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AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix (collectively "AT&T") hereby submit this brief addressing the remaining disputed issues from workshop two. Specifically, this brief will address certain disputed issues that remain relating to § 271 Checklist 1 Items on Interconnection and Collocation.

INTRODUCTION

To be in compliance with § 271, Qwest Communications, Inc. ("Qwest") must "support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry."¹ Compliance is not found merely in the language contained in the Statement of Generally Available Terms ("SGAT"), but rather it is determined by whether Qwest is actually implementing that which its SGAT promises.² Much of Qwest's actual performance may not be determined until after the Technical advisory Group ("TAG") concludes its OSS and performance measurement testing.

With respect to the disputed issues discussed in this brief, Qwest's implementation, or the descriptions of it in the SGAT, reveals Qwest's efforts to delay, make more expensive or preclude competition. The Act, however, directs both the Federal Communications Commission ("FCC") and the States "to remove not only statutory and regulatory impediments to competition, but economic and operational

¹ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999) at ¶ 37 [hereinafter "*Bell Atlantic New York 271 Order*"].

² While AT&T will address the disputed issues as they relate to the SGAT, which reveals Qwest's noncompliance with § 271, it is important to remember that Qwest cannot yet prove its compliance with § 271(c)(2)(B)(xiv) without also demonstrating that it has passed the performance measure evaluation using audited data as conducted by the ("TAG").

impediments as well.”³ Compliance with § 271 is illusory, at best, if Qwest is allowed to implement operational or economic measures that essentially undermine its obligations under the Act. That is, “[i]n order to comply with the requirements of section 271’s competitive checklist, [Qwest] must demonstrate that it has ‘*fully* implemented the competitive checklist in subsection (c)(2)(B).”⁴

With the submission of this brief, AT&T asks the Commission to ensure that Qwest—in deed—*fully* implements its obligations under the Act. To do less, is to allow Qwest premature § 271 relief to the detriment of CLECs and local competition.

DISCUSSION

Generally, the discussion that follows is organized by Checklist Item categories (*e.g.*, interconnection and collocation and then within those categories the disputes are discussed by SGAT section proceeding *seriatim* unless a general topic discussion warrants combining a group of SGAT sections to avoid redundant argument.

I. INTERCONNECTION

A. General Description and Legal Obligations: of Interconnection in Checklist Item 1.

Interconnection means the physical linking of two networks for the mutual exchange of traffic.⁵ Section 271(c)(2)(B)(i) of the Act requires Qwest to provide interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1).

§ 251(c)(2) imposes upon Qwest:

³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 & 95-185, FCC 96-325 (Rel. Aug. 8, 1996) at ¶ 3 (emphasis added) [hereinafter “*First Report and Order*”].

⁴ *Bell Atlantic New York 271 Order* at ¶ 44.

⁵ 47 C.F.R. § 51.5 (definition of “Interconnection”); *First Report and Order* at ¶ 176.

[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at *any technically feasible point* within the carrier's network;
- (C) that is *at least equal in quality to* that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that *are just, reasonable, and nondiscriminatory ...*⁶

“Technical feasibility” means technically or operationally possible without regard to economic, space or site considerations.⁷ The FCC has determined that competitive local exchange carriers (“CLECs”) may “choose any method of technically feasible interconnection at a particular point on the incumbent LEC's [“ILECs”] network.

Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.”⁸ The minimum number of feasible points for interconnection include the: (1) line-side of the local switch; (2) trunk-side of a local switch; (3) trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points necessary to exchange traffic and access call-related data bases and (6) the points of access to unbundled network elements (“UNEs”).⁹

In addition to technical feasibility, the FCC has also defined “equal-in-quality” to require the incumbent LEC “to provide interconnection between its network and that of a

⁶ 47 U.S.C. § 251(c)(2)(emphasis added); *see also* 47 C.F.R. § 51.305.

⁷ *Id.* at ¶ 198; 47 C.F.R. § 51.5 (definition of “Technically Feasible”).

⁸ *Bell Atlantic New York 271 Order* at ¶ 66.

⁹ 47 C.F.R. § 51.305.

requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party.”¹⁰

Finally, the FCC has further defined “just, reasonable, and nondiscriminatory” in the context of interconnection to mean:

that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides comparable function to its own retail operations.¹¹

As a general matter, the disputed issues below reveal Qwest’s repeated attempt to create less efficient, more costly interconnection and access functions for CLECs and to deter CLEC interconnection at any technically feasible place by any technically feasible method and manner.

B. Disputed Issues: As a Legal and Practical Matter, the SGAT Reveals Qwest’s Lack of Compliance with Its § 271 Interconnection Obligations in the Following Ways.

Set forth below is a description of the interconnection issues in dispute, why Qwest’s SGAT does not demonstrate compliance with its legal obligations, and how these issues must be resolved to bring Qwest into compliance. As noted above, the issues are presented *seriatim* unless a general topic discussion warrants combining several SGAT sections to avoid redundant argument.

1. AT&T Proposed SGAT § 7.1.1.1.2¹² – Qwest Should Not be Allowed to Avoid Responsibility for Poor Wholesale Service Quality and its Potential Adverse Impact on Competitors; Qwest Should Therefore Indemnify CLECs Against Poor Service Quality.

Interconnection with the ILEC is the lifeblood of the CLEC.¹³ Without timely,

¹⁰ *Bell Atlantic New York 271 Order* at ¶ 224.

¹¹ *Bell Atlantic New York 271 Order* at ¶ 65.

¹² See AZ Exhibit 2 ATT 4.1.

¹³ 2/13/01 AZ Tr. at p. 1299.

reliable provisioning of interconnection trunks, which can be expanded as quickly as the CLEC's business expands, the CLEC will not have a business. Despite AT&T's efforts to provide Qwest the necessary information to meet AT&T's interconnection trunking needs during joint trunk planning sessions, AT&T frequently encounters Qwest-caused delays,¹⁴ and in some cases indefinite holds, when ordering interconnection trunks from Qwest.¹⁵

While Qwest claims it has all the incentive it needs to timely and reliably install its competitor's interconnection trunks, in fact, it has provided no evidence of such incentive.¹⁶ And the evidence that Qwest prematurely¹⁷ presents on average installation of interconnection trunks via its un-audited performance indicators or PIDs does not comport with the real world experience of AT&T.¹⁸ Furthermore, it's important to bear in mind that late installation of interconnection trunks completely precludes a CLEC from conducting any business with any customers served by those trunks. Thus, AT&T proposes an incentive that will ensure that Qwest, the entity in sole control over its service quality, meets its interconnection obligations. The incentive is provided in the form of a common contract indemnity provision used when one party's business must rely heavily upon timely, reliable delivery of a product from another party.

Moreover, the SGAT and the Qwest proposed Performance Assurance Plan

¹⁴ Affidavit of Timothy Boykin at pp. 10-12 (AZ Exhibit 2 ATT 3).

¹⁵ 8/16/00 AZ Tr. at p. 29.

¹⁶ Although Qwest has submitted a Performance Assurance Plan ("PAP"), it has not made that available in this proceeding. Moreover, review of Qwest's PAP reveals that, although the PAP is based upon the Texas plan, it is missing many of the penalties and other incentives from that plan and provides little if any remedy to the CLEC actually suffering the harm at the hands of Qwest's poor performance.

¹⁷ Attached to Qwest's testimony are selective, unaudited interconnection results of Qwest's alleged TAG measurement testing. As noted in the exhibits to Mr. Wilson's testimony, however, the group monitoring Qwest's measurements has discovered numerous problems with Qwest's measurement and hence results. Thus, AT&T continues to advocate that the Commission disregard all premature or unaudited results produced by Qwest, and await the final most relevant audited measurements.

¹⁸ 8/16/00 AZ Tr. at p. 32.

provides precious little to incent Qwest to provide timely installation of interconnection trunks for particular competitors it would like to put out of business. Therefore, AT&T proposes the following incentive, which in general business dealings is a method employed frequently to incent timely performance:

7.1.1.1 Qwest will provide to CLEC interconnection at least equal in quality to that provided to itself, to any subsidiary, affiliate, or any other party to which it provides interconnection. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding interconnection are subject to this requirement. In addition, Qwest shall comply with all state wholesale and retail service quality requirements.

7.1.1.1.2 In the event that Qwest fails to meet the requirements of Section 7.1.1.1, Qwest shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.

Qwest shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail or wholesale service quality standards in the provision of interconnection services.¹⁹

AT&T requests that the Commission approve this indemnity proposal for inclusion in the SGAT. This proposal is consistent with goals of the Act and the FCC to ensure that the incumbent provides "interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations" which includes timely installation.²⁰ In short, Qwest has provided no tested

¹⁹ AZ Exhibit 2 ATT 4.1; AT&T reserves the right to address its concerns regarding § 5.9 (Indemnity) of the SGAT in the appropriate workshop on General Terms and Conditions of the SGAT.

²⁰ *In the Matter of 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 (Rel. June 30, 2000) at ¶ 63 [hereinafter "*SWBT Texas 271 Order*"].

data regarding its timely performance. Because the record to date fails to show Qwest's full compliance with its "equal in quality" obligations under the Act, Qwest's has not met its burden of proof for § 271 compliance, and the Commission should either order Qwest to alter its SGAT or find Qwest in non-compliance.

2. **SGAT § 7.1.2.1 – Qwest Fails to Comply with Its § 271 Obligations By Deconstructing Interconnection Trunks Into Entrance Facilities Such that It Wrongfully Dictates Where CLECs Must Interconnect and Access UNEs.**

There are two issues associated with SGAT § 7.1.2.1. The first issue concerns Qwest's attempt to deny CLECs the right to determine their points of interconnection in the Qwest network. The second issue concerns Qwest's attempt to prohibit the use of interconnection trunks for access to UNEs.

Turning to the first issue, in its SGAT and testimony, Qwest redefines interconnection trunks as newly described²¹ "entrance facilities, [which] are high speed digital loops."²² From Qwest's perspective the entrance facility is a "transport system ... that has one end at a CLEC's switch location or POI and the other end at the [closest] Qwest serving wire center."²³ Thus, Qwest tells the CLECs that their POI will be at the CLEC switch. In contrast, AT&T and other CLECs have, for some time and in accordance with the Act, designated their chosen points of interconnection, and paid for interconnection trunks that run from their points of presence ("POP") to the designated

²¹ While the term "entrance facility" has been employed to describe interconnection, its definition, as contained in commission-approved interconnection agreements, is different than the one proposed by Qwest in its recent SGAT and the SGAT utterly disallows the use of dedicated trunks to the point of interconnection chosen by the CLEC.

²² SGAT at §§ 7.1.2 & 7.1.2.1 (2 Qwest 30). Rebuttal Testimony of Thomas Freeberg, p. 19. During the workshop, Qwest had agreed to remove the word "entrance" from § 7.1.2 and replace it with "Qwest-provided" so as to remove the controversy from this section. 11/13/00 AZ Tr. p. 694. The latest SGAT, however, does not conform to this agreement; thus, the controversy remains with respect to § 7.1.2.

²³ 11/13/00 AZ Tr. at p. 703.

point of interconnection (“POI”) in the Qwest network.²⁴ Now, however, Qwest’s SGAT completely removes that option through its definition of interconnection via loop-type “entrance facilities.”

Rather than allowing the CLEC to choose the particular point of interconnection in the ILEC network, Qwest essentially makes the determination by splitting previously understood interconnection trunks into two parts: (1) loops and (2) interoffice transport. Qwest then proceeds to apply the FCC’s vacated proxy loop rates for the entrance facilities, and creates a separate charge for the interoffice transport.²⁵ Why does Qwest usurp the CLEC’s legal right to choose the particular point of interconnection? Because by redefining interconnection trunks it increases the cost of interconnection to the CLECs and increases the revenue to itself.²⁶

This section of the SGAT clearly reveals Qwest’s lack of § 271 compliance. AT&T, consistent with the FCC’s intent, has employed dedicated trunks as its means of interconnection, or the physical linking of its network, to particular Qwest switches that AT&T designates as the POI.²⁷ Furthermore, the FCC’s rules clarify:

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide ... any technically feasible method of obtaining interconnection *or* access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection *or* access to unbundled network elements include, but are not limited to:

²⁴ AZ *See* Attachment A – Bell South Interconnection offerings at Attachment 3, p. 3 describing § 1.2, “Interconnection via Dedicated Transport Facilities.”

²⁵ 11/13/00 AZ Tr. at p. 705.

²⁶ 11/13/00 AZ Tr. at pp. 705-706.

²⁷ *First Report and Order* at ¶ 176. Paragraph 176 explains that interconnection is the physical linking of the networks and not transport and termination. While dedicated trunk transport seems to indicate transport, it is used interchangeable with the physical link, not the transport per se, between the CLEC’s network and the chosen interconnection point with the BOC. This is the context in which AT&T employs the term here.

(c) A previously successful method of obtaining interconnection or access to unbundled network elements *at a particular premises or point on any incumbent LEC's network* is substantial evidence that such method is technically feasible ...²⁸

Consistent with its rule, the FCC's order clarifies that CLECs have the right to deliver terminating interconnection traffic "at any technically feasible point on [the ILEC] network, rather than [the ILEC] obligating [CLECs] to transport traffic to less convenient or efficient interconnection points."²⁹

Dedicated trunks are technically feasible means of obtaining interconnection or access to UNEs and Qwest should not now be attempting to dismantle interconnection trunks into loops and transport thus limiting the CLEC POI via "entrance facilities" to the CLEC switch. Furthermore, Qwest has made no showing that it provisions its own interconnection trunks in a manner that is consistent with what it demands here. Such failure is further evidence of Qwest's lack of § 271 compliance.³⁰

Turning to the second issue, the restriction on access to UNEs through interconnection trunks, Qwest's SGAT states: "Entrance Facilities may not be used for interconnection with unbundled network elements."³¹ Qwest claims that the FCC allegedly supports its proposition that "unbundled elements are not to be mixed with interconnection."³² Here again, Qwest increases the cost and also decreases efficiency for CLECs.

²⁸ 47 C.F.R. §§ 51.321(a) & (c). (emphasis added.)

²⁹ *First Report and Order* at ¶ 209.

³⁰ *BellSouth Second Louisiana 271 Order* at ¶ 74; AT&T also objects to Qwest's reference to its Private Line Transport services as an alternative means of interconnection to the extent that Qwest intends by such reference to also incorporate the non-TELRIC based rates associated with Private Line Transport. For the reasons stated in its brief, filed in Workshop 1, AT&T contends that the Commission should permit CLECs to use spare capacity on special access facilities for interconnection, but that such spare capacity must be paid for at TELRIC rates as required by the Act and FCC regulation thereunder; 11/13/00 AZ Tr. at p. 705.

³¹ SGAT at § 7.1.2.1; *see also* 11/13/00 AZ Tr. at p. 724.

³² 2/13/01 AZ Tr. at pp. 1318-1319.

Furthermore, Qwest's reliance upon the *First Report and Order* ¶ 552 (or 553)³³ for the proposition that interconnection trunks cannot be employed to access UNEs is misplaced because the referenced paragraph discusses virtual collocation. In fact, the FCC has made very clear that "under section 251(c)(2) and 251(c)(3), any requesting carrier may choose *any method* of technically feasible interconnection *or* access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection *or access to unbundled elements.*"³⁴ Contrary to Qwest's assertion, the FCC specifically recognized that CLECs may use interconnection trunks to access unbundled elements.³⁵ Moreover, this is consistent with the FCC's repeated directive that CLECs must be permitted to avail themselves of the most efficient means of interconnection and access to unbundled elements.³⁶

To bring this section of the SGAT into compliance, AT&T proposes that this section should be re-written as follows:

~~7.1.2.1 Entrance Facility Leased Facilities. Interconnection may be accomplished through the provision of a DS1 or DS3 entrance facility dedicated transport facilities. An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to entrance facilities, when CLEC uses such Private Line Transport service for multiple services. Entrance Facilities may not be used for interconnection with unbundled network elements. Such transport extends from the Qwest switch to the CLEC's switch location or the CLEC's POI of choice.~~

³³ Although Qwest, through Mr. Freeberg, cites to ¶ 552 of the First Report, he—in other forums has meant to cite to ¶ 553, which discusses mid-span meet points; likewise, this paragraph does not support the proposition that interconnection trunks may not be employed to access UNEs.

