

BEFORE THE ARIZONA PUBLIC REGULATION COMMISSION

WILLIAM A. MUNDELL
Commissioner
JAMES M. IRVIN
Commissioner
MARC SPITZER
Commissioner

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

1

2 AT&T'S INITIAL COMMENTS ON FORECASTING, BONA FIDE REQUEST
3 PROCESS AND GENERAL TERMS AND CONDITIONS

4 AT&T Communications of the Mountain States, Inc. and TCG Phoenix
5 (collectively "AT&T") hereby submit these Initial Comments for the Workshops on
6 Forecasting, Bona Fide Request ("BFR") Process and General Terms and Conditions
7 (GT&Cs").

8 These comments are intended to be responsive to the testimony filed by Qwest
9 Corporation ("Qwest") on these topics; however, AT&T notes that Qwest's testimony
10 was incomplete. Mr. Larry Brotherson's testimony consisted of a few lines for each of
11 several sections of the Statement of Generally Available Terms and Conditions
12 ("SGAT") basically describing at a very high level what the sections address. There are
13 no statements in this testimony in support of particular language or positions. Attached
14 to Mr. Brotherson's testimony is an SGAT "lite" with the provisions that Qwest appears
15 to put forward for this workshop. Therefore, AT&T's response generally consists of

1 comments on certain SGAT provisions that have been included with Qwest's filed
2 testimony.

3 As all of the parties to this proceeding are aware, there are several items that were
4 identified in previous workshops as being deferred to the workshop on general terms and
5 conditions. Attached is a list prepared by Thomas Dixon of WorldCom, Inc. for the
6 Colorado docket, that should contain most of the issues deferred in this docket as well.
7 See Exhibit A. Qwest did not present testimony on any of these issues. As these issues
8 have been deferred to this workshop, the parties need to discuss them, but Qwest must
9 file direct testimony so that competitive local exchange carriers ("CLECs") have the
10 opportunity to respond. It is AT&T's understanding that Qwest will file supplemental
11 testimony on all of these issues on May 11, 2001. Assuming that occurs, AT&T will use
12 its best efforts to provide its responsive testimony by May 25, 2001, so that these issues
13 can be discussed at the June 30, 2001 workshop in Arizona. If AT&T is unable to
14 respond to all or a portion of this testimony by May 25, 2001, AT&T will supplement its
15 comments and file them with the Commission on June 1, 2001, with the intention of
16 discussing those remaining issues at the June 11, 2001 workshop.

17 **I. INTRODUCTION**

18 The United States Congress conditioned the Regional Bell Operating Companies'
19 ("BOC") entrance into the in-region interLATA long distance market on their compliance
20 with 47 U.S.C. section 271. To be in compliance with section 271, Qwest must "support

1 its application with actual evidence demonstrating its *present* compliance with the
2 statutory conditions for entry.”¹

3 The Arizona Corporation Commission (“Commission”) is charged with the
4 important task of ensuring that the local telecommunications market in Arizona is open to
5 competition and that Qwest is complying with its obligations under both the state and
6 federal law. While remaining the final decision maker on Qwest’s compliance with its
7 section 271 obligations, the Federal Communications Commission (“FCC”) looks to the
8 state commissions for rigorous factual investigations upon which the FCC may base its
9 conclusions.

10 To conduct a rigorous investigation, one must understand both the legal standards
11 that Qwest is held to and, importantly, Qwest’s actual implementation of those standards.
12 Releasing Qwest to compete in the interLATA long distance market before it has fully
13 and fairly complied with its obligations under section 271 will discourage, if not destroy,
14 competition in both the local and long distance markets in Arizona.

15 Many a local competitor, including AT&T, has invested heavily in the promise of
16 open and fair competition in the local exchange market. AT&T requests that the
17 Commission, through its rigorous investigation of Qwest’s claims, ensure that the local
18 competitors and the public realize that promise. To that end, AT&T respectfully submits
19 these Comments.

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

1 elements by a preponderance of the evidence.⁶ Furthermore, the FCC has determined
2 that the most probative evidence is commercial usage along with performance measures
3 providing evidence of quality and timeliness of the performance under consideration.
4 Finally, as with any application, the “ultimate burden of proof that its application satisfies
5 all the requirements of section 271, even if no party files comments challenging its
6 compliance with a particular requirement[,]” rests upon Qwest.⁷

7 III. COMMENTS

8 The topics for discussion in these comments are the Bona Fide Request Process
9 (SGAT section 17), Forecasting (SGAT sections 7.2.2.8, Interconnection, and 8.4.1.4,
10 Collocation) and General Terms and Conditions (SGAT section 5 and others). These
11 comments will generally be organized to follow the numerical sequence of Qwest’s
12 SGAT.

13 The SGAT provisions discussed in these comments generally do not deal with any
14 single service identified in the SGAT. The fact is these provisions deal with *all* of the
15 services available under the SGAT. For this reason, the GT&Cs, as well as the various
16 processes described in these comments, are critical to the determination of whether the
17 services identified in the SGAT are actually available to a CLEC *i.e.* whether Qwest in
18 fact has “concrete and specific legal obligations” with respect to the services described in
19 the SGAT.

20 The SGAT provisions discussed in these comments deal with several issues,
21 including liability and allocation of risk. If these terms are not balanced, they place a

⁶ *Id.*, ¶ 48.

⁷ *Id.*, ¶ 47.

1 disproportionate burden on CLEC entry into the local market. They could require CLECs
2 to bear the financial burden of failures by Qwest to provision service or to obtain the
3 rights for the CLEC that Qwest has a duty to obtain. If the SGAT shifts the burden for
4 these and other risks to a CLEC, it undermines the ability of a CLEC to actually use the
5 SGAT and puts in doubt whether the services described in the SGAT are truly available.
6 It will become apparent in reviewing these comments that there is a general trend in the
7 GT&Cs to place the risk of Qwest's failure to perform on the CLEC. This evidences
8 Qwest's attitude that the only reason it is generating an SGAT is because Qwest is legally
9 required to and that Qwest has no desire to stand behind the services it is obligated to
10 provide.

11 Qwest has chosen to use its SGAT as the vehicle to demonstrate Qwest's
12 compliance with the Act and the section 271 checklist. At the end of this process, Qwest
13 expects to be permitted to enter the long distance market. If this SGAT is not available,
14 enforceable and does not contain strong remedies, there remains no incentive for Qwest
15 to comply with these contractual obligations. Incentives under a contract are always
16 important to drive performance of the parties, particularly unwilling parties such as
17 incumbent local exchange carriers ("ILECs") under the Act. In this instance, once Qwest
18 has entered into the long distance market, contract incentives may be all that is left to
19 drive Qwest's performance. For this reason, this Commission must ensure that that there
20 are strong incentives in the SGAT that will deter Qwest from failing to meet its contract
21 obligations and stunting growth in local competition.

22 Also important to the performance of all contracts are processes to handle various
23 situations. There may be disputes, requests for amendments, changes in law (the SGAT

1 contains several processes such as Pick and Choose, §1.8; Change in Law, §2.2; Dispute
2 Resolution, §5.18; BFR, §17).⁸ In a competitive market, the parties (where a carrier has a
3 choice of vendors) would expect to freely negotiate resolution of these issues because the
4 parties do not generally want to damage that business relationship. The local
5 telecommunications market, however, is not yet a competitive market. The CLECs'
6 supplier is Qwest, the monopoly provider and the most significant CLEC competitor.
7 The CLEC is not in a position to go to another vendor. Qwest is it. Therefore, each of
8 the processes described in the SGAT or otherwise proposed must be handled promptly
9 and fairly to ensure that CLECs are able to quickly reach resolution and continue serving
10 their customers. It is difficult to realize this desired outcome when Qwest controls these
11 processes. Without prompt, efficient and fairly managed processes, CLECs are delayed,
12 with resulting harm to the competitive local market.

13 At present, Qwest's position as the dominant monopoly provider of local
14 telecommunications services in its region requires the parties to be very clear about how
15 change is managed. Qwest's SGAT must set forth detailed and specific provisions; it
16 must anticipate change and provide clear mechanisms for managing such change; and
17 there must be accountability for Qwest's failure to perform.

18 **A. SGAT Section 1.7 -- Modifications to the SGAT**

19 In section 1.7 of the SGAT, Qwest reserves the right to modify its SGAT at any
20 time once this Commission approves it. The first part of section 1.7 states that such
21 amendments would take effect pursuant to section 252(f) of the Act. Section 252(f)(3)

⁸ AT&T notes that, with the exception of section 1.8, which deals with Pick and Choose, the parties to this proceeding have not had an opportunity yet to discuss other change management provisions. AT&T believes strongly that the parties will need to address all of these provisions in order to craft a document that is a meaningful option to all CLECs.

