Four Rebuttal
Aff. of Lori Simpson

&

Aff. of David Teitzel

and Midcontinent;
03/25/02 - Corrected Page 1 to Qwest's Brief;
03/25/02 - Qwest's Data Requests to Black Hills FiberCom, Midcontinent and AT&T;
03/27/02 - Black Hills FiberCom's Reply Brief Re: Track A Proceedings;
03/27/02 - Reply to Qwest's Response to Motions filed by Black Hills FiberCom and Midcontinent Regarding Qwest's Section 271 Application;
03/28/02 - Order Admitting Nonresident Attorney (Jonathan Frankel);
04/03/02 - Rebuttal Affidavit of Larry B. Brotherson;
04/03/02 - Seven Rebuttal Affidavits of Margaret S. Bumgarner and Request for Confidential Treatment of Information;
04/03/02 - Three Rebuttal Affidavits of Thomas R. Freeberg;
04/03/02 - Affidavit of Mary Ferguson LaFave;
04/03/02 - Rebuttal Affidavit of Jean M. Liston;
04/03/02 - Rebuttal Affidavit of Lynn M. V. Notarianni;
04/03/02 - Rebuttal Affidavit of Mark S. Reynolds;
04/03/02 - Affidavit of Judith M. Schultz;
04/03/02 - Rebuttal Affidavit of Marie E. Schwartz;
04/03/02 - Four Rebuttal Affidavits of Lori A. Simpson;
04/03/02 - Two Rebuttal Affidavits of Karen A. Stewart;
04/03/02 - Pre-Filed Testimony and Data Reconciliation Reports of Robert L. Stright;
04/03/02 - Rebuttal Affidavit of David L. Teitzel;
04/03/02 - Reply Affidavit of Michael G. Williams;
04/04/02 - Order Granting Motions; Order Amending Procedural Schedule and Extending Hearing Dates;
04/04/02 - AT&T's Procedural Motion Regarding the Section 271 Process;
04/10/02 - Errata to the Affidavit of Kenneth L. Wilson;
04/12/02 - Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan;
04/15/02 - Qwest's Proposed Order of Witnesses;
04/16/02 - AT&T's Motion for Extraordinary Protective Order;
04/16/02 - Midcontinent's Request for Confidential Treatment of Information;
04/16/02 - Midcontinent's Response to Qwest's Data Requests of March 22, 2002;
04/17/02 - Supplemental Prefiled Testimony of W. Tom Simmons;
04/19/02 - Orders Admitting Nonresident Attorney (Lynn Stang, Robert Cattanach, John Devaney, Kara M. Sacilotto, Mary Rose Hughes, Shannon Heim, William Richardson, Charles Steese, Blair Rosenthal and Andrew Crain);
04/19/02 - Black Hills' Responses to Qwest's Data Requests for Black Hills;
04/22/02 - Revised Order of Witnesses;
04/22/02 - Affidavits of Barbara Brohl and Dennis Pappas;
04/22/02 - Supplemental Affidavit of Karen A. Stewart;
04/22/02 - Response to AT&T's Motion for Extraordinary Protective Order;
04/22/02 - Order Admitting Nonresident Attorney to Practice (Steven H. Weigler);
04/22/02 - Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April 18, 2002;
04/22/02 - Motion Regarding Proceeding on Third Party Testing of Qwest's OSS;
04/22/02 - Supplemental Affidavit of Larry B. Brotherson;
04/24/02 - Additional Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan;
04/25/02 - AT&T's Request for Confidential Treatment of Information;
04/25/02 - AT&T's Responses to Qwest's Requests for Information;
04/29/02 - Qwest's Submission of Alternative QPAP Proposals;
04/29/02 - QPAP Approved as Amended;
04/29/02 - Qwest's Motion to Enter AT&T's Track A Data Request Response into Evidence;
05/01/02 - Qwest's November 2001 through February 2002 Performance Data as

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-165

QWEST CORPORATION'S

REBUTTAL
AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 6 – UNBUNDLED NETWORK ELEMENTS - SWITCHING

APRIL 2, 2002

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REBUTTAL AFFIDAVIT

OF

LORI A. SIMPSON

Checklist Item 6 — Unbundled Network Elements – Switching

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 Rebuttal Affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this Rebuttal Affidavit, I show that AT&T's claims concerning Qwest's compliance with the Telecommunications Act of 1996 (Telecom Act) and the FCC's rules and orders are incorrect, and that Qwest complies with Checklist Item 6 of Section 271 of the Telecom Act and the FCC's orders and rules as they relate to unbundled network elements -switching.[1]

I. EXECUTIVE SUMMARY

In this Rebuttal Affidavit I show that AT&T's comments and claims concerning unbundled network elements – switching (unbundled local switching) are erroneous, or are already satisfied by Qwest as requested by AT&T and as reflected in Qwest's South

[1] 47 U.S.C. § 271(c)(2)(B)(vi).

Dakota SGAT filed with the Commission on October 24, 2001, and as reflected in Qwest's interconnection agreement with KMC Telecom V, Inc.[2] (KMC)

In summary, Qwest provides local unbundled switching in compliance with the Telecom Act and the FCC's rules and orders. For these reasons, the South Dakota Public Utilities Commission should find that Qwest has satisfied all of the requirements of Checklist Item 6.

II. QWEST'S RESPONSE TO AT&T'S ERRONEOUS CLAIMS CONCERNING UNBUNDLED NETWORK ELEMENTS - SWITCHING

A. MISDIRECTED CALLS TO QWEST'S AND CLECS' OFFICES

In its comments AT&T[3] claims Qwest attempts to take unfair advantage of misdirected CLEC customer call in violation of section 271. It is unclear why AT&T makes this argument since the South Dakota SGAT filed in South Dakota on October 24, 2001, and Qwest's interconnection agreement with KMC, provide exactly what AT&T seeks.

Specifically, after lengthy comments on this topic, AT&T proposes adding the words "seeking such information" at the end of the SGAT Section 9.23.3.17.[4] The October 24, 2001, South Dakota SGAT at Section 9.23.3.17, and Qwest's agreement with KMC, do just that, as follows:

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[2] The Interconnection Agreement between KMC Telecom V, Inc., and Qwest is attached to the Affidavit of Mr. Larry Brotherson on behalf of Qwest Corporation, dated April 2, 2002, as Exhibit LBB-GTC-1.

[3] Comments of AT&T dated March 18, 2002 (AT&T Comments) at p12

> 9.23.3.17 CLEC, or CLEC's agent, shall act as the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its End User Customers that they are End User Customers of CLEC. CLEC's' End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party **seeking such information**. [emphasis added]

Qwest's agreement with KMC also includes this identical provision, as follows:

> 9.23.3.17 CLEC, or CLEC's agent, shall act as the single point of contact for its End User Customers' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its End User Customers that they are End User Customers of CLEC. CLEC's' End User Customers contacting Qwest will be instructed to contact CLEC, and Qwest's End User Customers contacting CLEC will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party **seeking such information**. [emphasis added]

Qwest submits that this settles the issue raised by AT&T.

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4 AT&T Comments at pp14-15.

B. ACCESS TO ADVANCED INTELLIGENT NETWORK (AIN) SERVICES

In its comments, AT&T complains that it does not agree with the FCC's decision regarding access to AIN services with unbundled local switching.[5] AT&T states "that the FCC disregarded its own standards for determining whether a network element is proprietary or necessary."[6] Qwest does not agree that the FCC "disregarded" its own standard when it determined that ILECs do not have to provide access to the ILECs' AIN services, and AT&T has supplied nothing to suggest that Qwest is not acting consistently with the FCC's *UNE Remand Order*.[7]

As described in detail in my initial Affidavit concerning Checklist Item 6, Qwest complies with the FCC's requirements when it does not provide access to AIN services with unbundled local switching.[8] The FCC was very clear concerning this issue in the *UNE Remand Order*:

> We agree with Ameritech that unbundling AIN service software such as "Privacy Manager" is not "necessary" within the meaning of the standard in section 251(d)(2)(A). In particular, a requesting carrier does not need to use an incumbent LEC's AIN service software to design, test, and implement a similar service of its own. (820) Because we are unbundling the incumbent LECs' AIN databases, SCE, SMS, and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the

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[5] AT&T Comments at pp19-26.

[6] AT&T Comments at p20.

[7] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999), ("*UNE Remand Order*").

[8] *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation regarding Checklist Item 6, Unbundled Network Elements – Switching, dated October 24, 2001.

1 incumbent will be able to use these databases to create their own AIN
2 software solutions to provide services similar to Ameritech's "Privacy
3 Manager." They therefore would not be precluded from providing service
4 without access to it. **Thus, we agree with Ameritech and BellSouth that**
5 **AIN service software should not be unbundled.**[9] (Emphasis added.)

6 The FCC did order, however, ILECs to provide a requesting carrier with
7 unbundled access to the elements necessary for the CLEC itself to design, create, test
8 and deploy AIN-based services.[10] As required by the FCC, and as described in my
9 initial Affidavit, Qwest provides CLECs access to these elements.[11] Qwest's South
10 Dakota SGAT and Qwest's interconnection agreement with KMC establish that Qwest
11 offers each of the four required items to CLECs which allow CLECs to develop their own
12 AIN services: AIN databases/platform (sections 9.14.1.2 and 9.14.2.2); SCE[12] (section
13 9.14.1.1); SMS (section 9.13.1.1); and STPs (section 9.13.1.1). Because Qwest
14 provides CLECs access to each of the four required items so that CLECs can develop
15 their own AIN products, this restriction in no way disadvantages CLECs in their
16 providing services with unbundled local switching. Qwest complies with the plain
17 language of the FCC's *UNE Remand Order*.

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9 *UNE Remand Order*, ¶419. Footnotes 820 and 821 were omitted.

10 *UNE Remand Order*, ¶ 412.

11 *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation regarding Checklist Item 6, Unbundled Network Elements – Switching, dated October 24, 2001.

12 SGAT and KMC agreement section 9.14.1.1 does not use the exact phrase "service creation environment" or "SCE"; however, the "SCE" is referred to in 9.14.1.1 as "Qwest's AIN service application development process".

AT&T claims that "[I]t does not appear that Qwest's service appears in any way unique to warrant a finding that it should be classified as proprietary."[13] The FCC's ruling that AIN services are not subject to unbundling is not contingent upon a determination of whether Qwest's specific AIN services are proprietary. The FCC held that AIN features, by their very nature, are proprietary.[14] Furthermore, Qwest's AIN products are proprietary to Qwest as evidenced by the fact that they are covered by patents, trademarks and copyright protection.[15] AIN software programs are also trade secrets of Qwest having been created and written by Qwest engineers.

The foregoing demonstrates that Qwest is not obligated to unbundle its AIN features. This is underscored by the fact that this issue was previously raised by AT&T and went to "impasse" in each of 12 state 271 hearings and workshops. In each case, including in the multistate 271 process, Qwest's position has been sustained and approved. Furthermore, Dr. Griffing's testimony on behalf of the South Dakota Commission Staff recommends: "[t]he Commission should adopt the proposed resolution," recommended by multistate facilitator Mr. John Antonuk finding that Qwest meets all switch obligations.[16]

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[13] AT&T comments at p23.

[14] *UNE Remand Order*, ¶418.

[15] *See* Confidential-Proprietary Exhibit LAS-SWITCH-2C attached to my initial Affidavit concerning Checklist Item 6.

[16] Direct Testimony of Dr. Marlon Griffing at p98.

C. PROVISION OF UNBUNDLED LOCAL SWITCHING IN "EXEMPT" WIRE CENTERS WHERE EEL IS NOT AVAILABLE, IF ANY

This issue is not relevant in South Dakota given that none of the top 50 metropolitan statistical areas (MSAs) identified by the FCC is in South Dakota. However, AT&T comments on this issue in its South Dakota comments, so I will provide Qwest's reply below.

As AT&T notes in its comments, the FCC has determined that unbundled local switching is a UNE that ILECs must make available. The FCC also found:

> . . . that an exception to this rule is required under certain market circumstances. We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs).[17]

AT&T states in its comments that "[I]f an EEL is ordered by a CLEC and it cannot be provisioned by Qwest, Qwest must make the unbundled switching element available."[18]

Qwest does not agree with AT&T. The FCC's unbundled switching exemption is not dependent upon capacity availability for other services in impacted Qwest wire centers. The FCC, after a detailed analysis, determined that CLECs had adequate alternatives to unbundled switching in wire centers in density zone 1 of the top 50 MSAs. The FCC did not limit its analysis to wire centers without exhaust issues. The FCC did require ILECs to offer EELs in those wire centers, but it did not condition the

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17 *UNE Remand Order*, ¶¶ 253 & 278.

18 AT&T Comments at p26.

exception on a CLEC-specific/wire center-specific analysis of facility collocation. The focus regarding whether a particular CLEC has access to a particular EEL or collocation is misplaced. The FCC's analysis is based upon the alternatives available to CLECs in the aggregate, and not as to whether a particular CLEC has access to a desired transport element.

Accordingly, for the reasons noted here, the South Dakota SGAT and Qwest's interconnection agreement with KMC are appropriate as written.

D. AT&T INCORRECTLY CLAIMS THAT END USER CUSTOMERS SHOULD BE COUNTED ON A CUSTOMER LOCATION BASIS RATHER THAN A WIRE CENTER BASIS FOR PURPOSES OF APPLYING THE MARKET-BASED RATE

This issue is not relevant in South Dakota given that none of the top 50 metropolitan statistical areas (MSAs) identified by the FCC is in South Dakota. However, AT&T comments on this issue in its South Dakota comments, so I will provide Qwest's reply.

As AT&T notes in its comments[19], the FCC has held that unbundled switching is a network element.[20] However, the FCC made an exception, finding that ILECs do not have to provide unbundled local switching to customers with four or more lines in density zone 1 wire centers if the ILEC makes the EEL available.[21] Consistent with the FCC's clear language, Qwest will apply the exception on a wire center-wide basis.

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19 AT&T Comments at p28.

20 *UNE Remand Order*, ¶ 253.

21 *UNE Remand Order*, ¶ 253.

meaning it will count each end users' service throughout the entire wire center to determine whether the end user has four or more lines. AT&T, takes a contrary position: "It is AT&T's position that the line count should be done on a location-by-location basis."[22]

Qwest's position is consistent with the FCC's orders and rules, and AT&T's position is not. The FCC has provided as follows:

> We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired without access to unbundled switching **for end users with four or more access lines within density zone 1** in the top 50 metropolitan statistical areas (MSAs).[23]

The FCC is clear that the number-of-lines threshold is satisfied when an end user has "four or more lines within density zone 1." AT&T's request to erode the FCC's exception and make the end user have four or more lines at each end user customer geographic location within a density zone 1 wire center is contrary to the mandate of the FCC should be rejected.

This issue was raised by AT&T and went to "impasse" in the multistate 271 process where Qwest's position was sustained and approved. In this proceeding, Dr. Griffing's testimony on behalf of the South Dakota Commission Staff recommends this Commission accept the proposed resolution offered by the multistate facilitator.[24]

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[22] AT&T Comments at p28.

[23] *UNE Remand Order*, ¶253 (emphasis added).

[24] Direct Testimony of Dr. Marlon Griffing at p99.

E. AT&T CLAIMS THAT QWEST IS REQUIRED TO PROVIDE SWITCH INTERFACES AT THE GR-303/TR-008 LEVEL

AT&T comments extensively concerning its desire to have access to "unbundled local switching using GR-303/TR-008 interfaces."[25] It states, finally, in a footnote, that ". . . In a workshop in another jurisdiction, Qwest proposed SGAT language acceptable to AT&T. If this language is adopted in South Dakota, this issue would be closed for AT&T."[26] Qwest has included this language in the South Dakota SGAT filed on October 24, 2001 and in its interconnection agreement with KMC. The SGAT provides as follows:

> 9.11.1.1.2 Qwest offers access to GR-303 features and functionalities as outlined in this Section. As a condition of this virtual access, CLEC must deploy a Remote Digital Terminal (RT) "hosted" by a GR-303 capable Qwest Switch. Under this architecture, and dependent on the existence and availability of GR-303 in any given office, a CLEC may deploy any compatible GR-303 Remote Terminal under the following conditions:
>
> > 9.11.1.1.2.1 The Qwest Central Office must have existing GR-303 capability with spare capacity available for use by CLEC. In addition, while CLEC may deploy its choice of Remote Terminal, it must be compatible with the existing Qwest GR-303 interface.
> >
> > 9.11.1.1.2.2 The transport between the Qwest Switch and the CLEC RT may be purchased from Qwest or provided by CLEC. If transport is provided by Qwest, the Demarcation Point will be at a physical cross connect point at the RT. If transport is provided by CLEC, the Demarcation Point will be at a physical cross connect in the Qwest Central Office.
> >
> > 9.11.1.1.2.3 Concentration levels will be in keeping with Qwest's current standard of 4:1 at the Switch. The specific concentration ratios to be applied to the RTs will be determined on a case by case basis.

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[25] AT&T Comments at pp. 29-31.

[26] AT&T Comments at fn141.

9.11.1.1.2.4 The TR-057 interface at the RT will be disabled. This interface enables the universal DLC applications and offers access to the OSS, Provisioning, and performance monitoring systems from the RT. By disabling the TR-057 interface, Qwest ensures that it retains the physical and logical administration of the GR-303 interface and that security and system integrity concerns are minimized.

9.11.1.1.2.5 All traffic must be delivered at 64 clear channel, (i.e. voice compression will not be allowed).

9.11.1.1.2.6 GR-303 was designed for the delivery of circuit switched voice traffic as such, packetized traffic will not be accepted.

9.11.1.1.2.7 While Qwest will retain administration of the DLC, CLEC will be responsible for all traffic management. Changes in Provisioning will be made only at the request of CLEC. CLEC will be allowed to view channel availability and monitor traffic and blocking levels at the RT via a man-to-machine interface (MMI). The CLEC will not have the ability to make any changes as all Provisioning will be done solely by Qwest at CLEC's request.

9.11.1.1.2.8 The parties will be responsible for the repair and maintenance of facilities on their side of the Demarcation Point. It is assumed that this will be done in an as yet undeveloped cooperative manner.

9.11.1.1.2.9 This specific network architecture option for virtual access to the GR-303 interface listed in this section is available via the Special Request Process (SRP). Any request that materially deviates from the language in this section regarding access to the GR-303 interface must be submitted via the Bona Fide Request (BFR) process.

Qwest's agreement with KMC also includes this identical provision, as follows:

9.11.1.1.2 Qwest offers access to GR-303 features and functionalities as outlined in this Section. As a condition of this virtual access, CLEC must deploy a Remote Digital Terminal (RT) "hosted" by a GR-303 capable Qwest Switch. Under this architecture, and dependent on the existence and availability of GR-303 in any given office, a CLEC may deploy any compatible GR-303 Remote Terminal under the following conditions:

9.11.1.1.2.1 The Qwest Central Office must have existing GR-303 capability with spare capacity available for use by CLEC. In addition, while CLEC may deploy its choice of Remote Terminal, it must be compatible with the existing Qwest GR-303 interface.

9.11.1.1.2.2 The transport between the Qwest Switch and the CLEC RT may be purchased from Qwest or provided by CLEC. If transport is provided by Qwest, the Demarcation Point will be at a physical cross connect point at the RT. If transport is provided by CLEC, the Demarcation Point will be at a physical cross connect in the Qwest Central Office.

9.11.1.1.2.3 Concentration levels will be in keeping with Qwest's current standard of 4:1 at the Switch. The specific concentration ratios to be applied to the RTs will be determined on a case by case basis.

9.11.1.1.2.4 The TR-057 interface at the RT will be disabled. This interface enables the universal DLC applications and offers access to the OSS, Provisioning, and performance monitoring systems from the RT. By disabling the TR-057 interface, Qwest ensures that it retains the physical and logical administration of the GR-303 interface and that security and system integrity concerns are minimized.

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9.11.1.1.2.8 The parties will be responsible for the repair and maintenance of facilities on their side of the Demarcation Point. It is assumed that this will be done in an as yet undeveloped cooperative manner.

9.11.1.1.2.9 This specific network architecture option for virtual access to the GR-303 interface listed in this section is available via the Special Request Process (SRP). Any request that materially deviates from the language in this section regarding access to the GR-303 interface must be submitted via the Bona Fide Request (BFR) process.

This issue should be settled for AT&T.

III. CONCLUSION

For the foregoing reasons, Qwest has satisfied the requirements of Section 271(c)(2)(B)(vi) of the Telecom Act regarding unbundled local switching. The South Dakota Public Utilities Commission should conclude that Qwest satisfies Checklist Item 6.

That concludes my rebuttal testimony.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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 No. TC01-165**

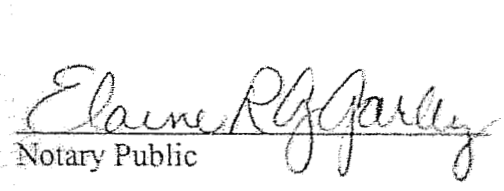
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 27th day of March, 2002.

Lori A. Simpson

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Subscribed and sworn before me this 27th day of March, 2002.



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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-165
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

REBUTTAL
AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 7(II) – DIRECTORY ASSISTANCE SERVICE

APRIL 2, 2002

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REBUTTAL AFFIDAVIT

OF

LORI A. SIMPSON

Checklist Item 7(II) — Directory Assistance Service

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 Rebuttal Affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this Rebuttal Affidavit, I respond to the testimony of Black Hills FiberCom (FiberCom), the only CLEC raising comments on Qwest's compliance with checklist item 7(II), access to directory assistance.[1] I show that FiberCom's claims concerning Qwest's compliance with the Telecommunications Act of 1996 (Telecom Act) and the FCC's rules and orders are incorrect, and that Qwest

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[1] Dr. Griffing, on behalf of Staff, also filed testimony relating to this checklist item. In his testimony, Dr. Griffing discusses an issue – whether Qwest must provide a "bulk download" of its calling name database – that WorldCom incorrectly labeled a checklist item 7(II) issue in the multistate workshop. See Griffing Testimony at p17. Access to calling name databases is a component of checklist item 10 and is addressed in the direct and rebuttal affidavits on checklist item 10 submitted by Margaret S. Bumgarner. Dr. Griffing recommends that the Commission adopt the multistate facilitator's recommendation on this issue and that he raises no additional issues regarding Qwest's compliance with this checklist item, 7(II), access to directory assistance.

REBUTTAL AFFIDAVIT

OF

LORI A. SIMPSON

Checklist Item 7(II) — Directory Assistance Service

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 Rebuttal Affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this Rebuttal Affidavit, I respond to the testimony of Black Hills FiberCom (FiberCom), the only CLEC raising comments on Qwest's compliance with checklist item 7(II), access to directory assistance.[1] I show that FiberCom's claims concerning Qwest's compliance with the Telecommunications Act of 1996 (Telecom Act) and the FCC's rules and orders are incorrect, and that Qwest

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[1] Dr. Griffing, on behalf of Staff, also filed testimony relating to this checklist item. In his testimony, Dr. Griffing discusses an issue – whether Qwest must provide a "bulk download" of its calling name database – that WorldCom incorrectly labeled a checklist item 7(II) issue in the multistate workshop. See Griffing Testimony at p17. Access to calling name databases is a component of checklist item 10 and is addressed in the direct and rebuttal affidavits on checklist item 10 submitted by Margaret S. Bumgarner. Dr. Griffing recommends that the Commission adopt the multistate facilitator's recommendation on this issue and that he raises no additional issues regarding Qwest's compliance with this checklist item, 7(II), access to directory assistance.

1 complies with Checklist Item 7(II) of Section 271 of the Telecom Act and the
2 FCC's orders and rules as they relate to access to directory assistance service.[2]

3 I. EXECUTIVE SUMMARY

4 In this Rebuttal Affidavit I show that FiberCom's testimony and claims
5 concerning directory assistance (DA) branding are erroneous. In summary,
6 Qwest provides nondiscriminatory access to DA service in compliance with the
7 Telecom Act and the FCC's rules and orders. For these reasons, and those set
8 forth in my previous affidavit, the South Dakota Public Utilities Commission
9 should find that Qwest has satisfied all of the requirements of Checklist Item 7(II).

10 II. QWEST'S RESPONSE TO BLACK HILLS FIBERCOM'S CLAIMS 11 CONCERNING DIRECTORY ASSISTANCE SERVICE

12 A. BRANDING OF QWEST'S DIRECTORY ASSISTANCE SERVICE FOR 13 BLACK HILLS FIBERCOM

14
15 Ms. Jheri Turner, on behalf of Black Hills FiberCom (FiberCom), provided
16 testimony concerning branding of Qwest's DA service with FiberCom's name. As
17 I described in my initial Affidavit concerning nondiscriminatory access to DA
18 service, CLECs may choose to have the CLEC's end users' calls to Qwest's DA
19 service branded with the name of the CLEC, where technically feasible. Qwest
20 charges a one-time nonrecurring charge for implementing CLEC-specific
21 branding, and there is no monthly recurring charge for branding.[3]

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2 47 U.S.C. § 271(c)(2)(B)(vii)(II).

3 *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation concerning checklist item 7(II), Directory Assistance, dated October 24, 2001.

1 Ms. Turner alleges in her testimony that there are "discrepancies" between
2 what I stated in my initial Affidavit concerning Qwest's "bench test" of its ability to
3 provide branding for CLECs, and FiberCom's experience in obtaining branding.[4]
4 Ms. Turner apparently misunderstands my testimony in my initial Affidavit
5 concerning Qwest's bench test.[5] First, Qwest's bench test was conducted for
6 several reasons, none of which applies to FiberCom's request for branding. The
7 bench test was undertaken because Qwest wished to show that it could, in fact,
8 provide unbundled local switching, customized routing, and associated CLEC-
9 specific branding of its DA and operator services in the absence of actual CLEC
10 orders for unbundled local switching and customized routing, and in the absence
11 of associated CLEC-specific branding requests. The bench test demonstrated
12 that Qwest is capable of providing branding for CLECs using Qwest's switch(es)
13 to provide local service, including access to DA service, (as well as unbundled
14 local switching and customized routing). FiberCom, however, does not use
15 Qwest's switch to provide local service, including access to DA service, for its
16 end users; FiberCom has its own switch. The process for implementing branding
17 differs for facilities-based CLECs using their own switches (such as FiberCom)
18 and for CLECs using Qwest's switch to provide local service to their end users.[6]

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[4] Testimony of Jheri Turner on behalf of Black Hills FiberCom (Turner Testimony) at pp.12-13.

[5] *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation, dated October 24, 2001.

1 Accordingly, the bench test referenced in my testimony does not apply to
2 FiberCom's branding request.

3 To be clear, however, Qwest does provide DA branding to facilities-based
4 CLECs. FiberCom and other facilities-based CLECs may use Qwest's DA
5 service or another third party's DA service, or they may choose to provide their
6 own DA service. FiberCom, and not Qwest, programs FiberCom's switch to
7 route its end users' DA calls to the trunks and transport facilities that carry its DA
8 calls to Qwest, to another third party DA service provider, or to its own DA
9 service.

10 With regard to Ms. Turners' testimony concerning FiberCom's experience
11 in obtaining CLEC-specific branding of Qwest's DA service, Ms. Turner does not
12 mention FiberCom's own delays in obtaining that branding.[6] In June of 2001,
13 FiberCom, which has chosen to use Qwest's DA service, was routing and
14 transporting its DA calls to Qwest's DA service. These calls were handled by
15 Qwest's Sioux Falls DA switch, which is not capable of providing multiple DA
16 brand messages. However, in September 2001, Qwest implemented a remote

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6 Ms. Turner states at p13 of her testimony that "[a]lthough Qwest represents that as of October 23, 2001, no CLECs had requesting branding in South Dakota," FiberCom had requested branding in June, 2001. My statement that no CLECs had ordered branding in South Dakota refers to CLECs using Qwest's switch, i.e., reseller CLECs and CLECs using Unbundled Local Switching and UNE-P. *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation, dated October 24, 2001.

7 *See* Turner Testimony.

1 DA switch in South Dakota that has the capability for multiple brand messages.
2 Accordingly, pursuant to its June branding request, Qwest notified FiberCom by
3 telephone on September 18, 2001, that Qwest could provide the requested
4 CLEC-specific branding via the remote DA switch, and that FiberCom should
5 transport its DA calls to the remote switch. On October 18, 2001, Qwest
6 received orders from FiberCom for installation of trunks from FiberCom's switch
7 to Qwest's remote DA switch. The order was returned to FiberCom because it
8 contained errors. Qwest received a correct order on November 8, 2001, and
9 Qwest sent FiberCom a firm order confirmation (FOC) on November 12, 2001,
10 and confirmed the standard due date of December 11, 2001, for installation of
11 the trunks. On the due date, December 11, Qwest called FiberCom at 605 721-
12 2071, and spoke to a FiberCom employee named "John." "John" advised Qwest
13 that FiberCom was not ready to accept the trunks at that time, and requested that
14 Qwest put the trunk order on hold until "after the holidays." On January 30, 2002,
15 Qwest again called FiberCom and spoke to someone it believed to be the same
16 employee, who stated that Qwest should hold the trunk order until February 4,
17 2002. On February 4 or shortly thereafter, FiberCom, not Qwest, asked that the
18 new trunks be reconfigured in a different arrangement where FiberCom
19 apparently would also use its existing trunks, thus requiring fewer new trunks.
20 Qwest agreed to do this, and according to Ms. Turner's testimony "on February
21 13, 2002, the branding was working properly. . . "[8] Thus, much of the delay in

[8] Turner Testimony at p13.

providing FiberCom's DA branding is the result of FiberCom's repeated requests that Qwest hold the trunks and then its request for reconfiguration of the trunks.

In summary, FiberCom's complaints about Qwest's performance in providing CLEC-specific branding for FiberCom's calls to Qwest's directory assistance service are unfounded. Qwest took all reasonable steps to supply the requested branding to FiberCom in a timely fashion.

III. CONCLUSION

For the foregoing reasons and those set forth in my initial affidavit, Qwest has satisfied the requirements of Section 271(c)(2)(B)(vii(II)) of the Telecom Act regarding nondiscriminatory access to directory assistance service. The South Dakota Public Utilities Commission should conclude that Qwest satisfies Checklist Item 7(II).

This concludes my rebuttal testimony.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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 No. TC01-165**

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 this 27th day of March, 2002.

Lori A. Simpson

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Subscribed and sworn before me this 27th day of March, 2002.

Notary Public

ELAINE R. GARLEY
NOTARY PUBLIC
HENNEPIN COUNTY, MINNESOTA

BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

RECEIVED
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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-165

QWEST CORPORATION'S

REBUTTAL
AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 8 – WHITE PAGES DIRECTORY LISTINGS

APRIL 2, 2002

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REBUTTAL AFFIDAVIT

OF

LORI A. SIMPSON

Checklist Item 8 — White Pages Directory Listings

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 Rebuttal Affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this Rebuttal Affidavit, I show that Midcontinent Communication's claims concerning Qwest's compliance with the Telecommunications Act of 1996 (Telecom Act) and the FCC's rules and orders are incorrect, and that Qwest complies with Checklist Item 8 of Section 271 of the Telecom Act and the FCC's orders and rules as they relate to white pages directory listings.[1]

I. EXECUTIVE SUMMARY

In this Rebuttal Affidavit I respond to the issues raised by Midcontinent Communications concerning white pages directory listings. In summary, Qwest provides white pages directory listings in compliance with the Telecom Act and the FCC's rules and orders. For these reasons, the South Dakota Public Utilities

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[1] 47 U.S.C. § 271(c)(2)(B)(viii).

Commission should find that Qwest has satisfied all of the requirements of Checklist Item 8.

II. QWEST'S RESPONSE TO MIDCONTINENT COMMUNICATIONS'S CLAIMS CONCERNING WHITE PAGES DIRECTORY LISTINGS

A. ISSUE 14 – CHECKLIST # 8 – WHITE PAGES DIRECTORY LISTINGS

Mr. W. Thomas Simmons, of Midcontinent Communications (Midcontinent), comments in its Affidavit that "it has experienced numerous problems with directory listings for resold customers." Mr. Simmons states that "[a] review of records in January and February, 2002 revealed 80 separate problems with residential directory listings . . ."[2] Midcontinent did not provide this list of 80 listings to Qwest so I cannot respond to the allegations of 80 listings errors. However, on January 25, 2002, Midcontinent did send its Qwest account manager an e-mail with *nine* listings that contained errors that made the listings appear as business rather than residential listings. These listings were apparently typed incorrectly by Qwest, and Qwest took immediate steps to have these listings corrected.

In addition, although he asserts that Qwest's directory listings performance relating to unbundled local loops is "statistically better than the resold product performance,"[3] Mr. Simmons claims that in "one instance" a directory listing of a

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2 Simmons Affidavit at pp4-5.

3 Simmons Affidavit at p4.

"business customer was missed in the August 2002 directory."[4] Qwest first learned of this assertion upon the review of Mr. Simmons' filed testimony. In that testimony, Mr. Simmons fails to provide any specific information that would allow Qwest to identify the customer at issue or any of the details surrounding the alleged listings error. Qwest has no knowledge concerning the "liability negotiations" Mr. Simmons alleges are ongoing between Midcontinent and this business customer.[5]

In an effort to meet Midcontinent's white pages listings needs, Qwest's account team and Midcontinent representatives meet monthly to discuss listings and other issues. In late 2001, Qwest agreed to audit 10% of Midcontinent's service orders as they appear in Qwest's service order processor compared to the local service requests (LSRs) submitted to Qwest by Midcontinent. If an error is found, it is corrected, and more importantly, Qwest's personnel are trained on correct procedures. Midcontinent has acknowledged in the meetings with the Qwest account team that it has seen improvement in the number of errors.

Qwest strives to provide error-free listings, but it may make some listings errors in CLECs' and Qwest's retail listings. The standard for listings accuracy and timeliness for CLECs is parity with Qwest's retail listings accuracy and

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4 Simmons Affidavit at p5. **Note** - Mr. Simmons presumably meant to refer to an August, *2001*, directory as changes can still be made for any August, 2002, directory.

5 Simmons Affidavit at p5. In the event that Qwest is able to determine the particulars regarding this allegation, it reserves the right to supplement my testimony on this point.

timeliness. Because the processes for handling CLECs' listings and Qwest's retail listings are substantially the same, listings are delivered on a nondiscriminatory, parity basis as between CLECs and Qwest retail. The same business rules, the same listings organization, and the same systems and databases are used for all listings processed by Qwest.

Furthermore, Qwest measures its performance in providing listings. Qwest provides a combined, or aggregated, performance result for two measurements specifically related to listings: DB-1, time for updates to the listings database, and DB-2, accuracy of listings database updates. The performance indicators for listings measure the overall results of the listings processes for CLECs and for Qwest retail end users. The performance indicator definitions (PIDs) were developed and approved as part of the Regional Oversight Committee (ROC) Third Party Operational Support System (OSS) Test in collaborative performance measurements workshops. Those workshops, involving both Qwest and CLECs, were conducted under the auspices of the ROC performance measures committee, which is composed of 13 state Commissions in the Qwest region, including the South Dakota Commission. During these workshops, CLECs and state commissions had a full and equal voice in the development of the PIDs and numerous opportunities to request modifications to them. The DB-1 and DB-2 PIDs the ROC developed call for an aggregated performance result for Qwest's performance in providing listings for CLECs and for Qwest retail operations. The PIDs incorporate and are reflective

of the fact that Qwest's processes for listings provide parity by the design of the processes.

The FCC has consistently recognized the importance of the collaborative process when considering exactly this kind of issue.[6] The FCC recently emphasized this in its Verizon Massachusetts Order:

> [W]here, as here, [performance] standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time or manner or in a way that provides them a meaningful opportunity to compete.[7]

Furthermore, an independent consultant for the ROC, Liberty Consulting Group, audited the PIDs and concludes that Qwest's listings process reflects parity by design and that the PIDs measure what they purport to measure.[8]

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[6] Memorandum Opinion and Order, 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, CC Docket No. 01-9, FCC 01-130 ¶ 13 (rel. Apr. 16, 2001) ("*Verizon Massachusetts Order*"); Memorandum Opinion and Order, Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, 15 FCC Rcd 3953 ¶ 55 (1999) ("*Bell Atlantic New York Order*") ("At the same time, for functions for which there are no retail analogues, and for which performance benchmarks have been developed with the ongoing participation of affected competitors and the BOC, those standards may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete").

[7] *Verizon Massachusetts Order* ¶ 13.

[8] *See* Affidavit of Lori A. Simpson on behalf of Qwest Corporation concerning Qwest's compliance with checklist item 7, dated Oct. 24, 2001. The

Qwest also provides CLECs with multiple opportunities and methods to review their listings so that any errors that have not already been detected by Qwest may be detected by the CLEC as soon as possible, and before directories are published. The first opportunity for CLEC review is in the firm order confirmation and service order completion reports. These reports may be reviewed by CLECs to determine if their listings orders were processed correctly and on time. Second, CLECs may also review their listings, at any time, as they actually appear in Qwest's listings database via the web-based Directory Listings Inquiry System. Third, CLECs automatically receive "verification proof" reports, which are monthly CLEC-specific reports showing all changed, deleted, and added listings since the prior month's report. Fourth, CLECs may also request "on demand snapshot" reports that show all of their listings. These processes for reviewing listings accuracy exceed those available to Qwest's retail operations in that Qwest's retail personnel do not receive monthly verification reports of retail end users' listings.

Mr. Simmons stated in his Affidavit that "Midcontinent has learned that directory listings training is optional within Qwest's interconnection department."[9] This is not correct. All Qwest typists in Qwest's Interconnection Service Center (ISC) have completed mandatory listings training. Qwest has also increased the

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September 29, 2001 Final Report on the Audit of Qwest's Performance Measures was attached as an Exhibit to the Affidavit of Margaret S. Bumgarner on checklist item 10, submitted October 24, 2001.

9 Simmons Affidavit at p5.

listings segment included in initial training for new typists by eight hours. Additionally, the ISC receives feedback on listings accuracy and errors from Qwest's listings organization, and from the service order error correction group, on a daily basis. This daily feedback information is reviewed with ISC personnel as appropriate to reduce and eliminate recurrence of errors.

In summary, Qwest strives to provide listings without errors. Qwest is working diligently to affirmatively identify and reduce any listings errors. Qwest also provides tools for CLECs to find and correct any errors in their listings on a timely basis and so to avoid publication of listings errors in directories. And, Qwest uses the same listings business rules, systems, databases, and listings organization for *all* listings, whether Qwest's retail listings or CLEC's listings.

IV. CONCLUSION

For the foregoing reasons, Qwest has satisfied the requirements of Section 271(c)(2)(B)(viii) of the Telecom Act regarding nondiscriminatory access to white pages directory listings. The South Dakota Public Utilities Commission should conclude that Qwest satisfies Checklist Item 8.

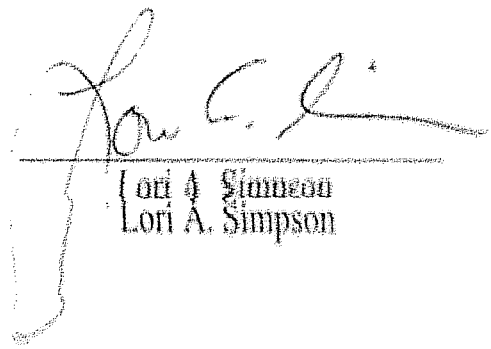
That concludes my rebuttal testimony.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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 No. TC01-165**

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.

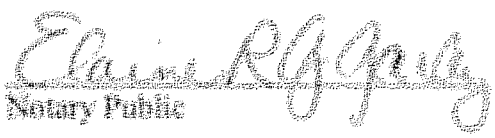
Executed this 27th day of March, 2002.



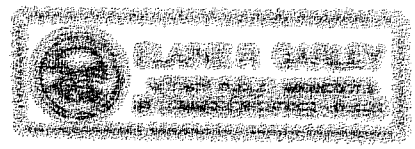
Lori A. Simpson

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Subscribed and sworn before me this 27th day of March, 2002.



Notary Public



BEFORE THE
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	DOCKET TC 01-165

QWEST CORPORATION'S

REBUTTAL
AFFIDAVIT

OF

LORI A. SIMPSON

CHECKLIST ITEM 14 – RESALE

APRIL 2, 2002

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REBUTTAL 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 Rebuttal Affidavit in support of Qwest's application for authority to provide interLATA services originating in South Dakota. In this Rebuttal Affidavit, I respond to the resale issues raised by Midcontinent Communications. I also show that AT&T's claims concerning Qwest's compliance with the Telecommunications Act of 1996 (Telecom Act) and the FCC's rules and orders as they relate to resale are incorrect. Through my rebuttal testimony, I reconfirm that Qwest complies with Checklist Item 14 of Section 271 of the Telecom Act and the FCC's orders and rules as they relate to resale.[1]

I. EXECUTIVE SUMMARY

In this Rebuttal Affidavit I respond to the issues raised by Midcontinent Communications concerning resale, and I show that AT&T's comments and claims contained in the Affidavit of Kenneth Wilson concerning resale are erroneous, or are already satisfied by Qwest as requested by AT&T and as reflected in Qwest's SGAT.

[1] 47 U.S.C. § 271(c)(2)(B)(xiv).

1 Dakota SGAT filed with the Commission on October 24, 2001, and in Qwest's
2 interconnection agreement with KMC Telecom V, Inc.[2] (KMC).
3 In summary, Qwest provides resale in compliance with the Telecom Act and the
4 FCC's rules and orders. For these reasons, the South Dakota Public Utilities
5 Commission should find that Qwest has satisfied all of the requirements of Checklist
6 Item 14.

7 **II. QWEST'S RESPONSE TO MIDCONTINENT COMMUNICATION'S ISSUES**
8 **CONCERNING RESALE**

9 **A. ISSUE 139: COMPARABILITY OF TERMS FOR NEW PRODUCTS OR**
10 **SERVICES**
11
12 W. Thomas Simmons, of Midcontinent Communications (Midcontinent)
13 comments that it has a concern with the definition of "SmartPak" service, which it
14 resells. Specifically, Midcontinent indicates it has experienced difficulties ordering
15 SmartPak for some telephone number prefixes (NXXs) in South Dakota, and with toll
16 charges and feature charges having been billed that should have been suppressed
17 based on the SmartPak service description.[3]
18 Qwest's account team assigned to and supporting Midcontinent has been
19 meeting monthly with Midcontinent to identify and resolve issues such as these. Qwest
20 and Midcontinent have discussed the issue of what NXXs are included in the SmartPak

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[2] The Interconnection Agreement between KMC Telecom V, Inc., and Qwest is attached to the Affidavit of Larry Brotherson on behalf of Qwest Corporation, dated April 2, 2002, as Exhibit LBB-GTC-1.

[3] Affidavit of W. Thomas Simmons on behalf of Midcontinent Communications (Simmons Affidavit) at pp11-13.

1 service offering. It appears there was a misunderstanding as to the time when several
2 new NXXs were available in South Dakota. Qwest implemented new NXXs in the
3 communities where SmartPak is available. Effective March 8, 2002, SmartPak was
4 available for these NXXs, and notice of this change was provided to Midcontinent. It
5 appears that Midcontinent placed orders for SmartPak before March 8, and Qwest's
6 systems were not yet updated with the new NXXs because they were not yet effective,
7 and so those orders were rejected. I believe this was a simple misunderstanding about
8 when the new NXXs were available.

