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March 27, 2001

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2996

RE: Docket No. T-00000A-97-0238

Arizona Corporation Commission

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Dear Docket Clerk:

Enclosed you will find the original and 10 copies of "Sprint Communications Company L.P.'s Brief Regarding Qwest Corporation's Lack of Compliance With Section 271 and 252(f) Obligations As to Interconnection, Collocation, LNP and Resale" in Docket No. T-00000A-97-0238.

Thank you for your assistance in this matter. Feel free to contact me with any questions or concerns you may have.

Sincerely,



Eric S. Heath

ESH:km

Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Commissioner

JAMES M. IRVIN

Commissioner

MARC SPITZER

Commissioner

**IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH § 271 OF THE)
TELECOMMUNICATIONS ACT OF)
1996)**

DOCKET NO. T-00000A-97-0238

SPRINT COMMUNICATIONS COMPANY L.P.'S BRIEF REGARDING QWEST CORPORATION'S LACK OF COMPLIANCE WITH SECTION 271 AND 252(f) OBLIGATIONS AS TO INTERCONNECTION, COLLOCATION, LNP AND RESALE

Sprint Communications Company L.P. ("Sprint") respectfully submits this Brief regarding Qwest Corporation's ("Qwest") lack of compliance with obligations imposed pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 151 et seq. (2000) (the "Act"). As set forth more fully herein, and in the comments filed by other competitive carriers in this docket, Qwest has not satisfied its obligations under Sections 271 and 252(f) as to interconnection, collocation, local number portability ("LNP") and resale.

I. INTRODUCTION

Any endorsement by this Commission that Qwest has satisfied obligations relating to interconnection, collocation, LNP and resale is premature. In Arizona, Qwest has chosen to assert its compliance with Section 271 checklist obligations by offering a Statement of Generally Available Terms and Conditions ("SGAT") as it has done generally throughout its 14-state region. In offering its SGAT, however, Qwest has not demonstrated actual performance with any of the criteria set forth in the Act. Qwest's SGAT offerings here do not constitute actual evidence demonstrating present compliance with conditions imposed upon all regional Bell Operating Companies

("BOCs") prior to entry into competitive in-region interLATA long distance markets. Instead, Qwest's SGAT represents mere promises to perform; actual evidence regarding Qwest implementation of SGAT provisions will be deferred until performance and operations support system ("OSS") testing. In any event, even setting aside the issue of actual performance, many of Qwest's proposed SGAT terms and conditions, on their face, do not satisfy obligations imposed under the Act, and do not justify approval by this Commission.

Qwest's premature entry into competitive in-region long distance markets without satisfaction of all Section 271 obligations not only discourages competition in local exchange markets in this State, but results in the destruction of competition in interLATA long distance markets to the detriment of consumers.¹ The success of Verizon (Bell Atlantic) in New York and SBC in Texas, with all due respect to these companies, cannot really be the result of stunning, indeed unprecedented, marketing skills. Rather, the dramatic penetration rates of these companies in their first months of entry largely reflect consumers' desire to purchase local and toll services from a single provider.

Fair and efficient competition can only occur if incumbents are truly required to open their local markets to new entry. Absent economic opportunities to offer local service telecommunications companies will be forced out of competition for the bundle

¹ The FCC has repeatedly explained that the critical market-opening provisions of Section 251 of the Act have been incorporated into the competitive checklist set forth in Section 271 of the Act. See e.g. Memorandum Opinion and Order, *In the Matter of Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. b/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (June 30, 2000) (the "SBC Texas 271 Order").

of services. In turn, they will forego serving residential long distance customers on a stand-alone basis.

Accordingly, the question has really become whether this Commission and the FCC are willing to cede the residential markets to incumbents. If the State commissions and FCC do not fully enforce the provisions of Section 271, then the BOCs will control not only the provision of local residential service within their regions, but long distance services as well.

II. LEGAL STANDARDS AND FRAMEWORK FOR ANALYSIS

Although the Federal Communications Commission ("FCC") remains the final arbiter of a BOC's compliance with the competitive checklist contained in Section 271 of the Act, this Commission must perform the critically important task of ensuring that Qwest takes the steps necessary to eliminate barriers to competition for local exchange services, and to create a meaningful record upon which the FCC will rely upon in reaching its determination. If this Commission does not stand firm in ensuring that Qwest has fully satisfied its legal obligations, or too quickly endorses promises of future performance in the guise of "real" performance, the process envisioned by Congress breaks down.

Unless the FCC finds that Qwest has satisfied four criteria including compliance with Section 271(c)(1)(A) or (c)(1)(B), full implementation of the competitive checklist, that the authorization will be carried out in accordance with Section 272, and that entry is consistent with the public interest, convenience and necessity, the FCC "shall not approve" the requested authorization.² Moreover, in the recent 271 decisions in Kansas and Oklahoma, the FCC reiterated that, although it assesses local competition

² Texas 271 Order, ¶ 9, citing 47 U.S.C. § 271(d)(3); *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413 (D.C. Cir. 1998).

prerequisites by BOC's compliance with rules and orders in effect at the time an application was filed, the BOC must comply with all of the Commission's rules implementing the requirements of section 251 and 252 beginning on the dates specified by those rules.³