³⁴ *First Report and Order*, ¶ 549. (Emphasis added.)

³⁵ See e.g., *UNE Remand Order* at ¶ 222 (explaining access to the subloop UNE may be acquired via interconnection trunking; *First Report and Order* at ¶ 212 ("We also note that the points of access to unbundled elements ... may also serve as points of interconnection").

³⁶ *SWBT Texas 271 Order* at ¶ 78.

By this suggestion, AT&T does not contend that CLECs should not pay the appropriate rates for access to UNEs when employing interconnection trunks to access those UNEs; AT&T merely contends that it should be allowed, consistent with the law, to access UNEs by any technically feasible means, including interconnection trunks.

3. **SGAT §§ 7.1.2.2 & 7.3.1.2 – Qwest’s EICT Charges for its Interconnection at the CLEC Collocation POI Violate the Act and Therefore Fail to Comply with § 271.**

The issue with respect to these sections is whether Qwest, consistent with the law, should have to pay for interconnection on its side of the POI. In SGAT §§ 7.1.2.2 and 7.3.1.2,³⁷ Qwest proposes to charge for the wires it calls the Expanded Interconnection Channel Termination or “EICT.”³⁸ Essentially these are Qwest’s physical connection to the CLEC’s collocation equipment when collocation is the method used to interconnect to Qwest’s network.³⁹ That is, the CLEC collocation in this instance serves as its point of interconnection or POI, and the law requires that Qwest meet the CLEC at that point.⁴⁰ Amazingly enough, Qwest’s SGAT demands CLECs pay DS-1 or DS-3 circuit rates for this physical link between the CLEC POI and Qwest’s equipment in the same building.⁴¹

Because it is Qwest’s legal obligation to take the traffic from the CLEC’s POI or collocation space in this instance, it is illegal, unjust and unreasonable for Qwest to shift the financial burden through EICT charges to the CLEC.⁴² The EICT is Qwest’s side of

³⁷ SGAT at § 7.3.1.2 must be modified to remove any reference to charges for EICT or such charges should be made reciprocal such that Qwest pays for its interconnection to the CLEC network through similar wires.

³⁸ Early versions of the SGAT mistakenly employed the term ITP, when Qwest intended EICT. Rebuttal Testimony of Freeberg at OR Exhibit 250 at p. 3.

³⁹ Rebuttal Testimony of Freeberg at p. 24.

⁴⁰ *SWBT Texas 271 Order* at ¶ 78.

⁴¹ SGAT at § 7.3.1.2.1.

⁴² 47 C.F.R. §§ 51.305(a) & (e); *see also, SWBT Texas 271 Order* at ¶ 78.

the interconnection, not the CLECs'. Furthermore, Qwest itself does not pay AT&T for similar service and it should therefore not be generally increasing costs to CLECs by such discriminatory behavior.⁴³ Therefore, AT&T proposes that the Commission modify Qwest's SGAT as follows:

7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement. ~~When interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Interconnection Tie Pair (ITP) Expanded Interconnection Channel Termination rate elements, as described in Section 9 7.3.1.2.1 and will apply in accordance with Exhibit A. The rates are defined at a DS0, DS1 and DS3 level.~~

4. SGAT § 7.1.2.3 – On Mid-Span Meets Fails to Comply with the Act and Must, Therefore, Be Altered

Here, AT&T objects to the language in SGAT § 7.1.2.3 that prohibits the use of mid-span meet arrangements to access unbundled network elements. As previously noted, a mid-span meet arrangement, like other methods of interconnection, consists of facilities used to carry traffic between the ILEC's network and that of the CLEC. These same facilities (essentially the fiber optic pipe running between two locations) are identical to facilities purchased as dedicated trunks, and thus, they are capable of carrying traffic of end-users served through unbundled network elements as well as providing interconnection. In order to allow competitors to make the most efficient use of a mid-span meet, Qwest's SGAT should be revised to eliminate the prohibition against using mid-span arrangements to access unbundled elements. Moreover, the FCC expressly supports the use of such trunks for access to UNEs.⁴⁴

⁴³ The alternative would be to make such payments reciprocal between the CLEC and Qwest as more fully discussed below in § 7.3.1.2.1.

⁴⁴ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) at ¶ 221 [hereinafter "*UNE Remand Order*"].

During the workshop, Qwest claimed that the FCC prohibited the use of a mid-span arrangements or interconnection trunks for access to unbundled elements in ¶ 553 of the *First Report and Order*. Qwest is simply incorrect. The FCC's concern in ¶ 553 of the *First Report and Order* was not to prohibit the use of mid-span meet arrangements for access to UNEs, but rather its ¶ 553 clarifies that when a meet point arrangement is used for access to UNEs the CLEC should bear 100 % of the economic costs associated with that use. As the FCC stated in ¶ 553:

In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point. We believe that although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(d)(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. *We conclude that in a section 251(c)(3) access situation, the new entrant should pay all of the economic costs of a meet point arrangement.*⁴⁵

It is clear from the last sentence of this passage that the FCC did recognize that a meet point arrangement could be used for access to UNEs. To the extent the CLEC, however, uses the facilities associated with the meet point arrangement for such access, it must pay the UNE rate for using that portion of the facility that is the ILEC's. AT&T does not deny that CLECs should pay a fair price for the portion of the connecting trunks to the meet point arrangement that are used for access to UNEs.

⁴⁵ *First Report and Order*, ¶ 553. (Emphasis added.)

Thus, AT&T recommends that Qwest be required to delete the prohibition against using meet point arrangements for access to UNEs from SGAT § 7.1.2.3. To do otherwise would be to deny CLECs the most efficient means of transport for both interconnection trunks and access to UNEs.

In addition to AT&T's objection, WorldCom was also concerned that Qwest's understanding of meet point arrangements may be too narrow. Qwest's SGAT describes a "Mid-Span Meet POI" as a "negotiated Point of Interface," limited to the Interconnection of facilities between one Party's switch and the other Party's switch." In response to a question from Mr. Wilson regarding whether the CLEC could order the span as dedicated transport, Mr. Freeberg replied that "if Qwest provided all of the facilities, it your [sic] not be a meet-point arrangement. It would be an entrance facility situation." Qwest appears to believe that it can limit meet-point arrangements to those where carriers are essentially meeting mid-span – at a point somewhere between the CLEC's switch and the ILEC's switch. However, as WorldCom's witness, Ms. Garvin explained, there are numerous different ways of designing a meet-point arrangement all of which are technically feasible and therefore permitted under the Act. Among the designs she mentioned in particular was the use of the ILEC's fiber with each company supplying the fiber optic termination on its side of the meet point. What was critical from Ms. Garvin's perspective is that "a mid-span allows us to have a single point of interconnection with a LATA, which all local traffic traverses over and it's made up of facilities and FOT's, fiber optic terminating equipment."⁴⁶

⁴⁶ 2/13/01 AZ Tr. at p. 1311.

Consistent with Qwest's duty under the Act to provide interconnection at any technically feasible point, § 7.1.2.3 should be broadened to encompass all technically feasible types of meet point arrangements. To that end, WorldCom proposed revisions to Qwest's SGAT, which AT&T supports.⁴⁷

5. **Qwest's Repeated Refusals to Permit CLECs to Choose the Most Efficient Means of Interconnection is not Compliant with § 271 of the Act; This Refusal is Evident in its Single Point Of Interconnection ("SPOP") Proposal**

An overarching problem with Qwest's interconnection policy is Qwest's unwillingness to permit CLECs to choose the most efficient point of interconnection as required by the Act and FCC regulations. For example, while Qwest purports to allow a single point of interconnection per LATA,⁴⁸ its Single Point of Presence ("SPOP") product designed to implement this policy, unlawfully restricts the CLECs' ability to interconnect at any technically feasible point in Qwest's network.⁴⁹ This is just one example of Qwest's SGAT representing one thing, while in practice, Qwest's *present* policy is not consistent with the SGAT or the Act.

The SPOP product dictates to the CLEC that its point of interconnection (POI) will be its point of presence (POP) and not at Qwest's wire center (as has been traditionally considered the CLEC POI or any other point the CLEC would choose).⁵⁰ Again, this conduct unlawfully limits the CLECs' ability to interconnect at the place of its choosing. Furthermore, the SPOP product—like § 7.2.2.9.6 of the SGAT discussed in more detail below—impedes interconnection at the access tandem, among other places,

⁴⁷ AZ Exhibit 2 WCom 2 at pp. 3-4.

⁴⁸ SGAT § 7.1.2; *see also*, Freeberg Rebuttal Affidavit at p. 12.

⁴⁹ AZ Exhibit 2 ATT 24.

⁵⁰ "For the purposes of this product, point of interconnect (POI) is defined as the wholesale customer's physical presence, and not the Qwest serving wire center (SWC) as has traditionally been the case with interconnecting carriers." AZ Exhibit 2 ATT 24 at p. 1.

to cases where a local tandem is not available to get to an end office.⁵¹ Moreover, among its other failings, the SPOP product wrongfully requires CLECs to choose between utilizing the SPOP in the LATA product offering or interconnecting at multiple points in Qwest's network. By limiting the CLECs' ability to design interconnection to meet their own needs for efficiency, the SPOP product violates § 251(c)(2) and the FCC's implementing regulations.

As the FCC stated in its *First Report and Order*, "[t]he interconnection obligation of section 251 (c)(2) . . . allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."⁵² This means that, in contrast to Qwest's practice of narrowly prescribing the means by which CLECs may obtain interconnection, the Act allows interconnection and access to unbundled elements by any technically feasible point by any technically feasible means.

In addition to its violation of the Act, the SPOP product offering contradicts the SGAT and current interconnection agreements in other ways.⁵³ CLECs have experienced difficulties with Qwest's personnel in the field that employ these product offerings or policies to the exclusion of all else, including interconnection agreements that otherwise permit the type of interconnection the SPOP product disallows. Thus, it appears that if a CLEC wants to enjoy the right to a single point of interconnection per LATA, it can do so only if it surrenders other rights it has under its interconnection agreement and under the

⁵¹ AZ Exhibit 2, ATT 24 at pp. 1-2.

⁵² *First Report and Order*, ¶ 172. (Emphasis added.)

⁵³ 2/13/01 AZ Tr. at pp. 1304-1305.

Act.⁵⁴ In short, Qwest's performance for purposes of § 271 must be judged as much by what the SGAT says as by what Qwest actually does.

Accordingly, until such time as Qwest recasts its SPOP product offering and its SGAT to eliminate restrictions on the CLECs' ability to designate whatever the point or points of interconnection they deem to be most efficient, Qwest cannot be found to be in compliance with Checklist Item No. 1.

6. SGAT § 7.2.2.1.2.1 – Qwest's Attempt to Control the Establishment of One & Two Way Trunk Groups Violates § 271 of the Act

In Qwest's modified SGAT § 7.2.2.1.2.1,⁵⁵ Qwest changed its SGAT to make permissive the establishment of one-way or two-way interconnection trunk groups for the exchange of traffic. This, among other things, removed the SGAT's original bias in favor of two-way trunking.⁵⁶ It did not, however, resolve the problem AT&T has encountered when it attempts to implement one-way interconnection trunking with Qwest. When AT&T, for example, seeks to install one-way trunking to a particular tandem switch in Qwest's network, Qwest—in almost a retaliatory move—will insist on installing the corresponding one-way trunking from every end-office to the AT&T switch causing the unnecessary and inefficient use and exhaust of AT&T's switch terminations as well as one-way trunks.⁵⁷ Qwest's conduct undermines the CLEC's right to select the points of interconnection and to employ either one-way or two-way trunking. Recall the FCC expressly said “[t]he interconnection obligation of section 251(c)(2) ... allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent

⁵⁴ 2/13/01 AZ Tr. at p. 1306.

⁵⁵ SGAT at § 7.2.2.1.2; AT&T refers the Commission to the language that Qwest offered during the workshop and not any language that it attempts to bring in late.

⁵⁶ 11/13/00 AZ Tr. at p. 730.

⁵⁷ 2/13/01 AZ Tr. at p. 1321.

LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."⁵⁸ To remove this threat to a CLEC's interconnection at any technically feasible point by any technically feasible method, AT&T proposes that the Commission order Qwest to incorporate the following sentence into § 7.2.2.1.2.1:

7.2.2.1.2.1 One-way or two-way trunk groups may be established. However, if either Party elects to provision its own one-way trunks for the delivery of Exchange Service (EAS/Local) traffic to be terminated on the other Party's network, the other Party must also provision its own one-way trunks. The point or points of interconnection for such one-way trunk groups shall be those designated by the CLEC.⁵⁹

AT&T's proposal ensures that "new entrants may select the 'most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination."⁶⁰

7. **SGAT § 7.2.2.1.5 – Qwest's 50 Mile Limitation on Direct Trunk Transport Violates the CLEC's Right to Choose the Most Efficient Point of Interconnection and Thus is Contrary to Qwest's § 271 Obligations.**

Qwest proposes an addition to its SGAT that artificially limits its interconnection obligation under the Act and shifts the burden to build Qwest's network to the CLEC.⁶¹ The proposal arbitrarily turns all interconnection trunks over 50 miles into mid-span meet arrangements where neither the CLEC nor Qwest have facilities in place. Qwest justifies this proposal providing an extreme and unsubstantiated example of a CLEC that might demand hundreds of miles of direct trunk transport to interconnect its network to Qwest's network.⁶²

⁵⁸ *First Report and Order* at ¶ 172.

⁵⁹ AZ Exhibit 2 ATT 22.

⁶⁰ *SWBT Texas 271 Order* at ¶ 74.

⁶¹ SGAT at § 7.2.2.1.5.

⁶² 2/13/01 AZ Tr. at p. 1325.

Nevertheless, the Act clearly states that it is Qwest's obligation to: "provide ... interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access."⁶³ According to the FCC, "[s]ection 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."⁶⁴

Simply put, Qwest's 50-mile limitation on its interconnection obligation violates the Act and the FCC's pronouncements. Moreover, Qwest has not presented even a single real case wherein it was required to construct such extremely long direct trunk transport (a/k/a interconnection trunks), nor has it presented even a shred of evidence that it would not recover the costs to do so. Thus, the Commission should reject Qwest's attempt to artificially limit its legal obligations by requiring that Qwest remove § 7.2.2.5.1 from the SGAT.

8. **AT&T Proposed SGAT § 7.2.2.6.3 – Qwest's Failure to Allow MF Signaling Where its Switches are Not SS7 Equipped Violates the FCC's Interconnection Requirements and Thus is Not Compliant with § 271.**

AT&T proposed § 7.2.2.6.3 to address the need for an MF signaling option in two situations; the first is related to switching where the Qwest switch itself could not accommodate SS7 signaling, and the second situation is where the Qwest central office

⁶³ 47 U.S.C. § 251(c)(2)(A).

⁶⁴ *First Report and Order* at ¶ 209.

switch does not have SS7 diverse routing.⁶⁵ MF signaling is multi-frequency, in-band signaling that was widely used before the advent of SS7 signaling and current switches are generally capable of operating under both MF and SS7 signaling. Qwest accepted the AT&T proposal covering the first situation, but rejected the language covering the second situation where the Qwest's switch lacks SS7 diverse routing.

Where, in particular in rural areas, Qwest refuses to allow the use of MF signaling where its central office switches lack SS7 diverse routing, AT&T has been delayed or precluded from, for example, serving state government entities (and presumably all entities sophisticated enough to recognize that without the SS7 diverse routing their ability to make calls is diminished if they employ a competitors' service as opposed to Qwest's).⁶⁶ Qwest had demanded in those instances that AT&T engage in a protracted bona fide request process before it would allow any interconnection at what is otherwise a technically feasible point of interconnection.⁶⁷ To resolve this delay or denial of interconnection at any technically feasible point, AT&T proposed the following language:

7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by the CLEC if the Qwest Central Office Switch does not have SS7 capability or if the Qwest Central Office Switch does not have SS7 diverse routing.⁶⁸

This portion under dispute of the provision clearly applies only where the Qwest switch does not have sufficient diversity in the signaling network such that the CLEC customers would be left stranded if a signaling failure occurred, while the Qwest customers could

⁶⁵ AZ Exhibit 2 ATT 23; 2/13/01 AZ Tr. at pp. 1327-1328.

⁶⁶ 2/13/01 AZ Tr. at p. 1328.

