Qwest

Exhibits

1-7

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

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

QWEST CORPORATION'S

AFFIDAVIT

OF

DAVID L. TEITZE

REGARDING PUBLIC INTEREST

OCTOBER 24, 2001

EXHIBIT
Qwest
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AFFIDAVIT

OF

DAVID L. TEITZEL

Public Interest

David L. Teitzel declares as follows:

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

I. EXECUTIVE SUMMARY

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

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

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

Qwest Satisfies Track A of the Act

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

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

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

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

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

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

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

Qwest's Entry is in the Public Interest

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

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

5 SBC-Texas Order, n. 7.

6 *See* Confidential Exhibit DLT-2.

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

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

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

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

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

II. PURPOSE OF AFFIDAVIT

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

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

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

III. TRACK A REQUIREMENTS AND EVIDENCE

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

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

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

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

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7 SBC Kansas Oklahoma Order, ¶40-¶41.

8 SBC Texas Order, ¶59.

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

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

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9 SBC Kansas Oklahoma Order, n. 101.

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

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

- existence of one or more binding interconnection agreements that have been approved under Section 252;
- provision of access and interconnection with unaffiliated competing providers of telephone exchange service;[12]
- provision by competitors of telephone exchange service to residential and business subscribers somewhere in the state; and
- offer by competing providers of telephone exchange service either exclusively or predominately over their own telephone exchange service facilities in combination with resale.[13]

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

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11 The FCC released its Memorandum Opinion and Order in CC Docket No. 97-137 (Ameritech Michigan Order) on August 19, 1997. Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, Inter-LATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298, 12 FCC 20,543, 20,598, (Aug. 19, 1997). Although the FCC denied Ameritech's Section 271 Application, it found that Ameritech had fully satisfied the Track A requirement.

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

13 Ameritech Michigan Order, ¶70.

A. Binding Interconnection Agreements

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

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

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

15 Ameritech Michigan Order, ¶72.

16 Ameritech Michigan Order, ¶72.

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

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

B. Unaffiliated Competing Providers

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

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

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17 Some CLECs can have multiple interconnection agreements.

18 Ameritech Michigan Order, ¶76.

19 Ameritech Michigan Order, ¶77.

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

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

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

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20 Ameritech Michigan Order, ¶77 and ¶78.

21 Ameritech Michigan Order, ¶94 - ¶101.

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

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

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

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

23 Ameritech Michigan Order, ¶78.

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

C. CLEC Market Entry in South Dakota

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

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

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

26 Exhibit DLT-6.

27 SBC Texas Order, ¶5 and n. 7.

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

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

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

Table 1

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28 SBC Texas Order, n. 7.

29 Confidential Exhibit DLT-2.

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

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

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

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

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

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

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

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

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

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

32 See Confidential Exhibit DLT-7 for detailed backup.

33 See Confidential Exhibit DLT-8 for detailed backup.

34 See Confidential Exhibit DLT-9 for detailed backup.

35 See Confidential Exhibit DLT-10 for detailed backup.

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

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

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

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

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

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

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

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

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

D. Facilities-Based Competitive Local Exchange Carriers

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

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

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

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

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

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

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

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

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

39 See Confidential Exhibit DLT-17, Page 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To estimate the quantity of CLEC-owned residential loops, I assumed the total number of residential white page listings associated with facilities-based CLECs as an estimate for actual access line counts.[60] As of August 31, 2001, a total of 22,217 residential white pages listings associated with facilities-based CLECs were in service in South Dakota. These totals are shown in Confidential Exhibit DLT-10. This is also a conservative estimate, as households with more than one line often use additional lines for purposes such as data modems or additional lines for children living in the home, and these lines are typically not listed in the white pages. White page listings were not used to estimate business facility-based lines in service, and ported numbers were used in this calculation instead, due to the wide and irregular variation between listings and actual business lines in service. For example, a large business with 50 access lines may only list the primary line in its system in the directory. The combination of the actual total of facilities-based CLEC white pages residential listings and the calculated number of CLEC-owned business loops represents a conservative estimate of total CLEC-owned loops in service in South Dakota. These calculations are displayed in Exhibit DLT-6, which also reflects a calculated CLEC market share of 22.4% using this method.

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

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

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

As with E911 records discussed above, telephone numbers belonging to facilities-based CLEC customers can be readily identified in the Qwest white pages listings database, keeping in mind that only telephone numbers customers elect to list in the Qwest Dex directory appear in the database. Any white pages listing order placed by a CLEC that uses its own switch is entered directly into Qwest's Listing Services System.[61] As shown on Confidential Exhibit DLT-10, there were 27,468 white page listings associated with local exchange lines provided by nine separate facilities-based CLECs in South Dakota as of August 2001. Of these, 5,251 were business listings and 22,217 were residential. Confidential Exhibit DLT-14 shows a subset of residential and business white page listings associated with certain CLEC-specific prefixes in the state of South Dakota and provides actual counts of listings for facilities-based CLEC access lines served by Black Hills FiberCom, McLeodUSA, and Northern Valley Communications in selected South Dakota communities. Collectively, a total of 13,123 residential and 615 business white pages listings are now associated with facilities-based local service provided by these three CLECs alone via prefixes dedicated exclusively to them.

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

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

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

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

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

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

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

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

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

E. Collocation

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

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

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

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

	All Wire Centers	Collocation Wire Centers	Percent of Total
Number of Wire Centers	**42**	**5**	**12%**
Access Lines[66]			
Business	**74,683**	**39,366**	**52.7%**
Residence	**157,024**	**77,672**	**49.5%**
Total	**231,707**	**117,038**	**50.5%**

F. Resale Providers

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

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

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

IV. PUBLIC INTEREST

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

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

A. Determination that the Local Markets are Open to Competition

1. Compliance with the 14-Point Checklist

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

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

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

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

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

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

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

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

- Qwest has 31 interconnection agreements pending Commission approval in South Dakota (as of August 31, 2001).
- Qwest has 16 competitors actively interconnecting with it in South Dakota (as of August 31, 2001).
- Qwest has 8 competitors purchasing resold services in South Dakota (as of August 31, 2001).

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

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

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

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

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

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

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

B. Assuranc of Future Compliance

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

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

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

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

1. Acceptable Performance Assurance Plan

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

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

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

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

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

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

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

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

C. Identification of Any Unusual Circumstances

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

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77 *Id.*

78 *Id.*

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

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

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

D. Other Public Interest Considerations

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

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

81 Bell Atlantic New York Order, ¶427.

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

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

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

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

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

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

1. COMPETITIVE BENEFITS

a. Market Experience Demonstrating Consumer Benefits

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

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

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

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

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

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

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

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

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

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

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

[86] *Id.*

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

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

b. Other Consumer Benefits

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

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

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

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

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

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

V. CONCLUSION

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

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

Executed on this 16 day of October, 2001.

David L. Teitzel

David L. Teitzel

LORI L. WHITE
COMMISSION EXPIRES
NOTARY PUBLIC
7-10-03
STATE OF WASHINGTON

STATE OF WASHINGTON

COUNTY OF KING

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

Lori L. White

Notary Public

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

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

QWEST CORPORATION'S

EXHIBITS TO THE AFFIDAVIT

OF

DAVID L. TEITZEL

REGARDING PUBLIC INTEREST

OCTOBER 24, 2001

INDEX TO EXHIBITS

EXHIBIT DLT-1

PROFESSIONAL EXPERIENCE AND EDUCATION

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

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

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

271 Access Line Report by Wire Center by Channel by Product

EXHIBIT DLT-3

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

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

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

EXHIBIT DLT-3

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

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

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

EXHIBIT DLT-3

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

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

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

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

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

EXHIBIT DLT-5

PROFILE OF SELECTED CLECs IN SOUTH DAKOTA

Black Hills FiberCom

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Northern Valley Communications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Beyond being known for its new telephone prefix, NVC is also well-known in Aberdeen for its local Internet service, Northern Valley Net. Northern Valley Net was one of the first local dial-up Internet providers in the Aberdeen area. In fact, according to Mr. Eidahl, NVC has become the fourth largest Internet provider in South Dakota.[42] In addition, NVC is the only company in Aberdeen that provides ADSL service that it calls "X-Stream ADSL".[43] They currently offer a residential X-Stream package for $59.00 per month that includes X-Stream ADSL, 256kbps, a dial tone line, 3-Way Calling, Call Waiting, Caller ID, Call Transfer, and 900 Call Block.[44] According to James Groft, general manager of finance and administration, the response from the community has been "unbelievable" and added "They love the fact that they have a choice."[45]

Dakota Telecommunications Group[46]

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

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

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

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

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

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

46/ Dakota Telecommunications Group is buying services from Qwest but no contract is on record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Midcontinent Communications