In proceedings involving other BOCs, the FCC has elaborated on the statutory standard to make a showing necessary to satisfy Section 271 of the Act.⁴ Under all circumstances, a BOC retains the burden of demonstrating that it has "fully implemented the competitive checklist in subsection (C)(2)(B)."⁵ Further, it has been firmly established that the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.⁶

In the New York 271 Order, the FCC explained that for those functions that the BOC provides to competitive carriers that are analogous to the functions a BOC provides to itself in connection with its retail offerings, the BOC must provide access to competing carriers that are of "substantially the same time and manner" as it provides to itself.⁷ Accordingly, where a retail analog exists, Qwest must provide access that is substantially the same as the level of access that it provides to "itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness."⁸ Alternatively, for functions without a retail analog, Qwest must demonstrate that the access it provides to

³ Memorandum Opinion and Order, *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*, CC. Docket 00-217 (January 22, 2001) ("SBC Kansas Oklahoma 271 Order"), ¶ 18, citing SBC Texas 271 Order, ¶ 29.

⁴ Memorandum Opinion and Order, *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York*, 15 FCC Rcd. 75 (Dec. 22, 1999), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000) ("New York 271 Order") at ¶ 44.

⁵ Id.

⁶ Id., citing 47 U.S.C. § 271(c)(1)(B)(i), (ii).

⁷ Id.

competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”⁹ The “meaningful opportunity to compete” standard is not a weaker test than the “substantially the same time and manner” standard, but is simply intended to be a proxy for the latter where the BOC does not perform analogous activities for itself.¹⁰

Finally, as is particularly relevant here where Qwest relies on its proposed SGAT, the FCC has established that a BOC, such as Qwest, must provide *actual* evidence of its compliance with the competitive checklist instead of promises of future performance or behavior. The FCC stated:

In addition, the [FCC] has found that a BOC’s promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on requirements of section 271.¹¹

Qwest simply has not satisfied these standards sufficient to justify the conclusion that Checklist Item 1 has been met.

III. CHECKLIST ITEM 1 – INTERCONNECTION

At the outset, it should be beyond dispute that the obligation to provide interconnection of facilities for mutual exchange of traffic is statutory, and is not dependent upon Qwest’s determination to offer “interconnection products” upon terms and conditions which Qwest chooses for itself. Section 271(c)(2)(B)(i) of the Act

⁸ New York 271 Order at ¶ 44, citing *Application of Ameritech Michigan Pursuant to Section 271 of The Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, (1977) (“Ameritech Michigan Order”), 12 Rcd 20618-19.

⁹ *Id.*

¹⁰ *Id.* at ¶ 45.

¹¹ New York 271 Order at ¶ 37, citing *Ameritech Michigan Order*, 12 FCC Rcd at 20575.

mandates that a 271 applicant provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”¹² Moreover, the command of Section 251(c)(2) is clear:

(2) Interconnection

The 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, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.¹³

Provision of collocation is an “essential prerequisite” to demonstrating compliance with Checklist Item No. 1.¹⁴ As is set forth below, and in the comments of other competitive carriers, the statute makes clear that Qwest’s attempt to define for itself and others the terms and conditions of interconnection “product offerings” in its SGAT is improper because the obligation to provide interconnection for physical linking of networks for mutual traffic exchange arises under the statute and not the SGAT.

¹² 47 U.S.C. § 271(c)(2)(B)(i).

¹³ 47 U.S.C. § 251(c)(2).

¹⁴ SBC Texas 271 Order, ¶ 64, citing 47 U.S.C. § 251(c)(6); New York 271 Order, ¶¶ 66; Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, (October 13, 1998) (“Second BellSouth Louisiana Order”), ¶¶ 61-62.

In elucidating the meaning of “technically feasible” in Section 251(C)(2)(B), the FCC has resisted the notion that the BOC can force competitive carriers to interconnect by building an overlay network that mirrors the BOC—in other words allowing the incumbent to force the competitive carrier to build a network to needless points within the incumbent’s network regardless of how duplicative, wasteful or inefficient. In the FCC’s First Report and Order,¹⁵ the FCC avowed that Section 251(c)(2) “gives competing carriers the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point on that network, *rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points.*”¹⁶ Further, the FCC explained that the Act was designed to lower barriers for competitive carriers that had not built extensive networks by allowing them to select the points on the incumbent’s network at which to deliver traffic, and expressly noted that competitive carriers have incentives to make “economically efficient decisions about where to interconnect.”¹⁷

The FCC further identified a minimum list of technically feasible points of interconnection crucial to facilitating entry by competitive carriers. The minimum list includes: (1) the line-side of a local switch (e.g., at the main distribution frame); (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points; and (6) the points of access to unbundled network elements.¹⁸ In identifying the minimum list, the FCC also noted that the list was not exhaustive. The FCC encouraged both the parties

¹⁵ *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 (August 6, 1996) (“First Report and Order”).

¹⁶ *Id.*, ¶ 209 (emphasis added).

