with the issues and form increasingly detailed levels of consensus. The first phase consisted of the creation of a set of principles and a framework for a plan. The second phase included the presentation of various plan proposals and negotiation of common features. The last phase was the treatment of implementation.[3]

The process through which the parties communicated was four-fold. First, the parties met in face-to-face workshops. Second, the parties met by conference call on several occasions. Third, the parties communicated through the email list service created through the registration process. Fourth, the parties had access to a common repository of documents in a web site maintained by NRRI for the project.

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[1] http://www.nrri.ohio-state.edu/oss/Post271/Post271/roc_release_aug_2000.pdf
[2] The states that initially participated were Colorado, Idaho, Iowa, Nebraska, North Dakota, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. New Mexico initially monitored the process, then formally joined. Minnesota and Arizona declined the invitation to be involved at this time.
[3] See http://www.nrri.ohio-state.edu/oss/Post271/Post271/mtg_initial_plan_8-21-00.pdf.

The original plan called for three workshops and contained contingency plans for additional conference calls. In practice, face-to-face workshops proved more efficient and conference calls were dropped after December 2000. Likewise, the negotiation process proved to be complex and extended. Additional workshops were added to the process. The content of the conference calls and workshops are discussed more fully below.

To assist the parties in this process, the consultants prepared several documents that were refined by the parties. These documents are archived in the PEPP web site.[4] The key documents found there and used by the collaboration were agendas for each meeting and call, the draft of principles and framework for the plan, a decomposition of the various plans submitted by the parties that was regularly updated for each of the 2001 meeting through April, and various documents that summarized agreements on issues as they arose. Additionally, the web site archives the various proposals and comments the parties provided for each session.

As noted more fully below in the discussion of the content of the meetings, the parties completed much of the first two phases in the original design of the project. There is agreement on much of the structure of a performance plan's performance measurements, statistical structure, and basic remedy structure. Other details remain in dispute. The parties did not reach a detailed recommendation on the manner of bringing a particular plan to a state (the implementation phase), but it is expected that Qwest will make individual filings with each state to initiate that process.

C. Collaborative Meetings

The collaboration was conducted through a series of workshops and conference calls. The sessions are summarized below.

The collaboration commenced with an organizational call on August 21, 2001. During the call, the consultants outlined the process they intended to use for directing the collaborative efforts and discussed a governance model and scheduling.[5]

On October 2, 2000, the consultants distributed an initial set of documents containing a discussion of FCC's treatment of performance plans, a side-by-side analysis of the New York and Texas plans, and a draft set of principles and framework for a performance plan with a request for comments.[6]

On October 5, 2000, the parties met by conference call to discuss the initial distribution of materials.[7]

In response to the October 2, 2000 request for comments, Qwest, Comptel, McLeod, Worldcom, ALTS, ASCENT, COVAD, ICG, Montana Consumers' Counsel, Z-Tel, ATT, Allegiance, and Sprint filed comments.[8]

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[4] http://www.nrri.ohio-state.edu/oss/Post271/index.htm.
[5] http://www.nrri.ohio-state.edu/oss/Post271/Minutes/minutes8-21-00.htm
[6] http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm
[7] http://www.nrri.ohio-state.edu/oss/Post271/Minutes/minutes10-5-00.htm
[8] http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm

The first workshop was held in Denver on October 24 and 25, 2000 to discuss the framework and principles document and governance of the collaboration. Those discussions lead to high-level agreements on many of the principles. That agreement was captured in a revised principles and framework document. In addition, the parties proceeded on several other issues including a review of state enforcement authority and a collaborative governance process. Further the parties set a conference call for December 5 and 6, 2000.[9]