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

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

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

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

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

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

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

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

<u>Ionex telecommunications, inc.</u>

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

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

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

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

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

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

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

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

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

---

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

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

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

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

EXHIBIT DLT-5

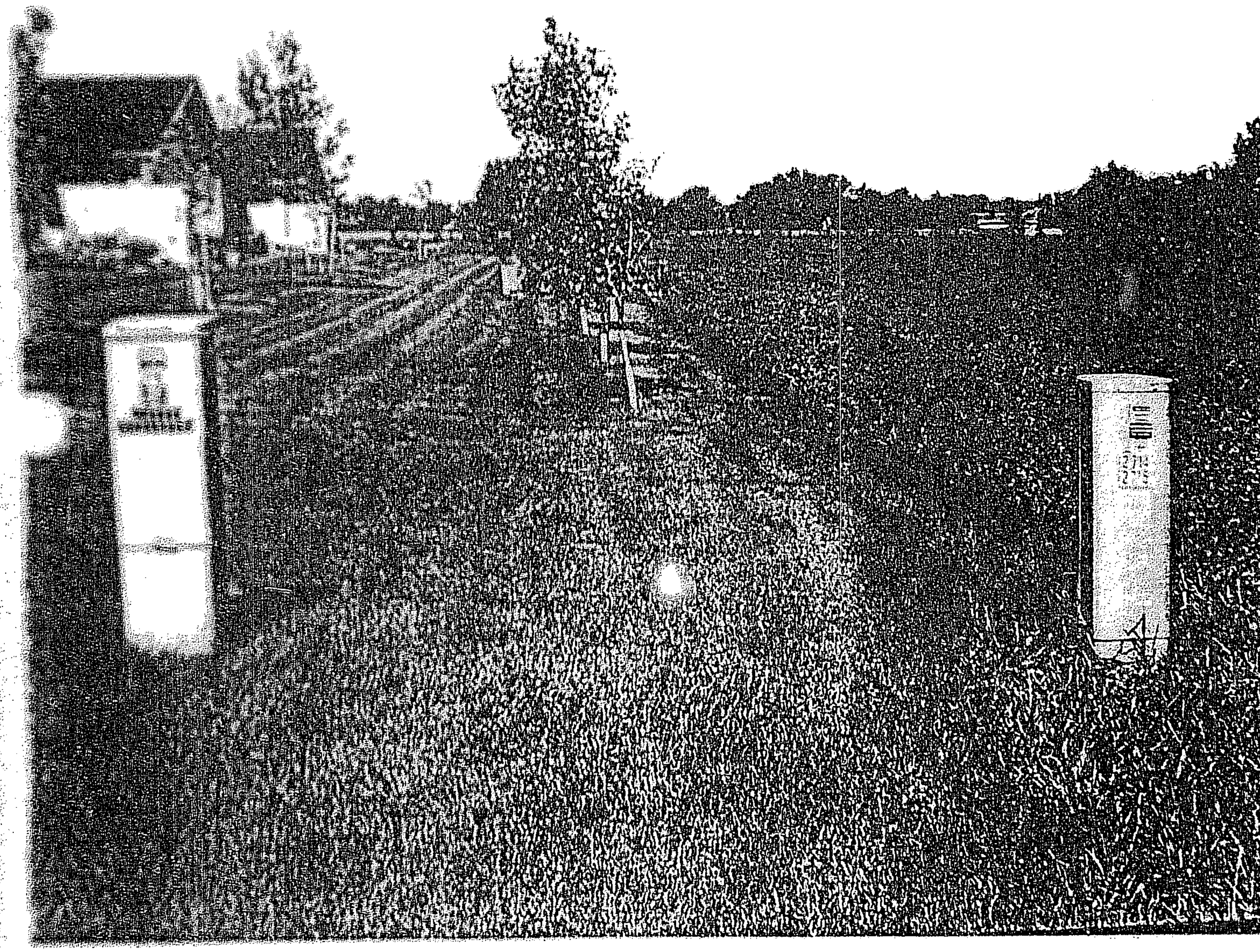
Attachment A

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

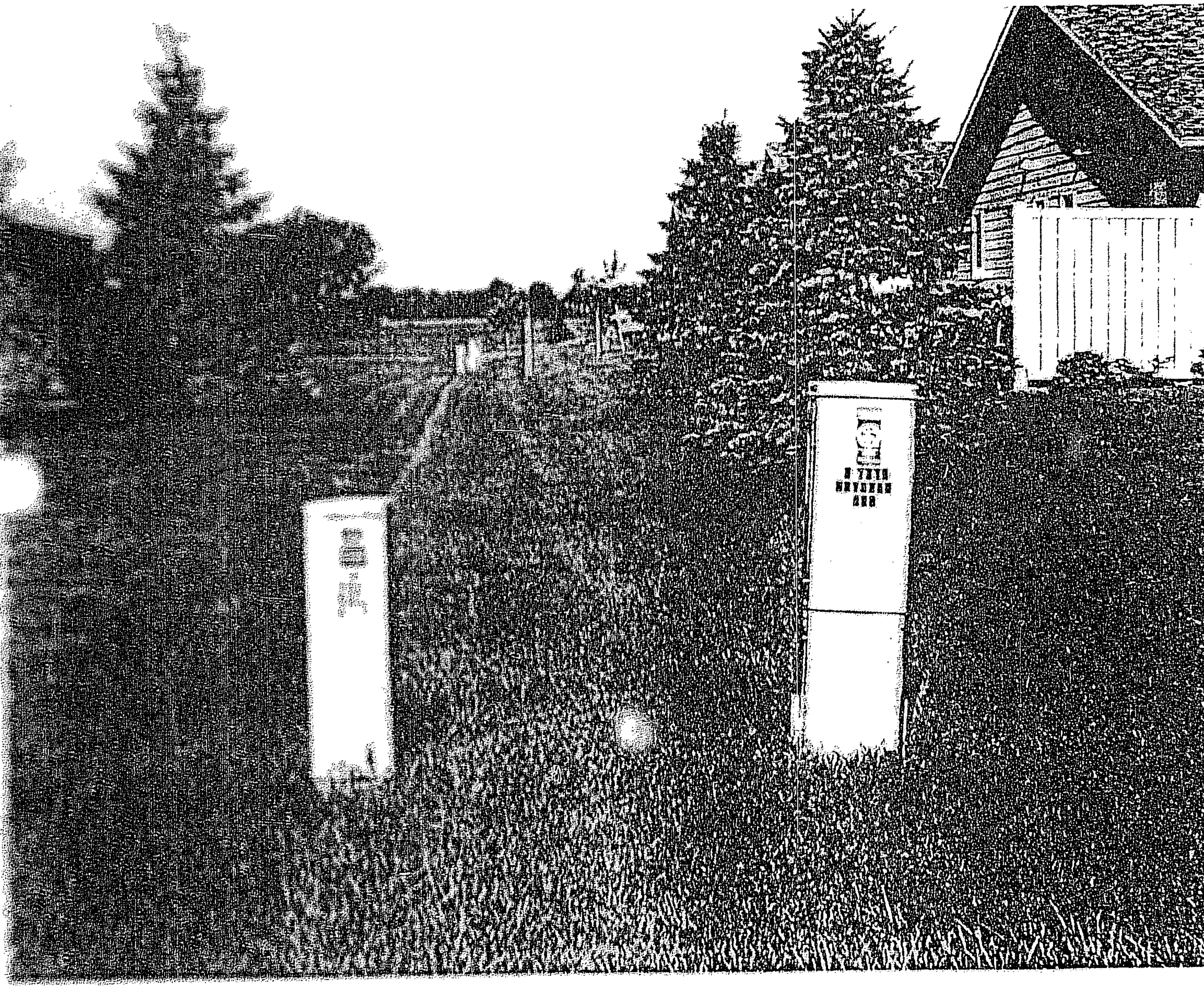
Residence - 1008 Roosevelt Street

Residence - 2314 Crystal Avenue

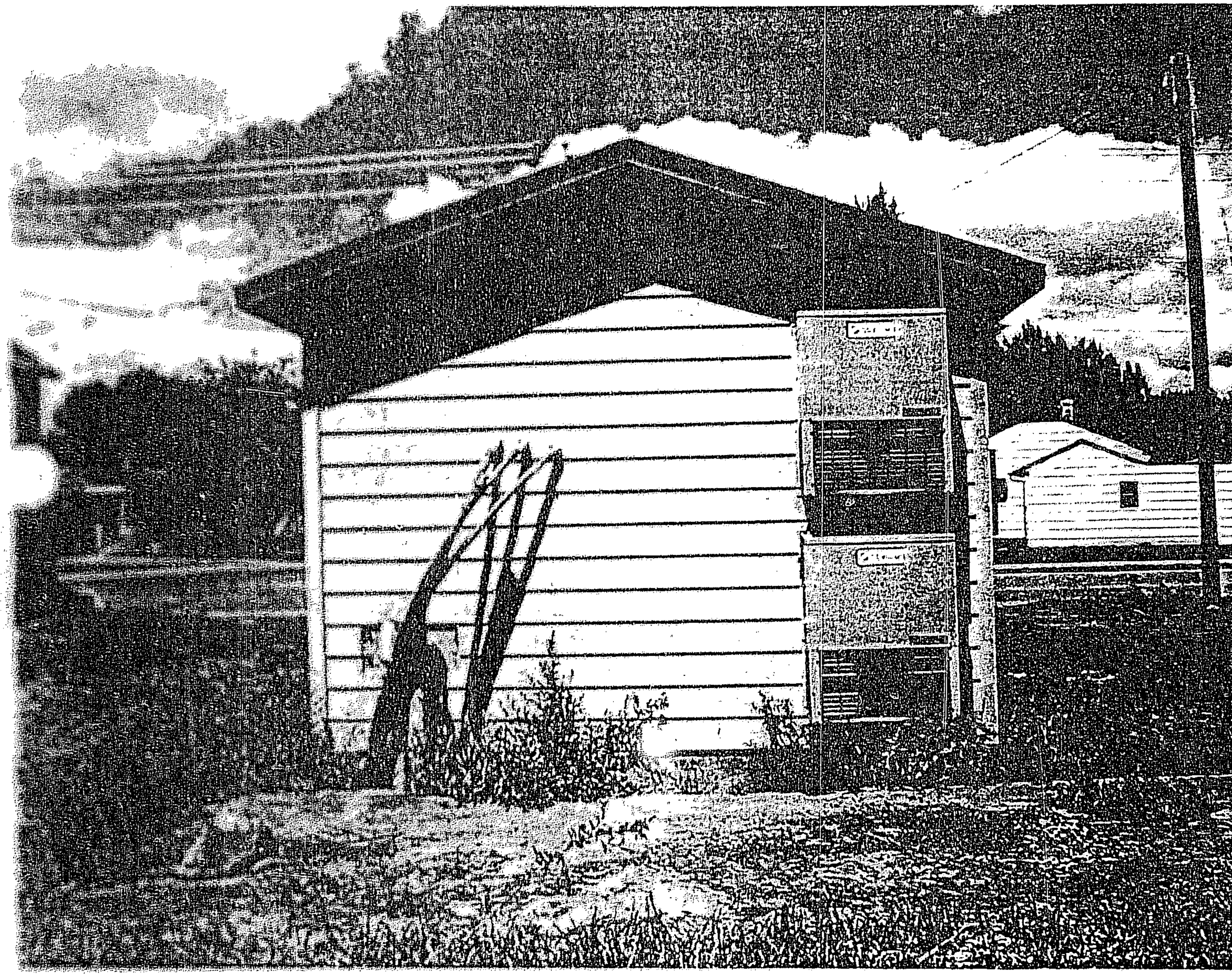
Fiber Hut – 202 East Melgard Road



1008 Roosevelt Street - Aberdeen, South Dakota



2314 Crystal Avenue - Aberdeen, South Dakota



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

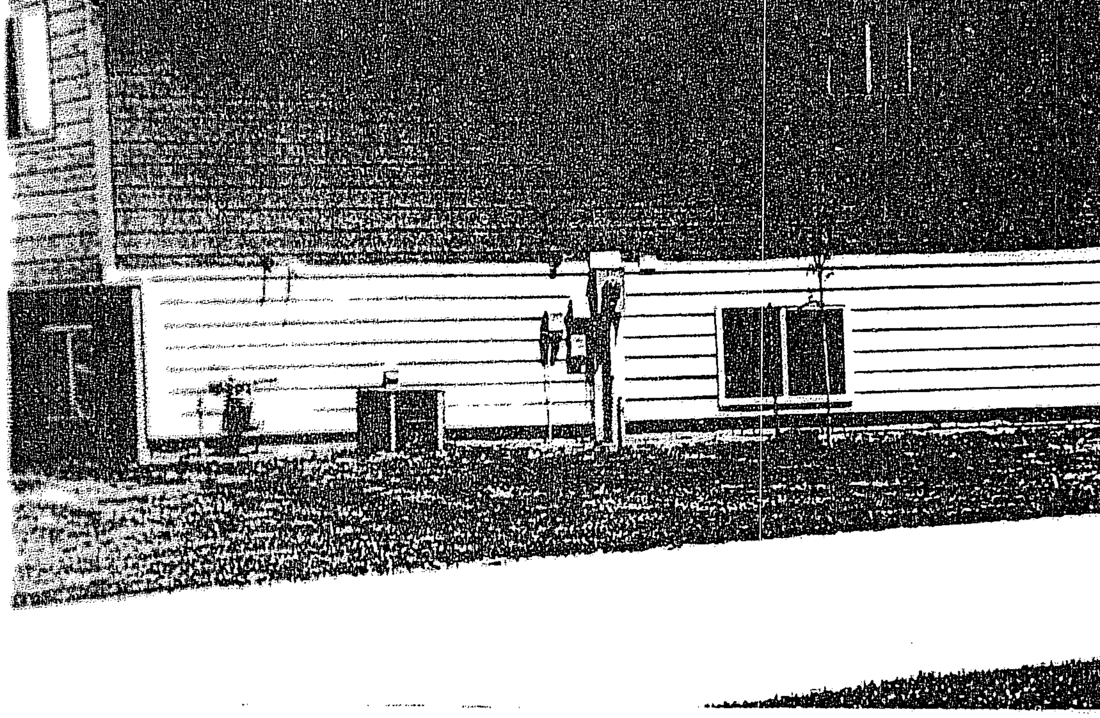
EXHIBIT DLT-5

Attachment B

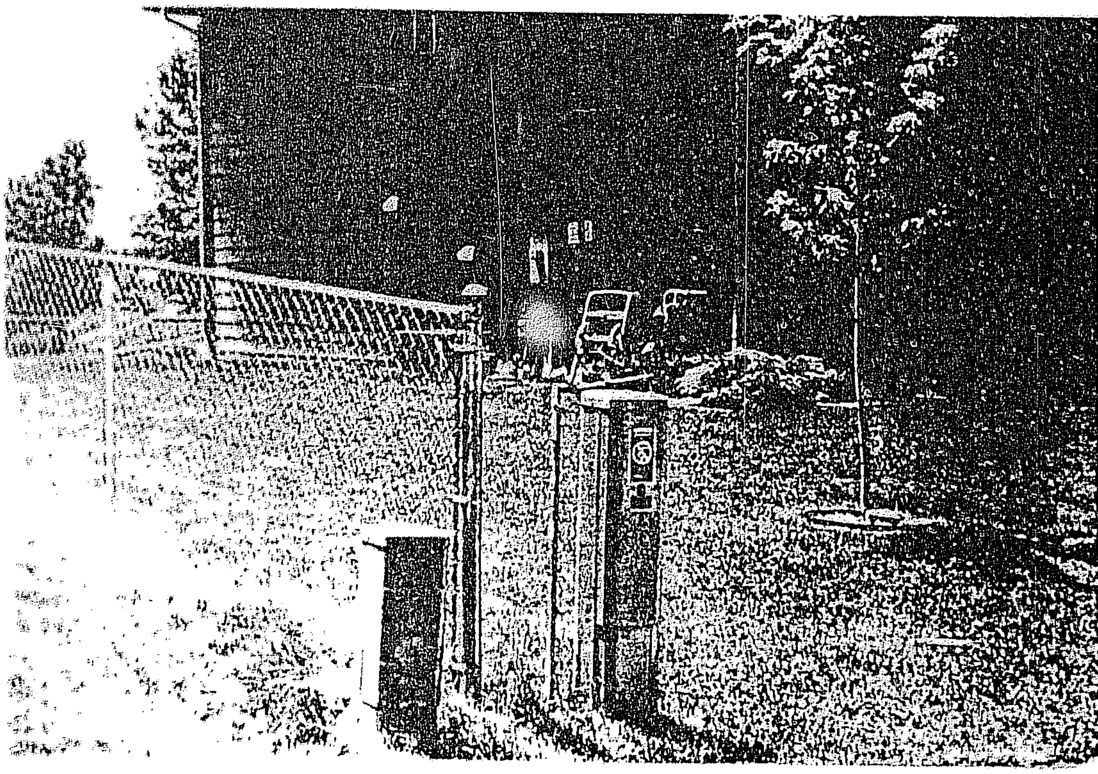
PICTURES FROM TEA, SOUTH DAKOTA OF QWEST AND DTG/MCLEOD FACILITIES

600 South Mary Drive

601 West Charish



600 S. Mary Drive South Side of Tea, SD



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

Unbundled Loops in Service	17,803			
Estimated Facility Bypass Competitive Lines in Service	32,164			
Residence Facility Bypass Lines (EST)	22,217			
Business Facility Bypass Lines (EST)	9,947			
Resold Access Lines				
Residential Lines	5,648			
Business Lines (includes Centrex)	11,153			
Resold Line Total	**16,801**			
Total CLEC UNE, Resold and Facilities-Based Lines In Service	**66,768**			
CLEC residential lines	**27,865**			
CLEC business lines	**38,903**			
Access Lines in State				
Qwest business lines in service	74,683			
CLEC business lines in service	38,903			
Total business lines in service	113,586			
% CLEC business lines	34.2%			
Qwest residential lines in service	157,024			
CLEC residential lines in service	27,865			
Total residence lines in service	184,889			
% CLEC residential lines	15.1%			
Tot. Qwest res/bus lines	**231,707**			
Tot. CLEC res/bus lines	66,768			
Tot. Qwest/CLEC res/bus lines	298,475			
% CLEC res/bus lines	**22.4%**			

NOTES:

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

CONTINUATION

[1]

S # P [ ]

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

Exhibits of the Affidavit of David L. Teitzel
Confidential Exhibit DLT-7

E911 Records in Service as of 9/30/01

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

South Dakota Interconnection Trunks in Service

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

South Dakota Ported Telephone Numbers in Service

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

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

CONTINUATION

[____]

S

EXHIBIT DLT-11

ADVERTISEMENTS BY CLECs OFFERING SERVICE IN SOUTH DAKOTA

An open letter from Black Hills FiberCom...

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

Black Hills FiberCom has invested over $100 million in the Black Hills region

Our business customers utilize our 100 mbs network the very same network residential customers enjoy

Cisco Systems the company empowering the Internet, uses Black Hills FiberCom's network, because of its robust infrastructure as one of its three beta test sites.

Black Hills FiberCom

Rapid City, SD 57709

Fax (605) 343-1693

competition is a good thing. We believe that the Rapid City communications companies. For that "Pulled the Trigger" to build a state-of-the- "Communication Firsts" to the Black Hills of the fastest growing communications companies complete, we are the first and only provider of in this, our only market.

the record straight.

high capacity, versatile, advanced broadband communications Our governor called it "the most advanced network on the planet." is designed for high-speed data including residential Internet. may make or by advertising designed for some other or retro-fitted networks in an attempt to in use refurbished your cable modem, it is the network capability and the Internet your Internet Performance as a user.

truly concerned about the economic development of our is the only locally owned and managed communications The decision makers are your neighbors, and all of the employees are a better place for all of us to live.

communications provider offering the best service, features an[illegible] value and the Northern Black Hills. To accomplish that, we have b[illegible]d "Value Packages" that bring true value and savings to our customers.

10,000 of you, both business and residential customers, have enjoying our services. New customers are joining our make the service available to them. We still have some work to do as we enter into the homestretch. And as a way to enthusiastic support of our project, we're offering March 31, 2001 for any and all of our services. We truly value opportunity to be of service to you.

Black Hills Corporation

Black Hills FiberCom

Local and Long Distance Telephone • High-Speed Internet

The Basics.

Includes: Basic Local and Long Distance Phone Service plus Enhanced Basic Cable service, Digital Pay Per View, Digital Music and 17 digital channels

$44.95*

The Upgrade.

Includes: The Basics Plus 6 Custom Calling Features and Call Waiting Caller ID or Voice Mail, a second phone line and your choice of one digital premium movie channel multiplex

$74.95*

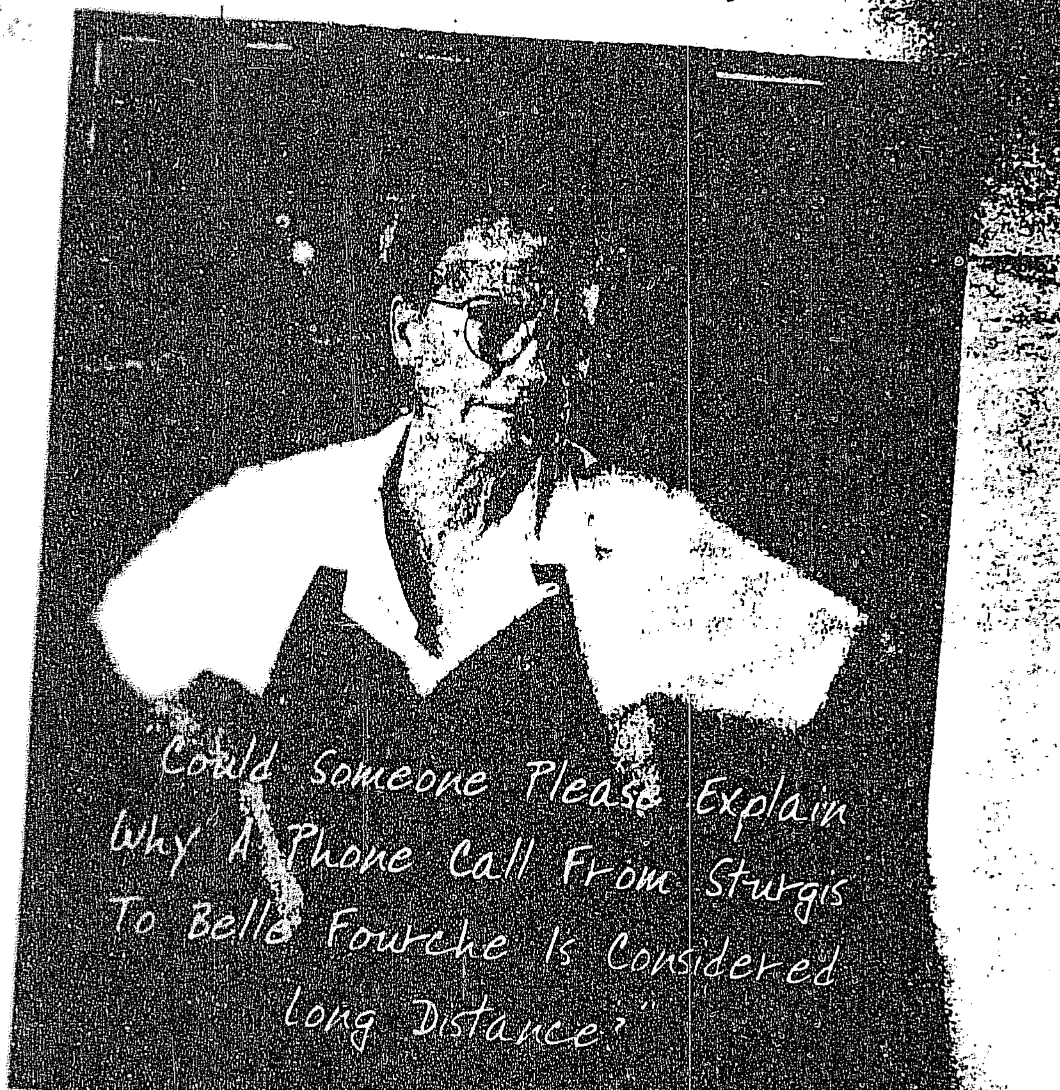
The Works.

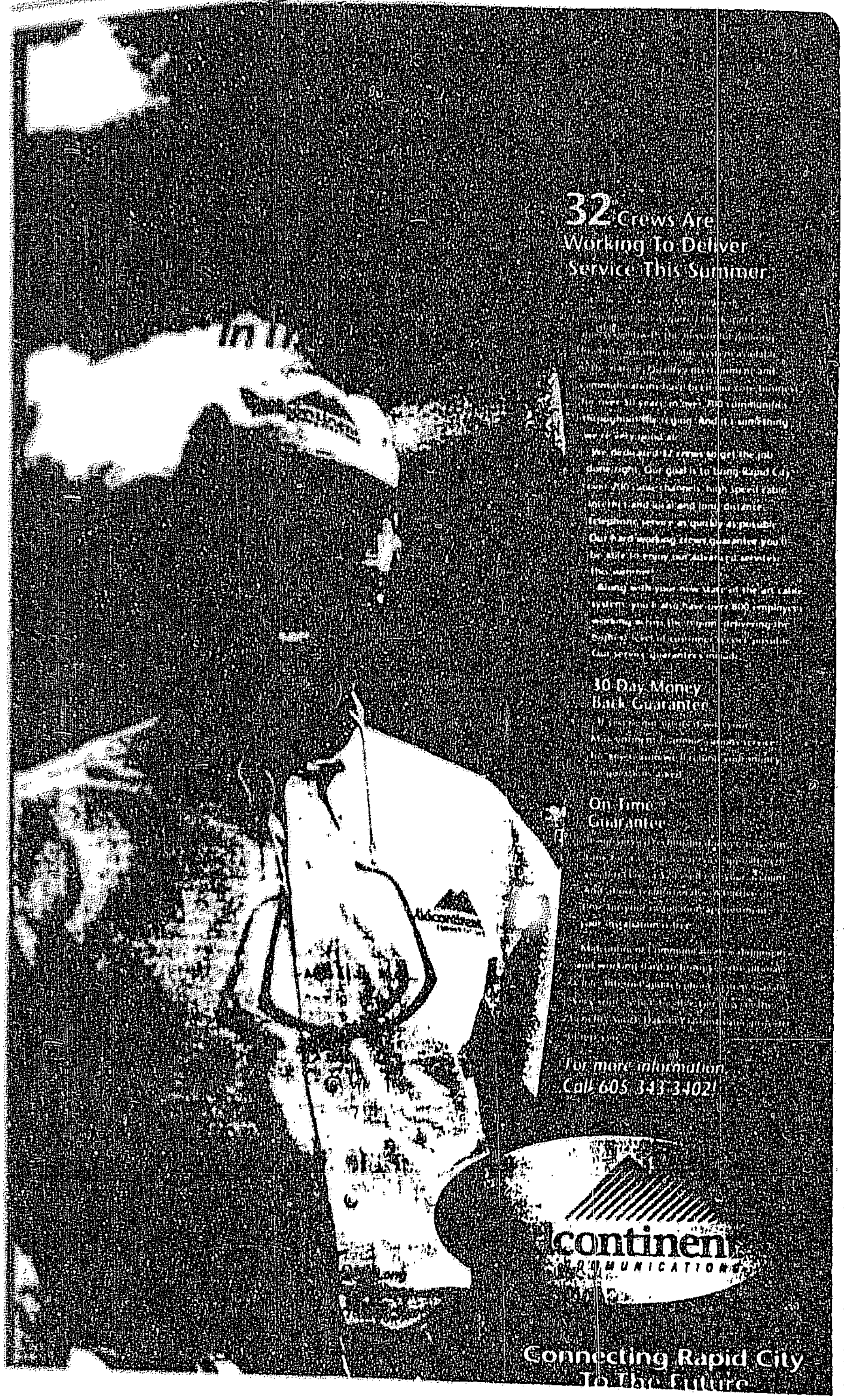
Includes: Everything the Basics & Upgrade include plus 4 more Custom Calling Features, Call Waiting Caller ID and Voice Mail; High-speed Internet connection via cable modem;** All 28 digital premium movie channels, Digital Pay-Per-View and Digital Music

$99.95

Rapid City Journal Page A3
Sunday, February 25, 2001

Rapid City Journal May 21, 2000 Page B12





ceived no later than Aug. to be considered in the final decision.

Sturgis board to discuss vendors

By Bill Harlan
Northern Hills Bureau

The Sturgis City Council begin a special meeting at p.m. Monday, July 24, with an executive session concerning the Champion Sports Group contract with the city.

When it reconvenes in open session, the council is to continue discussion started during its July 17 meeting about allowing certain vendors to use the site from 1st and 3rd streets between Lazelle and Sherman streets during the Sturgis motorcycle rally Aug. 7-13.

Initially, business owners and residents were presented with a proposal to allow the closure so major sponsors could have prime display

Downtown business owner Dean McHenry said last week that he was under the impression there wouldn't be any vending in those spots. He said he would object to permitting vending now.

An agreement, apparently reached in a June 21 meeting among city, chamber of commerce and Champion representatives, would allow such vending for high-level vendors selling official-logo products.

A second topic on Monday's agenda involves an agreement with Champion for operating the two photo towers and principal parking lots.