¹⁷ *Id.*

¹⁸ See First Report and Order, ¶¶ 209-12; 47 C.F.R. 51.305 (2000).

and the states to identify other technically feasible points of interconnection.¹⁹ In fact, in approving 271 applications in New York and Texas, the FCC specifically noted that the incumbents had processes in place for requesting interconnection at additional technically feasible points, and that competing carriers were therefore not limited to the standard types spelled out in a tariff.²⁰

Furthermore, the FCC indicated that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. Specifically, the FCC concluded that the term "technical," when appropriately interpreted in the context of engineering and operational concerns referenced in the context of sections 251(c)(2) and 251(c)(3) does not include consideration of accounting or billing restrictions.²¹ The FCC went on to conclude that that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.²²

To implement the requirement in Section 251 to provide interconnection that is "equal-in-quality," the FCC's rules require an incumbent to design and operate interconnection facilities to meet the "same technical criteria and service standards" that are used for the interoffice trunks within the incumbent's own network.²³ Although the FCC has traditionally looked at trunk blockage and transmission standards as indicators of an incumbent's technical criteria and service standards, it cautioned in the New York

¹⁹ First Report and Order, ¶ 212.

²⁰ New York 271 Order, ¶ 76; SBC Texas 271 Order, ¶ 76 ("SWBT demonstrates that it has an approved state interconnection agreement that spell outs readily available points of interconnection, and provides a process for requesting interconnection at additional, technically feasible points").

²¹ First Report and Order, ¶ 201.

²² *Id.* at ¶ 202.

²³ New York 271 Order, ¶ 64.

Bell Atlantic 271 proceeding that conclusions based upon such criteria are the result of a weighing of several significant factors. Thus, the FCC stated that a “different combination of factors in another case might well lead us to conclude that, on the whole, competitive LECs do not receive equal-in-quality interconnection on just, reasonable and nondiscriminatory terms and conditions.”²⁴

Lastly, in the First Report and Order, the FCC concluded that in providing interconnection on terms and conditions that are just, reasonable and nondiscriminatory, “the incumbent must provide interconnection that is no less efficient than the way the incumbent provides the comparable function for its own retail operations.”²⁵ In fact, the FCC directly stated that “by providing interconnection to a competitor in a manner less efficient than an incumbent provides itself, the incumbent violates the duty to be ‘just’ and ‘reasonable’ under section 251(c)(2)(D).”²⁶ As is discussed more fully below, Qwest’s interconnection policy, procedures and practices (which include, but are not limited to its SGAT), demonstrate that it imposes discriminatory, unreasonable and less efficient conditions on interconnection with competing carriers which has frustrated local competition in this State. Accordingly, Qwest has not yet satisfied Checklist Item No. 1 in this State.

A. Qwest Should Not Be Permitted To “Productize” Interconnection And Collocation Service Offerings That It Is Required To Offer Under The Act.

Competing carriers and Qwest are at an impasse over an issue now referred to as “productizing” that is directly relevant to interconnection and collocation, but also has broader application to the SGAT generally. Productizing refers to Qwest’s practice in developing its SGAT of requiring competing carriers to agree to certain terms and

²⁴ New York 271 Order, ¶ 72.

²⁵ First Report and Order, ¶ 218; see also New York 271 Order, ¶ 65.

conditions of new "product offerings" before the carrier can take advantage of the offering. Although Qwest has conceded in other states that productizing is an issue, including in collaborative workshops in Arizona on February 13, 2001, it generally asserts that resolution of this impasse issue should be left to workshops dealing with general terms and conditions.

At the same time as it asserts that the productizing issue should be resolved in workshops dealing with general terms and conditions, Qwest steadfastly maintains that general terms and conditions are not a 271 issue. Sprint cannot countenance such circular sleight-of-hand which is designed to ensure that the issue is never properly raised, and neither should this Commission. While other competing carriers, notably WorldCom, Inc., have agreed to defer discussions to a later time subject to the stipulation that the issue be resolved at some point, Sprint maintains that the productizing impasse is both a Section 271 issue and a SGAT issue.²⁷

Qwest's policy of "productizing" offerings that it is required to provide under the Act substantially increases the costs of interconnection for competing carriers, and substantially lengthens the time it takes a carrier to complete interconnection. By doing so, Qwest imposes unreasonable barriers to efficient interconnection by competing carriers thus serving to protect its monopoly status, frustrating competition and harming consumers in this state.

Qwest has generally prohibited competing carriers from ordering a new product offering until the parties negotiate an amendment to existing interconnection agreements. Negotiation of amendments to interconnection agreements are not nearly the simple, easy and efficient process that Qwest portrays in workshops. Sprint has

²⁶ First Report and Order, ¶ 218.

recently negotiated new interconnection agreements in several states in Qwest's 14-state region, as well as amendments to prior agreements. When the parties do not agree on specific language, the process can extend over several weeks or months significantly curtailing the competing carrier's ability to compete. The parties may resort to lengthy dispute resolution procedures, including but not limited to, an exhaustive procedure involving State commissions.

Moreover, Sprint agrees with other carriers such as WorldCom that the productizing policy has resulted in difficulties ordering products that were previously available under interconnection agreements absent approval of an amendment. Recently, in Arizona, Qwest asserted that it would make available new products to competing carriers before amendments to the interconnection agreements were finalized, but only if the competing carrier agrees to the terms and conditions of the new offering.