9 Regarding the issue noted by Mr. Simmons concerning toll suppression and
10 including billing for features on resold accounts with SmartPak, Qwest agreed during a
11 monthly meeting with Midcontinent in late 2001 to implement a process whereby Qwest
12 pulls a random 10% sample of Midcontinent's resale orders after they are released into
13 Qwest's service order processor. Qwest audits these orders for accuracy against
14 Midcontinent's local service request (LSR). Any errors are corrected, and more
15 importantly, the personnel responsible for causing the error are re-trained on the correct
16 process. Midcontinent's representative at the monthly meeting with Qwest on March 7,
17 2002, stated that Midcontinent had seen improvement and fewer billing errors. Qwest
18 takes these issues very seriously and is taking steps to improve its service for
19 Midcontinent.

20 Mr. Simmons also raised an issue concerning the offering of new retail products
21 and their availability for resale by reseller CLECs. Mr. Simmons indicates that

1 Midcontinent became aware of the SmartPak product offering "from our customers." [4]
2 However, Qwest in fact provides notice to reseller CLECs advising them of new
3 products and services. Qwest provided written notice of the SmartPak offering to two
4 Midcontinent employees, Ms. Karen Viste and Ms. Mary Lohnes, on September 13,
5 2000. Qwest provides written notice to reseller CLECs in South Dakota advising of new
6 Qwest retail products and services in advance of or on the date the service is available
7 to Qwest retail end users. This allows CLECs to be aware of and to offer new Qwest
8 services for resale.

9 **B. ISSUE 166: INTERNAL CONTROLS**

10 Midcontinent states that it has experienced issues with billing for resold
11 packages of features and voice messaging service.[5] Midcontinent has raised these
12 issues with Qwest's account team and Qwest has corrected Midcontinent's bills.
13 Additionally, as described above, Qwest is auditing a significant number of
14 Midcontinent's orders and is taking affirmative steps to ensure Midcontinent is correctly
15 billed for the resale services it orders.

16 Concerning the issue of Qwest's rate change for voice messaging service (VMS),
17 as was explained to Midcontinent by the Qwest account team at the time this billing
18 change took place, Qwest's monthly recurring rate for VMS was incorrectly reflected in
19 Qwest's South Dakota catalog as $16.00 when the rate was actually $18.50. When this
20 error was discovered the billing was corrected. Midcontinent was not back-billed at the

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[4] Simmons Affidavit at pp10-12.

[5] Simmons Affidavit at pp13-15.

correct rate; the correct rate was implemented on a going-forward basis only. While Qwest regrets any error, errors sometimes occur. Qwest hoped to minimize the impact on Midcontinent by not back-billing at the higher, correct rate.

C. ISSUE 176: POSTING BILLING DETAIL

Midcontinent states that it has experienced issues with the billed wholesale/resale discount rate for its resold services.[6] Midcontinent has raised these issues with Qwest in the joint meetings with Qwest's account team, and they have been addressed and resolved. Specifically, during interconnection contract and bill validation efforts undertaken by Qwest, Qwest changed the billed wholesale/resale discount rate applicable to Midcontinent's resold services. Unfortunately, the discount implemented was incorrect. Qwest has taken steps to correct all of the wholesale/resale discounts applied to Midcontinent's resold services so that the current charges on Midcontinent's bills are correct, and Qwest has also issued credit adjustments for incorrectly billed amounts. All of Midcontinent's resale bills issued after March 31, 2002, should be correct based on Qwest's efforts. Additionally, Qwest has agreed via the Change Management Process (CMP) to provide 10-day advance notice of rate changes that result from Qwest's rate validation efforts. This will ensure that Midcontinent and other CLECs have an opportunity to advise Qwest if they disagree with any rate change Qwest intends to implement.

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[6] Simmons Affidavit at pp15-16.

III. QWEST'S RESPONSE TO AT&T'S ERRONEOUS CLAIMS CONCERNING RESALE

A. INDEMNIFICATION FOR RESALE SERVICE QUALITY

AT&T complains in the Affidavit of Ken Wilson that ". . Qwest would like to essentially insulate itself from any responsibility for the harm its poor service causes to its wholesale reseller customer and the wholesale reseller's end-user customers."[7] AT&T goes on to state, concerning section 6.2.3 of the South Dakota SGAT, that "Qwest's recent concession on resale service quality assurances still unreasonably limits its liability for harm caused by Qwest's poor service quality to the reseller's end-user, and it utterly leaves the reseller without a real remedy," and "AT&T recommends that the State Commissions [sic] order Qwest to delete SGAT §§ 6.2.3.1 and 6.2.3.2, replacing them with" language provided by AT&T.[8]

AT&T has tried and failed in eleven other Qwest states to create remedies that are unjustified by the relationship between Qwest, reseller CLECs, and the reseller CLEC's end user's, and unnecessary for purposes of determining compliance with Section 271 of the Telecom Act. Mischaracterizing Qwest's position as an "attempt to insulate" cannot change the underlying facts, which do not support AT&T's request.

Qwest's South Dakota SGAT provides:

> 6.2.3 Qwest shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries, its Affiliates, other Resellers, and Qwest's retail end users. Qwest shall also

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7 Affidavit of Kenneth Wilson on behalf of AT&T (Wilson Affidavit) at pp39-42.

8 Wilson Affidavit at pp39-42.

provide resold services to CLEC in accordance with the Commission's retail service quality requirements, if any. Qwest further agrees to reimburse CLEC for credits or fines and penalties assessed against CLEC as a result of Qwest's failure to provide service to CLEC, subject to the understanding that any payments made pursuant to this provision will be an offset and credit toward any other penalties voluntarily agreed to by Qwest as part of a performance assurance plan, and further subject to the following provisions:

6.2.3.1 Qwest shall provide service credits to CLEC for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:

a) Qwest's service credits to CLEC shall be subject to the wholesale discount;

b) Qwest shall only be liable to provide service credits in accordance with the resold services provided to CLEC. Qwest is not required to provide service credits for service failures that are the fault of the CLEC;

c) Intentionally Left Blank

d) Intentionally Left Blank

e) In no case shall Qwest's credits to CLEC exceed the amount Qwest would pay a Qwest end user under the service quality requirements, less any wholesale discount applicable to CLEC's resold services; and

f) Intentionally Left Blank

6.2.3.2 Fines and Penalties --- Qwest shall be liable to pay to CLEC fines and penalties for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:

a) Qwest's fines and penalties paid to CLEC shall be subject to the wholesale discount;

b) Qwest shall only be liable to provide fines and penalties in accordance with the resold services provided to CLEC. Qwest is not required to pay fines and penalties for service failures that are the fault of the CLEC;

c) Qwest shall not be liable to provide fines and penalties to CLEC if CLEC is not subject to the Commission's fine and penalty requirements for service quality;

d) In no case shall Qwest's fines and penalties to CLEC exceed the amount Qwest would pay the Commission under the service quality plan, less any wholesale discount applicable to CLEC's resold services; and

e) In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident.

Qwest's agreement with KMC also includes the identical provision, as follows:

6.2.3 Qwest shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries, its Affiliates, other Resellers, and Qwest's retail end users. Qwest shall also provide resold services to CLEC in accordance with the Commission's retail service quality requirements, if any. Qwest further agrees to reimburse CLEC for credits or fines and penalties assessed against CLEC as a result of Qwest's failure to provide service to CLEC, subject to the understanding that any payments made pursuant to this provision will be an offset and credit toward any other penalties voluntarily agreed to by Qwest as part of a performance assurance plan, and further subject to the following provisions:

6.2.3.1 Qwest shall provide service credits to CLEC for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:

a) Qwest's service credits to CLEC shall be subject to the wholesale discount;

b) Qwest shall only be liable to provide service credits in accordance with the resold services provided to CLEC. Qwest is not required to provide service credits for service failures that are the fault of the CLEC;

c) Intentionally Left Blank

d) Intentionally Left Blank

e) In no case shall Qwest's credits to CLEC exceed the amount

Qwest would pay a Qwest end user under the service quality requirements, less any wholesale discount applicable to CLEC's resold services; and

f) Intentionally Left Blank

6.2.3.2 Fines and Penalties --- Qwest shall be liable to pay to CLEC fines and penalties for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:

a) Qwest's fines and penalties paid to CLEC shall be subject to the wholesale discount;

b) Qwest shall only be liable to provide fines and penalties in accordance with the resold services provided to CLEC. Qwest is not required to pay fines and penalties for service failures that are the fault of the CLEC;

c) Qwest shall not be liable to provide fines and penalties to CLEC if CLEC is not subject to the Commission's fine and penalty requirements for service quality;

d) In no case shall Qwest's fines and penalties to CLEC exceed the amount Qwest would pay the Commission under the service quality plan, less any wholesale discount applicable to CLEC's resold services; and

e) In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident.

The standard for service provided by Qwest to reseller CLECs is parity with Qwest's comparable retail services. Section 6.2.3 of the SGAT describes Qwest's obligations to give credits to reseller CLECs related to the quality of resold services provided to the reseller CLECs, and to reimburse reseller CLECs for fines or penalties to which they are subject based on state service quality rules. Those obligations mirror service quality payment obligations that apply to Qwest's retail operations, thus placing

1 CLECs in the same position as Qwest's retail operations and providing parity to reseller
2 CLECs. Furthermore, Qwest's performance in delivering resold services is measured
3 under performance measurements developed and agreed upon in the context of the
4 Regional Oversight Committee (ROC) Third Party Operational Support System (OSS)
5 Test. Qwest produces and publishes resale performance results monthly. Finally, the
6 Qwest Performance Assurance Plan (QPAP), also developed and agreed upon in the
7 context of the ROC Third Party OSS Test, provides for appropriate payments for any
8 Qwest failure to perform as required.[9]

9 AT&T has claimed that these remedies are not sufficient for reseller CLECs, and
10 that Qwest should be required to indemnify such CLECs virtually without limitation.
11 Qwest rejects AT&T's claims. Any demand that Qwest credit or reimburse a CLEC
12 more than the amount a CLEC pays Qwest for the resold service is unreasonable in that
13 Qwest has no control over the amount a reseller CLEC chooses to charge its end user
14 customers for resold service, nor does Qwest have any control over the amount a CLEC
15 may choose to pay to its end user customers for service problems. Qwest stands
16 behind the quality of its services to the full extent that reseller CLECs pay for them. In a
17 resale context, Qwest's customer is the CLEC, not the CLEC's end user. Quality of
18 service violations attributed to Qwest should trigger a credit in the amount that Qwest
19 received in exchange for providing that service, not an unknown, marked-up price over
20 which Qwest has no control. Section 6.2.3 of the South Dakota SGAT should not be

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[9] *See* Affidavits of Mark Reynolds on behalf of Qwest Corporation for details concerning the Qwest Performance Assurance Plan.

modified as it appropriately reflects Qwest's obligations to reseller CLECs to provide credits or reimbursements for service quality failures, as written.

AT&T raised this issue in the multistate 271 process. Qwest proposed new Qwest obligations and SGAT language to reimburse reseller CLECs for certain service quality failures attributable to Qwest via new language in section 6.2.3 of the SGATs, but AT&T did not agree that the obligations and new language satisfied its demands, and the issue went to "impasse." In his multistate report on resale, John Antonuk, facilitator of the multistate process, proposed that Qwest's offered response to the issues raised by AT&T was acceptable if Qwest agreed to delete certain portions of the proposed section 6.2.3 SGAT provisions. Specifically, Mr. Antonuk's report accepted Qwest's limited liability proposal except for parts (c) and (d) of section 6.2.3.1, which the report recommended should be deleted (and which Qwest has deleted for South Dakota, as noted above). Payments to CLECs, the report said, should not hinge on whether a CLEC is subject to state service requirements and should be made even if the CLEC does not pay credits.[10] Qwest agreed to make the multistate SGAT changes, and the South Dakota SGAT and Qwest's interconnection agreement with KMC also reflect the changes required by Mr. Antonuk's order on resale. Furthermore, the South Dakota Staff's consultant, Dr. Buster Griffing, recommends: "[t]he Commission should

[10] The Liberty Consulting Group, Report One on Qwest Communications, Inc.'s Compliance with Section 271 Checklist of the Telecommunications Act of 1996, Checklist Items 1, 11, 13, and 14, May 15, 2001.

accept the recommendation," referring to Mr. Antonuk's resale order on 6.2.3 and this issue.[11]

B. MISDIRECTED CALLS TO QWEST'S AND CLECS' OFFICES

It is unclear why AT&T makes the arguments it makes concerning misdirected calls and South Dakota SGAT section 6.4.1.[12] In short, Mr. Wilson states that AT&T proposes adding the words "seeking such information" at the end of the SGAT Section 6.4.1.[13] The October 24, 2001, South Dakota SGAT, and the interconnection agreement with KMC, at Section 9.23.3.17, do just that, as follows.

> 6.4.1 CLEC, or CLEC's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its end users that they are end users of CLEC for resold services. CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party, **seeking such information**. [emphasis added]

Qwest's agreement with KMC includes the identical provision, as follows:

> 6.4.1 CLEC, or CLEC's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry.

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11 Direct Testimony of Dr. Marlon Griffing at pp47-48.

12 Wilson Affidavit at pp39-42.

13 Wilson Affidavit at pp39-42.

> CLEC shall inform its end users that they are end users of CLEC for resold services. CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of Local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party, seeking such information.

This issue was raised by AT&T in the multistate 271 process, and it went to "impasse." Mr. Antonuk proposed that Qwest modify its SGAT section 6.4.1 as suggested by AT&T, and Qwest agreed to do so. Qwest has also modified its South Dakota SGAT, and Qwest believes this settles the issue raised by AT&T in this proceeding.

IV. CONCLUSION

For the foregoing reasons, Qwest has satisfied the requirements of Section 271(c)(2)(B)(vi) of the Telecom Act regarding unbundled local switching. The South Dakota Public Utilities Commission should conclude that Qwest satisfies Checklist Item 14.

That concludes my rebuttal testimony.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

In the Matter of the Investigation	)	
into Qwest Corporation's	)	**Docket No. TC01-165**
Compliance with Section 271(c) of the	)	
Telecommunications Act of 1996	)	
	)	

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 this 27th day of March, 2002.

Lori A. Simpson

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Subscribed and sworn before me this 27th day of March, 2002.

Notary Public

ELAINE R. GARLEY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES 1-31-2005

CONTINUATION

[1]

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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 01-165

QWEST CORPORATION'S

REBUTTAL AFFIDAVIT

OF

KAREN A. STEWART

CHECKLIST ITEMS 2 AND 5

APRIL 2, 2002

AFFIDAVIT INDEX

I. IDENTIFICATION OF WITNESS

My name is Karen A. Stewart. I am a Senior Staff Advocate in the Qwest Service Corporation ("Qwest"), Policy and Law organization. My office is located at 421 SW Oak Street, Portland, Oregon. I filed affidavits on October 24, 2001 providing direct testimony on Checklist Items 2 and 5 in this docket.

II. PURPOSE OF AFFIDAVIT

The purpose of my Rebuttal Affidavit is to reply to a subset of the issues raised in the affidavits of the parties commenting on Checklist Item 2 (access to unbundled network elements ("UNEs") and Checklist Item 5 (unbundled transport).

Qwest is also filing, the Rebuttal Affidavit of Lynn Notarianni, who addresses access to Qwest OSS, which also relates to Checklist Item 2. In addition, Qwest is filing the Rebuttal Affidavit of Mary LaFave to address the AT&T request to unbundle the in-region facilities of Qwest Corporation's affiliates, an issue that relates to Checklist Item 5.[1]

I respond to the issues raised in the submissions of three parties:

- the direct testimony of Dr. Marlon Griffing representing South Dakota Commission Staff;
- the comments of AT&T Communications of the Midwest, Inc. ("AT&T") on Checklist Items 2,5, and 6; and

[1] AT&T also filed comments regarding this same issue (specific to dark fiber) in their Emerging Services comments. Ms. LaFave's affidavit addresses both sets of AT&T comments.

- the affidavit of Ms. Michelle Merchen representing Black Hills Fiber Com.

Qwest has a concrete and specific legal obligation to provide access to UNEs and unbundled transport through its revised Statement of Generally Available Terms and Conditions (SGAT) and interconnection agreements such as the agreement between Qwest and KMC Telecom V, Inc ("KMC").[2]

In summary, as described in my Direct Affidavit and in this Rebuttal Affidavit, Qwest satisfies the requirements of section 271 of the Act and the FCC's rules as they relate to Checklist Item 2 and 5.

III. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH CHECKLIST ITEM 2 – ACCESS TO UNES

Three parties commented on issues associated with Checklist Item 2: Dr. Marlon Griffing representing South Dakota Commission Staff; Ken Wilson on behalf of AT&T Communications of the Midwest, Inc.; and Michelle Merchen representing Black Hills Fiber Com. I address these issues and concerns in the following sections. For ease of reference, I have utilized the number and issue identification in the Direct Testimony of Dr. Griffing dated March 18, 2002.

1. *Construction of New UNEs*

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[2] The Interconnection Agreement between KMC Telecom V, Inc. and Qwest, and is attached to the Affidavit of Larry Brotherson on behalf of Qwest Corporation, dated April 2, 2002, as Exhibit LDB-QTC-1. Qwest relies on the KMC interconnection agreement and the other interconnection agreements filed with this Commission, in addition to the SGAT. For better readability, I may not always mention the KMC agreement, but Qwest relies on that agreement and its language just as if the KMC agreement was mentioned every time I mention the SGAT. Everywhere I mention the SGAT in my direct affidavit, and in this rebuttal affidavit, I also incorporate and rely on the KMC agreement which has the same section numbers and same language as the October 2001 SGAT filed in South Dakota.

Dr. Griffing, representing Commission Staff, recommended that this Commission adopt the resolution from the report of the Multi-state Facilitator, John Antonuk.[3] Mr. Antonuk's Group 4 Report filed on August 20, 2001 concluded that Qwest does not have an obligation to carry out construction and build new UNEs at the request of CLECs.[4] First, Mr. Antonuk addresses that requiring Qwest to be a construction company for CLECs at TELRIC rates inappropriately shifts all investment risk to Qwest while CLECs are only on a month-to-month obligation to pay for the unbundled network elements that they have requested to be constructed.

> First, there is a substantial risk that Qwest will not recover actual costs in the event that AT&T's proposal is accepted. AT&T is not correct in arguing that UNE rates are compensatory for the installation of new or enhanced electronics on dark fiber. UNE rates are monthly in nature and generally without minimum term commitments. They can be said to compensate Qwest for investments that it has already made for its own purposes; at least that is a conceptual underpinning of the FCC's pricing approach for UNEs. However, a CLEC that requires a new investment altogether should have more than an obligation to pay month-to-month. Absent a term commitment, Qwest could be significantly under-compensated in cases where CLECs abandon UNEs before new investment is recovered.
>
> In essence, asking that Qwest be required to provide new construction is tantamount to requiring Qwest to take investment risk in new facilities. Nothing in the Act or in the rulings of the FCC suggests that promoting competition requires altering the risks of new investments. Moreover, AT&T has proposed no language that would mitigate this risk to Qwest. Instead, AT&T proposes merely to move the obligation to Qwest, which actually would encourage AT&T to require Qwest to make investments in situations where neither AT&T nor any other rational competitor would risk its own resources on the chance that customer use would continue for long enough to provide investment recovery. It is wholly inconsistent with the

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[3] Dr. Griffing Direct Testimony at pages 70-71.
[4] Mr. Antonuk Group 4 Report at page 25.

> promotion of effective competition to sever connections between risk/reward by transferring all of the former to a competitor.[5]

Next, the Mr. Antonuk underscored the importance of facilities based competition and the distinction between existing and new facilities:

> A key premise of the Act and of the FCC's implementing actions with respect to it is the development of facilities-based competition. For existing facilities, it is correct to place the burden on Qwest to show why access to them is not appropriate. For new facilities, the burden should be on Qwest's competitors to show why access to them is appropriate.
>
> There is no evidence of record to support any claim that Qwest has a monopoly position with respect to new facilities. In fact, circumstances would suggest that all carriers competent enough to have a future in the business have the capability either to construct new facilities themselves, or to contract with third party construction experts (much as incumbents do themselves on occasion) who do.[6]

In this docket, just as in the Multistate, there is no evidence to support any claim that Qwest has any advantage over CLECs with respect to new facilities.

In conclusion on the general obligation to build question, Mr. Antonuk ordered that:

> Thus there is not a clear basis for concluding that the failure to require Qwest to undertake the obligation to construct new facilities will significantly hinder fulfillment of the Act's general objectives, let alone its specific requirements. Even were there some demonstrated basis to so conclude, one would have to consider the goal of promoting facilities-based competition. Requiring Qwest to serve indefinitely and ubiquitously as both a financing arm (by taking investment risk under month-to-month UNE leases to CLECs) and as a construction contractor (by being forced to perform the installations required) is not appropriate. Not only will it not promote the goal, it

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5 Mr. Antonuk Group 4 Report at p.24.

6 *Id.* at 25.

> may well hinder it. If CLECs can transfer the economic risks of new construction to Qwest, there is little reason to expect that they will have an incentive to take facilities risks or develop efficient installation capabilities.[7]

Qwest agrees with Dr. Griffing's recommendation to accept Mr. Antonuk's resolution to this issue. No additional changes are required to the South Dakota SGAT as a result of this recommendation.

As noted by Dr. Griffing, Qwest agrees to provide new facilities to the extent it has a Provider of Last Resort and/or Eligible Telecommunications Carrier obligation in a state. Specifically, the Qwest South Dakota SGAT, filed October 24, 2001, and the KMC agreement contain the following provisions:

> 9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.
>
> > 9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.
> >
> > 9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop Carrier systems at the Central Office and Remote Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

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[7] *Id.*

> 9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for existing engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will treat CLECs request as follows:
>
> > 9.1.2.1.3.1 For UNEs that meet the requirements set forth in Section 9.1.2.1, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service to the End User Customer. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a SUP to change the Due Date to a later date.
> >
> > 9.1.2.1.3.2 For UNEs that do not meet the requirements in Section 9.1.2.1, Qwest will send CLEC a rejection notice canceling the LSR or ASR. Upon receipt of the rejection notice, CLEC may submit a request to build UNEs pursuant to Section 9.19 of this Agreement.
>
> 9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated Ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated Ready for Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

AT&T asserts that Qwest should be required to build new UNEs.[8] However, the above-cited language actually meets, and exceeds, Qwest's obligations to construct UNEs. Qwest has already agreed in its SGAT and KMC agreement to construct loops and switch ports when necessary to meet its provider-of-last-resort and ETC obligations.[9] Qwest also agrees in its SGAT and KMC agreement to perform

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8 AT&T Comments on Checklist Items 2, 5 and 6, at 4-5.
9 Section 9.1.2.1.

incremental facility work (which Qwest distinguishes from "building new facilities" or "constructing UNEs" in that entirely new facilities are not being constructed) which includes the following: conditioning, placing a drop, adding a network interface device, adding a card to existing equipment at central office or remote locations, adding central office tie pairs, and adding field cross jumpers.[10] Thus, Qwest has already agreed to perform significant work on behalf of CLECs and meets, and exceeds, the requirements imposed by the Act and the FCC. .[11] Furthermore, CLECs still have additional options if Qwest is not required to build. A CLEC can submit a request to build under Section 9.19, a CLEC can self-provision, and a CLEC can obtain the facility from a third party.

The FCC clearly stated that Qwest does not have an obligation to build a network for CLECs:

> In the *Local Competition First Report and Order*, the Commission **limited an incumbent LEC's transport unbundling obligation to existing facilities**, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities the incumbent LEC has not deployed for its own use.[12]

The Act created UNEs for the purpose of giving CLECs access to the incumbent LEC's existing network. AT&T's argument that the *UNE Remand Order* requires ILECs to construct facilities by negative implication is disingenuous. The FCC has never

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10 Section 9.1.2.3.
11 SGAT 9.1.2.3.
12 UNE Remand Order, at para. 324 (emphasis added).

1 expressly imposed construction requirements in all circumstances on ILECs and
2 intervenors have predictably not cited to any such requirement. One would surmise that
3 the FCC would have directly imposed this burdensome responsibility on ILECs in
4 unequivocal terms. The Act was not designed to force ILECs to build networks for
5 CLECs. The Eighth Circuit, in *Iowa Utilities Board v. FCC*[13], held that CLECs are
6 entitled to unbundled access to only Qwest's *existing* network:

7 > We also agree with petitioners that subsection 251(c)(3) implicitly **requires**
8 > **access to <u>only</u> an incumbent LEC's <u>existing</u> network**, -- not to a yet
9 > unbuilt superior one.[14]

10 The Eighth Circuit's rationale was based upon the premise that section 251(c)(3)
11 requires access *only* to an incumbent LEC's *existing* network.

12 The Eighth Circuit emphasized that nondiscriminatory access to unbundled
13 network elements does not lead to the determination that incumbent LECs cater to
14 every desire of every requesting carrier. Simply put, Qwest is not a UNE construction
15 company for CLECs. Qwest should not be required, other than what it has already
16 agreed to in its SGAT and the KMC agreement, to expend the resources in time and
17 manpower, at an opportunity cost to itself, to build new facilities for competitors who
18 have the option of constructing facilities at comparable costs. Requiring Qwest to
19 become the construction company for CLECs would be contrary to the public policy
20 goals of the Act and the State of South Dakota because it would discourage facilities-

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13 *Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997).
14 *Iowa Utilities Bd.*, 120 F.3d at 813 (emphasis added).

1 based competition by eliminating any incentive that CLECs construct their own
2 competing networks.

3 Additionally, AT&T requests that Qwest be required to add or upgrade electronics
4 for the purpose of providing dedicated transport.[15] For unbundled dedicated interoffice
5 transport (UDIT), if electronics are currently available, Qwest includes the existing
6 electronics as part of the overall facility request. However, Qwest does not agree to add
7 electronics or upgrade electronics for UDIT or EUDIT. This position is consistent with
8 the FCC's unwillingness to impose on ILECs an obligation to construct new facilities for
9 the provision of unbundled transport.[16] As stated above, Qwest agrees in Section
10 9.1.2.3 of the SGAT and KMC agreement to perform incremental facility work including
11 carding existing electronics.[17]

12 However, adding electronics at a CLEC's request is not incremental facility work.
13 The cost of such electronics is not insignificant and involves capital construction,
14 engineering and installation. For example, the addition of "electronics" can mean
15 anything from a multiplexing unit to a digital cross connect device. In the case of
16 placing an FLM-150 multiplexer, for example, the actual material and placing costs are
17 $36,880 per node, assuming that all supporting framework and power are in place in the
18 central office. A digital cross connect device can cost in excess of $1 million dollars to

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[15] AT&T Comments on Checklist Item 2, 5 and 6 at page 7.

[16] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report* and Order in CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499 at ¶ 451 (rel. Aug. 8, 1996) ("*First Report and Order*") (**"[W]e expressly limit the provision of unbundled interoffice facilities to existing incumbent LEC facilities."**).

1 install.[18] In network construction jobs such as these, floor space must be acquired,
2 infrastructure evaluated, and power needs assessed. The process can take four to five
3 months to complete. These are clearly construction jobs to build network capacity that
4 are not required by the FCC.

5 AT&T is also asking that Qwest "upgrade" existing electronics to add capacity to
6 the network.[19] Again, AT&T implies that an upgrade in electronics is a simple and
7 inexpensive method of adding capacity, when in fact an upgrade of interoffice transport
8 facilities can be an expensive operation. For example, if an existing OC-12 is at
9 exhaust, upgrading to an OC-48 would indeed add capacity, but at a cost of $98,806
10 per node, with a node needed at each end.

11 AT&T also raised the obligation to build issue by asking that Qwest be required
12 to light dark fiber.[20] The FCC defines dark fiber as "fiber that has not been activated
13 through connection to the electronics that 'light' it."[21] By definition, therefore, dark fiber
14 does not have electronics attached to it. Electronics must be added to light the dark
15 fiber so it can provide dedicated transport. The FCC has stated that the obligation to
16 add electronics belongs to the CLEC leasing the fiber.[22] AT&T's position that Qwest is

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18 For example, a recent installation of a Titan 550 digital cross connect at Qwest's Columbine, Colorado central office, cost $1,237,053 to install.

19 AT&T Comments on Checklist Item 2, 5 and 6 at page 7.

20 AT&T Comments on Checklist Item 2, 5 and 6 at page 7.

21 *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) (*UNE Remand Order*) ¶¶174. *See also id.* ¶328.

22 *Id.* at n.292 ("The [carrier] leasing the fiber is expected to put its own electronics and signals on the fiber.")(quoting definition of dark fiber in Newton's Telecom Dictionary, 14th ed.).

1 required to light dark fiber is clearly an unfounded attempt to circumvent the clear FCC
2 order that ILECs are not required to build dedicated transport facilities.[23]

3 As discussed in my Direct Affidavit on Emerging Services, Qwest will make dark
4 fiber available to CLECs. CLECs can light that dark fiber and create dedicated transport
5 at virtually the same cost as Qwest would incur. The Commission should reject this
6 attempt by AT&T to force Qwest to incur significant up-front investments to "bank roll"
7 CLEC expansions. Moreover, there is no assurance that the CLEC would not
8 disconnect the dedicated transport circuits a short time after installation, leaving Qwest
9 and its ratepayers responsible for recovering the cost of the facilities investment made
10 to light dark fiber at the CLEC's request. This is an obligation to build issue. To the
11 extent a CLEC would like to request that Qwest add electronics to light dark fiber, the
12 CLEC can utilize section 9.19 to make such a request. Qwest can then evaluate the
13 CLEC request, and make an informed decision about any network expansion plans.
14 Again, this Commission should reject any attempt to erode the clear FCC direction that
15 Qwest is not obligated to build UNEs for CLECs.

16 In summary, there is no statute, rule or case that imposes upon Qwest the
17 obligation to construct all UNEs. As stated above, the Act requires "access to *only* an
18 incumbent LEC's *existing* network." Therefore, the obligation to provide access to
19 UNEs in 251(c)(3) of the Act does not require Qwest to build or construct facilities for
20 CLECs.

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23 UNE Remand Order, at ¶ 324.

2 – Commingling UNEs and Tariffed Services on the Same Facilities

This issue arose in the multi-state workshops when CLECs asked that the SGAT be amended to permit them to use the same network facility to carry entrance facilities, Local Interconnection Trunks, UNEs and tariffed services, such as dedicated special access circuits (i.e., to commingle different types of services).

Mr. Antonuk determined that the FCC has a specific temporary ban on bringing together the different network services on a single network facility due to the significant impacts to access charges.[24] The FCC specifically ruled:

> **We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services)** in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations we make in this order do not prejudge any final resolution on **whether unbundled network elements may be combined with tariffed services**. We will seek further information on this issue in the Public Notice that we will issue in early 2001.[25] (emphasis added)

The issue of commingling, and specifically the issue of whether UNEs can be connected to access service circuits, as noted by Dr. Griffing, is currently being reconsidered by the FCC[26]. The FCC described the question as "whether unbundled network elements may be combined with tariffed services."[27] At this time, the FCC has upheld the prohibition on "commingling" pending the resolution of the issue in the further

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24 Mr. Antonuk Group Four Report at page 28.

25 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, FCC-00-183 (June 2, 2000) (Supplemental Order Clarification), para. 28 (emphasis added).

26 Dr. Griffing Direct Testimony at page 76.

notice of proposed rulemaking. This Commission should allow the FCC to rule on this pending issue rather than to attempt to decide it in the context of Qwest's 271 Petition. To the extent that an interpretative issue, such as this issue has not yet been resolved, the FCC has indicated that it will not deny a 271 application based upon such a dispute:

> Despite the comprehensiveness of our local competition rules, there will inevitably be, in any Section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the act. The Section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a Section 271 application.[28]

In its *BellSouth Second Louisiana Order*,[29] the FCC held that commingled traffic is not a 271 requirement:

> BellSouth also states that it offers, as a standard arrangement, local tandem interconnection for carrying traffic destined for BellSouth end offices that subtend a local tandem. BellSouth offers routing of local and intraLATA traffic over a single trunk group. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, is routed via a separate trunk group. BellSouth states that competitive LECs may order two-way trunks for the exchange of combined local and intraLATA toll traffic at BellSouth end offices or access tandems. BellSouth, therefore, establishes that it has a legal obligation to provide interconnection consistent with our rules.[30]

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[27] Supplemental Order Clarification, ¶28.

[28] FCC Kansas/Oklahoma Section 271 Order, para. 19.

[29] *Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana*, CC Docket 98-121, FCC 98-271, ¶ 54 (released October 13, 1998) ("*BellSouth Second Louisiana Order*").

[30] *BellSouth Second* Louisiana *Order* ¶ 75 (emphasis added; footnote omitted).

Moreover, a more recent FCC decision supports the Qwest position on this issue. In the Net2000 order,[31] issued January 9, 2002, the FCC ruled on a similar commingling issue resulting from Option 3 of its *Supplemental Order Clarification*.[32] The FCC held that Verizon did not violate the Communications Act of 1934 or FCC rules by denying Net2000's requests to convert special access circuits to enhanced extended links ("EELs") that would be on the same network facility as other special access circuits. As the FCC explained:

> Net2000 argues that whether circuits are used for "a significant amount of local exchange service" and therefore qualify for conversion to EEL should be judged on an "end-user-by-end-user basis." It should not matter, Net2000 contends, whether a dedicated DS1 between the CLEC's office and the customer's premises that is used to provide local exchange service is carried on a multiplexed DS3 transport channel that includes other DS1s used for other services. It proposes that DS3 circuits derived from both EEL-eligible and non-EEL-eligible DS1 circuits be priced utilizing "ratcheting," similar to mixed use DS3 circuits carrying both special access and switched assess DS1s, so that proportionate unbundled network element rates would apply to the converted DS1s and proportionate special access rates would apply to the non-converted DS1s. The arguments made by Net2000, however, ignore the specific language of Option 3. There is no provision anywhere in the *Supplemental Order Clarification*, or in prior orders for "ratcheting." The language of Option 3 clearly and specifically requires that "[w]hen a loop-transport combination includes multiplexing (*e.g.*, DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet [the substantial local exchange service use] criteria." There is no ambiguity in this language. Although Net2000 argues that it would be better if CLECs were permitted to convert only the parts of their DS3s that are used to provide local exchange service and to continue to obtain the remaining parts of the DS3s by tariff, this clearly is not permitted under our rules.[33]

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[31] Memorandum Opinion and Order, *In the Matter of Net2000 Communications, Inc. v. Verizon – Washington, D.C., Inc.*, File No. EB-00-018, FCC 01-381 (rel. Jan. 9, 2002).

[32] Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 ¶22(3) at 13-14 (rel. June 2, 2000) ("*Supplemental Order Clarification*").

[33] *Id.* ¶ 28, at 9-10 (citations omitted).

In summary, the final resolution of this complex issue is still awaiting resolution by the FCC.

AT&T in its South Dakota comments, states that Qwest's limits on commingling (approved by the FCC) allow Qwest to control CLEC market entry by delaying the provisioning of facilities or allowing UNE capacity to be unavailable.[34] Qwest does not agree with this assertion, nor does AT&T provide any evidence or even clarification to support this statement.

However, AT&T does admit that the FCC has identified situations where UNEs cannot be connected to tariffed services.[35] AT&T requests that SGAT sections 9.1.5, 9.6.2.1 and 9.23.1.2.2 state that UNEs can be connected to finished services, such as special access circuits, except where specifically prohibited by the FCC.[36]

Qwest's SGAT in sections 9.1.5 and 9.23.1.2.2 already contain this commitment:

> 9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. **Qwest shall not in any way restrict CLECs use of any**

[34] AT&T Comments on 2, 5 and 6 at pages 10-11.
[35] AT&T Comments on 2, 5 and 6 at page 11.
[36] AT&T Comments on 2, 5 and 6 at page 12.

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[34] AT&T Comments on 2, 5 and 6 at pages 10-11.
[35] AT&T Comments on 2, 5 and 6 at page 11.
[36] AT&T Comments on 2, 5 and 6 at page 12.

element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules. (emphasis added)

9.23.1.2.2 In addition to the UNE Combinations provided by Qwest to CLEC hereunder, Qwest shall permit CLEC to combine any UNE provided by Qwest with another UNE provided by Qwest or with compatible network components provided by CLEC or provided by third parties to CLEC in order to provide Telecommunications Services. **Where specifically prohibited by applicable federal or state requirements, UNE Combinations will not be directly connected to a Qwest Finished Service, whether found in a Tariff or otherwise, without going through a Collocation, unless otherwise agreed to by the Parties.** Notwithstanding the foregoing, CLEC can connect its UNE Combination to Qwest's Directory Assistance and Operator Services platforms. (emphasis added).

Mr. Antonuk specifically recommended the SGAT language specific to the bolded portion of 9.23.1.2.2 to address this concern of AT&T's in the multi-state proceeding.[37] Dr. Griffing has also recommend that this specific language be included in the SGAT to address this issue in section 9.23.1.2.2. In addition, Dr. Griffing notes that there may be FCC action in the future that could require a change to the SGAT.

Qwest agrees with Dr. Griffing's recommendation to accept Mr. Antonuk's resolution to this issue.[38] In the South Dakota SGAT filed on October 24, 2001, and in the KMC agreement, Qwest has already included the SGAT language as proposed by Mr. Antonuk for SGAT section 9.23.1.2.2. Qwest does not believe that any additional SGAT language is required at this time to implement the recommendation of Dr. Griffing.

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37 Mr. Antonuk Group 4 Report at page 29.
38 Dr. Griffing Direct Testimony at page 76.

In addition, Qwest acknowledges that if future FCC decisions require changes to the SGAT, Qwest will make appropriate changes to conform its SGAT to FCC requirements. However, since the filing of the Antonuk Report, no FCC decisions have been released that would require a change to the Qwest SGAT.

3 – OSS Testing

Qwest's response to the AT&T request for additional SGAT testing language is contained in the Rebuttal Affidavit of Lynn Notarianni.

Additional Checklist Item 2 OSS issues raised in the affidavit of Michelle Merchen representing Black Hills Fiber Com.

Qwest responds to the Checklist Item 2 OSS issues raised in the affidavit of Black Hills Fiber Com representative Ms. Michelle Merchen (regarding the OSS process for ordering EELs) in the Rebuttal Affidavit of Lynn Notarianni.[39] Ms. Merchen's affidavit refers to the New Product Questionnaire for Enhanced Extended Loops ("EELs") as part of the OSS process. Ms. Merchen does not express any specific concerns or issues about the New Product Questionnaire. However, later in this Affidavit, under the topic "Checklist Item 5 – EELs," I explain the role of the EEL product questionnaire in the CLEC provisioning process. Therefore, when my affidavit is combined with the affidavit of Ms. Notarianni, the Commission can understand the complete provisioning process when a CLEC first accesses new products.

IV. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH CHECKLIST ITEM 5 – UNBUNDLED INTEROFFICE TRANSPORT

[39] Merchen Direct Testimony at page 2.

Two parties commented on issues associated with Checklist Item 5-Unbundled Interoffice Transport: Dr. Marlon Griffing representing South Dakota Commission; and AT&T. I will address these issues and concerns in the following sections. For ease of reference, I have utilized the Checklist Item 5 number and issue identification in the Direct Testimony of Dr. Griffing dated March 18, 2002.

1 –SONET Add/Drop Multiplexing

Dr. Griffing, representing Commission Staff, was the only party to provide direct testimony on this issue.[40] Dr. Griffing recommended this Commission adopt the resolution from the Antonuk Group 4 Report. Mr. Antonuk recommended that Qwest be required to only unbundle its existing multiplexing facilities.[41] Qwest agrees with this recommendation and has added the following SGAT provision to the South Dakota SGAT filed on October 24, 2001 and included it in the KMC agreement:

> 9.6.1.2 An unbundled multiplexer is offered as an optional stand-alone element associated with UDIT or Unbundled Loops. A 3/1 multiplexer provides CLEC with the ability to multiplex the DS3 44.736 Mbps signal to 28 DS1 1.544 Mbps channels. The 3/1 multiplexer, in conjunction with an ITP, provides a DS3 signal terminated at a Demarcation Point and 28 DS1 signals terminated at a Demarcation Point. A 1/0 multiplexer provides CLEC with the ability to multiplex the DS1 1.544 Mbps signal to 24 DS0 64 Kbps channels. The 1/0 multiplexer provides a DS1 signal terminated at a Demarcation Point and 24 DS0 signals terminated at a Demarcation Point. **SONET add/drop multiplexing is available on an ICB basis where facilities are available and capacity exists.** (emphasis added)

Qwest believes that with the addition of this SGAT provision, this issue is closed between the parties.

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40 Dr. Griffing Direct Testimony at page 91.
41 Mr. Antonuk Group 4 Report at page 77.

2 – Access to Dark Fiber in Joint Build Arrangements

This dark fiber transport issue is addressed in the *AT&T Verified Comments on Checklist Items 2, 5, and 6* at pages 36-38 and in the *AT&T Emerging Services Comments* at pages 26-28. The direct testimony of Dr. Griffing and Mr. Antonuk's Third Report – Emerging Services discuss this issue under the topic "Emerging Services". I also address this issue in my Rebuttal Affidavit on Emerging Services. However, I would note, that for both unbundled dedicated transport (i.e. UDIT) and dark fiber, the Qwest SGAT and the KMC agreement already make transport and fiber facilities in meet point arrangements available to CLECs. Specifically for UDIT, the South Dakota SGAT filed on October 24, 2001 and the KMC agreement state:

> 9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a Network Element of a single transmission path between Qwest end offices, Serving Wire Centers or tandem switches in the same LATA and state. A UDIT can also provide a path between one CLEC in one Qwest Wire Center and a different CLEC in another Qwest Wire Center. Extended Unbundled Dedicated Interoffice Transport (EUDIT) provides CLEC with a bandwidth specific transmission path between the Qwest Serving Wire Center to CLEC's Wire Center or an IXC's Point of Presence located within the same Qwest Serving Wire Center area. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. **Qwest shall allow CLEC to access UDIT that is a part of a Meet Point arrangement between Qwest and another Local Exchange Carrier if CLEC has an Interconnection agreement containing access to UDIT with connecting Local Exchange Carrier at the determinsd Meet Point. Qwest rates, terms and conditions shall apply to the percentage of the route owned by Qwest.** EUDIT is a flat-rated, bandwidth-specific interoffice transmission path. EUDIT and UDIT are available in DS0 through OC-192 bandwidths and such higher capacities as evolve over time where facilities are available. EUDIT and UDIT in bandwidths up to OC-48 are defined products. Higher bandwidths can be ordered using the

> Special Request Process. CLEC can assign channels and transport its choice of voice or data. Specifications, interfaces and parameters are described in Qwest Technical Publication 77389. (emphasis added)

Qwest believes that no additional SGAT language is required to provide CLEC access to the Qwest facilities that are involved in meet point arrangements.