1 gives the state commission a sixty (60) day review period. However, in the second half
2 of section 1.7, the language states: “At the time any amendment is filed, the section
3 amended shall be considered withdrawn, and no CLEC may adopt the section considered
4 withdrawn following the filing of any amendment, even if such amendment has not yet
5 been approved or allowed to take effect.” This “immediate withdrawal” is not consistent
6 with the review period called for in section 252(f) of the Act. Moreover, it amounts to an
7 immediate change in the availability of the SGAT without notice to the Commission or
8 CLECs. The CLECs and the Commission have spent considerable resources ensuring
9 that the SGAT is consistent with the Act and the FCC’s orders. Qwest’s SGAT must also
10 sustain review by the FCC. It is unacceptable and unlawful for Qwest to unilaterally
11 withdraw provisions of the SGAT that were incorporated after rigorous review and in
12 order for Qwest to meet its section 271 obligations without prior Commission approval.

13 AT&T proposes that section 1.7 of the SGAT be deleted in its entirety and
14 replaced with the following:

15 1.7 Following the date this SGAT is approved by the Commission, this
16 SGAT shall remain available for adoption for two years. At the end of
17 such two-year period, this SGAT shall remain available until its
18 withdrawal by Qwest is approved by the Commission. Qwest may not
19 modify this SGAT in any way without notice to the Commission and the
20 CLEC community, an opportunity for CLECs to be heard regarding such
21 modifications and approval by the Commission.

22 This language proposed by AT&T is intended to insure that the SGAT remains available
23 for at least two years in the form approved by the Commission in this docket (and
24 thereafter until withdrawal is approved by the Commission). This is critical, since Qwest
25 has identified the SGAT as the contract document that demonstrates that Qwest has
26 opened its monopoly market to competition and in support of its section 271 application.
27 That assertion can only be maintained if the SGAT, in the approved form, remains

1 available for a substantial period of time. If that form is to change for any reason, all
2 CLEC parties should be notified and given the opportunity to comment and be heard on
3 whether such modifications are appropriate. Finally, any such modification should not be
4 allowed to go into effect without Commission approval.

5 **B. SGAT Section 1.8 -- Pick and Choose**

6 The law imposes upon ILECs, like Qwest, the duty to “negotiate in good faith”
7 with its competitors in the creation of interconnection agreements.⁹ In furtherance of that
8 obligation, the Act instructs ILECs to allow for the creation or amendment of
9 interconnection agreements through a mechanism known as “pick and choose.” The Act
10 states:

11 A local exchange carrier shall make available any interconnection service,
12 or network element provided under an agreement approved under this
13 section to which it is a party to any other requesting telecommunications
14 carrier upon the same terms and conditions as those provided in the
15 agreement.¹⁰

16 In addition, the *First Report & Order* (at ¶1316) states:

17 We further conclude that section 252(i) entitles all parties with
18 interconnection agreements to "most favored nation" status regardless of
19 whether they include "most favored nation" clauses in their agreements.
20 Congress's command under section 252(i) was that parties may utilize any
21 individual interconnection, service, or element in publicly filed
22 interconnection agreements and incorporate it into the terms of their
23 interconnection agreement. This means that any requesting carrier may
24 avail itself of more advantageous terms and conditions subsequently
25 negotiated by any other carrier for the same individual interconnection,
26 service, or element once the subsequent agreement is filed with, and
27 approved by, the state commission. We believe the approach we adopt
28 will maximize competition by ensuring that carriers' obtain access to terms
29 and elements on a nondiscriminatory basis.

⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC
Docket Nos. 96-98 & 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶¶ 138 – 171.
(hereinafter “*First Report & Order*”).

¹⁰ 47 U.S.C. § 252(i).

1 During its consideration of section 252(i) of the Act, the FCC recognized, among
2 other things, the incumbent-monopolist's superior bargaining position and its lack of
3 incentive to actually cooperate with its competitors during negotiations.¹¹ In fact, the
4 FCC concluded that it was vital to the growth of competition that states be ever vigilant
5 in their efforts to prevent incumbents from creating barriers to entry and handicaps that
6 delay or destroy the new entrants' opportunities to meaningfully compete.¹²

7 Here, Qwest's failure to fully and timely comply with its obligations under
8 section 252(i) constitute a failure to negotiate in good faith and create barriers to entry,
9 while undermining Qwest's full compliance with the Act, in particular section 271.
10 Although Qwest offers-up its SGAT as evidence of its compliance, it is equally important
11 in this investigation for Commissions to examine the language of the SGAT, as well as
12 Qwest's conduct related thereto. "Talk," as we all know, is cheap; the real proof is in the
13 conduct.

14 On its face, Qwest's SGAT appears to comply with "pick and choose" obligation
15 generally. It now provides in section 1.8:

16 This SGAT represents Qwest's standard contract offer and, as such
17 CLECs with a current Interconnection Agreement may opt into through
18 Section 252(i) of the Act, any provisions of the SGAT by executing an
19 appropriate amendment to its [sic] current Interconnection Agreement.¹³

20 The SGAT contains additional provisions that describe in very general terms the
21 operation of Qwest's pick and choose obligations.¹⁴ These provisions are not by
22 themselves at issue.

¹¹ *First Report & Order*, ¶¶ 15 & 141.

¹² *Id.*, ¶¶ 16 – 20.

¹³ Citing the March 20, 2001 version of the Washington SGAT containing recent changes to this particular provision.

¹⁴ SGAT §§ 1.8.1 – 1.8.4.

1 Rather, the problem lies, not in the SGAT as written, but rather in Qwest's
2 implementation of this provision. In fact, Qwest's strained interpretation of its "pick and
3 choose" obligations undermines, if not completely eviscerates, its compliance with its
4 section 271 obligations.

5 With respect to the pick and choose obligation, AT&T will provide two recent
6 examples in which Qwest: (1) interprets its obligation in a way that is commercially
7 unreasonable and frustrates the CLECs opportunity to interconnect with Qwest; and (2)
8 abuses its bargaining position by making unreasonable demands aimed at undermining
9 compliance with section 271 and the investigation related thereto. As a general matter,
10 both examples reveal Qwest's failure to negotiate in good faith and fully comply with
11 sections 252(i) and 271.

12 **1. Qwest's Interpretation of the Termination Periods Related to**
13 **Provisions Chosen from Agreements is Commercially Unreasonable**
14 **and Violates the Act.**

15 Qwest is interpreting its pick and choose obligations to limit a CLEC's use of any
16 chosen provision to the remaining time that provision would have existed under the
17 original agreement from which it came.¹⁵ That is, if AT&T's contract with Qwest is to
18 terminate next week, then the CLEC that picks and chooses an interconnection provision
19 from that contract can only avail itself of that provision until next week.¹⁶ Rather than
20 acquiring the provision for the duration of the contract between the CLEC and Qwest or
21 even the duration of the entire contract between AT&T and Qwest (*e.g.*, a four year
22 term), Qwest is creating random and artificial termination periods for individual

¹⁵ Multistate Tr. (March 27, 2001) at 19 – 21 attached hereto as Exhibit B.

¹⁶ *Id.*

1 provisions based upon the time remaining for the various contracts from which the CLEC
2 selects.

3 Clearly, such an interpretation is ludicrous and would create commercially
4 unreasonable interconnection contracts with individual provisions expiring at differing
5 intervals throughout the life of the agreement. If such an interpretation is allowed to
6 stand, CLECs and Qwest will be in a constant state of negotiation and amendment, which
7 essentially delays or destroys efficient and effective competition.

8 Qwest's interpretation also violates the spirit and express provisions related to its
9 pick and choose obligation, revealing once again the anticompetitive behavior of the local
10 monopolist. Such conduct militates against any section 271 relief for Qwest. In an
11 attempt to counter this Qwest interpretation, AT&T proposes the addition of the
12 following language at the end of section 1.8.4 of the SGAT:

13 Any provision brought into an existing interconnection agreement through
14 adoption under Section 252(i) of the Act shall continue in force for the full
15 term of the interconnection agreement into which such provision is
16 brought through adoption, regardless of the term of the interconnection
17 agreement from which such provision came.