The terms and conditions imposed by Qwest in the "new" product offering, however, may be different than the terms and conditions under which the competing carrier previously received similar interconnection. Therefore, Qwest's recent offer still requires agreement to terms and conditions it imposes unilaterally (even if not yet memorialized in a contract amendment), and merely provides another example of how it uses its market power to hold competing carriers "over a barrel" before it permits statutorily required interconnection. Use of such inequality of bargaining power results in Qwest having the ability unilaterally to change procedures that may have been in effect prior to the new productization simply because Qwest determined to create a new product in place of what was offered before. Qwest's productizing in theory and

²⁷ Although Sprint raises the impasse issue here, it does not intend to waive its right to re-raise the issue or comment further if the Commission should defer discussion until consideration of general terms and conditions or elsewhere in this docket.

practice therefore violates the FCC's national standards for just, reasonable and nondiscriminatory terms and conditions of interconnection.²⁸

The most egregious example of productizing may be Qwest's Single Point of Presence product or "SPOP" as addressed more fully below. Qwest has modified its SGAT in Section 7.2.2.9.6.1 to allow interconnection, in limited situations, at a Qwest access tandem. To facilitate this offering, Qwest has distributed a product description²⁹ which outlines the terms and conditions of the SPOP. Interestingly, where Qwest allows CLECs to interconnect at one point per LATA, it does so only under the terms and conditions of its SPOP product, and without regard to the statutory technical feasibility standard. Unfortunately for CLECs interested in interconnecting at a single point of interconnection per LATA, Qwest's SPOP *only* allows such configuration if no local tandems are available to serve the desired end offices even though Qwest admits that interconnection at the access tandem is technically feasible even where local tandems are available. Qwest's policy, therefore, contravenes the FCC's command that competing carriers be permitted to interconnect at a single point, on terms and conditions that are just, reasonable and nondiscriminatory.

Furthermore, the SPOP product description contains terms and conditions that could conflict with current interconnection agreements. For example, the SPOP product description indicates that "Qwest will not pay reciprocal compensation for ISP-bound traffic." Therefore, in order for a competing carrier to interconnect at a single point of presence in the LATA, it necessarily risks losing terms and conditions that may be

²⁸ In the First Report and Order, the FCC stated that minimum standards for just, reasonable and nondiscriminatory interconnection terms were required because only with such standards, can the imbalance in bargaining power between incumbents and competitors be offset. First Report and Order, ¶ 216. Further, the FCC expressly noted that negotiations between incumbents and competitors differ from commercial negotiations "because new entrants are dependent solely on the incumbent for interconnection." *Id.*

²⁹ Exhibit 2 ATT 24.

contained in its current interconnection agreement or in interconnection agreement with other carriers pursuant to Section 252(i). Additionally, the competing carrier may be forced to "waive" a position previously taken (for example, reciprocal compensation for ISP-bound traffic) in order to receive Qwest's new "product."

The practice of productizing thus offends the Act and violates the statutory standards. Technically feasible, equal-in-kind and just, reasonable and nondiscriminatory interconnection is simply not a product offering. Qwest is obligated under the Act to permit interconnection or the physical linking of two networks for the mutual exchange of traffic, including as stated in the FCC's prior 271 orders at a single point of presence.³⁰ By forcing competing carriers to choose between prior terms and conditions of interconnection agreements, and by forcing needless and time consuming amendments to interconnection agreements, Qwest improperly uses its dominant position to increase the cost of competition.

B. Qwest's SGAT Denies Efficient Interconnection Arrangements To Competing Carriers By Prohibiting The Combination Of Local Traffic and Switched Access Traffic On A Single Trunk Group.

Qwest's SGAT flatly denies competing carriers the ability to utilize efficient interconnection trunking, and seeks to force competing carriers needlessly to build inefficient "overlay" local networks that mirror old incumbent networks. As if to deny that the Act was ever passed, Qwest insists on conducting business the old way (separate trunk groups for local traffic and separate trunk groups for access traffic) simply because it has always done business that way, it is easier for it to do business that way, and because it can compete better with emerging competitors if it can force competing

³⁰ See 47 C.F.R. § 51.5.

carriers to incur unnecessary costs that incumbent local exchange carriers initially incurred in building local-only networks.³¹

Qwest's improper restriction is contained in Section 7.2.2.9.3.2 of the SGAT.

This section provides:

7.2.2.9.3 Separate trunk groups may be established based on billing, signaling, and network requirements. The following is the current list of traffic types that require separate trunk groups, unless specifically otherwise stated in this Agreement.

- a) Directory Assistance trunks (where the switch type requires separation from Operator Services trunks);
- b) 911/E911 trunks;
- c) Operator Services trunks (where the switch type requires separation from Directory Assistance trunks)
- d) Mass calling trunks, if applicable.

7.2.2.9.3.1 Exchange Service (EAS/local), Exchange Access (IntraLATA toll carried solely by Local Exchange Carriers) and Jointly Provided Switched Access (InterLATA and IntraLATA toll involving a third-party IXC) may be combined in a single LIS trunk group or transmitted on separate LIS trunk group or transmitted on separate LIS trunk groups.