The meeting will be in the Meade Room of Sturgis Community Center. It will conclude with another executive session regarding selected personnel

Deadwood m Main Street for motorcycl

By Bill Harlan
Northern Hills Bureau

Deadwood city officials scheduled a public hearing 5:25 p.m. day, July regarding a proposal to allow motorcycle parking on Main Street.

It was nearly 20 years in 1981, that bike parking banned from the historic downtown area. At that the city cited problems motorcycle gangs and the situation was getting out of control.

The decision was after historic preservation forts began renovating Street.

The new proposal would allow parking for bikes on west side of Main Street the Mineral Palace to the veranda during the Sturgis motorcycle rally 7 to 13.

Other items on the agenda include:

■ Thadd Turner historic walking tour.

■ Public hearing at p.m. for a convention-center liquor license for Holiday Express.

■ Setting a bid opening 1 p.m., Aug. 8, at Hall for a garbage-contract for 2001 through

■ Approval of agreement for Sturgis Bike Inc.

■ A request by construction for a 20-day for the Mount


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

CHOOSE FROM THE FOLLOWING

THE BASICS
$44.95

Includes: Basic Local and Long Distance Phone Service plus Enhanced Basic Cable service, Digital Pay-Per-View, Digital Music and 17 digital TV channels.

WITH FREE INSTALLATION

THE BASICS PLUS
$69.90

Includes: Basic Local and Long Distance Phone service plus 3 calling features with free Northern Hills extended calling area, 134 Channels including 17 Digital TV and 40 Music Channels, access to Pay-Per-View, and High Speed Internet Access**.

WITH FREE INSTALLATION

THE WORKS
$99.95

Includes: Everything the Basics & Basics Plus include plus 9 more Custom Calling Features including Caller ID and Voice Mail; High-speed Internet connection via cable modem;** All 41 digital premium movie channels, Digital Pay-Per-View and Digital Music

WITH FREE INSTALLATION

Black Hills FiberCom

145 E. Hudson, Spearfish, SD 57783

Call 722-2000

809 Deadwood Avenue, Rapid City, SD 57702

Call 721-2000

or toll free 877-243-4237

No One Else Has Our Connections SM

Minimum 1-year commitment required.
Available in limited service area. Pricing and availability subject to change without notice. Availability of individual
channels subject to change without notice. Price does not include sales tax, access charges and other applicable charges. Monthly fee does not
include long distance charges. Toll calls to communities outside service are are billed in 6 - second increments. Internal wiring charges may
apply. Restrictions apply. Cal complete details.
2 large pizzas redeemable at any Rapid City or Spearfish Domino's. Free Delivery available (limited area)

Rapid City Journal Oct. 14, 2001

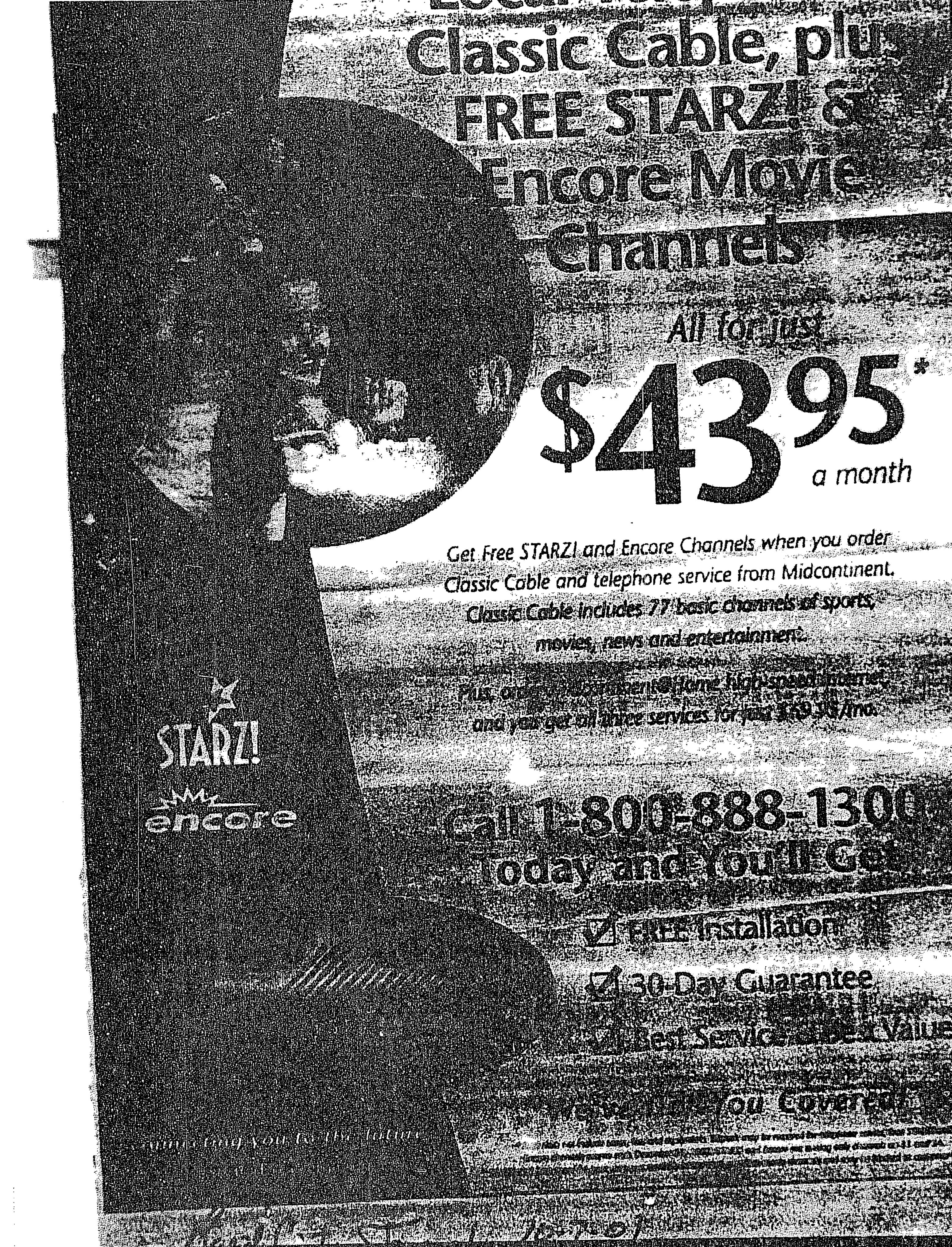

Classic Cable, plus
FREE STARZ! &
Encore Movie
Channels
All for just
$4395*
a month
Get Free STARZ! and Encore Channels when you order
Classic Cable and telephone service from Midcontinent.
Classic Cable includes 77 basic channels of sports,
movies, news and entertainment.
FREE Installation
30-Day Guarantee
STARZ!
encore

EXHIBIT DLT-12

SOUTH DAKOTA ACCESS LINE ESTIMATES

EXHIBIT DLT-12

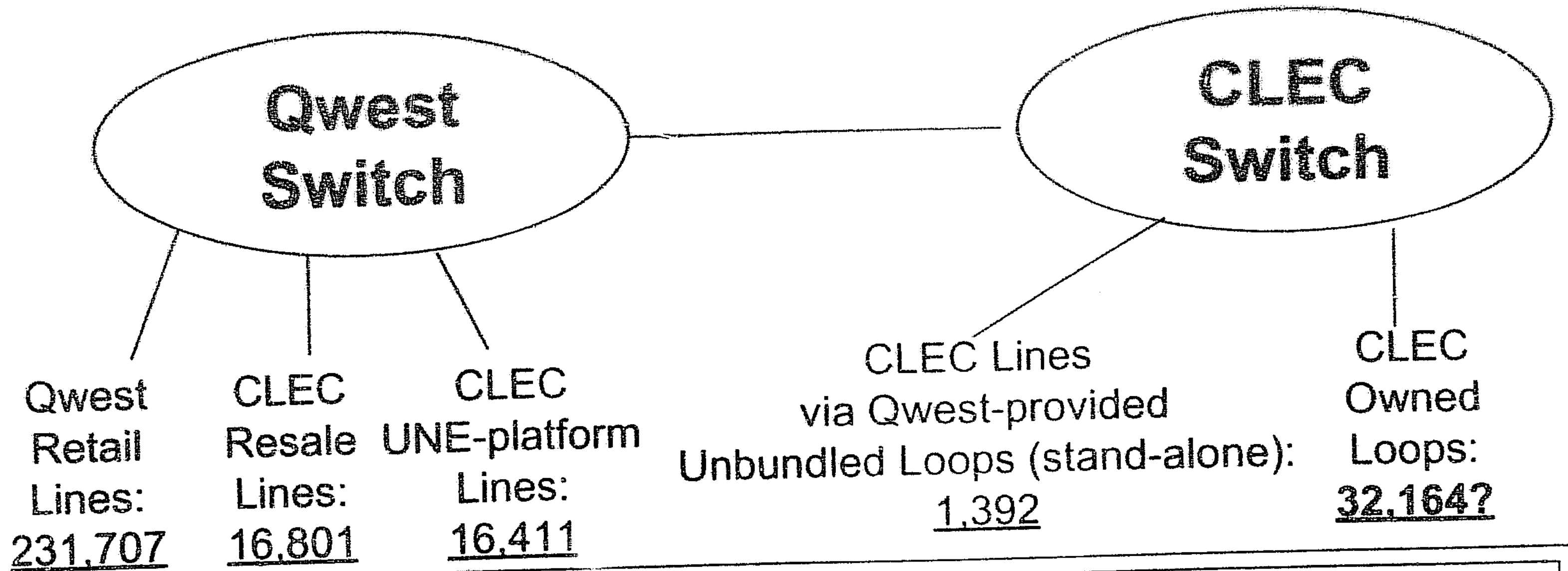
SOUTH DAKOTA ACCESS LINE ESTIMATES

CONTINUATION

[____]

South Dakota Access Lines: Qwest and CLEC

August 2001 Quantities



Estimate of CLEC-Owned Loops:

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

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

((7,049*2.75) - 1,392) = 17,993

((7,049*5.0) - 1,392) = 33,853

CONTINUATION

[ ]

EXHIBIT DLT-13

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

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

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

JOINT AFFIDAVIT OF J. GARY SMITH & MARK JOHNSON

STATE OF TEXAS)
)
COUNTY OF DALLAS)

TABLE OF CONTENTS
STATE OF COMPETITION AFFIDAVIT

Redacted For Public Inspection

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

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

PROFESSIONAL EXPERIENCE

J. GARY SMITH:

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

Redacted For Public Inspection

MARK JOHNSON:

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

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

PURPOSE OF AFFIDAVIT

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

CLEC MARKET ENTRY IN KANSAS AND OKLAHOMA

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

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

Table 1
Competitive Statewide Coverage
As of August 2000

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

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

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

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

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

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

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

Method Used	Number of CLEC Access Lines in SWBT Territory		
	Residential	Business	Total
[illegible]			
Interconnection Trunks 2.75:1 Ratio + UNE-P	1,449	96,699	98,148
E911 Lines + UNE-P	709	37,078	37,787
Interconnection Trunks 1:1 Ratio + UNE-P	527	46,009	46,536
OKLAHOMA			
Interconnection Trunks 2.75:1 Ratio + UNE-P	10,217	104,261	114,479
E911 Lines + UNE-P	12,126	49,057	61,183
Interconnection Trunks 1:1 Ratio + UNE-P	3,724	41,906	45,630

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

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

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

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

13. The most conservative of these estimates meets the requirements of Track A, and evidence provided in this affidavit demonstrates that even the higher-end estimates provided here may fall short of the true volume of competitive penetration. Including resale, CLECs currently serve between 9.0% and 12.6% of the total access lines in SWBT's Kansas service area, and between 5.5% and 11.4% of total access lines in SWBT's Oklahoma service area.

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

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

[3] Based on E911 listing data.

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

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

FACILITIES BASED PROVIDERS

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

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

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

Table 4

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

[illegible]	Kansas		Oklahoma	
	Use Own Facilities	Lease UNEs	Use Own Facilities	Lease UNEs

[illegible] carrier in this State

CLEC FACILITIES-BASED LINES: E911 DATABASE

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

31. Facilities-based carriers are identified in the E911 database by a specific Company ID Code. Among other things, this CLEC-specific ID Code allows the emergency services organization to contact the serving CLEC for emergency services such as line interrupt and call trace. CLECs utilizing their own switches also obtain specific NXX codes assigned solely for their use. Using the CLEC's assigned NXX code and Company ID, the E911 database identifies which CLECs are providing local service from their switches (since the NXX codes are specific to the CLEC's switch), and whether service to a particular telephone number has been designated as business or residential by the CLEC.[4]

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

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

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

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

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

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

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

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

INTERCONNECTION TRUNKS

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

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

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

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

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

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

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

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

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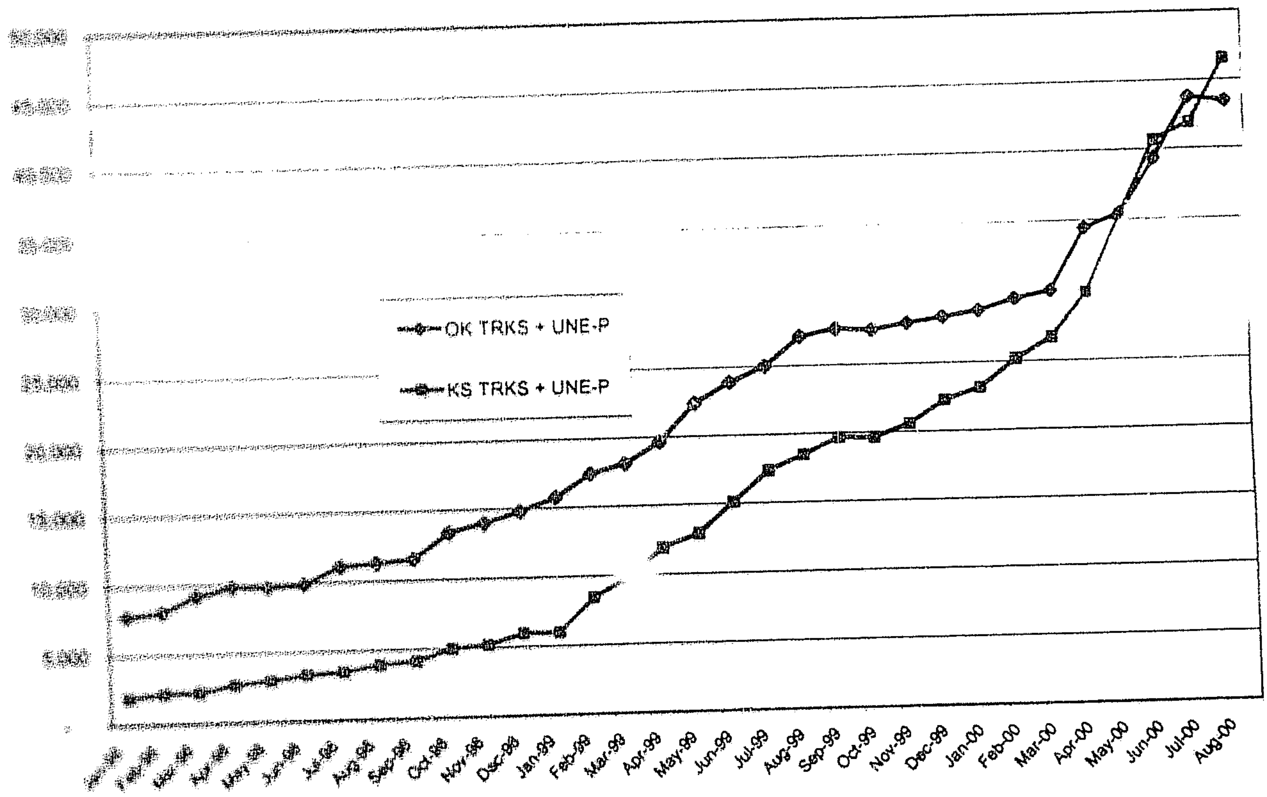
[8] Total UNE loop and port combinations for Kansas as of end of August 2000.
[9] Id. for Oklahoma.
[10] In its comments on SWBT's Texas 271 filing, the Department of Justice (DOJ) disagreed with the 2.75 lines per trunk ratio used by SWBT to estimate the number of access lines being served by facilities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

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

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



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

CLEC SWITCHES

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

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

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

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

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

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

COLLOCATION

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

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

Table 7
Collocations Through August 15, 2000

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

NOTE: Excludes Advanced Solutions, Inc. (ASI)

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

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

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

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

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

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

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

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

RESALE PROVIDERS

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

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

CLEC	Kansas			Oklahoma		
	Business Lines	Residence Lines	Total	Business Lines	Residence Lines	Total
Resale Only Providers	5,006	20,271	25,277	5,585	29,734	32,622
Sub-Total Facilities-based Resale-Only	43,488	25,993	69,481	15,021	4,341	16,567
Total Resale	48,494	46,264	94,758	17,421	37,260	54,681

NOTE: Coin is included in Business Lines

COMPETITIVE BENEFITS

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

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

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

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

Competitive Indicator	[illegible]
Lines Lost to Facilities Based CLECs	1,243,000 / 1,960,000 (% growth = 58%)
Total Lines Lost (includes resale)	1,590,000 / 2,340,000 (% growth = 47%)
Interconnection Trunks	398,000 / 505,000 (% growth = 27%)
Operational Physical Collocations	1,012 / 2,011 (% growth = 99%)
Unbundled Stand-Alone Loops	49.000 / 98.500 (% growth 99.8%)
Orders Processed (Electronic/Manual)	171.000 / 663.000 (% growth = 288%)
UNE Loop/Port Combinations	148,000 / 569,000 (% growth = 283%)

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

50. This concludes our affidavit.

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

50. This concludes our affidavit.

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

Executed on October 9, 2000

____

Area Manager-Competitive Analysis

STATE OF TEXAS)

COUNTY OF DALLAS)

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

____

Notary Public

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

Executed on October 9, 2000

____

Area Manager-Competitive Analysis

STATE OF TEXAS)

COUNTY OF DALLAS)

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

____

Notary Public

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

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

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

Resold Access Line Counts in South Dakota

Case No. TC01-___
Qwest Corporation
Exhibits of the Affidavit of David L. Teitzel
Public Interest
Exhibit DLT-16, Page 1
October 24, 2001