⁶⁷ *Id.*

⁶⁸ AZ Exhibit 2 ATT 23; but cf., SGAT § 7.2.2.6.3 (AZ Exhibit 2 Qwest 30).

continue to make calls.⁶⁹ In fact, this very lack of redundancy, and parity, has created a barrier to competition because some customers—as noted above—have refused to switch to CLECs, in particular AT&T, as a result of this lack of diversity.⁷⁰ For the foregoing reason, the Commission should adopt all of AT&T's proposed language as appropriate for the SGAT and Qwest's § 271 compliance obligations.

9. **SGAT §§ 7.2.2.8.6 & 6.1 – Qwest's Policies and SGAT Provisions on CLEC Interconnection Forecasting and Deposits Are Unjust, Unreasonable and Not at Parity with the Way Qwest Treats Itself; Thus, they Violate § 271.**

In SGAT §§ 7.2.2.8.6 and 7.2.2.8.6.1, Qwest, while insisting upon CLEC trunk forecasting, refuses to build to the CLEC forecast or its own forecast unless certain conditions are met. Basically, those conditions are that: (a) in a dispute over the CLEC forecast versus Qwest's own forecast, Qwest will make capacity available for the lower forecast (presumably its own forecast); (b) where the CLEC's trunk utilization over the preceding 18-month period is 50 % or less of forecast for each month, Qwest will likely require a 50 % deposit of the estimated capital cost to provision the forecasted trunks before it builds to the lower forecast; (c) Qwest will return the 50 % deposit if the CLEC's state-wide average trunk forecast to usage ratio exceeds 50 %, and if the usage does not exceed 50 %, Qwest will keep a pro rata share of the deposit; (d) if Qwest fails to have forecasted capacity available when the CLEC orders trunks, Qwest will refund a pro rata portion of the deposit; and (e) Qwest will build to the higher forecast, and may, at its sole discretion require a 100 % refundable deposit of the estimated cost to provision the new trunks.

⁶⁹ 2/13/01 AZ Tr. at pp. 1329-1330.

⁷⁰ 2/13/01 AZ Tr. at p. 1329.

When Qwest makes a forecast and the CLEC makes a forecast, both companies are trying to predict the capacity needed so that no [call] blocking will occur. As revealed in its exhibits, Qwest's own trunk utilization nationwide is 50.45 % while the CLECs is 48.08 %;⁷¹ nationwide thus the dominant carrier, Qwest, shows only slightly more trunk utilization than the nascent CLECs.⁷² However, Qwest is now using a metric that compares forecasted utilization instead of actual utilization for the purposes of determining deposits for trunking. Since forecasts are always looking to the future, they always project higher numbers of trunks, especially for CLECs who are growing quickly. The "utilization" measured in this way disadvantages fast growing CLECs. It is doubtful, nationwide, that Qwest would even meet the 50% utilization based on forecasts unless their forecasts are perfect. Qwest is trying to apply a metric to fast growing CLECs that it doesn't even meet itself. When a CLEC's utilization falls, however, Qwest will likely assess the CLEC a 50 % deposit of the estimated capital cost to build the forecasted trunks even though Qwest is not actually building those trunks and reserving them for the use of the CLEC that forecasted them; rather, the trunks could be lost to Qwest's own internal use or other CLECs' long before the forecasting (and deposit-paying) CLEC places an order.⁷³ Furthermore, the lower forecast is likely to be Qwest's own forecast and yet the CLEC is expected to pay a deposit so that Qwest will have the aggregate capacity⁷⁴ it predicts it will need—regardless of what the particular CLEC forecasts. The practical impact of this provision is nothing more than Qwest expecting CLECs to fund

⁷¹ Calculated from the August 2000 data on actual trunk usage supplied by Qwest in Washington.

⁷² 2/3/01 AZ Tr. at p. 1354.

⁷³ 11/14/00 AZ Tr. at pp. 837, 1061-1062.

⁷⁴ Qwest's forecasts include forecasted demand for itself and the CLECs; hence the forecast is an aggregate of all forecasts.

Qwest's own network capacity growth—something Qwest ought to be providing and paying for itself.⁷⁵ Similar problems arise when considering Qwest's 100 % deposit to build to the higher, presumably CLEC, forecast.

Finally, if Qwest suffers any excessive inventory problem—as it claims—much of that problem is caused by Qwest's own trunking policies, both past and present, which required CLECs to employ—for example—separate trunks to carry interLATA toll calls and obtain one-way trunks to numerous, unnecessary end offices.⁷⁶ In addition, Qwest's traditional lack of trunk facilities and delays in filling trunk orders has caused some CLECs to order more than immediately needed.⁷⁷ Furthermore, in the case of two-way trunks that carry both CLEC and Qwest traffic, Qwest may be as much to blame for under utilization as any CLEC.⁷⁸ And considering the discrepancies in data on the actual number of tandem trunks for August 2000, one can hardly judge whether Qwest's utilization or the CLECs is accurately measured here.⁷⁹

In short, this provision is drafted such that it helps no party and actually creates discriminatory trunking and utilization requirements for CLECs that Qwest itself is not held to. It should, therefore, be deleted from the SGAT.

10. SGAT § 7.2.2.9.3.2 – Qwest's Demand that CLEC's Inefficiently Use Interconnection Trunks Violates § 271.

The issue in SGAT § 7.2.2.9.3.2 is that Qwest steadfastly refuses to employ the most efficient use of interconnection trunking that would combine all traffic types on the

⁷⁵ 2/13/01 AZ Tr. at p. 1350.

⁷⁶ 2/13/01 AZ Tr. at pp. 1320, 1367.

⁷⁷ 8/16/00 AZ Tr. at p. 46.

⁷⁸ 8/17/00 AZ Tr. at p. 512.

⁷⁹ The WA August 2000 Exhibit shows 35,457 tandem trunks while the WA Bench Request No. 31 data shows 27,076 trunks and the WA PID (NI-1) shows 22,138 trunks. There are also very large differences between data Qwest is presenting at the state level versus the regional level.

same trunks. Instead, Qwest demands that CLECs use separate trunk groups for interLATA, 1 + long distance calls and for local calls.⁸⁰ This requirement increases interconnection cost to CLECs and requires the inefficient use of trunks along with the under-utilization problems described above.

The combination of all traffic is technically feasible, and several states have required that Qwest combine such traffic.⁸¹ Furthermore, the Ninth Circuit Court of Appeals has upheld such combination as appropriate.⁸² Moreover, the FCC has not indicated that co-mingling of local and long distance traffic on interconnection trunks is or should be prohibited.⁸³ Rather, to remove operational inefficiencies and increased costs, Qwest should allow such combination in its SGAT and to the extent it does not allow such co-mingling, the SGAT is not in compliance with the law because it creates operational and economic barriers; thus, requiring the Commission to disapprove it.

11. SGAT § 7.2.2.9.6 – Qwest’s Failure to Allow the CLEC to Select Its Point(s) of Technically Feasible Interconnection Violates § 271.

Unlike other Regional Bell Operating Companies (“RBOCs”), Qwest has artificially divided its tandem switches into local tandems and access tandems. Frequently, the separation is made in a single tandem switch through the use of switch modules; in other cases the switches are physically separated. In an effort to maintain its tandem switch dichotomy, Qwest demands that CLECs terminate local traffic on either

⁸⁰ 2/13/01 AZ Tr. at p. 1372.

⁸¹ 2/13/01 AZ Tr. at p. 1372.

⁸² *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124-25 (9th Cir. 1999).

⁸³ While the FCC has considered co-mingling traffic in relation to special access circuits, it has done so in the context of unbundled network elements and combinations, not interconnection trunks per se. There the FCC did not address circuits used exclusively to provide local interconnection service. See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, ¶ 28 (released. June 2, 2000).

Qwest local tandems or end offices.⁸⁴ While Qwest will allow a CLEC conditional interconnection at the access tandem, it will completely deny such interconnection if there exists a local tandem serving a particular end office, apparently even if the local tandem has exhausted capacity. Nevertheless, Qwest has admitted that interconnection at the access tandem is technically feasible.⁸⁵ And the FCC has concluded that interconnection at the tandem is appropriate and technically feasible.⁸⁶ Moreover, the 9th Circuit Court of Appeals has upheld interconnection at the access tandem.⁸⁷ Finally, Arizona too has determined that is technically feasible.

Qwest's legal obligation is quite clear—the CLEC may select the point or points at which to interconnect.⁸⁸ The “incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible.”⁸⁹ Qwest cannot prove to this Commission or any other that interconnection at the access tandem is technically infeasible. Moreover, such interconnection is frequently the most efficient for the CLEC.

In its response, Qwest typically alleges--without proof--that somehow interconnection at the access tandem forces inefficient use of or a threat to its network. Even more remote of a possibility, Qwest implies that CLECs choose interconnection points solely in an effort to increase Qwest's cost—yet, Qwest did not provide even a single instance of such behavior. Considering that other RBOCs allow such

⁸⁴ AZ Exhibit 2 Qwest 20.

⁸⁵ 2/13/01 AZ Tr. at p. 1373.

⁸⁶ *First Report and Order* at ¶ 210.

⁸⁷ *MFS Intelenet*, 193 F.3d at p. 1124.

⁸⁸ *First Report and Order* at ¶ 172; *SWBT Texas 271 Order* at ¶ 78.

⁸⁹ *SWBT Texas 271 Order* at ¶ 78 (emphasis added); 47 C.F.R. § 51.305(e).

interconnection quite successfully, Qwest has utterly failed to show technical infeasibility such that the Arizona Commission could uphold the restrictive conditions Qwest places on interconnection at the access tandem.

Thus, Qwest should be ordered to allow interconnection at the access tandem without all the conditions it attempts to place on CLECs in its SGAT.

The AT&T proposed language accomplishes this very simple goal; it states:

7.2.2.9.6 The Parties shall terminate Exchange Service (EAS/Local) traffic ~~exclusively on local tandems or end office switches,~~ at CLEC's option.⁹⁰

12. SGAT § 7.4.5 – Qwest's Attempt to Dictate Interconnection by Demanding Trunks Only to End Offices and Local Tandems and Limiting Interconnection at Access Tandems Violates §271 of the Act.

As in SGAT § 7.2.2.9.6, Qwest again limits the CLEC's interconnection in SGAT § 7.4.5 to access tandems. Qwest's legal obligation is clear and its SGAT runs contrary to that obligation; thus, Qwest fails to meet its § 271 obligation for the same reasons noted above in the discussions related to § 7.2.2.9.6.

13. SGAT § 4.11.2 – Qwest's Definition of "Tandem Office Switches" Violates § 271 of the Act.

In its SGAT definition, § 4.11.2, Qwest has reinforced two issues that are at impasse. This definition currently reads as follows:

4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. *CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access Tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also*

⁹⁰ Wilson Interconnection Affidavit at p. 38.

utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.⁹¹

First, Qwest's tandem switch definition is not consistent with the Act. FCC regulations provide that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent ILEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711 (a)(3). Qwest's SGAT attempts to alter this FCC rule. Section 4.11.2 of the SGAT, defines a tandem switch as CLEC switches that "*actually* serve(s) the *same* geographic area as U S WEST's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches."

The terms "actually" and "same" as used in Qwest's tandem definition, improperly limit the circumstances under which a CLEC shall be entitled to tandem treatment for its switch. In addition, Qwest's proposed tandem definition incorrectly suggests that the function of the switch should be considered in determining whether tandem treatment is appropriate. FCC Rule 51.711(a)(3) makes clear that the only factor to be considered is whether the CLEC's switch "serves a geographic area comparable to the area served by the ILECs tandem switch." Therefore, before Qwest can be found to be in compliance with Checklist Item 13, the tandem definition must be modified in two ways. First, the definition must be modified by striking "actually" and replacing "same" with "comparable" to track the language of FCC Rule 51.711(a)(3). Second, the references in the definition to switch functionality should be eliminated. The tandem

⁹¹ SGAT § 4.11.2 (emphasis added).

switching definition set forth in Qwest's SGAT was raised by CLECs as an issue for Checklist Item 13 – Reciprocal Compensation and that issue remains in dispute.

Second, the remaining portion of this definition should likewise be stricken because it too contradicts Qwest's § 271 obligations with respect to interconnection at the access tandem. This dispute is discussed above, where Qwest—contrary to the Act—is trying to dictate the conditions under which CLECs may interconnect at the access tandem. Briefly, the FCC and the Act clearly allow CLECs to choose any particular point of technically feasible interconnection, and Qwest within this definition is again attempting to avoid full compliance with the law. The arguments and cites from above are incorporated herein by reference.

14. SGAT § 4.39 – Qwest's Definition of "Meet Point Billing" Constitutes an Adhesion Attempt, is Unjust and Unreasonable in Violation of § 271 of the Act.

The issue in dispute with respect to SGAT § 4.39 relates primarily to the way in which Qwest attempts to force interconnecting CLECs to adhere to Qwest's legal position on IP telephony through its improper inclusion of the topic in the SGAT. The SGAT is a document that should not be a tool for redefining switched access as Qwest dictates. SGAT § 4.39 states:

4.39 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide *Switched Access Service including phone to phone voice interexchange traffic that is transmitted over a carrier's packet switched network using protocols such as TCP/IP to an Interexchange Carrier*, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.⁹²

⁹² SGAT at § 4.39 (emphasis added.)

The italicized portion of this section reveals Qwest's demand that interconnecting CLECs adhere to a definition of switched access, which the FCC has not even adopted. Qwest weaves its desired outcome even further into the SGAT in its definition of "Switched Access" as follows:

4.57 "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, *Phone to Phone IP Telephony*, 8XX access, and 900 access and their successors or similar Switched Access services. Switched Access traffic, as specifically defined in U S WEST's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at the IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

Here again the italicized language shows Qwest's strategy.

As an initial matter, the SGAT should not be a tool that Qwest can exploit to avoid its previous contractual obligations or to promote its policy positions particularly when they are utterly irrelevant to the purpose of the SGAT. First, the FCC has made clear that while interexchange carriers ("IXCs") may obtain interconnection pursuant to § 251(c)(2), interconnection solely for the purpose of originating or terminating interexchange traffic and not for the provision of telephone exchange services and exchange access to others is not entitled to receive interconnection pursuant to § 251(c)(2).⁹³ Thus, switched access and how it's defined—either in Qwest's Interstate Tariffs or its desired policy—is a matter that is not germane to the § 271 interconnection issues here nor the SGAT as a whole.

Second, the FCC has exempted Enhanced Service Provider's ("ESPs"), which includes Internet Service Provider's ("ISPs") traffic from switched access, and it has not

⁹³ *First Report and Order* at ¶¶ 190-91.

carved out a distinction for Internet Protocol (“IP”) Telephony traffic such that Qwest could subject such traffic to switched access. Nor has Qwest shown that any IP telephony products it offers are currently paying switched access. Rather, Qwest has improperly chosen its SGAT to impose its policy upon nascent competitive local exchange providers in an effort to increase its switched access revenues.

Qwest’s further motive for including its policy in the SGAT is clear. It is seeking to characterize phone-to-phone Internet Protocol Telephony traffic as switched access in order to avoid paying reciprocal compensation for this traffic. The FCC, however, has exempted this traffic from such charges. This traffic should be treated as local and subject to reciprocal compensation.

In fact, on February 25, 1999, the FCC issued a “Declaratory Ruling” in its local competition docket, CC Docket No. 96-98, to address questions concerning calls to ISPs and the applicability of reciprocal compensation to such calls.⁹⁴ In this ruling, the FCC determined that, although ISP traffic is jurisdictionally interstate, since there is no FCC rule governing inter-carrier compensation for ISP calling, where parties have included reciprocal compensation obligations within the ambit of their interconnection agreements, “they are bound by those agreements, as interpreted and enforced by the state commissions.”⁹⁵ Specifically, the FCC found “no reason to interfere with state commission findings that reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending the FCC’s adoption of a rule establishing

⁹⁴ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, 14 F.C.C.R. 3689 at ¶¶ 1 & 10 (1999) (“**Declaratory Ruling**”).

⁹⁵ *Id.* at ¶ 22.

an appropriate interstate compensation mechanism.”⁹⁶ It then explained that nothing in its ruling “should be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under existing interconnection agreements.”⁹⁷ Even where parties have not reached agreement on an inter-carrier compensation mechanism for ISP-bound traffic, the FCC stated that state commissions nonetheless may determine “that reciprocal compensation should be paid for this traffic.”⁹⁸ Thus, the FCC has expressly determined that state commissions have the authority to impose reciprocal compensation obligations on ISP traffic.