7.2.2.9.3.2 Exchange Service (EAS/Local) traffic shall not be combined with Switched Access, not including Jointly Provided Switched Access, on the same trunk group, i.e. EAS/Local may not be combined with FGD to a Qwest Access Tandem Switch and/or End Office Switch.³²

Rather than permit competing carriers to utilize unused capacity on existing, efficient, long distance networks to carry local/EAS traffic, Qwest has attempted to force

³¹ Sprint's comments on Qwest's refusal to permit combined local and interLATA traffic on a single trunk group are limited to Qwest's proposed SGAT language. These comments do not relate to any agreement by Qwest in existing interconnection agreements, including in the Sprint-Qwest interconnection agreement, to permit combination of traffic on single trunk groups pursuant to the terms and conditions contained therein. As is set forth herein, Qwest's SGAT should expressly permit combination of interLATA, 1+ long distance (access) traffic and local/EAS traffic on a single trunk group if requested by the competing carrier.

such carriers to build wasteful and duplicative "local-only" networks. For example, Sprint has an efficient trunking network in place today that is interconnected to Qwest's end offices and tandems. Sprint should have the opportunity to operate a network architecture similar to Qwest.

Sprint and competing carriers should not be forced to deploy dedicated overlay networks to carry local traffic. The Act and FCC regulations permit Sprint to use its trunk capacity where incremental traffic can economically be added to existing trunks groups. Qwest's SGAT language, in its insistence that carriers cannot combine toll and local traffic, does not comply with the Act or the FCC's command BOCs not obligate carriers to transport traffic at less convenient or efficient interconnection points.

Even Qwest does not seriously debate the technical feasibility of combining interLATA and intraLATA traffic on trunk groups between competitive carrier end offices and Qwest tandems. In fact, it is an industry-wide practice to combine interLATA and intraLATA traffic on the same trunk groups in many instances. In LATAs with a single access tandem, that tandem can also serve as a local (intraLATA) tandem where the intraLATA and interLATA traffic are combined on the tandem connecting trunk groups even though the end office to end office or end office to IXC POP carry segregated traffic.

Qwest and other incumbents may be concerned with the bypass of the access charge compensation scheme through the "masking" of access traffic as local traffic subject to reciprocal compensation. The FCC's rules however specifically prohibit a claim of technical infeasibility based upon a claim of billing or accounting concerns.³³

³² Exhibit 2 Qwest 30 (emphasis added).

³³ See e.g. First Report and Order, ¶¶ 198, 201, ("[n]or do we believe the term 'technical' when interpreted in accordance with its ordinary meaning as referring to engineering and operational concerns in the context of sections 251(c)(2) and 251(c)(3), includes consideration of accounting or billing restrictions").

The technical feasibility of combining traffic on a single trunk group is underscored by the many instances in which State commissions have either ordered incumbents to permit multi-jurisdictional trunking or have approved agreements where the parties have so agreed—particularly addressing such record-keeping and compensation concerns.

For example, even as far back as a 1997 arbitration proceeding between Sprint and BellSouth in Georgia, the Commission concluded:

The Commission finds Sprints request is not technically infeasible. The Commission finds that currently, interexchange carriers mix interstate and Intrastate traffic over the same trunk group. The Commission rules that for a reasonable period of time, Sprint shall be permitted to pass both local and toll over a single trunk group, utilizing a percent local usage factor to jurisdictionally separate the traffic. The factor shall be subject to audit.³⁴

In short, the telecommunications universe does not look like the “access-only” v. “local only” world envisioned by Qwest’s SGAT anymore. Companies that were formerly only long distance companies that used access trunks exclusively to haul toll traffic are receiving permission to use excess capacity on these trunks as competitive carriers to deliver local traffic along with toll traffic on the same trunk groups.

More recently, State commissions have realized that the post-Act world does not resemble the world envisioned by the Qwest SGAT. On October 5, 2000 the California Public Utilities Commission (“CPUC”) approved an interconnection agreement between Sprint and Pacific Bell that explicitly permits Sprint to combine local and toll traffic on a single trunk group. In D.00-10-030, the CPUC unanimously upheld this agreement as consistent with the standards for approval of negotiated and arbitrated interconnection agreements under Section 252(e)(2) of the Act and similar state rules:

³⁴ Order Ruling on Arbitration, Docket No. 6958-U, at 20 (January 7, 1997). As the Commission decision is a matter of, and properly obtainable as a public record, it is appropriate for this Commission’s consideration under principles of administrative notice.

3.2.1 SBC-13STATE shall not impose any restrictions on Sprint's ability to combine local and IntraLATA toll traffic with InterLATA traffic on the same (combined) trunk group. To the extent SBC does not currently combine its own InterLATA Toll, IntraLATA Toll, and/or Local Traffic, this should in no way inhibit Sprint's ability to combine such traffic.

3.2.1.1 Sprint intends to measure and accurately identify interLATA, IntraLATA and Local traffic on the combined trunk group.

3.2.1.2 When Sprint is not able to measure traffic, the Parties will make a best effort to apportion the traffic among the various jurisdictions, or, in the alternative, Sprint shall provide a percentage of jurisdictional use factors that will be use to apportion traffic.

3.2.1.3 SBC-13STATE may audit the development of Sprint's actual usage of the development of the jurisdictional usage factors, as set forth in the Audit provisions of the General Terms and Conditions of this Agreement.³⁵

Furthermore, technical feasibility as to multi-jurisdictional trunking on the Qwest network is demonstrated by the decisions of several states in the Qwest 14-state region. As Qwest implicitly argues in SGAT 7.2.2.9.3, U S WEST argued more explicitly against multi-jurisdictional trunking in *U S WEST Communications, Inc. v. Jennings*,³⁶ that there was "no way to reliably determine which of the traffic that passes along a trunk is toll and which is local . . . [and that it] will not be fully compensated for its share of the access charges associated with toll traffic."³⁷ The court, however, disagreed, and affirmed the Arizona Corporation Commission's requirement that competitive carriers

³⁵ Agreement submitted with the CPUC pursuant to D.00-10-030, *In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company*, October, 2000.