EXHIBIT DLT-16

SOUTH DAKOTA WHOLESALE VIEW
As of August 31, 2001

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

CONFIDENTIAL EXHIBIT

Qwest Corporation
Case No. TC 01-___

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

Unbundled Loops in Service in South Dakota

EXHIBIT DLT-18

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

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

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

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

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

Rank	Area	Census Population		Change, 1990 to 2000	
		April 1, 2000	April 1, 1990	Numeric	Percent
1	California	33,871,648	29,760,021	4,111,627	13.8
2	Texas	20,851,820	16,986,510	3,865,310	22.8
3	New York	18,976,457	17,990,455	986,002	5.5
4	Florida	15,982,378	12,937,926	3,044,452	23.5
5	Illinois	12,419,293	11,430,602	988,691	8.6
6	Pennsylvania	12,281,054	11,881,643	399,411	3.4
7	Ohio	11,353,140	10,847,115	506,025	4.7
8	Michigan	9,938,444	9,295,297	643,147	6.9
9	New Jersey	8,414,350	7,730,188	684,162	8.9
10	Georgia	8,186,453	6,478,216	1,708,237	26.4
11	North Carolina	8,049,313	6,628,637	1,420,676	21.4
12	Virginia	7,078,515	6,187,358	891,157	14.4
13	Massachusetts	6,349,097	6,016,425	332,672	5.5
14	Indiana	6,080,485	5,544,159	536,326	9.7
15	Washington	5,894,121	4,866,692	1,027,429	21.1
16	Tennessee	5,689,283	4,877,185	812,098	16.7
17	Missouri	5,595,211	5,117,073	478,138	9.3
18	Wisconsin	5,363,675	4,891,769	471,906	9.6
19	Maryland	5,296,486	4,781,468	515,018	10.8
20	Arizona	5,130,632	3,665,228	1,465,404	40.0
21	Minnesota	4,919,479	4,375,099	544,380	12.4
22	Louisiana	4,468,976	4,219,973	249,003	5.9
23	Alabama	4,447,100	4,040,587	406,513	10.1
24	Colorado	4,301,261	3,294,394	1,006,867	30.6
25	Kentucky	4,041,769	3,6[illegible],296	356,473	9.7
26	South Carolina	4,012,012	3,4[illegible]03	525,309	15.1
27	Oklahoma	3,450,654	3,145,585	305,069	9.7
28	Oregon	3,421,399	2,842,321	579,078	20.4
29	Connecticut	3,405,565	3,287,116	118,449	3.6
30	Iowa	2,926,324	2,776,755	149,569	5.4
31	Mississippi	2,844,658	2,573,216	271,442	10.5
32	Kansas	2,688,418	2,477,574	210,844	8.5
33	Arkansas	2,673,400	2,350,725	322,675	13.7
34	Utah	2,233,169	1,722,850	510,319	29.6
35	Nevada	1,998,257	1,201,833	796,424	66.3
36	New Mexico	1,819,046	1,515,069	303,977	20.1
37	West Virginia	1,808,344	1,793,477	14,867	0.8
38	Nebraska	1,711,263	1,578,385	132,878	8.4
39	Idaho	1,293,953	1,006,749	287,204	28.5
40	Maine	1,274,923	1,227,928	46,995	3.8
41	New Hampshire	1,235,786	1,109,252	126,534	11.4
42	Hawaii	1,211,537	1,108,229	103,308	9.3
43	Rhode Island	1,048,319	1,003,464	44,855	4.5
44	Montana	902,195	799,065	103,130	12.9
45	Delaware	783,600	666,168	117,432	17.6
46	South Dakota	754,844	69[illegible],004	58,840	8.5
47	North Dakota	642,200	638,800	3,400	0.5
48	Alaska	626,932	550,043	76,889	14.0
49	Vermont	608,827	562,758	46,069	8.2
(NA)	District of Columbia	572,059	606,900	-34,841	-5.7
50	Wyoming	493,782	453,588	40,194	8.9

CONTINUATION

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CONFIDENTIAL EXHIBIT DLT-2

Report 36 -- 8/2001 271 Access Line Report by Wire Center by Channel by Product

"Retail Resale" quantities are lines purchased and resold directly from the retail tariff.

Product Name	(All)
Wire Center	(All)
Clli8	(All)

Sum of 8/2001 In-Svc			MU Category				
			RETAIL				
State	Access Type	Product Group	BGS	CSG	SBG	RETAIL Total Access Lines	RETAIL RESALE
SD	ACCESS LINE	BUSINESS	47,393	16	27,274	74,683	2,448
		RESIDENCE	178	156,352	494	157,024	366
SD Total			47,571	156,368	27,768	231,707	2,814

Note: Retail line quantities exclude Official Company Service (OCS) and Public Coin.

EXHIBIT
Qwest
1A

CONFIDENTIAL
Disclose and distribute solely to Qwest employees with a need to know.

CONFIDENTIAL

CONFIDENTIAL EXHIBIT DLT-2

Report 36 -- 8/2001 271 Access Line Report by Wire Center by Channel by Product

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SD Total			47,571	156,368	27,768	231,707	2,814

Note: Retail line quantities exclude Official Company Service (OCS) and Public Coin.

EXHIBIT
Qwest
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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

DAVID L. TEITZEL

TRACK A AND PUBLIC INTEREST

APRIL 2, 2002

TABLE OF CONTENTS

REBUTTAL AFFIDAVIT

OF

DAVID L. TEITZEL

Track A and Public Interest

David L. Teitzel declares as follows:

My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., as Director-Product and Market Issues. My business address is 1600 7th Avenue, Room 2904, Seattle, Washington, 98191. I am the same David L. Teitzel who submitted a Public Interest Affidavit on October 23, 2001.

I. EXECUTIVE SUMMARY

My rebuttal testimony addresses the issues relating to Qwest's satisfaction of the Track A and public interest requirements of section 271 raised in this proceeding by Mr. Tom Simmons on behalf of Midcontinent Communications ("Midco"), by Dr. Marlon Griffing and Mr. Mark L. Stacy of QSI Consulting on behalf of the Staff of the Public Utilities Commission of South Dakota ("Staff"), and by AT&T in its Verified Comments.[1] In my testimony, I demonstrate that, contrary to the suggestions of these witnesses and parties, Qwest is in compliance with both the Track A and public interest requirements

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[1] Black Hills FiberCom did not file testimony directly addressing the Track A or public interest requirements, although, as explained below, that company's testimony on other subjects does reinforce Qwest's Track A case.

of section 271 in South Dakota. I also discuss why many of the issues and concerns these witnesses and parties have raised in this proceeding are well outside the scope of the Track A and public interest requirements, and indeed, well outside the legitimate scope of a section 271 proceeding entirely.

None of the witnesses or parties has disputed the evidence I presented in my October 24, 2001 affidavit to demonstrate Qwest's compliance with the requirements of Track A.[2] In fact, the other parties' testimony has only *strengthened* Qwest's Track A case. For example, the Vice President and General Manager of Black Hills FiberCom has now admitted on the record that his CLEC is serving approximately 22,000 residential and 17,000 business phone lines in South Dakota, primarily via its own facilities.[3] This testimony indicates that the conservative estimates of CLEC access lines that I presented in my initial affidavit substantially underestimate the level of competition in South Dakota, and confirms that the South Dakota local market is even more competitive than that in many of the states where the FCC has granted BOCs 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").

With respect to the public interest, the other witnesses and parties have provided only a range of assertions (unsupported by any facts or analysis) regarding alleged barriers to entry in this state, combined with a random grab bag of allegations involving events in states *other than* South Dakota. Indeed, AT&T did not even bother to present *testimony* on the public interest, but offered only "Verified Comments"[4] that merely rehash the arguments AT&T has made in other states' section 271 proceedings, entirely unrelated to South Dakota. All of these arguments have been rejected by the Federal Communications Commission ("FCC"), the Multistate Facilitator, and the other state commissions in Qwest's region that have issued recommended orders on public interest. For their part, witnesses for Midco and Staff merely assert that UNE prices in South Dakota do not permit CLECs to earn enough of a profit, without presenting any facts at all to support their claim. As I explain below, even if it were appropriate to look at UNE-based entry strategies in isolation in determining whether the local market is open and ignore every other method of entering the local market — an approach that makes no sense in a state like South Dakota, where there has been more facilities-based entry per capita than almost anywhere else in the country — the facts clearly establish that there is no price squeeze in South Dakota.

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[4] *See* AT&T's Verified Comments Regarding Public Interest, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 272(C) of the Telecommunications Act of 1996*, Docket No. TC 01-165, Mar. 18, 2002 ("AT&T's Comments").

II. TRACK A

No witness or party has challenged the Track A evidence presented in my October 24, 2001 affidavit, or presented any evidence tending to show that Qwest has *not* satisfied the requirements of the Track A provision, 47 U.S.C. § 271(c)(1)(A). Nor has any witness or party disagreed with my description of what the FCC has said is required to show compliance with this provision. (Dr. Marlon Griffing, on behalf of Staff, uses slightly different wording to describe the FCC's four requirements for Track A,[5] but his description does not disagree with mine in substance.) If anything, the testimony filed by the other parties actually *strengthens* Qwest's Track A case. I address each of the four requirements of Track A in turn.

A. Qwest Has Signed Binding Interconnection Agreements

The first requirement of Track A is that the BOC must have signed one or more binding interconnection agreements approved under section 252. I reported at page 9 of my direct affidavit that, as of August 31, 2001, a total of 20 wireline interconnection agreements between Qwest and other carriers were approved by this Commission and in effect. In fact, several additional wireline interconnection agreements had also been 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.

contract tracking database when I filed my direct affidavit. Inclusion of these agreements increases the actual number of Commission-approved wireline interconnection agreements in effect as of August 31, 2001 to 26. I have attached a list of these agreements, which are all on file with this Commission, together with the docket numbers of the Commission proceedings approving them, as Exhibit A. Confidential Exhibit DLT-4, filed with my direct affidavit, also showed that a total of 16 CLECs were actively purchasing wholesale services at that time, including prominent South Dakota CLECs such as Black Hills FiberCom, Ionex Communications (f/k/a FirstTel), McLeodUSA, Midco, and Northern Valley Communications. No witness or party has disputed my testimony on this subject.

B. Qwest Is Providing Access and Interconnection to Unaffiliated Competing Providers

The second requirement of Track A is that the BOC must be providing access and interconnection to unaffiliated competing providers of telephone exchange service. In regard to the second Track A requirement, Qwest's evidence also meets that test. As noted above, Confidential Exhibit DLT-4 reveals that, as of August 31, 2001, 16 CLECs were actively purchasing access and interconnection wholesale services from Qwest. All of these CLECs are unaffiliated in any way with Qwest, and all are directly competing with Qwest for local exchange service customers. Again, no witness or party has provided testimony to the contrary.

C. Competing Providers Are Serving Both Residential and Business Customers

The third requirement of Track A is that unaffiliated competing providers must be providing telephone exchange service to residential and business customers. Qwest also clearly meets the third Track A requirement. The CLECs discussed above all provide local exchange telephone service to residential and business customers in Qwest's service territory in South Dakota, as shown in Confidential Exhibit DLT-4 as well as Exhibit DLT-5 filed with my direct affidavit. In Exhibit DLT-6 of my direct affidavit, I reported quantities of unbundled loops (17,803), facilities bypass lines (22,217 residential and 9,947 business) and resold lines (5,648 residential and 11,153 business) in service in South Dakota as of August 31, 2001. The counts of unbundled loops and resold lines in service are actual quantities in service as tracked and reported by Qwest's wholesale billing systems, while the number of facility bypass lines was estimated from ported numbers and white pages data available to Qwest regarding lines served by facilities-based CLECs. As shown on Exhibit DLT-6, these quantities represent an aggregated CLEC market share estimate of 22.4%.

As I stated in my opening testimony (at pages 21-31), my methods for estimating CLEC access lines were conservative. Testimony submitted by another party to this proceeding has confirmed that this is indeed the case and that Qwest's Track A showing is likely even stronger than I originally stated. At page 2 of his direct testimony, Mr. Ron Schaible, the Vice President and General Manager of Black Hills FiberCom, states that "FiberCom has approximately 22,000 residential phone lines and approximately 17,000 business lines for a total of approximately 39,000 phone lines in its service territory." Mr. Schaible also states on pages 2-3 of his testimony that FiberCom provides telephone service to *all* of its residential customers and *most* of its business customers solely using its own separate fiber backbone and hybrid fiber-coaxial cable distribution network; in limited circumstances, it leases unbundled loops from Qwest to serve those "business customers in its local exchange area to whom it is not economically feasible to extend FiberCom's plant." This means that just one CLEC, standing alone, has at least as many full facilities bypass lines as I estimated for *all* CLECs in Exhibit DLT-6 of my direct testimony. Furthermore, since network elements leased from a BOC count as a CLEC's "own facilities" for purposes of Track A,[6] all 39,000 of these lines are relevant as facilities-based competition for determining Qwest's Track A compliance. Qwest has received data request responses from ~~filed data requests asking the other parties~~ parties to this proceeding, confirming that substantial quantities of ~~(including Midco) to report their facilities based access line totals, and therefore these~~ residential and business lines are currently served on a facilities ~~numbers will surely increase.~~ basis and through resale by South Dakota CLECs. In sum, it ... now clear that my estimates understate the true amount of facilities-based competition in South Dakota, and it is even more clear that Qwest can satisfy this requirement of Track A.

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6 *See* Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 ¶¶ 62-104 (1997) ("Ameritech Michigan Order").

D. Competing Providers Are Using Their Own Facilities Exclusively and in Combination with Resale

The fourth requirement of Track A is that unaffiliated competing providers must be offering telephone exchange service exclusively over their own telephone exchange facilities or predominantly over their own facilities in combination with resale. Qwest easily meets this requirement. As stated above, Black Hills FiberCom has submitted testimony admitting that it alone is currently serving approximately 22,000 residential and 17,000 business customers on a facilities basis. In addition, Qwest's wholesale system tracked 5,648 residential and 11,153 business resold access lines in service as of August 31, 2001, as shown on Exhibit DLT-6. Clearly, multiple CLECs in South Dakota are serving local exchange end users via unbundled loops, facilities bypass and resale.

At page 139 of his testimony, Dr. Griffing states, "Qwest has submitted as evidence the number of loops it is unbundling to CLECs. It should make a similar showing in South Dakota." It is unclear whether Dr. Griffing is suggesting that Qwest has failed to provide such evidence. In fact, Exhibit DLT-6 of my direct testimony displays the number of unbundled loops in service in South Dakota as of August 31, 2001. In addition, Confidential Exhibit DLT-4 shows which South Dakota CLECs are actively purchasing unbundled loops from Qwest. This evidence clearly shows that unbundled loops are being used by CLECs to serve end users, and Qwest agrees with Dr. Griffing's acknowledgement at page 140 that "the FCC has held that a CLEC's 'own' facilities include UNEs that it leases from the incumbent provider" (citing Ameritech Michigan Order at ¶ 99).

III. PUBLIC INTEREST

The FCC orders granting section 271 relief outline the following three-step analysis for determining whether a BOC's application is "consistent with the public interest, convenience, and necessity," within the meaning of 47 U.S.C. 271(d)(3)(C):

- determining whether granting the application "is consistent with promoting competition in the local and long distance telecommunications markets," giving substantial weight to Congress' presumption that when a BOC is in compliance with the competitive checklist, the local market is open and long-distance entry would benefit consumers;[7]

- looking for assurances that the market will stay open after a section 271 application is granted;[8] and

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[7] *See* Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 268 (2001), *modified, Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001) ("SBC Kansas/Oklahoma Order"). *See also* Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶ 427 (1999), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000) ("Bell Atlantic New York Order"); Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354 ¶ 416 (2000) ("SBC Texas Order").

[8] Bell Atlantic New York Order ¶¶ 422-23; SBC Texas Order ¶¶ 416-17.

- 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.

AT&T's approach, by contrast, is to submit a rehashed legal brief containing every possible circumstance or smear it can think of — including unlitigated and unverified allegations from complaints filed in states other than South Dakota, incorrect cost data (including nonrecurring charge numbers inflated by more than forty thousand percent), and legal arguments that the FCC and every state commission to consider them so far have rejected. The Chairman of the Colorado PUC (to whom AT&T submitted virtually the same filing) aptly described this approach as "let's throw everything against the wall and see what sticks."[11] The FCC has issued clear guidance as to what the public interest inquiry entails, however, and it is hardly the sort of limitless free-for-all that AT&T suggests. Put another way (and again to quote the Chairman of the Colorado PUC), the public interest test "is not the *'et cetera'* at the end of the 14-point checklist."[12]

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[11] Order on Staff Volume VII Regarding Section 272, the Public Interest, and Track A, *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with § 271(c) of the Telecommunications Act of 1996*, Docket No. 97I-198T, at 51 (Mar. 15, 2002) ("Colorado Order").

[12] *Id.* at 22. *See also* Memorandum Opinion and Order, *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, 17 FCC Rcd 3300 ¶ 102 (2002) ("Verizon Rhode Island Order") (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).

in this testimony, I will go through each of the three parts of the FCC's public interest inquiry in turn and explain why Qwest's application is consistent with the public interest *as the FCC has defined it*. As an initial matter, however, I wish to address AT&T's offhanded suggestion (at pages 2-3) that this Commission cannot consider the public interest *at all* at this time because the Commission has not yet ruled on Qwest's compliance with Track A, all fourteen checklist items (including the ROC OSS testing), and section 272, and has not yet found that a performance assurance plan "is in place." The FCC's delineation of the public interest inquiry clarifies that consideration of whether the application presents "unusual circumstances" or "other relevant factors" constitutes a discrete inquiry separate from the checklist and QPAP proceedings. Checklist compliance, the QPAP, and OSS testing are both substantively and procedurally distinct components of the section 271 approval process, and the Commission would not be reviewing those subjects a second time here in connection with the public interest. Accordingly, there is absolutely no reason for postponing consideration of the public interest until all of the other elements of the section 271 proceeding have been resolved. Therefore, even though compliance with the public interest test may be conditioned on successful resolution of the checklist and QPAP inquiries, those proceedings have no additional bearing on the public interest analysis 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*

A. Promoting Competition in the Local and Long Distance Markets

In my direct affidavit, I provided substantial evidence demonstrating that, not only has Qwest opened its local exchange markets to competitors as intended by the Act, but also that CLECs entered the South Dakota market in large numbers and are successfully competing. The data showed that CLECs have an estimated market share of 22.4% in South Dakota. No witness or party has disputed this data or estimate. Moreover, as noted above, the true CLEC market share in South Dakota is likely even higher, given FiberCom's admission that it alone serves approximately 22,000 residential and 17,000 business phone lines in the state, primarily *via* its own facilities.