2 –Unbundled Dedicated Interoffice Transport/Extended Unbundled Dedicated Interoffice Transport (UDIT/EUDIT) Distinction

This issue involves the rate structure that Qwest has in place for the portion of unbundled dedicated transport that is between a Qwest serving wire center and a CLEC wire center. Qwest provides existing unbundled dedicated transport between all locations identified in the FCC rules and related orders. So this is not a situation where Qwest is not providing a portion of its required transport facilities to CLECs. By delineating the unbundled dedicated transport between the Qwest serving wire center and the CLEC central office as "EUDIT," Qwest's intent was to clearly highlight that the costs of this specific segment of dedicated transport have historically been treated in cost models and recovered as a non-distance sensitive rate element. All other "interoffice" transport has typically been modeled and rated on a fixed and per mile basis.

For example, other transport services have this segment of "transport" as a non-distance sensitive rate component, e.g., in Switched Access Services it is an "entrance facility" and in retail private line tariffs it is typically called a "channel termination."

1 Dr. Griffing, representing Commission Staff, recommended this Commission
2 adopt the resolution from Antonuk Group 4 Report.[42] Mr. Antonuk recommended that
3 the UDIT/E-UDIT pricing issue be resolved in a cost docket.[43] Qwest agrees with Dr.
4 Griffing's recommendation, and agrees that it will address the cost and rate structure
5 issues associated with the EUDIT portion of unbundled transport in its cost docket.

6 Meanwhile however, it should be noted that Qwest's rate structure for
7 UDIT/EUDIT reflects standard industry practice and is not an inappropriate rate
8 structure as AT&T implies.[44] In reality, this "concern" of AT&T's is really a cost model
9 and rate issue. The FCC suggested use of existing rates for interstate dedicated
10 switched transport as a default proxy for unbundled dedicated transport.[45] The FCC
11 actually gave an example of the price structure difference between the equivalent of
12 UDIT and EUDIT:

13 Interstate access rates for dedicated transport vary by region, type of
14 circuit, mileage, and other factors. For example, BellSouth's entrance
15 facility charge, for transport from an IXC's point of presence to a BellSouth
16 serving wire center, is $134 monthly per DS1 circuit ($5.58 per derived
17 voice grade circuit) and $2,100 monthly per DS3 circuit ($3.13 per derived
18 voice grade circuit). Dedicated transport for 10 miles of interoffice
19 transmission between a serving wire center and an end office is $325
20 monthly per DS1 circuit ($13.54 per derived voice grade circuit) and $2,950
21 monthly per DS3 circuit ($4.39 per derived voice grade circuit). Installation,
22 multiplexing and other transport-related charges may also apply.[46]

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42 Dr. Griffing Direct Testimony at page 92.
43 Mr. Antonuk Group 4 report at pages 78-79.
44 AT&T's Comments on Checklist items 2, 5 and 6 at pages 39 to 43.
45 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC-96-325 (Local Competition First Report and Order), para. 821.
46 Local Competition First Report and Order, fn. 1948.

SBC's Texas 271 Agreement provides for a price structure similar to Qwest's distinction between UDIT and EUDIT:

> The price for dedicated transport is found in Appendix Pricing – UNE Schedule of Prices labeled "Interoffice Transport." Entrance facility rates are found in Appendix Pricing – UNE Schedule of Prices, labeled as "Dedicated Transport, Entrance Facilities." (T2A, Attachment UNE-TX, Section 8.2.1).

Again, Qwest submits that its provision of UDIT/EUDIT complies with the requirements of Checklist Item 5, and that any residual rate issue should be deferred to the cost docket.

As it relates to the AT&T sub-issue of wanting Qwest to provide access to the attached electronics at the CLEC end of an E-UDIT.[47] Qwest agrees to unbundle any existing electronics and will add the following specific SGAT language in its next filing of the South Dakota SGAT:

> 9.6.1.3 In conjunction with a UDIT, a CLEC may order Remote Node/Remote Port at the CLEC Wire Center or IXC POP, if the Remote Node is already installed and spare card capacity exists. Remote Node provides the equipment necessary to deliver bandwidth capacities of OC3, OC12, OC48 and OC192 (SRP). At least one remote Remote Port (card) must be ordered with Remote Node to deliver the specified payload. A Remote Node at OC3 can deliver 3 DS3s or 84 DS1s; at OC12 a payload of 4 OC3 or 12 DS3 or 336 DS1; at OC48 a payload of 4 OC12s or 16 OC3s or 48 DS3s.
>
> 9.6.3.10 Remote Node/Remote Port rates are contained in Exhibit A of this Agreement and include the following charges:
>
> Recurring Remote Node Charge. The Remote Node at OC3, OC12 or

[47] AT&T Comments on Checklist Items 2, 5 and 6 at page 42.

OC48.

Recurring Remote Port Charge. A recurring charge for Remote Port card at DS1, DS3, OC3, OC12.

Nonrecurring Remote Port. One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

Qwest believes that this language will resolve this very narrow sub-issue between the parties as it relates to the access of existing electronics at the CLEC end of the E-UDIT. Qwest acknowledges it does not resolve the AT&T request that this Commission require Qwest to place new electronics for CLECs.[48] I addressed that AT&T issue above in the discussion of "Checklist Item 2 Issue 1 – Construction of new UNEs".

3 – Commingling UNEs and Connection Trunk

This issue concerns allowing CLECs to combine LIS Trunks and UNEs on the same network facility. While earlier versions of the SGAT raised this concern, Mr. Antonuk, in his Group 4 Report on page 20 recognized that Qwest had agreed to drop Local Interconnection Services ("LIS trunks") from the definition of "finished services", thus allowing LIS trunking to be combined with UNEs. Dr. Griffing supports Mr. Antonuk's decision.[49] Since Qwest had previously agreed to this recommendation, the South Dakota SGAT filed on October 24, 2001, as well as the KMC agreement, contain the following definition:

> "Finished Services" means complete end to end services offered by Qwest to wholesale or retail Customers. Finished Services do not include

[48] AT&T Comments on Checklist Items 2, 5 and 6 at page 7.
[49] Griffing Direct Testimony at page 92.

> Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging. Qwest provided DSL, Access Services, private lines, retail services and resold services.

Inexplicably, AT&T objects in its Comments at page 39 that Qwest includes Local Interconnection Services," in its definition of finished services.[50] Since AT&T is clearly wrong on this point and the SGAT reflects the requested change, there appears to be no further controversy here and the Commission should consider this issue closed.

4–Applying Local Use Restrictions to Unbundled Transport

This issue of Qwest imposing the EEL local use restrictions to unbundled transport alone (versus being applied to combinations that contain transport) was closed between the parties in post multi-state workshops. AT&T set out the specific language it felt was required to resolve this issue in South Dakota in its comments at page 45. The language at issue is already in the SGAT filed on October 24, 2001 and the KMC agreement:

> 9.6.2.4 CLEC shall not use EUDIT as a substitute for special or Switched Access Services, except to the extent CLEC provides such services to its End User Customers in association with local Exchange Services. Pending resolution by the FCC, Qwest will not apply the local use restrictions contained in 9.23.3.7.2.

The language contained in the South Dakota SGAT is also entirely consistent with the recommendation of Mr. Antonuk; which Dr. Griffing urged this Commission to follow on page 93 of his testimony. This Commission should consider this issue closed between the parties.

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[50] AT&T's Comments on Checklist items 2, 5 and 6 at page 39 footnote 161.

V. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH CHECKLIST ITEM 5 – ENHANCED EXTENDED LOOPS (EELS)

Three parties commented on issues associated with Checklist Item-5 EELS: Dr. Marlon Griffing representing South Dakota Commission; Ken Wilson on behalf of AT&T Communications of the Midwest, Inc.; and Michelle Merchen representing Black Hills Fiber Com. I will address these issues and concerns in the following sections. For ease of reference for the parties, I have utilized the number and issue identification for EEL's in the Direct Testimony of Dr. Marlon Griffing dated March 18, 2002.

1–Limiting Local Use Requirements to Existing Special Access Circuits

Dr. Griffing was the only party to provide direct testimony on this issue.[51] Dr. Griffing recommended this Commission adopt Mr. Antonuk's conclusion that all EELs, whether as a result of special access circuit conversions or new installations, properly have a local use restriction. Qwest agrees to this recommendation. No changes are necessary to the South Dakota SGAT.

2–Allowing Commingling Where Qwest Refuses to Construct UNES

Mr. Antonuk in his Group 4 Report recommended that special access circuits installed as a result of the CLEC being unable to obtain new EELs (due to lack of existing facilities) should be exempt from the limitation on special access and UNE

[51] Dr. Griffing Direct Testimony at page 93.

commingling.[52] Mr. Antonuk recommend specific language be included in the SGAT on this point:

> 9.23.1.2.3 Where a CLEC has been denied access to a DS1 Loop as a UNE due to lack of facilities, and where CLEC has requested and been denied the construction of new facilities to provide such Loop, CLEC may connect a Tariffed service that it secures in lieu of that UNE to a transport UNE that it has secured from Qwest. Before making such connection, CLEC shall provide Qwest with evidence sufficient to demonstrate that it has fulfilled all of the prior conditions of this provision. This provision shall be changed as may be required to conform to the decisions of the FCC under any proceedings related to the Public Notice referred to in document FCC 00-183.[53]

This specific SGAT language is contained in the South Dakota SGAT filed on October 24, 2001 and in the KMC agreement. Dr. Griffing at page 94 of his direct testimony expressed his support for Mr. Antonuk's resolution.

AT&T's Comments at page 49 also recommends that Qwest waive the local use restriction on connecting UNEs to finished services where Qwest refuses to build UNEs.[54] Qwest believes that the language Mr. Antonuk recommended largely resolves this very narrow issue for AT&T. In other jurisdictions (such as North Dakota) AT&T had agreed to this language if "DS1" was replaced with "high capacity." Qwest is willing to include this further change, and believes it would resolve this issue in South Dakota between Qwest and AT&T.

4–Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs

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52 Mr. Antonuk Group 4 Report at page 84.
53 Mr. Antonuk Group Report page 84.
54 AT&T's Comments on Checklist items 2, 5 and 6 at page 49.

1 The FCC ban on commingling EELs and special access tariffed services was
2 extensively discussed in issue "2 – Commingling UNEs and tariffed Services on the
3 Same Facilities." AT&T takes the position that CLECs using private line services should
4 be permitted to connect them to UNEs when conversion of private line services results
5 in contractual liability for early termination. In essence, AT&T believes that if it is
6 unwilling to pay a binding termination liability agreement (TLA) penalty on a special
7 access circuit it wants to convert to an EEL, that it should be allowed to ignore the clear
8 FCC prohibition on commingling.[55]

9 AT&T simply wants the ability to tariff and "UNE Combination" shop at its
10 convenience and then be able to commingle all special access and UNE combination
11 circuits despite the clear orders of the FCC. Qwest strongly believes that the payment
12 of TLAs is a subject best addressed in the context of the service being disconnected
13 (i.e. special access services) where discounts were applied based on the CLEC
14 commitment to pay a TLA if the CLEC did not keep the circuit installed for the
15 committed length of time. Versus the TLA being discussed in the docket which is
16 reviewing the terms and conditions of the service being ordered (i.e. EELs).

17 Dr. Griffing recommended this Commission adopt the resolution from the
18 Antonuk Group 4 Report.[56] Mr. Antonuk recommended that the resolution of the
19 preceding issue, making TLA waivers available to CLECs when appropriate, should

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55 AT&T's Comments on Checklist items 2, 5 and 6 at page 48.
56 Dr. Griffing Direct Testimony at page 96.

1 address CLEC concerns on this issue. Qwest agrees to this resolution and notes that
2 no additional SGAT language is necessary to implement this recommendation.

3 **5–Counting ISP Traffic Toward Local Use Requirements**
4
5 Dr. Griffing, was the only party to provide direct testimony on this issue.[57] Dr.
6 Griffing recommended this Commission adopt the recommendation in Mr. Antonuk's
7 Group 4 Report at page 88 Mr. Antonuk recognized that the *ISP Remand Order* is clear
8 that ISP traffic is interstate and not local traffic.[58] Qwest agrees with the
9 recommendation, no changes are necessary to the South Dakota SGAT. For additional
10 information regarding this issue, please see the Rebuttal Affidavit of Thomas Freeberg,
11 who discusses the impact of this determination on Checklist Item 13, i.e., Reciprocal
12 Compensation.

13 **EEL New Questionnaire Process as discussed in the affidavit of Michelle**
14 **Merchen representing Black Hills Fiber Com.**

15 Ms. Merchen's affidavit refers to the New Product Questionnaire for Enhanced
16 Extended Loops ("EELs") as part of the OSS process.[59] Ms. Merchen does not express
17 any specific concerns or issues about the New Product Questionnaire. However, below
18 I explain the role of the EEL New Product Questionnaire in the CLEC provisioning
19 process. Therefore, when this affidavit is combined with the affidavit of Lynn Notarianni,
20 the Commission can understand the complete provisioning process when a CLEC first
21 accesses new products.

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57 Dr. Griffing Direct Testimony at page 97.
58 FCC April 27, 2001 Order on Remand and Report and Order in CC Dock. No 96-98 and 99-68.
59 Merchen Direct Testimony at page 2.

1 The CLEC Questionnaire is a tool used by Qwest to obtain information that is
2 critical to establishing the business relationship between Qwest and the CLEC. Some
3 sections of the questionnaire are required to enable Qwest to establish the CLEC in
4 internal and external systems, e.g., billing accounts, contact information, etc. In
5 addition, the CLEC Questionnaire was designed to allow CLECs to specify its
6 requirements for billing and contact information based on the CLEC's requirement for
7 single or multiple contacts and contact locations. Since not all CLECs have the same
8 requirements, the questionnaire was designed to allow for these differences.

9 Qwest has elected to obtain as much information as possible about the CLEC's
10 requirements on a single document. The other BOCs require much of the same
11 information but often require the CLEC to prepare separate documents or forms to
12 obtain the information Qwest requests on a single questionnaire.

13 Qwest recognizes that not all the information requested on the questionnaire is
14 available at the start of the business negotiations with Qwest. Therefore, Qwest only
15 requires information that is needed to establish the CLEC as a certified local service
16 provider and for billing of products/services provided to the CLEC by Qwest. The
17 required entries would include information from the following sections of the
18 questionnaire:

19 General Information

20 Billing & Collections – Section 1

Qwest Output – Section 2 (Minimum information required is Contact Name & Telephone Number if no other information available)

Input to Qwest – Section 3

Contact List – Section 4

If the CLEC is not prepared to provide some information when initially submitting the questionnaire, a designation of "to be determined" may be entered in some fields and the information can be provided at a later time. In addition, while some sections of the questionnaire contain several sub-sections by product or functionality, the use of "same as above" can be used in subsequent sections of the questionnaire if some or all of the information is the same. If the CLEC is not planning to order certain products, those product specific sections may be left blank or designated as "not applicable" or "n/a."

Qwest uses the information provided by the CLEC to establish billing accounts in the billing systems, load the CLECs contact information in internal systems to enable the referral of the CLEC's customers, as well as providing contact information to the Qwest wholesale centers responsible for processing CLEC requests. Also, Qwest uses some of the information to establish the method and system requirements for exchange of call usage data and begins the process of establishing the CLEC's requirements for either an EDI or GUI link to Qwest's IMA system. All of the information provided by the CLECs is required to enable Qwest to establish the necessary interfaces, whether business or systems, between the CLEC and Qwest. This information is not shared

with any department within Qwest without a need to know and none of this information is used for marketing purposes.

In summary, Ms. Merchen did not express any concerns specifically regarding the EEL new product questionnaire. In summary, this Commission should find that Qwest's use of new product questionnaires is reasonable, and that Qwest meets its obligations to provide access to unbundled local transport and EELs in compliance with FCC requirements for Checklist Item 5.

This concludes my Rebuttal Affidavit.

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 22 day of March, 2002.

Karen A. Stewart

Karen A. Stewart

STATE OF Oregon

COUNTY OF Multnomah

Subscribed and sworn to before me this 22 day of March, 2002.

Janice Kay Kerr

Notary Public

OFFICIAL SEAL
JANICE KAY KERR
NOTARY PUBLIC-OREGON
COMMISSION NO. 326256
MY COMMISSION EXPIRES SEPT. 17, 2003

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET-TC 01-165
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

REBUTTAL AFFIDAVIT

OF

KAREN A. STEWART

EMERGING SERVICES

APRIL 2, 2002

Table of Contents

I. IDENTIFICATION OF AFFIDAVIT

Karen A. Stewart states as follows:

My name is Karen A. Stewart. I am a Senior Staff Advocate in the Qwest Services Corporation (Qwest) Policy and Law organization. My office is located at 421 SW Oak Street, Portland, Oregon. I filed an affidavit regarding Qwest's compliance with all FCC requirements regarding Emerging Services in Docket No. TC 01-165 on October 24, 2001.

The purpose of my Rebuttal Affidavit is to reply to the affidavits of the numerous parties commenting on line sharing, sub-loop unbundling, access to dark fiber, and Qwest's obligation to provide access to unbundled packet switching. Specifically, I respond to the affidavits of Kenneth Wilson on behalf of AT&T Communications of the Midwest, Inc (AT&T), Dr. Marlon Griffing representing South Dakota Commission Staff, and W. Thomas Simmons representing Midcontinent Communications.

As described in my Direct Affidavit and in this Rebuttal Affidavit, Qwest satisfies the requirements of Sections 251 and 271 of the Act and the FCC's rules as it relates to emerging services.

II. EXECUTIVE SUMMARY

In this affidavit, I address issues raised by other parties regarding Qwest's compliance with the FCC's emerging services obligations. Qwest's emerging service obligations are the result of the FCC's Third Interconnection Order in CC Docket No.

96-98[1] and the Line Sharing Order in CC Docket Nos. 98-147 and 96-98.[2] The Line Sharing Order, as its name implies, added a requirement for line sharing and the Third Interconnection Order added requirements for sub-loop unbundling, access to dark fiber, and limited access to unbundled packet switching.

Qwest has a concrete and specific legal obligation to provide emerging services and UNEs through its revised Statement of Generally Available Terms and Conditions (SGAT), the KMC Telecom V, Inc. ("KMC") interconnection agreement, and Qwest's other Commission approved interconnection agreements. Section 9 of the South Dakota SGAT was updated consistent with the recommendations from Mr. John Antonuk's reports on emerging services, i.e., for SGAT sections for line sharing, sub-loop unbundling, dark fiber, and packet switching.

My affidavit, when combined with the Regional Oversight Committee's (ROC) Third Party Operation Support System (OSS) testing results, and references to the SGAT and South Dakota interconnection agreements, such as KMC, proves that Qwest provides access to emerging services in conformance with the Act. The South Dakota Commission should confirm that Qwest satisfies its obligations to provide access to emerging services under checklist item 2.

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1 Third Interconnection Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98 FCC 99-238, (November 5, 1999) (Third Interconnection Order or UNE Remand Order).

2 Third Interconnection Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98, FCC 99-355 (December 9, 1999) (Line Sharing Order).

II. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH THE FCC'S REQUIREMENTS FOR LINE SHARING

This issue concerns whether Qwest must provide CLECs with access to its line splitters on a line at a time basis. Two witnesses commented on issues associated with line sharing: Dr. Griffing on behalf of the Commission Staff; and Mr. Wilson on behalf of AT&T. I will address these issues and concerns in the following sections. Dr. Griffing provided Direct Testimony on each impasse issue identified in Mr. John Antonuk's (the Multi-state facilitator) Third Report – Emerging Services ("Third Report") issued on June 11, 2001. For ease of identification by the parties, I have used the numbering and issue identification contained in the Direct Testimony of Dr. Griffing.

1 – Ownership of and Access to Splitters

Qwest strongly disagrees with AT&T's position that Qwest be required to purchase, own, and deploy line splitters to support line splitting arrangements.[3] The FCC in the Texas 271 order rejected this exact request. Specifically the FCC stated:

> 326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.[4] AT&T alleges that this is "the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive."[5] Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of

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3 AT&T Emerging Services Comments at page 38.

4 *See* AT&T Texas II Pfau/Chambers Decl. at ¶¶40-42; *see also* IP Communications at 12, 14.

5 AT&T Texas II Pfau/Chambers Decl. at ¶41.

> the loop, including electronics attached to the loop.[6] AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.[7]
>
> 327. **We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P.** The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, **and incumbent LECs therefore have no current obligation to make the splitter available.**[8] As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity."[9] We separately determined that the DSLAM is a component of the packet switching unbundled network element.[10] We observed that "DSLAM equipment sometimes includes a splitter" and that, "[i]f not, a separate splitter device separates voice and data traffic."[11] **We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element.** That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding. (emphasis added)
>
> 328. **The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters.** (emphasis added).

Thus, this issue has been resolved by the FCC against AT&T. This position is further supported by the FCC's Line Sharing Order. This order specifically stated that

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6 AT&T Texas II Pfau/Chambers Decl. at ¶¶40-42.

7 AT&T Texas II Pfau/Chambers Decl. at ¶40.

8 *See* 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

9 *UNE Remand Order*, 15 FCC Rcd at 3776, ¶175.

10 *UNE Remand Order*, 15 FCC Rcd at 3833, ¶¶302-303.

11 *UNE Remand Order*, 15 FCC Rcd at 3833, ¶303.

ILECs such as Qwest had the option of providing line splitters itself or, in the alternative, allowing CLECs to place their splitters in the ILEC's central offices.[12]

Interestingly, the FCC believes that providing CLECs with the option to own line splitters is to the CLEC's advantage, since it ensures that the ILEC cannot limit the CLEC's ability to deploy competitive services.[13]

Thus, the FCC has specifically stated, not once but twice, that ILECs are not required to own and install splitters for CLECs that can be obtained on a line-at-a-time basis.

Moreover, this issue has also been determined by the Texas Commission. In the case of Southwestern Bell (SWBT), it was utilizing non-integrated outboard splitters as part of a managed data service it was offering. Because outboard splitters were already available to an SWBT affiliate, the Texas Commission mandated that the CLECs could also use the SWBT outboard POTS splitters. Additionally, the Texas Commission clarified in its order:

> "The Commission clarifies that this finding applies only to "stand-alone" splitters, as requested by AT&T in this docket. **This does not apply to a splitter that has been incorporated into a DSLAM.**"[14] (emphasis added)

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12 Line Sharing Order at ¶146.

13 Line Sharing Order at ¶76.

14 Order Approving Revised Arbitration Award, PUC Docket No. 22315, Public Utility Commission of Texas, page 9.

First, Qwest does not currently provide non-integrated (i.e. outboard) POTS splitters to an affiliate. The only splitters used in Qwest's central offices are those that are integrated into the Qwest DSLAM unit. Within both the Cisco and Lucent platforms used by Qwest, there is a separate shelf for the splitters. However, the DSLAM shelves are hardwired directly to the back of the data ports of the splitters. These hardwired connections are made with amphenol connectors. Qwest's current architecture for DSLAM and splitter deployment does not call for circuit board integration, due to critical need to maintain voice service if a DSLAM card fails or is removed for maintenance purposes. However, Qwest believes that the integration of DSLAMs and splitters is not defined exclusively by circuit board integration.

Second, from a design and provisioning perspective, the Qwest DSLAM modems and the POTS splitters are considered as one unit. This translates into one and only one point of demarcation between the line shared loop and the Splitter/DSLAM port combinations. Also, the interface to the ATM switch is seen as one demarcation point. Furthermore, the equipment bays that house the POTS splitter and DSLAM units are ordered from the manufacturer as one EF&I (Engineered, Furnished, and Installed) unit. Finally, Qwest's technicians do not have access to the cable between the Splitter and the DSLAM for testing. Testing is performed at the Main Distribution Frame ("MDF") in the serving wire center. Therefore, it is impossible to provide access for another provider to the Qwest-owned splitter. In summary, Qwest does not use the type of "outboard splitters" that could be shared between Qwest and other CLECs.

In addition, Qwest disagrees with AT&T's implication that providing access to Qwest splitters would result in a CLEC being able to provide or partner with another CLEC to provide DSL services without central office collocation.[15] In reality, one of these parties would require central office collocation to place the DSLAM to provide access to the packet switch providing the DSL service.

Therefore, the Qwest position that POTS splitters in South Dakota must be provided by the CLEC is consistent with both the FCC and the Texas Commission on this issue.

Finally, Dr. Griffing, on behalf of the Commission Staff, carefully reviewed the multi-state facilitator's Third Report regarding the issue of POTS splitter ownership that resulted from the Multi-state emerging services workshops, and concurs with Mr. Antonuk's recommendation.[16] In his Third Report, Mr. Antonuk recognized that existing regulations do not require Qwest to provide CLECs with splitters.[17] Nor did Mr. Antonuk find any evidence to support a conclusion that CLEC installation of splitters would impose distance, cable length, or central-office space problems that could be avoided by having Qwest perform the splitter installations.[18] The state commissions from Arizona, Colorado, Idaho, Iowa, Montana, Nebraska, New Mexico, North Dakota,

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15 AT&T Emerging Services Comments at page 38.

16 Dr. Griffing's Direct Testimony at pages 53-54.

17 Mr. Antonuk's Third Report at page 15.

18 Mr. Antonuk's Third Report at page 15.

Oregon, Utah, Wyoming, and Washington have all agreed with Qwest on this issue. No Commission has found otherwise.

In summary, Qwest agrees with the recommendation of Dr. Griffing and notes no changes are necessary to the South Dakota SGAT to implement his recommendation.

2 – Tying Qwest Data Service and Voice Service

This issue concerns whether Qwest must enable CLECs to offer Qwest DSL service when CLECs provide voice service over UNE-P. Qwest provides for such access. No CLEC provides comment on this issue. Probably because he has not seen how this issue has evolved, only Dr. Griffing, on behalf of the Commission Staff, provides comment. Dr. Griffing reviewed the facilitator's report and analyzed the previous Qwest policy of disconnecting retail Qwest DSL service if an end user customer was to convert their retail Qwest local exchange service to voice service provided by a CLEC using unbundled network elements (UNEs). Dr. Griffing correctly noted that Qwest's initial response was to respond to AT&T's request literally and allow CLECs to keep existing Qwest DSL service in place when the CLEC decided to provide voice over UNE-P. Dr. Griffing supports, at a minimum, an interpretation of Mr. Antonuk's Third Report that Qwest allow CLECs to provide Qwest retail DSL to any interested end user customer that obtains its voice service by a CLEC via UNEs.[19] So long as Qwest has the infrastructure in place to provide the DSL service, Qwest

[19] Dr. Griffing's Direct Testimony at page 55.

supports that recommendation and has already included this commitment to offer Qwest DSL service in its South Dakota SGAT and its KMC interconnection agreement:

> 9.23.3.11.7 CLEC may order new or retain existing Qwest DSL service on behalf of End User Customers when utilizing UNE-P-POTS, UNE-P-Centrex, and UNE-P-PBX (analog, non-DID trunks only) combinations, where Technically Feasible. . . .[20]

In addition to recommending, at a minimum, that the South Dakota Commission adopt the resolution in Mr. Antonuk's Third Report, Dr. Griffing also recommends that Qwest be required to offer Qwest DSL as a stand-alone product. The issue of Qwest's ability to offer Qwest DSL as a stand-alone product is discussed in the Rebuttal Affidavit of Ms. Jean Liston.

However, since Qwest has already implemented the resolution from Mr. Antonuk's Third Report in South Dakota, Qwest recommends that the South Dakota Commission finds that this issue has been resolved.

3- Line Sharing Over Fiber Loops

Mr. Wilson, on behalf of AT&T, seeks to impose new obligations, in addition to those the FCC currently imposes, on Qwest to provide line sharing over fiber.[21] In the Line Sharing Reconsideration Order, the FCC clarified Qwest's current obligation:

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[20] See SGAT § 9.23.3.11.7 and KMC agreement § 9.23.3.11.7.

[21] AT&T Comments on Emerging Services at page1.

> where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office. The incumbent LEC can do this, at a minimum, by leasing access to the dark fiber element or by leasing access to the subloop element.[22]

Qwest clearly complies with this current obligation. Qwest provides CLECs with the network elements to transport data from Qwest remote terminals including unbundled dark fiber,[23] DS1 capable loops,[24] and OCN.[25] Qwest also provides CLECs with the ability to commingle its data with Qwest's data.[26]

Qwest admits that the FCC then acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed.[27] Accordingly, the FCC initiated two further notices of proposed rulemaking to request comments to explore the feasibility of additional methods of providing line sharing over fiber-fed loops.[28] Clearly, the FCC has not imposed any additional obligations, but has merely begun the process for considering whether to impose any such additional obligations. Nonetheless, AT&T

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22 Line Sharing Reconsideration Order ¶12.

23 *See* SGAT section 9.7.

24 *See* SGAT section 9.2.

25 *See* SGAT section 9.2.2.3.1. Qwest also offered to add the following sentence at the end of section 9.2.2.3.1: "Qwest shall allow CLECs to access high capacity loops at accessible terminals including DSX, FDPs or equivalent in the Central Office, customer premises or at Qwest owned outside plant structure (e.g., CEV, RT or hut)."

26 *See* SGAT section 9.20 (unbundled packet switching).

27 Line Sharing Reconsideration Order ¶12.

28 *Line Sharing Reconsideration Order* ¶12 ("For these reasons, we are initiating a Third Further Notice of Proposed Rulemaking today in the Advanced Services docket and a Sixth Further Notice of Proposed Rulemaking in the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.")

asks that the Commission impose additional line sharing obligations of the very kind the FCC intends to study through the comments it has requested.

Specifically, the AT&T request would require Qwest to delete references to "copper" loops in SGAT section 9.4.1, which describes Qwest's line sharing offering, and broaden the reference to include other loops. Deleting references to copper loops would render the SGAT's description of line sharing misleading because Qwest cannot currently offer line sharing over anything other than a copper loop. No state commission in Qwest's region has imposed the obligation that AT&T seeks here. All have recognized that the line sharing language as currently constructed in dependent on the use of copper loops.

Mr. Wilson asserts that line sharing over fiber fed loops is technically feasible.[29] However, Mr. Wilson quickly acknowledges this would require the South Dakota Commission to expand Qwest's legal obligations as it relates to unbundled packet switching.[30] Mr. Wilson does not provide any information, facts or data about the technology, cost or network impacts of his recommendation that would allow this Commission to do a necessary and impair analysis of his request. Moreover, an expanded definition of unbundled packet switching would not make line sharing over fiber any more technically feasible. This process is just not feasible in Qwest's network today.

Moreover, Qwest has included language in the South Dakota SGAT and in the KMC interconnection agreement that acknowledges its obligations to provide line sharing over additional transport mechanisms as they become available:

> 9.4.1.1 Line Sharing occurs on the copper portion of the Loop (i.e., copper Loop or shared copper distribution). Qwest provides CLECs with the Network Elements to transport data from Qwest Remote Terminals including unbundled Dark Fiber, DS1 capable Loop, and OCN. Qwest also provides CLECs with the ability to commingle its data with Qwest's pursuant to Section 9.20 with Unbundled Packet Switching. To the extent additional Line Sharing technologies and transport mechanisms are identified, and Qwest has deployed such technology for its own use, and Qwest is obligated by law to provide access to such technology. Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for Line Sharing may need to be amended in order to provide such access.

Dr. Griffing, on behalf of the Commission Staff, reviewed the facilitator's report regarding this impasse issue from the Multi-state emerging services workshops. Dr. Griffing supports the recommendation from Mr. Antonuk's Third Report.[31] Specifically, Mr. Antonuk found no evidence that Qwest was failing to provide any technically feasible line sharing over fiber.[32] Moreover, Mr. Antonuk noted that 9.4.1.1 is flexible enough to accommodate new technologies.[33] Qwest agrees with this recommendation

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[29] AT&T Comments on Emerging Services at page 39.

[30] *Id.*

[31] Dr. Griffing's Direct Testimony at pages 55-56.

[32] Mr. Antonuk's Third Report at pages 18-19.

[33] Mr. Antonuk's Third Report at page 19. Mr. Antonuk's report refers to an original version of 9.4.1.1, *prior to it being modified based on CLEC comments in post Multi-state emerging services workshops.* The version of 9.4.1.1 in Mr. Antonuk's Third Report reads: "To the extent additional line sharing technologies and transport mechanisms are identified, and Qwest has deployed such technologies for its own use, and Qwest is obligated by law to provide access to such technology. Qwest

and notes that no changes are necessary to the South Dakota SGAT to implement Dr. Griffing's recommendation.

4– Provisioning Interval

This issue concerns the speed with which Qwest must make line sharing available to CLECs. Dr. Griffing representing Commission Staff, was the only party to provide direct testimony on this provisioning installation interval. This issue developed in the Multi-state workshop because a CLEC desired Qwest to provide a one-day installation interval for line sharing. However, the FCC has expressly determined that the retail parity standard applies to line sharing because there is a retail analogue:

> As a general matter, the nondiscrimination obligation requires incumbent LECs to provide to requesting carriers access to the high frequency portion of the loop that is equal to that access the incumbent provides to itself for *retail* DSL service its customers or its affiliates, in terms of quality, accuracy and timeliness. Thus, we encourage states to require, in arbitration proceedings, incumbent LECs to fulfill requests for line sharing within the ***same interval the incumbent provision xDSL to its own retail or wholesale customers***, regardless of whether the incumbent uses an automated or manual process.[34]

Thus, the FCC has established that the nondiscrimination standard for line sharing is retail parity and the interval for line sharing should be the same as the xDSL loop interval.

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will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access." Qwest believes the current version of 9.4.1.1 in the South Dakota SGAT still contains the relevant commitments identified by Mr. Antonuk and is preferred by the CLECs.

[34] *Line Sharing Order* ¶173 (emphasis added).

Qwest's installation interval was actually better than this FCC directive when it first set the line sharing interval at five days. Qwest's retail DSL provisioning interval is ten days. Thus, Qwest was already providing CLECs with a faster interval than required to comply with the parity standard. Clearly, a five day interval provides CLECs better than retail parity. Nonetheless, Qwest agreed to reduce its line sharing interval even further. Effective July 1, 2001, the standard interval for line sharing was reduced to only 3 days for quantities of 1 to 24 lines.

Moreover, since Mr. Antonuk's decision, parties to the ROC PID process have agreed upon an average line sharing provisioning interval of 3.3 days. Thus, if Qwest provides CLECs with line sharing in, on average, 3.3 days, the CLECs admit that they have a meaningful opportunity to compete. While CLECs in South Dakota have not yet afforded themselves of line sharing, throughout the region, Qwest consistently provisions line sharing at or faster than the 3.3 day benchmark. Thus, Qwest can and does meet this 3.3 day objective with its 3.0 day provisioning interval thereby verifying its propriety. All 12 states to consider this issue have supported Qwest's existing provisioning interval for line sharing.

III. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH THE FCC'S REQUIREMENTS FOR SUBLOOPS

Qwest offers CLECs access to subloop unbundling such that CLECs can obtain access to fragments of an unbundled loop at any Qwest accessible terminal. Three witnesses commented on issues associated with subloop unbundling: Dr. Griffing on

behalf of the Commission Staff; Mr. Wilson on behalf of AT&T, and W. Thomas Simmons representing Midcontinent Communications. I will address these issues and concerns in the following sections. Dr. Griffing provided Direct Testimony on each impasse issue identified in Mr. Antonuk's Third Report. For ease of identification by the parties, I have used the numbering and issue identification contained in the Direct Testimony of Dr. Griffing.

After proceedings on this subject in multiple states, Qwest and the CLEC community have reached consensus on how CLECs should access subloop elements in detached terminals such as a feeder distribution interface (FDI). The issues that remain, concern how CLECs can access subloops and terminals in multiple tenant environments (MTEs). AT&T wants access without any rule or limitation. Qwest asserts that some minimal procedures must be followed.

1– Subloop Access at MTE Terminals

The first issue is whether the SGAT section on subloop access is consistent with the FCC's definition of the unbundled network interface device ("NID"). Qwest is confused about this issue, as it appears to be an unnecessary hold over from the time when Qwest demanded collocation in MTE terminals. The SGAT and KMC interconnection agreement allows CLECs to access NIDs (terminals without a subloop element) and MTE terminals (when subloop access is required) in exactly the same way. Despite this, AT&T contends that any accessible terminal containing a protector in

an MTE is a NID and subject to the FCC's rules on access to the unbundled NID. AT&T in their comments only raises issues that were addressed and resolved in the Multi-state workshops and in Mr. Antonuk's Third Report. AT&T does not provide any new factual evidence on this issue.

Before discussing the merits of AT&T's position, Qwest would like to make a practical point. This is simply a terminology issue, nothing more. There is no difference in what access the CLECs will obtain. The only issue is what do we call these terminals when they are a stand-alone product versus what we call these terminals when they have an accompanying subloop. Qwest asserts that the terminals should have different names to leave absolutely no confusion about whether a subloop is involved or not. When an MTE Terminal is involved, a Qwest subloop exists past the terminal. When an MTE Terminal is involved, a CLEC also wants access to a Qwest subloop past the terminal. When a NID is ordered, it is the only portion of the network that CLECs seek access to; generally this would mean that the NID is a demarcation point between the Qwest network and customer owned inside wire. We do not need to add a level of confusion for the individuals who must implement the SGAT.

In order to make its argument, AT&T cites to Rule 319 (a)(2)(D) that provides "[a]ccess to the subloop is subject to the Commission's collocation rules." In order to avoid the application of the collocation rules, AT&T claims that the accessible terminals it seeks to access in conjunction with subloop elements constitute unbundled NIDs, and therefore are not subject to the collocation rules. Qwest does not seek to

require CLECs to collocate in either NIDs or MTE Terminals for subloop unbundling. Qwest decided to back off of this clear FCC language in March of 2001. AT&T knows this as SGAT section 9.3.3.1 specifically states that no such collocation is required.

The crux of the purported disagreement between AT&T and Qwest turns on the FCC's description of these two UNEs – subloop and NID. Essentially, AT&T claims that any accessible terminal that includes the cross-connect and electrical over-voltage protections that a NID performs constitutes a NID to which Qwest must provide unbundled access pursuant to Rule 319(b). This contention ignores the FCC's plain distinction between the functionality of the NID, which the FCC expressly held is included as part of a subloop, and the unbundled network element NID, which the FCC clearly defined as the demarcation point between "end-user customer premises wiring [and] the incumbent LEC's distribution plant."[35] Thus, all Qwest is stating is that CLECs must order subloops pursuant to section 9.3 of the SGAT and NIDs pursuant to section 9.5 of the SGAT. The processes involved have much agreed upon overlap and the differences required for subloop are necessary to ensure Qwest can monitor, repair, and bill for its subloop elements. All 12 state commissions to consider this issue have agreed with Qwest.

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[35] *UNE Remand Order* ¶233.

Dr. Griffing, who also provided direct testimony on this issue, recommends that the Commission adopt Mr. Antonuk's Third Report on this issue.[36] Mr. Antonuk stated that we should avoid trying to define the issue simply in terms of a broad definition of the NID and rote application of collocation rules, but rather that there be language in the SGAT flexible enough to allow a case-by-case assessment of "accessible" terminal by subloop elements.[37] As also stated by Dr. Griffing, Qwest has already made Mr. Antonuk's suggested changes to the SGAT and has implemented these changes in the KMC interconnection agreement. Qwest agrees with this recommendation and believes this Commission should find that Qwest meets its obligations to provide access to subloops at MTE terminals.

2- Requiring Local Service Requests (LSRs) for Access to Premise Wiring at MTEs

The second such subloop issue in an MTE environment is whether CLECs must order subloops using the standard LSR process. Dr. Griffing recommended that the Commission adopt the resolution from Mr. Antonuk's Third Report, which specifically mandated use of LSRs.[38] Mr. Antonuk discounted the AT&T suggestion to have CLECs avoid a standard LSR process by sending in monthly counts to Qwest.[39] Every state commission except Oregon has specifically required use of the LSR, and Oregon

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[36] Dr. Griffing's Direct Testimony at page 57.

[37] Mr. Antonuk's Third Report at page 29-30.

[38] Dr. Griffing's Direct Testimony at pages 58-59.

[39] Mr. Antonuk's Third Report at page 31.

relied upon a Washington ALJ decision, which the Washington Commission reversed.[40] This is the same proposal AT&T is still making in its South Dakota comments.[41] In rejecting this proposal, Mr. Antonuk stated:

> AT&T's arguments about the low cost and the low incidence of repair for on-premises wiring does not support its proposed long-term solution. Because Qwest is entitled to bill for the wiring if it owns it, it is also entitled to regularity and completeness for billing purposes. LSRs provide an efficient means of getting Qwest's billing systems the information needed; comparable manual methods would not be efficient; and AT&T's solution is simply not rigorous enough to offer Qwest what it is entitled to have when it makes its facilities available for CLEC use as subloop elements.[42]

Qwest acknowledges that Mr. Antonuk addressed the timing concerns of the CLECs in having to have complete LSRs the first time they access an MTE location. Therefore, Qwest agreed to implement Mr. Antonuk's recommendation that it allow CLECs to submit incomplete LSRs the first time the CLEC accesses Qwest subloop elements at an MTE. Qwest has made the SGAT changes recommended by Mr. Antonuk in its South Dakota SGAT and makes the same commitment in the KMC interconnection agreement:

> 9.3.5.4.7 For access to Qwest's on-premises MTE wire as a Subloop element, CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible

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40 Qwest has filed comments in Oregon that it will seek review of this issue in the next Oregon 271 workshop.

41 AT&T Emerging Services Comments at page 12.

42 Mr. Antonuk's Third Report at page 31.

> for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

Qwest agrees with this recommendation and urges the Commission find the Qwest policy of requiring an LSR is reasonable and that Qwest meets its obligations to provide access to Qwest-owned inside wire.

Despite the statements of AT&T, submission of an LSR is the industry standard for wholesale orders of network elements. The OBF is the national industry forum that creates and maintains LSR ordering guidelines. These guidelines are the de facto standard for ordering UNEs. The OBF has considered how subloop unbundling should be ordered and has begun to adopt processes for access to the various types of subloops. The process the subloop ordering process that the OBF has thus far defined for ordering subloops is based on submission of an LSR.

The industry standard requires submission of an LSR for ordering for good reason. The LSR contains information Qwest requires for billing, tracking inventory, and identifying the circuit for maintenance and repair purposes. Timely submission of the LSR is required so that Qwest can satisfy its obligations to manage and maintain its network and to bill and recover the payment to which it is entitled for the element. More importantly, both CLEC and Qwest customers will be adversely affected by the lack of a timely LSR due to the resultant inaccuracies in Qwest's systems, which will impede Qwest's repair efforts.

AT&T's contention is that it is too costly to submit LSRs. Yet, AT&T does not object to submitting LSRs when the end user customer they are going to serve wants its number ported. AT&T has estimated that 80% of the time this will be the case. So in the remaining 20%, AT&T proposes a non-standard, one-off process that does not eliminate cost but rather increases it. The difference with AT&T's proposal, is that all the cost of having to deploy methods, processes, training and system changes are borne by Qwest.

Again, Qwest asks this Commission to adopt the recommendation of the Mr. Antonuk and require that CLECs submit LSRs when seeking access to Qwest subloops.

3– CLEC Facility Inventories

This step of the subloop provisioning process requires Qwest to inventory the particular facilities that the CLEC physically brings into and attaches to the Qwest MTE Terminal. Qwest takes 5-days to complete this process. The creation of an inventory allows Qwest to monitor what Qwest facilities are currently in use by a CLEC. In the 7 state report, Mr. Antonuk recommended that CLECs be allowed to submit LSRs for subloops before the 5-day inventory process was complete. Qwest has memorialized this concept in SGAT section 9.3.5.4.7 of the South Dakota SGAT and the KMC interconnection agreement.