³⁶ 46 F.Supp.2d 1024 (D. Az. 1999).

³⁷ Id.

provide U S WEST with traffic reports and audit rights, citing its lack of technical experience to second-guess the commission.³⁸ Similarly, as AT&T and WorldCom have argued in the Qwest 271 proceeding in Washington, many states in the Qwest region have required combination of traffic on single trunk groups, including Arizona, Utah, New Mexico, Montana and Idaho.³⁹

Forcing competing carriers to employ local-only trunks to carry local/EAS traffic deprives CLECs from using trunks efficiently where existing excess capacity would permit the combination of local and interLATA traffic, and prohibits CLECs from making independent decisions about efficient interconnection. Qwest's policy therefore will result in underutilized trunks subjecting the competing carrier to adverse charges including high deposits that Qwest imposes. Such treatment is patently discriminatory, and does not constitute just, reasonable or nondiscriminatory interconnection.

C. QWEST'S SGAT FAILS TO PROVIDE A SINGLE POINT OF INTERCONNECTION FOR CLECS.

Qwest's SGAT undermines CLECs' ability to enter the Arizona market by forcing interconnecting carriers to interconnect to Qwest's facilities at more than one Point of Interconnection ("POI") per LATA.⁴⁰ This unreasonable requirement directly conflicts with the Act and the FCC's regulations, which permit CLECs to interconnect with the ILEC in any technically feasible manner and at no more than a single point in the LATA.⁴¹ Although Qwest argues its SPOP (Single Point of Presence) product satisfies the Act in this regard, closer scrutiny of this "product" shows that Qwest's compliance is illusory.

³⁸ Id. at 1027.

³⁹ ATT/WorldCom have cited to Washington Tr. 1357:18-20.

⁴⁰ Exhibit 2 Qwest 30, SGAT 7.2.2.9.6.

⁴¹ See, First Report and Order, ¶ 172.

Both Section 7.2.2.9.6 of SGAT and the SPOP unlawfully require CLECs to interconnect with Qwest deep within its network, thereby duplicating much of Qwest's own network and forcing CLECs to bear this unnecessary (and extremely high) cost. In particular, Qwest's SPOP product requires CLECs to interconnect at local tandems in its network, and only permits interconnection at the access tandem (where a single POI would most logically be located) if no local tandem is available. Further, the SPOP "product" itself is apparently the exclusive means by which a CLEC can obtain a single POI (if no local tandems are available). In other words, Qwest impermissibly forces interconnecting CLECs to either use the SPOP "product" or to interconnect at more than one point in Qwest's network. This conditional permission to interconnect at the access tandem *only* if a local tandem does not serve a particular end office (notwithstanding the exhaust status of the local tandem) flies in the face of Qwest's own admission as well as the FCC's conclusion that interconnection at the access tandem is technically feasible.⁴²

Clearly, Qwest's refusal to consider alternative interconnection arrangements, (regardless of how technically feasible), eviscerates the CLECs' ability to determine the most economical and efficient points of interconnection with the ILEC, and unlawfully limits the CLEC's ability to design and maintain its own network, in clear violation of Section 251(c)(2) of the Act.⁴³ The FCC recognized the fundamental nature of the CLEC's right to choose its POI in the First Report and Order where it stated that the obligation of ILECs to interconnect with local market entrants pursuant to Section 251(c)(2) of the Act give rise to the local entrant's right to designate the POI at any technically feasible point within the LEC's network:

⁴² First Report and Order, ¶ 210.

⁴³ "The 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' cost of, among other things, transport and termination of traffic." *Id.* at ¶ 172.

The interconnection obligation of section 251(c)(2) allows competing carriers to chose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic.

* * *

. . . Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under Section 251(c)(2).⁴⁴

More recently, the FCC strongly reaffirmed the competing carriers' right to select the point of interconnection in the Order in the Texas 271 proceedings:

Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect *at only one technically feasible point in each LATA*.⁴⁵

Further, the FCC has specifically condemned Qwest's imposition of extensive POIs on interconnecting CLECs as untenable in light of the Act's requirements. In its *amicus curiae* brief filed with the Federal District Court of Oregon in an interconnection dispute between US West (now Qwest) and AT&T,⁴⁶ the FCC noted:

[N]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.⁴⁷

⁴⁴ First Report and Order at ¶¶ 172, 220, fn. 464.

⁴⁵ CC Docket No. 00-65, *Application of SBC Communications, Inc. et al Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order at ¶ 77 (June 30, 2000)(emphasis added).

⁴⁶ *US West Communications, Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.*, (D.OR. 1998) (No. CV 97-1575-JE).

⁴⁷ Memorandum of the Federal Communications Commission as *Amicus Curiae*, at 20-21, *US West Communications, Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D.OR. 1998)(No. CV 97-1575-JE).