Despite the issuance of its Declaratory Ruling, the FCC removed the treatment of ISP traffic from consideration as a Checklist Item 13 issue in the *Bell Atlantic New York 271 Order*, citing its ruling that ISP traffic was jurisdictionally interstate in nature.⁹⁹ However, since that determination, the Court of Appeals for the District of Columbia issued its ruling in the appeal of the FCC’s Declaratory Ruling.¹⁰⁰ The ruling by the Court of Appeals appears to undermine the FCC’s removal of ISP traffic from consideration under Checklist Item 13.

The Court of Appeals, in the *Bell Atlantic Decision*, accepted the FCC’s determination that ISP calls are jurisdictionally interstate services, stating that the LECs’ carriage of ISP calls, are “interstate communications by wire or radio” and are within the

⁹⁶ *Id.* at ¶ 21.

⁹⁷ *Id.* at ¶ 24.

⁹⁸ *Id.* at ¶ 25.

⁹⁹ *Bell Atlantic New York 271 Order* at ¶ 377.

¹⁰⁰ *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C.Cir. Mar. 24, 2000) (“*Bell Atlantic Decision*”).

jurisdiction of the Commission.¹⁰¹ However, the D.C. Circuit remanded the case back to the FCC because the “arguments supporting use of the end-to-end analysis in the jurisdictional analysis [over ISP-bound calls] are not obviously transferable to th[e different] context” of determining the application of § 251(b)(5). For that reason, the Court ruled that the exclusion of ISP-bound traffic from the statutory reciprocal compensation requirements could be upheld (if at all) only if further explanation and analysis were provided on remand.¹⁰² The D.C. Circuit emphasized that it was holding only that the “Commission has not satisfactorily explained why an ISP is not, *for purposes of reciprocal compensation*, ‘simply a communications-intensive business end user selling a product to other consumer and business end users.’ ”¹⁰³

In fact, the D.C. Circuit suggested that the FCC’s exclusion of this traffic from the requirements of § 251(b)(5) does not “make sense in terms of the statute or the Commission’s regulations” since § 251(b)(5) imposes on all LECs the duty to establish reciprocal compensation arrangements for the transport and termination of “telecommunications” and this traffic appears to be encompassed within the definition of telecommunications.¹⁰⁴

In any event, ISP-bound traffic has always been treated as “local” for analogous purposes under the FCC’s prior decisions and the terms of the *First Report and Order*. The FCC has never required information service providers to pay access charges; they have always been exempted from paying such charges. In short, notwithstanding the fact

¹⁰¹ See *Bell Atlantic Decision*, 206 F.3d at 5 & 7 (“[t]here is no dispute that the Commission has historically been justified in relying on [the end-to-end] method when determining whether a particular communication is jurisdictionally interstate” and that the “end-to-end analysis” is “sound” for “jurisdictional purposes”).

¹⁰² *Id.* at p. 6.

¹⁰³ *Id.* (emphasis added.)

¹⁰⁴ *Bell Atlantic Decision*, 206 F.3d at 3.

that ISP-bound traffic is jurisdictionally interstate, for regulatory purposes the FCC has always *treated* that traffic as local.

Because this exemption results in the treatment of ISP-bound traffic as local, the vast majority of state commissions – both before and after the Declaratory Ruling – have ruled that LECs owe cost-based reciprocal compensation for such traffic, just as they do for other local calls.¹⁰⁵ Indeed, since the Declaratory Ruling, at least thirteen states have ordered reciprocal compensation for such traffic, consistent with the FCC's orders establishing that ISP-bound traffic is to be regulated as if it were a local call rather than as traditional interstate access.¹⁰⁶

With respect to IP Telephony, the same exemption from the payment of access charges established by the FCC for ISP traffic has been applied as well to IP Telephony

¹⁰⁵ This includes four state commissions in Qwest's region that have ordered reciprocal compensation for ISP-bound traffic. See *In the Matter of the Petition of U S WEST Communications, Inc. for a Determination that ISP Traffic is Not Subject to Reciprocal Compensation Payments Under the MFS/U S WEST Interconnection Agreement*, Order Denying Petition, Minnesota Public Utilities Commission, Docket No. P421/M-99-529, (Rel. August 17, 1999); *In the Matter of the Petition of Sprint Communications Co. L.P. for Arbitration of an Interconnection Agreement with U S WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b)*, Final Arbitration Order Under Minn. Rules, Part 7812.17, Subp. 21, Minnesota Public Utilities Commission, Docket No. P-466,421/M-00-33, June 27, 2000; *In the Matter of the Application of the Nebraska Public Service Commission, on its own Motion, to conduct an investigation of the interstate or local characteristics of Internet service provider traffic*, Findings and Conclusions, Nebraska Public Service Commission, Application No. C-1960/PI-25, December 7, 1999; *Electric Lightwave, Inc., Complainant, vs. U S WEST Communications, Inc., Respondent, Order, Public Utility Commission of Arizona, Docket No. UC 377, April 26, 1999*; *WorldCom, Inc. f/k/a MFS Intelenet of Washington, Inc. Complainant, v. GTE Northwest Incorporated Respondent*, Third Supplemental Order Granting WorldCom's Complaint, Granting Staff's Penalty Proposal; and Denying GTE's Counterclaim, Washington Utilities and Transportation Commission, Docket No. UT-980338, May 12, 1999; *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale for U S WEST Communications, Inc. and GTE Northwest Incorporated*, 17th Supplemental Order: Interim Order Determining Prices; Notice of Prehearing Conference, Washington Utilities and Transportation Commission, Docket No. UT-960369, et al, August 30, 1999.

¹⁰⁶ See e.g., *Arbitration Award Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982 (Pub. Util. Comm'n of Texas) (July 2000); *Order Directing Reciprocal Compensation Rate, Proceeding on Motion of the Commission to Examine Reciprocal Compensation: Filing of Cablevision Lightpath, Inc., to Rebut the Presumption That a Substantial Portion of Terminated Traffic is Subject to Compensation at End-Office Rate*, Case 99-C-0529 (N.Y. Pub. Serv. Comm.) (December 9, 1999). The other eleven states are Alabama, California, Florida, Georgia, Illinois, Kentucky, North Carolina, Nevada, Arizona, Pennsylvania, and Tennessee.

traffic. Since 1983, the FCC has classified enhanced service providers (“ESPs”) (now referred to as information service providers) under its rules as “end users,” thereby exempting them from paying carrier access charges.¹⁰⁷ IP Telephony continues to be classified by the FCC as an information service exempt from access charges. Therefore, Qwest’s attempt in its SGAT to include IP Telephony in its definition of Switched Access flies in the face of these FCC rulings and must be rejected. The FCC has clearly treated this traffic as local traffic and, therefore, this traffic should be subject to reciprocal compensation, but most importantly for purposes of interconnection, Qwest should not be attempting to shoe-horn its position into the SGAT via the interconnection provisions.

Finally, by Qwest’s own admissions and contrary to its position as offered in Exhibit 259 (attached to Mr. Freeberg’s Rebuttal testimony):¹⁰⁸

even if one wished to impose ... access charges on IP telephony, identifying or distinguishing IP telephony from other Internet usage is problematical. Thus, there is no method currently to identify minutes of usage for the purpose of imposing access charges in all situations. “Marking” or otherwise identifying such traffic, if and when technically feasible, as well as determining the jurisdictional nature of such traffic, also implicates contentious issues in addition to access charges; for example, universal service and the extent to which Regional Bell Operating Companies (“RBOCs”) and their ISP affiliates are engaged in interLATA telecommunications services.

Under these circumstances, state regulation of IP telephony, however well intentioned it may be, may be premature. As the FCC’s Office of Plans and Policy has observed:

If federal rules governing Internet telephony are problematic, state regulations seem even harder to justify The possibility that fifty separate state Commissions could choose to regulate providers of Internet telephony services within their state (sic) (however that would be defined),

¹⁰⁷ *MTS and WATS Market Structure*, Memorandum Report and Order, 97 FCC21d 682, 715 (1983); Access Reform Order, 12 FCC Rcd 15982 at ¶¶ 341-42.

¹⁰⁸ AZ Exhibit 2 Qwest 3.

already may be exerting a chilling influence on the Internet telephony market.¹⁰⁹

Regardless, the FCC's position today is no different than it was in April 1999, when Qwest made these assertions. Therefore, AT&T recommends that Qwest delete the italicized portions of §§ 4.39 and 4.57 from its SGAT.

In addition, corresponding changes should be made to other paragraphs, including but not limited to, §§ 7.3.1.1.3.1 and 7.3.2.2. Qwest should be required to make any other corresponding changes required for consistency.

II. COLLOCATION

A. General Description of Collocation and the Relevant Legal Standards for Collocation in Checklist Item 1

Collocation is the act of placing equipment of a competitor in the premises of an incumbent for purposes of interconnection or access to UNEs. As noted, competitors may "collocate" for interconnection or access to the incumbent's network within the "premises" of the incumbent. The FCC has defined "premises" to include:¹¹⁰

an incumbent LEC's central offices and serving wire centers; all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities; all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, buildings, and

¹⁰⁹ *U S WEST Communications, Inc. v. Qwest Communications Corp.*, Motion to Dismiss or, In the Alternative, for Deferral, Before the Colorado Public Utilities Commission, Docket No. 99F-141T at p.12 (Apr. 20, 1999). ("*U S WEST v. Qwest*")

¹¹⁰ Although the FCC's latest collocation order is not yet effective, from a practical standpoint Qwest should implement it in this SGAT now because the FCC has ordered all BOCs to amend their SGATs to incorporate its new standards.

structures.¹¹¹

Generally, carriers accomplish collocation in two ways: (a) physical collocation and (b) virtual collocation. Physical collocation is basically “an offering by an incumbent LEC that enables a requesting carrier” to place its interconnection and access equipment within or upon an incumbent’s premises.¹¹² The collocated equipment may be used for interconnection or access to UNEs, transmission and routing facilities, and exchange access service.

Like physical collocation, virtual collocation is “an offering by an incumbent LEC that enables a requesting carrier to” designate equipment to be used for interconnection or access to UNEs, transmission and routing and exchange access.¹¹³ For virtual collocation, however, the requesting carrier uses the incumbent’s equipment rather than supplying its own.

Under the Act, Qwest has “the duty to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.”¹¹⁴ Qwest must

¹¹¹ 47 CFR § 51.5 (definition of “Premises” as amended); *see also*, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration & Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 & Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CC Docket Nos. 98-147 & 96-98, FCC 00-297 (Released Aug. 10, 2000) at ¶ 47 (further defining the buildings and structures) (hereinafter “*Order on Reconsideration*”).

¹¹² 47 CFR § 51.5 (definition of “Physical Collocation”).

¹¹³ 47 CFR § 51.5 (definition of “Virtual Collocation”).

¹¹⁴ 47 U.S.C. § 251(c)(6); *see also*, 47 CFR § 51.323(a). The Order on Reconsideration requires Qwest denials of collocation for lack of space to be submitted to the State Commissions; the submission now includes the floor plans and affidavits explaining the limitation. 47 CFR § 51.321(f)(as amended).

allow the collocation of any type of equipment that is “necessary, required or indispensable.”¹¹⁵ In fact, the Ninth Circuit Court of Appeals has determined that the Act permits state commissions to require the collocation of remote switching units (“RSUs”) on ILEC premises.¹¹⁶

Furthermore, in the context of a § 271 showing, the FCC has declared, among other things:

To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and our implementing rules. Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, helps the Commission evaluate a BOC’s compliance with its collocation obligations.¹¹⁷

The FCC also concluded that to ensure that incumbents did not misuse limited-space arguments, incumbents had an affirmative obligation to provide detailed floor plans or diagrams to state commissions for review of such claims.¹¹⁸ These plans or diagrams must show the reserved space, if any, for future use of either Qwest or any CLEC reservations.¹¹⁹

Finally, as a general observation, the FCC noted in its *Order on Reconsideration* that collocation provisioning “intervals significantly longer than 90 days generally will impede competitive LECs’ ability to compete effectively.”¹²⁰ Thus, Qwest’s SGAT provisions coupled with its performance, as judged in the ROC process, must demonstrate full compliance with the collocation checklist items under § 271 of the Act.

¹¹⁵ *GTE Service Corp. v. FCC*, 205 F.3d 416, 424 (D.C. Cir. 2000).

¹¹⁶ *U S WEST Communications v. Hamilton*, 2000 WL 1335548 (9th Cir. Sept. 13, 2000).

¹¹⁷ *Bell Atlantic New York 271 Order* at ¶ 66.

¹¹⁸ *First Report and Order* at ¶ 602.

¹¹⁹ 47 C.F.R. § 51.321(f).

¹²⁰ *Order on Reconsideration* at ¶ 29.

For the reasons that follow, AT&T submits that Qwest's SGAT and its implementation thereunder do not fully meet the requirements of Checklist Item 1 on collocation.

B. Disputed Issues: As a Legal and Practical Matter, Qwest's SGAT Reveals Its Lack of § 271 Compliance in the Following Ways.

The disputed issues that adversely impact Qwest's § 271 compliance claims are contained within certain SGAT sections that are encompassed within seven broad topics; the broad topics are: (a) Qwest's illegal limitations on CLEC remote and adjacent collocation; (b) Qwest's attempt to stretch the definition of collocation to encompass access to subloops precludes parity and it creates barriers; (c) Qwest's "productizing" or creating "policies" to undermine compliance with its legal obligations; (d) Qwest's imposing barriers to the CLEC actually receiving the benefit of the FCC's collocation intervals that were created expressly to remove such barriers;¹²¹ (e) Qwest's failure to comply with the FCC's rule on public notice to CLECs of full collocation premises; (f) Qwest's arbitrarily increasing the expense of collocation for the CLEC in defining its rate elements; and (g) Qwest's discriminatory space reservation policies that favor Qwest over the CLEC. A discussion of each broad topic, which subsumes the relevant SGAT sections, follows.

1. In Violation of its § 271 Collocation Obligations, Qwest Illegally Limits the CLECs' Right to Collocate at Remote and Adjacent Premises, and, as a Result, Qwest is not in Full Compliance with Its Collocation Obligations Under the Act.

As noted above, the FCC's rules allow CLECs to select technically feasible physical or virtual collocation at Qwest "premises." Qwest, on the other hand, doggedly

¹²¹ *Order on Reconsideration* at ¶ 12.

refuses to comply with the law by disallowing all virtual collocation in what it defines as “Remote Premises” and in any adjacent premises.

Qwest defines “Remote Premises” for purposes of collocation as only physical collocation in a “premises” other than a wire center or central office.¹²² In contrast, the FCC defines “premises” for the purpose of all collocation types as

an incumbent LEC’s central offices and serving wire centers; all buildings or similar structures owned, leased, or otherwise controlled by an incumbent LEC that house its network facilities ... including but not limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, buildings, and structures.¹²³

Similarly, in regard to adjacent premises, the FCC has clarified that where space is legitimately exhausted in a particular incumbent structure, the incumbent must allow the CLEC to collocate in “adjacent controlled environmental vaults or similar structures ...”¹²⁴ The D.C. Circuit Court of Appeals upheld this particular provision.¹²⁵

With respect to the FCC’s definition, its rules require:

(a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.¹²⁶

In addition, the FCC’s rules, consistent with the Act, allow incumbent LECs to offer virtual collocation where the space in the incumbents’ premises is not sufficient for physical collocation.¹²⁷ When faced with the suggestion that the alternative noted in the

¹²² AZ 2 Qwest 30.

¹²³ 47 CFR § 51.5 (as amended); *see also*, Order on Reconsideration at ¶ 47.

¹²⁴ Order on Reconsideration at ¶ 40; *see also*, 47 C.F.R. § 51.323(k)(3).

¹²⁵ *GTE v. FCC*, 205 F.3d at 425.

¹²⁶ 47 C.F.R. § 323(a) (emphasis added).

¹²⁷ 47 C.F.R. § 321(e); *see also* 47 U.S.C. 251(c)(6).