During the December 5 and 6, 2000 conference call, the parties addressed two major areas. First, there was an extended discussion on the governance of the collaboration. When it became apparent that agreement on governance was not going to emerge, Qwest offered to submit a new proposal. (Qwest subsequently withdrew that offer and indicated that it intended to proceed without a formal governance structure.[10]) Second, the parties generally completed discussion of the principles. Further discussion of the framework of the performance plan was suspended as the parties had already distributed proposed plans to the collaborative members. The consultants, therefore, agreed to roll the framework discussion into the discussion of the plans. At the end of the conference call, the parties agreed to an agenda for the next workshop scheduled for January 3 to 5, 2001 in Seattle.[11]

As noted previously, several parties submitted proposed plans between the first and second workshops. Qwest provided drafts of its variation of the Texas plan. In addition, ATT, Worldcom, and Z-Tel also submitted plans. A statement of principles was submitted by ASCENT through a letter addressed to Commissioner Rowe of Montana.[12]

These proposals and position papers became the grist for a decomposition of the various plan elements that structured the discussion for the next three workshops. The decomposition sought to identify the basic elements of the various plans and aggregate the proposals from the various parties concerning those elements. The decomposition then was used as an outline for discussion in the collaborative sessions.[13]

The parties then met in workshops on January 3 to 5 in Seattle,[14] February 13 to 15 in Denver,[15] and March 13 to 15 in Denver[16] to discuss items on the decomposition. In addition, parties made presentations to the collaboration at each of these sessions to detail generally the nature of their proposals (overviews of the various plans in Seattle) and the particular elements of their proposal (statistical approaches were discussed in the February Denver meeting and remedies were discussed in the March Denver meeting). Importantly, the performance measures to be included in the plan were largely agreed to at the March Denver meeting.

Following the discussion of remedies at the March Denver meeting, the states requested "price outs" of the various proposals for the discussion at the next workshop scheduled in Portland on April 24-26, 2001. Pursuant to various agreements concerning the confidentiality of the data, Qwest

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[9] http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm
[10] http://www.nrri.ohio-state.edu/oss/Post271/Post271/stevedavisltrp.pdf
[11] http://www.nrri.ohio-state.edu/oss/Post271/Minutes/dec_5&6_minutes.htm
[12] http://www.nrri.ohio-state.edu/oss/Post271/position_papers.htm
[13] For an early version of the decomposition, see http://www.nrri.ohio-state.edu/oss/Post271/Post271/Decomposition_ver2.pdf
[14] http://www.nrri.ohio-state.edu/oss/Post271/third_workshop_materials.htm
[15] http://www.nrri.ohio-state.edu/oss/Post271/fourth_workshop_materials.htm
[16] http://www.nrri.ohio-state.edu/oss/Post271/fifth_workshop_materials.htm

performed calculations for three states of the effects of its and the modified ATT plan of the remedy provisions. These calculations were presented to the collaboration on April 24 in Portland. Following extended discussion the parties at the Portland meeting agreed to use the Qwest plan as the basis for further negotiation and largely agreed to a statistical approach based on the Qwest plan model. (Z-Tel did not participate in the April meeting and subsequently registered objections to the proposal.)[17] At the conclusion of the April workshop, the parties agreed to a May meeting in Seattle.

The Seattle workshop took place on May 15 to 17, 2001.[18] At the beginning of this workshop several issues that remained open from the prior session were discussed and resolved. Qwest then presented a proposal on remedies to the parties. In response, the CLECs identified the major areas of concern they had with the Qwest proposal and the redline draft of the Qwest PAP they received on May 14, 2001. Qwest declined to discuss further the areas raised by the CLECs except for several areas of clarification on items that had been tentatively agreed to in prior discussions. It also left open the possibility of further discussions concerning higher remedies for high value services. At that point, Qwest indicated that further workshops would be unwarranted and that it would prepare a draft of the performance plan incorporating the areas of agreement previously reached and highlighting those areas that remain unresolved. These items (the Qwest revised performance plan, areas of agreement, and areas of disagreement) form the remainder of this report.