To the extent Qwest insists on approaching its 271 obligations using its "productization" approach, the Commission should require it to provide wholly disaggregated services based on technical feasibility as individual products, thereby permitting CLECs to interconnect at any technically feasible point in Qwest's network.

As discussed above, Qwest's SPOP "product" and its refusal to provide a single POI/LATA to interconnecting CLECs in SGAT Section 7.2.2.9.6, demonstrates that Qwest has failed to comply with the strictures of Section 271 of the Act with regard to Checklist Item No.1. Accordingly, the Commission must require Qwest to open its network to competitors, specifically allowing CLECs to interconnect at a single POI per LATA, even when local tandems serve the same end office used by the CLEC's customer. Failure to enforce the law in this regard will render a devastating blow to Competition in Arizona, and will allow Qwest to perpetuate its monopoly status in the post-271 world.

D. QWEST'S CLASSIFICATION OF IP TELEPHONY AS SWITCHED ACCESS VIOLATES FCC RULES AND SHOULD NOT BE INCLUDED IN THE SGAT.

By attempting to redefine switched access to include ISP traffic, Qwest's SGAT impermissibly forces CLECs to accept its internal position regarding the nature of IP Telephony and collaterally attacks this Commission's rulings on reciprocal compensation. A reading of Section 4.39 reveals that Qwest requires interconnecting CLECs to accept a definition of switched access that the FCC has not endorsed:

- 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. (Emphasis added).⁴⁸

Further, Qwest integrates its unsupported classification of IP Telephony 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. (Emphasis added).

This language directly contradicts the FCC's own pronouncements of this issue, contained in its Report to Congress, *Federal-State Joint Board on Universal Service*, wherein the Joint Board declined to rule on the regulatory treatment of IP Telephony, and further declined to subject such calls to access charges. Specifically, paragraph 90 of the Report to Congress provides:

We do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. As stated above, we use in this analysis a tentative definition of "phone-to-phone" IP telephony. Because of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in

⁴⁸ Exhibit 2 Qwest 30.

technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible.⁴⁹

The Commission should not allow Qwest to use its SGAT to avoid its legal obligations, or to promote its own, internal policy positions contrary to law. The above-referenced language provides yet another example of Qwest's attempts to leverage its SGAT to deny CLECs their rights under the Act. In this particular instance, Qwest's language compromises CLECs' rights to receive compensation for terminating traffic to Qwest and would improperly require the payment of access charges for local traffic. At the same time, when Qwest upgrades its plant in Arizona in the future to provide ubiquitous packet switching, Qwest's definition would subject its own local traffic to access charges.

In addition, as this Commission is well aware, the FCC has stated that interexchange carriers ("IXCs") may obtain interconnection pursuant to § 251(c)(2) for the provision of telephone exchange services and exchange access to others. The FCC has also noted that Section 251(c)(2) is inapplicable where the IXC wishes to interconnect solely for the purpose of originating or terminating interexchange traffic.⁵⁰ Accordingly, a definition of switched access has no bearing on this Commission's consideration of Qwest's compliance with Checklist Item No. 1.

Also, and perhaps more importantly, as Sprint advocated in its interconnection arbitration before this Commission, the FCC has exempted Enhanced Service Provider ("ESPs") (including Internet Service Provider ("ISP")) traffic from switched access

⁴⁹ *Federal-State Joint Board on Universal Service, Report to Congress, CC Docket 96-45, FCC 98-67 (April 10, 1998), ¶ 90.*

charges. Further, the FCC has never ruled that Internet Protocol ("IP") Telephony traffic (a subset of ESP traffic) should be subject to switched access charges. Therefore, allowing Qwest to capture this traffic within its definition of switched access would permit a collateral attack on this Commission's (as well as the FCC's) prior decisions (particularly ARB 238) and would undermine the state of law in Oregon on this issue.

The FCC's February 25, 1999 Declaratory Ruling in its Local Competition docket, addresses these same questions concerning calls to ISPs and the applicability of reciprocal compensation to such calls.⁵¹ In this ruling, the FCC determined that, where parties address reciprocal compensation obligations within the ambit of their interconnection agreements, "they are bound by those agreements, as interpreted and enforced by the state commissions."⁵² In particular, 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 an appropriate interstate compensation mechanism."⁵³ Even when a state commission has ruled that ISP-bound traffic is only subject to bill and keep compensation arrangements, Qwest's SGAT would seriously undermine this Commission's authority to decide such intra-state issues.

Further, Qwest's assertion that it can distinguish IP Telephony from ISP traffic is illusory at best. The same exemption from access charges established for ISP traffic applies equally to IP Telephony, this service constitutes an "information service"

⁵⁰ First Report and Order, ¶¶ 190-91.

⁵¹ *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, ¶¶ 1,10 (1999) ("Declaratory Ruling").

⁵² *Id.*, ¶ 22.

⁵³ *Id.*, ¶ 21.

according to the FCC.⁵⁴ Accordingly, Qwest's attempt to classify IP Telephony as Switched Access must be denied, and Qwest's efforts to incorporate its own definitions of these terms rebuffed as inconsistent with the public interest.