18 **2. Qwest Unreasonably Demands that CLECs Relinquish Their Rights**
19 **under the Act In Order to Pick and Choose Certain Provisions and It**
20 **Illegally Limits the Contracts from which CLECs May Choose.**

21 There are two examples of AT&T's recent efforts to employ the pick and choose
22 process that demonstrate Qwest's less than good faith conduct. First, AT&T recently
23 requested some blocking reports from Qwest. Qwest responded that AT&T must amend
24 its interconnection agreement to obtain such reports. Why an amendment is required for
25 two companies to share blocking information for the benefit of their customers is not

1 entirely clear; demanding an amendment certainly delays the time within which Qwest
2 would have to turn over the reports.

3 Nevertheless, these reports are contemplated in the SGAT at section 7.2.2.9.1.1.
4 Rather than having AT&T amend its contract via pick and choose to incorporate the
5 relevant section 7.2.2.9.1.1, Qwest demanded that AT&T amend its contract to
6 incorporate a wholly irrelevant provision on interconnection trunk forecasting, section
7 7.2.2.8.¹⁷ Portions of this provision are currently in dispute in a previous workshop, but
8 apparently Qwest will not cooperate in AT&T's efforts to address trunk blocking unless
9 and until AT&T relinquishes its disagreement with Qwest in the section 271 process by
10 adopting irrelevant, disputed provisions.

11 In the second example, AT&T, in order to expand its business in Wyoming, has
12 requested to opt into, with some needed modifications, the Commission-approved New
13 Edge interconnection agreement in Wyoming. Instead of allowing AT&T to pick and
14 choose the New Edge contract along with negotiating some additional provisions from
15 the SGAT, Qwest has declared that AT&T cannot opt into the New Edge contract
16 because the New Edge contract was actually an opted into Covad contract with some
17 slight modification.¹⁸ According to Qwest, AT&T must opt into the Covad agreement
18 and engage in a renegotiation of what New Edge obtained, along with whatever other
19 modifications AT&T needs. Qwest apparently holds the view that a CLEC cannot adopt
20 an interconnection agreement arrived at through adoption via a previous opt-in. Qwest

¹⁷ See Exhibit C, the voice mail response from Qwest regarding the blocking reports.

¹⁸ See Exhibit D, an e-mail explaining Qwest's refusal to allow AT&T to pick and choose the New Edge contract.

1 has not, and cannot, provide legal support for this assertion. It is in conflict with the plain
2 language in the statute.

3 Qwest has also suggested that AT&T, in order to obtain a single point of
4 interconnection (“POI”) per LATA in Wyoming, must also pick and choose provisions in
5 the SGAT that are unrelated to a single POI and that are currently in dispute. Once again,
6 a single POI per LATA is a legal obligation that Qwest must provide under the Act.¹⁹
7 Nevertheless, Qwest is demanding that AT&T also adopt irrelevant SGAT provisions in
8 order to obtain what Qwest should otherwise be providing.

9 Not only is Qwest’s position directly contrary to the Act, which allows the
10 adoption of “any” service or element in an approved agreement, but it also reveals the
11 extreme bad faith in which Qwest generally approaches the pick and choose obligation.
12 By refusing to cooperate and participate in the most efficient means of creating an
13 interconnection agreement, Qwest creates obstructions to negotiations with ridiculous,
14 illegal constraints on pick and choose that have the effect of further delaying the process
15 and undermining its compliance with its section 271 obligations.

16 The FCC concluded that “intentionally obstructing negotiations ... would
17 constitute a failure to negotiate in good faith, because it reflects a party’s unwillingness
18 to reach agreement.”²⁰ Qwest’s conduct provides the State Commissions with as much
19 evidence as the SGAT does on whether Qwest deserves the section 271 relief it seeks. It
20 is unconscionable for Qwest to be driving Commissions and CLECs through an

¹⁹ *Application by SBC Communications Inc., Southwestern Bell Telephone Co., 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*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. June 30, 2000), ¶ 78 (“*SWBT Texas 271 Order*”); 47 U.S.C. § 251(c)(2)(B).

²⁰ *First Report & Order*, ¶ 148.

1 exhausting, expedited investigation when Qwest utterly fails to cooperate in good faith
2 negotiations with CLECs to create fair and timely interconnection agreements.

3 In short, Qwest cannot be found to be in compliance with its section 271
4 obligations when its conduct frustrates so fundamental a need of the CLECs. Without the
5 ability to engage in contract negotiations through an efficient pick and choose process,
6 the CLECs' right to obtain interconnection and any other right under the Act is thwarted,
7 if not destroyed.

8 **C. SGAT Section 2 -- Interpretation and Construction**

9 Section 2.1 of the SGAT addresses other documents referenced in the SGAT.
10 AT&T and other CLECs have expressed concern about including references to external
11 documents, particularly when Qwest controls those external documents. Prior to
12 adoption of the SGAT, CLECs could review such referenced documents and determine
13 whether they are acceptable or not. If they are not acceptable, however, what recourse
14 does a CLEC have?

15 After adoption by a CLEC, Qwest still desires the freedom to unilaterally change
16 these documents and thereby potentially add to the obligations of the CLEC under the
17 SGAT. With respect to any document outside the SGAT that Qwest controls including,
18 but not limited to, tariffs, product descriptions, processes, Technical Publications and
19 methods and procedures, Qwest should not be allowed to make unilateral changes that
20 affect CLECs' obligations under the SGAT. This could be handled through a process by
21 which CLECs are provided notice and the opportunity to participate in all such changes.
22 Or perhaps a simpler solution would be to state in the SGAT that to the extent Qwest
23 makes changes to any of these documents after the effective date of the adoption by

1 CLEC of the SGAT, such changes shall not be effective as to CLEC unless CLEC
2 consents to such changes.

3 Much of section 2.2 is an unnecessary statement regarding the state of the law and
4 reservations of Qwest's right to change its position. The change-in-law language should
5 be modified to reflect that the Agreement will be changed if a legal ruling is legally
6 binding, which should be defined to mean that the legal ruling has not been stayed, no
7 request for a stay is pending, and if any deadline for requesting a stay is designated by
8 statute or regulation, it has passed. An appropriate process is needed, particularly when
9 the parties interpret the change in law differently, as has often been the case between
10 CLECs and ILECs. The parties may disagree on how that change is to be implemented in
11 the agreement, if a change is needed at all. There is the potential for delay.

12 AT&T proposes changes to the language as follows. An important thing about
13 changes in law is that the parties continue to perform until an appropriate modification is
14 negotiated or arbitrated. The following proposed language addresses this issue:

15 2.2 The provisions in this Agreement are based, in large part, on the
16 existing state of the law, rules, regulations and interpretations thereof, as
17 of the date hereof (the "Existing Rules"). Among the Existing Rules are
18 the results of arbitrated decisions by the Commission, which are currently
19 being challenged by Qwest or CLEC. Among the Existing Rules are
20 certain FCC rules and orders that are the subject of, or affected by, the
21 opinion issued by the Supreme Court of the United States in *AT&T Corp.,*
22 *et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Many of the
23 Existing Rules, including rules concerning which Network Elements are
24 subject to unbundling requirements, may be changed or modified during
25 legal proceedings that follow the Supreme Court opinion. Among the
26 Existing Rules are the FCC's orders regarding BOCs' applications under
27 Section 271 of the Act. Qwest is basing the offerings in this Agreement
28 on the Existing Rules, including the FCC's orders on BOC 271
29 applications. Nothing in this Agreement shall be deemed an admission by
30 Qwest concerning the interpretation or effect of the Existing Rules or an
31 admission by Qwest that the Existing Rules should not be vacated,
32 dismissed, stayed or modified. Nothing in this Agreement shall preclude

1 or estop Qwest or CLEC from taking any position in any forum
2 concerning the proper interpretation or effect of the Existing Rules or
3 concerning whether the Existing Rules should be changed, dismissed,
4 stayed or modified, provided that such positioning shall not interfere with
5 performance of the obligations set forth herein. To the extent that the
6 Existing Rules are changed, vacated, dismissed, stayed or modified, then
7 this Agreement and all contracts adopting all or part of this Agreement
8 shall be amended to reflect such modification or change of the Existing
9 Rules. Where the Parties fail to agree upon such an amendment within
10 sixty (60) days from the effective date of the modification or change of the
11 Existing Rules, it shall be resolved in accordance with the Dispute
12 Resolution provision of this Agreement. It is expressly understood that
13 this Agreement will be corrected to reflect the outcome of generic
14 proceedings by the Commission for pricing, service standards, or other
15 matters covered by this Agreement. This Section shall be considered part
16 of the rates, terms and conditions of each Interconnection, service and
17 network element arrangement contained in this Agreement, and this
18 Section shall be considered legitimately related to the purchase of each
19 Interconnection, service and network element arrangement contained in
20 this Agreement.