In addition, my opening testimony presented extensive evidence showing that Qwest's entry into the long distance market in South Dakota will provide substantial savings to South Dakota consumers, both by spurring CLECs to accelerate their local entry plans and by increasing competition in the long-distance market. I presented an estimate that South Dakota consumers would save as much as $16.6 million per year from Qwest's interLATA entry, based on a study recently completed by Dr. Jerry Hausman of MIT. I also presented a study from the Telecommunications Research and Action Center (TRAC), an *independent* consumer interest group that compiles

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Approval of its Statement of Generally Available Terms, Docket No. 70000-TA-00-599 (Record No. 5924) (Jan. 30, 2001), at 7 ("Wyoming Order") ("we agree with the comments of the Consultant in the Workshop Report that Qwest has satisfied the generalized public interest requirement . . . conditional" on Qwest's submission of a satisfactory QPAP and completion of ROC OSS testing); *see also* Colorado Order at 75 (finding that Qwest will be in compliance with the public interest test once it files an appropriate QPAP).

information about long distance competitors and their pricing practices, finding that New York consumers have realized savings of up to $700 million in combined local service and long distance charges annually as a result of Verizon's entry into the long distance market in that state. Finally, I presented the FCC's own findings indicating that CLEC competition markedly increased in both New York and Texas after Verizon and SBC respectively entered the interLATA market in those states,[14] providing consumers in those states with a greater array of choices and other benefits. Ironically, AT&T itself has submitted evidence confirming that SBC's entry into the Texas interLATA market has spurred, not thwarted, CLEC entry into the local market. The very *Dallas Morning News* article that AT&T attaches to its comments as Exhibit H quotes an AT&T spokesman as follows regarding the situation in Texas: "There is no doubt they [SBC] have taken some of our long-distance customers, but we have taken 325,000 of their local service customers. . . . We think we are doing pretty well."[15]

Of all of the evidence I presented in my direct testimony, AT&T attempts to dispute only one piece of it, the study by Dr. Hausman. (Witnesses for Staff, MidCo, and Black Hills do not dispute this evidence at all.) AT&T relies exclusively on a March 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.

authored by its witness in numerous other section 271 proceedings, Dr. Lee L. Selwyn. AT&T's proffer of this white paper, however, is wholly inappropriate and illustrates an utter disregard of this Commission's procedures. The white paper is nothing more than the unsworn testimony of one of AT&T's witnesses, specifically "prepared at the request of AT&T."[16] Indeed, it is not even "verified" by Dr. Selwyn, nor offered in his name; the only verification of AT&T's public interest "comments" comes from Diane Roth. AT&T has not indicated that it will make Dr. Selwyn available for cross-examination at the hearings in South Dakota so that other parties may test his analysis and conclusions. The Commission should accord no weight to AT&T's proffer of the Selwyn white paper.

In any event, Dr. Selwyn's white paper is not credible on its face, and its criticisms of the Hausman study are flat-out wrong. Dr. Selwyn is not an econometrician, nor does he have any formal training in econometrics, so far as Qwest can determine from reviewing the statement of qualifications Dr. Selwyn attached to his declaration filed with the FCC on February 28, 2002 in CC Docket No. 01-347 concerning Verizon's New Jersey petition for interLATA authority in New Jersey. Also, Dr. Selwyn did not attempt to rerun the Hausman model to verify its accuracy. The responses to Dr. Selwyn's specific criticisms of Dr. Hausman's study are as follows:

- Notwithstanding Dr. Selwyn's suggestion that the study results are irreproducible,[17] a trained econometrician can run the model upon which Dr. Hausman based his report, using standard econometric software (e.g., SAS), and obtain the same results.

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16 See Lee L. Selwyn, *BOC Long Distance Entry Does Not Benefit Consumers* (Mar. 2, 2002), Exhibit I to AT&T's Comments at 1 ("Selwyn Paper").

17 *Id.* at 1-2.

- 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 <u>additional</u> 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.

AT&T's argument on the public interest ultimately boils down to the entirely self-serving assertions that the long distance market is already competitive enough, and that South Dakota consumers have nothing to gain from the addition of Qwest as a new competitor in that market.[23] Leaving aside that this argument is very obviously nothing more than a last-ditch attempt by AT&T to shield itself from facing a new competitor in its core market, *it is also undercut by the very evidence AT&T has provided.* AT&T's white paper from Dr. Selwyn *concedes* that the bulk of the price reductions that long-distance customers have received in recent years come *not* from any putative increase in competition in the long distance market, but rather from regulatory changes over the years that have reduced the amount that long distance carriers pay local exchange carriers for access. In Dr. Selwyn's own words, "[t]he single most important source of the enormous drop in long distance prices is the succession of FCC-required decreases in 'access charges.'"[24]

Indeed, events since I filed my initial testimony have confirmed that the long distance market in South Dakota remains a cozy oligopoly, and South Dakota consumers would benefit greatly from the addition of Qwest as a new competitor. In the absence of Qwest's competition in the long distance market, the Big Three long distance carriers (AT&T, WorldCom, and Sprint) are raising their prices for South Dakota consumers in lockstep. AT&T, for example, has recently raised its monthly

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[23] AT&T's Comments at 21, 23.

[24] Selwyn Paper at 3.

universal service line-item fee for its residential customers from 9.9% to 11.5%[25] — and this is after it raised the charge from 8.6% in 2001. At the same time, according to the FCC and members of Congress, AT&T pays only about 60% of this amount into the federal universal service fund, apparently pocketing the rest.[26] In addition, *all* of the Big Three raised their basic rates this past February 1. AT&T's twenty-three million basic residential customers, for example, will now pay 35 cents a minute — 17% more — for daytime calling.[27] AT&T's evening rates have similarly been increased, from 25 to 29.5 cents a minute.[28] Moreover, this increase in long distance rates is hitting the most vulnerable South Dakotans — the poorer and less educated — the hardest.[29] Qwest's entry into the long-distance market in South Dakota would curb this trend, just as it has in every state where a 271 application has been approved.

In short, neither AT&T nor anyone else has shown that South Dakota would not 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

when it repeatedly holds BOC entry in the interLATA market once the BOC opens its local market through checklist compliance benefits consumers. On the contrary, events since I filed my initial testimony have shown that South Dakotan consumers will face increasing costs so long as the long-distance market is left unchecked by increased competition.

B. Assurance of Future Compliance

In my initial affidavit, I demonstrated that both Qwest's performance assurance plan for South Dakota (the "QPAP") and the FCC's authority under section 271(d)(6) of the 1996 Act to rescind a BOC's section 271 authority will provide more than adequate assurance of Qwest's future compliance. However, because I did "not present a version of the QPAP for consideration," AT&T claims that "it is impossible to find in [my] testimony any assurance whatsoever of future market openness."[30] If AT&T's concern is that Qwest did not give it an opportunity to review the QPAP, that claim is belied by the fact that the South Dakota QPAP was included with, and discussed in, Qwest witness Mark S. Reynolds' separate affidavit, filed with Qwest's November 2001 filing with this Commission, and AT&T offers no reason why I should have been required to "present . . . the QPAP for consideration" as well. Indeed, AT&T clearly has reviewed the QPAP: in the next paragraph of its public interest comments, AT&T argues that "it is

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http://papers.ssrn.com/sol3/delivery.cfm/SSRN_ID296368_code020125560.pdf?abstractid=296368 (Jan. 22, 2002).

30 AT&T's Comments at 32.

certainly premature to characterize the QPAP as providing any assurances that Qwest's markets, once open, will remain so,"[31] and AT&T has also filed extensive comments on Mr. Reynolds's affidavit and the QPAP.[32] Concurrently with the filing of my rebuttal affidavit, Mr. Reynolds has filed reply comments in this proceeding addressing AT&T's concerns with the QPAP,[33] and it would make little sense to duplicate that QPAP discussion here.[34] It is important for this Commission to review the QPAP; however, it is addressed in other Qwest affidavits by other Qwest witnesses.

AT&T also cobbles together a random handful of quotes from Qwest's advocacy in assorted unrelated states and federal proceedings, and asserts that Qwest is unalterably opposed to "any and all attempts to establish backsliding penalties in the various states."[35] This argument is completely unfounded. Qwest obviously *has* 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.

enforcement plan in this proceeding and other section 271 proceedings in the form of the QPAP. Qwest has put a great deal of time and effort into developing and negotiating the QPAP with a number of parties, including state commission staff members and CLECs, and Qwest is fully committed to the anti-backsliding remedies contained in that plan. None of AT&T's out-of-context cites changes that core fact.

C. Identification of Any Unusual Circumstances

AT&T and witnesses for Midco and Staff have alleged a number of "unusual circumstances" in the local exchange and long distance markets that would purportedly make Qwest's entry into the long distance market contrary to the public interest.[36] Most of these allegations are made without any factual support at all, and virtually all of them are made without any regard to the governing FCC section 271 orders. The FCC has made clear that, in order to bear on the public interest, an alleged "unusual circumstance" must result from a "sin of omission or commission" by the section 271 applicant.[37] In particular, the FCC has declared that a BOC applicant should not be penalized on public interest grounds simply for complying with binding state law or state commission orders beyond its control.[38] Parties also may not use the public interest

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36 *See* Bell Atlantic New York Order ¶ 423; Verizon Massachusetts Order ¶ 233.

37 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).

38 *See* Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant*

inquiry to exact additional checklist item terms and conditions unavailable under the checklist items themselves, simply by repackaging the issue as an "unusual circumstance."[39]

Moreover, it is not sufficient to merely allege an assortment of "unusual circumstances" unsupported by any factual proof and then demand that the BOC *disprove* all of these allegations. An "unusual circumstance" is supposed to be a set of facts that would justify denying a BOC's application *notwithstanding* that it has complied with the competitive checklist and provided assurances that it will continue to comply post-entry — that is, a circumstance sufficient to rebut the BOC's prima facie case that interLATA entry is justified. As in any litigation, once the plaintiff has established a prima facie case for relief, the other side must *prove*, and may not simply allege, a defense or rebuttal. The Multistate Facilitator explained why the opponents of a section 271 application bear the burden of proving the existence of unusual circumstances as follows:

> Given the FCC's conclusion that checklist compliance is a strong indicator of the satisfaction of the public interest test, we think that it is appropriate to ask those who make public interest assertions to demonstrate the existence of the facts necessary to support their claimed reasons why the public interest would not be served by granting Qwest 271 authority. If

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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).

> nothing else, a simple reliance on the need for order compels the conclusion that those who make specific allegations should be required to prove them.[40]

A number of state commissions, state commission staffs, and hearing commissioners have held the same, not only rejecting the notion that "'Qwest must bear the burden of disproving [third-party allegations] in order to demonstrate that the public interest would be served by granting it 271 authority,'"[41] but further acknowledging that "the multifarious grievances raised in the name of the 'public interest' underscores the abuses to which the standard is prone."[42] In the discussion that follows, I shall demonstrate that the parties have failed to meet their burden of proof regarding each and every "unusual circumstance" they allege.

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40 Liberty Consulting Group, Public Interest Report, *In the Matter of the Investigation into Qwest Corporation's Compliance with § 271 of the Telecommunications Act of 1996*, Seven State Collaborative Section 271 Workshops (Oct. 22, 2001) ("Multistate Facilitator's Public Interest Report"), at 2.

41 Colorado Order at 29-30 (quoting the Multistate Facilitator's Public Interest Report at 2).

42 *Id.* at 30. *See also* Conditional Statement Regarding Public Interest and Track A, Iowa Dept. of Commerce Utilities Board, *In Re: U S WEST Communications, Inc. n/k/a Qwest Corporation*, Docket Nos. INU-00-2 SPU-00-11, at 13 (January 25, 2002) ("Iowa Report") (affirming the Facilitator's analysis of the burden of proof); Report on the Public Interest, Public Service Commission of Utah, *In the Matter of the Application of QWEST CORPORATION, fka US WEST Communications, Inc., for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)*, Docket No. 00-049-08 (Feb. 20, 2002), at 6 (concluding that conclusion that "parties asserting that unusual circumstances exist bear the burden of proof"); Wyoming Order at 7 ("Qwest does not, in our opinion, have the burden of raising and disproving every possible problem imaginable. Their burden is to provide the demonstrations required by the federal Act, but they need only to rebut any allegations by others as to special problems or circumstances which might warrant not granting the recommendation sought by Qwest here.").

1. UNE-Platform "Price Squeeze"

AT&T suggests in its "Verified Comments" that the Commission should ignore the reality of CLEC entry through facilities-based competition and resale, and instead focus exclusively on UNE-based entry strategies.[43] AT&T asserts further, based on inaccurate cost data and an incomplete comparison of cost and revenue, that UNE prices are too high in South Dakota, compared to the Commission's retail rates, for CLECs to make a significant profit in the residential market using a so-called "platform" of UNEs.[44] Witnesses for Staff and MidCo echo the same argument, but do not provide any facts or additional analysis.[45] Not only does this argument misconstrue the 1996 Act and the FCC's orders, but there is evidence in South Dakota flatly disproving the existence of the alleged price squeeze.

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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).

a. The entire premise of the "price squeeze" argument is wrong.

AT&T's UNE "price squeeze" argument rests on the fallacious assumption that, if AT&T feels it cannot make enough of a profit using unbundled network elements to serve the South Dakota residential market, then the entire local market in the state must be closed to competition, and Qwest's entry into the interLATA market must be denied as contrary to the public interest. The premise of this argument — that CLEC entry through resale and facilities-based competition are irrelevant, and that there must be CLEC competition via the UNE-platform to demonstrate compliance with section 271 — is at odds with the very structure of the Telecommunications Act, the FCC's section 271 orders, and the realities of competition in the South Dakota market. First, there is nothing in the federal Act that requires each of the three modes of CLEC entry to yield equal operating profits (or indeed, *any* profits) in every single situation, no matter what kind of customer or what kind of service area the CLEC is trying to serve. The reason that Congress authorized three different modes of entry with three different wholesale cost structures was precisely because different entry strategies would be appropriate to serve different kinds of customers in different circumstances. As discussed in more detail below, a UNE-based entry strategy — with its statutory bottom-up, TELRIC-based wholesale cost[46] — may simply not be appropriate to serve a group of customers (such as residential customers) for whom the state has intentionally kept retail prices below cost. Congress prescribed an alternative method of entry for this circumstance: resale

46 *See* 47 U.S.C. § 252(d).

CONTINUATION

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under 47 U.S.C. § 251(c)(4), for which the CLEC's wholesale cost is determined, not by building on costs from the bottom-up, but by stepping back a discount from whatever retail price for the service the state has set.[47] In paragraph 69 of its new Vermont decision, the FCC expressly held that the Act "addresses such potential price squeezes through the availability of resale," which guarantees a profit even where the state has kept retail rates low. The FCC held further that it was incorrect to focus only on UNEs and ignore other methods of entry. AT&T cannot and does not point to anything in the Act that would require all three modes of entry to be equally profitable and workable in every circumstance.

Second, the FCC's section 271 orders have continued to confirm (even after the D.C. Circuit's decision in *Sprint Communications Co. v. FCC*, discussed below) that it is inappropriate to take one method of entry in isolation and claim that the level of CLEC competition using that particular method is too low. In its most recent section 271 decision, the FCC specifically rejected the argument that Verizon's Rhode Island application was contrary to the public interest because the level of UNE-based competition in the residential market was assertedly too low.[48] Stating that it need not "consider the market share of each entry strategy for each type of service," the FCC clarified that "[g]iven an affirmative showing that the competitive checklist has been satisfied, low customer volumes in *any one particular mode of entry* or in general do not necessarily undermine that showing."[49]

Third, AT&T's single-minded focus on UNE-based entry is willfully blind to the 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).

why AT&T attempts to get this Commission to look at UNE-based competition alone: there is so much residential competition in South Dakota using facilities-based and resale-based strategies that AT&T's claim that competition is impossible in the residential market simply does not pass the laugh test. While AT&T asserts that UNE-platform competition is all that matters "because neither resale nor facilities based competition is likely to provide a significant, viable source of competition for Qwest during any foreseeable time frame,"[50] AT&T's arguments fly in the face of the facilities-based CLECs who are now actively serving significant numbers of South Dakota local exchange customers. Notwithstanding AT&T's assertion that such competition is impossible, as I noted above, FiberCom has now admitted that it is currently serving 22,000 residential customers just by itself *via* facilities-based competition,[51] and that number will surely rise once Midco and the other CLECs answer Qwest's data request. And notwithstanding AT&T's assertion that the wholesale discounts contained in the federal Act's resale provision have "proven inadequate to provide CLECs a basis for profitable entry,"[52] South Dakota CLECs have still managed to serve an additional 5,648 residential and 11,153 business lines through resale.[53] Even if AT&T's assertion that UNE prices in South Dakota make UNE-based entry strategies difficult were correct

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50 AT&T's Comments at 13.

51 *See* Schaible Testimony at 2.

52 AT&T's Comments at 13 n.15.

53 *See* Teitzel Affidavit at 32; Confidential Exhibit DLT-15 (these figures were calculated as of Aug. 31, 2001).

(and, as I explain in the next section, it is demonstrably *in*correct), AT&T's premise that this would mean the South Dakota local market is closed would still bear no connection to market realities in this state.

The only FCC authority that AT&T cites for its assertion that there must be a certain amount of UNE-based residential competition for Qwest's application to pass public interest muster is a misleadingly truncated excerpt from paragraph 391 of the FCC's *Ameritech Michigan Order* (pages 9-10 of AT&T's Comments). AT&T quotes a passage from this paragraph stating that "[t]he most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a wide variety of arrangements (that is, through resale, unbundled elements, interconnection . . . or some other combination thereof) . . . ."[54] But AT&T inexcusably leaves off the very next sentence of the quotation, which makes clear that the FCC is describing an *ideal* evidentiary showing, not a required one:

> We emphasize, however, that we do not construe the 1996 Act to require that a BOC lose a specific percentage of its market share, or that there be competitive entry in different regions, at different scales, *or through different arrangements*, before we would conclude that BOC entry is consistent with the public interest.[55]

Through its misleading editing, AT&T proffers the FCC's discussion for the precise 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).

Nor does the D.C. Circuit's decision in *Sprint Communications Co. v. FCC*,[56] which remanded the FCC's *SBC Kansas/Oklahoma Order*, require this Commission to accept AT&T's argument. In that opinion, the D.C. Circuit did not endorse AT&T's reading of section 271 on the merits, but merely expressed concern that the FCC had given AT&T's claim an inadequately explained "brush-off" in that particular case.[57] The court did not vacate the FCC's section 271 authorization for Kansas and Oklahoma, but simply remanded so that the FCC could reconsider and either "pursue [AT&T's] price squeeze claim, or at the very least explain why the public interest does not require it to do so."[58] Notably, the court observed that the Commission could well reaffirm its existing position on remand, and indeed it pointed the way to that outcome.

As the D.C. Circuit explained, the lack of a market share requirement in the section 271 inquiry could "reflect a recognition" that, even if UNE rates are based on TELRIC, "the residential market may not be attractive to competitors" choosing to enter through the UNE platform.[59] The court also acknowledged the possibility that state-mandated retail prices beyond the BOC's control could be responsible for dampening CLECs' prospects for market entry, especially since states "have historically set relatively low residential rates . . . allowing the incumbent monopoly to make it up in

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56 *Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

57 *Id.* at 554.

58 *Id.*

59 *Id.* at 556.

other aspects of their business."[60] In both situations, it would *disserve* the public interest to deprive consumers of greater long-distance competition simply because CLECs, through no fault (or "sin of omission or commission"[61]) of the BOC applicant, find the platform an inapt business model for widespread entry into the residential market due to the relationship of UNE rates set by state commissions and residential
The FCC has subsequently op
retail rates set by state commissions or state legislatures. Moreover, the D.C. Circuit's
that a state decision to keep residential rates low would be responsible for any
opinion was premised on the fact that there was little residential competition of any kind
price squeezes, and said in paragraph 67 of its new Vermont order, "we do not
in Kansas and Oklahoma[62] — a premise that certainly does not hold here in South
agree that it would be in the public interest to deny a Section 271 application
Dakota, where CLECs enjoy an estimated 15.1 percent of the residential market, and a
simply because the local telephone rates are low.
single CLEC has already acknowledged provision of some 22,000 residential lines via its own facilities.