This Commission cannot allow Qwest's defiance of the FCC's rules regarding the classification of traffic flowing to and from Enhanced Service Providers to satisfy its obligations under Section 271. Qwest's attempt to classify IP Telephony as switched access traffic is another example of Qwest using its leverage as the ILEC with which all CLECs must interconnect, to undermine the state of competition. This Commission should order Qwest to take steps correcting the inconsistencies found in its SGAT regarding IP Telephony as detailed above. Otherwise, Qwest's insistence on imposing its own definitional scheme (which is inconsistent with the industry's) to serve its current policy needs will continue to harm the fragile state of competition and cannot constitute satisfaction of Checklist Item No. 1.

E. QWEST'S SGAT FAILS TO PROVIDE TECHNICALLY FEASIBLE REMOTE COLLOCATION OPTIONS.

The FCC's regulations mandate that Qwest provide both "physical collocation and virtual collocation to requesting telecommunications carriers."⁵⁵ Notwithstanding this well-established rule, Section 8 of the SGAT, in particular Section 8.1.1.8, permits only *physical* collocation, effectively prohibiting *virtual* collocation, despite the fact that virtual collocation is technically feasible and therefore must be provided to interconnecting CLECs. This prohibition of an effective, efficient and low-cost way of bringing competition to areas served by Qwest's Digital Loop Carrier should not be tolerated by the Commission.

⁵⁴ Memorandum Report and Order, *MTS and WATS Market Structure*, 97 FCC21d 682, 715 (1983); Access Reform Order, 12 FCC Rcd 15982, ¶¶ 341-42.

⁵⁵ 47 C.F.R. § 51.323(a).

Requiring CLECs to physically collocate in every remote terminal serving potential customers is excessively costly and unduly burdensome, and (again) compels the CLEC to build an overlay of Qwest's network. There is simply no rational justification for allowing virtual collocation in the central office while prohibiting it in the remote terminal. Qwest should be required to allow CLECs to use the same cost-effective technology it uses to reach customers served from remote terminals, including, "card-at-a-time" virtual collocation where available.

Recognizing that the quality of DSL services is dependent on the length of the copper loop, having to rely on an all-copper solution may well foreclose CLECs from a substantial part of the market, depending on how far the end user is from a central office. DLCs are often employed to serve more spread-out areas such as new subdivisions. Such areas are likely to be farther away from the central office and thus less likely to be suitable for DSL services on all-copper loops. If Qwest is using a New Generation DLC ("NGDLC") (which would allow card-at-a-time virtual collocation) and does not have to rely itself on an all-copper solution, it will have a substantial competitive advantage over CLECs in this important respect. Where in-service copper does exist, CLECs should be able to make use of it. However, the availability of copper should not restrict the CLECs from availing themselves of the preferred solution discussed here.

Since collocation of a DSLAM is likely to be more expensive on a per-customer basis than virtual collocation of line cards, the first-in CLEC, if forced to collocate a DSLAM, may have a cost disadvantage vis-à-vis other CLECs that, because collocation space has been exhausted by the first CLEC, could collocate line cards instead. Not only is this a strange way of rewarding those CLECs who are most interested in making their service available at an early date, it also could retard any competitive deployment

of broadband services as the various CLECs play a game of "chicken" to see which one goes first and suffers the higher cost as a consequence.

Allowing card-at-a-time virtual collocation will facilitate the efficient use of Qwest's underlying network and reduce the costs of competition for CLECs and the public generally. Absent the implementation of a virtual collocation mechanism, individual CLECs will be saddled with the unrecoverable costs of physically collocating a DSLAM in remote terminals that serve far fewer customers than the DSLAM is capable of serving, and will foreclose viable competitive alternatives to a large portion of Qwest's customers in locations that are distant from the central office. Card-at-a-time virtual collocation would alleviate this tremendous waste of resources and eliminate an existing barrier to entry. Using card-at-a-time virtual collocation, many companies could use a single DSLAM to provide DSL service to an area served by a remote terminal, without having to invest thousands of dollars in extra, unused capacity.

Precluding technically feasible remote virtual collocation (including card-at-a-time virtual collocation) at this time will foreclose viable and cost-effective collocation options for CLECs, and, in the case of card-at-a-time collocation, will do so prematurely. Qwest's requirement that CLECs physically collocate at all remote terminals imposes ill-founded restrictive standards on CLECs that have not been endorsed by the FCC (or any state commission) and are unreasonable, inefficient and unduly burdensome. Accordingly, Qwest's SGAT should be revised to allow remote virtual collocation as discussed above.

IV. CONCLUSION

For the foregoing reasons, the Commission should find that Qwest has not satisfied Checklist Item No. 1. The Commission should not prematurely bless promises easily given by Qwest designed merely to gain entry into the interLATA market without truly opening local markets to competition.

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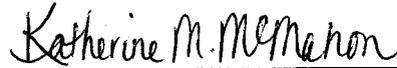
By: 
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CERTIFICATE OF SERVICE

I, KATHERINE M. McMAHON, hereby certify that I have this day served a true and correct copy of "Sprint Communications Company L.P.'s Brief Regarding Qwest Corporation's Lack of Compliance With Section 271 and 252(f) Obligations As To Interconnection, Collocation, LNP and Resale" upon all parties of record in Docket No. T-00000A-97-0238 (see the attached list) by placing a copy thereof into the U.S. Mail, postage prepaid.

Dated this 27th day of March 2001 at San Francisco, California.



Katherine M. McMahon
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Docket No. T-00000A-97-0238

Date: March 27, 2001

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