1996 Act,¹²⁸ to provide virtual collocation where space for physical collocation was exhausted, somehow limited the use of virtual collocation, the FCC held:

If the [FCC] concluded that subsection (c)(6) places a limitation on our authority to require virtual collocation, competitive providers would be required to undertake costly and burdensome actions to convert back to physical collocation even if they were satisfied with existing virtual collocation arrangements. We conclude that Congress did not intend to impose such a burden on requesting carriers that wish to continue to use virtual collocation for purposes of section 251(c). Further, the record indicates that this requirement would be costly and would delay competition. In short, we conclude that, in enacting section 251(c)(6), Congress intended to expand the interconnection choices available to requesting carriers, not to restrict them.¹²⁹

We also conclude that requiring incumbent LECs to provide virtual collocation and other technically feasible methods of interconnection or access to unbundled elements is consistent with Congress's desires to facilitate entry into the local telephone market by competitive carriers ... competitive carriers may find, for example, that virtual collocation is less costly or more efficient than physical collocation. We believe that this may be particularly true for small carriers [that] lack the financial resources to physically collocation equipment in a large number of incumbent LEC premises.¹³⁰

Consistent with its decision that both virtual and physical collocation options should be available to CLECs, in the § 271 applications that the FCC has approved, the FCC expressly noted—as part of that approval—that the BOC was providing both physical and virtual collocation (not virtual only if physical was not otherwise available as Qwest is doing in some premises).¹³¹ Furthermore, in its *UNE Remand Order* the FCC expressly

¹²⁸ Prior to the Act, the FCC declared that incumbents must allow both physical and virtual collocation. *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order And further Notice of Proposed Rulemaking, FCC 99-48, CC Docket No. 98-147 (Rel. Mar. 31, 1999) at ¶ 19 (citing the 1992 FCC Order) [hereinafter "*Advanced Services Order*"].

¹²⁹ *First Report and Order* at ¶ 551.

¹³⁰ *Id.* at ¶ 552.

¹³¹ See e.g., *Bell Atlantic New York 271 Order* at ¶ 73; *SWBT Texas 271 Order* at ¶ 73"; *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Sought western Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, FCC 01-29, CC Docket No. 00-217, (Rel. Jan. 22, 2001) at ¶ 228 [hereinafter "*Kansas/Oklahoma 271 Order*"]. Each of these orders refers to tariffs that provide for physical or virtual collocation at the CLECs' choice.

refers to the option that CLECs have to virtually collocate in cabinets or vaults (two “remote premises” identified by Qwest).¹³²

Finally, Qwest’s own SGAT states, in relevant part,

8.2.1.1 Qwest shall provide Collocation on rates, terms and conditions that are just, reasonable and non-discriminatory. In addition, Qwest shall provide Collocation in accordance with all applicable federal and state law.¹³³

Contrary to its SGAT and its collocation obligations under § 271 of the Act, Qwest refuses to allow technically feasible virtual collocation in remote and adjacent premises. Qwest erroneously argues that the alternative to lacking physical collocation space identified above, allows Qwest to completely deny virtual collocation as an option in either its remote or adjacent premises.¹³⁴

From a practical perspective premises outside the Qwest wire centers and adjacent premises will necessarily be limited in space such that demanding only physical collocation without the opportunity to obtain virtual collocation may preclude altogether some collocation. These types of premises are generally CEVs or remote terminals where space is already limited and the virtual collocation option may be the only one left, aside from constructing numerous, expensive adjacent structures.

Here again, Qwest’s conduct is contrary to the law, and in this case, its SGAT reveals the problem by failing to allow virtual collocation in remote and adjacent premises. Because Qwest’s position is contrary to the law and reveals that it has failed to fully comply with its obligations under the Act, its § 271 approval request must be denied by the FCC, and the State should likewise recommend against approval. The alternative

¹³² *UNE Remand Order* at ¶ 221.

¹³³ SGAT at § 8.2.1.1.

¹³⁴ 2/13/01 AZ Tr. at pp. 1428-1429.

to a negative recommendation is for the State Commission to require Qwest to amend its SGAT to conform the following sections to allow for virtual collocation in both remote and adjacent premises. The SGAT sections include: 8.1.1.8 – Description of Remote Collocation; 8.2.7 to 8.2.7.2 Terms of Remote Collocation; 8.6.5.1¹³⁵ – CLEC Responsible for Maintenance and Repair of All Remote Collocation Equipment; and 8.4.6.1 – Qwest’s Section Refusing to Allow Virtual Collocation in an Adjacent Premises.

2. **In Violation of its § 271 Obligations, Qwest Attempts to Stretch the Definition of Collocation to Encompass Access to the Network Interface Device or its Equivalent at Multiple Dwelling Units and Business Campuses Such that CLECs Cannot Access Those End-User Customers at Parity with Qwest.**

In a recent addition to its SGAT section on collocation, Qwest has added the following proposal:

8.1.1.8.1 With respect to Collocation involving cross-connections for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3¹³⁶

From this proposal it is clear that Qwest has determined that cross-connections between a CLEC’s network interface device and Qwest’s network interface device often referred to as NIDs, located at multiple tenant environments (“MTEs”) or multiple dwelling units (“MDUs”), constitute some form of collocation, which is subject—at this stage in this workshop—to unknown intervals for provisioning. In regard to the NID, the FCC has stated:

The network interface device (“NID”) is a “cross-connect device used to connect loop facilities to insider wiring. ... The Commission also

¹³⁵ Qwest may have deleted this SGAT section as unnecessary; in which case AT&T agrees with the deletion.

¹³⁶ AZ Exhibit 2 Qwest 31; 2/13/01 AZ Tr. at pp. 1485–1488.

concluded that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC's NID.

We modify that definition of the NID to include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.¹³⁷

In its discussion of the NID, the FCC went further in stating,

We define subloops as portions of the loop that can be accessed at terminals in the incumbent's outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID (which we discuss below), or the minimum point of entry to the customer premises (MPOE).¹³⁸

We decline to adopt parties' proposal to include the NID in the definition of the loop. Similarly, we reject arguments that should include inside wiring in the definition of the NID in order to permit facilities-based competitors access to inside wiring. ... We therefore find no need to include inside wiring in the definition of the NID, or to include the NID as part of any other subloop element.¹³⁹

Specifically, an incumbent LEC must permit a requesting carrier to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's network interface device, or at any other technically feasible point, to access the inside wire subloop network element.¹⁴⁰

Thus, the NID is not an unbundled subloop element, but rather it is a UNE itself.¹⁴¹

In several workshops since the last Arizona workshop—and in the Arizona workshop—on collocation AT&T has offered pictures of its NIDs at MDU/MTEs that are connected to Qwest's NIDs.¹⁴² These pictures reveal that NIDs can be open termination blocks containing multiple wires mounted on plywood or they can be enclosed in box-like

¹³⁷ *UNE Remand Order* at ¶¶ 230 & 233.

¹³⁸ *UNE Remand Order* at ¶ 206.

¹³⁹ *UNE Remand Order* at ¶ 235.

¹⁴⁰ *UNE Remand Order* at ¶ 237.

¹⁴¹ 47 C.F.R. § 51.319(b).

¹⁴² AZ Exhibit 2 ATT 19.

cabinets.

Where a CLEC, in particular a facilities-based CLEC such as AT&T, runs its own network to the furthest feasible point of interconnection with a customer at the MTE or MDU, it merely needs access to the Qwest NID so that it can provide service to the end-user customers whose inside wiring is connected to Qwest's NID. The right of CLECs to access the internal wiring at the NID is indisputably set out by the FCC orders.¹⁴³

Qwest's proposal suggests that AT&T would have to collocate in a UNE in order to gain the access to the end-user customers. Where, for example, Qwest has ready access to those customers, AT&T would have to wait for extended collocation provisioning intervals and could not service its customers in the same time frames as Qwest—clearly creating a parity problem.¹⁴⁴ Moreover, by Qwest's own admission, collocation is not required at a NID.¹⁴⁵

For purposes of defining access to the NID as collocation, Qwest is drawing a distinction between when it owns the inside wiring to the MDU/MTE and when it does not own the wiring.¹⁴⁶ Whether the NID is enclosed or not, is apparently no longer the

¹⁴³ *UNE Remand Order* at ¶ 202 *et. seq.*; *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets Wireless Comm'n Assoc. Int'l, Inc. Petition for Rulemaking to Amend § 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Serv. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, etc.*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366 (Rel. Oct. 25, 2000) at ¶ 48, and other state commissions have enforced such rights. See Georgia Public Utilities Commission *In re: Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.*, Docket No. 10418-U; *In re: MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc.*, Docket No. 10135-U.

¹⁴⁴ 2/13/01 AZ Tr. at p. 1447; *see also*, 2/08/01 OR Tr. at p. 17; OR Tr. at pp. 29–30.

¹⁴⁵ 2/13/01 AZ Tr. at p. 1448; *see also*, 2/08/01 OR Tr. at p. 17

¹⁴⁶ AZ Tr. at p. 1448.

dispositive point.¹⁴⁷ When it owns the wiring, Qwest claims that such access becomes collocation, and as noted above, when Qwest doesn't own the wires no collocation is required. From a technical perspective, AT&T's witness—a telecommunications engineer with years of interconnection experience—confirms that there is absolutely no difference technically between the two situations.¹⁴⁸ Drawing an ownership distinction does not serve competition, but rather creates a barrier thereto by injecting greater expense and delay in the CLECs' ability to access the end-user customer than Qwest itself experiences. Qwest can have almost immediate access to the MDU/MTE end-user customer, whereas AT&T and other CLECs could as well if they did not have to wait out Qwest's collocation provisioning intervals. AT&T explained during the Arizona and Arizona workshops on this topic that it can send its service representatives out to provision the interconnection between the AT&T NID and the Qwest NID in a fraction of the time it would take Qwest to implement a physical collocation. Simply put, suggesting that CLECs suffer the expense and delay associated with Qwest's attempt to define access to the NID as collocation, is a barrier to entry and a violation of Qwest's § 271 obligation. Instead AT&T recommends editing SGAT § 8.1.1.8.1 as follows:

8.1.1.8.1 With respect to ~~Collocation involving cross-~~connections for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3 This type of access and cross-connection is not collocation.¹⁴⁹

3. **In Violation of its § 271 Collocation Obligations, Qwest is Creating Allegedly “New” Products or Policies that, by Their Individual Terms and Conditions, Undermine Qwest’s Actual Compliance with Its**

¹⁴⁷ See *supra*, footnote 144.

¹⁴⁸ 2/13/01 AZ Tr. at pp. 1447-49.

¹⁴⁹ AZ Exhibit 2 ATT 17.

Obligations Under the Act, the SGAT and Interconnection Agreements.

There are essentially two issues in dispute here. First, § 8.1.1 identifies eight standard types of collocation that are offered by Qwest. The section provides further, “other types of collocation may be requested through the BFR process.” Assuming for argument’s sake that Qwest actually comes up with a “new” type of collocation not already contemplated by the FCC and covered under the terms of its SGAT, the problem with a *bona fide* request process, in the experience of both AT&T and WorldCom among others, is that it has proven to create unwarranted delay in the CLECs’ ability to serve customers thereby creating enormous operational delays and impeding competition.¹⁵⁰

The second issue that arises with respect to Qwest’s “productizing” its collocation offerings is that it issues policy statements further defining how the collocation product is to be accomplished. Within these policy statements Qwest demands that the CLECs subscribe to these policies regardless of what the SGAT or the interconnection agreements state.¹⁵¹ Frequently the policies are contrary to the SGAT and interconnection agreements. In fact, Qwest has been known to demand that a CLEC sign just such a policy before Qwest will turn over provisioned collocation space that the CLEC has already paid for.¹⁵²

Returning to the first issue, Qwest’s attempt to limit the SGAT’s applicability to only the eight specified types of collocation primarily raises the primary concern that whenever Qwest introduces what it considers to be a “new” product, it insists on a

¹⁵⁰ 2/13/01 AZ Tr. at p. 1395.

¹⁵¹ See Exhibit A-3, attached hereto.

¹⁵² 2/13/01 AZ Tr. at p. 1398.

contract amendment before the CLEC is permitted to order the product.¹⁵³ This process is generally accomplished through a BFR process and, as noted, it has been AT&T and WorldCom's experience that the amendment process is time consuming and frequently occurs under circumstances in which the parties have unequal bargaining power. To address at least the delay problem, AT&T proposed the following amendment to Qwest's BFR language, "Other types of collocation may be requested through the BFR process unless Qwest offers a new collocation product, in which case CLEC may order such new product as soon as it becomes available."¹⁵⁴ Qwest cannot be found to be in compliance with Checklist Item 1 unless it is clear that it has an obligation to provide all types of collocation to the CLECs as soon as they are made available. If, in deed, an amendment to an interconnection agreement or the SGAT is in order, then such process will not deter the CLEC's ability to timely collocate and the parties to the amendment may "true up" any discrepancies between the use of the product prior to the ultimate agreement on the amendment.

The second related issue involves Qwest's practice of unilaterally altering its agreements through the development of written policies and performance requirements that are inconsistent with its interconnection agreements and the SGAT. In the case of collocation, testimony by AT&T's witness Mr. Wilson in Arizona and by Mr. Zulevic for Covad in Colorado showed that Qwest requires CLECs at the time they accept a collocation space to execute written policies and performance requirements that are inconsistent with the SGAT and their respective agreements.¹⁵⁵ Furthermore, in AZ

¹⁵³ 2/13/01 AZ Tr. at pp. 1393-1394.

¹⁵⁴ 2/13/01 AZ Tr. at p. 1394.

¹⁵⁵ 2/14/01 AZ Tr. at pp. 1617-1621.

Exhibit 2 ATT 20 and other later-created collocation policies that were subsequently admitted in other states and attached hereto as **Exhibit A**, one can readily discern the problem.

To the extent that Qwest is relying on its SGAT as proof of its compliance with the competitive checklist under § 271, it can only be found to have satisfied the checklist if it is also shown that Qwest is *presently* providing service consistent with the provisions of the SGAT. The Collocation Policies and Performance Requirements set forth in AZ Exhibit 2 ATT 20 and those in the attached Exhibit E are inconsistent with the terms of the SGAT. As a consequence, Qwest should not be found to be in compliance with Checklist Item 1 until such time as it demonstrates that its collocation policies and performance requirements are, in fact, consistent with its SGAT and interconnection agreements.

4. **Qwest Has Created Numerous Unnecessary Exceptions to Its Compliance with Timely Collocation Provisioning Intervals Such that It Creates Barriers to the CLECs' Right to Timely Collocation Under the Act.**

Pursuant to FCC Order, Qwest should provide collocation within the intervals outlined by the FCC, which require, among other things, that within 10 calendar days after receiving an application, Qwest must inform the CLEC whether its application meets collocation standards.¹⁵⁶ Then, Qwest must complete physical collocation arrangements within 90 calendar days after receiving an application that meets the collocation standards.¹⁵⁷ Furthermore, Qwest must finish construction and turn functioning space over to the CLEC within the 90 day interval.¹⁵⁸ Longer intervals must

¹⁵⁶ 47 C.F.R. § 51.323(1)(1).

¹⁵⁷ 47 C.F.R. § 51.323(1)(2).

¹⁵⁸ See, *Order on Reconsideration* at ¶ 30.

be submitted to the state commissions for approval.¹⁵⁹

While the FCC has set national standards for the provisioning intervals of physical collocation, it has—as yet—declined to do so for virtual collocation.¹⁶⁰ Nevertheless, the FCC has declared that “intervals significantly longer than 90 days generally will impede competitive LECs’ ability to compete effectively.”¹⁶¹

Contrary to § 251(c)(6) and thus § 271, there are four SGAT sections that create unwarranted exceptions to Qwest’s obligations to provide timely and reasonable collocation for CLECs within the 90 day intervals. They are: (1) § 8.4.1.9 (formerly 8.4.1.8) imposing excessive limitations on the number of collocation applications a CLEC may submit to Qwest; (2) § 8.4.2.4.3 & .4 imposing outrageously long provisioning intervals for virtual collocation; (3) § 8.4.3.4.3 & .4 again imposing excessive provisioning intervals on physical collocation; and (4) § 8.4.4.4.3 & .4 also imposing excessive provisioning intervals on ICDF collocation orders. Because SGAT sections 8.4.2.4.3/4, 8.4.3.4.3/4 and 8.4.4.4.3/4 are identical in the interval requirements, AT&T will discuss those sections together, but provide individual language proposals in attached SGAT Sections 8.4.2, 8.4.3, 8.4.4 (**Exhibits B – D**),¹⁶² that if adopted, would alleviate the non-compliance problems.