21 2.2.1 In the event that any legally binding legislative, regulatory,
22 judicial or other legal action materially affects any material terms
23 of this Agreement, or the ability of CLEC or Qwest to perform any
24 material terms of this Agreement, CLEC or Qwest may, on thirty
25 (30) days' written notice require that such terms be renegotiated,
26 and the Parties shall renegotiate in good faith such mutually
27 acceptable new terms as may be required. In the event that such
28 new terms are not renegotiated within thirty (30) days after such
29 notice, or if at any time during such 30-day period the Parties shall
30 have ceased to negotiate such new terms for a continuous period of
31 fifteen (15) days, the dispute shall be resolved as provided in
32 Section 5.18, for expedited Dispute Resolution. For purposes of
33 this Section 2.2.1, legally binding means that the legal ruling has
34 not been stayed, no request for a stay is pending, and if any
35 deadline for requesting a stay is designated by statute or regulation,
36 it has passed.

37 2.2.2 During the pendency of any renegotiation or dispute
38 resolution pursuant to Section 2.2.1 above, the Parties shall
39 continue to perform their obligations in accordance with the terms
40 and conditions of this Agreement, unless the Commission, the
41 Federal Communications Commission, or a court of competent
42 jurisdiction determines that modifications to this Agreement are
43 required to bring it into compliance with the Act, in which case the
44 Parties shall perform their obligations in accordance with such
45 determination or ruling.

1 Section 2.3 is meant to ensure that the SGAT is first in the order of priority
2 among the various documents incorporated by Qwest into the SGAT. Qwest should add
3 language that ensures extraneous terms and conditions, which properly belong in the
4 SGAT but are found in these other documents, are non-binding unless incorporated into
5 the SGAT. This comments mirrors AT&T's comments regarding section 2.1 above.

6 **D. SGAT Section 3 -- Implementation Schedule**

7 Sections 3.1, 3.2 and 3.3 require CLEC to complete and sign a "CLEC
8 Questionnaire" and negotiate an "Interconnection implementation schedule" prior to
9 placing any order for service. Qwest should provide the workshop participants with a
10 description of what Qwest expects an Interconnection implementation schedule to look
11 like and would accomplish before the workshop and be prepared to discuss the
12 questionnaire and implementation schedule at the workshop. The elements of the CLEC
13 Questionnaire should be specifically identified in the SGAT, or the CLEC Questionnaire
14 should be attached to the SGAT so that the information Qwest may seek in such a
15 Questionnaire is fixed for the term of the SGAT and not unilaterally changeable by
16 Qwest. To the extent a CLEC has already been doing business with Qwest under an
17 interconnection agreement, these requirements should be waived.

18 Qwest should include language in this section that would ensure that these
19 required documents do not create unnecessary or excessive burdens on CLECs or delays
20 in provisioning of orders for service. Furthermore, a statement that the information
21 CLEC provides in these documents is subject to the nondisclosure and restricted use
22 section of the SGAT is needed here.

1 The statement in section 3.1 that the parties have to “negotiate” an
2 implementation schedule is troublesome. Does this mean that Qwest has to agree with
3 CLEC’s plans for implementation? What if Qwest disagrees with CLEC’s plans; does
4 that mean Qwest can refuse to perform until it agrees with CLEC’s implementation plans
5 or simply refuse to perform the parts of the Implementation Schedule it does not like?
6 Since Qwest is the incumbent monopoly, a major competitor and a bottleneck supplier,
7 CLECs should not be in a position of having to provide too much information to Qwest
8 about their implementation plans. In addition, with respect to any Implementation
9 Schedule, a CLEC needs to have discretion about what information it will provide to
10 Qwest. If Qwest seeks particular information in an Implementation Schedule, Qwest
11 needs to identify that information and include it in the SGAT so that Qwest cannot
12 change these requirements during the term of the SGAT. In addition, if Qwest is allowed
13 to agree or disagree with CLEC’s Implementation Schedule, Qwest is then given power
14 to inappropriately influence and delay CLEC’s plans. It is clearly in Qwest’s best
15 interest, particularly after it obtains section 271 approval, to delay CLEC’s activities.

16 Finally, section 3.3 should be deleted. The need for an implementation schedule
17 is not clear, particularly for a CLEC that has been doing business with Qwest for a
18 number of years already. Whether an implementation schedule is a good idea or not,
19 Qwest should not be excused from performing under the SGAT because an
20 Implementation Schedule has not been finalized.

21 **E. SGAT Section 4 -- Definitions**

22 Many of the definitions have been the subject of debate in other workshops and in
23 many cases, Qwest has revised them in those workshops. Qwest must ensure that

1 revisions that have been previously agreed to by Qwest and CLECs are reflected in the
2 final SGAT. Qwest did not file section 4 with the testimony of Larry Brotherson, dated
3 April 4, 2001, so the parties have not had the opportunity to review what Qwest considers
4 the current form of definitions in the SGAT. Qwest should be required to file the most-
5 recent definitions and explain the changes that have been made to date for the benefit of
6 the Commission and the parties. CLECs should also be given the opportunity, with
7 sufficient time, to review and comment on these definitions, preferably prior to a
8 workshop. Further, to the extent that AT&T or other CLECs have objected to particular
9 concepts or definitions and those issues were not closed, the definitions remain at issue
10 and AT&T reserves its position on those matters.

11 Throughout the SGAT, Qwest has used capitalized terms inconsistently. In some
12 cases, the phraseology is slightly askew, in others a word is not capitalized that should be,
13 or capitalized but not defined. AT&T requests that Qwest rationalize the document's use
14 of definitions to make its meaning clearer.

15 **F. SGAT Section 5 -- Terms and Conditions**

16 **1. Section 5.1**

17 Section 5.1.1 requires "best efforts" of the parties to comply with the
18 "Implementation Schedule". AT&T has commented on the Implementation Schedule
19 above with respect to section 3 of the SGAT. Those concerns carry over to section 5.1.1,
20 and AT&T does not believe this section is appropriate, or can be properly discussed, until
21 Qwest provides more information as discussed in AT&T's comments to section 3 above.

22 Qwest's proposed language at section 5.1.3 ("use any service related to" and "use
23 any of the services provided in") both relate to "this Agreement". While this language is

1 written to be reciprocal it really imposes a restriction only on the CLEC since the SGAT
2 is primarily a contract about what Qwest will provide to the CLEC. A similar restriction
3 should be placed on Qwest so that its provision of service does not interfere with CLEC.

4 In addition, by this language, Qwest seeks the right to discontinue services in its
5 discretion due to this vague and unclear provision. That is unacceptable. In addition to
6 being a supplier to the CLEC, Qwest is the major competitor and bottleneck for CLECs.
7 Qwest cannot be allowed the right to discontinue services without first attempting to
8 resolve the issues through good faith negotiation. If that fails, then the parties have the
9 ability to pursue dispute resolution under the SGAT. Qwest is in the position of power
10 under the SGAT because Qwest has the facilities. Any right Qwest seeks unilaterally to
11 discontinue processing orders or discontinue services must be extremely limited and must
12 have oversight. AT&T proposes to amend the language to read:

13 5.1.3 Neither Party shall use any service related to or use any of the
14 services provided in this Agreement in any manner that interferes with
15 other persons in the use of their service, prevents other persons from using
16 their service, or otherwise impairs the quality of service to other carriers or
17 to either Party's end users. In addition, neither party's provision or use of
18 services shall interfere in any way with the services related to or provided
19 under this Agreement. Each Party may discontinue or refuse service if the
20 other Party violates this provision. Upon a such violation of this Section
21 5.1.3, either Party shall provide the other Party notice of such violation at
22 the earliest practicable time and the Parties shall work cooperatively and
23 in good faith to resolve their differences.

24 The purpose of the language in section 5.1.4 is unclear. When a CLEC provides a
25 service to an end user customer through the use of wholesale services provided by Qwest,
26 the CLEC should have recourse against Qwest for its failure to perform. The additional
27 sentence is intended to make clear that right remains. AT&T's proposed changes as
28 follows:

29 5.1.4 Each Party is solely responsible for the services it provides to its

1 end users and to other Telecommunications Carriers. This provision is not
2 intended to limit the liability of either Party for its failure to perform under
3 this Agreement.