[17] http://www.nrri.ohio-state.edu/oss/Post271/sixth_workshop_materials.htm

[18] http://www.nrri.ohio-state.edu/oss/Post271/seventh_workshop_materials.html

List of Agreements

Part 2: List of Agreements

The following issues were discussed and agreed to by the collaborative.

A. Principles and Framework Items

1. The collaborative agreed on wording for Principles 4.1 through 4.5 at the October 24, 2000 workshop. This agreed upon wording is contained in the Revised Principles and Framework document posted on the collaborative web site.

B. PEPP Governance

1. The collaborative agreed to work without a defined governance structure.

C. Performance Measurements

1. The collaborative agreed that the PIDs would be used to define whether a measure was a parity or benchmark measure. The PIDs would also define how these measurements were to be evaluated.

2. A matrix of the PIDs that were discussed for inclusion in the plan appears as Appendix A of this document. The matrix outlines areas of agreement and areas of no agreement for the PIDs. This matrix contains an agreed upon structure of families for some of the PIDs. When a measurement family is defined, the collaborative agreed that the remedy would be calculated based upon the measurement resulting in the highest dollar value within the family.

D. Classification of Performance Measurements

1. Qwest proposed to increase the level of Tier 1 payments to CLECs by classifying Tier 1 measurements OP-8, OP-13a, MR-3, MR-5, and MR-6a, 6b, 6c as "high. (See attachment 1 of the Qwest PAP.) This agreement is captured in Appendix A of this document.

2. The collaborative agreed that Tier I remedies would be payable to the individual CLECs, while Tier II remedies will be payable to the states. Tier II remedies will be measured on an aggregate basis.

E. Statistical Methods

1. The collaborative agreed to evaluate benchmark measurements on a "stare and compare" basis.

2. The collaborative agreed to use the Modified Z approach to determine if the difference between the Qwest and CLEC means were statistically significant.

3. A step function to determine the critical z value to utilize for various sample sizes was proposed by Qwest and accepted by the collaborative after some discussion and modification. The proposal was accepted[19] as follows:

   1. K Table eliminated.
   2. For purposes of statistical testing on parity measurements, the following critical values will be used:

Sample Size	All Other	*LIS Trunks, UDITs, Resale, UBL – DS1 and DS3*
1-10	1.645	1.04*
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* Applies for individual month testing. For purposes of determining consecutive month misses, 1.645 shall be used. Zone 1 and zone 2 shall be combined.

4. Permutation testing will be used for sample sizes of $n \leq 30$. For benchmark measurements, a mathematical function (incorporated into the Qwest PAP) will determine the benchmark target for $n \leq 100$.

F. Payment Structure

1. The CLECs proposed a method to incorporate "sticky" (or "sliding") duration by incrementing and decrementing remedy levels for each month when the target is missed and/or met. This will be accomplished using the remedy table that exists in the Qwest PAP. Qwest accepted this proposal, and it was subsequently adopted by the collaborative.

2. The collaborative accepted Qwest's proposal to create a stepped penalty structure for the following Tier II measurements: GA-1, GA-2, GA-3, GA-4, GA-6, PO-1, OP-2, and MR-2. The Tier II remedies will be implemented on the month the measure is missed (rather than after 3 months, as originally proposed). PO-1 will be collapsed to EDI and GUI for remedy calculations. The following penalties apply:

GA Measurements	*Remedy Level*
$\leq$ 1%	\$1,000 / \$14,000
> 1% to 3%	\$10,000 / \$140,000
> 3% to 5%	\$20,000 / \$280,000
> 5%	\$30,000 / \$420,000

[19] Note in the next section that additional features were proposed and are in dispute.