- a. **Through § 8.4.1.9 (formerly 8.4.1.8) Qwest illegally attempts to limit the number of CLEC collocation applications it will accept.**

Qwest’s SGAT § 8.4.1.9 states:

¹⁵⁹ *Order on Reconsideration* at ¶ 29.

¹⁶⁰ *Id.* at ¶ 32.

¹⁶¹ *Id.* at ¶ 29.

¹⁶² These Exhibits were previously introduced as OR Exhibits ATT 224, 225, and 226; they are attached hereto as a convenience.

The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs.

This SGAT section applies to all CLEC collocation applications – whether small, large, augments to existing collocations or complex collocation requests.¹⁶³ Rather than hiring the people necessary to meet customer needs, Qwest seeks to control and limit customer demand so that it can ensure that it meets its ROC PID measurements.¹⁶⁴ In support of its position, Qwest cites to the FCC *Order on Reconsideration* at ¶ 24 and it cites to *Texas 271 Order* at ¶ 73.¹⁶⁵

Despite its hopes of limiting all CLEC orders, neither of the FCC decisions upon which Qwest relies to support upholding SGAT § 8.4.1.9 in fact supports such a proposal. First, the *Order on Reconsideration* states, in pertinent part:

An incumbent LEC must perform essentially three groups of tasks in order to provision collocation space in response to a competitive LEC's request. The incumbent LEC must determine whether the competitive LEC's application for collocation space meets any requirements the incumbent has established for such applications. In the Advanced Services First Report and Order, we stated that ten days constitutes a reasonable period within which an incumbent LEC should inform a new entrant whether its collocation application has been accepted or denied. Based on the record before us, we believe that an incumbent LEC has had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet this deadline, absent the receipt of an extraordinary number of complex collocation applications within a limited time frame.¹⁶⁶

Qwest has not shown that it has ever received “an extraordinary number of complex

¹⁶³ AZ Exhibit 2 Qwest 36 & 37.

¹⁶⁴ *Id.* at p. 107.

¹⁶⁵ *Id.* at p. 88. These proposals have neither been approved by the Arizona Commission nor the FCC.

¹⁶⁶ *Order on Reconsideration* at ¶ 27 (emphasis added).

collocation applications.” Rather it has shown that it seeks to unilaterally limit all orders, complex or simple.¹⁶⁷ Yet, the FCC’s statement is clear, Qwest has had ample time to have prepared itself to meet customer demand (were it a willing seller in any other market it would strive to meet customer demand rather than trying to limit it). It does not appear that Qwest has sufficiently upgraded its processes to handle the loads it can clearly track as expected by the FCC.¹⁶⁸

Moreover, the time periods for Qwest to report back to the CLEC whether its application is accepted or denied and the time periods to perform feasibility studies and the like all have “buffers” built into them. That is, it does not take 10 days to inform a CLEC whether its application is denied or accepted nor is 10 days required to do a feasibility study.¹⁶⁹ So the allocation of these time periods to the tasks assigned already take into consideration the need for some flexibility—no more is needed.

Likewise, the *SWBT Texas 271 Order* decision does not support Qwest’s desire.

It states, in pertinent part:

Except where a competitive LEC places a large number of collocation orders in the same 5-business day period, SWBT responds to each request within 10 days.¹⁷⁰

Again, Qwest is not attempting to create a reasonable exception to limit the number of complex orders it can handle in a week’s period from a single carrier; rather, it seeks to limit all CLECs all of the time. This is an unjustified restraint on the CLEC’s business. There is no legal support for such a limitation, and it creates a barrier to competition on

¹⁶⁷ AZ Exhibit 2 Qwest 36 & 37; 2/14/01 AZ Tr. at pp. 1560–69.

¹⁶⁸ 1/3/01 WA Tr. at pp. 2226–2227; 2/14/01 AZ Tr. at pp. 1566-1567

¹⁶⁹ *Id* at pp. 1567-1569.

¹⁷⁰ *SWBT Texas 271 Order* at ¶ 73 (emphasis added).

its face. Thus, Qwest is not in compliance with § 251(c)(6) nor § 271. To remedy this lack of compliance, Qwest should delete SGAT § 8.4.1.9.

- b. **SGAT § 8.4.2.4.3 & .4, § 8.4.3.4.3 & .4 and § 8.4.4.4.3 & .4 all impose excessive provisioning intervals for virtual, physical and ICDF collocation in violation of the FCC's orders and § 271 of the Act.**

The FCC's recent *Reconsideration Order* determined, among other things, that:

an incumbent LEC should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premise and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval.¹⁷¹

This statement and its meaning are fairly straightforward; only two circumstances should relieve an incumbent from meeting the 90 day interval where space is available: (a) a state commission's different intervals or (b) a mutual agreement between the CLEC and the incumbent LEC. Furthermore, where space is available or not, the FCC did not perceive the 90 day standard interval as imposing an undue hardship on incumbents; rather, the FCC stated:

[b]ased on the record before us, we believe ... that a maximum 90 calendar day interval will give an incumbent LEC ample time to provision most, if not all, physical collocation arrangements. We recognize, of course, that many incumbent LECs will have to improve their collocation provisioning performance significantly in order to meet this interval. Significant improvement is needed, however, only where incumbent LECs have taken insufficient steps to ensure the adequacy of their collocation provisioning processes. ... Incumbents already have extensive experience with handling large numbers of collocation applications on an ongoing basis. This experience should enable them to upgrade their internal controls, methods, and procedures to the extent necessary to provision all, or virtually all, physical collocation arrangements in no more than 90 calendar days.¹⁷²

¹⁷¹ *Order on Reconsideration* at ¶ 27.

¹⁷² *Id.* at ¶ 28 (emphasis added).

In fact, the FCC found that intervals significantly longer than 90 days would generally impede the CLEC's ability to compete effectively.¹⁷³ To that end, the FCC amended its rules to state:

[a]n incumbent LEC must offer to provide and provide all forms of physical collocation (i.e., caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.¹⁷⁴

Ultimately, then, there are only three general exceptions to the 90 day interval: (a) state deadlines; (b) mutually agreed to deadlines between CLEC and ILEC; and (c) lack of space in the premises.

On November 7, 2000, the FCC issued its Memorandum Opinion and Order ("Memorandum")¹⁷⁵ in response to Qwest's request for a waiver of the imposition of the 90 day intervals pending the FCC's consideration of Qwest's Reconsideration Petitions.

In its Memorandum, the FCC clarified that:

The Collocation Reconsideration Order does not permit an incumbent LEC to set unilaterally different standards by incorporating time periods of its own choosing into its SGATs and tariffs and having those standards take effect through inaction by the state commission. Indeed, such an approach would eviscerate the Commission's intent in the Collocation Reconsideration Order to establish national standards applicable except where specifically modified through interconnection agreement negotiations or deliberative processes of a state commission.¹⁷⁶

¹⁷³ *Id.* at ¶ 29.

¹⁷⁴ 47 C.F.R. § 51.323(l).

¹⁷⁵ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, DA 00-2528 (Released Nov. 7, 2000) [hereinafter "*Memorandum*"].

¹⁷⁶ *Id.* at ¶ 7 (emphasis added).

Thus, unilateral declarations, not approved by the FCC or the State, cannot go into effect on an interim or permanent basis here. That is, SGAT § 8.4 should be amended to reflect only that which the Arizona Commission has approved.

In addition to addressing unilateral action, the FCC also clarified that Qwest's interim waiver limited Qwest to:

increase the provisioning interval for a proposed physical collocation arrangements no more than 60 calendar days in the event a competitive LEC fails to timely and accurately forecast the arrangement We expect Qwest to use its best efforts to minimize any such increases¹⁷⁷

Qwest, therefore, was given no more than an additional 60 days for provisioning unforecasted requests *on an interim basis*, and it was further expected to minimize that time period.

Qwest's SGAT, however, demands that the CLECs provide very specific forecasts, demanding much of the same detailed information found in an application, before Qwest will agree to meet the 90 day interval.¹⁷⁸ Thus, even where space is available and Qwest could otherwise meet the interval, it—nevertheless—refuses to do so and gives itself another two months to provision the collocation request by demanding a “pre-application” a/k/a forecast 60 days in advance of the actual order. Five months is simply an outrageous amount of time to obtain collocation, particularly in the case of cageless physical collocation requests where appropriate space is readily available whether forecasted or not. Moreover, it appears that Qwest is doing little else than arbitrarily lopping off 30 days, of the 60 additional days, to minimize the extended time frames for unforecasted collocation requests (*see* Qwest's FCC matrix interval). There is

¹⁷⁷ *Memorandum* at ¶ 19.

¹⁷⁸ Compare SGAT § 8.4.1.4 (outlining the information demanded in a forecast) and § 8.4.1.5 (outlining the information that constitutes an application).

no reason that Qwest shouldn't be required to actually minimize the delay and meet the 90 day provisioning interval where space is available regardless of its receipt of a forecast; the FCC certainly did not preclude such action, and in fact, admonished Qwest to "use best efforts to minimize increases."¹⁷⁹

Qwest implied during the workshop, by omission of a critical portion of the quote, that the FCC allows an incumbent LEC to unilaterally require a CLEC to forecast its collocation needs as a precondition to receiving the standard intervals. What the FCC actually said was:

[a]n incumbent LEC also may require a competitive LEC to forecast its physical collocation demands. *Absent state action requiring forecasting*, a requesting carriers failure to submit a timely forecast *will not* relieve the incumbent LEC of its obligation to comply with the time limits set forth in this section. Similarly, an incumbent LEC may penalize an inaccurate collocation forecast by lengthening a collocation interval only if the state commission affirmatively authorizes such action.¹⁸⁰

On the heels of its slanted forecast assertion, Qwest's witnesses also suggested that the FCC's interim order governing Qwest included an ongoing forecasting obligation as a precondition to receiving the 90 day interval.¹⁸¹ Two things are important to remember in relation to the relief that Qwest obtained from the FCC. First, the FCC provided Qwest with only a temporary conditional waiver in the absence of state rules. Second, the FCC did not contemplate that Qwest had failed to obtain the necessary approval for forecasting as a precondition to meeting all the required intervals from this Commission nor that the forecasts that Qwest demands in its SGAT are closer to applications for collocation than real forecasts. Examination of the FCC's Memorandum makes clear that

¹⁷⁹ *Memorandum* at 9, ¶ 19.

¹⁸⁰ *FCC Reconsideration Order* at 22, ¶ 39.

¹⁸¹ 2/14/01 AZ Tr. at p. 1591.

such unilateral action is contrary to the FCC's intent and the Arizona Commission should determine for itself whether it is appropriate for Qwest to take longer provisioning intervals where the space is available.

In attempting to rationalize its position, Qwest claims that without automatically obtaining longer intervals for unforecasted collocation orders, CLECs will not provide forecasts.¹⁸² As an initial matter, if an interconnection agreement (or in this case an "opted into" SGAT) says that the parties shall provide forecasts, it is then a likely breach of contract not to do so. Furthermore, CLECs have all the incentive they need to provide forecasts if it will ensure that Qwest has the HVAC and upgrades to the collocation space necessary for smooth provisioning. The goal of the CLEC is to obtain the space when needed, not to play forecasting games nor did the FCC suggest that Qwest should be creating interval penalties via forecasting. Rather, the FCC instructed Qwest to minimize increases in provisioning intervals.

While on the topic of incentives, Qwest's SGAT sections do not provide it with any incentive to do as the FCC has admonished it "use best efforts to minimize increases" to the standard collocation interval. Rather, CLECs must accept it on blind faith that Qwest will minimize increases.¹⁸³ AT&T's experience in dealings with Qwest have suggested that Qwest will not in fact cooperate especially where contract language is silent on any topic.¹⁸⁴

In any event, AT&T proposes the SGAT language, contained in the attached Exhibits, to remedy the compliance problems created by Qwest's proposals. In these

¹⁸² 2/14/01 AZ Tr. at p. 1593.

¹⁸³ 2/14/01 AZ Tr. at pp. 1593-1594.

¹⁸⁴ AZ Exhibit 2 ATT 2, Exhibits E-F.

exhibits essentially altering the disputed sections from SGAT §§ 8.4.2, 8.4.3 and 8.4.4, AT&T proposes that the 90 day standard for physical and the lesser standards for virtual and ICDF collocation intervals would apply for forecasted or unforecasted collocation orders where Qwest has collocation space available. In exceptional circumstances where Qwest lacks the necessary space, power or HVAC to accommodate the order's needs, Qwest may employ the longer interval, which it has an express obligation to minimize. The AT&T proposals are consistent with the FCC's orders, and thus, the Commission should adopt them over Qwest's proposals.

5. **Qwest's Open Refusal to Comply with the FCC's Rule, 47 C.F.R. § 51.321(h), Regarding Publicly Posted Notice for CLECs of Full Qwest Collocation Premises Competitively Disadvantages CLECs and Violates § 271 of the Act.**

Qwest's SGAT states, in pertinent part, that Qwest will "maintain a publicly available document, posted for viewing on the Internet ... indicating *all Premises that are full*, and will update this document within ten (10) calendar days of the date which a premises runs out of physical space."¹⁸⁵ All "premises" by definition includes wire centers and remote premises, among other things.¹⁸⁶ On its face, the SGAT language is consistent with the FCC rule, which states:

The incumbent LEC *must* maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, *indicating all premises that are full*, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.¹⁸⁷

¹⁸⁵ SGAT at § 8.2.1.13

¹⁸⁶ 47 C.F.R. § 51.5 (definition of "Premises").

¹⁸⁷ 47 C.F.R. § 51.321(h) (emphasis added); *see also* Advanced Services Order at ¶ 58 ("*In addition to reporting requirements, we adopt the proposal of Sprint that incumbent LECs must maintain a publicly available document, posted for viewing on the Internet, indicating all premises that are full ...*")

The record, however, reveals that Qwest has absolutely no intention of actually abiding by its legal obligation as recited in the SGAT.¹⁸⁸ Rather, Qwest's public Internet document will list only wire centers, not all premises, and with respect to wire centers it will show only a limited subset of the wire centers. The subset of wire centers Qwest intends to identify are only those that it discovers are full as a result of providing a Space Availability Report to a CLEC requesting collocation in a particular wire center. Providing only a small subset of full wire centers in the Internet document is clearly contrary to what the law expressly requires and is yet another example of Qwest saying one thing in its SGAT to obtain § 271 approval while implementing something quite different than what the law requires.

Qwest's rationale for such conduct is twofold. First it argues, contrary to the law on statutory and legal construction, that because the requirement regarding the Internet document is expressed in the same subsection as the Space Availability Report, the Report requirement necessarily limits the later Internet document rule.¹⁸⁹

Such an interpretation defies, not only English grammar, but also legal construction. As an initial matter it is important to focus clearly upon the issue in dispute—this involves what the FCC requires of the publicly available Internet document; it does not involve the Space Availability Report, which the CLECs will pay for when they request that Qwest provide such a report regarding a particular premises. As to interpreting the Internet document rule, case law instructs that where a statute or rule is plain, unambiguous, and clear on its face, there is no room for other

¹⁸⁸ 2/13/01 AZ Tr. at pp. 1474-1477.

¹⁸⁹ *Id.* at p. 1 & p. 1880.

interpretation.¹⁹⁰ The FCC's rule is clear on its face, there is nothing to interpret.

Second, Qwest argues that the burden to track and understand its outside plant is far too great for it to comply with the law.¹⁹¹ While AT&T believes that Qwest should maintain better records of its outside plant and that it exaggerates the burden of doing so, AT&T has—nonetheless—sought a reasonable compromise with Qwest. It has requested that Qwest maintain an Internet document that reveals all its wire centers in the State that are full and that it also maintain a list of premises, other than wire centers, where it has prepared a Space Availability Report for a CLEC that showed, for example, a particular remote premises was full.¹⁹² This compromise relieves Qwest of the alleged burden of understanding the space limitations in all its remote premises while not shifting completely the financial burden of developing better wire center and outside plant inventory records onto its competitors.

In short, AT&T notes that Qwest is not fully compliant with its collocation obligations under § 271 of the Act, and therefore, the Commission should not recommend that Qwest receive approval before Qwest either agrees to the compromise proposed by AT&T or complies fully with the clear obligation described in 47 C.F.R. § 51.321(h) by providing an Internet document “*indicating all premises that are full*, and [updates] such a document within ten days of the date at which a premises runs out of physical collocation space.”