4 By including section 5.1.6 in the SGAT, Qwest attempts to give the appearance
5 that it will not be properly compensated for the services it provides and may seek recover
6 of costs. There are at least two problems with this. First, the point of entering into a
7 contract is to spell out rights and obligations so that the parties know what to expect
8 during the term of the contract, including the pricing. Qwest cannot be allowed to say on
9 the one hand that it is entering into a binding agreement, but on the other hand it may
10 seek to charge more at any time during the term. How is Qwest bound with respect to
11 price in that situation? Second, the FCC's section 271 orders have made clear that Qwest
12 must demonstrate that it has "concrete and specific legal obligations" to provide the
13 checklist items.²¹ Section 252(d) of the Act is entitled "Pricing Standards" and is
14 expressly referenced in section 271 checklist items ((i), (ii), (xiii), (xiv)). Price is a key
15 component of Qwest's section 271 obligation. If Qwest is allowed to change price during
16 the term, this obligation is not met. For these reasons, the SGAT must have an
17 affirmative statement of the pricing standards applicable to this Agreement to ensure that
18 Qwest is obligated in the SGAT to adhere to such standards and Qwest must be bound to
19 the prices in the SGAT.

20 5.1.6 Nothing in this Agreement shall prevent either Party from seeking
21 to recover the costs and expenses, if any, it may incur in (a) complying
22 with and implementing its obligations under this Agreement, the Act, and
23 the rules, regulations and orders of the FCC and the Commission, and (b)
24 the development, modification, technical installation and maintenance of
25 any systems or other infrastructure which it requires to comply with and to
26 continue complying with its responsibilities and obligations under this

²¹ *Application of BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Louisiana*,
CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. Oct. 13, 1998), ¶ 54
("BellSouth Louisiana II Order").

1 Agreement. Notwithstanding the foregoing, Qwest shall not assess any
2 charges against CLEC for services, facilities, unbundled network
3 elements, ancillary service and other related work or services covered by
4 this Agreement, unless the charges are expressly provided for in this
5 Agreement.

6 All services and capabilities currently provided hereunder (including
7 resold telecommunications services, unbundled network elements, UNE
8 combinations and ancillary services) and all new and additional services or
9 unbundled network elements to be provided hereunder, shall be priced in
10 accordance with all applicable provisions of the Act and the rules and
11 orders of the Federal Communications Commission and orders of the
12 Commission.

13 **2. Section 5.2 -- Term of Agreement**

14 Section 5.2.2.1 of the SGAT gives the impression, perhaps unintentionally, that
15 the SGAT, as an interconnection agreement, can only be replaced at the end of the two-
16 year term. CLECs should have the ability to replace some or all of the terms of an
17 interconnection agreement during the term to insure that the most favorable terms are
18 available to all CLECs at all times and to avoid discriminatory treatment whereby Qwest
19 provides certain CLECs with better terms than others. This is consistent with the rights
20 CLECs have under section 252(i) of the Act. AT&T has proposed changes below to
21 address this concern:

22 5.2.2.1 Prior to the conclusion of the term specified above, CLEC may
23 obtain Interconnection services under the terms and conditions of a then-
24 existing SGAT or agreement to become effective at the conclusion of the
25 term or prior to the conclusion of the term if CLEC so chooses.

26 **3. Section 5.3 -- Proof of Authorization**

27 The FCC has established rules regarding customer authorization for the change of
28 service. See 47 CFR 64.1120 and 64.1140. Many states have adopted rules that may add
29 to the federal requirements. See Arizona Revised Statutes, Article 10, section 44-1573.

30 Section 5.3 of the SGAT purports to identify the exclusive means by which customer

1 authorization is obtained and seems to do so to the exclusion of other methods that may
2 be permitted or required by law. These options should not be so limited. In addition, the
3 FCC rules and some state rules already impose certain liability on carriers for
4 unauthorized changes in service. It is not necessary or appropriate to add liability
5 provisions in an SGAT or interconnection agreement for unauthorized changes where the
6 penalty is paid between carriers. The existing regulatory requirements should govern in
7 this area. Finally, the state and federal rules regarding customer authorization may
8 change at any time. The change recommended by AT&T would require the parties to
9 adhere to the rules even as they change, whereas the Qwest language would freeze the
10 methods by which customer authorization may be obtained.

11 ~~5.3.1 Where so indicated in specific sections of this Agreement, eEach~~
12 ~~Party shall be responsible for obtaining and having in its possession Proof~~
13 ~~of Authorization ("POA") as required by applicable federal and state law,~~
14 ~~as amended from time to time. POA shall consist of documentation of the~~
15 ~~end user's selection of its local service provider. Such selection may be~~
16 ~~obtained in the following ways:~~

17 ~~5.3.1.1 The end user's written Letter of Authorization.~~

18 ~~5.3.1.2 The end user's electronic authorization by use of an 8XX~~
19 ~~number.~~

20 ~~5.3.1.3 The end user's oral authorization verified by an~~
21 ~~independent third party (with third party verification as POA).~~

22 ~~5.3.2 The Parties shall make POAs available to each other upon request.~~
23 ~~in accordance with applicable laws and rules. A charge of \$100.00 will be~~
24 ~~assessed if the POA cannot be provided supporting the change in service~~
25 ~~provider. If there is a conflict between the end user designation and the~~
26 ~~other Party's written evidence of its authority, the Parties shall honor the~~
27 ~~designation of the end user and change the end user back to the previous~~
28 ~~service provider.~~

29 **4. Section 5.4 -- Payment**

30 Under section 5.4.2, Qwest seeks the right to discontinue the processing of CLEC

1 orders if CLEC fails to make full payment within a certain period of time. Since Qwest is
2 the major competitor for all CLECs, this provides Qwest with a very strong right that, if
3 misused, would substantially damage CLECs. If Qwest is to take this action, there must
4 be absolute certainty that the action is taken appropriately. AT&T proposes two changes
5 of significance to this language. First, the CLEC should have more time, and AT&T has
6 changed the time period from thirty days to ninety days. Second, Qwest should
7 demonstrate to the Commission that it is appropriate for Qwest to take such action, and
8 CLEC should have the express ability to pursue other remedies, if necessary. These
9 changes should help to provide a check in the process so that CLECs are not
10 unnecessarily harmed by their major competitor who is also their supplier.

11 5.4.2 Qwest may discontinue processing orders for the failure of CLEC
12 to make full payment, less any disputed amount as provided for in Section
13 5.4.4 of this Agreement, for the services provided under this Agreement
14 within ninety (90)~~thirty (30)~~ days of the due date on CLEC's bill. Qwest
15 will notify CLEC in writing at least ten (10) business days prior to
16 discontinuing the processing of orders. If Qwest does not refuse to accept
17 additional orders on the date specified in the ten (10) days notice, and
18 CLEC's non-compliance continues, Qwest shall provide another notice ten
19 (10) business days prior to refusing to accept additional orders.~~nothing~~
20 ~~contained herein shall preclude Qwest's right to refuse to accept additional~~
21 ~~orders from the non-complying CLEC without further notice.~~ For order
22 processing to resume, CLEC will be required to make full payment of all
23 past and current charges incurred under this Agreement. Additionally,
24 Qwest may require a deposit (or additional deposit) from CLEC, pursuant
25 to this section. If CLEC contests action taken by Qwest under this Section
26 5.4.2, Qwest must seek approval from the Commission to take such action
27 and Qwest shall continue processing orders until it has obtained such
28 approval. In addition to other remedies that may be available at law or
29 equity, CLEC reserves the right to seek equitable relief, including
30 injunctive relief and specific performance.

31 Under section 5.4.3, Qwest seeks the right to disconnect CLEC if CLEC fails to
32 make full payment within a certain period of time. This provision is very similar to
33 section 5.4.2, but this is an even stronger right for Qwest because they seek to have the

1 right to interrupt the service CLECs provide to their customers. AT&T has proposed
2 changes to section 5.4.3 that are similar to the changes proposed for section 5.4.2 for all
3 the same reasons. If Qwest improperly takes this action, the harm to CLECs and their
4 customers would be substantial.