Dr. Griffing recommended this Commission adopt the resolution from Mr. Antonuk's Third Report on this issue that allows Qwest to conduct CLEC inventories but that the need for such inventories to create circuit identifications within the Qwest systems should not delay CLEC access.[43] Mr. Antonuk deemed that upon CLEC request, the required inventory would take place during the 5-day period an LSR is in suspension. Qwest agrees with this recommendation and has already implemented this option for CLECs into its SGAT and makes this commitment in its KMC interconnection agreement:

> 9.3.5.4.7 For access to Qwest's on-premises MTE wire as a Subloop element, 'CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the Subloop element as of the time of LSR submission by CLEC.

AT&T has expressed concern about the language in 9.3.3.5 and that it needs to be clear that the CLEC does not have to wait for the completion of the inventory; rather AT&T contends that Qwest should inventory CLEC facilities after, rather than before, the CLEC has completed its installation process.[44]

AT&T concerns are without merit. As stated above, SGAT section 9.3.5.4.7 specifically allows CLEC to access to the intrabuilding cable subloops prior to

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43 Dr. Griffing's Direct Testimony at pages 59-60.

44 AT&T Emerging Services Comments at page 17.

submitting a complete LSR. If a CLEC begins the 5 day inventory process at the time its places facilities into the MTE, the CLEC could easily have more than 5 days before needing to process an end user customer order. Further, a CLEC's business plan will be in place well before marketing actually begins. AT&T could notify Qwest in advance of the targeted MTEs so that the inventory can be completed before the CLEC even begins marketing, eliminating AT&T's concern. Accordingly, AT&T's argument should be rejected.

Secondarily, AT&T argues that "it is prejudicial to have AT&T create an inventory." However, in the next sentence, AT&T acknowledges that the inventory is a simple "cable count." Thus, it is not clear what the prejudice is. Moreover, it is not AT&T creating the inventory, it is Qwest. All AT&T must do is inform Qwest of the cable count into the MTE Terminal and, from that, Qwest will create the inventory that facilities simple subloop ordering in its systems. It is hardly prejudicial for AT&T to tell Qwest how many cable pair it is terminating in Qwest's terminal.

Finally, AT&T claims it should not have to pay Qwest for creating the inventory that will allow CLECs to order subloops. This is a one time charge. Section 252(d) specifically allows Qwest to recover its cost of making UNEs available to CLECs. Thus the submission of the LSR prior to completing the inventory is at the CLEC's option.

Nonetheless, Qwest would not object to the following SGAT revision to address the AT&T issue of clarity in section 9.3.3.5:

> 9.3.3.5 If there is space in the building for CLEC to enter the building and terminate its facilities without Qwest having to rearrange its facilities, CLEC must seek to use such space. In such circumstances, an inventory of CLEC's terminations within the MTE shall be input into Qwest's systems to support Subloop orders before Subloop orders are provisioned or in conjunction with the first Subloop order in the MTE. Qwest shall have five (5) calendar days from receipt of a written request from CLEC, in addition to the interval set forth in Section 9.3.5.4.1, to input the inventory of CLEC's terminations into its systems. **If a CLEC requires immediate access to the subloop, then the CLEC may access the subloop element prior to the completion of the inventory per Section 9.3.5.4.7.** Qwest may seek an extended interval if the work cannot reasonably be completed within the stated interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for, and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain the extended interval. If CLEC submits a Subloop order before Qwest inputs the inventory into its systems, Qwest shall process the order in accord with Section 9.3.5.4.1.

Qwest believes this will address AT&T's concerns with this section of the SGAT. Qwest will file this update in the next South Dakota SGAT and will provide the same terms to CLECs in their interconnection agreements. As to AT&T's concerns regarding the price for doing the CLEC inventory work, Qwest has a right to recover it cost for providing a CLEC with access to its UNEs. However, Qwest does agree with Dr. Griffing and Mr. Antonuk that the proposed South Dakota cost docket is the correct

place to resolve this issue. At least 11 state commissions have agreed with Qwest on this issue.

4– Determining Ownership of Inside Wire/Intervals

The SGAT, and interconnection agreements such at the KMC interconnection agreement, provides Qwest with a certain period of time to determine whether it, or the landlord owns the facilities inside an MTE. Mr. Antonuk recognized that Qwest has the responsibility of keeping ownership records given that it will receive payments from CLECs when it is found to be the owner of the wire and thus has the burden of absorbing the record keeping cost. Moreover, Mr. Antonuk recognized that once Qwest makes a determination of ownership in a MTE once, subsequent decisions in the same MTE should be more simple. Qwest's subloop proposal specifically provides Qwest with ten days from an initial CLEC request to determine whether Qwest or the landlord owns the facilities on the customer side of the MTE Terminal.

Three parties commented on issues associated with determination of inside wire ownership: Dr. Griffing on behalf of the Commission Staff; Mr. Wilson on behalf of AT&T and W. Thomas Simmons representing Midcontinent Communications.

First, Mr. Simmons is concerned if there is a rate associated with Qwest's determination of inside wire ownership.[45] This is easily resolved; Qwest does not charge the CLEC to determine its ownership of inside wire. Mr. Simmons' other

[45] Direct testimony of Mr. Simmons at page 8.

comments appeared to be of a general nature and did not imply that Qwest was falling short of its obligations to determine inside wire ownership. Qwest recommends that the Commission find the issue of rate for ownership determination to be closed between the parties.

AT&T stated no real objection to the need for the determination, but rather focused on the interval. Indeed, in the Colorado follow-up workshop on emerging services the week of April 16, 2001, AT&T proposed SGAT language requiring Qwest to perform the ownership inquiry.[46] Ownership determination is necessary because it establishes where Qwest's network facilities (and its accompanying maintenance and repair obligations) ends, and the customer premises facilities begin. Without this determination, Qwest and the CLEC can not know if CLEC requires a subloop element from Qwest or cable owned by the landowner or both. No state commission has agreed with AT&T on this issue. In fact, in the sate of Washington, AT&T specifically agreed with Qwest on this issue. It is not clear, therefore, why this issue has been reopened

As a result of Mr. Antonuk's Third Report, Qwest modified its original proposal of 10 days to a more aggressive interval schedule recommended by Mr. Antonuk.[47] Specifically, Mr. Antonuk proposed the following interval schedule that has been

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[46] AT&T proposed SGAT, filed April 19, 2001 in the Colorado workshop as Exhibit 3 ATT 4, section 9.3.8.2 ("Qwest shall reply to such MTE Ownership Request within (a) ten (10) days, if CLEC's request is the first request for access at such MTE ").

[47] Mr. Antonuk's Third Report at page 7.

implemented in Qwest's South Dakota SGAT and Qwest also has this concrete obligation in its KMC interconnection agreement:

> 9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing, including via e-mail, of its intention to provide access to customers that reside within a MTE. Upon receipt of such request, Qwest shall have up to ten (10) calendar days to notify CLEC and the MTE owner whether Qwest believes it or the MTE owner owns the intrabuilding cable. In the event there has been a previous determination of on-premises wiring ownership at the same MTE, Qwest shall provide such notification within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the customer side of the terminal, the preceding ten (10) day period shall be reduced to five (5) calendar days from Qwest's receipt of such claim.

Qwest's ten **calendar** day interval for determining ownership of MTE wiring for the first time in an MTE is reasonable. In the *MTE Order*, the FCC held that the ILEC has up to ten **business** days to determine ownership of the intrabuilding cable.[48] Therefore, Qwest's ten calendar days interval is less than the amount of time it is entitled to by the FCC. Moreover, as identified above, the interval can be a little as two days based on the current South Dakota SGAT and KMC interconnection agreement.

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[48] First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 96-98 & 88-57, FCC 00-366 (Rel. October 25, 2000) ("*MTE Order*") ¶56.

AT&T has suggested that Qwest must maintain a web site that would contain the ownership determinations that have occurred as a result of SGAT based inquiries.[49] Qwest has several concerns about AT&T's web site proposal. First, the property owner's ownership of specific network facilities at an MTE may well be confidential information. Next, there would be an additional personnel and server expense involved in Qwest being required to indefinably maintain such a website. Next, as also suggested by AT&T, Qwest does attempt (in buildings it has recently augmented network facilities in) to post information regarding Qwest's ownership of inside wire.

Dr. Griffing recommended that this Commission adopt the resolution from Mr Antonuk's Third Report.[50] Qwest has already implemented all the recommendations suggested by Mr. Antonuk Third Report on these issues. First, the SGAT does contain the intervals he suggested and second, the SGAT does not contain a charge to determine of inside wire in the SGAT. Qwest agrees with this recommendation and notes that no additional changes are necessary to the South Dakota SGAT to implement the recommendations of Mr. Antonuk. Qwest also has made these commitments in its KMC interconnection agreement.

Dr. Griffing also suggested the Commission consider a further reduction in the 5 day interval for when the property owner self declares ownership.[51] However, he

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49 AT&T Emerging Services Comments at page 18.

50 Dr. Griffing's Direct Testimony at pages 60-61.

51 Dr. Griffing's Direct Testimony at pages 60-61.

makes this recommendations based on "AT&T's stated willingness to bear the risk of relying on a potentially incorrect ownership declaration." I have reviewed the AT&T testimony filed in South Dakota, and could not find this statement, or any similar statement. Moreover, it is not AT&T taking risk here, it is Qwest. I would recommend that the Commission not reduce the 5 day interval, since Qwest is already committing to an interval that is less than half of the interval contemplated by the FCC as quoted above.

5– Intervals

As discussed in previous subloop issues, there are numerous intervals associated with CLEC access to subloops. Dr. Griffing, who was the only witness to file direct testimony on this issue, states there is no need for Commission action on this issue.[52] He bases his recommendation on Mr. Antonuk's Third Report that notes that the report in the prior subloop impasse issues deals with all the necessary interval issues and no additional relief was needed on any subloop access intervals.[53] Qwest agrees with this recommendation and notes that no changes are necessary to the South Dakota SGAT. Qwest believes the Commission should find this issue closed.

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52 Dr. Griffing's Direct Testimony at page 61.

53 Dr. Griffing's Direct Testimony at page 61.

6– Requirement for Qwest-Performed Jumpering at MTEs

Dr. Griffing representing Commission Staff, was the only witness to provide comment on this issue.[54] In summary, this issue was a CLEC request to be able to require Qwest to run the jumpers in any subloop situation, and conversely, be able to have a CLEC technician run a jumper in any subloop situation. Originally, Qwest required CLECs to run all jumpers in an MTE for intrabuilding cable, and Qwest would run all jumpers in non-MTE environments and for all distribution subloops.

Mr. Antonuk's Third Report recognized that a case-by-case analysis of the needs and circumstances associated with unique and varying outside plant configurations and conditions should provide a solution for this issue. I noted in my testimony on Subloop Issue 1, Mr. Antonuk had already provided SGAT language that provides for a case-by-case analysis SGAT language as.

As a result of this recommendation, and CLEC requests, Qwest agreed to provide the option for it to run the jumpers in MTE terminals and added this ordering option in the SGAT and KMC interconnection agreement:

> 9.3.5.4.5 If CLEC ordered intrabuilding cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI in accordance with the MTE Access Protocol. If CLEC ordered a Subloop type other than intrabuilding cable Loop, Qwest will dispatch a technician to run a jumper

[54] Dr. Griffing's Direct Testimony at pages 61-62.

> between CLECs Subloop elements and Qwest's Subloop elements to make a connection at the MTE-POI. **CLEC, at its option, may request that Qwest run the jumper for Intrabuiling cable in MTEs when the inventory is done and a complete LSR has been submitted.** (Emphasis added)

In addition, Qwest acknowledges that CLECs can use the following subloop case-by-case analysis language to have the flexibility to run the jumpers in Qwest's outside plant environments:

> 9.3.1.1.2 For any configuration not specifically addressed in this Agreement, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any collocation or other provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for Subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all Carriers' facilities.
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> 9.3.1.1.3 Any Party may request, under any procedure provided for by this Agreement, for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.
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> 9.3.1.1.4 Prior to the development of such standard terms and conditions, Qwest shall impose in the six (6) areas identified in Section 9.3.1.1.2 above, only those requirements or intervals that are reasonably necessary.

Dr. Griffing recommended adopting Mr. Antonuk's Third Report resolution for this issue, but requested clarification of the applicable SGAT references.[55] I have provided that clarification above, and request that this Commission find that this issue is closed.

7– Expanding Explicitly Available Subloop Elements

Dr. Griffing representing Commission Staff, was the only witness to provide comment on this issue.[56] This impasse issue in the Multi-state workshops (regarding the potential list of all subloop elements and AT&T's request they all be put in the SGAT) was closed between AT&T and Qwest in subsequent state workshops. This issue was closed with the addition of the following SGAT language:

> 9.3.1.7 Qwest shall provide access to additional Subloop elements, e.g. copper feeder, to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.

This SGAT language is in the South Dakota SGAT and the KMC interconnection agreement. Mr. Antonuk's Third Report also recognized that it is not appropriate to expect Qwest to undertake the effort to design standard offerings for every conceivable case, without reference to potential demand for each in Qwest's network, and anticipated a resolution as later reached by the parties.[57] Dr. Griffing recommends the

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55 Dr. Griffing's Direct Testimony at page 62.

56 Dr. Griffing's Direct Testimony at pages 62-63.

57 Mr. Antonuk's Third Report at page 7.

adoption of the Mr. Antonuk's Third Report resolution.[58] Qwest agrees with this recommendation and notes that no changes are necessary to the South Dakota SGAT.

IV. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH THE FCC'S REQUIREMENTS FOR DARK FIBER

Two parties commented on issues associated with dark fiber: Dr. Griffing on behalf of the Commission Staff, and Mr. Wilson on behalf of AT&T. I will address these issues and concerns in the following sections. Dr. Griffing provided Direct Testimony on each impasse issue identified in Mr. Antonuk's Third Report. For ease of identification by the parties, I have used the numbering and issue identification contained in the Direct Testimony of Dr. Griffing.

1– Affiliate Obligations to Provide Access to Dark Fiber

Qwest does not agree it is under any obligation to unbundle its affiliate's network facilities, including dark fiber facilities. Please see the Rebuttal Affidavit of Ms. Mary LaFave for Qwest's response to the parties' testimony on this issue.

2– Access to Dark Fiber in Joint Build Arrangements

AT&T claims that Qwest refuses to permit CLECs to obtain access to any rights that Qwest has to use the facilities of a third party.[59] Qwest disagrees. In fact, one has

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58 Dr. Griffing's Direct Testimony at pages 63.

59 AT&T Emerging Services Comments at page 26.

only to read section 9.7.1 of the South Dakota SGAT and the KMC interconnection agreement to see that is not even remotely correct:

> 9.7.1 Unbundled Dark Fiber (UDF) is a deployed, unlit pair of fiber optic cable or strands that connects two points within Qwest's network. UDF is a single transmission path between two Qwest Wire Centers, or between a Qwest Wire Center and a CLEC Wire Center, or between a Qwest Wire Center and either an appropriate outside plant structure or an End User Customer premises in the same LATA and state. UDF exists in three (3) distinct forms: (a) UDF Interoffice Facility (UDF-IOF), which constitutes an deployed route between two Qwest Wire Centers; and (b) UDF-Loop, which constitutes a deployed Loop or section of a deployed Loop between a Qwest Wire Center and an End User Customer premises; and (c) Extended UDF (E-UDF) which constitutes a deployed route between a Qwest Wire Center and a CLEC Wire Center. **Deployed Dark Fiber facilities shall include Dark Fiber Qwest has obtained with capitalized Indefeasible Right to Use (IRUs) or capitalized leases that do not prohibit Qwest's ability to provided access to another Person or entity. Deployed Dark Fiber facilities shall not be limited to facilities owned by Qwest, but will include in place and easily called into service facilities to which Qwest has otherwise obtained a right of access, including but not limited to capitalized Indefeasible Right to Use (IRUs) or capitalized leases. Qwest shall not be required to extend access in a manner that is inconsistent with the restrictions and other terms and conditions that apply to Qwest's access; however, in the case of access obtained from an Affiliate: (a) the actual practice and custom as between Qwest and the Affiliate shall apply, in the event that it provides broader access than does any documented agreement that may exist, and (b) any terms restricting access by CLEC that are imposed by the agreement with the Affiliate (excluding good-faith restrictions imposed by any agreement with a third party from whom the Affiliate has gained rights of access) shall not be applied to restrict CLEC access.** (emphasis added)

In a typical meet point arrangement, two entities combine to make a fiber route between two points. As part of the arrangement, the route is divided into two parts that

come together at the meet point, and each entity owns one of the parts. As Qwest has made clear in its SGAT, it will unbundle dark fiber that it owns as part of a meet point arrangement.

AT&T, however, wants Qwest to go further and unbundle dark fiber it does not own in such meet point arrangements. Qwest cannot and will not unbundle such dark fiber belonging to other entities.

Qwest has clearly met its legal obligations concerning this issue by committing to unbundle all dark fiber it owns in meet point arrangements. Section 9.7.2.20 provides the following:

> Qwest shall allow CLEC to access Dark Fiber that is a part of a meet point arrangement between Qwest and another Local Exchange Carrier if CLEC has an Interconnection agreement containing access to Dark Fiber with the connecting Local Exchange Carrier. Qwest rates, terms and conditions shall apply to the percentage of the route owned by Qwest.

The intent of SGAT sections 9.7.1 and 9.7.2.20 is that Qwest will unbundle all the dark fiber it owns and controls in the route, but it cannot, nor is it obligated to, unbundle dark fiber it does not own or control. For the portion of the route that Qwest does not own or control, the CLEC must go to the owner of that dark fiber and strike an agreement, which is what Qwest did.

AT&T points out Qwest may have rights to send traffic over the fiber owned by the other party and argues that CLECs are entitled to have those rights unbundled.

This is not the case. First, whatever those rights may be, they are not Qwest dark fiber, and therefore, they are not subject to unbundling obligations as part of dark fiber. Second, failure of Qwest to unbundle those rights is not, as AT&T contends, discriminatory. Rather, having to deal with the third party that has no legal obligation to deal with Qwest is exactly what Qwest had to do. So it is not discriminatory that CLECs have to do the same. And the rights Qwest may have with regard to the third party's fiber depend on what Qwest provided to the third party in return.

To provide Qwest's traffic rights to CLECs at TELRIC rates (which is necessarily implied by unbundling) when CLEC does not have to take over Qwest's duties under the arrangement with the third party could actually be unlawfully discriminatory against Qwest and possibly the third party. Moreover, the third party may have some legal rights against the unbundling to CLECs of Qwest's rights under the two-party arrangement.

Consequently, the Commission should reject AT&T's request as reaching far beyond the legal requirements placed on Qwest to unbundle dark fiber.

Mr. Antonuk's Third Report provided specific direction for SGAT language to be developed to insure that Qwest unbundled all of it rights of access to dark fiber. Qwest has complied with Mr. Antonuk recommendations in the South Dakota SGAT and KMC interconnection agreement. In addition, Dr. Griffing has also recommended

this Commission adopt the resolution from the Mr. Antonuk's Third Report.[60] There is really no dark fiber left to unbundle regardless of the claims of AT&T. In summary, Qwest recommends that this Commission adopt the recommendation of Dr. Griffing on this issue.

3– Applying a Local Exchange Usage Requirement to Dark Fiber

Section 9.7.2.9 of the SGAT specifically requires that EELs comprised in whole or in part of dark fiber must conform to the FCC's local use restriction. Mr. Antonuk recognized that when a CLEC secures access to dark fiber that provides the functionality of a loop that is connected to dedicated transport, it secures an EEL, a combined loop and transport element. Dr. Griffing recommended this Commission adopt the resolution from Mr. Antonuk's Third Report.[62] Mr. Antonuk recognized that when a CLEC secures access to dark fiber which provides the functionality of a loop that is connected to dedicated transport, it secures an EEL, a combined loop and transport element.

Qwest agrees with this recommendation and no changes are necessary to the South Dakota SGAT.

AT&T has challenged the following provision in the SGAT as unlawful:

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60 Mr. Antonuk's Third Report at pages 54-55.

61 Dr. Griffing's Direct Testimony at page 68.

62 Dr. Griffing's Direct Testimony at pages 68-69.

CONTINUATION

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> 9.7.2.9 CLEC shall not use UDF as a substitute for special or switched access services, except to the extent CLEC provides "a significant amount of local exchange traffic" to its end users over the UDF as set forth by the FCC (See 9.23.3.7.2).

AT&T claims that the FCC authorized such a restriction only for enhanced extended links (EELs) and not dark fiber per the FCC's *Supplemental Order Clarification* regarding the *UNE Remand Order*.

However, EELs are combinations of loop and transport.[63] Dark fiber is not a UNE unto itself, but rather a version of transport and loop.[64] The local exchange traffic restriction pertains to combinations of loop and transport.[65] Thus, the local exchange traffic restriction does properly pertain to combinations of dark fiber loop and transport.

Moreover, the FCC's rationale for the local exchange restriction pertains to dark fiber combinations of loop and transport just as it does to EELs. The FCC imposed the restriction so as to prevent unbundling requirements from interfering with access charge and universal service reform.[66] In other words, an unfettered unbundling obligation would have erased substantial amounts of access charge revenues. In addition, access revenues have historically provided implicit subsidies that are necessary to maintain the goals of universal service. Without the local service restriction, dark fiber

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[63] *UNE Remand Order* ¶¶477, 480.

[64] *UNE Remand Order* ¶¶174, 325.

[65] *Supplemental Order Clarification*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) ¶8.

[66] *Id.*

loop and transport unbundling could present a similar threat to access revenues and universal service.

Consequently, section 9.7.2.9 is appropriate under the FCC's *Supplemental Order Clarification*.

As to AT&T's concern that multiple customers may be served on the dark fiber,[67] This is not different than the situation where multiple DS1s riding a single DS3 pipe may serve different customers. The FCC has addressed this issue in the Supplemental Order of Clarification when stating what constitutes a "significant amount of local exchange service":

> . . . When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet this criteria. . .[68]

Therefore, each derived channel of dark fiber must meet the local use restriction. If there are multiple customers within a single channel, then AT&T would have to self certify for each customer what percentage of their traffic was local usage and that it meets the significant amount of local usage based on their traffic mix.

Dr. Griffing recommended this Commission adopt the resolution from the 7 state Mr. Antonuk report.[69] Mr. Antonuk recognized that when a CLEC secures access to

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[67] AT&T Emerging Services Comments at pages 19 –20.

dark fiber which provides the functionality of a loop that is connected to dedicated transport, it secures an EEL, a combined loop and transport element.[70] Every state commission except Washington -- 11 different sate commissions – have all agreed with Qwest on this issue.

Qwest agrees with this recommendation and no changes are necessary to the South Dakota SGAT.

4– Consistency with Technical Publications

This issue developed during a period of time when Qwest was making new commitments in multiple dark fiber workshops to address CLEC concerns with the provisioning of dark fiber. Qwest's published product documentation understandably lagged behind the new commitments that where being made in workshops. However, CLECs wanted assurances that if there was a conflict between a published product document, such as a technical publication, that the new commitments memorialized in the SGAT would prevail. Qwest agreed to a new SGAT provision that would demonstrate the commitments in the SGAT would prevail over previously published product documentation. This resolved this issue in workshops in subsequent states. The South Dakota SGAT and KMC interconnection agreement state:

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[68] *Supplemental Order Clarification*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) ¶22 (2) and (3).

[69] Dr. Griffing's Direct Testimony at pages 68-69.

[70] Mr. Antonuk's Third Report at page 11.

> 2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations or either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

Since the conclusion of the workshops in 2001, Qwest has updated its product documentation to be consistent with its commitments in the various state workshops. The issues on dark fiber have all gone through the Change Management Process (CMP). Thus, this issue is now moot.

V. ISSUES RAISED REGARDING QWEST'S COMPLIANCE WITH THE FCC'S REQUIREMENTS FOR PACKET SWITCHING

Two parties commented on issues associated with line sharing: Dr. Griffing on behalf of the staff for the South Dakota PUC, and Mr. Wilson on behalf of AT&T. I will address these issues and concerns in the following sections. Dr. Griffing provided Direct Testimony on each packet switching impasse issue identified in Mr. John Antonuk's (the Multi-state facilitator) Third Report – Emerging Services issued on June 11, 2001. For ease of identification by the parties, I have used the numbering and issue identification contained in the Direct Testimony of Dr. Griffing.

1– Availability of Spare Copper Loops

In its *UNE Remand Order*, the FCC modified Rule 319 to require unbundling of packet switching in very limited circumstances.[71] As the FCC has recently confirmed, Rule 319(c)(3)(B) requires an incumbent to unbundle packet switching only if each of the following four preconditions is met:

(1) the ILEC has deployed a digital loop carrier system ("DLC")

(2) there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer

(3) it has not permitted the requesting CLEC to collocate its DSLAM at the remote terminal

(4) the ILEC has deployed packet switching capability for its own use.[72]

Qwest's SGAT contains these explicit requirements, which the FCC has found satisfactory in the past. Qwest and AT&T reached impasse in the Multi-state workshops regarding the second of these requirements: "there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer." In order to insure its compliance with FCC requirements to implement this condition, Qwest literally copied it word-for-word into the SGAT at section 9.20.2.1.2. Nonetheless, AT&T still

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71 Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696 (rel. Nov. 5, 1999) ("*UNE Remand Order*") ¶313.

72 Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (Rel. January 19, 2001) ("*Line Sharing Reconsideration Order*") ¶ 56, citing 47 C.F.R. 51.319(c)(3)(B).

complains that additional language regarding available copper loops must be included in order to ensure that CLECs can offer the xDSL service they desire.[73]

Specifically, AT&T requests that the word "no" be replaced with "insufficient" and that the word "adequately" be added before "supporting," so that the requirement would be revised to read: "there are *insufficient* spare copper loops capable of *adequately* supporting the xDSL services that the requesting carrier seeks to offer." Clearly, the CLECs are seeking to add to Qwest's existing obligations under the Rule and FCC orders.

The FCC has already rejected this attempt by CLECs. The identical dispute arose in SWBT's Kansas/Oklahoma proceeding. The FCC held that SWBT had satisfactorily established a sufficient legal obligation because the SGATs at issue "incorporate **verbatim** the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available."[74]

In addition, inserting "adequately" to modify the requirement that available loops must be "capable of supporting the xDSL services the requesting carrier seeks to offer" adds nothing but vagueness and the potential for conflict. The CLECs' revision would introduce a layer of uncertainty by requiring a factual inquiry regarding the "adequacy" of loop capabilities. The language in the SGAT (and the Rule) unambiguously states

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73 AT&T Emerging Services Comments at pages 31-32.

74 *Kansas/Oklahoma Order* ¶243 (emphasis added).

the condition: available loops are either capable of supporting the xDSL service the CLEC chooses to offer or they are not.

Under the Rule, packet switching must be unbundled if there are no spare copper loops capable of supporting the xDSL service the CLEC seeks to offer. This analysis applies on a customer-by-customer basis. If there is an available loop capable of providing the particular customer with the service the CLEC desires to offer, then the condition is not met. If there is no such loop available to support the xDSL service a CLEC seeks to offer to that particular customer, the condition is met. The concept of "insufficient" simply does not apply. Again, the AT&T's proposal would only introduce an additional layer of uncertainty by requiring a factual inquiry regarding the "sufficiency" of available loops.

Finally, AT&T's concern that the availability of copper loops will pose an impediment to their ability to obtain unbundled packet switching is moot as a practical matter. In order for packet switching to be unbundled, Qwest must have remotely deployed a DSLAM. Generally, Qwest will only remotely deploy a DSLAM if the existing loops are too long to support xDSL; thus, as a practical matter, where the fourth condition for unbundling -- Qwest has remotely deployed a DSLAM -- is met, the second condition -- no xDSL capable copper loops -- will generally also be met.

In his Third Report, Mr. Antonuk recognized that the FCC made it clear that where copper loops are available and sufficient to fill a CLEC order, providing them

constitutes full satisfaction of Qwest's requirements.[75] Therefore, Mr. Antonuk agreed with Qwest that it was not necessary to modify the quoted sections of the FCC rule captured in the SGAT.[76] After careful review of Mr. Antonuk's Third Report, Dr. Griffing recommended this Commission adopt the resolution from Mr. Antonuk's Third Report that does not require Qwest to insert the ambiguous concept of "adequacy" into SGAT language that already clearly meets Qwest's obligations to unbundled packet switching in South Dakota.[77] All 12 state commissions to consider this issue have agreed with Qwest.

Qwest agrees with the recommendation of Dr. Griffing and notes that no changes are necessary to the South Dakota SGAT to implement his recommendation.

2- Denial of Digital Subscriber Line Access Multiplexers (DSLAM) Collocation

Mr. Wilson, on behalf of AT&T, requests that this Commission change the FCC pre-conditions for ordering unbundled packet switching. AT&T believes that Qwest's obligation to unbundle packet switching should be expanded to include situations where the CLECs believes it is economically infeasible to remotely deploy its own DSLAM.[78]

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[75] Mr. Antonuk's Third Report at page 25.

[76] Mr. Antonuk's Third Report at page 25.

[77] Dr. Griffing's Direct Testimony at page 63.

[78] AT&T Emerging Services Comments at page 34.

Mr. Antonuk's Third Report on this Multi-state impasse issue was clear that CLECs in the Multi-state workshops did not provide any specific analysis or quantification to support the assumption that there is substantial difference in the economics of DSLAM deployment between CLECs and Qwest. In essence, this lack of critical financial data, was a significant flaw in the CLEC's testimony. Mr. Antonuk specially stated:

> In fact, much more than an addition to the FCC requirements is anticipated: the request is to replace an operational standard with an economic one, which would serve to redefine the applicable FCC standard entirely. It is difficult to imagine that the FCC has utterly failed to consider any relevant economic considerations. Certainly, we should not her consider them without at least a substantial showing that there areas significant economic differences in CLEC versus Qwest deployment. Nothing prevented the participants from discovery and testimony that would specifically address such economic differences. The failure to provide any level of quantification of that difference is material, given the *Iowa Utilities Board* standard for economic impairment. **There is simply no sound basis for deciding that the FCC conditions regarding DSLAM collocation should be supplemented by the addition of an economic impairment.** (emphasis added)[78]

All 12 state commissions to consider this issue have agreed with Qwest.

In reviewing AT&T's testimony I did not find any specific analysis or quantification to support the assumption that there is a substantial difference in the economics of DSLAM deployment between CLECs and Qwest. Again, AT&T wants another Commission and (as well as Qwest) too accept on face value, any CLEC's

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[78] Mr. Antonuk's Third Report at page 45.

assurance that it is not economically feasible to collocate their own DSLAM and significantly expand Qwest's unbundling obligations under the law. Qwest is not even sure what the basis of the CLEC's economic "feasibility" test would be. Does a CLEC lacking sufficient funds in a checking account to buy a DSLAM constitute "economic" unfeasibility? It appears that AT&T is demanding that Qwest be required to go beyond its obligations for unbundling packet switching based on the CLECs own, and perhaps biased statements of affordability.

Moreover, Dr. Griffing recommended this Commission adopt the resolution from the 7 state Mr. Antonuk report as detailed above.[80] Qwest agrees with this recommendation and notes that no changes are necessary to the South Dakota SGAT to implement Dr. Griffing's or Mr. Antonuk's recommendations.

3 - ICB Pricing

Dr. Griffing, on behalf of the Commission Staff, was the only witness to provide direct testimony specific to this issue. As an initial matter, Qwest believes that this purpose issue is moot because this issue developed at a point in time when Qwest did not have interim rates for packet switching in its SGAT and was planning to develop individual case based ("ICB") rates for each service request. Since the conclusion of the Multi-state workshops, Qwest has filed interim rates for packet switching in its South Dakota SGAT Exhibit A on October 24, 2001. In addition, Qwest has had no requests

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80 Dr. Griffing's Direct Testimony at pagas 63-64.

for packet switching in South Dakota and did not rely on ICB rates to provide service to any CLEC.

Dr. Griffing notes in his Direct Testimony that Mr. Antonuk's Third Report stated that ICB pricing subject to eventual true-up was then the only feasible approach.[81] Dr. Griffing also states that the Commission might ask that the packet switching rates be highlighted in the cost docket for review. Qwest agrees with Dr. Griffing's recommendation and already plans to support its packet switching rates in the proposed South Dakota cost docket. Qwest recommends that the South Dakota Commission find this a closed issue.

4. Unbundling Conditions as a Prerequisite to ordering

Dr. Griffing, on behalf of the Commission Staff, reviewed the facilitators report regarding this impasse issue from the Multi-state emerging services workshops and was the only party to provide direct testimony specific to this issue. This issue involved parallel processing of DSLAM collocation requests and packet switching unbundling requests. This issue arose in the workshop because CLECs were concerned about the timing between a denial for remote collocation (i.e., meeting the first three pre-conditions to ordering unbundling packet switching) and then having to wait for the packet switching installation interval before providing service to end user customers.

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[81] Dr. Griffing's Direct Testimony at page 38.

Mr. Antonuk's Third Report recommended that Qwest commit in the SGAT to respond to DSLAM collocation orders and packet switching orders in parallel.[82] Qwest supported this recommendation and has already included the following language in its South Dakota SGAT and its KMC interconnection agreement:

> 8.2.1.4.1.2 To the extent that CLEC submits an order for Unbundled Packet Switching before the Collocation Application, Collocation space availability report pursuant to Section 8.2.1.9, or Collocation Forecast is denied, Qwest shall respond to the Collocation request and Unbundled Packet Switching order in parallel.

Dr. Gilling recommends this Commission adopt Mr. Antonuk's resolution identified above.[83] Qwest agrees with this recommendation and notes that no additional changes are necessary to the South Dakota SGAT and believes this issue should be considered closed.

5.–Line Card "Plug and Play"

Dr. Gilling, on behalf of the Commission Staff, reviewed the facilitators report regarding this impasse issue from the Multi-state emerging services workshops and was the only party to provide direct testimony specific to this issue. This issue developed in the Multi-state workshops when CLECs requested that they be able to place line cards in Qwest's DSLAMs (i.e., "plug and play") and therefore not be required to wholesale collocate their own DSLAMs. This issue is essentially the same as Packet Switching Issue No. 2 above.

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[83] Mr. Antonuk's Third Report at pages 44-45.

Mr. Antonuk's Third Report on this issue agreed with Qwest that there was insufficient evidence in the Multi-state record to support the conclusion that plug and play is technical feasibile; and that a "plug and play" option would in effect eviscerate the current FCC standard.[84] Mr. Antonuk did not require any SGAT commitments or changes by Qwest based on his resolution of this issue.

Dr. Griffing recommended this Commission adopt the resolution from Mr. Antonuk's Third Report.[85] Qwest agrees with this recommendation and again notes that no changes are necessary to the SGAT.

The South Dakota Commission should find that Qwest has implemented its legal obligations in the SGAT to unbundle packet switching in the limited circumstances required by the FCC.

This concludes my rebuttal affidavit.

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[84] Dr. Griffing's Direct Testimony at pages 65-66.

[85] Mr. Antonuk's Third Report at page 48.

[86] Dr. Griffing's Direct Testimony at page 66.

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 22 day of March, 2002.

Karen A. Stewart

Karen A. Stewart

STATE OF Oregon

COUNTY OF Multnomah

Subscribed and sworn to before me this 22 day of March, 2002.

Janice Kay Kerr

Notary Public

OFFICIAL SEAL
JANICE KAY KERR
NOTARY PUBLIC-OREGON
COMMISSION NO. 326256
MY COMMISSION EXPIRES SEPT. 17, 2003

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-165
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

PRE-FILED TESTIMONY AND DATA RECONCILIATION REPORTS

OF ROBERT L. STRIGHT OF THE LIBERTY CONSULTING GROUP

ON BEHALF OF

QWEST CORPORATION

April 2, 2002

1 Q. **PLEASE STATE YOUR FULL NAME, EMPLOYER, AND BUSINESS**
2 **ADDRESS.**
3 A. My name is Robert L. Stright. I am a principal and founder of The Liberty Consulting
4 Group. My business address is 65 Main Street, Quentin, PA, 17083.
5
6 Q. **PLEASE DESCRIBE YOUR PROFESSIONAL QUALIFICATIONS.**
7 A. I have had lead roles for Liberty in telecommunications consulting engagements
8 conducted for many state public utility commissions including Delaware, Maryland,
9 Pennsylvania, New Jersey, New York, Oklahoma, and Virginia. These assignments have
10 involved rate cases, management audits, financial evaluations, performance metrics,
11 affiliate transactions, interconnection arbitrations, and consulting to commissioners and
12 administrative law judges. I have also consulted in the energy industry. A resume that
13 includes some of my consulting experiences is attached as Exhibit RLS-1.
14
15 Q. **DID THE REGIONAL OVERSIGHT COMMITTEE RETAIN LIBRTY TO**
16 **PERFORM WORK AS PART OF ITS OSS TEST?**
17 A. Yes. Initially, the Regional Oversight Committee (ROC) retained Liberty to conduct an
18 audit of Qwest's wholesale performance measures as part of the OSS test. I served as the
19 project manager for that assignment. The scope of Liberty's audit is set forth in the final
20 audit report. The audit had three primary elements: an examination of the business
21 processes related to the performance measures, tracking data through the process to
22 performance results reporting, and independently calculating performance results.
23

Liberty issued a final audit report on Qwest's performance measures in September 2001. However, several performance measures were changed or added during and after Liberty's audit. The ROC requested Liberty to audit those changed and new measures. Liberty's work in that area is ongoing.

Q. DID LIBERTY REACH ANY CONCLUSIONS IN ITS PERFORMANCE MEASUERMENT AUDIT?

A. Yes. While we included several recommendations for improvement and ongoing monitoring of performance measures, Liberty concluded that the audited performance measures accurately and reliably report Qwest actual performance.

Q. DID THE ROC THEN ASK LIBERTY TO CONDUCT DATA RECONCILIATION WORK AS AN EXTENSION OF THE PERFORMANCE MEASUREMNT AUDIT?

A. Yes. In August 2001, the ROC asked Liberty to conduct data reconciliation as an extension of the performance measures audit. Liberty is performing "data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC PIDs." (ROC Change Request #20.) Certain CLECs have expressed concerns about the accuracy of Qwest's reported performance results as they relate to service that they have been receiving. The ROC decided to conduct this data reconciliation work in order to test those concerns. Three CLECs – AT&T, WorldCom, and Covad Communications – participated in the data reconciliation to help determine whether the data Qwest inputs into its systems are accurate and reliable. The data reconciliation process was designed to determine whether any of the information

provided by CLECs demonstrated inaccuracy in Qwest's reported performance results as these measures were defined in the PID. The ROC requested that Liberty use the Observation and Exception process for indicating any concerns with Qwest's data.

Q. PLEASE DESCRIBE THE DATA RECONCILIATION WORK THAT LIBERTY HAS COMPLETED TO DATE.

A. Liberty issued its first data reconciliation report, which used data from Arizona, on December 3, 2001. The second report on data from Colorado was issued on January 3, 2002. Liberty issued the third report, which provided the results of the review of data from Nebraska on January 28. On February 2, 2002, Liberty issued an update to the Colorado report, which provided the status of observations and the exception issued as a result of all of the data reconciliation work. On March 1, 2002, Liberty issued a report on the results of its reconciliation of data from the state of Washington. Finally, on March 28, 2002, Liberty issued a report on the results of its reconciliation of data from the state of Oregon. While reconciliation work is ongoing in the states of Utah and Minnesota, I expect that the data reconciliation work completed by Liberty to date is representative of what Liberty will find in these remaining states. The reports that Liberty has issued are attached to this testimony as Exhibits RLS-2 through RLS-7.

Q. HAS LIBERTY REACHED ANY CONCLUSIONS AS A RESULT OF ITS DATA RECONCILIATION.

A. Liberty's data reconciliation work is not complete. However, and for the most part, the same issues are the cause of any problems with Qwest's performance reporting. Liberty identified two new issues in its most recent review of data from Oregon. Liberty is

investigating these matters, but it appears that both were limited to a specific time interval during the first half of 2001. In all, the issues that Liberty discovered were documented in 1 Exception report, 13 Observation reports, and various findings where Liberty found Qwest's data collection practices appropriate. Liberty has since closed the Exception and ten of the Observations. Liberty continues to evaluate the three open Observations.

Liberty has evaluated several thousand orders and trouble tickets on an item-by-item basis. With one exception, and considering all of Liberty's work in both auditing and monitoring Qwest's performance measures and data, I believe a commission may rely on Qwest's performance results as representative of the level of performance that Qwest delivers in the marketplace to CLECs.

The condition placed on the above statement is that Liberty has found errors and inconsistencies in the way Qwest has treated service orders with respect to customer-caused problems in meeting due dates and causing delays. This matter is the subject of Liberty's Observation 1031. Qwest has provided information to show that it has improved its procedures and processes to minimize the likelihood of these types of errors. Qwest recently provided more information that Liberty is evaluating.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Robert L. Stright

Selected Consulting Experiences

Project manager and lead consultant the audit of wholesale performance measures for the Regional Oversight Committee *(ROC)*, 13 of the 14 states served by Qwest.

Lead consultant for Liberty's assignment to provide advice to a member of the Pennsylvania Public Utility Commission in the global telecommunications-settlement proceeding that is concerned with many issues associated with local competition.

Project manager for Liberty's evaluation of the financial integrity of Verizon – New Jersey for the NJ Board of Public Utilities.

Engagement Director for Liberty's investigation of the reliability of Commonwealth Edison's transmission and distribution systems for the Illinois Commerce Commission.

Project Manager for Liberty's assessment for the Virginia State Corporation Commission of prices for Bell Atlantic-Virginia's unbundled-network elements.

Assisted the Staff of the Virginia State Corporation Commission in the arbitration proceeding for local telephone competition involving GTE and new entrants Sprint, MCI, AT&T, and Cox Communications.

Project Manager for Liberty's assistance to the New Jersey Board of Public Utilities related to arbitrations TCG, MCI, AT&T, and Bell Atlantic.

Project Manager for Liberty's assessment of pricing of Southwestern Bell Telephone's unbundled-network elements, performed for the Oklahoma Corporation Commission.

Lead Consultant providing technical support in Liberty's Telecommunications Act arbitration engagements in Mississippi and Idaho.

Lead Consultant for Liberty's review of the affiliate relations of Bell Atlantic - Pennsylvania and Bell Atlantic - District of Columbia for their respective public-service commissions.

Lead consultant in Liberty's audits of the affiliate interests of C&P Telephone of Maryland for the Maryland Public Service Commission (MPSC) and of New York Telephone Company (NYT) for the New York Public Service Commission (NYPSC).

Project Manager for Liberty's work for Boston Edison and BEC Energy dealing with a regulatory proceeding initiated by an information-services competitor and the structuring of the newly-formed holding company.

[illegible] to the review of affiliate transactions of Public Service Company of New Hampshire as a management audit conducted for the New Hampshire Public Utilities Commission.

[illegible] assist in Liberty's review of affiliate transactions of Public Service Electric & Gas Company, for the New Jersey Board of Regulatory Commissioners.