¹⁹⁰ *Arizona Dept. of Revenue v. Capitol Castings, Inc.*, 970 P.2d. 443, 449 (AZ App. Ct. 1998).

¹⁹¹ 2/13/01 AZ Tr. at p. 1475.

¹⁹² *Id.* at 1477.

6. **Qwest's SGAT Arbitrarily Increases the Expense of Collocation for the CLEC in Developing and Defining Certain Collocation Rate Elements and by Leaving Other Rates to Be Determined on an ICB Basis in Violation of the Recent Oklahoma and Kansas 271 Decisions.**¹⁹³

There are three SGAT sections with offending rate issues. They are discussed in the two subsections below.

a. **SGAT § 8.3.1.9 - Channel Regeneration Charges Impose Unwarranted Increases in the Expense of Collocation.**

AT&T objects to Qwest's imposition of a channel regeneration charge when the distance between the CLEC's collocation space and Qwest's network facilities is so great as to require regeneration.¹⁹⁴ The CLECs have no control over either the location of their collocation space within Qwest's central office or its relation to Qwest's network facilities. In a forward-looking environment, facilities would be placed such that the distance between the CLECs collocation space and Qwest's network facilities would not require channel regeneration. A channel regeneration charge is by definition inconsistent with the principle that collocation rates be based on forward-looking cost developed using a least cost network configuration.

Moreover, the SGAT should create some incentive for Qwest to minimize the need for regeneration charges by encouraging it to place its competitors' equipment appropriately. Therefore, the Commission should require Qwest to delete this provision before it is found to be in compliance with Checklist Item 1.

¹⁹³ *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29 (January 22, 2001) at ¶ 236 [hereinafter "*Kansas and Oklahoma 271 Order*"].

¹⁹⁴ 2/13/01 AZ Tr. at p. 1488.

b. SGAT §§ 8.3.5.1, 8.3.6 - Adjacent Collocation Charges and Rate Elements for Remote Collocation Done on an Individual Case Basis ("ICB") Are Not Just and Reasonable.

AT&T objects to Qwest's proposal to price both adjacent collocation and remote collocation on an ICB basis. Rather, Qwest should be required to develop a set of standard adjacent and remote collocation offerings, incorporating collocation rate elements to the extent possible. This is consistent with the FCC's expectation that Qwest has created specific and concrete terms under which it provides interconnection, collocation and its other wholesale offerings.

Both remote and adjacent collocation are likely to become more and more frequent requests as wire centers become more congested and as digital loop carrier systems are more frequently deployed requiring carriers to access the loop at the FDI. Allowing Qwest to price these two types of collocation on an ICB basis leads to delay, unjust pricing and potential discrimination.

In Colorado, Qwest agreed to defer the question of appropriate pricing for remote and adjacent collocation to the costing and pricing proceeding beginning there. At a minimum, AT&T urges the Commission to defer this issue to an appropriate cost docket so that all parties have the opportunity to submit proposals for standardizing the prices of adjacent and remote collocation.

7. SGAT § 8.4.1.7 - Qwest Discriminatory Space Reservation Policies that Favor Qwest over the CLEC

Since the workshop in Washington, the parties have reached agreement on the majority of the provisions in § 8.4.1.7. The only issue that remains at impasse is the forfeiture provision set forth in § 8.4.1.7.4. AT&T oppose Qwest's proposal to require CLECs to forfeit their space reservation fee upon cancellation of the reservation. Such

a forfeiture provision is discriminatory and would result in an unlawful windfall for Qwest.

In its First Report and Order, the FCC first ruled that incumbent LECs may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own uses.¹⁹⁵ The FCC confirmed this determination in its *Order on Reconsideration*.¹⁹⁶ The forfeiture provision set forth at § 8.7.1.7 violates the requirement that space reservation policies apply equally to both the ILEC and its competitors. In the event Qwest determines to cancel its reservation, Qwest stands in a completely different position than the CLECs. Unlike the CLECs Qwest has placed nothing at risk of forfeiture. Given the discriminatory nature of the forfeiture provision, it must be struck down.

The forfeiture provision creates the additional problem that it allows Qwest a windfall and thus confers a competitive advantage. There is simply no evidence supporting Qwest's contention that the deposit amount at risk of forfeiture bears any reasonable relation to costs Qwest incurs in connection with maintenance of the space reservation policy. Thus, for this reason as well, the forfeiture provision cannot stand.

CONCLUSION

For the foregoing reasons, AT&T requests that the Arizona Commission either find Qwest in non-compliance in relation to its § 271 obligations found in Checklist 1 Items on interconnection and collocation or order that Qwest make the adjustments suggested herein and await the outcome of the TAG performance testing to make any

¹⁹⁵ *First Report and Order* at ¶ 604; see 47 C.F.R. § 51.323(f)(4).

¹⁹⁶ *Order on Reconsideration* at ¶ 48.

final decision in relation to recommending Qwest's compliance, or lack thereof, to the
FCC.

Respectfully submitted this 28th day of March, 2001.

**AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.
AND AT&T LOCAL SERVICES ON
BEHALF OF TCG PHOENIX**

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EXHIBIT A-1

February 23, 2001

Collocation Cancellation Policy - effective March 15, 2001

This policy addresses the applicable requirements for the cancellation of a collocation site request under construction. This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

Cancellation, for purposes of this policy, applies to all collocation sites which are under construction and have not been completed, as defined by Request For Service (RFS) complete. A cancellation can occur by the result of a Co-Provider request or due to expiration. Expiration of a collocation request occurs where the Co-Provider fails to take the following action:

- ◆ Accept the quote and pay the initial 50% by the 30 day quote acceptance timeframe.

Cancellation Terms and Conditions

The following describes the two scenarios for which a collocation request will be considered cancelled.

1. Quote is not accepted by the Co-Provider or the Quote expires
 - ◆ Upon cancellation of the collocation site construction will cease;
 - *Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full.*
 - ◆ **Payments owed to Qwest:** (*Quota acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*)
 - Original QPF payment is required
2. After Quote acceptance (*Quota acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*), but prior to RFS a cancellation may be requested.
 - ◆ **Payments owed to Qwest**
 - QPF payment associated with the original order
 - First 50% of quoted charges
 - QPF payment associated with the cancellation request
 - Engineering Labor charges (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)
 - Cancellation Assessment Fee

General Terms

1. Qwest requires all cancellation requests to be submitted to the Account Team Representative in writing, and accompanied by a completed collocation application indicating the cancellation request requirements.

General Terms (continued)

2. Provider when a cancellation request is received, with the exception of work for which installation has begun (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)
 - a. Upon receipt of the cancellation request, Qwest will assess the project status to determine if specific elements will be finished or are in progress.
3. Qwest will prepare a cancellation bill and remit to the Co-Provider within 30 days. Payment of cancellation bill is due within 30 days of quote date.
4. If payment is not made within 30 days of receiving the cancellation bill, the Co-Provider's account is subject to collection.
 - a. Prior to Qwest accepting another collocation application from the Co-Provider; all outstanding financial obligations must be paid to Qwest
Collocation Payments owed to Qwest:
 - 100% of all incurred recurring charges
 - 100% of all incurred non-recurring charges
 - All associated cancellation charges
 - b. Collocation space returned to Qwest, due to cancellation, is subject to all remedies associated with Qwest's collection's process
- 5) Upon cancellation, the Co-Provider owned materials utilized in building the collocation site will be retained unless the Co-Provider requests removal in writing.
 - (If the Co-Provider requests that the materials that it owns (i.e. cage/fencing and cabling) be removed, Qwest will add charges for the removal of these items to the cancellation quote. By Whom?*
 - If the equipment cable was procured by Qwest, per Co-Providers application, and not installed: Qwest will reuse it when possible for future requests.*
 - If the cable has been procured by the Co-Provider and not installed, the cable will be returned.) What does this mean*
- 6) Space returned to Qwest's control is used to meet Qwest's valid space requirements, as well as, offered to other requesting Co-Providers on a first come first serve basis.
 - a. Co-Providers presented the opportunity to occupy the collocation space relinquished by another Co-Provider will be charged:
 - i) Non-recurring and recurring charges stipulated in the Collocation section of the new Co-Providers Interconnection Agreement or tariff.
 - ii) Non-recurring material charges paid by the previous Co-Provider and relinquished will not be assessed to the new occupant.
 - iii) Expedited structure charge
- 7) The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. A New Co-Provider must submit its request for security access utilizing Qwest procedures.
- 8) Space returned to Qwest is not subject to change of responsibility or decommission.

If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

Sincerely,

Qwest

EXHIBIT A-2

February 27, 2001

Collocation Change of Responsibility Policy - effective March 15, 2001

Target Audience: CLEC

Notification Classification: Product, Network

This policy addresses the applicable requirements for Change of Responsibility for Co-Provider who wishes to transfer the lease of its collocation site to another Co-Provider. This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

Change of responsibility refers to the authorized transfer of a specific collocation site, and the associated payment obligations for the transfer of that site, from one Co-Provider to another Co-Provider with a commission approved Interconnection Agreement. Two options for a change of responsibility are available:

1. Decommission Avoidance Request - (DAR)
 - a. A DAR permits a Co-Provider to vacate and transfer responsibility for a completed collocation site to another Co-Provider in good standing, who agrees to take on the legal and financial responsibilities of occupying the collocation. Please see the general terms and conditions contained in this document relating to DAR
 - b. DAR is submitted in lieu of a Decommission request.
2. Cancellation Avoidance Request - (CAR)
 - a. A CAR permits a Co-Provider to stop work on a collocation site in progress, as well as, transfer the responsibility of the collocation site to a new Co-Provider in good standing, who agrees to take on the legal and financial responsibilities of occupying the collocation. Please see the general terms and conditions contained in this document relating to CAR
 - b. CAR is submitted in lieu of a cancellation order.

Change of Responsibility Options and Requirements

Decommission Avoidance Request - DAR

A DAR will only be accepted after:

1. Original collocation request has been completed and 100% of the associated financial obligations have been paid.
2. Qwest has not taken action to decommission an order due to expiration.
 - a. Expiration is defined as an existing collocation request that terminates by lack of customer action.
 - b. If a Co-Provider fails to take the following actions, the collocation request will expire. To avoid decommissioning the following actions must be taken by the Co-Provider prior to expiration.
 - i. Accept the quote and payment of the initial 50% by the 30 day quote acceptance timeframe.
 - ii. Payment of the final 50% must be made within 30 days of Ready For Service (RFS).
 - iii. Schedule and perform a walk through within 3 weeks of RFS.
3. A DAR is not permitted if the Co-Provider has previously submitted a decommission request or the collocation build has not been completed.

DAR Charges

Rate Elements Charged to the New Co-Provider

The following fees will be assessed:

- Engineering Record Transfer Fee
- Security Access Charges
- Administrative Costs
- Engineering Labor Charges
- Expedited Structure Charge

Rate Elements Charged to Vacating Co-Provider

- Engineering Labor Charges
- Change of Responsibility Assessment Fee

Cancellation Avoidance Request - CAR

A CAR can be requested only if:

1. A collocation site request has not been completely constructed as defined by RFS complete.
 - a. If the collocation has been completely constructed as defined by RFS, a CAR is not available.
2. A collocation site request has been accepted through the quote acceptance procedures but is prior to RFS. (*Quote acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*)
 - a. Any financial obligations to Qwest for the collocation must be satisfied in full.
3. Qwest has not taken action to cancel an order due to expiration.
 - a. Expiration is defined as an existing collocation request that terminates by lack of customer action.
 - i. If a Co-Provider fails to take the following actions the collocation request will expire. To avoid cancellation the following actions must be taken by the Co-Provider prior to expiration.
 - (1) Accept the quote and pay the initial 50% by the 30 day quote acceptance timeframe.
4. A CAR is not permitted if the Co-Provider has previously submitted a cancellation request or an order has expired.

CAR Charges

Outstanding Financial Obligations

These obligations may include but are not limited to:

Payments owed to Qwest*

- QPF payment associated with the original order
- First 50% of quoted charges
- Engineering Labor charges (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)

**Any payments received for the specific collocation will be applied to the Billing Account Number (BAN)*

Change of Responsibility Rate Elements Charged to the New Co-Provider

The following charges will be assessed:

- Engineering Record Transfer Fee
- Security Access Fees
- Administrative Fees
- Engineering Labor Charges
- Expedited Structure Charge

Change of Responsibility Rate Elements Charged to Vacating Co-Provider

- Engineer Labor Charges
- Change of Responsibility Assessment Fee

General Terms for Change of Responsibility Requests:

1. The new Co-Provider must submit their change of responsibility request via the Collocation Order Form.
2. Change of Responsibility is offered for Caged Collocation, Cageless Collocation, and Virtual Collocation.
3. In all Central Offices in which a Co-Provider wishes to vacate a collocation site, the Co-Provider must have the collocation offered to Co-Providers who have requested similar collocation sites and are on Qwest's Queue list.
 - a. Qwest will administer the offering of the collocation site on behalf of the vacating Co-Provider to Co-Providers in queue. The collocation site will be offered in the order in which Qwest received the Co-Providers requests.
 - b. If a Co-Provider indicates interest, Qwest will notify the vacating Co-Provider.
 - i. Negotiation of the terms and conditions between the vacating Co-Provider and the new Co-Provider are the responsibility of the two parties. Qwest does not participate in these discussions, nor have any responsibility for any terms and conditions negotiated by the Co-Providers beyond those stated in the Change of Responsibility Policy.
 - c. If no Co-Providers are in queue or this is no interest, the vacating Co-Provider will be notified.
 - i. If no Co-Provider is in queue, the vacating Co-Provider may select to transfer the responsibility to an interested commission approved Co-Provider they have identified, if the following steps have been taken:
 - (1) Interested party is a commission approved Co-Provider;
 - (2) Interested Co-Provider and applicable information was indicated on the submitted Change of Responsibility query request;
 - (3) Required Change of Responsibility order information and documentation is submitted to Qwest within 7 days;
 - (a) Documentation requirements are indicated in the Change of Responsibility Policy
 - ii. If no interested party is identified in queue or indicated on the Change of Responsibility query request by the vacating Co-Provider, Qwest will cancel the request and the legal and financial responsibilities remain with the original Co-Provider.
 - (1) A new Change of Responsibility Assessment Fee will need to be submitted for each additional query.
4. The Co-Provider to whom the collocation site is being transferred must be in good financial standing and have a commission approved Interconnection Agreement with Qwest.
 - a. The terms of the Co-Provider's Interconnection Agreement to whom the collocation site is being transferred must have negotiated terms and conditions for the type of the collocation for which they are accepting responsibility.
 - i. If terms and conditions for the specific collocation are not included in the Interconnect Agreement and have not been established the Co-Provider must renegotiate those portions of its existing Interconnect Agreement with Qwest prior to the completion of the change of responsibility.
5. Prior to the completion of the Change of Responsibility Decommission Avoidance Request, the vacating Co-Provider must pay 100% of its outstanding financial obligations.
6. The change of responsibility policy is for the entire collocation site "as is", which includes all materials utilized in the initial design of the collocation site with the exception of the Unbundled Elements, finished services, administrative lines or entrance facilities. These elements are required to be disconnected prior to the completion of the transfer

- a. All Unbundled Elements or finished services of the vacating Co-Provider must be disconnected from the collocation space, before the change of responsibility order will be completed and transferred.
 - i. Prior to disconnecting circuits associated with the collocation Co-Provider must notify all current end users of the discontinuance of service.
 - (1) A copy of the notification letter must be submitted with the application for the change of responsibility of the collocation site or the application will be refused.
- b. Entrance Facilities must be unspliced at the POI but the facilities are transferred "as is" with the change of responsibility available for two standard entrance facility options. All other entrance facilities choices must be completely disconnected from the collocation site prior to the completion of the change of responsibility. The two standard entrance facilities that can be transferred and the associated actions are as follows:

Standard Entrance Facility

- ☐ Vacating Co-Provider is responsible for the removal of the original splice.
- ☐ New Co-Provider delivers fiber at the POI and is responsible for scheduling the splicing of the entrance facility to the collocation site.

Express Fiber Entrance Facility

- ☐ If no splice exists at the POI the vacating Co-Provider's fiber will be cut.
- ☐ If the express entrance facility has a splice at the POI the vacating Co-Provider is responsible for the removal of the original splice.
- ☐ New Co-Provider must deliver fiber at the POI and is responsible for scheduling the splicing of the express fiber to the collocation.