5 5.4.3 Qwest may disconnect any and all services for failure by CLEC to
6 make full payment, less any disputed amount as provided for in Section
7 5.4.4 of this Agreement, for the services provided under this Agreement
8 within one hundred and twenty (120) ~~sixty (60)~~ days of the due date on
9 CLEC's bill. CLEC will pay the Tariff charge, less the wholesale
10 discount, required to reconnect each resold end user line disconnected
11 pursuant to this paragraph. Qwest will notify CLEC in writing at least ten
12 (10) business days prior to disconnection of the service(s). In case of such
13 disconnection, all applicable charges, including termination charges
14 [termination charges?], shall become due. If Qwest does not disconnect
15 CLEC's service(s) on the date specified in the ten (10) day notice, and
16 CLEC's noncompliance continues, Qwest shall provide another notice ten
17 (10) business days prior to disconnection of the service(s).nothing
18 contained herein shall preclude Qwest's right to disconnect any or all
19 services of the non-complying CLEC without further notice. For
20 reconnection of service to occur, CLEC will be required to make full
21 payment of all past and current charges incurred under this Agreement.
22 Additionally, Qwest will request a deposit (or additional deposit) from
23 CLEC, pursuant to this section. Qwest agrees, however, that the
24 application of this provision will be suspended for the initial three (3)
25 billing cycles of this Agreement and will not apply to amounts billed
26 during those three (3) cycles. If CLEC contests action taken by Qwest
27 under this Section 5.4.3, Qwest must seek approval from the Commission
28 to take such action and Qwest shall refrain from disconnecting CLEC until
29 it has obtained such approval. In addition to other remedies that may be
30 available at law or equity, CLEC reserves the right to seek equitable relief,
31 including injunctive relief and specific performance.

32 AT&T proposes a clarifying amendment to section 5.4.6 below. Payment in full
33 should always be qualified by the right of a CLEC to withhold payment of disputed
34 amounts without being penalized while the dispute is being resolved:

35 5.4.6 Interest will be paid on cash deposits at the rate applying to
36 deposits under applicable Commission rules, regulations, or Tariffs. Cash
37 deposits and accrued interest will be credited to CLEC's account or
38 refunded, as appropriate, upon the earlier of the two year term or the
39 establishment of satisfactory credit with Qwest, which will generally be

1 one full year of timely payments in full by CLEC, less any disputed
2 amounts. The fact that a deposit has been made does not relieve CLEC
3 from any requirements of this Agreement.

4 **5. Section 5.5 -- Taxes**

5 CLECs will be the primary purchasers under the SGAT. The original Qwest
6 language seemed to require that virtually all taxes be paid by the "purchaser" (*i.e.*,
7 CLEC). The change proposed by AT&T attempts to make the language more balanced
8 and requires that the party who is responsible under applicable law pay any particular tax.
9 It is not appropriate to shift the burden for payment of taxes to the purchaser under this
10 Agreement where applicable law does not require the taxes be paid by that party.

11 ~~5.5.1 Each Party purchasing services hereunder shall pay or otherwise be~~
12 ~~responsible for all~~ Any federal, state, or local sales, use, excise, gross
13 receipts, transaction or similar taxes, fees or surcharges resulting from the
14 performance of this Agreement shall be borne by the Party upon which the
15 obligation for payment is imposed under applicable law, even if the
16 obligation to collect and remit such taxes is placed upon the other
17 Party levied against or upon such purchasing Party (or the providing Party
18 when such providing Party is permitted to pass along to the purchasing
19 Party such taxes, fees or surcharges), Each Party is responsible for ~~except~~
20 ~~for any tax on either its Party's corporate existence, status or income.~~
21 Whenever possible, these amounts shall be billed as a separate item on the
22 invoice. To the extent a sale is claimed to be for resale tax exemption, the
23 purchasing Party shall furnish the providing Party a proper resale tax
24 exemption certificate as authorized or required by statute or regulation by
25 the jurisdiction providing said resale tax exemption. Until such time as a
26 resale tax exemption certificate is provided, no exemptions will be
27 applied.

28 **6. Section 5.6 -- Insurance**

29 AT&T has made several proposed changes to the insurance language in section
30 5.6 of the SGAT. These changes are intended mainly to clarify, rather than substantively
31 change, the coverage required. In section 5.6.1, AT&T added language that permits a
32 CLEC affiliated captive insurance company to be used to provide the coverage. These

1 companies are not usually rated by industry groups. For a company the size of AT&T, or
2 Qwest for that matter, it is customary to self insure or use captive insurance companies.
3 In section 5.6.1.3, AT&T changed "Comprehensive" to "Business", on the advice of its
4 insurance experts. It appears the industry has changed from the use of the term
5 "Comprehensive" to the use of the term "Business" for this type of coverage. In section
6 5.6.1.5, AT&T struck the sentence relieving Qwest of liability for loss of profit or
7 revenues for a business interruption. This topic should be addressed in the
8 indemnification provisions of the SGAT, not as a back door in the insurance provisions.
9 The changes in section 5.6.2 provide further clarification.

10 5.6.1 CLEC shall at all times during the term of this Agreement, at its
11 own cost and expense, carry and maintain the insurance coverage listed
12 below with insurers, other than CLEC's affiliated captive insurance
13 company, having a "Best's" rating of B+XIII.

14 5.6.1.1 Workers' Compensation with statutory limits as
15 required in the state of operation and Employers' Liability
16 insurance with limits of not less than \$100,000 each accident.

17 5.6.1.2 Commercial General Liability insurance covering
18 claims for bodily injury, death, personal injury or property damage
19 occurring or arising out of the use or occupancy of the premises,
20 including coverage for independent contractor's protection
21 (required if any work will be subcontracted), premises-operations,
22 products and/or completed operations and contractual liability with
23 respect to the liability assumed by CLEC hereunder. The limits of
24 insurance shall not be less than \$1,000,000 each occurrence and
25 \$2,000,000 general aggregate limit.

26 5.6.1.3 Business~~Comprehensive~~ automobile liability insurance
27 covering the ownership, operation and maintenance of all owned,
28 non-owned and hired motor vehicles with limits of not less than
29 \$1,000,000 per occurrence for bodily injury and property damage.

30 5.6.1.4 Umbrella/Excess Liability insurance in an amount of
31 \$10,000,000 excess of Commercial General Liability insurance
32 specified above. These limits may be obtained through any
33 combination of primary and excess or umbrella liability insurance
34 so long as the total limit is \$11,000,000.

1 5.6.1.5 “All Risk” Property coverage on a full replacement cost
2 basis insuring all of CLEC personal property situated on or within
3 the premises. CLEC may elect to purchase business interruption
4 and contingent business interruption insurance. ~~Qwest has no~~
5 ~~liability for loss of profit or revenues should an interruption of~~
6 ~~service occur.~~

7 5.6.2 CLEC shall provide certificate(s) of insurance evidencing
8 coverage, and ~~annually thereafter within ten (10) calendar days of prior to~~
9 ~~the renewal of any coverage maintained pursuant to this Section.~~ Such
10 certificates shall (1) name Qwest as an additional insured under
11 commercial general liability coverage as respects liability arising from
12 CLEC’s operations for which CLEC has legally assumed responsibility
13 herein Qwest’s interests; (2) provide Qwest thirty (30) calendar days prior
14 written notice of cancellation of, ~~or material change to or exclusions in the~~
15 ~~policy(s) to which certificate(s) relate~~; (3) indicate that to the extent Qwest
16 is an additional insured, coverage is primary and not excess of, or
17 contributory with, any other valid and collectible insurance purchased by
18 Qwest; and (4) acknowledge provide severability of interest/cross liability
19 coverage for those policies under which Qwest is an additional insured.

20 **7. Section 5.7 -- Force Majeure**

21 AT&T believes “equipment failure” should be stricken from this clause. Qwest is
22 responsible for the performance of its equipment (as is the CLEC) and should not be
23 identified as an item that is beyond its control.

24 5.7.1 Neither Party shall be liable for any delay or failure in performance
25 of any part of this Agreement from any cause beyond its control and
26 without its fault or negligence including, without limitation, acts of nature,
27 acts of civil or military authority, government regulations, embargoes,
28 epidemics, terrorist acts, riots, insurrections, fires, explosions,
29 earthquakes, nuclear accidents, floods, work stoppages, ~~equipment failure,~~
30 power blackouts, volcanic action, other major environmental disturbances,
31 unusually severe weather conditions, inability to secure products or
32 services of other persons or transportation facilities or acts or omissions of
33 transportation carriers (collectively, a “Force Majeure Event”). The Party
34 affected by a Force Majeure Event shall give prompt notice to the other
35 Party, shall be excused from performance of its obligations hereunder on a
36 day to day basis to the extent those obligations are prevented by the Force
37 Majeure Event, and shall use reasonable efforts to remove or mitigate the
38 Force Majeure Event. In the event of a labor dispute or strike the Parties
39 agree to provide service to each other at a level equivalent to the level they
40 provide themselves.