OP-2 and MR-2	*Remedy Level*
≤ 1%	$1,000 / $14,000
> 1% to 3%	$5,000 / $70,000
> 3% to 5%	$10,000 / $140,000
> 5%	$15,000 / $210,000

PO-1	*Remedy Level*
2 sec. or less	$1,000 / $14,000
>2 sec. To 5 sec.	$5,000 / $70,000
>5 sec to 10 sec.	$10,000 / $140,000
> 10 sec.	$15,000 / $210,000

G. Cap on Payments

1. The collaborative accepted the following proposal offered by Qwest regarding per-measure caps:
   a. Remove the cap on PO-3
   b. Retain the cap on BI-1, BI-3, and BI-4
   c. Remove the cap on PO-1 (this measure will become a per-measure measure rather than a per-occurrence measure with a cap)
   d. Remove the cap on PO-7
   e. Do not divide by 24 on NI-1. The cap will be removed for NI-1 as well.
   f. Qwest will verify with the TAG that NI-1 will not be counted in the remedy calculations in the month when a TGSR is issued.

H. Other PAP Provisions

1. The collaborative agreed that RSIDs would not be combined for the purposes of remedy calculations.

2. Qwest will draft more general wording regarding the states' use of Tier II funds. This wording will be incorporated into the revised Qwest PAP.

3. Some reporting provisions were agreed to by the collaborative. Reports will be issued monthly to the CLECs and the states by the final day of the month following the month for which the performance results are being reported. There will be a grace period of 5 business days.

List of Unresolved Issues

Part 3: List of Unresolved Issues

The following issues were discussed, but no consensus was reached. The topics may be at impasse or open for further discussion as noted below.

A. Principles and Framework Items

2. The Framework items were not discussed separately as a specific workshop topic. The collaborative agreed to defer the Framework items and discuss the specific components of the plan as the meetings progressed.

3. The collaborative agreed on wording for Principles 4.1 through 4.5 at the October 24, 2000 workshop. This agreed upon wording is contained in the Revised Principles and Framework document posted on the collaborative web site. The Collaborative did not reach agreement on the wording for Principles 4.6 and 4.7. These Principles address the issues of exclusivity and enforcement.

B. Performance Measurements

3. Change management PIDs have been proposed by Qwest and are currently before the TAG. Any discussion of their inclusion in the PAP was deferred pending TAG consideration.

4. The CLECs proposed that "parity with a floor" be incorporated into PID standards. No specific proposal of benchmark "floors" was made. This proposal was made at the May 16, 2001 workshop. The collaborative had previously agreed to use the performance standard stated in the PID.

5. A matrix of the PIDs that were discussed for inclusion in the plan appears as Appendix A of this document. The matrix outlines areas of agreement and areas of no agreement for the PIDs.

C. Classification of Performance Measurements

1. Qwest proposed to increase the level of Tier 1 payments to CLECs by classifying Tier 1 measurements OP-8, OP-13a, MR-3, MR-5, and MR-6a, 6b, 6c as "high" and to decrease the level of Tier 2 payments to State Funds by classifying Tier 2 measurements OP-3, OP-4, OP-5, OP-6, MR-7, and MR-8 as "medium." (See attachment 1 of the Qwest PAP.) The CLECs accepted the Tier 1 classifications, but made the classification of the Tier 2 measurements contingent upon Qwest accepting the classifications of PO3, PO7, PO8, MR3, MR5, MR6, BI3, CP1, CP3, CP4 as Tier 2 in same manner as Tier 1 e.g. H, M, L. Qwest rejected the entirety of the CLEC counter-proposal. The CLECs inquired as to Qwest's response if only MR-3 and MR-5 were added as Tier2 measurements. Qwest stated that it would accept, if the CLECs were to make such a proposal. The Qwest proposal was left on the table for the CLECs to determine if they would formalize their inquiry as to MR-3 and MR-5.

2. The CLECs proposed that all performance measurements designated "low" be classified as "medium" and the "low" category be eliminated. Qwest rejected this proposal.