- 7. Prior to the completion of a Change of Responsibility Cancellation Avoidance Request, the vacating Co-Provider must pay 100% of the non-recurring and recurring charges that are outstanding.
 - a. Upon the acceptance of the Change of Responsibility – Cancellation avoidance application, Qwest will stop construction and consider the job 100% complete and the RFS met.
 - i. Any outstanding charges and payments will be assessed in accordance with the CAR terms as described in the CAR and DAR sections of this document.
- 8. Vacating Co-Provider is obligated to pay all recurring charges until Change of Responsibility is completed. The change of responsibility is considered complete when:
 - a. Network record changes are complete
 - b. Billing is transferred to the new Co-Provider
 - c. Letter of Agreement is signed by both Co-Providers
 - d. Letter of Agreement is received and approved by Qwest via certified mail
- 9. The vacating and the new Co-Provider must submit 100% payment for the billed charges within 30 days of their billing date or the Change of Responsibility application will be cancelled.
 - a. If cancellation of the change of responsibility application occurs all preexisting financial and legal obligations will remain responsibilities of the original (vacating) Co-Provider.
- 10. Upon completion of the change of responsibility, the new Co-Provider will be assessed ongoing and future charges for the collocation site based on the terms and conditions of its Interconnection Agreement.
- 11. Qwest does not participate in the financial negotiations between the vacating Co-Provider and the new Co-Provider regarding capital expenditures incurred by or charged for by the vacating Co-Provider for the transfer of the collocation site.
- 12. Upon completion of the change of responsibility the new Co-Provider may modify the collocation site by submitting augment orders.
 - a. Types of Augment orders that might need immediate consideration are:
 - i. Entrance Facility requirements
 - ii. Finished Services or UNES
 - iii. Power Requirements

13. Charges for Augments requested to modify Collocation sites obtained through Cancellation Avoidance Request will be billed based upon the New Co-Provider's interconnection agreement.
14. The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. New Co-Providers must submit its request for security access utilizing Qwest procedures.

If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

Sincerely,

Qwest

EXHIBIT A-3

February 27, 2001

Collocation Decommissioning Policy - effective March 15, 2001

Target Audience: CLEC

Notification Classification: Product, Network

This policy addresses the applicable requirements for a Co-Provider to submit an order to decommission a completed collocation site, as defined by Ready For Service (RFS). This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

A decommission refers to the removal of a specific collocation site, which the Co-Provider desires to be deactivated, which includes the removal of Co-Provider equipment and associated elements from the Qwest central office. *(If the Co-Provider requests that the materials it owns (i.e. cage/fencing and cabling) be removed, Qwest will add charges for the material removal to the decommissioning quote.)* The completion of a decommission and 100% payment of any outstanding financial obligations, will terminate a Co-Providers obligation for payment of recurring charges for the site.

Decommission Requirements

1. Decommissioning is offered for Caged Collocation, Cageless Collocation, Virtual Collocation and ICDF Collocation.
2. A Decommission request will only be accepted after the original collocation request has been completed and a 100% of the Co-Provider's financial obligations have been paid.
3. A Decommission request will be accepted as long as the application has been properly completed and the Co-Provider does not have a Change of Responsibility-Decommission Avoidance Request (DAR) in process.
4. The Co-Provider must submit its Decommissioning Request to a Qwest Account Manager via certified mail. A completed Collocation application must be sent, accompanied by a written request (Letter of Authorization) on company letterhead, and must be signed by an authorized Co-Provider agent.
 - a. Additional requirements exist for Co-Providers that have end users utilizing leased Qwest services (i.e. CLEC to CLEC, UNEs, Finished Services, etc. - Please review additional Decommission requirements)
5. The terms of the Interconnection Agreement for the Co-Provider requesting a decommission, must negotiate or have negotiated terms and conditions for the type of collocation for which the decommission is being requested.
 - a. If negotiations for terms and conditions have not been completed, the Co-Provider must enter into negotiations with Qwest prior to acceptance of the Decommission Request.
6. A Decommission Request, if approved, will authorize Qwest to remove the specified collocation site. The Decommission includes removal of all materials utilized in the design of the collocation site.
 - a. Prior to decommissioning, Qwest will assess the collocation space and materials, with the exception of the Co-Provider owned equipment, to identify if the elements used in building the collocation site, may be reused to meet other existing or future collocation requests.
 - b. Co-Providers presented the opportunity to occupy the collocation space relinquished by another Co-Provider will be charged:
 - i. The non-recurring and recurring charges stipulated in the new Co-Providers Interconnection Agreement or the tariff.
 - (1) Non-recurring material charges paid by the previous Co-Provider and relinquished will not be assessed to the new occupant.

- c. If Qwest determines the elements are reusable, Qwest will not remove the materials utilized to construct the collocation space unless requested by the Co-Provider in writing.
 - i. If materials are requested to be removed, charges for removal will be added to the Co-Provider's decommissioning cost.
 - ii. If the materials are not to be removed, the materials will remain in place and all usable materials will be reused for existing or future collocation requests.
 - (1) This will reduce the vacating Co-Providers decommissioning expense and the new Co-Provider's construction expenditures.
- 7. Co-Provider has 60 days to remove its equipment or Qwest will send notification to the Co-Provider that the equipment is considered abandoned.
 - a. Co-Provider then has 15 days to notify Qwest that the equipment is not abandoned.
 - i. Co-Provider must remove the equipment within 15 days after it sends notification to Qwest, or the equipment will be considered abandoned.
 - b. After Qwest notification procedures are completed, Qwest will review Co-Provider responses and assess if the equipment has been abandoned: If abandoned, Qwest will send final notification and a bill to the Co-Provider for the labor charges associated with the abandoned equipment removal. Qwest will then sell the equipment as scrap.
 - i. In the case of Virtual collocation, Qwest will automatically remove all equipment within 60 days and return it to the Co-Provider. An additional charge will be assessed and billed for the removal of the Co-Provider's equipment.
- 8. All Unbundled Network Elements, finished services and administrative lines are required to be disconnected and removed prior to the decommission process proceeding.
- 9. All Unbundled Network Elements, CLEC to CLEC, administrative lines or finished services of the vacating Co-Provider must be disconnected and removed. If they are not disconnected, charges for these elements will continue to be billed and the decommission request will not be processed.
 - a. Prior to disconnecting circuits associated with the collocation, the Co-Provider must notify, in writing, all current end users of the discontinuance of service.
 - i. A copy of the notification letter must be submitted with the decommission request or the application will not be accepted.
 - b. In the case of CLEC to CLEC and shared collocation, the Co-Provider submitting the decommission request must:
 - i. Send written notification of the requested decommission to the partnering Co-Provider, with a copy of the same notification sent to Qwest as an attachment to the decommission request.
 - ii. Submit an Augment order, with a copy of the written notification indicated above, to remove the CLEC to CLEC connection, or recurring billing will continue. (Please see CLEC to CLEC policy for additional CLEC to CLEC terms and requirements.)
 - iii. If a copy of the required notification(s) are not attached to the decommission request, Qwest will not accept the application.
- 10. Vacating Co-Provider is obligated to pay all recurring charges until the decommission is completed. The decommission is considered complete when:
 - a. Power has been removed from the collocation site;
 - b. Collocation financial obligations for the site have been met;
 - i. 100% of decommission charges have been paid
 - ii. 100% of outstanding non-recurring and recurring charges have been paid;
 - c. Letters of Authorization and notification(s) are submitted with the application, received via certified mail and accepted by Qwest.
- 11. The vacating Co-Provider must submit 100% payment for the billed charges within 30 days of the quote or the recurring charges and the associated liability (i.e. power and terminations) will continue to be billed and assessed against the Co-Provider.
- 12. If 100% of the Co-Provider's financial obligation are not received within 90 days, the Co-Provider will receive notification that no new collocation applications will be accepted until all past due balances are paid and accounts are brought current.

13. The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. New Co-Providers must submit its request for security access utilizing Qwest procedures.

Rate Elements Charged for Decommissioning

The following fees will be assessed:

- QPF
- Network System Administrative Fee
- Billing Administrative Fee
- Engineering Labor Charges
- Additional Removal Fees*
- Decommission Assessment Fee

**If the Co-Provider requests that the materials that it owns (i.e. cage/fencing, and cabling) be removed, Qwest will add charges for the removal of these items to the decommissioning quote.*

If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

Sincerely,

Qwest

EXHIBIT B

AT&T EXHIBIT FOR ARIZONA § 271 PROCEEDING

Proposed SGAT Language

8.4.2 Ordering - Virtual Collocation

8.4.2.1 **Application** -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premise. The feasibility study will be provided within ten (10) calendar days of receipt of a complete Application, ~~if the Premise was included in the CLEC's forecast at least sixty (60) calendar days prior to the Application. If the Premise was not included in the CLEC's forecast at least sixty (60) calendar days prior to the Application, the feasibility study shall be completed within twenty (20) calendar days of receipt of a complete Application.~~

8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.2.2 **Quotation** -- If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing Virtually Collocated equipment, will be processed within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's approval of the quoted charges.

8.4.2.3 **Acceptance** -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.2.4 **Interval** -- The interval for Virtual Collocation shall vary depending upon four factors -- 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7 2) whether CLEC provides its Acceptance within seven (7) calendar days receipt of the quotation, 3) whether the CLEC delivers its collocated equipment to Qwest in a timely manner, ~~which shall mean within forty-five (45) days of the receipt of the complete Collocation Application;~~ and 4) whether the application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no

instance shall any such interval exceed thirty (30) calendar days. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.2.4.1 Forecasted Applications with Timely Acceptance – If an Application is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ sixtyfourty-five calendar (6045) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five~~ sixtyfourty-five (6045) calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within forty-five (45) calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.2 Forecasted Applications with Late Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within forty-five (45) calendar days after receipt of the complete Collocation Acceptance, Qwest shall complete the collocation installation within forty-five (45) calendar days of the receipt of all of the CLEC's equipment. If CLEC submits its acceptance more than thirty (30) days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.2.4.3 Unforecasted Applications with Timely Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ sixtyfourty-five calendar (6045) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ~~ninety one hundred and twenty~~ ninety one hundred and twenty (90120) calendar days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete

Collocation Application. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five~~ (6045) calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within forty-five (45) ~~seventy-five (75)~~ calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.4 Unforecasted Applications with Late Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ calendar (6045) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ~~ninetyone hundred and twenty~~ (90120) calendar days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five~~ (6045) calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within forty-five (45) ~~seventy-five (75)~~ calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted collocation application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.31 through 8.4.2.4.4 ~~may~~ shall be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the collocation arrangement within an interval of no more than 150 calendar days after receipt of the complete Collocation Application. The need for, and the duration of, such extended intervals shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, such an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

~~8.4.2.4.5.1 When major infrastructure modifications are required, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of~~

~~the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within the following extended periods after of the receipt of the complete Collocation Application:~~

- ~~a) DC Power Plants — 180 calendar days~~
- ~~b) AC Standby Generators — 240 days~~
- ~~c) HVAC — 210 days~~
- ~~d) Space Conditioning — 210 days~~

~~8.4.2.4.65.2 **Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space.** If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to insure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application, notify CLEC that the longer intervals will apply when the application is submitted. Qwest will not begin construction of the infrastructure modification until CLEC submits an application and acceptance.~~

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EXHIBIT C

AT&T EXHIBIT FOR ARIZONA § 271 PROCEEDING

Proposed SGAT Language

8.4.3 Ordering – Caged and Cageless Physical Collocation

8.4.3.1 **Application** -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premise. The feasibility study will be provided within ten (10) calendar days from date of receipt of a complete Application, ~~if the application was included in the CLEC's forecast at least sixty (60) calendar days prior to the Application. If the Application was not included in the CLEC's forecast at least 60 days prior to the application, the feasibility study shall be completed within twenty (20) calendar days of receipt of a complete Application.~~

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.3.2 **Quotation** -- If Collocation entrance facilities and space are available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's approval of the quoted charges.

8.4.3.3 **Acceptance** -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.

8.4.3.4 **Interval** – The interval for physical collocation shall vary depending upon three factors – 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7, and 2) whether CLEC provides its Acceptance within seven (7) calendar days of receipt of the quotation and 43) whether the application requires major infrastructure additions or modifications. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.3.4.1 Forecasted Applications with Timely Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Application.

8.4.3.4.2 Forecasted Applications with Late Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Acceptance. If CLEC submits its acceptance more than thirty (30) days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.

8.4.3.4.3 Unforecasted Applications with Timely Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninetyone hundred and twenty (90120) calendar days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Application.

8.4.3.4.4 Unforecasted Applications with Late Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application and if CLEC provides a complete Acceptance more than eight (8) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninetyone hundred and twenty (90120) calendar days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Acceptance.

8.4.3.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted collocation application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure

modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.3.4.31 through 8.4.3.4.4 ~~may~~shall be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the collocation arrangement within an interval of no more than 150 calendar days after of the receipt of the complete Collocation Application. The need for, and the duration of, such extended intervals shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, such an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

~~8.4.2.4.5.1 When major infrastructure modifications are required, Qwest shall complete its installation of the collocation arrangement within the following extended periods after of the receipt of the complete Collocation Application:~~

- ~~a) DC Power Plants — 180 calendar days~~
- ~~b) AC Standby Generators — 240 days~~
- ~~c) HVAC — 210 days~~
- ~~d) Space Conditioning — 210 days~~

8.4.2.4.5.2 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to insure that it will meet the intervals set forth in Sections 8.4.3.4.1 and 8.4.3.4.2 when CLEC submits a Collocation Application. notify CLEC that the longer intervals will apply when the application is submitted. Qwest will not begin construction of the infrastructure modification until CLEC submits an application and acceptance.

.....

EXHIBIT D

AT&T EXHIBIT FOR ARIZONA § 271 PROCEEDING

Proposed SGAT Language

8.4.4 Ordering - Interconnection Distribution Frame ("ICDF") Collocation

8.4.4.1 **Application** -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's equipment [~~What CLEC equipment does Qwest contemplate; isn't this only fiber?~~] within the Wire Center. The feasibility study will be provided within ten (10) calendar days from date of receipt of a complete Application, ~~if the Premise was included in the CLEC's forecast at least 60 days prior to the Application. If the Premise was not included in the CLEC's forecast at least 60 days prior to the application, the feasibility study shall be completed within 20 calendar days of receipt of a complete Application.~~ The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by DS0, DS1 and DS3 capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.4.2 **Quotation** -- If office space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar days of providing the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period, the space is reserved pending CLEC's approval of the quoted charges.

8.4.4.3 **Acceptance** -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.4.4 **Interval** -- The interval for ICDF Collocation shall vary depending upon two factors -- 1) Whether the request was forecasted ~~in accordance with 8.4.1.4~~ in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7 and 2) Whether CLEC provides its Acceptance within seven (7) calendar days of the quotation. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard

intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.4.4.1 Forecasted Applications with Timely Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within forty-five (45) calendar days of the receipt of the complete Collocation Application.

8.4.4.4.2 Forecasted Applications with Late Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within forty-five (45) calendar days of the receipt of the complete Collocation Acceptance. If CLEC submits its acceptance more than thirty (30) days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.4.4.3 Unforecasted Applications with Timely Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within forty-five (45)ninety (90) calendar days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premise does not have on an existing ICDF or space for a new ICDF to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such ICDF space is not available, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Application. This interval may be lengthened if space must be reclaimed or reconditioned.

8.4.4.4.4 Unforecasted Applications with Late Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application and if the CLEC provides a complete Acceptance more than eight (8) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within forty-five (45)ninety (90) calendar days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premise does not have on an existing ICDF or space for a new ICDF to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such ICDF space is not available, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Acceptance.

This interval may be lengthened if space must be reclaimed or reconditioned.

8.4.4.5 ~~When ordering UNEs or ancillary services to be terminated on the Interconnection Distribution Frame, each UNE or ancillary service is ordered separately, using the existing ordering forms and intervals for the specific UNE or ancillary service. [Because this is inconsistent with the UNE combination language, this must be deleted]~~

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Closing Brief on Disputed Issues Regarding Checklist Item 1 on Interconnection and Collocation in Docket No. T-00000A-97-0238 were sent by overnight delivery on March 28, 2001 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
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