For all of these reasons it is hardly surprising that the state Commissions and fact-finders in Qwest's region have declined to accept AT&T's UNE price squeeze theory, both prior and subsequent to the D.C. Circuit's decision in *Sprint v. FCC*. In reviewing virtually the same argument from AT&T in the multistate proceedings, for 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.

to the exclusion of all other methods of entering the local market.[63] (The Facilitator also found AT&T's evidentiary showing factually deficient, even with respect to UNEs, as I discuss in the next section.) The state commissions participating in the multistate process have now endorsed the Facilitator's rejection of AT&T's argument.[64] Similarly, the Hearing Commissioner of Colorado has admonished AT&T that "other avenues of market entry are also available to entrants ... avenues that, "along with bundled services over UNE-P, will certainly maximize consumer and producer welfare."[65] The Colorado Hearing Commissioner also noted that even if there had been some factual basis for AT&T's claim, Qwest's application should not be delayed, because the culprit in any price squeeze would be the state laws and regulations holding residential retail prices artificially low, not any misconduct by Qwest.[66] AT&T's argument deserves no better reception in South Dakota.

b. There is simply no evidence to support the "price squeeze" argument

Assuming, *arguendo*, one could prove that a market is closed to competition by focusing on a single mode of entry — a notion that the Act and FCC rules clearly reject — there is simply no evidence to support that claim in South Dakota. As I outline below,

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63 *See* Multistate Facilitator's Public Interest Report at 5.

64 *See, e.g.*, Iowa Report at 15-16.

65 Colorado Order at 35.

AT&T's supposed cost and price evidence is wrong on its face and misleadingly incomplete, and the witnesses for Staff and Midco do not present any factual support for their assertions at all.

The only evidence that AT&T proffers to support its assertion that UNE-based entry is impossible is — by its own concession — a mere "thumb-nail comparison" of te supposed cost of a UNE platform against the retail price of unadorned basic residential local service (the IFR).[67] As I explain below, this is exactly the same type of bare-bones evidentiary showing that AT&T raised in the multistate workshops and in Colorado, and which has been rejected by decision makers in both proceedings as simplistic and woefully incomplete.[68] Remarkably enough, even as AT&T admits that it has merely sketched out a "policy argument" rather than provided "full-blown" cost evidence, it 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.").

fully evaluate its argument.[69] But that is the very point of these hearings: to build and evaluate facts. If AT&T chooses not to provide the full evidence necessary to support its claims, it can hardly complain if decision makers reject those claims as lacking a sufficient basis in fact.

AT&T's "thumb-nail comparison" is flawed on its face. AT&T's argument is that a CLEC cannot make a profit entering the local market with a UNE platform. But AT&T persistently refuses to look at *all* of the revenues the CLEC would earn by using that platform, which is what any prudent businessperson would do. Instead, AT&T limits its analysis to just one component of that revenue: the 1FR price. Missing from AT&T's analysis are the revenues that the CLECs would also receive from vertical features and toll services. (AT&T's failure to include feature revenues in its comparison is especially egregious given that it includes the cost of providing those very same features in its proffered UNE platform cost.[70] AT&T cannot have it both ways.) AT&T also ignores the amount that the CLEC would either receive in access charges or, if the CLEC was also the customer's long-distance carrier, the amount that it would save by not having to pay Qwest for access. Either way, the effect on the CLEC's bottom line — and its decision to enter the market — would be the same. In paragraph 71 of its new Vermont order, the FCC expressly held that a proper price squeeze analysis must consider all of these additional sources of revenue and savings.

[69] AT&T's Comments at 12.

[70] *See id.* at 9 (reporting the cost of a "UNE-P *with features*") (emphasis added).

AT&T's excuse for excluding these revenues is that the price of local service should not be cross-subsidized.[71] This is a non sequitur. The question at hand is not whether local services ultimately should or should not be cross-subsidized, but rather whether a CLEC can earn a positive margin in the South Dakota local market under the current retail rate structure as it now stands. And the answer to that question has to turn on *all* of the revenues for *all* of the services the CLEC could expect to provide the average residential customer, as well as *all* of the savings or revenues the CLEC would receive on access charges. AT&T's argument is akin to saying that an automobile manufacturer should not be permitted to consider the potential revenues on manufacturer-installed options when it decides whether to launch a new model.

AT&T does not explain how it derived its "UNE-P with features" cost in its comparison table on page 9; however, for purposes of argument, Qwest will accept AT&T's listed prices for recurring charges as reasonable representations of Qwest's Zone 1 (highest density/least cost) UNE-P rate and Zone 3 (lowest density/highest cost) UNE-P rates. But when those UNE-P costs are properly compared against *all* of the revenues a CLEC would receive from deploying a UNE platform, the margin analysis actually yields the opposite result from what AT&T suggests. The following table compares the average recurring revenue generated by a Qwest residential customer in 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.

prices currently available to any South Dakota CLEC under Qwest's October 2001 SGAT, currently in effect:

	UNE-P (with features), per month	Qwest Residential Retail Revenue, per month
Flat-Rated Residential Line	Zone 1: $22.16	Rate Group I: $18.15
End User Subscriber Line Charge (SLC)	N/A	~~$5.11~~ 5.48
Avg. IntraLATA Long Distance	N/A	~~$2.55~~ 2.43
Avg. Vertical Features	N/A	~~$4.51~~ 4.65
Avg. Intrastate Switched Access	N/A	~~$5.83~~ 4.44
Avg. Interstate Switched Access	N/A	~~$4.28~~ 3.19
Total Monthly Revenue	**$22.16**	~~**$40.53**~~ 38.34

This simple comparison suggests that an *average* margin of ~~$18.37~~ 16.18, or ~~83%~~ 73%, is available to any CLEC electing to provide alternative residential local exchange service in Sioux Falls on a UNE-platform basis. A CLEC could earn an even higher margin by targeting customers likely to purchase higher-margin vertical features and offering packages of services. For example, Qwest provides its popular CustomChoice package in South Dakota for $32.95 per month, which includes the residential access line and a package of over 20 calling features. Adding the SLC, average long distance average revenues, and average switched access revenues from the table above, the average CustomChoice customer generates ~~$50.72~~ 48.49 in monthly revenue. It is important to note that *all* of the CustomChoice features are available to CLECs as part of the basic UNE-platform recurring rate: there is no incremental UNE-platform charge for these features.

In other words, a CLEC electing to offer a residential service package similar to Qwest's CustomChoice package could expect margins for that service of $~~28.56~~ 26.33 per month, or ~~129%~~ 119%. Clearly, positive margins are available to CLECs wishing to serve the residential market via a UNE-platform.

In considering AT&T's identical argument in the multistate workshop, the Multistate Facilitator concluded that AT&T's UNE pricing argument was so "incomplete" and "simplistic" as to be "of inconsequential value in assessing the state of local markets in Qwest's local exchange serving areas."[72] He specifically found that AT&T's evidence and argument, which is virtually identical to what AT&T presents to this Commission, failed to persuade for at least four reasons:

> First, it did not recognize that local rates consist of much more than the basic monthly charge for service. Vertical features and intrastate toll revenues must be considered . . . . AT&T conceded that it had made no effort to measure or to take account of such other revenues. Second, AT&T's analysis did not consider the existence of resale as an option for certain service classes that do not lend themselves to economical competition through the use of UNEs. Third, AT&T did not provide any evidence of business rates; it did not even provide its simple comparison of basic rates for such service. Fourth, AT&T did not address the issue of what "subsidies" might be available to it in the event that it should serve qualifying residential lines through facilities-based competition.[73]

AT&T itself conceded on cross-examination in the multistate workshops that its price squeeze argument bore little resemblance to how an actual would-be entrant would 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.

revenue it would expect to capture from that customer against all of the costs that would be involved in serving that customer and make the judgment *on that basis* rather than comparing simply the UNE-P rate against the 1-FR rate,"[74] AT&T's witness, Ms. Mary Jane Rasher, confessed that she "would expect [the business] would look at the additional services" — a proposition the Facilitator volunteered was "self-evident."[75] Qwest agrees with Ms. Rasher's statement, and so have the Colorado Hearing Commissioner and other state commissions.[76]

That is not the end of AT&T's evidentiary errors, however. The second half of AT&T's table at page 9 suggests that CLECs are required to pay a UNE-platform nonrecurring charge of $271.94 when electing to use UNE-platform to serve residential customers, while Qwest's corresponding 1FR nonrecurring charge is $25.00. AT&T is flatly wrong. When a South Dakota CLEC wins an existing 1FR customer from Qwest using the UNE-platform, the nonrecurring charge to convert the Qwest 1FR to UNE-platform is only $0.66, since the conversion process is largely mechanized. These conversions represent the vast majority of access lines served by CLECs. If a CLEC wishes to provide a new access line as a new connect (customer is installing a new line which is not being converted from Qwest), the UNE-platform nonrecurring charge is

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74 Exhibit B, 6/26/01 MS Tr. at 223:17-22 (emphasis added).

75 *Id.* at 223:24 to 224:1.

76 Colorado Report at 34; Preliminary Report on Qwest's Compliance with the Public Interest Requirement, Montana Report at 7 (tentatively finding that "the record insufficiently compares relevant retail and wholesale rates and revenue").

$53.73. In other words, AT&T's proffered data for non-recurring costs are inflated by over 40,000 percent with respect to existing lines, and by 500 percent for new connects. In sum, AT&T's purported evidentiary showing is seriously incomplete, and what limited information AT&T does provide is totally inaccurate in important respects.

Although they offer no additional evidence of a UNE "price squeeze," witnesses for both Staff and Midco also address the issue in their affidavits. On behalf of Staff, Mr. Mark Stacy cites at page 30 of his testimony to the Multistate Proceeding and states "[t]he facilitator went on to comment on the evidence presented in the multi-state proceeding that clearly showed that Qwest's retail rates were lower than UNE prices, noting that this difference could be made up by CLECs by offering vertical features and in other ways, and that the CLECs could turn to resale as an option if UNE prices are set at such a level that retail service cannot be offered by CLECs profitably."[77] In light of my analysis above, it is clear that Mr. Stacy has significantly mischaracterized the findings of the Multistate Facilitator on this point. First, Mr. Stacy refers holistically to "retail" rates in his assertions, when there has never been a challenge by any party to the fact that business local exchange retail rates in South Dakota, even when considered on a stand-alone basis, exceed UNE prices. In fact, the Facilitator's 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").

Next, Mr. Tom Simmons, on behalf of Midco, asserts on pages 19 and 20 of his direct testimony that Midco is now actively serving residential customers in South Dakota via "its own hybrid fiber coax network, where available, or via Qwest's resold services," and that UNE local loop is not economically attractive to Midco since the 1FR recurring rate is generally lower than the current UNE loop rate.[78] However, Mr. Simmons neglects to offer an analysis demonstrating the relative margins Midco believes to exist in the three means of serving residential customers, nor does he assert that Midco cannot service residential customers profitably *via* UNE local loops.

It is clear that none of the parties has offered any evidence demonstrating a UNE "price squeeze" in South Dakota. More importantly, the success and desirability of the UNE-P entry strategy is immaterial in this case. Ample evidence in South Dakota confirms not only that there is no barrier to competition in the residential market, but that the market is fully open to competition and that South Dakota CLECs have entered it by way of facilities-based and other strategies.

2. Intrastate Access Charges

AT&T and Midco assert that the Commission should not find Qwest's section 271 application to be in the public interest because Qwest's *intra*state access rates are "exorbitant," "priced significantly above cost," and "provide it with a source to subsidize

78 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 (Mar. 18, 2002).

its other products and services."[79] However, these complaints about Qwest's *intra*state access charges have no connection to Qwest's section 271 application at all. The fact is that South Dakota is primarily a *one*-LATA state. Qwest can already provide intrastate long distance service throughout South Dakota without section 271 authority. When Qwest does receive section 271 authority for South Dakota, the only new services it will provide are *inter*state services, *i.e.*, calling from points within South Dakota to points outside of the state. These *inter*state services implicate only *inter*state access charges, which are exclusively within the FCC's jurisdiction. Put another way, none of the new services that Qwest could provide in South Dakota as a result of the grant of its section 271 application would involve the intrastate access charges about which AT&T is complaining. It would be entirely illogical to require intrastate access charge reform, as AT&T urges, as a pre-condition to approval of Qwest's section 271 application when there is no relationship between the application and intrastate access charges.

In any event, the FCC has now approved section 271 applications in ten states, and it has never once determined, or even suggested, that access charge reform is a precondition to section 271 relief. On the contrary, the FCC has expressly acknowledged that *Congress* did not intend access charge reform to be a precondition for granting a section 271 application: "Congress anticipated that some Bell Operating Companies ("BOCs") would obtain authorization under 47 U.S.C. 271 to originate in-

79 AT&T's Comments at 18; *see also* Simmons Testimony at 21.

region long-distance services *before the completion of access charge reform*."[80] In other words, Congress clearly expected that the section 271 process would not be delayed until access charge reform could be implemented.

Congress' safeguard against the types of hypothetical cross-subsidization concerns that AT&T raises was *not* to delay section 271 approval as AT&T and Midco's witness suggest, but rather, as the FCC noted, to "enact[] Section 272, which requires a BOC competing in the in-region long-distance market to create a separate long-distance affiliate and to recover access charges from that affiliate on the same basis on which it recovers such charges from unaffiliated carriers."[81] This non-discrimination safeguard "will enable a new entrant to compete effectively, assuming it is at least as efficient as the BOC and/or its section 272 affiliate."[82] While section 272 is in effect, it requires the BOC to actually charge the section 272 affiliate, and for the 272 affiliate to pay, the exact same access charges as any other interLATA carrier. After the sunset of section 272, the BOC is required to impute access charges if it chooses to offer interLATA long distance services directly. As the FCC noted in its recent order approving SBC's section 271 application in Arkansas and Missouri, section 272's safeguards are not

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80 Supplemental Order Clarification, *Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996*, 15 FCC Rcd 9587 ¶ 19 (2000) ("Supplemental Order Clarification").

81 Supplemental Order Clarification ¶ 19.

82 First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 ¶ 13 (1996) ("Non-Accounting Safeguards Order").

limited to the nondiscrimination and imputation provisions of section 272(e)(3); they also "discourage, and facilitate the detection of, improper cost allocation, and cross-subsidization between the BOC and its section 272 affiliate."[83] Qwest witnesses Judith Brunsting and Marie Schwartz state in their direct testimony in this proceeding that Qwest is prepared to comply with all of the safeguards Congress specified in section 272, including but not limited to section 272(e)(3).[84]

While AT&T suggests that these imputation requirements are an insufficient safeguard,[85] the FCC has repeatedly found — based on over a decade of experience with similar requirements — that these section 272 safeguards are adequate to protect against the types of price squeezes and cross-subsidies that AT&T hypothesizes. In its *Access Charge Reform Order*, the FCC specifically found that "independent (non-BOC) incumbent LECs have been providing in-region, interexchange services on a separated basis" for over ten years "with no substantiated complaints of a price squeeze."[86] Similarly, in the *Non-Accounting Safeguards Order*, the FCC noted that "[t]he structural

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*").

and nondiscrimination safeguards contained in section 272 ensure that competitors of the BOC's section 272 affiliate have access to essential inputs . . . on terms that do not discriminate against the competitors and in favor of the BOC's affiliate."[87] In addition, in its *Supplemental Order Clarification*, the FCC held that the 272 requirements "provide adequate safeguards against any effort by an incumbent to obtain an unfair competitive advantage in the long-distance market by discriminating against unaffiliated IXCs or by improperly allocating costs or assets between itself and its long-distance affiliate."[88] The Eighth Circuit expressly affirmed the FCC's holding that section 272 safeguards were "adequate . . . to prevent" any kind of "anticompetitive price squeeze when a LEC affiliate offers interexchange service," deferring to the FCC's "expertise in this highly technical area" and years of experience with independent LECs.[89] Other state commissions considering AT&T's intrastate access charge argument have agreed.[90] There is no basis for second guessing Congress' and the FCC's well-reasoned judgment in this regard.

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87 Non-Accounting Safeguards Order ¶ 13.

88 Supplemental Order Clarification ¶ 20.

89 *Southwestern Bell Tel Co. v. FCC*, 153 F.3d 523, 548 (8th Cir. 1998).

90 *See* Iowa Report at 19 ("It appears that Congress, itself, contemplated [the issue of intrastate access charges] and reasoned that the imputation requirements of section 272 provide an adequate safeguard"). In addressing AT&T's same access charge argument in Colorado, the Commission Chairman found that access charge reform is not a precondition to section 271 approval. *See* Colorado Order at 48.

Indeed, AT&T has contradicted its own suggestions regarding the futility of the imputation rules in other pleadings. For example, in response to Qwest's statement that its entry into the long distance market will promote competition to lower prices, AT&T argued in a set of comments filed in the Colorado section 271 proceeding that Qwest "cannot lower rates given that it must impute to itself the excessive access rates it charges to long distance competitors."[91] In other words, AT&T is admitting that the imputation rules of section 272 will effectively prevent Qwest from engaging in an access charge price squeeze by preventing it from lowering its prices to predatory levels.

AT&T's speculation that it will be "squeeze[d] . . . out of *both* the local and long 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.

[92] AT&T's Comments at 21.

charges is simply not true. The only evidence AT&T provides is a newspaper article from the *Dallas Morning News*, which AT&T alleges shows that a "squeeze" on competitors is "real and happening in Texas."[93] There is no merit to this claim; indeed, AT&T's own evidence proves exactly the opposite. AT&T argues that after approval of its section 271 application in Texas, SBC was able to engage in a predatory pricing scheme that allowed it "to capture nearly 20 percent of the Texas long distance market" by bundling its local service with a long distance offering, setting its interLATA rates close to its price for switched access, and squeezing competitors out of the market.[94] Even assuming that a different Bell company's pricing strategy in a different state could somehow be relevant to the public interest implications of Qwest's application in South Dakota, the very *Dallas Morning News* articles that AT&T cites contradict AT&T's claim that it is being squeezed out of the local market. In one article, an AT&T spokesman declares, "There is no doubt they [SBC] have taken some of our long-distance customers, but we have taken 325,000 of their local service customers. . . . We think we are doing pretty well."[95] Not only does this demonstrate that AT&T's fears regarding intrastate access charges and price squeezes are unwarranted, but it also demonstrates that section 271 approval has actually enhanced competition in Texas,

93 *Id.*

94 *Id.* at 21-22.