[illegible] in Liberty's management audit of Arkansas Western Gas Company (AWG) for the Arkansas Public Service Commission, AWG, and the Office of the Attorney General of the State of Arkansas.

[illegible] in Liberty's audit of Baltimore Gas & Electric Company's management of the [illegible] of the Calvert Cliffs power plant for the MPSC. Results provided in [illegible] in a [illegible] proceeding before the MPSC.

[illegible] in Liberty's evaluation of an extended outage and utility-management [illegible] of the South Texas Project nuclear plant (STP) on behalf of Houston Light & Power Company and Baker & Botts.

Education
M.B.A., Power Operations Research, University of Maryland
B.S., Science Engineering, Northwestern University

Registration
Professional Engineer, Virginia

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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 No. TC [illegible]

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 this 1st day of April, 2002.

STATE OF Pennsylvania
COUNTY OF Lehigh

Subscribed and sworn before me this 1st day of April, 2002.

Notary Public

Notarial Seal
Marcia A. Keiper, Notary Public
Catasauqua Boro, Lehigh County
My Commission Expires Jan. 13, [illegible]
Member, Pennsylvania Association of Notaries

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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2. The auditor takes the CLECs information and confirms the existence of the discrepancy.

3. After confirming the discrepancy, the auditor determines and identifies the source of the discrepancy.

4. If the source of the discrepancy is the CLEC, the auditor will share its findings at a high level with the TAG. The specific details of the discrepancy shall be shared by the auditor privately with the specific CLEC.

5. If the source of a discrepancy is Qwest and that discrepancy points to some problem with Qwest's raw data, the auditor shall create an Exception/Observation per the Exception and Observation process used in the ROC OSS test. In the Exception/Observation, the auditor will make recommendations as to whether the identified deficiency is likely to affect multiple services and/or multiple CLECs. The auditor will also identify what it believes is the period of time that Qwest may have been producing questionable performance results.

6. After the Exception/Observation has been created, it should follow the normal process for closure as would any other Exception or Observation.

In general, the process described by AT&T reflected how the data reconciliation effort proceeded.

Three CLECs, Covad, WorldCom, and AT&T, chose to participate in data reconciliation. The participating CLECs had identified numerous discrepancies. However, some CLECs did not produce sufficient evidence to demonstrate that claimed discrepancies actually existed. In connection with this report, Liberty has separately supplied specific information about the CLECs' sources of discrepancies, as well as proprietary information concerning specific records and volumes. Liberty sought to prepare this report to inform the interested participants about the test and its results, without revealing confidential information. For example, the report generally refers to percentages of total orders instead of the actual number of orders. The specific performance measures and products that the participating CLECs wanted included in the data reconciliation, being widely known, were therefore not considered proprietary.

As an indirect result of its data reconciliation work for the state of Arizona, Liberty will be issuing one Exception Report on performance measure OP-15. The discovery of the problem described below and in the forthcoming Exception Report did not result from information provided by CLECs, but rather was the result of Liberty's review of Qwest's information during data reconciliation.

Qwest, the CLECs, and Liberty spent significant time and effort resolving the specific scope of the performance measures to be included in data reconciliation. It took considerable added effort to digest and process the information provided by CLECs and match it with data provided by Qwest. Liberty began this data reconciliation test with a significantly greater familiarity with the structure and nature of the Qwest data, with which Liberty worked extensively during earlier audit activities. Gaining a similar kind of familiarity with CLEC data structure and content

II. Overall Summary of Findings

This report presents more detailed, non-confidential results in later sections that are organized by CLEC. This section provides Liberty's overall conclusions, which have been formed on the basis of completing the first of the states included in the current scope of the reconciliation effort.

Given the way that CLECs captured data and accounted for information related to Qwest's wholesale performance measures, concerns about the accuracy of Qwest reporting are understandable.

It is understandable that CLECs record data relevant to performance measure results in ways that best suit their own operational and management needs and their information system capabilities. They have not had substantial reason to ensure that their recording and processing of data coincide exactly with that reported by Qwest, although the potential for adoption of the QPAP in the future will make commonality much more important. Detailed data matching concerns, such as which records are included and excluded, what time-of-day clock to use, and the like, simply have not been matters of immediate concern heretofore.

In some cases the CLECs do not have the systems required to track performance measure results at the level of detail required of Qwest, which must take measurements in strict accord with the requirements of the PID's approximately 700 sub-measures. Some CLECs even use multiple and different data management systems to support their own internal operations. For the most part, Liberty found that the participating CLECs' personnel are not familiar with all of the details of how performance data are captured, processed, and ultimately reported by Qwest.

The information provided by CLECs for the state of Arizona did not demonstrate that Qwest reports of its performance are materially inaccurate.

In the course of its data reconciliation work to date, Liberty found that Qwest did make some errors that affected performance results. However, those errors were generally either (a) of the kind and at levels to be expected at the front end of the performance measurement process, where people must manually enter vast amounts of information, or (b) appeared to be honest errors in judgment. The amount of these errors in relation to the total amount of information required for the performance measures did not exceed what Liberty considers to be expected levels, even under a carefully operated set of measurement activities. Moreover, there was no evidence that Qwest purposely took steps to make its performance figures appear better than it actually was. With the exception of a programming problem associated with measure OP-15 and a failure to report a group of Firm Order Confirmations in June 2001, the errors were not systemic, nor did they apply to a significant percentage of the performance measure results.

The results of Liberty's Arizona data reconciliation work should influence decisions about the scope and methods of the remaining data reconciliation work.

Liberty has identified what it considers to be generically applicable reasons for large portions of the discrepancies between Qwest and CLEC performance data. Future data reconciliation work would be expedited if it does not have to examine for other states what Liberty expects to be very substantial amounts of data whose discrepancies have the same underlying causes. The

III. Results of Data Reconciliation – AT&T

A. Introduction

After some discussion between the parties, it was ultimately determined that the following performance measures were to be reconciled:

- The denominator of PO-5A, B, and C combined for unbundled loops (UBL).
- The denominator of PO-5D for Local Interconnection Service (LIS) trunks.
- The numerator and denominator of OP-3D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-4D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-6A and OP-6B for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-13A and OP-13B for unbundled loops.
- The numerator and denominator of OP-15A and OP-15B for LIS Trunks.

For unbundled loops, the period to be reconciled is April 2001 through June 2001.

The LIS Trunks reconciliation period was from January 2001 through June 2001. Qwest stated, however, that it did not report CLEC-specific state results for LIS Trunks for OP-15 for January or February; therefore, Liberty could not reconcile data for those months. In addition, Qwest was unable to provide the data necessary to reconcile OP-15 for LIS Trunks for May; therefore, data for that month could not be reconciled.

In addition, Liberty was to compare the unbundled loop trouble tickets provided by AT&T with the trouble tickets provided by Qwest. Where Liberty had data about a trouble ticket from both parties, Liberty was to compare the repair intervals reported by the two parties. In addition, Liberty was to analyze situations identified by AT&T where AT&T found one trouble ticket, but where more than one Qwest trouble ticket applied.

Liberty received data both from Qwest and from AT&T. Liberty initially received from Qwest: (a) data files containing information on the records actually used in the measurement, and (b) those records that Qwest had excluded. Qwest provided one file for each state/product/measure combination. These data allowed Liberty to determine the records that Qwest believed should be included in each measure. Liberty could also replicate the numerators and denominators in Qwest's reported performance results.

AT&T initially provided for each state files by product containing the records it believed were relevant. AT&T also provided hardcopies of the source documents for its records (*i.e.*, UBL service orders, LIS trunk service orders, and trouble tickets). Liberty needed to know those records that AT&T believed should be included in the numerators and denominators of each measure so that Liberty could reconcile the sets of data from the two parties. Liberty therefore

completed earlier than Qwest does. AT&T believes the order is completed when a first test is done, but Qwest does not consider it completed until an additional test is completed as well. For many orders a due date is established; i.e., the date by which both parties expect to complete the order. When a test is successfully completed on that due date, AT&T considers the order completed. AT&T therefore includes the order in the relevant performance measures as completed on the date of that test. However, Qwest believes another test is necessary; *i.e.*, a test for which AT&T is often not ready on the due date. Accordingly, Qwest classifies the order completion as having been missed for customer reasons, and therefore excludes it from many measure results. This disagreement about the meaning of order completion accounts for significant numbers of discrepancies between the parties. For example, it accounts for a third of the LIS trunk denominator discrepancies between the parties for OP-3 for the months of January to June.

Both AT&T and Qwest have reasonable justifications for their definitions of order completion. Their difference is an operational one, which cannot be resolved in either party's favor by referring to the language of the PID. Liberty did not consider this test as including a Liberty determination of which company applied the better or most correct operational interpretation. Rather, Liberty sought to determine whether Qwest's approach was out of conformity with the PID. Liberty concluded that Qwest's definition and use of a service order completion date could not be judged to be out of conformance with the PID.

The parties' differing interpretations of the term *completion date* appears to be limited to LIS trunk orders. Liberty did not find that this difference affected results for loops. However, it is possible that a similar difference could cause differing results for other products.

Data Processing Error

Liberty's analysis of LIS Trunks disclosed that many orders being reported in OP-15 did not appear to be Qwest "misses," even according to Qwest's own data. The cause of the problem was a data transfer error. The Detailed Data Set that Qwest uses for the OP-15 measure incorporates data from the Integrated Data Repository (IDR) Pending data source. One extremely important piece of this data is the miss code, which determines whether the order will be included in OP-15, and whether it will be included in OP-15A or OP-15B. LIS Trunks constitute a designed service; therefore, they have three-digit miss codes. Misses for customer reasons begin with the letter "C." For example, C01 is the miss code for the category of "Customer Not Ready." During the data transfer step, the third digit of the miss code was often (although not always) being truncated. The Wholesale Regulatory Reporting program looks up the code in a miss code table in order to determine how the order should be handled. If it fails to find the code, it establishes Qwest as the default cause of the miss. Therefore, all of the LIS trunk orders showing two digit miss codes were being reported as Qwest misses, even though not all of them were. Qwest has stated that it knew about the problem, and has already fixed it, but the performance reports for the months being reconciled, and the data provided by Qwest that generated them, contained this error. Liberty will issue an Exception Report addressing this issue. The problem occurred in about half of the LIS Trunk service orders.

This problem could exist (for the period being reconciled) for designed services other than LIS Trunks. Accordingly, an investigation would be appropriate to determine exactly the full range of products affected, and the months involved.

Qwest to an original due date in every case that its customer requested a later one, Qwest was in violation of the precise language that had been contained in the PID.

Missed Due Dates

Qwest and AT&T have differing views on which orders should be excluded from OP-3, OP-4, and OP-6 on the grounds of customer-caused missed due dates. Qwest excludes every order that has a missed due date for any customer (i.e., AT&T) reason. AT&T states that it attempts to exclude only those orders that have missed due dates for the specific reasons stated in the PID. Unlike the changed due date issue discussed above, this distinction did not constitute a major source of the discrepancies between the parties.

Firm Order Confirmations (FOCs)

Several issues caused a vast difference between what Qwest reported and what AT&T thought should be reported. First, AT&T counted multiple FOCs for PONs that included several orders and only one FOC. Second, AT&T did not capture FOCs for disconnect orders, cancelled orders, and change orders. Finally, for the month of June 2001, Qwest failed to report the first order of FOCs that contained multiple orders. Qwest had already reported this problem in its October 5, 2001, summary of notes to the regional results report. Liberty is still considering whether that notification was sufficient.

These matters accounted for practically all of the discrepancies between AT&T and Qwest in the PO-5 denominator for unbundled loops. Qwest's and AT&T's initial submittal showed that only 11 percent of their records matched. Qwest's reporting problem in June caused 5 percent of the total records and 11 percent of the records for June to be in error. It was not clear which company was in error for 8 percent of the records.

Liberty found vastly higher matching of records in the case of LIS Trunks. Qwest and AT&T at the outset agreed on the denominator in 70 percent of the cases. About 36 percent of the apparent discrepancies were ultimately not real discrepancies at all. Liberty found that Qwest had incorrectly reported on less than 3 percent of the records.

Hot Cuts

OP-13A measures the percentage of loop hot cuts completed on time. This measure reflected considerable agreement between Qwest and AT&T, but even in this case, only 73 percent of the records initially agreed. Another 8 percent of those that did not match initially were found to be duplicates. Of the discrepancies that existed, Liberty found that 6 percent fell into the "inconclusive" category. These cases were instances where Qwest and AT&T disagreed on whether the cut was completed on time. The recorded start and stop times for the two companies varied. The place of most disagreement was the recorded start times for the cut, but even there most of the cases varied by less than one hour. There was no evident procedural or systemic reason that would support a conclusion that either company was routinely recording times earlier or later than the other was. In summary, while reported times varied, the information provided by AT&T did not show that Qwest was making any attempt to shorten the cut interval for the purpose of improving reported hot cut performance. In several cases, Qwest's reported interval was greater than the one recorded by AT&T. It appeared that AT&T might have considered the

Liberty identified several issues in its preliminary analysis:

- There was a large discrepancy in the population of "relevant" trouble tickets provided by each party.
- In many cases, AT&T had logged more than one Qwest trouble ticket number in connection with a single AT&T repair request.
- In no case did the MTTR or repair duration recorded by each party match.

There was a significant disparity in the population of relevant Qwest trouble ticket numbers that each party provided. Approximately 60 percent of the Qwest ticket numbers in each party's data set matched; the balance did not appear in the other party's data. Liberty confined its analysis to those Qwest trouble ticket numbers found in both data sets.[2]

Roughly 15 percent of AT&T repair orders had multiple, *i.e.*, between two and six, Qwest ticket numbers associated with them. Two main reasons explain why Qwest assigned more than one ticket number to an AT&T repair order:

- The AT&T repair order included two or more different circuits, which were subsequently assigned separate Qwest trouble ticket numbers.
- There was more than one repair performed on the given circuits, and these repairs were performed on different days. Qwest typically opened and closed the original tickets and opened new ones for the later repairs.

The primary reasons for opening multiple Qwest trouble tickets on an AT&T service request arise from procedural differences between the parties. CLECs are permitted to bundle repair requests, provided that the repairs are for the same customer and location. Qwest, on the other hand, splits the repairs into separate trouble tickets in order to allow proper calculation of billing adjustments for individual circuits. While individual trouble tickets on a given problem may be opened and closed by Qwest, AT&T may have reasons (*e.g.*, recurring, intermittent service problems) to keep a trouble ticket with its own customer open. Should AT&T wish to pursue a matter on an open AT&T ticket, Qwest would have to open new tickets. From AT&T's perspective, there would thus be more than one Qwest ticket number for an AT&T ticket.

Liberty developed a summary chart itemizing the reason for multiple Qwest tickets, and submitted it to AT&T for comments. AT&T ultimately agreed with Liberty's analysis in one-third of the cases. For the others, AT&T questioned how specific situations were treated in the performance measures. Specific situations raised by AT&T included:

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[2] Liberty did not attempt to isolate the reasons for the discrepancy, but during the course of its analysis identified some possible explanations. Liberty found that some of the ticket numbers provided by AT&T were for dates outside the April to June 2001 period, and some appeared to contain typographical errors (since Qwest was able to locate relevant tickets with similar numbers).

includes "test assist") trouble is included in the MR-6 measure.[5] When the wrong circuit is reported or repaired, regardless of which party made the error, the ticket is typically closed to CPE or INFO, and subsequently excluded from the performance measures.

Trouble tickets restored with a trouble code of NTF (no trouble found) are included in the performance measures, as the PID requires. Liberty found, however, that there was some judgment being applied in the assignment of trouble codes. "No trouble found" was closed to NTF in some cases and to CPE in other cases. According to its guidelines, if Qwest tested and found no circuit problem, then it would close the ticket to NTF. However, if additional available information indicated that the trouble was on the CLEC's side (e.g., the customer identifying the wrong circuit or that the trouble was actually on the customer's side), then Qwest would close the ticket to CPE.[6] In the former case, the ticket would be included in the measure; in the latter case, it would not.

Liberty found that, for each of the trouble tickets in question, Qwest handled its trouble tickets consistently with its stated procedures and with the PID. Liberty did, however, find human errors in the coding for roughly 4 percent of the tickets. Specifically, tickets that apparently involved repair work were closed to CPE or INFO, and incorrectly excluded from the measure. Liberty believes that the magnitude of these errors was not sufficient to affect materially the Qwest-reported results. Liberty has concluded that Qwest had handled the repair tickets correctly during the time period, and found no reason to conclude that it had reported its performance incorrectly.

The MTTR reported by AT&T on a given Qwest trouble ticket never matched the duration for the ticket reported by Qwest. For 59 percent of the tickets, the durations differed by more than 1 hour; for 30 percent, the durations differed by more than 12 hours. In a few cases, Qwest had actually recorded a longer MTTR than did AT&T, but in the majority of cases, the time recorded by AT&T was significantly longer than that recorded by Qwest.

Liberty submitted a data request to Qwest asking it to provide: (a) explanations for the difference in duration for a 10 percent sample of trouble tickets, and (b) copies of some of the individual tickets. Liberty found that:

- The disparity in durations ranged from 3 minutes to over 9 days.
- There was an apparent 3-hour difference between the system clock used by Qwest and that of AT&T (Liberty therefore assumed this difference to be a constant throughout its analysis).
- In 77 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open time for the ticket.

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[5] The differences would instead manifest themselves in the relative performance of each company. For example, if AT&T kept its own trouble ticket number open while Qwest opened and closed tickets more than once, AT&T's MTTR would be longer than Qwest's, but Qwest's repeat trouble rate would be higher.

[6] According to Qwest, at one time all of these tickets were restored as NTF, but this policy changed 2-3 years ago, and they began making this distinction between NTF and CPE.

IV. Results of Data Reconciliation – Covad and WorldCom

A. Covad

Covad initially requested an audit of the disaggregated line sharing and unbundled 2-wire non-loaded loop numerators and denominators for OP-4, OP-5, MR-3, MR-5, MR-6, and PO-5 for the months of May, June, and July 2001. After its own analysis, Qwest indicated that OP-5 was not auditable because the data used to calculate it originated from too many sources to permit a record-by-record reconciliation. Qwest and Covad could not produce data with a common field, which would be necessary to permit reconciliation of the maintenance and repair measures.

Liberty reconciled OP-4 to the extent possible, given the information provided by Covad and Qwest. Liberty classified the orders according to whether Qwest and COVAD agreed on the numerator, denominator, and inclusion in the measure. Liberty then requested information from both parties. Qwest provided Local Service Requests (*LSR*), Work Force Administration Control (*WFAC*) records, and a discussion of specific orders that were included by Covad, but not by Qwest. Covad provided an updated database that included a number of orders that had been excluded for various reasons by Qwest, but did not include any documentation of Covad's position on any of the orders. Liberty reviewed the data filings, then performed additional analysis and presented a supplemental data request to the two parties. Again, Qwest provided LSRs and WFAC documentation on orders it had excluded, and, with only limited exceptions, Qwest provided all the information requested for OP-4. Covad did not respond. On November 29, 2001, Covad indicated that it had additional documentation related to the Arizona reconciliation. Liberty did not have time to secure and use that information in time to include its effect in this report.

For the period from May through July 2001, Covad and Qwest agreed on 42 percent of the total OP-4 denominator orders. They agreed on the numerator in many fewer cases.

Qwest provided documentation for all its OP-4 line sharing orders that were in conflict with those included in Covad's numerator. The documentation consisted primarily of LSRs that provided the application date, completion date, and reference date. Liberty compared the values from these documents with values included in the comparable field in the data files supplied by Qwest. Liberty did not find any inconsistencies between the LSR documents and data files. Covad did not provide support for its data files. Liberty conducted the same type of analysis on 2-wire NL UBL orders with similar results. Liberty did not find inconsistencies between the LSR documents and Qwest data files.

Liberty also requested that Covad provide information on Qwest's PONs that were not matched by Covad. Covad indicated that it was unable to provide the information. Covad did provide an expanded data set that may have addressed some of the problems, but did not provide headers for the data set. Liberty was unable to use it. Liberty treated orders where Qwest was able to identify a PON as appropriate for inclusion in the performance report. Qwest was unable to provide PONs for some orders included in performance reports for the three-month period. Liberty treated these orders as inconclusive in its analysis.

small number of Qwest errors in the data inputs to these systems. These errors affected less than 2 percent of the total orders considered.

The initial reconciliation focused on the fact that Qwest reports at a service-order level, while WCom develops data at a purchase order level. A purchase order, or PON, might result in multiple service orders; therefore, Liberty had to establish the PON/SO relationship. Liberty found a number of differences between the WCom and Qwest classification and counting of orders. For example, WCom uses the month of actual order completion for reporting, while Qwest uses the reference date of an order, which means that some orders completed at the end of a month may be reported by Qwest in the following month or later. (See discussion in the AT&T section of this report.) The other significant difference in order counting was the fact that Qwest did not count orders classified as a customer-caused miss of the due date.

Liberty verified that Qwest's reported performance for WCom was correct strictly on the basis of Qwest's own data. Then, after the service order reconsolidation, Liberty determined that the orders reported by Qwest and WCom matched in 42 percent of the cases for LIS Trunks and in 75 percent of the cases for UBLs.

For the apparent discrepancies on LIS Trunk orders, Liberty found that in 47 percent of the total, either Qwest's and WCom's records affirmatively showed that Qwest was correct or that there was no information to prove that Qwest was incorrect. In 6 percent of the total, the results of the record analysis were inconclusive, and in less than 5 percent of the total, Liberty found that Qwest was incorrect. Qwest's errors were of two types: (a) that an order should have been ruled ineligible using Qwest's rules for a customer-caused miss, or (b) that the commitment date did not appear to be met as reported by Qwest.

For the apparent discrepancies on UBL orders, Liberty found that in 22 percent of the total, either Qwest's and WCom's records affirmatively showed that Qwest was correct or that there was no information to prove that Qwest was incorrect. In 2 percent of the total, the results of the record analysis were inconclusive, and in less than 2 percent of the total, Liberty found that Qwest was incorrect. Qwest's errors involved either lack of support for a customer-caused miss classification or some other reason for excluding the order. Most of the errors occurred in January 2001.

Liberty has prepared spreadsheets showing the results of its analysis of the WCom service orders. These documents contain information that is proprietary to WCom; therefore, Liberty made a very limited distribution of them.

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1. The CLEC identifies what it believes are discrepancies between performance results it has produced and the performance results that Qwest has produced. The CLEC should identify the particular performance measurement in question and the evidence that lead the CLEC to conclude that a discrepancy exists.

2. The auditor takes the CLECs information and confirms the existence of the discrepancy.

3. After confirming the discrepancy, the auditor determines and identifies the source of the discrepancy.

4. If the source of the discrepancy is the CLEC, the auditor will share its findings at a high level with the TAG. The specific details of the discrepancy shall be shared by the auditor privately with the specific CLEC.

5. If the source of a discrepancy is Qwest and that discrepancy points to some problem with Qwest's raw data, the auditor shall create an Exception/Observation per the Exception and Observation process used in the ROC OSS test. In the Exception/Observation, the auditor will make recommendations as to whether the identified deficiency is likely to affect multiple services and/or multiple CLECs. The auditor will also identify what it believes is the period of time that Qwest may have been producing questionable performance results.";

6. After the Exception/Observation has been created, it should follow the normal process for closure as would any other Exception or Observation.

In general, the process described by AT&T reflected how the data reconciliation effort proceeded.

Three CLECs, Covad, WorldCom, and AT&T, chose to participate in data reconciliation. The participating CLECs had identified numerous discrepancies. In connection with this report, Liberty has separately supplied specific information about the CLECs' sources of discrepancies, as well as proprietary information concerning specific records and volumes. Liberty sought to prepare this report to inform the interested participants about the test and its results, without revealing confidential information. For example, the report generally refers to percentages of total orders instead of the actual number of orders. The specific performance measures and products that the participating CLECs wanted included in the data reconciliation, being widely known, were therefore not considered proprietary.

As a result of its data reconciliation work for the state of Colorado, Liberty has or will be issuing several Observation Reports, each of which is discussed below.

Qwest, the CLECs, and Liberty spent significant time and effort resolving the specific scope of the performance measures to be included in data reconciliation. It took considerable added effort to digest and process the information provided by CLECs and match it with data provided by Qwest. Liberty began this data reconciliation test with a significantly greater familiarity with the structure and nature of the Qwest data, with which Liberty worked extensively during earlier

II. Overall Summary of Findings

This report presents more detailed, non-confidential results in later sections that are organized by CLEC. This section provides Liberty's overall conclusions, which have been formed on the basis of the reconciliation of Colorado data.

Several process errors significantly affected Qwest's reported performance results. These problems are documented in Observation reports 1026, 1027, 1029, and 1030. Qwest reported retail line-sharing orders as wholesale orders, orders were repeated in consecutive months because of different completion codes, orders were not reported because the CLEC designation was "unknown," and records were excluded because of no state code. Qwest has indicated that it has either corrected or is investigating these matters.

While the problems discussed in the four Observation reports listed above caused reported results to not reflect actual performance, they are the type of problem that can rather easily be fixed, and at least in some cases, performance results can be re-calculated. Of more concern to Liberty because it may not be so easily corrected is the number of apparent human errors that occurred in the processing of AT&T LIS trunk orders. This matter has been reported in Observation 1031. In addition, human errors were apparently the cause of some Covad UBL orders not being excluded from OP-4 in cases where the requested interval was longer than the standard (Observation 1032), and application dates and times were incorrectly determined by Qwest personnel on AT&T LIS trunk orders (Observation 1033).

As a result of its data reconciliation work for Arizona data, Liberty found that Qwest made some errors that affected performance results. However, those errors were generally either (a) of the kind and at levels to be expected at the front end of the performance measurement process, where people must manually enter vast amounts of information, or (b) appeared to be honest errors in judgment. The amount of these errors in relation to the total amount of information required for the performance measures did not exceed what Liberty considers to be expected levels, even under a carefully operated set of measurement activities. The Arizona work also noted a programming problem associated with measure OP-15 (Exception 1046) and a failure to report a group of Firm Order Confirmations in June 2001.

For the Colorado data, there were three primary factors that drove to different conclusions. First, Covad provided support information for the performance measures that were to be reconciled. Second, the scope of the AT&T reconciliation was smaller and so Liberty was able to investigate a higher percentage of orders in more depth than had been accomplished for the Arizona data. Finally, Liberty did not need to spend effort on issues that had been investigated in Arizona and in learning about how data were stored and processed. Qwest has indicated that there should not be differences among the states in its region as to how data are collected and processed for reporting performance measures. Therefore, Liberty views the results of its data reconciliation work to be cumulative and that overall conclusions should be made after its work for the states of Washington and Nebraska is complete.

application time and following the process for writing service orders. This process includes recording the application date as the next day when the application time is after 3 p.m. MT on a LIS trunk order. This is consistent with the definition section at the end of the PID. The only times that are logged by Qwest, however, appear to be the time when the WSC enters the application date into the EXACT system and the time the most recent application/supplement was received from AT&T. These times need not be the same time as the application time. Thus, Qwest cannot always support the application times it used in developing the performance results for OP-4.

Service Order Completion Date

For LIS trunks, Liberty found that Qwest and AT&T have different operational definitions of when an order is considered to be completed. In most instances, AT&T views the order as completed earlier than Qwest does. AT&T believes the order is completed when a first test is done, but Qwest does not consider it completed until an additional test is completed as well. For many orders a due date is established, *i.e.*, the date by which both parties expect to complete the order. When a test is successfully completed on that due date, AT&T considers the order completed. AT&T therefore includes the order in the relevant performance measures as completed on the date of that test. However, Qwest believes another test is necessary, *i.e.*, a test for which AT&T is often not ready on the due date. Accordingly, Qwest classifies the order completion as having been missed for customer reasons, and therefore excludes it from many measure results. This disagreement about the meaning of order completion accounts some of the discrepancies between the parties. For example, it accounts for seven of the discrepancies between the parties for LIS trunks for OP-4 for the months of January to June in Colorado.

Both AT&T and Qwest have reasonable justifications for their definitions of order completion. Their difference is an operational one, which cannot be resolved in either party's favor by referring to the language of the PID. Liberty did not consider this test as including a Liberty determination of which company applied the better or most correct operational interpretation. Rather, Liberty sought to determine whether Qwest's approach was out of conformity with the PID. Liberty concluded that Qwest's definition and use of a service order completion date could not be judged to be out of conformance with the PID.

Data Processing Error

Liberty's analysis of LIS trunks disclosed that many orders being reported in OP-15 did not appear to be Qwest "misses," even according to Qwest's own data. The cause of the problem was a data transfer error. The Detailed Data Set that Qwest uses for the OP-15 measure incorporates data from the Integrated Data Repository *(IDR)* Pending data source. One extremely important piece of this data is the miss code, which determines whether the order will be included in OP-15, and whether it will be included in OP-15A or OP-15B. LIS trunks constitute a designed service; therefore, they have three-digit miss codes. Misses for customer reasons begin with the letter "C." For example, C01 is the miss code for the category of "Customer Not Ready." During the data transfer step, the third digit of the miss code was often (although not always) being truncated. The Wholesale Regulatory Reporting program looks up the code in a miss code table in order to determine how the order should be handled. If it fails to find the code, it establishes Qwest as the default cause of the miss. Therefore, all of the LIS trunk orders showing two-digit miss codes were being reported as Qwest misses, even though not all of them were. Qwest has

- 21 percent were likely caused by Qwest's errors in assigning jeopardy codes and customer-miss exclusions. In addition, another 9 percent of the orders contained a 01/01/01 completion date, which meant that Qwest's program properly excluded the orders but that there was likely human error in failing to enter a correct completion date. (Observation 1031.)
- 6 percent were not counted by Qwest because the order took more than eight months to complete.
- For 61 percent, Qwest's treatment was correct, or Qwest followed its procedures for not counting orders with a customer miss. In a quarter of these cases, the discrepancy was caused by Qwest using the reference date to report order completion. In 40 percent of these cases, the discrepancy was caused by disagreement as to when a LIS trunk order completes.
- 12 percent of the discrepancies contained conflicting information that Liberty was unable to resolve.

For measure OP-4, the base results are the same as those presented above for OP-3. In addition, however, the companies disagreed on most of the interval numerator values in cases where they agreed that the order should be included. For many of the numerator discrepancies, Liberty was not given information that resolved the conflict. In some cases, Liberty determined that Qwest correctly determined the numerator for OP-4 and AT&T did not. One-third of the numerator discrepancies were caused by errors in Qwest's application date. (Observation 1033.)

For measure OP-6, Liberty found that there was no actual disagreement in 37 percent of the orders. Qwest was incorrect on 27 percent of the orders for the same reasons given in the OP-3 analysis. Qwest was correct in 18 percent of the discrepancies, and 18 percent remained in conflict.

For the few orders that could be analyzed for measure OP-15, Liberty found that there was no actual disagreement in 24 percent of the records, Qwest was incorrect on 29 percent of the records, Qwest was correct on 29 percent of the records, and 18 percent remained in conflict. All but one of the Qwest errors related to the data processing problem that was the subject of Exception 1046. The other case was one in which Qwest's documentation did not support its position that an order was pending for Qwest reasons.

For PO-5, Qwest and AT&T agreed on 86 percent of the orders. Qwest was in error on 25 percent of the discrepancies, Qwest was correct on 25 percent, and 50 percent of the discrepancies could not be resolved with the available information.

V. Results of Data Reconciliation – Covad

A. Issues

The agreed upon scope of the data reconciliation for Covad was a 25 percent sample of OP-4 (installation interval) for line-sharing and unbundled loops and of PO-5 (Firm Order Confirmations on time). Liberty chose the sample and received Covad's agreement of the method of drawing the sample. The time period for the review was the months of May, June, and July 2001.

Liberty found several problems with Qwest's performance reporting for Covad. First, Qwest reported some retail orders as wholesale. For line sharing, Qwest may generate two orders, one for the CLEC data side and another to account for Qwest's voice service. At least some of the orders of the second type were incorrectly reported as wholesale orders associated with the CLEC. Liberty documented this problem in Observation 1026. In response to the Observation, Qwest said that it had implemented a code change that looks orders that contain billing USOCs for line sharing and reviews all line-level USOCs to identify those with retail activity and excludes them from the results. Qwest said that this change would prevent future reporting of the retail orders as line sharing activity and effectively reduce volumes previously shown. For July 2001, Liberty found that this problem affected 5 percent of the sampled number of discrepant records that Liberty reviewed. Qwest indicated that the revised code would be executed on historical data starting from January 2001 and be reported with performance results that include December 2001.

Liberty also found that Qwest reported some of the same items in two consecutive months. This problem was documented in Observation 1027 and for Covad affected both UBL and line-sharing orders. While Liberty has not received Qwest's formal response to the Observation, Qwest has indicated that this problem was known and has been corrected. Qwest indicated that the problem had to do with different completion status codes given to some orders and that the effect was minimal. However, for the UBL records, this problem accounted for 22 percent of the sampled number of discrepant records that Liberty reviewed.

Liberty found that some line-sharing orders were not reported by Qwest because the CLEC was designated as unknown. This problem was documented in Observation 1029. Qwest's records confirmed the application and completion dates on these orders with the data provided by Covad. However, Qwest could not report the orders because the CLEC designation was not assigned correctly. This problem affected 70 percent of the orders that Liberty reviewed and that were in the category of included by Covad but not by Qwest in the reporting of July line-sharing results for OP-4.

Covad's information provided to Liberty for data reconciliation included many orders that Qwest did not report for PO-5. Investigation of these orders revealed that Qwest's program had excluded them because of an invalid or missing state code. There was nothing apparently wrong with Covad's orders. This problem accounted for about two-thirds of the items that Liberty reviewed and that were the category of included by Covad but not by Qwest in the reporting of July PO-5 results. This matter was documented in Observation 1030.

- In 19 percent of the records there was conflicting information that Liberty was unable to resolve. Many of these were cases in which the parties disagreed by one day on either the application or completion dates.

For PO-5, the companies agreed on only about 10 percent of the orders. Liberty sampled the 90 percent of the orders for which there was disagreement. For June and July, Liberty found for those discrepancies that:

- Qwest was incorrect in 38 percent of the records. Most all of these were excluded by Qwest because of the problem with the state code (Observation 1030). There were some (PO-5C) fax orders that were not included in the data provided to Liberty, although Qwest claimed that these orders were accounted for.
- Qwest was correct or Covad did not provide any information to show otherwise for 44 percent of the records.
- 18 percent showed conflicting information that Liberty was unable to resolve.

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II. Overall Summary of Findings

In the course of its initial data reconciliation work in Arizona, Liberty found that Qwest did make some errors that affected performance results. However, those errors were generally either: (a) of the kind and at levels to be expected at the front end of the performance measurement process, where people must manually enter vast amounts of information, or (b) appeared to be honest errors in judgment. The amount of these errors in relation to the total amount of information required for the performance measures did not exceed what Liberty considered to be expected levels, even under a carefully controlled set of measurement activities. Moreover, there was no evidence that Qwest purposely took steps to make its performance figures appear better than they actually were. With the exception of a programming problem associated with measure OP-15 (Exception 1046) and a failure to report a group of Firm Order Confirmations in June 2001, the errors were not systemic, nor did they apply to a significant percentage of the performance measure results.

Contrary to its conclusions in Arizona, Liberty found that several process errors significantly affected Qwest's reported performance results for Colorado. As documented in Observation reports 1026, 1027, 1029, and 1030, Qwest had: (a) reported retail line-sharing orders as wholesale orders, (2) repeated orders in consecutive months' measures because of different completion codes, (3) not reported orders because the CLEC designation was "unknown," and (4) excluded records because of a missing state code. Liberty also found that performance measures had been affected by human errors. For example, human errors (1) occurred in the processing of AT&T LIS trunk orders (Observation 1031), (2) caused some Covad UBL orders to not being excluded from OP-4 in cases where the requested interval was longer than the standard (Observation 1032), (3) caused line-sharing orders to be classified as UBLs causing an incorrect reporting of PO-5 (Observation 1034), and (4) occurred in determining the application dates and times on certain orders (Observation 1033).

Using data from Nebraska, Liberty found an additional process-type problem. As documented in Observation 1035, Qwest's system allowed cancelled orders to be incorrectly included in the OP-3 and OP-4 measures as completed (and on time) orders. The error occurred only for orders through the SOLAR system serving the eastern states (Iowa, Minnesota, Nebraska, North Dakota and South Dakota). Qwest has indicated that the problem was resolved as of May 12, 2001, but all results prior to June 2001 for the five states were affected.

Liberty also found that human errors affected performance measure results using the Nebraska data. Qwest had an error rate in calculating mean-time-to-repair (MTTR) for MR-6 of roughly 15 percent. This was reported in Observation 1028.

As first mentioned in Liberty's report on Arizona, Qwest had a programming anomaly that affected results for PO-5 results the month of June 2001, whereby orders for multiple loops were excluded from the measure. The same programming problem existed for Nebraska, whereby both orders for multiple loops and those orders that had a duplicate entry in Qwest's system were excluded. Qwest corrected the programming problem such that results for July 2001 and forward are no longer affected. Qwest had already reported this problem in its October 5, 2001, summary of notes to the regional results report.

- In 1 percent, Qwest had counted the same order in two months; this double counting error was the subject of Observation 1027.
- In 7 percent, Qwest did not include orders in the measure that AT&T believed should be included. These were cases in which the CLEC supplemented the order and moved the due date past the original due date. This matter was discussed in the Arizona report, wherein Liberty concluded that it was appropriate for Qwest to exclude such orders. It should be noted, however, that there was an instance in which both AT&T and Qwest included such an order in the measure, and thus the parties agreed, but Qwest later clarified that it had mistakenly included the order.

For measure OP-4, the same issues arose as those presented above for OP-3. In addition, however, Qwest incorrectly excluded roughly 3 percent of the orders that should have been included in the measure because of human error in coding the order. Specifically, the orders had been coded as being longer than the standard interval, when in fact they were not. This issue concerning miscoding of the order interval was addressed in Observation 1032.

For measure OP-6, the orders the companies disagreed on were limited to those where AT&T supplemented the order and moved it beyond the original due date. These discrepancies accounted for roughly 33 percent of the total orders examined and Liberty found that Qwest handled these orders correctly. The parties had no disagreement on the OP-13 and OP-15 measures.

For PO-5, Qwest and AT&T agreed on 90 percent of the orders. All of the discrepancies were due to Qwest errors. Roughly 2 percent of the orders included Qwest's errors due to the fact that it had included orders where no FOC was issued on the initial LSR but one was issued for the cancellation. The remaining 8 percent of the orders had errors because of a programming problem that existed during the month of June. Orders that were either for multiple loops or were duplicated in the Qwest system were left out entirely. Qwest has since corrected this programming error, effective with July 2001 results. According to Qwest, the error was the result of programming changes made to move to PID 4.0.

LIS Trunks

Working together, Qwest and AT&T were able to reduce the number of Nebraska LIS trunk orders requiring reconciliation to one. For that order, Qwest stated that it was inappropriately excluded from the measures because of human error (Observation 1031). Because only one LIS trunk order required reconciliation, Liberty is not including any LIS trunk spreadsheets with this report.

C. Trouble Tickets

Liberty's work scope included a review of AT&T's and Qwest's Nebraska trouble ticket data for unbundled loop products for the April to June 2001 period. Liberty conducted this review to determine whether Qwest had correctly reported its performance measures, particularly MR-6 –

For 50 percent of the individual Qwest trouble tickets that the two parties had in common, the MTTR reported by each party did not match.[4] Of these, the durations differed by more than 1 hour for 60 percent and by more than 12 hours for 40 percent. At times, Qwest had recorded a longer MTTR than did AT&T, but in the majority of cases, the time recorded by AT&T was significantly longer than that recorded by Qwest.

Liberty held discussions with AT&T and Qwest to determine the reasons for these differences in duration. During the course of the discussions, both parties revised their data or reinterpreted the information on their ticket logs. Liberty found that:

- There was a 1-hour difference between the system clock used by Qwest and that of AT&T (this difference would not affect net duration, however).
- In 70 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open time for the ticket.
- In 30 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open and restore time for the ticket.
- In 20 percent of the cases, there was "no access" time that AT&T did not remove from duration.

The net results of the duration reconciliation were as follows:

- In 60 percent of the cases, the parties ultimately concurred that Qwest had properly handled the ticket duration.
- In 10 percent of the cases, the discrepancies could not be explained.
- In 30 percent of the cases, Qwest had made administrative errors or did not follow its own procedures, which led to durations that were significantly different from those recorded by AT&T.
- The adjustments to MTTR for the Qwest tickets in error ranged from approximately 20 hours shorter to roughly 9 hours longer.

The population of tickets analyzed above constituted half of those used by Qwest to derive its MR-6 measure. Assuming the error rate in the other half is zero (since the parties agreed), then Qwest had significant errors in 15 percent of the total ticket durations used to calculate the measure. Although the sample analyzed by Liberty was small compared to Qwest's entire trouble ticket population, the human error rate was higher than Liberty believes is acceptable for a process of this type. Liberty issued an Observation report (#1028) on this subject.

Qwest's response to Liberty's Observation maintained that the mistakes identified by Liberty were isolated human errors and not typical, and that no corrective action was required. Qwest added that it conducted semi-annual reviews at its service centers, routinely finding error rates of 1 percent or less; Qwest center managers also reportedly conducted random checks and provided coaching to technicians whenever discrepancies were found.

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[4] Liberty considered instances where the parties disagreed by 20 minutes or less to be "matches."

IV. Status of Observations and Exceptions

The preceding discussion covered matters that explained the differences between the performance measure results obtained by AT&T and by Qwest for data from the state of Nebraska. In its prior data reconciliation work using data from Arizona and Colorado, Liberty identified several problems with Qwest's performance measures that were reported in the form of an Exception and several Observations. In addition, Covad provided some order information associated with Arizona that was received too late to incorporate in the Arizona report. The following sections provide the status of those issues.

Exception 1046

Exception 1046 stated that, during the period being covered by Liberty's data reconciliation, Qwest's systems sometimes truncated the third digit of an order's missed function code while it was being transferred from the Integrated Data Repository pending data source to the Detailed Data Set used by RRS to calculate OP-15 performance measure results. The Wholesale Regulatory Reporting program looks up the code in a miss code table to determine how the order should be handled. If it fails to find the code, it defaults the miss to Qwest. Thus, all of the LIS trunk orders showing two-digit miss codes were being reported as Qwest misses, even though not all of them were.

In its response to the exception, Qwest stated that it had already identified the problem and that the code had been corrected in the August 2001 release of performance results. Qwest also stated that the problem affected all results produced for OP-15A and OP-15B on all designed service products for the period of January through July 2001.

Liberty issued data requests (set 45) for the old and new programming code for OP-15, as well as for Qwest's documentation of how it identified the problem, developed revised business requirements, and solved the problem. Based on Qwest's responses, Liberty issued follow-on data requests (set 59), but has not yet received a response. Liberty has also not yet received a response to one of the earlier data requests (45-1). When those responses are received, Liberty will review them and determine whether the exception can be closed.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Qwest indicated that the process of provisioning a line-sharing order involves Qwest issuing a separate retail and wholesale order. The wholesale order was being correctly included in the RRS calculations. However, because there was no retail line sharing, the second order was being defaulted into the wholesale category, resulting in a double count. Qwest implemented a code change to look for orders that contain billing USOCs with retail activity and then exclude such orders from the measure. Qwest indicated that this action prevents the reporting of retail orders as line-sharing activity. The code changes were implemented effective with the November 2001 release of performance results. Qwest indicated that the December 2001 release corrected the results for all months in 2001.