D. Statistical Methods

1. Certain CLECs proposed that a 1.04 critical value be used for statistical testing for all parity performance measurements with samples sizes of 11 or less. The collaborative had previously agreed to a statistical approach that eliminated the K-Table and substituted a table of varying critical value. (See section 5.0 of the Qwest PAP.) Included in this table is a 1.04 critical value applied to sample sizes of 10 or less for performance measurements involving LIS trunks and to DS1s and DS3s for UDITs, resale, and unbundled loops. Qwest rejected this proposal. The previously agreed to statistical approach stands.

E. Payment Structure

1. The CLECs proposed a payment structure for collocation that is that which was adopted by the Michigan Commission. This subject is under discussion in other venues and any agreements reached will be incorporated into the Qwest PAP for the participating ROC states.

2. The CLECs and Qwest discussed adjustments to the payment schedule for "high valued" services, defined as LIS trunks and DS1 and DS3 UDITs, resale, and unbundled loops. This subject is under discussion in other venues and any agreements reached will be incorporated into the Qwest PAP for the participating ROC states.

3. The CLECs proposed that severity of misses for percentage type measurements be incorporated into payment structure. No specific method was proposed. Qwest stated its opposition to the idea.

4. The CLECs proposed that there be no end to the escalation in the level of per occurrence payment amounts for consecutive month misses beyond six months. No specific dollar amounts were proposed. Qwest stated its opposition to the idea.

5. The CLECs proposed that the level of per occurrence payment amounts for the longer durations be increased. States indicated their preference for the per occurrence payment amounts at the shorter durations be decreased while those for the longer durations be increased. Qwest indicated its willingness to consider adjustments along the lines described by the states; however, no CLEC indicated acceptance of this concept.

F. Cap on Payments

1. Qwest proposes a cap on payments equal to 36% of net revenues. (See section 12.0 of the Qwest PAP.) Individual state cap amounts are shown on Attachment 3 of the Qwest PAP. The CLECs oppose a cap on payments and propose a cap act as a trigger for a service investigation by the state commission. Qwest opposes any cap other than a hard cap of 36%.

G. Other PAP Provisions

1. Audits and root cause analysis provisions were discussed by the collaborative. Qwest's proposal is section 15.0 in its PAP. No specific proposals were made by the CLECs. No consensus on this matter was reached.

2. The limitation provisions were discussed by the collaborative. Qwest's proposal is section 13.0 in its PAP. No consensus on limitations was reached.

3. The reporting provisions were discussed by the collaborative. Qwest's proposal is section 14.0 in its PAP. No consensus was reached as to payments for late reports, inaccurate reports, or incomplete reports.

4. Tier 1 payment method was discussed by the collaborative. Qwest's proposal is section 11.0 in its PAP. Qwest volunteered to work with CLECs and the states on the bill credit format and documentation of the payment calculation. No consensus was reached; however, the CLECs indicated that the information may satisfy their concerns over bill credits.

5. The CLECs propose that the PAP be effective upon state commission approval of the PAP. Qwest proposes that the PAP be effective upon FCC approval of its section 271 application for that state. (See section 13.1 of the Qwest PAP.) No consensus on this matter was reached.

6. The CLECs propose that at the effective date of the Qwest PAP that the initial payment levels reflect the number of consecutive months of misses prior to the effective date. No consensus on this matter was reached.

H. Other Topics

1. The CLECs proposed that the provisions of the PAP apply to special access services. No specific proposal of how such would be accomplished was made. Qwest opposed inserting special access as an issue for the first time in the May workshop and rejected the inclusion of special access on the basis that inclusion of special access was inappropriate.