1 **8. Section 5.8 -- Limitation of Liability**

2 AT&T has proposed changes to section 5.8 as set forth below. AT&T has
3 stricken the exclusionary language in section 5.8.1, because it narrows liability so
4 substantially as to potentially make this clause meaningless. If there is a claim, including
5 those that arise from a failure to perform under this agreement, the non-performing party
6 should be responsible for direct damages incurred by the other party.

7 The exclusionary language in section 5.8.1 relates directly to section 5.8.3. In
8 essence, section 5.8.3 states that instead of getting direct damages, the harmed party gets
9 a proportionate amount of the price of the service when there is a failure. A fraction of
10 the price of the service will likely bear no relationship to the damages suffered. A CLEC
11 that is damaged by Qwest's provision of service (or failure to provision service) should
12 not be limited in its recovery of damages by the price of the service, particularly when
13 Qwest is the monopoly competitor who the CLEC must work with in order to enter the
14 market. A CLEC will be damaged by Qwest's failures to perform, and Qwest must be
15 accountable in a meaningful way -- a way that will provide Qwest with an incentive to
16 perform. In addition, to the extent that backsliding measures are put in place that require
17 Qwest to make payments for certain failures to perform, the language in section 5.8.3
18 could limit the payout under the backsliding plan, thereby diminishing its effectiveness as
19 a means to incent Qwest performance. Issues of liability are very important and may
20 need to be revisited after the Commission adopts a backsliding plan.

21 5.8.1 ~~Except for losses relating to or arising out of any act or omission in~~
22 ~~its performance of services or functions provided under this Agreement,~~
23 ~~e~~Each Party shall be liable to the other for direct damages for any loss,
24 defect or equipment failure including without limitation any penalty,
25 reparation or liquidated damages assessed by the Commission or under a
26 Commission-ordered agreement (including without limitation penalties or

1 liquidated damages assessed as a result of cable cuts), resulting from the
2 causing Party's conduct or the conduct of its agents or contractors.

3 5.8.2 Neither Party shall be liable to the other for indirect, incidental,
4 consequential, or special damages, including (without limitation) damages
5 for lost profits, lost revenues, lost savings suffered by the other Party
6 regardless of the form of action, whether in contract, warranty, strict
7 liability, tort, including (without limitation) negligence of any kind and
8 regardless of whether the Parties know the possibility that such damages
9 could result. For purposes of this Section 5.8.2, amounts due and owing to
10 CLEC, or CLECs as a group, pursuant to any backsliding plan applicable
11 to this Agreement shall not be considered to be indirect, incidental,
12 consequential, or special damages.

13 5.8.3 ~~Except for indemnity obligations, or as otherwise set forth in this~~
14 ~~Section, each Party's liability to the other Party for any loss relating to or~~
15 ~~arising out of any act or omission in its performance of services or~~
16 ~~functions provided under this Agreement, whether in contract or in tort,~~
17 ~~shall be limited to the total amount that is or would have been charged to~~
18 ~~the other Party by such breaching Party for the service(s) or function(s)~~
19 ~~not performed or improperly performed, including without limitation~~
20 ~~direct damages for loss of or damaged to CLEC's collocated equipment~~
21 ~~located within the Collocation space.~~

22 AT&T has proposed changes to section 5.8.4 that includes appropriate carve-outs
23 to the limitation of liability. Qwest's liability/accountability under this SGAT is directly
24 tied to Qwest's section 271 application because sufficiently high liability and
25 accountability are the only way to continue to insure that Qwest will perform its
26 contractual (and statutory) obligations once its section 271 application is approved. The
27 adequacy of the liability/accountability is extremely important as well. If set too low,
28 then Qwest could consider them as just another cost of doing business and pay them
29 rather than perform.

30 5.8.4 Nothing contained in this Section shall limit either Party's liability
31 to the other for (i) willful or intentional misconduct (including gross
32 negligence) or (ii) bodily injury, death or damage to tangible real or
33 tangible personal property proximately caused by such Party's negligent
34 act or omission or that of their respective agents, subcontractors or
35 employees.

1 The changes to section 5.8.6 are intended to make Qwest responsible for its
2 conduct. With respect to fraud, Qwest only wants to be liable if Qwest's conduct is
3 intentional or grossly negligent, placing the risk of other Qwest fault on the CLEC.
4 There is no reason why a CLEC should bear the responsibility for fraud where Qwest is
5 responsible, for whatever reason. AT&T's change makes Qwest responsible whether it is
6 due to intentional conduct, gross negligence or otherwise. The comments relating to
7 section 5.8.4 are equally applicable here.

8 5.8.6 CLEC is liable for all fraud associated with service to its end-users
9 and accounts. Qwest takes no responsibility, will not investigate, and will
10 make no adjustments to CLEC's account in cases of fraud unless Qwest is
11 responsible for such fraud, whether is the result of any intentional act of
12 Qwest, or gross negligence of Qwest, or otherwise. Notwithstanding the
13 above, if Qwest becomes aware of potential fraud with respect to CLEC's
14 accounts, Qwest will promptly inform CLEC and, at the direction of
15 CLEC, take reasonable action to mitigate the fraud where such action is
16 possible.

17 **9. Section 5.9 -- Indemnity**

18 In section 5.9.1, AT&T inserted a cross-reference to section 5.10, because of
19 language AT&T proposes for indemnification relating to intellectual property. AT&T
20 has struck the introductory clause, because there is no basis to exclude CLEC customer
21 claims for which Qwest is responsible. This is another section that relates directly to the
22 fact that once Qwest obtains section 271 approval, there will be little incentive left to
23 insure Qwest's performance of interconnection agreements. Therefore, the agreements
24 themselves must contain the incentive. It is a matter of making Qwest accountable for its
25 conduct to insure performance and deter backsliding. The SGAT needs to have a
26 collection of provisions dealing with liability, indemnification and liquidated damages
27 with a level of exposure that is sufficient to incent Qwest to perform. That is the purpose

1 behind all of AT&T's proposed changes to section 5.9. Other changes to section 5.9.1.2
2 were added to clarify and include infringement claims.

3 5.9.1 ~~With respect to third party claims, the Parties agree to indemnify~~
4 ~~each other as follows:~~

5 ~~5.9.1.1—Except as otherwise provided in Section 5.10 for claims~~
6 ~~made by end users of one Party against the other Party, which~~
7 ~~claims are based on defective or faulty services provided by the~~
8 ~~other Party to the one Party, each of the Parties agrees to release,~~
9 ~~indemnify, defend and hold harmless the other Party and each of~~
10 ~~its officers, directors, employees and agents (each an~~
11 ~~“Indemnitee”) from and against and in respect of any loss, debt,~~
12 ~~liability, damage, obligation, claim, demand, judgment or~~
13 ~~settlement of any nature or kind, known or unknown, liquidated or~~
14 ~~unliquidated including, but not limited to, reasonable costs and~~
15 ~~expenses (attorneys’ fees, accounting fees, or other) whether~~
16 ~~suffered, made, instituted, or asserted by any other Party or person,~~
17 ~~for (i) invasion of privacy, (ii) personal injury to or death of any~~
18 ~~person or persons, or for loss, damage to, or destruction of property~~
19 ~~or the environment, whether or not owned by others, resulting from~~
20 ~~the indemnifying Party’s performance, breach of applicable law, or~~
21 ~~status of its employees, agents and subcontractors; ~~or (iii) for~~~~
22 ~~breach of or failure to perform under this Agreement, regardless of~~
23 ~~the form of action, or (iv) for actual or alleged infringement of any~~
24 ~~patent, copyright, trademark, service mark, trade name, trade dress,~~
25 ~~trade secret or any other intellectual property right, now known or~~
26 ~~later developed, to the extent that such claim or action arises from~~
27 ~~CLEC or CLEC’s customer’s use of the services provided under~~
28 ~~this Agreement.~~

29 Section 5.9.1.2 is confusingly worded, but seems to indicate that if, for example, a
30 CLEC customer has a claim based on defective or faulty service that was ultimately
31 provided by Qwest on its facilities, Qwest will not indemnify the CLEC unless Qwest’s
32 conduct is shown to be “intentional and malicious.” First, if Qwest provides faulty
33 service, Qwest should be responsible. If a CLEC has to pay a claim to its customer
34 because of Qwest’s failure, Qwest should indemnify the CLEC. Second, it is very
35 difficult to prove “intentional *and* malicious misconduct” and a CLEC should not have
36 that burden when Qwest provided the defective or faulty service in the first place. CLEC

1 and customer are harmed equally whether the cause of the failure was “intentional and
2 malicious” or just a simple mistake. Qwest must be accountable and section 5.9.1.2
3 should be deleted.