Qwest provided data files that contained the orders identified by Liberty that were affected by this observation. Liberty has reviewed these files and found that the appropriate changes had

Observation. Qwest stated that the affected measures are OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9 for line sharing only.

Liberty believes that Qwest's solutions (interim and permanent) will permit it to properly identify CLECs and related orders for the periods identified and will provide proper reporting. Liberty reviewed the changes to the field details that provide the required information. Liberty is satisfied with the interim solution but has not completed its review of the new data field used in the permanent fix.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad Firm Order Commitment (FOC) records because the state code was not auto-logged for those transactions. Qwest acknowledged that there was a problem. However, Qwest stated only a small percentage of the transactions were not recorded. Qwest indicated that the issue was caused by a code break in EDI 6.0 related to unbundled loop processing. Qwest indicated that customers were moved off EDI 6.0 in August and September and EDI 6.0 was retired in December 2001, so the problem for the most part had been addressed with the new technology. For those records that are not auto-logged with the new technology, Qwest will run an ad hoc report to identify them and will manually populate the state code.

AT&T commented that since PO-2, PO-3A-1, PO-3B-1, PO-3C, and PO-4C all require state codes that it was highly likely that these results were inaccurate. AT&T also expressed concern with when the "break" occurred and whether, in months prior to July, the CLECs using EDI 6.0 had inaccurate performance results for PO-5 because of this problem. Finally, AT&T requested that Qwest's process ensure that all transactions affected by the omission of the state code were recorded.

Liberty agrees with AT&T that the results of other measures may be affected by this problem. However, Liberty had no specific knowledge of such an effect. Moreover, Liberty had concerns with Qwest's *de minimus* argument because a significant percentage of Covad orders sampled were affected by having no state code. Qwest indicated that the problem affects PO-2, PO-3, PO-4, and PO-5. Qwest also said that it primarily affects UBLs, but also impacts line sharing. Qwest claims that the problem affects less than 1 percent of orders during the period from January through May 2001.

Qwest stated that it has implemented a manual process to fix the problem, and that this correction would work for all measures. Liberty needs more information on the percentage of all relevant orders submitted via EDI that had the problem, and expects to be able to close this observation after reviewing that information.

Observation 1031

Observation 1031 reported that the Service Order Miss Code *(SOMC)* in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting.

In addition, Liberty determined that several Covad UBL orders in Arizona received after 7 p.m. were dated the same day, rather than the next day in accordance with the PID. This resulted from Liberty's review of the data Covad provided too late for inclusion in the Arizona report.

In its response to the observation, Qwest stated that the net effect of its errors was minimal, i.e., a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator.

AT&T filed comments on this observation, questioning whether other performance measures and other products could be affected by the problem, whether there could be both systems errors and human errors involved, and whether prior results could be re-stated.

Liberty is waiting for the responses to several questions (set 53) to Qwest regarding this issue and needs more information on Qwest's ability to rehabilitate historical performance data and on which performance measures have been affected by this problem.

Observation 1034

Observation 1034 reported that Qwest failed to report many Firm Order Confirmations for Covad because it incorrectly identified line-sharing orders as unbundled loops with a non-standard interval of 72 hours. Qwest does not report records in cases where the interval is non-standard. Covad currently has a special contract with Qwest that requires delivery of UBLs within 72 hours, a non-standard interval. Line-sharing orders have a standard interval of 24 hours. Line-sharing orders that are misidentified as UBLs are therefore excluded from the measure.

Liberty has submitted data requests to Qwest regarding the time period involved with this problem and the changed its processes to correct the problem.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures for cases in the eastern region prior to June 2001 because Qwest included cancelled orders in the measures. This Observation is discussed above in the Nebraska-specific section of this report.

Data Reconciliation Update

On January 3, 2002, Liberty issued its second report on data reconciliation. That report discussed the results of reconciling data from CLECs and Qwest for the state of Colorado. As a result of the work reflected in that report, and on reconciliation efforts that used data from Arizona and Nebraska, Liberty issued one exception and ten observation reports. This report provides a summary and the status of each of the exception and observation reports. It also describes one correction and updates the status of an open issue from the Colorado report.

In summary, Liberty has identified and reported on several problems with Qwest's performance measure reporting. One-half of these issues appear to require programming changes that Qwest has indicated it has already made. The other half of these issues involves human error. Qwest has indicated that it has conducted training or taken other steps to improve human performance. Liberty has closed five of the eleven reports.

Exception 1046

Exception 1046 stated that, during the period being covered by Liberty's data reconciliation, Qwest's systems sometimes truncated the third digit of an order's missed function code while it was being transferred from the Integrated Data Repository pending data source to the Detailed Data Set used by RRS to calculate OP-15 performance measure results. The Wholesale Regulatory Reporting program looks up the code in a miss code table to determine how the order should be handled. If it fails to find the code, it defaults the miss to Qwest. Thus, all of the LIS trunk orders showing two-digit miss codes were being reported as Qwest misses, even though not all of them were.

In its response to the exception, Qwest stated that it had already identified the problem and that the programming code had been corrected in the August 2001 release of performance results. Qwest also stated that the problem affected all results produced for OP-15A and OP-15B on all designed service products for the period of January through July 2001.

Liberty issued data requests for the old and new programming code for OP-15, as well as for Qwest's documentation of how it identified the problem, developed revised business requirements, and solved the problem. Liberty reviewed the revised code for OP-15, conducted a telephone interview, and concluded that the code was no longer truncating the missed function code. Liberty also reviewed the PEND data files for the months of September through December 2001, the period after the fix was reportedly in place. Liberty confirmed that these files contained all three characters of the missed function code, *i.e.*, there was no truncation. Liberty then used the files to determine how many orders should have been included in the OP-15 measure results for these months and confirmed that the published performance reports included the same number of orders. Liberty considers this exception to be closed.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Qwest indicated that the process of provisioning a line-sharing order involves Qwest issuing a separate retail and wholesale order. The wholesale order was being correctly included in the RRS calculations. However, because there was no retail line sharing, the second order was being defaulted into the wholesale category, resulting in a double count. Qwest implemented a code change to look for orders that contain billing USOCs with retail activity and then exclude such orders from the measure. Qwest indicated that this action prevents the reporting of retail orders as line-sharing activity. The code changes were implemented effective with the November 2001 release of performance results. Qwest indicated that the December 2001 release corrected the results for all months in 2001.

Qwest provided data files that contained the orders identified by Liberty that were affected by this observation. Liberty has reviewed these files and found that the appropriate changes had been made for orders affecting July measures onward. Also, during its re-audit of the PID 4.0 OP measures, Liberty reviewed the code that is used to identify orders with retail activity. Liberty conducted an interview with Qwest on this matter and received responses to related data requests.

Liberty found that for months before July 2001, Qwest's revised code could not correct the problem. Qwest acknowledged this in a supplemental data request response. Liberty considers this observation to be closed. To ensure that the record is clear, Qwest should supplement its observation response to clarify that only results from July 2001 and forward are free of this problem.

Observation 1027

Observation 1027 identified various orders that were included and counted in more than one month. Qwest acknowledged the problem and indicated that it occurred when an order was completed in one month and then passed through completions again in a second month. If an order was passed through with a completed status (CP) in one month and goes through a second completion as a billing post (PP) in another month then it was double counted. Qwest implemented new code that reviews the record for the previous seven months and, if the record has been previously counted, it is omitted from the current month's calculations.

AT&T filed comments on this observation noting that measures other than OP-3 and OP-4 could be affected. AT&T also questioned why this problem was apparent when earlier, in a response to the problem identified in Arizona, Qwest indicated that prior results would be re-generated with the fix in place. Qwest stated that corrected data could not be made available for the reconciliation because the problem was not yet resolved at the time Liberty was given the reconciliation data. Qwest also stated that the problem affected OP-3, OP-4, OP-5, OP-6, OP-13, PO-8 and PO-9, and all disaggregated products. Qwest provided documentation showing that the same issue that had been identified in the Arizona test had been closed.

Liberty conducted an interview with Qwest on this matter and received responses to related data requests. Liberty reviewed the data files and the revised code provided by Qwest to confirm that the problem has been resolved. Liberty considers this observation to be closed.

Observation 1028

Observation 1028 reported that there was a significant error rate (about 15 percent) in the mean-time-to-repair (MTTR), or repair duration, used by Qwest in calculating its MR-6 measure for AT&T in Nebraska. In its earlier reconciliation work, Liberty found that Qwest's overall error rate of about 3 percent in Arizona, when viewed alone, was within the range of a reasonable human error rate. However, when Arizona and Nebraska results were combined, the error rate was 6.5 percent, which in Liberty's opinion could be problematic. Liberty has therefore begun an analysis of AT&T trouble tickets in Oregon to obtain additional data on the nature and frequency of errors. Liberty has also requested information on Qwest's compliance review and coaching programs to ascertain whether such programs should be effective. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1029

Observation 1029 noted the exclusion of certain CLEC line-sharing orders because the CLEC was unknown. Qwest acknowledged that it was unable to report the majority of line-sharing orders in the months of July and going forward for certain CLECs. Qwest indicated that its order writing process did not capture the data used to identify CLECs, and thus Qwest was not able to report line-sharing results for the majority of the orders at the CLEC-specific level for this time period. Beginning with the December 2001 data and going forward, a new detail field was added to PANS that addressed this problem. Qwest indicated for the period from July through November 2001, a "work around" solution had been implemented.

AT&T filed comments on this observation noting that measures other than OP-4 could be affected. AT&T also requested that Qwest identify the specific performance measures for which CLEC-specific reporting was not available as a result of the problem identified in this observation. Qwest stated that measures OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9 were affected, but for line sharing results only. Qwest also indicated that the problem did not affect the M&R measures because the relevant information was retrieved from other sources.

Liberty has conducted an interview with Qwest on this matter and received responses to its data requests. The data responses included revised computer code, updated July RSOR data files with the "work around" solution in place, identification of other measures affected by this problem, and information on the development of the new data field. Liberty compared the original test July RSOR file sample with the corrected July RSOR data file sample and was able to confirm that the improperly excluded orders were included in the new July RSOR data set. Liberty considers this observation to be closed.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad Firm Order Commitment (FOC) records because the state code was not automatically logged for those transactions. Qwest acknowledged that there was a problem. However, Qwest stated that only a small percentage of the transactions were not recorded. Qwest indicated that the issue was caused by a code break in EDI 6.0 related to unbundled loop processing. Qwest indicated that customers were moved off EDI 6.0 in August and September and EDI 6.0 was retired in December 2001, so the problem for the most part had been addressed with the new technology. For those records that are not auto-logged with the new technology, Qwest will run an ad hoc report to identify them and will manually populate the state code.

AT&T commented that, since PO-2, PO-3A-1, PO-3B-1, PO-3C, and PO-4C all require state codes, it was highly likely that these results were inaccurate. AT&T also expressed concern with when the "break" occurred and whether, in months prior to July, the CLECs using EDI 6.0 had inaccurate performance results for PO-5 because of this problem. Finally, AT&T requested that Qwest's process ensure that all transactions affected by the omission of the state code were recorded.

Liberty had concerns with Qwest's *de minimus* argument because a significant percentage of Covad orders sampled were affected by having no state code, while Qwest claims that the problem affects less than 1 percent of orders. Qwest also indicated that the problem affects PO-2, PO-3, PO-4, and PO-5, and that it primarily affects unbundled loops, but also affects line sharing.

Liberty has requested additional information on the number and percentage of other performance measures affected by the code problem and the percentage of EDI 6.0 transactions. Liberty expects to be able to close this observation after reviewing that information.

Observation 1031

Observation 1031 reported that the Service Order Miss Code (SOMC) in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting.

Qwest responded to this observation on January 24, 2002. Qwest stated that it had re-evaluated every AT&T LIS trunk and unbundled loop order for the reconciliation period from the states of Arizona and Nebraska and found that no LIS trunk orders evaluated by Liberty in Arizona were miscoded as customer caused misses and that only one of many unbundled loop orders evaluated by Liberty in Arizona were miscoded as customer caused misses. Qwest also stated that, in evaluating the data from the three states collectively (Arizona, Colorado and Nebraska), it found that 0.11 percent of the unbundled loop orders, and 6.12 percent of the interconnection trunk orders were miscoded as customer-caused misses. Qwest stated that it had clarified the MFC coding process documentation, conducted a review with the Network Organization to ensure that employees correctly complete the MFC field, and individually reviewed SOMC coding with each ISC representatives responsible for the coding errors identified.

Liberty discovered that it had mis-categorized one order and thus overstated the effect of this problem in the Colorado report. The correction is described in detail at the end of this report.

Liberty has not completed its review of Qwest's response to Observation 1031. Liberty has reviewed the attachments Qwest provided with its observation response and evaluated the manner in which Qwest improved its procedures and retrained its ISC representatives. Liberty will also complete its own evaluation of the LIS trunk orders from Arizona to validate Qwest's statement that none of them had been miscoded. Liberty submitted follow-up data requests on January 29, 2002, and Liberty expects to be able to close this observation after receiving and reviewing that information.

Observation 1032

Observation 1032 noted that Qwest included some orders in OP-4 that should have been excluded because the requested provisioning interval was greater than the then-current standard installation interval. Qwest's response indicated that out of a very large number of orders, Liberty found only a few PONS for which this had occurred. In fact, however, Liberty performed an analysis on only a sample of the orders and found that this improper exclusion affected over 8 percent of the sample. Liberty is now beginning its analysis of data from the state of Washington and continues to observe this problem.

Qwest indicated that it had improved its documentation in an effort to prevent this problem from recurring. Liberty requested a copy of the improved documentation. Liberty also requested that Qwest address what measures, products, time frames, and which CLECs, were affected by this type of error. Qwest has not yet replied to Liberty's data requests, which asked for a detailed explanation of Qwest's solution to the problem and support for the error rate Qwest reported as resulting from this problem. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1033

Observation 1033 stated that there were instances where Qwest personnel determined the order application date/time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. In some instances, Qwest failed to change the application day to the next day, even though the ASR was received after 3:00 p.m. MT. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether or not the application was "complete and accurate" as is required in the definition section of the PID.

In addition, Liberty determined that several Covad UBL orders in Arizona received after 7 p.m. were dated the same day, rather than the next day in accordance with the PID. This resulted from Liberty's review of the data Covad provided too late for inclusion in the Arizona report.

In its response to the observation, Qwest stated that the net effect of its errors was minimal, i.e., a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important

fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator.

AT&T filed comments on this observation, questioning whether other performance measures and other products could be affected by the problem, whether there could be both systems errors and human errors involved, and whether prior results could be re-stated.

Liberty is waiting for the responses to several data requests to Qwest regarding this issue. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1034

Observation 1034 identified various line sharing orders that were incorrectly excluded as loops with non-standard intervals of 72 hours. Liberty identified the problem in the Covad's Colorado May PO-5 performance report and did not find this problem occurring in the months of June and July. Qwest in its response concurred with Liberty that a number of line sharing orders for May had been excluded from the performance report because the orders had been assigned a non-standard FOC interval of 72 hours. Qwest indicated that the problem was human error and that the exclusions of the line sharing orders were improper. Qwest stated that their processes currently dictate that the 72 hours interval should be manually selected only on specific unbundled loop products where the CLEC has a special non-standard FOC agreement. Qwest contends that this process should and did address the concerns raised in the observation.

Qwest identified for Covad's May performance report 23 line sharing orders in Arizona, 39 line sharing orders in Colorado, and 91 line sharing orders in Washington excluded because of the assignment of a non-standard interval. Qwest provided ad hoc files for each month from May through December 2001. Liberty has reviewed each month and does agree that Qwest has identified the magnitude of the problem in Arizona, Colorado, and Washington. Furthermore, Liberty confirmed that the sharing non-standard interval assignment did not occur during the months from June through December 2001.

In an interview, Qwest gave a plausible explanation for why this problem only occurred during the month of May 2001. Since Liberty has confirmed that the problem has not appeared after that month, this observation is considered closed.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures prior to June 2001 because Qwest included cancelled orders in the measures. According to Qwest, the problem affected only orders coming through the SOLAR system, which processed service orders for the five eastern states (Iowa, Minnesota, Nebraska, North Dakota, and South Dakota). Qwest has indicated that the problem was resolved as of May 12, 2001, but all results prior to June 2001 for the five states were affected. Although Liberty saw no evidence of the problem in

Arizona or Colorado, Liberty has not yet concluded that the problem was limited to these five states.

Qwest recently provided a response that indicated only about 2 percent of the custom region orders were affected by this problem and that the problem did not occur after May 12, 2001. Liberty is now reviewing the information provided by Qwest.

Other Issues

Lengthy Completion Intervals

To capture the data required for completed service orders, Qwest extracts information for the current and the prior seven months. Qwest performed a test showing that this method captured 99.9 percent of the completed orders. During the data reconciliation for Colorado, Liberty found two LIS trunk orders that were not reported because they were over eight months old. Liberty was concerned that Qwest's test may not have been valid for orders that are typically more complex than average, such as those for LIS trunks. Liberty requested that Qwest conduct another test limited to LIS trunk orders to determine the percentage captured during the eight-month interval. Qwest has not yet responded to Liberty's request.

Report Correction

Liberty recently discovered that it had mis-categorized one of the LIS trunk orders about which the parties disagreed in Colorado. Liberty had categorized it as a Qwest error in assigning jeopardy codes and customer-miss exclusions, but it should have been categorized as a Qwest error because Qwest did not support the due date it believed to be correct. After issuance of the Colorado report, Qwest did provide support for the due date, and the information about this order should now be considered inconclusive because AT&T provided support for a different due date. Accordingly, the beginning of the reconciliation section of the AT&T part of the Colorado report should read:

B. Reconciliation Results

For the measure OP-3, Qwest and AT&T agreed on 47 percent of the orders. For the orders that the companies disagreed on, Liberty found that:

- *18 percent were likely caused by Qwest's errors in assigning jeopardy codes and customer-miss exclusions. In addition, another 9 percent of the orders contained a 01/01/01 completion date, which meant that Qwest's program properly included the orders but that there was likely human error in failing to enter a correct completion date. (Observation 1031.)*
- *6 percent were not counted by Qwest because the order took more than eight months to complete.*

- *For 61 percent, Qwest's treatment was correct, or Qwest followed its procedures for not counting orders with a customer miss. In a quarter of these cases, the discrepancy was caused by Qwest using the reference date to report order completion. In 40 percent of these cases, the discrepancy was caused by disagreement as to when a LIS trunk order completes.*
- *15 percent of the discrepancies contained conflicting information that I [illegible] unable to resolve.*

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Fourth Report on Qwest Performance Measure Data Reconciliation - Washington

I. Introduction

The Liberty Consulting Group (*Liberty*) is performing for the ROC a "data validation to resolve any debates concerning the accuracy of performance data emanating from particular ILEC systems" (ROC Change Request #20.) Certain CLECs have expressed concerns about the accuracy of Qwest's reported performance results as they relate to service that they have been receiving. The ROC decided to conduct this data reconciliation work in order to test these concerns. The data reconciliation process was designed to determine whether any of the information provided by CLECs demonstrated inaccuracies in Qwest's reported performance results as these measures were defined in the PID. The detailed process has been discussed in prior reports but has not been repeated here. Liberty issued its first data reconciliation report, which used data from Arizona, on December 3, 2001. The second report on data from Colorado was issued on January 3, 2002, and on January 28, Liberty issued the third report, which provided the results of the review of data from Nebraska. On February 2, 2002, Liberty issued an update to the Colorado report, which provided the status of observations and the exceptions issued as a result of all of the data reconciliation work.

The scope of the data reconciliation work using information from the state of Washington included: (1) AT&T's LIS trunk orders, and performance measures PO-5, OP-3, OP-4, OP-6, and OP-15, and (2) Covad's line-sharing and unbundled loop orders, and performance measures PO-5 and OP-4.

This report provides a summary of the results of the reconciliation of data from Washington. Detailed, confidential spreadsheets will be sent to Qwest and individually to AT&T and Covad. The report also updates the status of the observation reports issued as a result of earlier data reconciliation work.

II. Overall Summary of Findings

For Covad orders in Washington, Liberty found a significant number of problems with Qwest's performance measure reporting. However, these were all the same problems that had been identified in earlier data reconciliation work and documented in observation reports. There were only a very small number of records for which Liberty concluded that Qwest's outcome for performance measures were incorrect and that did not fall under one of the previously identified issues.

For a large number of Covad's unbundled loop orders, Liberty found that while Qwest's treatment of the order for OP-4 was correct, Qwest's processes or procedures differed from those used in other states and differed from that previously described to Liberty. More specifically, Qwest had indicated that the service order miss code (SOMC) field was only populated in cases where the due date had been missed. For the Washington data, however and unlike other states, Liberty found customer-caused miss codes entered for orders in which the due date had been met. Liberty is investigating this matter as part of the resolution of Observation 1051.

For AT&T, Liberty also found significant problems with some of Qwest's performance reporting. In the case of AT&T, however, Liberty identified two causes of some of these problems that had not previously been found. In some instances, Qwest improperly excluded from the OP measures re-termination orders (orders to move a LIS unit from an old phone switch to its replacement). This matter has been documented in Observation 1054. In several other cases, Liberty found that Qwest included orders in OP-15 when it should not have because AT&T had caused a delay. Pending orders delayed due to customer reasons are to be excluded from OP-15. This matter will be investigated as part of open Observation 1051. The remainder of the problems related to issues already identified in earlier data reconciliation reports.

III. Results of Data Reconciliation – Covad

Liberty examined a large (well over 300) sample of Covad line-sharing orders for reconciliation to OP-4, installation interval. Qwest and Covad agreed on the numerator and denominator for 24 percent of the orders. For 53 percent of the orders examined, Liberty concluded that Qwest properly treated the order in the performance measure, that Covad's information did not show that there was anything wrong with Qwest's treatment, or that the information from Qwest and Covad conflicted so as to prevent reconciliation.

Liberty found that Qwest was incorrect on 23 percent of the line-sharing orders. With one exception, these consisted of retail orders reported under wholesale results (Observation 1029), orders reported complete a second time in a different month (Observation 1027), and orders not reported because the CLEC designation was "unknown" (Observation 1024). These three observations have been closed. The one Qwest error that did not fall under these previously defined issues was one in which there were several applications and rejections followed by a customer cancellation before the service had been installed.

Liberty also examined a large (nearly 200) sample of Covad unbundled loop order for reconciliation to OP-4. For 57 percent of the sample, Qwest and Covad agreed on the numerator and denominator. For 39 percent of the orders examined, Liberty concluded that Qwest properly treated the order in the performance measure, that Covad's information did not show that there was anything wrong with Qwest's treatment, or that the information from Qwest and Covad conflicted so as to prevent reconciliation.

Liberty found that Qwest was incorrect on 4 percent of the unbundled loop orders. These errors consisted of previously defined matters such as those documented in closed observations 1031, 1032, and 1033. Liberty found one order for which Qwest incorrectly included a duplicate order for the same purchase order.

Finally, Liberty examined a large (nearly 300) sample of line-sharing orders for reconciliation to PO-5, timeliness of Firm Order Confirmations. Qwest and Covad agreed on the numerator and denominator for 21 percent of the records. For 51 percent of the records, Liberty concluded that either Qwest was correct, Covad did not show that Qwest was incorrect, or that the records were inconsistent and no conclusion could be reached.

Liberty concluded that Qwest was incorrect on 28 percent of the PO-5 records. Most of these (23 percent of the total) were cases in which Qwest's records did not include the same order (Observation 1030). Liberty closed this observation as documented in the last section of this report. During the month of May only, Qwest incorrectly reported a few (about 4 percent of the total) orders because it classified the order as having a non-standard interval (Observation 1030). This observation has also been closed. The other 1 percent of the records that Liberty marked as Qwest being incorrect involved orders in which Covad's records supposed its position and Qwest's did not.

IV. Results of Data Reconciliation – AT&T

Liberty found that Qwest was correct, or not shown to be wrong, on 78 percent of the orders in OP-3. For 12 percent of the orders, Qwest was incorrect because of the re-termination issue that is discussed below under Observation 1036. Problems with jeopardy coding (discussed in Observation 1031) accounted for 8 percent of the orders, and the remaining 2 percent due to Qwest having inadequate support for its position. The results for OP-4 generally followed those for OP-3.

For OP-6, Qwest was correct, or not shown to be wrong, on 42 percent of the orders. The re-termination issue (Observation 1036) accounted for 50 percent of the orders and improper jeopardy coding (Observation 1031) accounted for 8 percent.

For OP-15, Liberty found that Qwest was correct on 8 percent of the orders, the re-termination issue (Observation 1036) accounted for 33 percent of the orders, and, for 59 percent, Qwest included orders for which AT&T caused the delay (Observation 1031).

Finally, for PO-5, Liberty did not find any problems with Qwest's treatment of the records.

V. Status of Observations and Exceptions

Exception 1046

Exception 1046 reported a programming problem that affected OP-15 and designed service products. Liberty previously closed this exception report.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Liberty found that performance measures from July 2001 and forward were free of this problem and previously closed this observation report.

Observation 1027

Observation 1027 identified various orders that were included and counted in more than one month. Previously Liberty reported that it had reviewed the data files and the revised code provided by Qwest, confirmed that the problem had been resolved, and considered the observation to be closed.

Observation 1028

Observation 1028 reported that there was a significant error rate (about 15 percent) in the mean-time-to-repair (MTTR), or repair duration, used by Qwest in calculating its MR-6 measure for AT&T in Nebraska. In its earlier reconciliation work, Liberty found that Qwest's overall error rate of about 3 percent in Arizona, when viewed alone, was within the range of a reasonable human error rate. However, when Arizona and Nebraska results were combined, the error rate was 6.5 percent, which in Liberty's opinion could be problematic.

To obtain additional data on the nature and frequency of errors, Liberty conducted an analysis of AT&T trouble tickets in Oregon. Liberty found an error rate of 6.5 percent, the same as the combined results from Arizona and Nebraska. Liberty had also requested information on Qwest's compliance review and coaching programs to ascertain whether such programs could be effective. Materials provided by Qwest included checklists of areas to be examined during the semi-annual reviews, with areas to record expectations, findings, and recommendations. These checklists encompassed a broad range of areas, including such topics as handoff of tickets to the central office, proper billing and rebate coding, sufficiency of work force, and valid no access time used on tickets. Qwest also provided ticket review worksheets and process guides on various aspects of trouble ticket administration.

Liberty's general assessment of the material was that the compliance reviews and coaching programs did not appear to be of the scope and focus that would minimize significantly the kind

of errors found during data reconciliation. During its analysis, Liberty had found that the errors in MTTR were generally due to improper handling of "no access" time and improper ticket restoring and closing procedures. These errors were made by both customer technicians and by "scrubbers," the administrative technicians responsible for verifying and reconciling ticket histories. Qwest's compliance reviews and coaching programs were simply not geared to focus on these troublesome areas.

Qwest subsequently provided Liberty with additional information describing recent training programs and review efforts geared towards further improving the handling of trouble tickets. A focused training process was completed in January 2002. All Design Service Center Directors, Administrative Technicians, and Customer Communication Technicians received additional training and documentation on guidelines for handling no access time and for providing information to customers as part of the ticket restoration process. In addition to the sampling and coaching programs that had been in place, Qwest implemented an audit process where each Design Service Center manager is now responsible for verifying repair process adherence.

While Liberty expects that the renewed focus on methods and procedures should work to reduce the error rate in MTTR, it cannot substantiate those effects at this time. Liberty therefore recommends that the error rate be the subject of any future monitoring work. Liberty is satisfied that Qwest has taken positive steps to reduce the level of errors found during the data reconciliation work, and considers this observation closed.

Observation 1029

Observation 1029 noted the exclusion of certain CLEC line-sharing orders because the CLEC was unknown. Liberty evaluated Qwest's solution to the problem, confirmed that the improperly excluded orders were included, and, as previously reported, considered the observation to be closed.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad's Firm Order Commitment *(FOC)* records because the state code was not automatically logged for those transactions. Qwest acknowledged that there was a problem. However, Qwest stated that only a small percentage of the transactions were not recorded. Qwest indicated that the issue was caused by a code break in EDI 6.0 related to unbundled loop processing. Qwest also indicated that affected customers were moved off EDI 6.0 in August and September and EDI 6.0 was retired in December 2001, so the problem with EDI 6.0 has been addressed with the new technology. For those records that are not properly logged with the new technology, Qwest will run an *ad hoc* report to identify them and will manually populate the state code.

AT&T commented that, since PO-2, PO-3A-1, PO-3B-1, PO-3C-1 and PO-4C all require state codes, it was highly likely that these performance results were inaccurate. AT&T also expressed concern with the time the "break" occurred and whether, in months prior to July 2001, CLECs

using EDI 6.0 had inaccurate performance results for PO-5 because of this problem. Finally, AT&T requested that Qwest's process ensure that all transactions affected by the omission of the state code were recorded for accuracy purposes.

Liberty had concerns with Qwest's *de minimus* argument because a significant percentage of the Covad orders sampled were affected by the failure to record state code, while Qwest claims that the problem affects less than 1 percent of orders. Qwest stated that the problem affects PO-2, PO-3, PO-4, and PO-5, and that it primarily affects unbundled loops, but also affects line sharing.

Liberty conducted interviews with Qwest personnel and issued a number of data requests concerning this issue. Qwest responded and addressed the concerns of AT&T and Liberty. Qwest acknowledged that "code break" affected the results for the entire period. From January through April 2001 there were 28 records that were excluded from PO-5C results. According to Qwest, PO-5A and PO-5B were not impacted. Also provided by Qwest was the number of records excluded from PO-2 (3 out of 99,487 records), PO-3 (246 out of 44,969), and PO-4 (808 out of 150,776 records) in July. In each case the resulting percentage was less than or approximately equal to .005 percent. Qwest indicated that of the 90,777 transactions in November, 43,164 records or 47.6 percent were EDI 6.0 transactions.

Qwest agreed that the "code break" could have disproportionately affected some CLECs performance. According to Qwest, Covad during this period was a large user of unbundled loops and that would explain the disproportionate impact on them. As to AT&T's concern with the impact of the "code break" on other PIDS, Qwest stated that its solution would address the problems for PO-2, PO-3, PO-4, and PO-5.

On the basis of Liberty's review of this matter, including Qwest's proposed solution to identifying records that did not contain a state code and Qwest's response to AT&T's concerns, Liberty considers this observation closed.

Observation 1031

Observation 1031 reported that the Service Order Miss Code *(SOMC)* in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting.

Qwest responded to this observation on January 24, 2002. Qwest stated that it had re-evaluated every AT&T LIS trunk and unbundled loop order for the reconciliation period from the states of Arizona and Nebraska and found that no LIS trunk orders evaluated by Liberty in Arizona were miscoded as customer caused misses and that only one of many unbundled loop orders evaluated by Liberty in Arizona were miscoded as customer caused misses. Qwest also stated that, in evaluating the data from the three states collectively (Arizona, Colorado and Nebraska), it found that 0.11 percent of the unbundled loop orders, and 6.12 percent of the interconnection trunk orders were miscoded as customer-caused misses. Qwest stated that it had clarified the MFC coding process documentation, conducted a review with the Network Organization to ensure that

employees correctly complete the MFC field, and individually reviewed SOMC coding with each ISC representatives responsible for the coding errors identified.

Liberty has reviewed the attachments Qwest provided with its observation response and evaluated the manner in which Qwest improved its procedures and retrained its ISC representatives. Liberty conducted its own evaluation of the LIS trunk orders from Arizona to validate Qwest's statement that none of them had been miscoded. Liberty's results differed from those obtained by Qwest. Liberty reviewed 23 Arizona LIS trunk orders that Qwest showed as having been excluded for customer misses. Liberty found that 4 of the orders had been jeopardized by Qwest well after the original due date, with no support in their WFAC logs showing that AT&T had caused a miss of that due date. Liberty also found that Qwest had excluded 3 other orders as customer misses, even though the orders had also been jeopardized to Qwest, thus violating Qwest's own *Jeopardy Coding Job Aid* procedures. In addition, Liberty found that there was no support at all in the WFAC logs for the jeopardies applied to 2 other orders, and that the SOMC field was blank in one additional order that had been excluded as a customer miss.

For Washington LIS trunk orders, Qwest included several in the reporting of OP-15 for which AT&T had caused the delay. This matter will be investigated as part of this Observation report.

For a large number of Covad's unbundled loop orders, Liberty found that while Qwest's treatment of the order for OP-4 was correct, Qwest's processes or procedures differed from those used in other states and differed from that previously described to Liberty. More specifically, Qwest had indicated that the service order miss code (SOMC) field was only populated in cases where the due date had been missed. For the Washington data, however and unlike other states, Liberty found customer-caused miss codes entered for orders in which the due date had been met. Liberty is investigating this matter as part of the resolution of Observation 1031.

Qwest has stated that it is conducting a further assessment of the underlying causes of these problems and the means by which they will be corrected, and that it will provide documentation of its conclusions to Liberty. Accordingly, this observation remains open.

Observation 1032

Observation 1032 noted that Qwest included some orders in OP-4 that should have been excluded because the requested provisioning interval was greater than the then-current standard installation interval. Qwest's response indicated that out of a very large number of orders, Liberty found only a few PONS for which this had occurred. Originally Liberty thought believed the percentage of orders affected was more significant. But after additional analysis and correction of errors, Liberty found that, in the sample of UBL orders for Colorado and Washington combined, about 4 percent of the orders for which Qwest and the CLEC disagreed had this problem. When the agreed upon orders are also counted, the percentage is even lower.

Qwest's responded to the observation by indicating that the orders should have been excluded but were not because of human error when the order was processed. Qwest personnel had failed to populate the "L" (for longer than standard interval) field on the service order. Qwest indicated

that it had improved its documentation in an effort to prevent this problem from recurring. Liberty reviewed the improved documentation and concluded that it adequately described the process and should help to avoid this kind of error in the future.

Liberty also investigated whether other measures, products, and CLECs could have been affected, and determined that only OP-4 for designed services but any CLEC could have seen the problem.

The nature of this problem falls into the general category of human errors documented in KPMG's Observation 3086. However, on the basis of Liberty's additional analysis of Colorado and Washington orders showing a lower percentage than had been thought to be the case, and the evaluation of the steps and improved tools implemented by Qwest to minimize the likelihood of the error, Liberty has concluded that this observation should be closed.

Observation 1033

Observation 1033 stated that there were instances where Qwest personnel determined the order application date time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. In some instances, Qwest failed to change the application day to the next day, even though the ASR was received after 3:00 p.m. MT. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether or not the application was "complete and accurate" as is required in the definition section of the PID.

In addition, Liberty determined that several Covad UBL orders in Arizona received after 3 p.m. were dated the same day, rather than the next day in accordance with the PID. This resulted from Liberty's review of the data Covad provided too late for inclusion in the Arizona report.

In its response to the observation, Qwest stated that the net effect of its errors was minimal, i.e., a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator. Qwest's response also stated that it planned to "*Improve the quality control process by increasing the quantity of ASRs sampled in the quality review process from 20 to 30 ASRs per SDC per month.*" Liberty wanted to see the results of the quality review process. However, in response to data request 53-3, Qwest stated that the quality control reviews did not begin until July 2001, that quality control reports are only kept for 30 days (unless a problem is identified), and that no quality control reviews were available at this time.

AT&T filed comments on this observation, questioning whether other performance measures and other products could be affected by the problem, whether there could be both systems errors and human errors involved, and whether prior results could be re-stated. In response to data request 65-2, Qwest stated that it does not plan to correct historical results because the errors were minimal, it is a Qwest policy not to alter closed records, and altering records in PANS but not the original records would create inconsistencies. In response to data request 65-3, Qwest stated that the only performance measures that could be impacted by the application date problem are PO-

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5D and OP-4. Finally, in response to data request 65-4, Qwest stated that, for a three-week period it had audited, 98.1 percent of unbundled loop orders had the correct application date.

In the responses to data requests 53-1, 53-2, and 65-1, Liberty received the documentation used by Qwest to train personnel in properly determining the application date, and the Qwest application date methods and procedures. Liberty reviewed those documents, and found that they clearly described the application date and how it should be determined, included examples, and were all internally consistent. Liberty considers this observation to be closed, but recommends that Qwest retain its quality control reports for a period of at least a year and that application date error rates be closely monitored and tracked over time.

Observation 1034

Observation 1034 identified various line-sharing orders that were incorrectly excluded as loops with non-standard intervals of 72 hours. Liberty confirmed that the problem has not appeared after May 2001, and, as previously reported, considered this observation to be closed.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures prior to June 2001 because Qwest included cancelled orders in the measures. According to Qwest, the problem affected only orders coming through SOLAR, the service order processor for the five eastern states (Iowa, Minnesota, Nebraska, North Dakota, and South Dakota). Qwest has indicated that the problem was resolved as of May 12, 2001, but all results prior to June 2001 for the five states were affected. Liberty saw no evidence of the problem in Arizona or Colorado, and has found no reason to conclude that the problem was limited to anything other than these five states.

An order coming through SOLAR is initially assigned a completion date equal to the due date (since the field cannot be blank). Previously, this completion date would be passed to the RSOR database by the RSOR EFMT (Eastern format) batch programs and would remain in place unless changed. Qwest subsequently implemented a real time connection between SOLAR and RSOR with new RSOR ERTP (Eastern real time process) programs, replacing the EFMT interface programs and eliminating the problem. While SOLAR still assigns a completion date equal to the due date, this date is no longer passed to the RSOR database. The RSOR database does not receive the completion date from SOLAR until the order is actually completed. Orders that are cancelled in SOLAR are assigned a completion date of 11/11/1111 by RSOR, and thus excluded from the measures.

Qwest maintained that only about 2 percent of the eastern region orders were affected by this problem, and that the problem did not occur after May 12, 2001. Liberty subsequently issued data requests to clarify, among other things: (a) why the 11/11/1111 completion date was assigned in some but not all cases prior to May 12, 2001, and (b) what safeguards were in place

to ensure that the completion dates for non-cancelled orders were accurate, i.e., whether they were changed if the order was not completed on time.

Qwest indicated that the cause of the problem was a software error that resulted in not all cancelled orders being assigned a completion date of 11/11/1111 (and thus properly excluded from the measures). According to Qwest, any order that had multiple activities in one day, including cancellation, would not go through the portion of the EPMT programming logic that assigned the 11/11/1111 date. Any order with only cancellation activity in a given day would have been handled correctly. Since the interface has been rewritten, the logic error no longer exists.

Liberty also asked Qwest to explain more fully the statistics on the nature of the problem that is provided in response to the observation. According to Qwest, original data on orders are stored in RSOR for only 60 days. Qwest therefore had to reconstruct data from the Integrated Data Repository (IDR), and subsequently provided a summary of this data representing all products to Liberty. Qwest's analysis indicated, for the January to April 2001 period, that 2.1 to 2.9 percent of total retail orders for all products and 3.0 to 4.2 percent of total wholesale orders for all products were cancelled orders without the 11/11/1111 completion date in place. (Liberty's analysis showed that these percentages would be very slightly higher if the effects of cancelled orders that properly contained the 11/11/1111 date were considered.) In other words, these orders were included in both the denominator and numerator of OP-3 and OP-4, making Qwest's performance appear better than it was for both CLECs and Qwest retail.

In its comments on this observation, AT&T raised the issue of whether the completion dates on orders that were not cancelled could be inaccurate. Specifically, if completion dates were automatically assigned by SOLAR and passed to RSOR prior to May 2001, it may be possible that completion dates for missed commitments could be inaccurate if they were not changed from being equal to the due dates. Qwest was unable to reconstruct the data to validate whether non-cancelled orders had accurate completion dates. It appeared that there were no safeguards in place to ensure that accurate completion dates were entered into the system to override the one automatically assigned by SOLAR. To the extent that orders were closed manually (as opposed to be being auto-completed, such that the completion date would be automatically updated), it is possible that some orders did have completion dates that were not accurate. With the link-load between SOLAR and RSOR now in place, completion dates are no longer prematurely recorded in RSOR. It is no longer possible for inaccurate completion dates to be automatically carried forward; it is, however, still theoretically possible for manually-closed orders to have completion dates that were not entered correctly.

The programming fix put in place as of May 12, 2001 has corrected the problem of cancelled orders being included in OP-3 and OP4, and results beginning with June 2001 should not be affected. Liberty therefore considers this observation closed.

Observation 1036 (Re-termination)

When Qwest plans to undertake a switch conversion, it notifies its customers, who then submit disconnect and re-termination orders to move their LIS trunks from the old Qwest switch to the

new one. Coordination between the parties is required to ensure that service is not adversely affected during the conversion process.

In Washington, Liberty identified several LIS trunk re-termination orders that AT&T had included in the OP and PO-5 performance measures, but Qwest had not. Qwest did not include them in PO-5 because Qwest considers re-termination orders to be projects, and projects are excluded from the PO-5 measure.

However, orders deemed to be projects are not excluded from the OP-3, OP-4, OP-6 and OP-15 measures. Qwest excluded these same re-termination orders from those OP measures because human error caused the orders to be improperly coded C40, which resulted in their exclusion as customer misses (this issue was discussed in an interview with Qwest on 2/28/02). These orders showed inward activity, and they should have been included in the OP measures. In fact, Liberty identified several Colorado AT&T LIS trunk orders that appear to be re-termination orders and that Qwest did include in the OP measures (e.g., DENP0103676 and DENP0103679).

Other Issues

Lengthy Completion Intervals

To capture the data required for completed service orders, Qwest extracts information for the current and the prior seven months. Qwest performed a test showing that this method captured 99.9 percent of the completed orders. During the data reconciliation for Colorado, Liberty found two LIS trunk orders that were not reported because they were over eight months old. Liberty was concerned that Qwest's test may not have been valid for orders that are typically more complex than average, such as those for LIS trunks. Liberty requested that Qwest conduct another test limited to LIS trunk orders to determine the percentage captured during the eight-month interval.

Liberty and Qwest agreed that Qwest would perform an analysis for the months of June, September and December 2001. For each month, Liberty wanted to know the number of LIS trunk orders that had completed during that month, but that had not been included in the performance measures because they had taken longer than eight months to complete. Initially, Qwest was unable to do exactly that. Rather, they were able to analyze the set of orders that had a LIS trunk class of service from the USOC table. Thus, Qwest analyzed a larger group of orders than would appear in the performance reports (which only include orders with LIS product codes). Qwest determined that, from this larger set of orders, 4 orders completing in June took longer than 8 months to complete, 1 order completing in September took longer than 8 months to complete, and one order completing in December took longer than 8 months to complete.

Liberty asked Qwest to further investigate these 6 orders, and Liberty learned the results of Qwest's analysis during an interview held on 2/20/02. Of the four orders completing in June, two would have been reported in the performance reports except for the 8-month exclusion. (The other two orders were for a change of circuit ID which would have been excluded for no inward activity, and a retail order for a disconnect.) For the month of June 2001, there were 252 LIS trunk orders included in the Qwest regional performance report for OP-3D and OP-3E combined

(*i.e.*, this is the sum of the two denominators). Accordingly, for the month of June 2001, 0.8 percent (which is 2/254) of LIS trunk orders were omitted from the OP-3 LIS trunk regional performance results because they completed in more than 8 months.