Appendix A
PID Measurements Matrix

Appendix A
PID Measurements Martix

Measurements Matrix

ELECTRONIC GATEWAY AVAILABILITY		Tier I	Tier II	Agreement	No Agreement
GA-1	Gateway Availability - IMA-GUI		X		
GA-2	Gateway Availability - IMA-EDI		X		
GA-3	Gateway Availability - EB-TA		X		
GA-4	System Availability - Exact		X		
GA-6	System Availability - GUI Repair		X		
ORDERING AND PROVISIONING					
PO-1	Pre-Order/Order Response Times		X		
PO-2	Electronic Flow-Through			Diagnostic	
PO-3	LSR Rejection Notice Interval	X		Limited to a-1, b-1, c	X (Tier II)
PO-4	LSRs Rejected			Diagnostic	
PO-5	FOCs On Time (%)	X	X		
PO-6	Work Completion Notification Interval	X		Family w/PO-7	
PO-7	Billing Completion Notification Timeliness	X		Family w/PO-6	X (Tier II)
PO-8	Jeopardy Notice Interval	X			X (Tier II)
PO-9	Timely Jeopardy Notices	X			
PO-10	LSR Accountability			Diagnostic	
PO-15	Number of Due Date Changes per Order			Diagnostic	
ORDERING AND PROVISIONING					
OP-2	Calls Answered within Twenty Seconds -		X		
OP-3	Installation Commitments Met	X	X	Family 3a/3b, 3d/3e	
OP-4	Installation Interval	X	X	Family w/ OP-6	
OP-5a	New Service Installation Quality	X	X		
OP-5b	New Service Installation Quality			Diagnostic	
OP-6	Delayed Days	X	X	Combine 6a/6b, Family w/ OP-4	
OP-7	Coordinated "Hot Cut" Interval - UBL			Diagnostic	
OP-8	Number Portability Timeliness	X	X		
OP-13a	Coordinated Cuts On Time - UBL	X	X		
OP-13b	Coordinated Cuts On Time - UBL			Diagnostic	
MAINTENANCE AND REPAIR					
MR-2	Calls Answered within Twenty Seconds - Interconnect Repair Center		X		
MR-3	Out of Service Cleared within 24 Hours	X	*		X (Tier II)
MR-4	All Troubles Cleared within 48 Hours			Not Included	
MR-5	All Troubles Cleared within 4 Hours	X	*		X (Tier II)
MR-6	Mean Time to Restore	X		6a, 6b, 6c only	X (Tier II)
MR-7	Repair Repeat Report Rate	X	X		
MR-8	Trouble Rate	X	X		
MR-9	Repair Appointments Met			Not Included	
MR-10	Customer-Related Trouble Reports			Diagnostic	
BILLING					
BI-1	Time to Provide Recorded Usage Records	X	X		
BI-2	Invoices Delivered within 10 Days			Not Included	
BI-3	Billing Accuracy - Adjustments for Errors	X			X (Tier II)
BI-4	Billing Completeness	X	X		

Appendix A (continued)

DATABASE UPDATES		Tier I	Tier II	Agreement	No Agreement
DB-1	Time to Update Databases			Not Included	
DB-2	Accurate Database Updates			Not Included	
DIRECTORY ASSISTANCE					
DA-1	Speed of Answer - Directory Assistance			Not Included	
DA-2	Calls Answered within Ten Seconds - Directory Assistance			Not Included	
OPERATOR SERVICES					
OS-1	Speed of Answer - Operator Services			Not Included	
OS-2	Calls Answered within Ten Seconds - Operator Services			Not Included	
NETWORK PERFORMANCE					
NI-1	Trunk Blocking	X	X		
NP-1	NXX Code Activation	X	X		
COLLOCATION					
CP-1	Installation Interval	X			X (Tier II)
CP-2	Installation Commitments Met	X	X		
CP-3	Feasibility Study Interval	X			X (Tier II)
CP-4	Feasibility Study Commitments Met	X			X (Tier II)
CP-5	Quote Interval			remove	
CP-6	Quote Commitments Met			remove	
	* CLECs inquired if Qwest would agree to included MR-3 and MR-5 in Tier 2 as a resolution of Tier 2 measures and other proposals made by Qwest at the May 16, 2001				