95 Vikas Bajaj, *SBC Raises Non Local Call Rates, Company Says Prices Better Reflect Costs*, Dallas Morning News, Feb. 2, 2001, attached to AT&T's Comments as Exhibit H.

fostering 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

or any other section of the federal Telecommunications Act authorizes state commissions to invent new structural separation requirements beyond the short list of separate affiliate obligations Congress enumerated. Congress enumerated two, and only two, separate entity requirements in Title II of the 1996 Act: for interLATA services and manufacturing in 47 U.S.C. § 272, which stops well short of full wholesale-retail structural separation, and for electronic publishing in 47 U.S.C. § 274, which has since sunset. Congress made compliance with section 272 rules an express condition of section 271 relief.[98] Given Congress' specificity regarding the limited separate affiliate requirements of section 272 and its express incorporation of those requirements in section 271(d)(3)(B), it strains credulity to suggest that an *even broader* authority to order separation for *all* local exchange services is hidden somewhere in section 271(d)(3)(C)'s public interest test. Indeed, in considering AT&T's same structural separation argument in Colorado, the Colorado Chairman explained "[t]he existence of § 272 structural separation requirements belie that broader structural separation of the ILECs is a legal requirement" and that "structural separation has never been required by the FCC for a grant of § 271 authority."[99]

Moreover, AT&T presents *no* factual evidence of any kind to demonstrate that structural separation would yield any benefits to consumers. Just as in Colorado and all the other states where AT&T has made (and lost) this argument, "AT&T . . . [does] not

98 *See* 47 U.S.C. § 271(d)(3)(B).

99 Colorado Order at 49. *See also* Multistate Facilitator's Public Interest Report at 10-11.

even begin to provide the factual record that would justify the structural remedy [it] advocate[s]."[100] In reality, structural separation would force South Dakota consumers to bear the costs of a duplicative corporate structure, wasteful administrative overhead, and an inefficient division of Qwest's integrated multistate operations into insular South Dakota-specific retail and wholesale entities. Going forward, structural separation would also decrease Qwest's incentives to improve its network and deploy innovative new services making use of that network. The FCC has phased out or relaxed all of its structural separation requirements over the past fifteen years for this very reason. As the FCC explained in connection with its decision to abandon the *Computer II* structural separation requirements for enhanced services, it is ultimately consumers who suffer as a result of structural separation's dampening effect on innovation: "innovation losses, resulting from the physical, technical, and organizational constraints imposed by the structural separation requirements, directly harm the public, which does not realize the 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

proposal have found, the costs of structural separation would likely "be passed along to consumers and CLECs in the form of higher rates and inflated UNE prices."[102] Given these enormous costs and consumer welfare losses structural separation would involve — as well as the absence of any legal basis for ordering it — it is hardly surprising that no state considering structural separation has adopted it.[103] This Commission should likewise decline to give any credence to AT&T's proposal.

> organizational inflexibility, is that structural separation prevents consumers from obtaining services and service combinations that they desire.

Id. ¶ 91.

102 Colorado Order at 58.

103 Maryland, Virginia, Illinois, Pennsylvania, and Florida have already rejected proposals for structural separation. *See, e.g.*, Order Granting Motion to Dismiss, *Joint Petition of Cavalier Telephone L.L.C., Network Access Solutions, LLC, Covad Communications Company and AT&T Communications of Virginia, Inc. for Structural Separation of Verizon Virginia Inc. and Verizon South Inc.*, Case No. PUC010096 (June 26, 2001); Greg Edwards, *Rivals' Request That Verizon Be Dismantled is Dismissed*, Richmond Times-Dispatch, June 28, 2001, at B15 (discussing Maryland and Virginia decisions); Wayne Kawamoto, *Structural Separation Sunk by Illinois Legislature*, CLEC-Planet, June 8, 2001; *Structural Separation of Bell Atlantic-Pennsylvania, Inc., Retail and Wholesale Operations*, Opinion and Order, Docket No. M-00001353, March 22, 2001; *Joint Petition of Nextlink Pennsylvania, Inc.*, Opinion and Order, Docket No. P-00991648 (September 30, 1999), *aff'd*, *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utilities Commission*, 763 A.2d 440 (Pa. Comm. Ct. 2001); *Petition By AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for Structural Separation of BellSouth Telecommunications, Inc. into Two Distinct Wholesale and Retail Corporate Subsidiaries*, Dkt. No. 010345-TP (Nov. 6, 2001) ("Florida PSC Dismissal Order") (dismissing AT&T's petition seeking structural separation).

While the Pennsylvania PUC did impose a code of conduct governing affiliate relationships with lesser separation requirements, that commission recently

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 disobeyed 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 24-25. 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*

FCC cases cited by AT&T involved a good-faith view by U S WEST (and, in two cases, by Ameritech as well) that an offering did not involve it in the provision of interLATA service.[106] None of these cases involved anything more than a dispute about the scope

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boundary," so that Qwest could provide long distance service throughout the state. *Id.* at 27 (emphasis added). Not only does this incident lack any relationship to South Dakota, it is clear even from AT&T's characterization that Qwest took no action other than to request the Arizona Commission to reconsider the LATA boundaries in the state.

106 The calling card programs developed by U S WEST and Ameritech, for example, involved whether these BOCs would be deemed to be "provid[ing]" interLATA service by marketing a calling card for use with an independent third party provider's interexchange service. See Memorandum Opinion and Order, *AT&T Corp., v. U S West Communications*, Inc., File No. E-97-28 et al., DA 01-418 (Chief, Enforcement Bureau, rel. Feb. 16, 2001).

U S WEST's National Directory Assistance program involved the question whether providing nonlocal directory assistance from an out-of-region data base — which would have been permissible under section 271(g)(4) had the data base been owned by U S WEST itself — so qualified where the data base was owned by a third party. See Memorandum Opinion and Order, *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252 (1999) ("*DA Order*"). The FCC has specifically rejected AT&T's argument that the BOCs' provision of national directory assistance services should cause them to fail the public interest test. *See* Bell Atlantic New York Order ¶ 445. Qwest was allowed to provide non-local directory assistance in-region where Qwest owned the database. The only reason that the FCC disallowed Qwest's provision of non-local directory assistance out-of-region was because Qwest did not actually own the out-of-region database. See *DA Order.*

Finally, the Buyer's Advantage case involved an analysis similar to that in the calling card programs case, of whether the prohibition in section 271 against "provid[ing]" interLATA services could be read to extend to programs by U S WEST and Ameritech in which those BOCs marketed (but did not transmit) an independent third party provider's interexchange service. On review, the D.C. Circuit upheld the FCC's "case-by-case judgment[]" that it could be so read as reasonable (and therefore entitled to judicial deference). *U S WEST Communications, Inc. v. FCC*, 177 F.3d 1057, 1061 (D.C. Cir. 1999).

of the term "provide" as used in section 271 — which, as the D.C. Circuit recognized in the Buyer's Advantage case (AT&T's third example), has no plain meaning in this context.[107]

Furthermore, whatever the merits of these past statutory disputes, they certainly have no relevance today. There is no indication that Qwest's markets are not *now* sufficiently open to competition. The FCC has specifically recognized that the post-merger Qwest has "a greater incentive than the pre-merger U S West to satisfy section 251 so that it can comply with section 271 and re-enter the in-region long distance market and serve Qwest's national corporate customers that require service in the U S WEST region."[108] The South Dakota workshop process is occurring only because Qwest is in fact committed to pursuing the full section 271 process. Whether Qwest has sufficiently opened its markets today to competition will be determined on the record developed in the checklist compliance portion of this proceeding, not by 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).

and other state commissions have rejected AT&T's identical contention in their respective proceedings that these FCC matters presented a public interest concern.[109]

b. Alleged violations of section 271 in the merger Auditor's Report

AT&T also alleges that reviews of Qwest's April 16, 2001, Auditor's Report and merger approval certification filed with the FCC likewise demonstrate that Qwest has violated section 271, because Qwest billed and branded in-region interLATA transport services as its own services.[110] This matter is currently under review by the FCC, which is the appropriate forum for resolving any issue relating to the audit, and not a section 271 proceeding. The Commission made clear in the *Verizon Connecticut Order* that section 271 dockets are not the place to review BOC merger audit findings.[111] In any event, AT&T is grasping at straws: This matter involved a simple billing error, not a violation of section 271. As Qwest has stated to the FCC, the error involved services provisioned by Touch America (not Qwest). The services were erroneously billed in the name of Qwest. Qwest did not provision the services, did not market them or obtain

[109] *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.

[110] *See* AT&T's Comments at 26.

[111] *See* Memorandum Opinion and Order, *Application of Verizon New York 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 Connecticut*, 16 FCC Rcd 14147 ¶ 79 (2001) ("Verizon Connecticut Order") (noting that "Verizon's compliance with the conditions of the Bell Atlantic/GTE merger ... [would] be appropriately addressed in the Commission's detailed review of the audit findings").

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

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. §

proper regulatory agency to consider the complaint and the complaint's significance vis-à-vis Qwest's expected 271 bid. The FCC has made clear that disputes currently being considered in complaint dockets at the FCC are best resolved in those other dockets, not brought into the section 271 process.[115] Thus, the Touch America complaint is not a public interest issue in the context of this section 271 proceeding.

153(29) — does not itself constitute the provision of "telecommunications." Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 ¶ 157 (1997), *aff'd sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

In addition, as Qwest has maintained, the FCC has already approved the Qwest conduct at issue. *See* Answer of Defendants Qwest Communications International Inc., Qwest Corporation, and Qwest Communications Corporation, *Touch America, Inc. v. Qwest Communications International Inc.*, File No. EB-02-MD-003 (Mar. 4, 2002). In Qwest's formal Divestiture Compliance Report, Qwest detailed the aspects of its plans for complying with section 271 prior to the merger, and specifically stated that it was not planning to unwind any pre-existing sales of IRUs "both for the conveyance of dark fiber and for the conveyance of lit fiber capacity" and that it "intend[ed] to continue selling similar telecommunications facilities in the future." Qwest Divestiture Compliance Report, *Qwest Communications International and U S WEST, Inc.*, CC Docket No. 99-272, at 28-30 (filed Apr. 14, 2000). The FCC subsequently approved Qwest's divestiture plan, noting "[b]ased upon the description of the customers, services and assets being transferred to Touch America" it concluded that the "proposed divestiture . . . will ensure that Qwest will not provide prohibited in-region interLATA services." Memorandum Opinion and Order, *Qwest Communications International Inc. and U S WEST, Inc.*, 15 FCC Rcd 11909 ¶¶ 5, 13 (2000).

115 *See* Verizon Connecticut Order ¶ 79 (noting that concerns with "Verizon's compliance with the conditions of the Bell Atlantic/GTE merger . . . [should] be appropriately addressed in the Commission's" merger audit proceedings, not the public interest inquiry).

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 numb[illegible]r 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.

equally irrelevant to the public interest inquiry in South Dakota, they should be disregarded here as well.

e. The Minnesota systems testing dispute

AT&T also attaches to its Verified Comments a Minnesota ALJ's interim recommended decision on a systems testing dispute in that state.[121] In short, this is nothing more than an attempt to turn a systems testing dispute that AT&T is pursuing under checklist item 2 into a public interest issue as well. As I note below, AT&T has already *raised and lost* this issue in both the checklist item 2 and public interest inquiries in other states and before the Multistate Facilitator.

The ALJ's recommended decision arose out of AT&T's request to perform extensive systems testing on one thousand UNE-P lines in Minnesota. Thus far, AT&T has requested SGAT language entitling it to the very same testing in the checklist item 2 workshops of the other states in which Qwest is seeking section 271 approval — including South Dakota. Qwest has consistently opposed AT&T's request (as it did in Minnesota and the Multistate Proceeding[122]) on the grounds that: (a) the requested testing was duplicative of the ROC OSS testing already underway, (b) the requested testing was unnecessary in light of other testing provided for in the SGAT, and (c) since AT&T apparently had no plans to enter the local market through substantial use of

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121 *See* AT&T Comments at 27-31 and Exhibit L.

122 Liberty Consulting Group, Unbundled Network Element Report, *In the Matter of Qwest Corporation's Motion for an Alternative Procedure to Manage Its Section 271 Application* (Aug. 20, 2001) ("Multistate Facilitator's UNE Report"), at 29.

Qwest's unbundled loops, it had no reason to request that testing other than to delay Qwest's application.

The SGAT language proposed by AT&T has also been rejected in a growing number of state section 271 dockets.[123] The Facilitator of the Multistate Proceeding, for 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).

that the OSS test would "comprehensively address" AT&T's stated concerns with Qwest's OSS (including its "ability to handle commercial volumes of transactions"); and that AT&T's specific testing request "could prove disruptive to the OSS test procedures now underway."[124] The Facilitator also noted that "AT&T presented no argument or evidence that its near-term market-entry plans require any such test to be performed immediately."[125] In short, the Facilitator said, "AT&T failed to demonstrate the need for such testing now, given the pendency of the comprehensive ROC OSS testing, with which AT&T's proposed testing could interfere."[126]

Although Qwest continues to object to the specific OSS testing that AT&T wants to include, Qwest has always been willing to adopt SGAT language clarifying when CLECs can obtain individualized testing going forward. Accordingly, in response to AT&T's concerns about comprehensive production testing, Qwest added a provision to its SGATs specifically designed to prevent such a dispute from ever arising. In the

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124 Multistate Facilitator's UNE Report at 30.

125 *Id.*

126 *Id.* at 6. AT&T's claim that Qwest "deliberately fabricated evidence" to support its contention that AT&T had no local entry plans is not merely false, but deeply ironic. AT&T's Comments at 29. Although the premise of AT&T's complaint in Minnesota was that it had plans to enter the local market, or was at least seriously considering such entry, AT&T failed to submit in the Minnesota proceeding any evidence to support that premise, and succeeded in blocking Qwest's efforts to take discovery to disprove it. Indeed, AT&T blocked Qwest's effort to submit into the record in Minnesota evidence that members of AT&T's Law and Government Affairs organization had told Qwest contemporaneously with its testing request that AT&T was not serious about entering local markets in states other than those in which it had already entered.

SGATs of each of the seven states participating in the Multistate Proceeding and Nebraska, for example, Qwest added the following language to § 12.2.9.8 of the SGAT:

> [U]pon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the dispute resolution procedures of this Agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.[127]

This language was originally proposed by the Multistate Facilitator, who suggested that the proposed language "should preclude such a dispute in the future."[128] Nevertheless, AT&T has subsequently requested that Qwest *not include* this language in its SGAT in states where it has not been ordered at this time including South Dakota and certain 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.

additional protections, Qwest has acceded to AT&T's request. AT&T's decision that these protections are unnecessary after all does not change the fact that Qwest was willing to resolve the UNE-P testing dispute in a manner that would have prevented AT&T's Minnesota-specific dispute from ever even arising in South Dakota. Qwest stands ready to add this language that would make testing available to competitors in this state to its South Dakota SGAT.

Not content to address this issue in the context of checklist item 2, AT&T persists in raising it a second time here in the public interest inquiry, where AT&T is trying to recycle its Minnesota UNE-P testing complaint into an alleged example of Qwest misconduct. AT&T's gambit has been rejected in every other state to rule so far. The Multistate Facilitator, for example, found that the Minnesota dispute: (1) "do[es] not provide substantial evidence of a predictive, patterned refusal or inability of Qwest to comply with its wholesale service obligations," and (2) does not constitute "the kind of unique circumstances that the FCC believes it takes to support a finding that Qwest's entry into the in-region, interLATA market would contravene the public interest."[130] The Facilitator further noted that the underlying question was "the subject of a good-faith dispute" in the checklist item 2 workshops.[131]

130 Multistate Facilitator's Public Interest Report at 9.

131 *Id.*

Specifically acknowledging AT&T's recent proffer of the Minnesota ALJ's interim order in Colorado,[132] the Chairman of the Colorado PUC likewise declared that this example, together with the rest of AT&T's evidence of alleged misconduct, failed to demonstrate "any 'pattern' of anticompetitive behavior in Colorado that is foreseeable to take place in the future or implicate welfare enhancement."[133] Indeed, the Chairman went on to say that AT&T's efforts merely "highlight[] the heightened expectations that parties have in a public interest inquiry to sling as much as they can on the wall to see what will stick."[134] This issue clearly does not. The findings of the Multistate Facilitator and the Chairman of the Colorado PUC do not merely cast doubt upon the overheated statements in AT&T's submission about Qwest's conduct — they expressly and correctly refute them.

Moreover, even the Minnesota complaint itself is now moot on the facts. Qwest has now completed the testing that AT&T requested in Minnesota. Fully bearing out Qwest's objection that the testing AT&T wanted would simply duplicate the work being performed in the OSS test, the Minnesota UNE-platform test did not find anything that was not also found in the ROC OSS test and the Arizona OSS test, or that necessitated any changes in Qwest's OSS at all. Subsequent events also confirmed Qwest's good-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.

entering the residential market in Minnesota via UNEs: after the test was complete, AT&T admitted in newspaper interviews that it did not plan to enter the residential market in Minnesota after all.[135]

Finally, as noted above, the ALJ's interim decision plainly does not concern any complaint or dispute *in South Dakota*. None of the events at issue occurred in this state, and AT&T has never asked Qwest to conduct the same testing in South Dakota that it demanded in Minnesota. AT&T does not even bother trying to tie its Minnesota allegations to any conduct in South Dakota. Indeed, Qwest had provisioned 17,922 UNE-P loops in South Dakota as of December 31, 2001, evidencing that Qwest's systems in the state are functioning properly. AT&T's allegation thus says nothing about whether granting Qwest's interLATA application in South Dakota would serve the public interest.

f. CLEC market woes

Perhaps AT&T's oddest claim is that "facilities-based competition is [not] likely to provide a significant, viable source of competition for Qwest during any foreseeable timeframe" because "the CLEC industry now faces significant obstacles in raising the

135 See Steve Alexander, *Judge Recommends Qwest Be Fined for Impeding Local Service by AT&T; But AT&T Says It Won't Enter Market*, Star Tribune, February 26, 2002, at D3. While AT&T did an "about face" the next day and stated that it did plan on entering the residential market in Minnesota "once an agreement can be made with Qwest," *Clarification*, Star Tribune, February 27, 2002, Qwest believes that AT&T's initial statement is a strong indicator of the company's true intentions. Those intentions confirm Qwest's initial opposition to the test.

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).

> Sprint also argues that the . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments. Factors beyond the control of the applicant, such as a weak economy, individual competing LEC and out-of-region BOC business plans, or poor business planning by potential competitors can explain the lack of entry into a particular market.[138]

Thus, this is not simply Qwest's argument (as AT&T has suggested), but an unequivocal statement from the FCC. Just as "incumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin,"[139] nor are they required to guarantee their competitors stable stock prices in the face of a general NASDAQ rout. The fact that some South Dakota CLECs may theoretically choose to scale back entry plans in light of their own financial troubles or current economic conditions (although it does not appear that any have done so) also has no bearing on whether Qwest has taken those actions within its power to open up its market; as the FCC has recognized repeatedly, "individual competitive LEC entry strategies" are "beyond a BOC's control."[140]

The truth is that a number of factors explain the CLECs' troubles in the capital markets, over which Qwest has no control, including: misdirected or insufficiently focused business plans, an overall economic slowdown (which leads to the drying up of funding sources and higher lending costs), inexperienced management, too many

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138 *Verizon Rhode Island Order* at ¶ 106.