The one LIS trunk order that took longer than 8 months to complete in September 2001 was also a retail order for a disconnect. Thus, 0.0 percent of the 219 LIS trunk orders were omitted from the OP-3 performance results for September because they completed in more than 8 months.

Finally, the one LIS trunk order that took longer than 8 months to complete in December 2001 would have been reported in the performance reports except for the 8-month exclusion. Accordingly, for December 2001, 0.4 percent of the 275 LIS trunk orders were omitted from the OP-3 performance results for December because they completed in more than 8 months.

Overall, for the 3 months analyzed, 0.4 percent (which is 3/748) of the LIS trunk orders were omitted because they completed in more than 8 months. This low percent appears to Liberty to support Qwest's view that the 8-month constraint does not significantly distort the performance measure results.

Cross-Boundary Orders

During its analysis of Washington LIS trunk orders, Liberty noticed that AT&T included numerous orders that Qwest did not. These orders are "cross boundary" in the sense that they are for interconnection trunks that originate from an AT&T switch in Oregon and terminate in a Qwest switch in Washington. In response to data request 71-002, Qwest stated that, for purposes of OP-3, OP-4, OP-6, and OP-15, it classifies orders in a state depending on the area code of the main telephone number. These cross boundary orders have an area code in Oregon, so Qwest classifies them in that state for those OP measures. Qwest also stated that, for purposes of PO-5, it classifies orders in a state depending on the customer facility location. Because of this, these cross boundary orders are classified in Washington for PO-5 reporting. For performance reporting, the result is that the cross boundary orders are reported in one state for the OP measures and in another state for the PO-5 measure.

The PID does not provide guidance about the state in which these cross boundary orders should be reported. Although it would be ideal to include each order (for all measures) in only one state report, Qwest applies its procedures uniformly throughout the region, there is no double counting of orders in the measures, and Liberty finds no clear basis for requiring that those procedures be changed.

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Fifth Report on Qwest Performance Measure Data Reconciliation - Oregon

I. Introduction

The Liberty Consulting Group *(Liberty)* is performing for the ROC a "data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC PIDs." (ROC Change Request #20.) Certain CLECs have expressed concerns about the accuracy of Qwest's reported performance results as they relate to service that they have been receiving. The ROC decided to conduct this data reconciliation work in order to test those concerns. The data reconciliation process was designed to determine whether any of the information provided by CLECs demonstrated inaccuracies in Qwest's reported performance results as these measures were defined in the PID. The detailed process has been discussed in prior reports and has not been repeated here. Liberty issued its first data reconciliation report, which used data from Arizona, on December 3, 2001. The second report on data from Colorado was issued on January 3, 2002, and on January 28, Liberty issued the third report, which provided the results of the review of data from Nebraska. On February 2, 2002, Liberty issued an update to the Colorado report, which provided the status of observations and the exception issued as a result of all of the data reconciliation work. Liberty's report on the state of Washington was issued March 1, 2002.

The scope of the data reconciliation work using information from the state of Oregon included AT&T's unbundled loop and LIS trunk orders, and performance measures PO-5, OP-3, OP-4, OP-6, OP-13, and OP-15. Liberty also reviewed Qwest and AT&T trouble ticket data used in reporting MR-6. This report provides a summary of the results of the reconciliation of data from Oregon. Detailed, confidential spreadsheets will be sent to Qwest and to AT&T. The report also updates the status of the exception and observation reports issued as a result of the data reconciliation work done to date.

II. Overall Summary of Findings

The following is a summary of the problems that Liberty found in Qwest's performance measure reporting.

For AT&T's unbundled loop orders, Liberty found some problems with some of Qwest's performance reporting that had not been previously discovered. More specifically, in some instances Qwest improperly recorded the stop times for coordinated cuts, which are used to calculate OP-13. This matter has been documented in Observation 1037. In another case, Qwest improperly omitted some orders in calculating OP-15A; this issue has been documented in Observation 1038. Liberty also found that Qwest order typists had entered the incorrect completion dates for orders, which affected results for OP-3, OP-4 and OP-6; this matter will be investigated as part of open Observation 1031. The remainder of the problems related to issues already identified in earlier data reconciliation reports.

For LIS trunk orders, the most of the problems that Liberty discovered were related to human errors and the subject of open Observation 1031.

III. Results of Data Reconciliation – AT&T

A. Introduction

After some discussion between the parties, it was ultimately determined that the following performance measures were to be reconciled:

- The denominator of PO-5A, B, and C combined for unbundled loops (UBL).
- The numerator and denominator of PO-5D for Local Interconnection Service (LIS) trunks.
- The numerator and denominator of OP-3D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-4D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-6A and OP-6B for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-13A and OP-13B for unbundled loops.
- The numerator and denominator of OP-15A and OP-15B for unbundled loops and for LIS Trunks.

For unbundled loops, the period to be reconciled was April 2001 through June 2001. Qwest was unable to provide the data necessary to reconcile OP-15 for UBL for May. The LIS Trunks reconciliation period was from January 2001 through June 2001. Qwest stated, however, that it did not report CLEC-specific state results for LIS Trunks for OP-15 for January or February; therefore, Liberty could not reconcile data for those months. In addition, Qwest was unable to provide the data necessary to reconcile OP-15 for LIS Trunks for May; therefore, data for that month could not be reconciled. These matters of not having data for particular measures and months have been reported in Liberty's earlier data reconciliation reports.

Liberty compared the unbundled loop trouble tickets provided by AT&T with the trouble tickets provided by Qwest. Where Liberty had data about a trouble ticket from both parties, Liberty compared the repair intervals reported by the two parties. Liberty also analyzed situations identified by AT&T where AT&T found one trouble ticket, but where more than one Qwest trouble ticket applied.

B. Reconciliation Results

Unbundled Loops

For the measure OP-3, Qwest and AT&T ultimately agreed on 88 percent of the unique orders that either AT&T or Qwest had included in its calculations. For the 12 percent of total orders that the companies disagreed on, Liberty found that Qwest had been correct for 5 percent;

- For 2 percent, Qwest had reported the order in a different month than logged by AT&T on the basis of the reference date. Liberty previously concluded that Qwest's treatment was proper.
- For 3 percent, Qwest did not include orders in the measure that AT&T believed should be included. These were cases in which the CLEC supplemented the order before the original due date to move the due date past the original due date. This matter was discussed in the Arizona report, wherein Liberty concluded that it was appropriate for Qwest to exclude such orders.

For the remaining 6 percent of the orders, Qwest had made errors:

- For roughly 4 percent of the cases, Qwest acknowledged that its order typist had entered the incorrect completion date. In all cases, the typist entered exactly one day later than was correct. In one-third of such cases, the typist also entered a customer-caused miss code, which resulted in the orders being excluded from the measure. This issue has been added to Observation 1031.
- For 2 percent, Qwest counted the same order in two months; this double counting error was the subject of Observation 1027.

For measure OP-4, the same issues arose as those presented above for OP-3, and in roughly the same percentages. For measure OP-6A, some of the same issues arose, however the effect was magnified because of the relatively small number of orders in the measure.

The parties agreed on all orders in the OP-6B measure. Although AT&T did not have the ability to determine what orders had been delayed due to Qwest facility reasons, AT&T concurred that Qwest had treated the orders properly.

For OP-13, AT&T and Qwest recorded different start and stop times for many of the coordinated cuts, and most of the discrepancies could not be explained. Qwest has been measuring the interval correctly as the difference between the scheduled due time (or start time if the order was started early with permission) and stop time. Qwest did acknowledge, however, that after it moved the hot cut operations from Des Moines to Omaha (April to May 2001 period), there may be have been some confusion among technicians about how to properly record stop times. In some instances, technicians were not reporting stop time as the time when physical work and Qwest testing was completed, but rather as the time that AT&T called back to confirm that the order was completed. In these cases, Qwest would be recording intervals as longer than they should be, since it was capturing the time technicians waited for a call back, which should not have been recorded at all. In June, Qwest technicians began treating the time between notifying AT&T the work was completed and getting a confirmation call back as delay time. Although Qwest subtracted delay time from the interval, and the interval was correct, Qwest's data records were not correct. Liberty issued an observation report (Observation 1037) on this subject. This error affected the records for at least 9 percent of orders included by either party in the measure. In only one case, however, did the expanded interval cause Qwest to improperly record an order as a miss that should have been a make. In most cases, the extended interval was still within the tolerances set out for OP-13.

Qwest and AT&T agreed on the treatment (make or miss) for 97 percent of the unique orders that either AT&T or Qwest had included in its calculations. All of the discrepancies were due to Qwest errors, either: (a) Qwest's analysts failed to incorporate data on an order when transferring data to its calculation spreadsheets, so that the order was never reported in the measure; (b) Qwest assigned incorrect PON numbers for certain orders (so the orders were counted with other service orders under the wrong PON and never picked up under the correct PON), or (c) Qwest technicians recorded incorrect stop times, which made the order appear incorrectly as a miss rather than a make.

For OP-15A, Liberty reconciled results for April and June only, since Qwest was unable to produce reliable data for May. While AT&T and Qwest agreed on the treatment of orders that Qwest had included in the measure for these two months, AT&T believed that there were a significant number of orders that had been omitted from April results. This omission had a significant effect on reported results for the month because of the relatively small number of orders in the measure. Specifically, adding these orders in the measure would increase the OP-15A denominator by 37 percent. Qwest stated that the omissions were due to a programming code error. Liberty issued an observation report (Observation 1038) on this subject.

AT&T and Qwest agreed on all orders for OP-15B for the months of April and June; AT&T did not record the reason for delays, and thus had no information to indicate that Qwest had not handled the orders properly.

For PO-5, Qwest and AT&T agreed on 91 percent of the orders. All of the discrepancies were due to Qwest errors. The remaining 9 percent of the orders had errors because of a programming problem that existed during the months of May and June. Orders that were either for multiple loops or were duplicated in the Qwest system were left out entirely. Qwest has since corrected this programming error, effective with July 2001 results. According to Qwest, the error was the result of programming changes made to move to PID 4.0.

LIS Trunks

For LIS trunks and OP-3, the parties agreed on 28 percent of the orders. Of the remaining orders over which the parties disagreed, Liberty found that Qwest was correct in 23 percent of its reporting. All but one of Qwest's errors occurred in January and February and most were related to issues identified in open Observation 1031. The results for OP-4 were very similar to those for OP-3.

For OP-6, Liberty found two Qwest errors, one of which was related to open Observation 1031.

For OP-15, there were no orders reported by either party during the data reconciliation period.

For PO-5, Liberty found one order in which Qwest mistakenly recorded the correct application date.

C. Trouble Tickets

Liberty's work scope included a review of AT&T's and Qwest's Oregon trouble ticket data for unbundled loop products (UBL) for the April to June 2001 period. Liberty conducted this review to determine whether Qwest had correctly reported its performance measures, particularly MR-6 – Mean Time to Repair *(MTTR)*. Liberty received summary information in spreadsheet form from both parties, as well as a hard copy of many of the AT&T and Qwest trouble tickets.

Liberty identified several issues in its preliminary analysis:

- There was a large discrepancy in the population of trouble tickets provided by each party.
- In many cases, AT&T had logged more than one Qwest trouble ticket number in connection with a single AT&T repair request.
- In 61 percent of the tickets in common, the MTTR or repair duration recorded by each party did not match.

There was a significant disparity in the population of relevant Qwest trouble ticket numbers that each party provided. Roughly one-third of the Qwest trouble tickets appeared in the AT&T data. Forty percent of the tickets in the AT&T data did not appear in the Qwest data. Qwest stated that these tickets (except for three that it could not find) were either for non-UBL products (LNP, DS1, or DS0), for a state other than Oregon, or "Info/Test Assist" tickets and were not included in the measure. Liberty found that Qwest had treated these tickets consistent with its procedures and consistent with the PID.

Roughly 13 percent of the total population of AT&T repair orders had multiple, *i.e.*, two or more, Qwest ticket numbers associated with them. In almost all cases, Qwest had assigned more than one ticket number to an AT&T repair order for one of two reasons:

- The AT&T repair order included two or more different circuits, and Qwest assigned the circuits separate Qwest trouble ticket numbers.
- There was more than one repair performed on the given circuit, and these repairs were performed on different days or at different times. Qwest typically opened and closed the original tickets and opened new ones for the later repairs.

In one case, AT&T had opened a duplicate ticket on the same circuit and Qwest closed the second duplicate ticket to "INFO" and excluded it from the measure to avoid double counting.

Liberty developed a summary chart itemizing the reasons for multiple Qwest tickets, and submitted it to the parties for comments. Liberty found that, for each of the trouble tickets in question, Qwest handled its trouble tickets consistently with its stated procedures and with the PID. AT&T accepted Liberty's analysis in all of the cases. Not all of the tickets were included in the MR-6 measure by both parties, however. In some cases, AT&T had included tickets for non-UBL products or "Info/Test Assist" tickets that were not included by Qwest in the measure.

For 61 percent of the individual Qwest trouble tickets that the two parties had in common, the MTTR reported by each party did not match. Of these, the durations differed by more than 1 but

less than 12 hours for roughly 60 percent and by more than 12 hours for roughly 40 percent. In each case, the MTTR recorded by AT&T was longer than that recorded by Qwest.

Liberty held discussions with AT&T and Qwest to determine the reasons for these differences in duration. During the course of the discussions, both parties revised their data or reinterpreted the information on their ticket logs. Liberty found that:

- There was a 3-hour difference between the system clock used by Qwest and that of AT&T (this difference would not affect net duration, however).
- In 90 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open time for the ticket.
- In 20 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open and restore time for the ticket.
- In 37 percent of the cases, there was "no access" time that AT&T had not removed from MTTR or AT&T had not used the correct "restore back to" time.

The net results of the duration reconciliation were as follows:

- In 84 percent of the cases, the parties ultimately concurred that Qwest had properly handled the ticket duration.
- In 5 percent of the cases, the discrepancies could not be explained.
- In 11 percent of the cases, Qwest had made administrative errors, which led to durations that were significantly different from those recorded by AT&T.
- The adjustments to increase MTTR for the Qwest tickets in error ranged from roughly 12 to 80 hours.

The population of tickets analyzed for MTTR above constituted 61 percent of the tickets the parties had in common (not the number used by Qwest to derive its MR-6 measure). Assuming the error rate in the other 39 percent is zero (since the parties agreed), Qwest had significant errors in 6.5 percent of the total ticket durations used to calculate the measure. It should be noted, however, that one of the errors involved a ticket with an extremely long and complex log, and neither party could reconstruct or defend the MTTR that it used.

Although the sample analyzed by Liberty was small compared to Qwest's entire trouble ticket population, the human error rate was higher than Liberty believes is acceptable for a process of this type. Liberty previously issued an Observation report (#1028) on this subject. In its report on Nebraska, Liberty had noted that the combined MTTR error rate for Arizona and Nebraska was 6.5 percent. Liberty recommended that it conduct an analysis of AT&T trouble tickets in Oregon to obtain additional data on the nature and frequency of errors. As noted above, Liberty found a 6.5 percent error rate for Oregon, consistent with prior results.

Qwest informed Liberty that it had instituted additional training programs and review efforts geared towards improving the administration of trouble tickets. Liberty has closed the observation.

V. Status of Observations and Exceptions

Exception 1046

Exception 1046 reported a programming problem that affected OP-15 and designed service products. Liberty previously closed this exception report.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Liberty found that performance measures from July 2001 onward were free of this problem and previously closed this observation report.

Observation 1027

Observation 1027 identified various orders that were included and counted in more than one month. Previously, Liberty reported that it had reviewed the data files and the revised code provided by Qwest, confirmed that the problem had been resolved, and considered the observation to be closed.

Observation 1028

Observation 1028 identified a significant error rate in the mean-time-to-repair (MTTR), or repair duration, used by Qwest in calculating its MR-6 measure. Liberty was satisfied that Qwest had taken positive steps to reduce the level of errors found during the data reconciliation work, and previously closed this observation report. Liberty also recommended that the error rate be the subject of any future monitoring work.

Observation 1029

Observation 1029 noted the exclusion of certain CLEC line-sharing orders because the CLEC was unknown. Liberty evaluated Qwest's solution to the problem, confirmed that the improperly excluded orders were included, and, as previously reported, considered the observation to be closed.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad's Firm Order Commitment *(FOC)* records because the state code was not automatically logged for those transactions. The "code break" occurred in a system that has since been retired. Liberty evaluated Qwest's proposed solution to identifying records that did not include a state code, and, as previously reported, considered this observation to be closed.

Observation 1031

Observation 1031 initially reported that the Service Order Miss Code *(SOMC)* in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting.

For Washington LIS trunk orders, Qwest included several in the reporting of OP-15 for which AT&T had caused the delay. This matter will be investigated as part of this Observation report.

For a large number of Covad's unbundled loop orders, Liberty found that while Qwest's treatment of the order for OP-4 was correct, Qwest's processes or procedures differed from those used in other states and differed from that previously described to Liberty. More specifically, Qwest had indicated that the SOMC field was only populated in cases where the due date had been missed. For the Washington data, however and unlike other states, Liberty found customer-caused miss codes entered for orders in which the due date had been met. Liberty is investigating this matter as part of the resolution of Observation 1031.

During its data reconciliation work for Oregon UBL orders, Liberty found that, for roughly 4 percent of the cases for OP-3 and OP-4, Qwest's order typist had entered the incorrect completion date. In all cases, the typist entered exactly one day later than was correct. In one-third of such cases, the typist also entered a customer-caused miss code, which resulted in the orders being improperly excluded from the measure. Liberty is also investigating this matter as part of the resolution of Observation 1031.

Qwest initially responded to this observation on January 24, 2002. Among other things, Qwest stated that it had clarified the Missed Function Code (MFC) coding process documentation, conducted a review with the Network Organization to ensure that employees correctly complete the MFC field, and individually reviewed SOMC coding with each ISC representative responsible for the coding errors identified.

Qwest conducted a further assessment of the underlying causes of these human error problems and the means by which they will be corrected, and provided a supplemental response to this observation on March 21, 2002. In its supplemental response, Qwest stated that it found no issues that it believed were *1031 issues* with either Covad or WorldCom orders. Qwest also stated that, for most *1031 issue* orders, the order was first held for facility reasons without populating WFAC with the associated jeopardy code. If such an order was subsequently jeopardized to the CLEC and that jeopardy code was populated in WFAC, then the Service Delivery Coordinator might be unaware of the Qwest jeopardy and populate the SOMC with a customer miss. Qwest stated that it retrained the affected employees on February 12, 2002 to ensure that they populate WFAC with all Qwest-caused delays. Qwest also stated that it revised its code so that the MFC in WFAC will be used for OP-3, OP-4 and OP-6 instead of the SOMC for all designed services (which include LIS trunks). Finally, Qwest stated that it assessed the magnitude of the *1031 issue* (as it interprets it), and that the issue has had minimal impact, *i.e.*, Qwest stated that its "historical results are accurate and reliable."

Liberty will determine whether Qwest has addressed all of the issues that Liberty has included in Observation 1031. If Qwest has not fully addressed any of the issues, Liberty will submit data requests to learn Qwest's position and how it plans to resolve them. Furthermore, Liberty will assess the actions Qwest has already taken. Liberty will also recommend any additional actions deemed necessary and assess how Qwest carries them out. Accordingly, this observation remains open.

Observation 1032

Observation 1032 noted that Qwest included some orders in OP-4 that should have been excluded because the requested provisioning interval was greater than the then-current standard installation interval. Liberty's subsequent analysis of Colorado and Washington orders showed a lesser percentage than had been thought to be the case, and the evaluation of the steps and improved tools implemented by Qwest to minimize the likelihood of the error. As such, Liberty had closed this observation.

Observation 1033

Observation 1033 stated that there were instances where Qwest personnel determined the order application date/time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. Liberty was satisfied that the documentation used by Qwest to train personnel in properly determining the application date was sound. As previously reported, Liberty closed this observation but recommended that Qwest closely monitor and track application date error rates over time.

Observation 1034

Observation 1034 identified various line-sharing orders that were incorrectly excluded as loops with non-standard intervals of 72 hours. Liberty confirmed that the problem has not appeared after May 2001, and, as previously reported, considered this observation to be closed.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures prior to June 2001 because Qwest included cancelled orders in the measures. Liberty determined that the programming fix put in place as of May 12, 2001 corrected the problem and that results beginning with June 2001 should not be affected. As previously reported, Liberty considered this observation closed.

Observation 1036

When Qwest plans to undertake a switch conversion, it notifies its customers, who then submit disconnect and re-termination orders to move their LIS trunks from the old Qwest switch to the new one. Coordination between the parties is required to ensure that service is not adversely affected during the conversion process.

In Washington, Liberty identified several LIS trunk re-termination orders that AT&T had included in the OP and PO-5 performance measures, but Qwest had not. Qwest did not include them in PO-5 because Qwest considers re-termination orders to be projects, and projects are excluded from the PO-5 measure.

However, orders deemed to be projects are not excluded from the OP-3, OP-4, OP-6, and OP-15 measures. Qwest sometimes excluded these re-termination orders from these OP measures and sometimes it included them. For example, Liberty identified several Colorado AT&T LIS trunk re-termination orders that Qwest did include in the OP measures (DENP0103676 and

[illegible] In addition, Washington re-termination orders were improperly coded C40 due to human error. This issue was discussed in an interview with Qwest on February 28, 2002.

[illegible] version 3.0 specifies that only inward orders are to be included in OP-3, OP-4, OP-6, and OP-13. Qwest stated in its response to this observation that it does not view re-termination orders as having inward activity, and it therefore believes that these types of orders should be excluded from the OP measures. It also agreed that, historically, it had treated these orders inconsistently, sometimes including them in the measures and sometimes excluding them. In an e-mail AT&T stated that it accepts Qwest's explanation of why re-termination orders should be excluded from the performance measures, although it expresses concern that Qwest's performance on these orders will not be measured. Accordingly, the parties now agree that re-termination orders should not be included in performance reporting.

In its response to this observation, Qwest also stated that it was making a programming code change that would fix the re-termination order problem retroactive to December 2001 data. Qwest provided Liberty with the revised programming code for OP-15 as a supplement to its observation response. Liberty reviewed it and confirmed that Qwest had created a new exclusion (exclusion type [illegible]) that removes central office conversion orders from that measure. As a second supplement, Qwest also provided Liberty with the revised code for OP-3/OP-4/OP-6. Liberty reviewed it as well and confirmed that the same new exclusion type for those measures had been created, and for the same purpose.

Qwest stated that it retrained all Customer Communication Technicians – Implementor in the Des Moines Design Service Center (DSC) on February 12, 2002. The Des Moines DSC handles all switch conversion interconnection trunks. Liberty reviewed the training materials and confirmed that they clearly require that the jeopardy code of H41 be used for switch conversions and not the jeopardy code of C40. Liberty now considers this observation to be closed.

Observation 1037

Observation 1037 noted that there were errors in the stop times recorded by Qwest for unbundled loop coordinated cuts. According to Qwest, these errors coincided with moving the coordinate cut service center from Des Moines to Omaha.

Stop time is defined in the PID as when Qwest notifies the CLEC that the Qwest physical work and the appropriate tests have been successfully accomplished. During April and May, testers had, for some orders, recorded the stop time for the order as the time the CLEC called back to confirm the order was completed, rather than the time Qwest first notified the CLEC that the order was completed. In effect, Qwest had incorporated this waiting time in the duration of the coordinated cut. In most cases, Qwest still made the interval, but in a few cases, this additional time caused an order to be considered a miss.

Liberty found a somewhat different manifestation of the problem occurring in June. Testers began to record the time spent waiting for a call back from the CLEC as "delay time." Qwest appropriately subtracted any delay time from the calculated interval, so the duration of the coordinated cut would be accurate in this case. However, the actual recorded stop time would be incorrect.

Observation 1038

Observation 1038 noted that there were orders omitted from OP-15A UBL results for April 2001. Qwest stated that there was a mistake in its programming code that caused the omissions. According to Qwest, any completed order that had not been posted to CRIS before the April OP-15A results were re-run in June did not get picked up in the measure. Qwest should provide a full explanation of the nature of the programming code mistake, and discuss whether a programming fix is either planned or in place. Qwest should also discuss whether similar errors have occurred in other months and quantify the effect on reported results. Liberty considers this observation still open.

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 01-165

QWEST CORPORATION'S

REBUTTAL AFFIDAVIT

OF

DAVID L. TEITZEL

TRACK A AND PUBLIC INTEREST

APRIL 2, 2002

6

1 of section 271 in South Dakota. I also discuss why many of the issues and concerns
2 these witnesses and parties have raised in this proceeding are well outside the scope of
3 the Track A and public interest requirements, and indeed, well outside the legitimate
4 scope of a section 271 proceeding entirely.

5 None of the witnesses or parties has disputed the evidence I presented in my
6 October 24, 2001 affidavit to demonstrate Qwest's compliance with the requirements of
7 Track A.[2] In fact, the other parties' testimony has only *strengthened* Qwest's Track A
8 case. For example, the Vice President and General Manager of Black Hills FiberCom
9 has now admitted on the record that his CLEC is serving approximately 22,000
10 residential and 17,000 business phone lines in South Dakota, primarily via its own
11 facilities.[3] This testimony indicates that the conservative estimates of CLEC access
12 lines that I presented in my initial affidavit substantially underestimate the level of
13 competition in South Dakota, and confirms that the South Dakota local market is even
14 more competitive than that in many of the states where the FCC has granted BOCs
15 section 271 authority.

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[2] Qwest Corporation's Affidavit of David L. Teitzel, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(C) of the Telecommunications Act of 1996*, Docket No. TC 01-165 (Oct. 24, 2001) ("Teitzel Affidavit").

[3] *See* Direct Testimony of Ronald Schaible on behalf of Black Hills FiberCom, LLC, *In the Matter of the Analysis into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket No. TC01-165 (Mar. 18, 2002) at 2 ("Schaible Testimony").

1 II. **TRACK A**

2 No witness or party has challenged the Track A evidence presented in my
3 October 24, 2001 affidavit, or presented any evidence tending to show that Qwest has
4 *not* satisfied the requirements of the Track A provision, 47 U.S.C. § 271(c)(1)(A). Nor
5 has any witness or party disagreed with my description of what the FCC has said is
6 required to show compliance with this provision. (Dr. Marlon Griffing, on behalf of Staff,
7 uses slightly different wording to describe the FCC's four requirements for Track A,[5] but
8 his description does not disagree with mine in substance.) If anything, the testimony
9 filed by the other parties actually *strengthens* Qwest's Track A case. I address each of
10 the four requirements of Track A in turn.

11

12 A. **Qwest Has Signed Binding Interconnection Agreements**

13 The first requirement of Track A is that the BOC must have signed one or more
14 binding interconnection agreements approved under section 252. I reported at page 9
15 of my direct affidavit that, as of August 31, 2001, a total of 20 wireline interconnection
16 agreements between Qwest and other carriers were approved by this Commission and
17 in effect. In fact, several additional wireline interconnection agreements had also been
18 approved prior to August 31, 2001 that had not yet been entered into Qwest's wholesale

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5 *See* Direct Testimony of Marlon Griffing, Ph.D., on Behalf of the Staff of the Public Utilities Commission of South Dakota, *In the Matter of the Analysis into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996,* Docket No. TC01-165, Mar. 18, 2002 ("Griffing Testimony"), at 137-38.

1 **C. Competing Providers Are Serving Both Residential and Business**
2 **Customers**

3 The third requirement of Track A is that unaffiliated competing providers must be
4 providing telephone exchange service to residential and business customers. Qwest
5 also clearly meets the third Track A requirement. The CLECs discussed above all
6 provide local exchange telephone service to residential and business customers in
7 Qwest's service territory in South Dakota, as shown in Confidential Exhibit DLT-4 as
8 well as Exhibit DLT-5 filed with my direct affidavit. In Exhibit DLT-6 of my direct
9 affidavit, I reported quantities of unbundled loops (17,803), facilities bypass lines
10 (22,217 residential and 9,947 business) and resold lines (5,648 residential and 11,153
11 business) in service in South Dakota as of August 31, 2001. The counts of unbundled
12 loops and resold lines in service are actual quantities in service as tracked and reported
13 by Qwest's wholesale billing systems, while the number of facility bypass lines was
14 estimated from ported numbers and white pages data available to Qwest regarding lines
15 served by facilities-based CLECs. As shown on Exhibit DLT-6, these quantities
16 represent an aggregated CLEC market share estimate of 22.4%.

17 As I stated in my opening testimony (at pages 21-31), my methods for estimating
18 CLEC access lines were conservative. Testimony submitted by another party to this
19 proceeding has confirmed that this is indeed the case and that Qwest's Track A
20 showing is likely even stronger than I originally stated. At page 2 of his direct testimony,
21 Mr. Ron Schaible, the Vice President and General Manager of Black Hills FiberCom,
22 states that "FiberCom has approximately 22,000 residential phone lines and

1 **D. Competing Providers Are Using Their Own Facilities Exclusively and**
2 **in Combination with Resale**

3 The fourth requirement of Track A is that unaffiliated competing providers must
4 be offering telephone exchange service exclusively over their own telephone exchange
5 facilities or predominantly over their own facilities in combination with resale. Qwest
6 easily meets this requirement. As stated above, Black Hills FiberCom has submitted
7 testimony admitting that it alone is currently serving approximately 22,000 residential
8 and 17,000 business customers on a facilities basis. In addition, Qwest's wholesale
9 system tracked 5,648 residential and 11,153 business resold access lines in service as
10 of August 31, 2001, as shown on Exhibit DLT-6. Clearly, multiple CLECs in South
11 Dakota are serving local exchange end users via unbundled loops, facilities bypass and
12 resale.

13 At page 139 of his testimony, Dr. Griffing states, "Qwest has submitted as
14 evidence the number of loops it is unbundling to CLECs. It should make a similar
15 showing in South Dakota." It is unclear whether Dr. Griffing is suggesting that Qwest
16 has failed to provide such evidence. In fact, Exhibit DLT-6 of my direct testimony
17 displays the number of unbundled loops in service in South Dakota as of August 31,
18 2001. In addition, Confidential Exhibit DLT-4 shows which South Dakota CLECs are
19 actively purchasing unbundled loops from Qwest. This evidence clearly shows that
20 unbundled loops are being used by CLECs to serve end users, and Qwest agrees with
21 Dr. Griffing's acknowledgement at page 140 that "the FCC has held that a CLEC's 'own'

- considering whether there are any remaining "*unusual circumstances* that would make entry contrary to the public interest under the particular circumstances."[9]

Indeed, the public interest inquiry is simply "an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the checklist, and that entry will therefore serve the public interest as Congress expected."[10]

My opening testimony demonstrated that competition is thriving in South Dakota and that Qwest's entry into the long distance market would benefit South Dakota's consumers, making approval of Qwest's application consistent with the public interest as the FCC has defined it. In response, witnesses Simmons for Midco and Stacy for Staff ignore *all* of the facilities-based competition in the state and assert that the South Dakota market is closed because UNE prices do not enable competitors to earn as much profit using that method of entry as they would like. Neither witness proffers a single fact to support his claim — not surprisingly, as I demonstrate below, because the facts prove otherwise.

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9 SBC Kansas/Oklahoma Order ¶ 267 (emphasis added). *See also* Bell Atlantic New York Order ¶ 423; Memorandum Opinion and Order, *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*, 16 FCC Rcd 8988 ¶ 233 (2001) ("Verizon Massachusetts Order").

10 Bell Atlantic New York Order ¶ 423.

1 In this testimony, I will go through each of the three parts of the FCC's public
2 interest inquiry in turn and explain why Qwest's application is consistent with the public
3 interest *as the FCC has defined it.* As an initial matter, however, I wish to address
4 AT&T's offhanded suggestion (at pages 2-3) that this Commission cannot consider the
5 public interest *at all* at this time because the Commission has not yet ruled on Qwest's
6 compliance with Track A, all fourteen checklist items (including the ROC OSS testing),
7 and section 272, and has not yet found that a performance assurance plan "is in place."
8 The FCC's delineation of the public interest inquiry clarifies that consideration of
9 whether the application presents "unusual circumstances" or "other relevant factors"
10 constitutes a discrete inquiry separate from the checklist and QPAP proceedings.
11 Checklist compliance, the QPAP, and OSS testing are both substantively and
12 procedurally distinct components of the section 271 approval process, and the
13 Commission would not be reviewing those subjects a second time here in connection
14 with the public interest. Accordingly, there is absolutely no reason for postponing
15 consideration of the public interest until all of the other elements of the section 271
16 proceeding have been resolved. Therefore, even though compliance with the public
17 interest test may be conditioned on successful resolution of the checklist and QPAP
18 inquiries, those proceedings have no additional bearing on the public interest analysis
19 and should not be used to delay the section 271 process in this state.[13]

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13 Other state commissions and hearing examiners have agreed. *See* First Order on Group 5A Issues, *In the Matter of the Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996, Wyoming's Participation in a Multi-State Section 271 Process*, and

1 information about long distance competitors and their pricing practices, finding that New
2 York consumers have realized savings of up to $700 million in combined local service
3 and long distance charges annually as a result of Verizon's entry into the long distance
4 market in that state. Finally, I presented the FCC's own findings indicating that CLEC
5 competition markedly increased in both New York and Texas after Verizon and SBC
6 respectively entered the interLATA market in those states,[14] providing consumers in
7 those states with a greater array of choices and other benefits. Ironically, AT&T itself
8 has submitted evidence confirming that SBC's entry into the Texas interLATA market
9 has spurred, not thwarted, CLEC entry into the local market. The very *Dallas Morning*
10 *News* article that AT&T attaches to its comments as Exhibit H quotes an AT&T
11 spokesman as follows regarding the situation in Texas: "There is no doubt they [SBC]
12 have taken some of our long-distance customers, but we have taken 325,000 of their
13 local service customers. . . . We think we are doing pretty well."[15]
14 Of all of the evidence I presented in my direct testimony, AT&T attempts to
15 dispute only one piece of it, the study by Dr. Hausman. (Witnesses for Staff, MidCo,
16 and Black Hills do not dispute this evidence at all.) AT&T relies exclusively on a March
17 2002 white paper entitled "BOC Long Distance Entry Does Not Benefit Consumers,"

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14 *See* FCC Public Notice, "Federal Communications Commission Releases Latest Data on Local Telephone Competition (rel. May 21, 2001), *available at* 2001 WL 533362.

15 Vikas Bajaj, *SBC Raises Non Local Call Rates; Company Says Prices Better Reflect Costs*, Dallas Morning News, Exhibit H to AT&T's Comments, Feb. 2, 2001.

- Contrary to Dr. Selwyn's professions of mystery regarding the source of all Dr. Hausman's data,[18] the study uses exactly the same data source that AT&T has used in its own economic studies in the past. Dr. Hausman's study is based on a random survey of telephone bills collected by PNR and Associates, a research firm that has been collecting this data for approximately 10 years. This data is publicly available.

- Dr. Selwyn's charge that Dr. Hausman's study failed to control for changes in access prices is simply wrong.[19] Dr. Hausman found that long distance prices in New York and Texas decreased by an additional 15-20% after 271 relief, beyond any decreases in switched access charges.[20]

- Dr. Selwyn simply ignores Dr. Hausman's conclusion that local competition in New York and Texas increased measurably more post-BOC interLATA entry as compared to the level of competition in Pennsylvania and California during the same time period.

- While Dr. Selwyn charges that Dr. Hausman's choice of control states (Pennsylvania for New York, and California for Texas) was "entirely arbitrary,"[21] Dr. Hausman makes clear that the control states were chosen based on their similarity in size, geography, and number and size of LATAs to the test state as well as the commonality of the BOC.[22] By contrast, Dr. Selwyn's proffer of Kentucky, Wisconsin, Missouri, and Florida as control states for New York and Texas is "entirely arbitrary" and admittedly results-driven.

In sum, AT&T's criticisms of the Hausman study are not based on competent evidence and are ill founded, and they should be disregarded.

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18 *Id.* at 5.

19 *Id.* at 15-16.

20 Jerry A. Hausman, Gregory K. Leonard, J. Gregory Sidak, *The Consumer-Welfare Benefits from Bell Company Entry into Long-Distance Telecommunications: Empirical Evidence from New York and Texas*, available at http://papers.ssrn.com/sol3/delivery.cfm/SSRN_ID289851_code011106140.pdf?abstractid=289851 (Jan. 9, 2002), at 8-9 ("Hausman Study")

21 Selwyn Paper at 11.

22 Hausman Study at 5.

1 universal service line-item fee for its residential customers from 9.9% to 11.5%[25] — and
2 this is after it raised the charge from 8.6% in 2001. At the same time, according to the
3 FCC and members of Congress, AT&T pays only about 60% of this amount into the
4 federal universal service fund, apparently pocketing the rest.[26] In addition, *all* of the Big
5 Three raised their basic rates this past February 1. AT&T's twenty-three million basic
6 residential customers, for example, will now pay 35 cents a minute — 17% more — for
7 daytime calling.[27] AT&T's evening rates have similarly been increased, from 25 to 29.5
8 cents a minute.[28] Moreover, this increase in long distance rates is hitting the most
9 vulnerable South Dakotans — the poorer and less educated — the hardest.[29] Qwest's
10 entry into the long-distance market in South Dakota would curb this trend, just as it has
11 in every state where a 271 application has been approved.

12 In short, neither AT&T nor anyone else has shown that South Dakota would not
13 benefit from additional competition in the long-distance market, or that the FCC is wrong

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25 *See AT&T Increases Universal Service Fee Because of 'Lag' Problem*, Communications Daily, Jan. 3, 2002, Vol. 22, No. 2 ("*AT&T Increases Fee*")

26 *See Survey Finds Long Distance Rates and Fees Creeping Up*, Consumer Action News, available at http://www.consumer-action.org/Library/English/Newsletter/NL-I-23_EN/NL-I-23_EN.html (Sep. 2001); *see also Dingell Asks FCC to Open AT&T Books on Universal Service Fees*, Communications Daily, Jan. 9, 2002, Vol. 22, No. 6.

27 *See AT&T Increases Fee*.

28 *Id.*

29 *See* Jerry A. Hausman and J. Gregory Sidak, *Do Long-Distance Carriers Price Discriminate Against the Poor and Less-Educated?*, available at

1 certainly premature to characterize the QPAP as providing any assurances that Qwest's
2 markets, once open, will remain so,"[31] and AT&T has also filed extensive comments on
3 Mr. Reynolds's affidavit and the QPAP.[32] Concurrently with the filing of my rebuttal
4 affidavit, Mr. Reynolds has filed reply comments in this proceeding addressing AT&T's
5 concerns with the QPAP,[33] and it would make little sense to duplicate that QPAP
6 discussion here.[34] It is important for this Commission to review the QPAP; however, it is
7 addressed in other Qwest affidavits by other Qwest witnesses.

8 AT&T also cobbles together a random handful of quotes from Qwest's advocacy
9 in assorted unrelated states and federal proceedings, and asserts that Qwest is
10 unalterably opposed to "any and all attempts to establish backsliding penalties in the
11 various states."[35] This argument is completely unfounded. Qwest obviously has
12 proposed a carefully thought-out, comprehensive, and stringent anti-backsliding

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31 *Id.*

32 *See* AT&T Witness John Finnegan's Verified Comments on Qwest's Performance Assurance Plan, *In the Matter of the Analysis into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket No. TC01-165 (Mar. 18, 2002) ("AT&T's QPAP Comments").

33 *See* Rebuttal Affidavit of Mark S. Reynolds, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket No. TC01-165 (Apr. 2, 2002) ("Reynolds Rebuttal Aff.").

34 For this reason, AT&T's attempt bring a discussion of the voluntary nature of the QPAP into the public interest inquiry, *see* AT&T's Comments at 34-35, should be ignored. That issue was also raised by AT&T in Mr. Finnegan's comments, *see* AT&T's QPAP Comments at 60, and has been fully addressed by Mr. Reynolds. *See* Reynolds Rebuttal Aff. at 45-46.

35 AT&T's Comments at 33.

1 inquiry to exact additional checklist item terms and conditions unavailable under the
2 checklist items themselves, simply by repackaging the issue as an "unusual
3 circumstance."[39]

4 Moreover, it is not sufficient to merely allege an assortment of "unusual
5 circumstances" unsupported by any factual proof and then demand that the BOC
6 *disprove* all of these allegations. An "unusual circumstance" is supposed to be a set of
7 facts that would justify denying a BOC's application *notwithstanding* that it has complied
8 with the competitive checklist and provided assurances that it will continue to comply
9 post-entry — that is, a circumstance sufficient to rebut the BOC's prima facie case that
10 interLATA entry is justified. As in any litigation, once the plaintiff has established a
11 prima facie case for relief, the other side must *prove*, and may not simply allege, a
12 defense or rebuttal. The Multistate Facilitator explained why the opponents of a section
13 271 application bear the burden of proving the existence of unusual circumstances as
14 follows:

15 Given the FCC's conclusion that checklist compliance is a strong indicator
16 of the satisfaction of the public interest test, we think that it is appropriate
17 to ask those who make public interest assertions to demonstrate the
18 existence of the facts necessary to support their claimed reasons why the
19 public interest would not be served by granting Qwest 271 authority. ...

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to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Arkansas and Missouri, 16 FCC Rcd 20719 ¶ 136 (2001) ("SBC Arkansas/Missouri Order") (declaring that "compliance with existing Missouri law cannot be grounds for finding that it is violating the public interest").

39 *See* Verizon Rhode Island Order at ¶ 102 (affirming that the FCC "may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B)" as part of the public interest analysis).

1
2 **1. UNE-Platform "Price Squeeze"**

3 AT&T suggests in its "Verified Comments" that the Commission should ignore the
4 reality of CLEC entry through facilities-based competition and resale, and instead focus
5 exclusively on UNE-based entry strategies.[43] AT&T asserts further, based on
6 inaccurate cost data and an incomplete comparison of cost and revenue, that UNE
7 prices are too high in South Dakota, compared to the Commission's retail rates, for
8 CLECs to make a significant profit in the residential market using a so-called "platform"
9 of UNEs.[44] Witnesses for Staff and MidCo echo the same argument, but do not provide
10 any facts or additional analysis.[45] Not only does this argument misconstrue the 1996
11 Act and the FCC's orders, but there is evidence in South Dakota flatly disproving the
12 existence of the alleged price squeeze.
13

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43 *See* AT&T Comments at 13 (dismissing resale and facilities-based competition in South Dakota because "neither . . . is likely to provide a viable source of competition for Qwest during any foreseeable time frame").

44 AT&T Comments at 8-9.

45 *See* Direct Testimony of Mark L. Stacy on Behalf of the Staff of the Public Utilities Commission of South Dakota, *In the Matter of the Analysis Into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket TC 01-165, at 30 (Mar. 18, 2002) ("Stacy Testimony"); Pre-filed Testimony of W. Tom Simmons, *In the Matter of the Analysis of Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket No. TC 01-165, at 19-20 (Mar. 18, 2002).