Appendix B
PEPP Collaborative Participants

Appendix B
Collaborative Participants

NAME	ASSOCIATION
Andrea P. Harris	Allegiance Telecom
Kimberly M. Kirby	ALTS
John Finnegan	AT&T
Michael Kalb	AT&T
Michelle Engel	AT&T
Steve Weigler	AT&T
Timothy M. Connolly	AT&T
Molly O'Leary	Avista Communication
Mana Jennings-Fader	Colorado Ass't Attorney
Wendie Alstot	Colorado PUC
Lans Chase	Covad
Lise Strom	Davis Wright Tremaine
Joyce Hundleyus	DOJ
Mary Tee	Electric Lightwave
Mary Tee	Electric Lightwave
Nigel Bates	Electric Lightwave
Garth Morrisette	Eschelon
Gena Doyscher	Global Crossing
Amy Hartzler	ICG Communications
Julia Waysdorf	ICG Communications
Wayne Hart	Idaho PUC
Dennis Rosauer	Iowa Utility Board
John Ridgeway	Iowa Utility Board
Penny Baker	Iowa Utility Board
Vince Hanrahan	Iowa Utility Board
Andrew Newell	JATO
Rod Cox	McLeod USA
Todd McNally	McLeod USA
Mary Lohnes	Midcontinent Communications
Mike Lee	Montana
Allen Buckalew	Montana Consumer Counsel
John Bushnell	Montana Consumer Counsel
Kate Whitney	Montana PSC
Marla Larson	Montana PSC
Michael Lee	Montana PSC
Gene Vuckovich	Montana Rural Development
Theodore Otis	Montana Wireless, Inc
Bob Center	MTG
Denise Anderson	MTG
Marie Bakunas	MTG
Peggy Caraway	MTG
M. Marsh	Nebraska Commission
Chris Post	Nebraska PSC
Dick Palazzolo	Nebraska PSC

Appendix B (continued)

NAME	ASSOCIATION
William Taylor	NERA
Kathleen Shotsky	New Edge Networks
Penny H. Bewick	New Edge Networks
Karl Wyler	New Mexico
Maryanne Reilly	New Mexico Public Reg. Comm
Mike Ripperger	New Mexico Public Reg. Comm
Patrick Fahn	North Dakota PSC
Frank Darr	NRRI
Barbara Combs	Oregon PUC
Sterling Sawyer	Oregon PUC
Marlon "Buster" Griffing	QSI Consulting
Andrew Crain	Qwest
Barbara Brohl	Qwest
Bill Taylor	Qwest
Carl T. Inouye	Qwest
David Gonazales	Qwest
David Sather	Qwest
Dennis Wu	Qwest
Ione Wilkens	Qwest
Jeff Carmon	Qwest
Joanne Ragge	Qwest
Lynn Stang	Qwest
Mark Reynolds	Qwest
Michael Williams	Qwest
Nita Taylor	Qwest
Paul McDaniel	Qwest
Peter Cummings	Qwest
Wayne Kobbervig	Qwest
Douglas Hsiao	Rythms
Cheryl Boyd	SBC Telecom
Mark Mattson	SBC Telecom
Harlan Best	South Dakota PUC
Keith Senger	South Dakota PUC
Rolayne Wiest	South Dakota PUC
Barb Young	Sprint
Don Low	Sprint
Jim Kite	Sprint
Dennis Miller	Utah
Wendy Fuller	Utah
Judith Hooper	Utah Division of PUC

Appendix B (continued)

NAME	ASSOCIATION
Dave Griffiths	Washington Utilities & Trans Com
Tom Spinks	Washington Utilities & Trans Com
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Karen Kinard	Worldcom
Liz Balvin	Worldcom
Terry Tan	Worldcom
Thomas Priday	Worldcom
Tom Dixon	Worldcom
Mike Korber	Wyoming PSC
David LaFrance	XO Communications
Rex Knowles	XO Communications
George Ford	Z-Tel
Janet Livengood	Z-Tel