139 SBC Kansas/Oklahoma Order ¶ 65.

140 Verizon Pennsylvania Order ¶¶ 9, 126.

competitors with the same business plan vying for the same market segment, and unmanaged growth. If CLECs believe that Qwest has played a role in their troubles by (in their view) failing to open its markets, those beliefs will be tested directly in the hearings evaluating Qwest's compliance with the competitive checklist. The financial health of the capital markets and of the CLECs in general should not be allowed to insinuate itself into the public interest test.[141]

IV. CONCLUSION

Through my direct and rebuttal testimony, I have demonstrated that Qwest is in full compliance with the Track A and public interest requirements of section 271. Numerous CLECs are collectively serving residential and business customers either exclusively or predominantly over their own facilities in South Dakota, as required by Track A. The substantial level of competition in South Dakota — far more than in other states where the FCC has granted section 271 authorization — confirms that Qwest's

[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.

competitors with the same business plan vying for the same market segment, and unmanaged growth. If CLECs believe that Qwest has played a role in their troubles by (in their view) failing to open its markets, those beliefs will be tested directly in the hearings evaluating Qwest's compliance with the competitive checklist. The financial health of the capital markets and of the CLECs in general should not be allowed to insinuate itself into the public interest test.[141]

IV. CONCLUSION

Through my direct and rebuttal testimony, I have demonstrated that Qwest is in full compliance with the Track A and public interest requirements of section 271. Numerous CLECs are collectively serving residential and business customers either exclusively or predominantly over their own facilities in South Dakota, as required by Track A. The substantial level of competition in South Dakota — far more than in other states where the FCC has granted section 271 authorization — confirms that Qwest's

[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.

local market in the state is wide-open, and that there are no "unusual circumstances" thwarting entry. The parties opposing Qwest in this proceeding have failed to present any legitimate reason, backed up by factual proof, why Qwest should not be found to satisfy the public interest requirements of section 271.

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

LORI L. WHITE
COMMISSION EXP.
NOTARY
PUBLIC
STATE OF W

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 $30.23 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 nonrecurring.

MR. MUNN: When you say, with input from Qwest, wouldn't that also be true with input from any other party, including AT&T, that wanted to participate in that process?

MS. RASHER: I believe that is true. And the focus of my comments was addressed to the commissions to look at the prices that are being charged.

MR. MUNN: The -- you mentioned disparity or something that you found, I believe, unfair with respect to the 1-FR retail rate and also the rates for UNE-P or some type of unbundled network element service that CLECs purchase. Is that -- did you generally discuss those terms?

MS. RASHER: I don't think I used the term unfair. I believe I gave an example of the difference in the prices that CLECs are charged for UNE-P versus the Qwest retail 1-FR rate and noted the great disparity between those [illegible]ces.

MR. MUNN: Is it your understanding that UNE rates are set by the commissions through cost dockets addressing the TELRIC rate for particular unbundled network elements?

MS. RASHER: I'm not a cost person, so I

don't have enough knowledge to answer all of the proceedings that are involved during a cost case.

MR. MUNN: Fair enough. If you don't know, you can just tell me and we can move on.

Is it your understanding that Qwest would be able to set the unbundled network element rates in any of the seven states just on its own?

MS. RASHER: Again, I'll qualify that with I am not a cost person. My understanding is, as with the access rates that we discussed, that those are set -- finally set by the state commissions.

MR. MUNN: So it also --

MS. RASHER: So my answer would be, no, I don't believe that Qwest can set its own UNE-P rates independent of a commission.

MR. MUNN: Would your answer be the same with respect to the 1-FR rate?

MS. RASHER: Yes, it would be.

MR. MUNN: When you were comparing the 1-FR to the, say -- strike that.

Would you agree with me that AT&T has recently increased its intraLATA long distance prices to its customers?

MS. RASHER: That is a very broad question. AT&T has many, many calling plans available

DR. GRIFFING: Okay, fine.

MR. ANTONUK: Just to demonstrate the point, if -- if Party A begins with a market share of 90, and Party B begins with a market share of 10, Party B has a 10 percent market share.

If over the period we're concerned about, Party A, which was the 90 percent party, has a growth of 10 -- these are customers now, not shares -- and Party B has a growth of 3. Party B's share of the market will actually have grown from 10 percent to 11 percent; and I think that's really the point Dr. Griffing was trying to make.

DR. GRIFFING: Okay.

My second question referred to the prices for nonrecurring prices for 1-FRs versus the retail prices, do you know if any of those price -- well, the retail prices, would reflect deaveraging?

MS. RASHER: I'm sorry?

DR. GRIFFING: Deaveraging, zone pricing?

MS. RASHER: I'm not aware. I was provided this information from our cost support group. So I am not aware of the individual states and if those included deaveraged rates.

MR. ANTONUK: What -- do you know, then, what the $30 and some odd cents for the UNE-P was in

Idaho; was that -- was that a statewide single rate, was that a rate for a certain kind of zone or don't you know?

MS. RASHER: I don't know. I was given one rate for each state from our cost support group.

MR. ANTONUK: Okay -- go ahead.

DR. GRIFFING: So it's -- if they weren't deaveraged rates but subsequently deaveraged rates were put in place for retail rates, that $30 in urban, dense areas would be likely declining; and in other areas of the states it would -- you will get probably some middle range, and then a very high range for the very sparsely populated areas -- the three zones being the requirement. Deaveraging might go a long way toward solving this mismatch of wholesale rates and retail rates.

MS. RASHER: I understand your point. And I would agree with your point in theory. I don't know -- I don't have sufficient ckground to tell you if that was how those rates were derived, if they included deaveraging.

DR. GRIFFING: Okay.

MR. ANTONUK: Are you ready to move on, because I had some questions on this area?

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 UNE-P; 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

to look at is that the cost to provide that is the same for the 1-FR as it is on the UNE-P. And the Act didn't say, CLECs, you should come into the market this way or with this product only; it should be that the basic underlying pinnings of the product -- and then if the CLEC wants to add additional functionality and incur additional cost to provide some finished service to its customers, the underlying costs between what Qwest is using to provision its 1-FR versus a UNE-P the costs should be the same.

MR. ANTONUK: Well, I thought your testimony was that -- that you would not pay $30 to capture a customer for whom basic service costs $10; and I guess what I'm questioning --

MS. RASHER: That's true.

MR. ANTONUK: -- whether that's at all a way a business would make a decision. Would a business not look at all the revenue it would expect to capture from that customer against all of the costs that would be involved in serving that customer and make the judgment on that basis rather than comparing simply the UNE-P rate against the 1-FR rate?

MS. RASHER: I would expect --

MR. ANTONUK: Is that self-evident?

MS. RASHER: I would expect they would

look at the additional services, but when you are starting with such a disparity already --

MR. ANTONUK: Did your people tell you what the average revenue per residential line, for example, is in Idaho?

MS. RASHER: No, I don't have that information.

MR. ANTONUK: Did they tell you what Qwest's average revenue per residential line was in Idaho?

MS. RASHER: No.

MR. ANTONUK: Did they tell you what the average basic service rate for business service is in Idaho?

MS. RASHER: No. And the example in my testimony was specifically targeted at the residential market.

MR. ANTONUK: Okay.

Dr. Griffing?

DR. GRIFFING: Moving to a new topic, you mentioned that you acknowledge that 271 sets no minimum standards for market penetration that commissions can use in judging whether a market is open; yet you suggested that such penetration rates should be used as a guide to -- well, somehow judge when the markets

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FACSIMILE COVER PAGE

THIS TRANSMITTAL CONSISTS OF 6 PAGES, INCLUDING THIS COVER PAGE.

Date: April 19, 2002

PLEASE DELIVER TO: Ms. Debra Elofson
Executive Director - Public Utilities Commission
605/773-3809

FROM: Gregory J. Bernard, Esq.

Comments:

Please call (605) 348-7516 if transmiss n is incomplete for any reason. Facsimile number is (605) 348-5..2.

EXHIBIT
Qwest
3
cw

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DAVID E. MORRILL

April 19, 2002

[e-mail: gjbernard@mtnlaw.com]

Via Facsimile & U.S. Mail
Ms. Debra Elofson
Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

RE: Black Hills FiberCom/US West 271 Application
TC01-165
Our File No. BH-1231

Dear Ms. Elofson:

Please find enclosed for filing the original and ten (10) copies of Black Hills FiberCom, LLC's Responses to Qwest Corporation's Data Requests for Black Hills FiberCom with regard to the above-referenced matter.

By copy of this correspondence to opposing counsel, I am providing them with a copy of the same which is intended as service upon them via e-mail and first class mail.

Please call if you have any questions.

Sincerely,

G. J. Bernard

Gregory J. Bernard

GJB/mkt
Enclosures
cc: Clients
Service List

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

BLACK HILLS FIBERCOM, L.L.C.'S RESPONSES TO QWEST CORPORATION'S DATA REQUESTS FOR BLACK HILLS FIBERCOM

COMES NOW, Ron Schaible, of Black Hills FiberCom, L.L.C., and answers Qwest Corporation's Data Requests for Black Hills FiberCom as follows:

REQUESTS FOR INFORMATION/PRODUCTION OF DOCUMENTS

Request No. 1: Please provide the number of end user residential lines you currently serve in Qwest service territory in South Dakota through facilities entirely owned by you. For purposes of this Request, the term "facilities" includes, but is not limited to copper, coaxial, or fiber facilities.

NOTE: this Request does not seek information regarding access lines served via unbundled network elements (UNEs).

Response: 26,035

Request No. 2: Please provide the number of end user business lines you currently serve in Qwest service territory in South Dakota through facilities entirely owned by you. For purposes of this Request, the term "facilities" includes, but is not limited to copper, coaxial, or fiber facilities.

NOTE: this Request does not seek information regarding access lines served via unbundled network elements (UNEs).

Response: 13,412

Request No. 3: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using services purchased from Qwest services for resale.

Response: 0

Request No. 4: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using services purchased from Qwest services for resale.

Response: 0

Request No. 5: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using stand-alone unbundled loops purchased from Qwest. For purposes of this Request, the term "stand-alone unbundled loops" does not include UNE-Platform services.

Response: 5

Request No. 6: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using stand-alone unbundled loops purchased from Qwest. For purposes of this Request, the term "stand-alone unbundled loops" does not include UNE-Platform services.

Response: 225

Request No. 7: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using a finished package of unbundled network elements (often identified as "UNE-Platform" or "UNE-P") purchased from Qwest.

Response: 0

Request No. 8: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using a finished package of unbundled network elements (often identified as "UNE-Platform" or "UNE-P") purchased from Qwest.

Response: 0

Dated this 19th day of April, 2002.

Ron Schaible

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On the 19th day of April, 2002, before me, the undersigned officer, personally appeared Ron Schaible, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public, South Dakota
My Commission Expires: 6-07-2006

CERTIFICATE OF SERVICE

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of Black Hills Fibercom, L.L.C.'s Responses to Qwest's Data Requests to Black Hills FiberCom was mailed by first-class mail, postage prepaid thereon, to the following:

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by depositing the same in the United States Mail at Rapid City, South Dakota, this 19th day of April, 2002.

Gregory J. Bernard

CONFIDENTIAL

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CONTINUATION

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South Dakota Track A/Public Interest Summary

Dave Teitzel

April 22, 2002

EXHIBIT
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South Dakota Track A/Public Interest Summary

Dave Teitzel

April 22, 2002

EXHIBIT
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Overview

- Qwest's Track A and Public Interest evidence is organized around the format outlined in the FCC's Ameritech-Michigan Order
  - Track A: (p. 9 Teitzel direct)
    - Evidence of binding interconnection agreements.
    - Provision of access to and interconnection with unaffiliated CLECs.
    - Provision by competitors of service to residential and business customers.
    - Offering of service by CLECs via their own facilities, UNEs or in combination with resale.
  - Public Interest: (p. 33 Teitzel direct)
    - Determination that local markets are open.
    - Assurance of future compliance.
    - Identification of "unusual circumstances" contrary to the public interest.

Track A

1) Interconnection Agreements. (Teitzel rebuttual, Exhibit A)

- As of 8/31/01, 26 approved wireline interconnection agreements in effect.
- After 8/31/01, 4 additional wireline interconnection agreements approved.
- Includes prominent South Dakota CLECs such as Black Hills FiberCom, Midcontinent, McLeodUSA, Ionex, Northern Valley, AT&T.

2) Access and interconnection with unaffiliated CLECs. (Teitzel direct, Confidential Exhibit DLT-4)

- Multiple CLECs purchasing wholesale elements and interconnection from Qwest.
- CLECs include, at minimum, each of those listed above.

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Track A

3) Provision of service to residential and business customers.

- Black Hills FiberCom services available in Rapid City, Black Hawk, Piedmont, Sturgis, Lead, Deadwood, Bell Fourche and Whitewood to residential and business customers. (Teitzel direct, Exhibit DLT-5)
- Black Hills FiberCom now serves approx. 22,000 residential lines and approx. 17,000 business lines for a total of approx. 39,000 lines. (p. 7, Teitzel rebuttal).
- Midco services available in Rapid City and other Black Hill communities to residential and business customers. (Teitzel direct, Exhibit DLT-5)
- Northern Valley Communications services available to Aberdeen and surrounding communities: $14.50/month residential, $27.95/month business (Teitzel direct, Exhibit DLT-5)
- Four resellers serving 5,648 residential lines and 11,153 business lines. (Teitzel direct, Exhibit DLT-6)
- No market share/geographic penetration test required by FCC (p. 13, Teitzel direct)
  - So. Dakota CLEC share estimates range from 16.0% to 22.8%. (p. 22, 25, 28 and 30, Teitzel direct)

Track A

4) Offering of service by CLECs via their own facilities, UNEs or in combination with resale.

- Black Hills FiberCom publicly reports all residence customers served via its own facilities and most business customers served via FiberCom facilities. (p. 7, Teitzel rebuttal)
- Confidential data request responses confirm additional CLECs providing facilities-based service.
- As of 8/31/01, six CLECs purchasing a combined total of 17,803 unbundled loops (stand alone and platform). (Teitzel direct, Exhibits DLT-4 and DLT-6)
- As of 8/31/01, four resellers providing a combined total of 16,801 lines in So. Dakota (Teitzel direct, Exhibits DLT-4 and DLT-6).

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Public Interest

1) Determination that local markets are open.
   - FCC has found (New York, Texas Kansas, Oklahoma, etc) that compliance with 14 point checklist is strong evidence that local markets are open. (p. 34, Teitzel direct)
   - Track A evidence clearly shows CLECs are present in South Dakota and have captured a significant number of local exchange customers via all three means of entry identified in Section 271.

2) Assurance of future compliance.
   - Qwest Performance Assurance Plan. (p. 36, Teitzel direct)
   - FCC enforcement authority under Section 271(d)(6). (p. 36, Teitzel direct).

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Public Interest

3) Identification of any "unusual circumstances."
   - FCC has identified factors insufficient to warrant denial of 271 petitions: (p. 38, Teitzel direct)
     - Low percentage of lines served by CLECs.
     - Concentration of competition in densely populated areas.
     - Minimal competition for residential service.
     - Modest facilities-based investment.
     - Prices for local exchange service at maximum permissible levels under price caps.
   - AT&T, Midco and Staff suggest other "unusual circumstances" exist in South Dakota that are contrary to the public interest, including UNE-P pricing, switched access rates and lack of structural separation. (p. 21-49, Teitzel direct)

Public Interest

Qwest UNE-P/Residential Retail Comparison: (p. 35, Teitzel rebuttal)

	UNE-P (w/ features) Per month	Qwest Residential Revenue Per Month
Flat-rated residential line (Zone 1)	$22.16	$18.15
Avg. Subscriber Line Charge	N/A	5.48
		$23 63
Avg. intraLATA long distance	N/A	2.43
Avg. vertical features	N/A	4.65
Avg. intrastate switched access	N/A	4.44
Avg. interstate switched access	N/A	3.19
TOTAL	$22.16	$38.34

(Average retail revenue values based on 5/2001 through 3/2002 reporting period and are based on booked revenue)

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Public Interest

Qwest Switched Access pricing: (p. 40-46, Teitzel rebuttal)

- FCC has approved 271 applications in 10 states, and has not identified access reform as a precondition to approval.
- South Dakota is a single-LATA state, with Qwest currently providing competitive intrastate long distance services. Section 271 only addresses interLATA service.
- Section 272 enacted to address pricing concerns, and requires that Qwest's long distance subsidiary must pay exactly the same access charges that are assessed to any interexchange carrier.

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Customer Benefits

- One stop shopping. (p. 39, Teitzel direct)
- Additional local, long distance options. (p. 40-42, Teitzel direct)
  - Competition has driven prices downward in New York, Texas.
  - AT&T, WorldCom, Sprint increased interLATA prices on 2/1/02. Qwest entry will represent another alternative for South Dakotans.

CONTINUATION

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I. IDENTIFICATION OF AFFIDAVIT

Barbara Brohl states as follows:

My name is Barbara Brohl. I am employed by Qwest Information Technologies, Inc. as a Director – Legal Issues in the Information Technologies (IT) Wholesale Systems Organization. My business address is 930 15th Street, 10th Floor, Denver, Colorado.

Currently, my responsibilities include identifying and managing regulatory issues surrounding Operations Support Systems, as a result of the Telecommunications Act of 1996, FCC orders, state commission decisions, and other legal and regulatory matters. I have testified before federal and state regulatory bodies in arbitration cases, rulemakings and complaint proceedings concerning conformance with state and federal telecommunications laws and regulations. Prior to my current position, I managed the Information Technologies department's compliance with the restrictions of the Modification of Final Judgment and the requirements of Open Network Architecture. During that time, I became certified by the Institute for Certification of Computing Professionals (ICCP) as a Certified Computing Professional (CCP), and then received a Bachelor of Science degree in Business/ Computer Science from Regis University in 1991. In 1995, I received a Juris Doctorate degree from the University of Denver, School of Law. I then left U S WEST, now Qwest, for approximately two years to work as a judicial law clerk for the Colorado Supreme Court. Since my return, my work has focused on providing regulatory support to the Wholesale Markets organization.

II. PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the South Dakota Public Utilities Commission and the parties in this docket that for the hearing beginning on April 22, 2002, I will be adopting the affidavits of Lynn M. V. Notarianni.

III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED

I have read Lynn Notarianni's Direct and Rebuttal affidavits. I am adopting the portions of each affidavit that address pre-order loop qualification. Based on my professional experience, personal knowledge, and information available to me in the normal course of my duties, I will be prepared to present Qwest's compliance with the portion of Checklist Item 2 covering OSS.

This concludes my Affidavit.

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 19th day of April, 2002.

Barbara J Brohl

STATE OF COLORADO)
)ss.
CITY & COUNTY OF DENVER)

Subscribed and sworn before me this 19th day of April, 2002.

Pamela L Laning
Notary Public

NOTARY PUBLIC STATE OF COLORADO

PAMELA L. LANING
Notary Public
State of Colorado
My Commission Expires
06-29-2002