1 under 47 U.S.C. § 251(c)(4), for which the CLEC's wholesale cost is determined, not by
2 building on costs from the bottom-up, but by stepping back a discount from whatever
3 retail price for the service the state has set.[47] AT&T cannot and does not point to
4 anything in the Act that would require all three modes of entry to be equally profitable
5 and workable in every circumstance.

6 Second, the FCC's section 271 orders have continued to confirm (even after the
7 D.C. Circuit's decision in *Sprint Communications Co. v. FCC*, discussed below) that it is
8 inappropriate to take one method of entry in isolation and claim that the level of CLEC
9 competition using that particular method is too low. In its most recent section 271
10 decision, the FCC specifically rejected the argument that Verizon's Rhode Island
11 application was contrary to the public interest because the level of UNE-based
12 competition in the residential market was assertedly too low.[48] Stating that it need not
13 "consider the market share of each entry strategy for each type of service," the FCC
14 clarified that "[g]iven an affirmative showing that the competitive checklist has been
15 satisfied, low customer volumes in *any one particular mode of entry* or in general do not
16 necessarily undermine that showing."[49]

17 Third, AT&T's single-minded focus on UNE-based entry is willfully blind to the
18 realities of competition in the South Dakota residential market. It is easy to understand

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47 *See* 47 U.S.C. § 252(d)(3).

48 Verizon Rhode Island Order ¶ 104.

49 *Id.* (emphasis added).

1 (and, as I explain in the next section, it is demonstrably *incorrect*), AT&T's premise that
2 this would mean the South Dakota local market is closed would still bear no connection
3 to market realities in this state.

4 The only FCC authority that AT&T cites for its assertion that there must be a
5 certain amount of UNE-based residential competition for Qwest's application to pass
6 public interest muster is a misleadingly truncated excerpt from paragraph 391 of the
7 FCC's *Ameritech Michigan Order* (pages 9-10 of AT&T's Comments). AT&T quotes a
8 passage from this paragraph stating that "[t]he most probative evidence that all entry
9 strategies are available would be that new entrants are actually offering competitive
10 local telecommunications services to different classes of customers (residential and
11 business) through a wide variety of arrangements (that is, through resale, unbundled
12 elements, interconnection . . . or some other combination thereof) . . . ."[54] But AT&T
13 inexcusably leaves off the very next sentence of the quotation, which makes clear that
14 the FCC is describing an *ideal* evidentiary showing, not a required one:

15 We emphasize, however, that we do not construe the 1996 Act to require
16 that a BOC lose a specific percentage of its market share, or that there be
17 competitive entry in different regions, at different scales, *or through*
18 *different arrangements*, before we would conclude that BOC entry is
19 consistent with the public interest.[55]
20
21 Through its misleading editing, AT&T proffers the FCC's discussion for the precise
22 opposite of what it actually says.

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54 AT&T Comments at 9-10 (quoting Ameritech Michigan Order at ¶ 391).

55 Ameritech Michigan Order ¶ 391 (emphasis added).

1 other aspects of their business."[60] In both situations, it would *disserve* the public
2 interest to deprive consumers of greater long-distance competition simply because
3 CLECs, through no fault (or "sin of omission or commission"[61]) of the BOC applicant,
4 find the platform an inapt business model for widespread entry into the residential
5 market due to the relationship of UNE rates set by state commissions and residential
6 retail rates set by state commissions or state legislatures. Moreover, the D.C. Circuit's
7 opinion was premised on the fact that there was little residential competition of any kind
8 in Kansas and Oklahoma[62] — a premise that certainly does not hold here in South
9 Dakota, where CLECs enjoy an estimated 15.1 percent of the residential market, and a
10 single CLEC has already acknowledged provision of some 22,000 residential lines via
11 its own facilities.

12 For all of these reasons it is hardly surprising that the state Commissions and
13 fact-finders in Qwest's region have declined to accept AT&T's UNE price squeeze
14 theory, both prior and subsequent to the D.C. Circuit's decision in *Sprint v. FCC*. In
15 reviewing virtually the same argument from AT&T in the multistate proceedings, for
16 example, the Multistate Facilitator rejected AT&T's myopic focus on a UNE-based entry

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60 *Id.* at 555. The D.C. Circuit did not rule on this argument because it was not explicitly raised in the SBC Kansas/Oklahoma Order itself.

61 Bell Atlantic New York Order ¶ 427 (noting that circumstances that are not the result of a "sin of omission or commission" on the part of the BOC will have no place in the public interest test).

62 *Sprint v. FCC*, 274 F.3d at 553-554.

1 AT&T's supposed cost and price evidence is wrong on its face and misleadingly
2 incomplete, and the witnesses for Staff and Midco do not present any factual support for
3 their assertions at all.

4 The only evidence that AT&T proffers to support its assertion that UNE-based
5 entry is impossible is — by its own concession — a mere "thumb-nail comparison" of te
6 supposed cost of a UNE platform against the retail price of unadorned basic residential
7 local service (the IFR).[67] As I explain below, this is exactly the same type of bare-bones
8 evidentiary showing that AT&T raised in the multistate workshops and in Colorado, and
9 which has been rejected by decision makers in both proceedings as simplistic and
10 woefully incomplete.[68] Remarkably enough, even as AT&T admits that it has merely
11 sketched out a "policy argument" rather than provided "full-blown" cost evidence, it
12 disclaims any obligation to provide this Commission with the factual proof necessary to

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66 Colorado Order at 41 ("To hold up § 271 approval because of a distorted retail rate structure would be inequitable to Qwest and delay competition's benefits [to the state's] consumers").

67 AT&T's Comments at 4.

68 *See, e.g.*, Brief of AT&T Regarding Public Interest and Track A, *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Seven State Collaborative Section 271 Workshops, at 5-8 (July 25, 2001); Affidavit of Mary Jane Rasher, *Application of U S WEST Communications, Inc. for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)*, Seven State Collaborative Section 271 Workshops (May 4, 2001), at 7-10; Transcript of Workshop Proceedings (June 26, 2001), *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Seven State Collaborative Section 271 Workshops, at 194, 210-11, 220-24, 228 (Jun. 26, 2001), attached as Exhibit B ("Exhibit B, 6/26/01 MS Tr.").

1 AT&T's excuse for excluding these revenues is that the price of local service
2 should not be cross-subsidized.[71] This is a non sequitur. The question at hand is not
3 whether local services ultimately should or should not be cross-subsidized, but rather
4 whether a CLEC can earn a positive margin in the South Dakota local market under the
5 current retail rate structure as it now stands. And the answer to that question has to
6 turn on *all* of the revenues for *all* of the services the CLEC could expect to provide the
7 average residential customer, as well as *all* of the savings or revenues the CLEC would
8 receive on access charges. AT&T's argument is akin to saying that an automobile
9 manufacturer should not be permitted to consider the potential revenues on
10 manufacturer-installed options when it decides whether to launch a new model.

11 AT&T does not explain how it derived its "UNE-P with features" cost in its
12 comparison table on page 9; however, for purposes of argument, Qwest will accept
13 AT&T's listed prices for recurring charges as reasonable representations of Qwest's
14 Zone 1 (highest density/least cost) UNE-P rate and Zone 3 (lowest density/highest cost)
15 UNE-P rates. But when those UNE-P costs are properly compared against *all* of the
16 revenues a CLEC would receive from deploying a UNE platform, the margin analysis
17 actually yields the opposite result from what AT&T suggests. The following table
18 compares the average recurring revenue generated by a Qwest residential customer in
19 Sioux Falls (Qwest's largest exchange in South Dakota) against the UNE-platform

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[71] *See id.* at 9 n.10, 11.

1 In other words, a CLEC electing to offer a residential service package similar to Qwest's
2 CustomChoice package could expect margins for that service of $28.56 per month, or
3 129%. Clearly, positive margins are available to CLECs wishing to serve the residential
4 market via a UNE-platform.

5 In considering AT&T's identical argument in the multistate workshop, the
6 Multistate Facilitator concluded that AT&T's UNE pricing argument was so "incomplete"
7 and "simplistic" as to be "of inconsequential value in assessing the state of local
8 markets in Qwest's local exchange serving areas."[72] He specifically found that AT&T's
9 evidence and argument, which is virtually identical to what AT&T presents to this
10 Commission, failed to persuade for at least four reasons:

11 First, it did not recognize that local rates consist of much more than the basic
12 monthly charge for service. Vertical features and intrastate toll revenues
13 must be considered . . . . AT&T conceded that it had made no effort to
14 measure or to take account of such other revenues. Second, AT&T's
15 analysis did not consider the existence of resale as an option for certain
16 service classes that do not lend themselves to economical competition
17 through the use of UNEs. Third, AT&T did not provide any evidence of
18 business rates; it did not even provide its simple comparison of basic rates
19 for such service. Fourth, AT&T did not address the issue of what "subsidies"
20 might be available to it in the event that it should serve qualifying residential
21 lines through facilities-based competition.[73]

22 AT&T itself conceded on cross-examination in the multistate workshops that its price
23 squeeze argument bore little resemblance to how an actual would-be entrant would
24 make its entry decision. When asked whether "a business [would] not look at all the

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72 Multistate Facilitator's Public Interest Report at 6.

73 *Id.* at 5-6.

1 $53.73. In other words, AT&T's proffered data for non-recurring costs are inflated by
2 over 40,000 percent with respect to existing lines, and by 500 percent for new connects.
3 In sum, AT&T's purported evidentiary showing is seriously incomplete, and what limited
4 information AT&T does provide is totally inaccurate in important respects.

5 Although they offer no additional evidence of a UNE "price squeeze," witnesses
6 for both Staff and Midco also address the issue in their affidavits. On behalf of Staff, Mr.
7 Mark Stacy cites at page 30 of his testimony to the Multistate Proceeding and states
8 "[t]he facilitator went on to comment on the evidence presented in the multi-state
9 proceeding that clearly showed that Qwest's retail rates were lower than UNE prices,
10 noting that this difference could be made up by CLECs by offering vertical features and
11 in other ways, and that the CLECs could turn to resale as an option if UNE prices are
12 set at such a level that retail service cannot be offered by CLECs profitably."[77] In light of
13 my analysis above, it is clear that Mr. Stacy has significantly mischaracterized the
14 findings of the Multistate Facilitator on this point. First, Mr. Stacy refers holistically to
15 "retail" rates in his assertions, when there has never been a challenge by any party to
16 the fact that business local exchange retail rates in South Dakota, even when
17 considered on a stand-alone basis, exceed UNE prices. In fact, the Facilitator's
18 comments were limited only to residential retail local exchange rates.

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77 Direct Testimony of Mark L. Stacy on Behalf of the Staff of the Public Utilities Commission of South Dakota, *In the Matter of the Analysis Into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996*, Docket TC 01-165 (Mar. 18, 2002) ("Stacy Testimony").

1 its other products and services."[79] However, these complaints about Qwest's intrastate
2 access charges have no connection to Qwest's section 271 application at all. The fact
3 is that South Dakota is primarily a *one*-LATA state. Qwest can already provide
4 intrastate long distance service throughout South Dakota without section 271 authority.
5 When Qwest does receive section 271 authority for South Dakota, the only new
6 services it will provide are *inter*state services, *i.e.*, calling from points within South
7 Dakota to points outside of the state. These *inter*state services implicate only interstate
8 access charges, which are exclusively within the FCC's jurisdiction. Put another way,
9 none of the new services that Qwest could provide in South Dakota as a result of the
10 grant of its section 271 application would involve the intrastate access charges about
11 which AT&T is complaining. It would be entirely illogical to require intrastate access
12 charge reform, as AT&T urges, as a pre-condition to approval of Qwest's section 271
13 application when there is no relationship between the application and intrastate access
14 charges.

15 In any event, the FCC has now approved section 271 applications in ten states
16 and it has never once determined, or even suggested, that access charge reform is a
17 precondition to section 271 relief. On the contrary, the FCC has expressly
18 acknowledged that *Congress* did not intend access charge reform to be a precondition
19 for granting a section 271 application: "Congress anticipated that some Bell Operating
20 Companies ("BOCs") would obtain authorization under 47 U.S.C. 271 to originate in-

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79 AT&T's Comments at 18; *see also* Simmons Testimony at 21.

1 limited to the nondiscrimination and imputation provisions of Section 272(e)(3). They also
2 "discourage, and facilitate the detection of, improper cost allocation, and cross-
3 subsidization between the BOC and its section 272 affiliate."[83] Qwest witnesses Judith
4 Brunsting and Marie Schwartz state in their direct testimony in this proceeding that
5 Qwest is prepared to comply with all of the safeguards Congress specified in section
6 272, including but not limited to section 272(e)(3).[84]

7 While AT&T suggests that these imputation requirements are an insufficient
8 safeguard,[85] the FCC has repeatedly found — based on over a decade of experience
9 with similar requirements — that these section 272 safeguards are adequate to protect
10 against the types of price squeezes and cross-subsidies that AT&T hypothesizes. In its
11 *Access Charge Reform Order*, the FCC specifically found that "independent (non-BOC)
12 incumbent LECs have been providing in-region, interexchange services on a separate[illegible]
13 basis" for over ten years "with no substantiated complaints of a price squeeze."[86]
14 Similarly, in the *Non-Accounting Safeguards Order*, the FCC noted that "the structural

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83 *See* SBC Arkansas/Missouri Order ¶ 122.

84 *See* Qwest Corporation's Affidavit of Marie E. Schwartz, Section 272, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(C) of the Telecommunications Act of 1996*, Docket TC 01-165 (Oct. 24, 2001); Qwest Communications Corporation's Affidavit of Judith L. Brunsting, Section 272, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(C) of the Telecommunications Act of 1996*, Docket TC 01-165 (Oct. 24, 2001).

85 *See* AT&T's Comments at 20-21.

86 First Report and Order, *Access Charge Reform*, 12 FCC Rcd 15982 ¶ 279 (1997) ("Access Charge Reform Order").

1 Indeed, AT&T has contradicted its own suggestions regarding the futility of the
2 imputation rates in other pleadings. For example, in response to Qwest's statement that
3 its entry into the long distance market will promote competition to lower prices, AT&T
4 argued in a set of comments filed in the Colorado section 271 proceeding that Qwest
5 "cannot lower rates given that it must impute to itself the excessive access rates it
6 charges to long distance competitors."[91] In other words, AT&T is admitting that the
7 imputation rules of section 272 will effectively prevent Qwest from engaging in an
8 access charge price squeeze by preventing it from lowering its prices to predatory
9 levels.

10 AT&T's speculation that it will be "squeeze[d] . . . out of *both* the local and long
11 distance markets"[92] after grant of Qwest's application as a result of intrastate access

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[91] See AT&T & WorldCom's Response to Qwest's Comments Allegedly Demonstrating Compliance with § 271 and the Hearing Commissioner's Decisions, *Investigation into U S West Communications, Inc.'s Compliance with § 271(c) of the Telecommunications Act*, Docket No. 97I-198T (CO Pub. Utils. Comm'n, Feb. 11, 2002), at 5. AT&T's full argument on this point reads:

> First, Qwest's re-introduction into the long distance market and any alleged benefit is largely irrelevant to an investigation of whether it is meeting its § 271 checklist obligations. Furthermore, introducing yet another long distance provider into an already competitive market will not benefit Colorado consumers as Qwest claims because Qwest will bring nothing that the other long-distance providers don't already offer, as evidenced by its offerings in other regions, and it cannot lower rates given that it must impute to itself the excessive access rates it charges to long distance competitors.

Id.

[92] AT&T's Comments at 21.

including competition in the local market, just as Congress intended. There is no reason to suspect that the experience in South Dakota would be any different from the experience in the many other states to which the FCC referred when it observed that "for over ten years . . . independent (non-BOC) incumbent LECs have been providing in-region, interexchange services on a separated basis with *no substantiated complaints* of a price squeeze" in the long distance market.[96]

2. Structural Separation

AT&T suggests that "[c]onsideration should also be given to the structural separation of Qwest's wholesale and retail operations."[97] AT&T's entire analysis consists of four sentences. Notably, AT&T does not cite a single provision of the 1996 Act that authorizes such a radical restructuring of Qwest's operations, a single FCC order holding that structural separation is a precondition for granting a BOC's section 271 application, a single provision of South Dakota law, or a single decision by a state anywhere in the country to adopt AT&T's proposal. AT&T's utter failure to cite any legal authority supporting its proposal is not surprising: simply put, there is none.

The FCC has never required structural separation as a condition of section 271 authority, and none of its section 271 orders has even *hinted* that such far-reaching authority might lurk somewhere within the public interest inquiry. Nothing in section 271

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[96] Access Charge Reform Order ¶ 279 (emphasis added); *accord Southwestern Bell*, 153 F.3d at 548; Supplemental Order Clarification ¶ 20.

[97] AT&T's Comments at 35.

1 even begin to provide the factual record that would justify the structural remedy [it]
2 advocate[s]."[100] In reality, structural separation would force South Dakota consumers to
3 bear the costs of a duplicative corporate structure, wasteful administrative overhead,
4 and an inefficient division of Qwest's integrated multistate operations into insular South
5 Dakota-specific retail and wholesale entities. Going forward, structural separation
6 would also decrease Qwest's incentives to improve its network and deploy innovative
7 new services making use of that network. The FCC has phased out or relaxed all of its
8 structural separation requirements over the past fifteen years for this very reason. As
9 the FCC explained in connection with its decision to abandon the *Computer II* structural
10 separation requirements for enhanced services, it is ultimately consumers who suffer as
11 a result of structural separation's dampening effect on innovation: "innovation losses,
12 resulting from the physical, technical, and organizational constraints imposed by the
13 structural separation requirements, directly harm the public, which does not realize the
14 benefits of new offerings."[101] Indeed, as other states that have considered AT&T's

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[100] *Id.* at 51.

[101] Report and Order, *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 F.C.C.2d 958 ¶ 89 (1986). The FCC went on:

> We further recognize that structural separation imposes direct costs on the BOCs from the duplication of facilities and personnel, the limitations on joint marketing, and the inability to take advantage of scope economies . . . . These are indications of more fundamental costs of structural separation – namely, that the BOCs are unable to organize their operations in the manner best suited to the markets and customers they serve. The net result of these costs in delayed services and innovation, in direct duplicative costs, and in

3. Allegations Regarding Qwest's Prior Conduct

a. FCC proceedings allegedly demonstrating Qwest's anticompetitive behavior

AT&T next attempts to offer evidence of a disjointed series of federal complaint proceedings — many of which do not even involve events in South Dakota — to purportedly show that "Qwest (and its predecessor USWest) [sic] has routinely disregard federal telecommunications regulations."[104] According to AT&T, Qwest has engaged in a pattern of section 271 violations, as evidenced by a variety of acts committed by U S WEST: its participation in the long distance market through a 1-800 service, its provision of nonlocal directory assistance service to its in-region subscribers; and its pre-merger business arrangement with Qwest.[105] However, each of these three

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proposed to remove even this requirement, observing that full structural separation is "an intrusive remedy designed to fix a problem that has not been shown to exist," and recommending that Verizon not be required to divide its employees and facilities into separate wholesale and retail divisions. *Motion of Commissioner Terrance J. Fitzpatrick*, Docket No. M-00960799 (November 30, 2001) at 2. This motion was ratified by the full Commission. *See* "PUC Outlines Proposed Rules to Safeguard Telephone Competition" (November 30, 2001), available at http://puc.paonline.com/press_releases/Press_Releases.asp? UtilityCode=TP&UtilityName=Telecommunications&PR_ID=746&View=PressRelease.

Other state commissions involved in the section 271 process have also declined to impose structural separation as a condition of approval. *See* Iowa Report at 31 (finding that "the public interest can be met without a structural separation of Qwest's retail and wholesale operations"); Montana Report at 20 (declining to conduct an inquiry on structural separation as part of its section 271 process).

[104] AT&T's Comments at 24.

[105] *Id.* at 24-26. AT&T also alleges that that "related to Qwest's outright violations of section 271 are Qwest's efforts in Arizona" to seek removal of "the LATA boundary within Arizona by *asking the Commission there to abolish the*

1 of the term "provide" as used in section 271 — which, as the D.C. Circuit recognized in
2 the Buyer's Advantage case (AT&T's third example), has no plain meaning in this
3 context.[107]

4 Furthermore, whatever the merits of these past statutory disputes, they certainly
5 have no relevance today. There is no indication that Qwest's markets are not *now*
6 sufficiently open to competition. The FCC has specifically recognized that the post-
7 merger Qwest has "a greater incentive than the pre-merger U S West to satisfy section
8 251 so that it can comply with section 271 and re-enter the in-region long distance
9 market and serve Qwest's national corporate customers that require service in the U S
10 WEST region."[108] The South Dakota workshop process is occurring only because
11 Qwest is in fact committed to pursuing the full section 271 process. Whether Qwest
12 has sufficiently opened its markets today to competition will be determined on the
13 record developed in the checklist compliance portion of this proceeding, not by
14 reference to past cases. The Multistate Facilitator, the Chairman of the Colorado PUC,

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[107] *See* 177 F.3d at 1058 ("The statutory term 'provide' appears to us somewhat ambiguous in the present context."). Moreover, the FCC in fact *had* previously interpreted "provide" exactly as the BOCs had suggested with respect to another provision of the Act. *Id.* at 1060-61.

[108] Memorandum Opinion and Order, *Qwest Communications International Inc. and U S West, Inc. Application for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 5376 ¶ 2 (2000).

any material benefits associated with packaging them with local service, did not hold itself out as the provider of them, and did not perform any other functions of an interexchange carrier. Once again, the Multistate Facilitator, the Chairman of the Colorado PUC, and the commissions of other states have rejected the idea that this matter presents a public interest concern.[112]

c. Touch America's FCC complaint

AT&T also notes that Touch America has filed a complaint, both with the FCC and in federal court, alleging that Qwest's "Q-Wave" service involves the provision of in-region interLATA services in violation of section 271 and the U S WEST merger agreement.[113] Once again, however, the Touch America complaint — which has not even been adjudicated yet — does not relate to local competition issues at all, but rather to the question of whether the BOC's long-distance affiliate is providing interLATA telephone service.[114] The merits of this allegation notwithstanding, the FCC is the

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[112] *See, e.g.*, Multistate Facilitator's Public Interest Report at 9-10; Colorado Order at 42-46; Iowa Report at 23-27; Wyoming Order at 7.

[113] *See* AT&T Comments at 27.

[114] Qwest's position is that clear FCC precedent establishes that the services at issue are not "telecommunications services" but network facilities. The FCC has stated that "the one-time transfer of ownership and control of an interLATA network is not an interLATA service, which means it falls entirely outside the section 271/272 framework that governs interLATA services." *See, e.g.*, Second Order on Reconsideration, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 12 FCC Rcd 8653 ¶ 54 n.110 (1997). Moreover, the FCC has also noted that the provisioning of a "network element" — defined in the Act as "a facility or equipment used in the provision of a telecommunications service," 47 U.S.C. §

d. Allegations regarding behavior in Washington and Colorado

AT&T also serves up a list of alleged "bad acts" in Colorado and Washington.[116] Here AT&T is simply throwing dust. Not only do these allegations have nothing to do with South Dakota, but as AT&T witness Mary Jane Rasher admitted in her affidavit in Colorado,[117] Qwest has already settled both the SunWest and Rhythms disputes to the satisfaction of the complaining CLECs. Having considered each of these claims, the Multistate Facilitator declared that Qwest's alleged refusal of access to NIDs and inside wiring in multi-tenant buildings in Washington was not a public interest concern at all, but rather a sub-loops issue to be resolved in the workshop on emerging services.[118] He likewise found that AT&T's charges regarding Sun West, MCI Metro, and Rhythms provided insufficient, and often secondhand, evidence concerning third parties' claims in other states, and he therefore dismissed the allegations altogether.[119] The Chairman of the Colorado PUC — in whose own state a number of the alleged acts supposedly took place — also dismissed these items as irrelevant to the public interest.[120] As they are

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[116] *See* AT&T Comments at 31.

[117] *See* Affidavit of Mary Jane Rasher Regarding Public Interest (June 25, 2001), *In the Matter of the Investigation into U S West Communications, Inc.'s Compliance with § 271(c) of the Telecommunications Act of 1996*, Colorado Public Utilities Commission, at 21 (SunWest, Rhythms).

[118] *See* Multistate Facilitator's Public Interest Report at 9 (citing Staff's Report on Emerging Services at 30).

[119] *Id.* at 9-10.

[120] *See* Colorado Order at 42-46.

1 Qwest's unbundled loops, it had no reason to request that testing other than to delay
2 Qwest's application.

3 The SGAT language proposed by AT&T has also been rejected in a growing
4 number of state section 271 dockets.[123] The Facilitator of the Multistate Proceeding, for
5 example, found that AT&T's testing proposal was inflexible and potentially duplicative;

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[123] The findings of a growing number of section 271 dockets to have ruled on this issue are consistent with those of the Multistate Facilitator. In the Multistate Proceeding, *see, e.g.*, Commission Decision Regarding Qwest Corporation's Compliance with 47 U.S.C. § 271 Checklist, *In the Matter of U S WEST Communications, Inc.'s Motion for an Alternative Procedure to Manage its Section 271 Application*, Case No. USW-T-00-3 (Nov. 21, 2001), at 4 (Idaho); Conditional Statement Regarding August 20, 2001, Report, *In re U S WEST Communications, Inc., n/k/a Qwest Corporation*, Docket Nos. INU-00-2, SPU-00-11 (Dec. 21, 2001) at 18 (Iowa) (finding the new SGAT language sufficient for compliance with checklist item 2); Final Report on Checklist Item 2 — Access to Unbundled Network Elements and Checklist Item 4 — Access to Unbundled Loops, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. D2000.5.70 (Jan. 30, 2002), at 32 (Montana); Interim Consultative Report on Group 4 Checklist Items, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, Case No. PU-314-97-193 (Jan. 16, 2002), at 8-9 (acknowledging the new SGAT language and conditional compliance with checklist item 2) (North Dakota)). Colorado, Nebraska, Oregon, and Washington have ruled similarly. *See, e.g.*, Workshop 3 Findings and Recommendation Report of the Commission, *In the Matter of the 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 No. UM 823 (Dec. 21, 2001), at 4 (stating that "until [AT&T] gets the type of testing it wants, *without limitation*, AT&T appears to continue to be dissatisfied") (Oregon); Thirteenth Supplemental Order Initial Order (Workshop Three): Checklist Item No. 2, 5, and 6, *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, *In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket Nos. UT-003022, UT-003040 (July 2001), at 9 (Washington).

1 SGATs of each of the seven states participating in the Multistate Proceeding and
2 Nebraska, for example, Qwest added the following language to § 12.2.9.8 of the SGAT:

> 3 [U]pon request by CLEC, Qwest shall enter into negotiations for
> 4 comprehensive production test procedures. In the event that
> 5 agreement is not reached, CLEC shall be entitled to employ, at its
> 6 choice, the dispute resolution procedures of this Agreement or
> 7 expedited resolution through request to the state Commission to
> 8 resolve any differences. In such cases, CLEC shall be entitled to
> 9 testing that is reasonably necessary to accommodate identified
> 10 business plans or operations needs, accounting for any other testing
> 11 relevant to those plans or needs. As part of the resolution of such
> 12 dispute, there shall be considered the issue of assigning responsibility
> 13 for the costs of such testing. Absent a finding that the test scope and
> 14 activities address issues of common interest to the CLEC community,
> 15 the costs shall be assigned to the CLEC requesting the test
> 16 procedures.[127]
> 17

18 This language was originally proposed by the Multistate Facilitator, who suggested that
19 the proposed language "should preclude such a dispute in the future."[128] Nevertheless,
20 AT&T has subsequently requested that Qwest *not include* this language in its SGAT in
21 states where it has not been ordered at this time, including South Dakota and certain
22 other states.[129] Since this language was intended only to offer AT&T and other carriers

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127 *See, e.g.*, Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation in the State of Idaho, Second Revision, § 12.2.9.8 (Dec. 10, 2001). *See also* Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation in the State of Utah, Third Revision, § 12.2.9.8 (Dec. 7, 2001). The recommended language has been added to the SGAT.

128 Multistate Facilitator's Public Interest Report at 9.

129 WorldCom has made a similar request in other states.

1 Specifically acknowledging AT&T's recent proffer of the Minnesota ALJ's interim
2 order in Colorado,[132] the Chairman of the Colorado PUC likewise declared that this
3 example, together with the rest of AT&T's evidence of alleged misconduct, failed to
4 demonstrate "any 'pattern' of anticompetitive behavior in Colorado that is foreseeable to
5 take place in the future or implicate welfare enhancement."[133] Indeed, the Chairman
6 went on to say that AT&T's efforts merely "highlight[] the heightened expectations that
7 parties have in a public interest inquiry to sling as much as they can on the wall to see
8 what will stick."[134] This issue clearly does not. The findings of the Multistate Facilitator
9 and the Chairman of the Colorado PUC do not merely cast doubt upon the overheated
10 statements in AT&T's submission about Qwest's conduct — they expressly and
11 correctly refute them.

12 Moreover, even the Minnesota complaint itself is now moot on the facts. Qwest
13 has now completed the testing that AT&T requested in Minnesota. Fully bearing out
14 Qwest's objection that the testing AT&T wanted would simply duplicate the work being
15 performed in the OSS test, the Minnesota UNE-platform test did not find anything that
16 was not also found in the ROC OSS test and the Arizona OSS test, or that necessitated
17 any changes in Qwest's OSS at all. Subsequent events also confirmed Qwest's good-
18 faith belief that AT&T never actually needed the testing because it had no intention of

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132 Colorado Report at 43.

133 *Id.* at 45.

134 *Id.* at 44.

capital necessary to compete."[136] AT&T is simply repeating its advocacy in other states without bothering to look at what is happening on the ground here in South Dakota. As I noted above, CLECs have over 22% of the market in South Dakota, and just a single CLEC (FiberCom) standing alone, by its own admission, serves approximately 22,000 residential phone lines in South Dakota exclusively over its own facilities and approximately 17,000 business lines primarily over its own facilities. These facts expose AT&T's arguments about the impossibility of facilities-based competition for what they are: meritless.

In any event, AT&T's suggestion that Qwest can be held responsible for CLECs' difficulties in raising capital is nonsense. The current troubles in the capital markets are beyond Qwest's control, and they have affected Qwest no less than any other out-of-favor telecommunications company. As the FCC held in the *Verizon Pennsylvania Order*, CLEC business failures are not relevant to the public interest inquiry:

> We disagree with those commenters that assert under our public interest examination we must consider . . . *the financial strength of competitive LECs* . . . as evidence that, despite checklist compliance, the local market is not yet truly open to competition.[137]

The FCC recently reaffirmed this position in the *Verizon Rhode Island Order*, rejecting nearly identical claims brought by Sprint:

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136 AT&T Comments at 13.

137 Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 ¶ 126 (2001) ("Verizon Pennsylvania Order") (emphasis added).

1 competitors with the same business plan vying for the same market segment, and
2 unmanaged growth. If CLECs believe that Qwest has played a role in their troubles by
3 (in their view) failing to open its markets, those beliefs will be tested directly in the
4 hearings evaluating Qwest's compliance with the competitive checklist. The financial
5 health of the capital markets and of the CLECs in general should not be allowed to
6 insinuate itself into the public interest test.[141]
7
8 **IV. CONCLUSION**

9 Through my direct and rebuttal testimony, I have demonstrated that Qwest is in
10 full compliance with the Track A and public interest requirements of section 271.
11 Numerous CLECs are collectively serving residential and business customers either
12 exclusively or predominantly over their own facilities in South Dakota, as required by
13 Track A. The substantial level of competition in South Dakota — far more than in other
14 states where the FCC has granted section 271 authorization — confirms that Qwest's

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[141] AT&T's suggestion that an internal Qwest email discussing Covad's decision to file for Chapter 11 bankruptcy protection is evidence of a Qwest effort to destroy its competitors is absolutely baseless. *See* AT&T's Comments at 15. The Qwest employee that drafted and sent the email, Linda Broberg, was a Grade 5 manager in product market intelligence organization, and therefore had no authority to establish Qwest policy in any way. Qwest also notes that Ms. Broberg was reprimanded for sending the email because her comments violated Qwest's policies with respect to its competitors. The email was sent only to Qwest employees, and *not* to any customers, financial analysts, venture capitalists, or any other person or entity who might be prejudiced by the news or Qwest's reaction, and it does mention any act or omission on behalf of Qwest that would have caused Covad's problems. Any suggestion that the e-mail or reflects a Qwest policy or strategy to harm CLECs is without merit.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

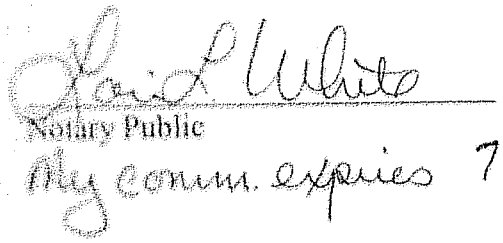
In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996	)))))	**Docket No. TC01-165**

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 this 25th day of March, 2002.

STATE OF Washington)
)ss.
COUNTY OF King)

Subscribed and sworn before me this 25th day of March, 2002.



Notary Public
My comm. expires 7/10/03.

INTERCONNECTION AGREEMENTS APPROVED AS OF 8/31/01 (WIRELINE ONLY)

Docket Number	Company	Date Approved
TC96-184	AT&T	March 20, 1997 and March 4, 1999
TC97-126	Dakota Telecommunications	August 27, 1997
TC99-023	Midco Communications	November 18, 1997
TC01-151	Sprint	November 21, 1997
TC98-203	Advanced Communications	September 14, 1999
TC98-205	Black Hills FiberCom Group	January 6, 1999
TC99-007	CCCSD (Connect!)	August 26, 1999
TC99-017	Covad	November 18, 1999
TC99-018	Northern Valley	March 30, 1999
TC99-057	McLeod	July 23, 1999
TC99-086	DSL Net	September 23, 1999
TC99-109	New Edge Network	January 12, 2000
TC99-125	Path Net	June 28, 2000
TC00-058	Integra Telecom	August 25, 2000
TC00-083	Avera	June 28, 2000
TC00-099	New Path Holdings	August 16, 2000
TC00-133	@Link Networks	September 29, 2000
TC00-197	Maxcess	March 9, 2001
TC01-018	CommChoice	July 12, 2001
TC01-020	FiberCom LC	July 12, 2001
TC01-021	Essex Communications	May 11, 2001
TC01-054	360 Networks	July 12, 2001
TC01-069	1-800 Reconex	July 27, 2001
TC01-070	New Access Communications	August 21, 2001
TC01-071	Z-Tel Communications	July 27, 2001
TC01-090	Williams & Co.	July 27, 2001

INTERCONNECTION AGREEMENTS APPROVED AFTER 8/31/01 (WIRELINE ONLY)

Docket Number	Company	Date Approved
TC01-081	Quantum Shift, Inc.	September 14, 2001
TC01-092	NOS	October 18, 2001
TC01-157	Midstate Telecom	December 5, 2001
TC02-002	VarTec	February 8, 2002

seven states, that are barriers that CLECs encounter in attempting to enter Qwest's local market.

For example, consider Qwest UNE-P prices. Qwest charges CLECs monthly recurring charges in these seven states that range from 1.3 to 2.6 times the rate that Qwest charges its own retail customers for a 1-FR. As an example in Idaho, a CLEC must pay Qwest $[illegible] for a UNE-P arrangement; while a retail customer pays Qwest only $11.49 for 1-FR. These prices preclude CLECs from using UNE-P as a market-entry strategy for retail customers because the CLECs cannot compete with Qwest's retail prices.

Qwest charges CLECs nonrecurring charges in six of these seven states that range from 1.3 to 11 times higher than the nonrecurring charges it assesses it's retail 1-FR customers.

Again, as an example, in Montana, a CLEC pays Qwest $287.55 -- and that's not the highest of the seven states, in nonrecurring charges for UNE-P arrangements. Qwest's retail customer pays $25 in Montana to Qwest in nonrecurring charges for a 1-FR.

Qwest's intrastate access charges in these seven states present another market entry barrier. Qwest's high access rates are priced significantly above its cost and thereby provide a

1 nonrecurring.

2 MR. MUNN: When you say, with input from

3 Qwest, wouldn't that also be true with input from any

4 other party, including AT&T, that wanted to participate

5 in that process?

6 MS. RASHER: I believe that is true. And

7 the focus of my comments was addressed to the

8 commissions to look at the prices that are being

9 charged.

10 MR. MUNN: The -- you mentioned disparity

11 or something that you found, I believe, unfair with

12 respect to the 1-FR retail rate and also the rates for

13 UNE-P or some type of unbundled network element service

14 that CLECs purchase. Is that -- did you generally

15 discuss those terms?

16 MS. RASHER: I don't think I used the

17 term unfair. I believe I gave an example of the

18 difference in the prices that CLECs are charged for

19 UNE-P versus the Qwest retail 1-FR rate and noted the

20 great disparity between those rates.

21 MR. MUNN: Is it your understanding that

22 UNE rates are set by the commissions through cost

23 dockets addressing the TELRIC rate for particular

24 unbundled network elements?

25 MS. RASHER: I'm not a cost person, so I

1 don't have enough knowledge to answer all of the
2 proceedings that are involved during a cost case.
3 MR. MUNN: Fair enough. If you don't
4 know, you can just tell me and we can move on.
5 Is it your understanding that Qwest would
6 be able to set the unbundled network element rates in
7 any of the seven states just on its own?
8 MS. RASHER: Again, I'll qualify that
9 with I am not a cost person. My understanding is, as
10 with the access rates that we discussed, that those are
11 set -- finally set by the state commissions.
12 MR. MUNN: So it also --
13 MS. RASHER: So my answer would be, no, I
14 don't believe that Qwest can set its own UNE-P rates
15 independent of a commission.
16 MR. MUNN: Would your answer be the same
17 with respect to the 1-FR rate?
18 MS. RASHER: Yes, it would be.
19 MR. MUNN: When you were comparing the
20 1-FR to the, say -- strike that.
21 Would you agree with me that AT&T has
22 recently increased its intraLATA long distance prices
23 to its customers?
24 MS. RASHER: That is a very broad
25 question. AT&T has many, many calling plans available

1 DR. GRIFFING: Okay, fine.

2 MR. ANTONUK: Just to demonstrate the

3 point, if -- if Party A begins with a market share of

4 90, and Party B begins with a market share of 10, Party

5 B has a 10 percent market share.

6 If over the period we're concerned about,

7 Party A, which was the 90 percent party, has a growth

8 of 10 -- these are customers now, not shares -- and

9 Party B has a growth of 1. Party B's share of the

10 market will actually have grown from 10 percent to

11 11 percent; and I think that's really the point

12 Dr. Griffing was trying to make.

13 DR. GRIFFING: Okay.

14 My second question referred to the prices

15 for nonrecurring prices for 1-FR versus the retail

16 prices. Do you know if any of those prices -- well, the

17 retail prices, would reflect deaveraging?

18 MS. RAGER: I'm sorry?

19 DR. GRIFFING: Deaveraging, zone pricing?

20 MS. RAGER: I'm not aware. I was

21 provided this information from our cost support group.

22 So I am not aware of the individual states and if these

23 included deaveraged rates.

24 MR. ANTONUK: Does -- do you know, then,

25 what the $30 and some odd cents for the UNE-P was in

1 Idaho; was that -- was that a statewide single rate,
2 was that a rate for a certain kind of zone or don't you
3 know?
4 MS. RASHER: I don't know. I was given
5 one rate for each state from our cost support group.
6 MR. ANTONUK: Okay -- go ahead.
7 DR. GRIFFING: So it's -- if they weren't
8 deaveraged rates but subsequently deaveraged rates were
9 put in place for retail rates, that $20 in urban, dense
10 areas would be likely declining; and in other areas of
11 the states it would -- you will get probably some
12 middle range, and then a very high range for the very
13 sparsely populated areas -- the three zones being the
14 requirement. Deaveraging might go a long way toward
15 solving this mismatch of wholesale rates and retail
16 rates.
17 MS. RASHER: I understand your point.
18 And I would agree with your point in theory. I don't
19 know -- I don't have sufficient background to tell you
20 if that was how those rates were derived, if they
21 included deaveraging.
22 DR. GRIFFING: Okay.
23 MR. ANTONUK: Are you ready to move on,
24 because I had some questions on this area?
25 DR. GRIFFING: One more -- one more.

On that topic or -- I have another topic.

MR. ANTONUK: Yeah, actually I wanted to, if you don't mind, ask some questions about this subject while we're on it.

DR. GRIFFING: Go ahead.

MR. ANTONUK: What does the 1-FR rate include in Idaho? What do you get if you pay the 1-FR rate from Qwest? Is that all vertical features, is that unlimited local, toll calling; what all is included in that?

MS. RASHER: I believe that it is dial tone.

MR. ANTONUK: Okay.

MS. RASHER: And I don't -- I don't know but I don't believe that there is toll, local dialing anywhere in the Qwest region.

MR. ANTONUK: Or any features -- any vertical features would be extra, I assume.

MS. RASHER: Yes.

MR. ANTONUK: From a business perspective, what's the right way to look at the revenue potential from a loop that you gain from the 1, is it the 1-FR rate or all the revenue you can gain if you capture that customer as a basic service customer?

MS. RASHER: I think the important thing

1 to look at is that the cost to provide that is the same
2 for the 1-FR as it is on the UNE-P. And the Act didn't
3 say, CLECs, you should come into the market this way or
4 with this product only; it should be that the basic
5 underlying pinnings of the product -- and then if the
6 CLEC wants to add additional functionality and incur
7 additional cost to provide some finished service to its
8 customers, the underlying costs between what Qwest is
9 using to provision its 1-FR versus a UNE-P the costs
10 should be the same.
11 MR. ANTONUK: Well, I thought your
12 testimony was that -- that you would not pay $30 to
13 capture a customer for whom basic service costs $10;
14 and I guess what I'm questioning --
15 MS. RASHER: That's true.
16 MR. ANTONUK: -- whether that's at all a
17 way a business would make a decision. Would a business
18 not look at all the revenue it would expect to capture
19 from that customer against all of the costs that would
20 be involved in serving that customer and make the
21 judgment on that basis rather than comparing simply the
22 UNE-P rate against the 1-FR rate?
23 MS. RASHER: I would expect --
24 MR. ANTONUK: Is that self-evident?
25 MS. RASHER: I would expect they would

1 look at the additional services, but when you are
2 starting with such a disparity already --
3 MR. ANTONUK: Did your people tell you
4 what the average revenue per residential line, for
5 example, is in Idaho?
6 MS. RASHER: No, I don't have that
7 information.
8 MR. ANTONUK: Did they tell you what
9 Qwest's average revenue per residential line was in
10 Idaho?
11 MS. RASHER: No.
12 MR. ANTONUK: Did they tell you what the
13 average basic service rate for business service is in
14 Idaho?
15 MS. RASHER: No. And the example in my
16 testimony was specifically targeted at the residential
17 market.
18 MR. ANTONUK: Okay.
19 Dr. Griffing?
20 DR. GRIFFING: Moving to a new topic, you
21 mentioned that you acknowledge that 271 sets no minimum
22 standards for market penetration that commissions can
23 use in judging whether a market is open, yet you
24 suggested that such penetration rates should be used as
25 a guide to -- well, somehow judge when the markets