4 ~~5.9.1.2 — Where the third party claim is made by (or through) an end user
5 of one Party against the other Party, which claim is based on defective or
6 faulty services provided by the other Party to the one Party, then there shall
7 be no obligation of indemnity unless the act or omission giving rise to the
8 defective or faulty services is shown to be intentional and malicious
9 misconduct of the other Party.~~

10 Section 5.9.1.3 is another confusingly worded provision. It is not clear what
11 “based on the content of a transmission” means or why this carve-out is necessary. If
12 either party is responsible for certain conduct, the indemnification duty follows. It should
13 not matter if an end user customer of the other party is the claimant. Section 5.9.1.3
14 should also be deleted.

15 ~~5.9.1.3 — If the claim is made by (or through) an end user and where a
16 claim is in the nature of a claim for invasion of privacy, libel, slander, or
17 other claim based on the content of a transmission, and it is made against a
18 Party who is not the immediate provider of the Telecommunications
19 Service to the end user (the indemnified provider), then in the absence of
20 fault or neglect on the part of the indemnified provider, the Party who is the
21 immediate seller of such Telecommunications Service shall indemnify,
22 defend and hold harmless the indemnified provider from such claim.~~

23 Section 5.9.1.4 deals only with defining “claims made by end users of customers
24 of one Party against the other Party” and “immediate provider of the Telecommunications
25 Service to the end user or customer.” The only function this section seems to perform is
26 to further define when Qwest will not have liability for its failures that impact CLEC
27 customers. Since section 5.9.1.4 deals directly with the previous sections AT&T has
28 proposed deleting (sections 5.9.1.2 and 5.9.1.3), this section should be deleted as well.

29 ~~5.9.1.4 — For purposes of this Section, where the Parties have agreed to
30 provision line sharing using a POTS splitter: “claims made by end users or
31 customers of one Party against the other Party” refers to claims relating to~~

1 ~~the provision of DSL services made against the Party that provides voice~~
2 ~~services, or claims relating to the provision of voice service made against~~
3 ~~the Party that provides DSL services; and "immediate provider of the~~
4 ~~Telecommunications Service to the end user or customer" refers to the~~
5 ~~Party that provides DSL service for claims relating to DSL services, and to~~
6 ~~the Party that provides voice service for claims relating to voice services.~~
7 ~~For purposes of this Section, "customer" refers to the immediate purchaser~~
8 ~~of the telecommunications service, whether or not that customer is the~~
9 ~~ultimate end user of that service.~~

10 AT&T's comments in section 5.9 are intended to clarify and address certain
11 matters that may occur in the process of handling an indemnified claim. For example, it
12 addresses what the indemnified party can do in a situation where the indemnifying party
13 is unwilling to undertake the defense of the claim.

14 5.9.2 The indemnification provided herein shall be conditioned upon:

15 5.9.2.1 The indemnified Party shall promptly notify the
16 indemnifying Party of any action taken against the indemnified
17 Party relating to the indemnification. Failure to so notify the
18 indemnifying Party shall not relieve the indemnifying Party of any
19 liability that the indemnifying Party might have, except to the extent
20 that such failure prejudices the indemnifying Party's ability to
21 defend such claim.

22 5.9.2.2 If the indemnifying Party wishes to defend against such
23 action, it shall give written notice to the indemnified party of
24 acceptance of the defense of such action. In such event, the
25 indemnifying Party shall have sole authority to defend any such
26 action, including the selection of legal counsel, and the indemnified
27 Party may engage separate legal counsel only at its sole cost and
28 expense. In the event that the indemnifying Party does not accept
29 the defense of an action, the indemnified Party shall have the right
30 to employ counsel for such defense at the expense of the
31 indemnifying Party. Each Party agrees to cooperate and to cause its
32 employees and agents to cooperate with the other Party in the
33 defense of any such action and the relevant records of each Party
34 shall be available to the other Party with respect to any such
35 defense.

36 5.9.2.3 In no event shall the indemnifying Party settle or consent
37 to any judgment pertaining to any such action without the prior
38 written consent of the indemnified Party. In the event the
39 indemnified Party withholds such consent, the indemnified Party

1 may, at its cost, take over such defense, provided that, in such
2 event, the indemnifying Party shall not be responsible for, nor shall
3 it be obligated to indemnify the relevant indemnified party against,
4 any cost or liability in excess of such refused compromise or
5 settlement.

6 **10. Section 5.10 -- Intellectual Property**

7 CLECs will be the purchasers under this Agreement; Qwest will be the supplier.

8 If there are lawsuits against a CLEC claiming that the technology the CLEC is using (and
9 has been provided by Qwest) infringes on some third-party's intellectual property rights,
10 Qwest as the supplier of the technology should defend and indemnify the CLEC. This is
11 customary in commercial transactions and is appropriate, because CLEC does not control
12 how Qwest obtains the technology that it uses in its network and what rights Qwest
13 obtains to such technology. This is basic accountability as a supplier.

14 5.10.1 Each Party hereby grants to the other Party the limited, personal
15 and nonexclusive right and license to use its patents, copyrights and trade
16 secrets but only to the extent necessary to implement this Agreement or
17 specifically required by the then-applicable federal and state rules and
18 regulations relating to Interconnection and access to telecommunications
19 facilities and services, and for no other purposes. Nothing in this
20 Agreement shall be construed as the grant to the other Party of any rights or
21 licenses to trademarks.

22 5.10.2 ~~The rights and licenses above are granted "AS IS, WITH ALL~~
23 ~~FAULTS", and the other Party's exercise of any such right and license~~
24 ~~shall be at the sole and exclusive risk of the other Party. Neither Party shall~~
25 ~~have any obligation to defend, indemnify or hold harmless the other based~~
26 ~~on or arising from any claim, demand, or proceeding (hereinafter "claim")~~
27 ~~by any third party alleging or asserting that the use of any circuit,~~
28 ~~apparatus, or system, or the use of any software, or the performance of any~~
29 ~~service or method, or the provision of any facilities by either Party under~~
30 ~~this Agreement constitutes infringement, or misuse or misappropriation of~~
31 ~~any patent, copyright, trade secret, or any other proprietary or intellectual~~
32 ~~property right of any third party.~~

33 The FCC made certain determinations about facilities, equipment and

1 services that an ILEC provides to a CLEC.²² The *Intellectual Property Order* specifically
2 calls for the “best efforts” standard set forth in section 5.10.3 of the SGAT and provides
3 other guidance. The changes in section 5.10.3 proposed by AT&T are intended to more
4 fully capture the FCC’s decision. This obligation is an ILEC obligation, not a CLEC
5 obligation, therefore this provision should not be reciprocal. It should apply to Qwest
6 only. The FCC determined in this decision that the ILEC’s obligation is directly related
7 to the ILEC’s duties under section 251(c)(3) of the Telecommunications Act of 1996.²³

8 5.10.3 To the extent required under applicable federal and state rules
9 law, ~~Qwest the Party providing access shall use its best efforts to provide~~
10 all features and functionalities of the facilities, equipment and services it
11 provides under this Agreement and to obtain, from its vendors who have
12 licensed intellectual property rights to Qwest such Party in connection with
13 facilities and services provided hereunder, licenses under such intellectual
14 property rights as necessary for CLEC the other Party to use such facilities,
15 equipment and services as contemplated hereunder and at least in the same
16 manner as used by Qwest.

17 The covenants and warranties called for in section 5.10.3.1 proposed by AT&T
18 are consistent with the FCC’s decision on intellectual property and help to flesh out the
19 “best efforts” standard called for by the FCC. This language calls for assurances from
20 Qwest that it will not engage in behavior that interferes with the right of a CLEC to use
21 the intellectual property contained in facilities, equipment or services provided by Qwest
22 under this Agreement. Such conduct would be anticompetitive and would impair the
23 ability of a CLEC to compete on a level playing field with Qwest. It would also be in
24 violation of Qwest’s duty described in the *Intellectual Property Order*.

25 5.10.3.1 Qwest covenants that it will not enter into any licensing
26 agreements with respect to any Qwest facilities, equipment or services,

²² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Memorandum Opinion and Order, FCC 00-139 (rel. April 27, 2000) (“*Intellectual Property Order*”).

²³ *Intellectual Property Order*, ¶ 9.

1 including software, that contain provisions that would disqualify CLEC
2 from using or interconnecting with such facilities, equipment or services,
3 including software, pursuant to the terms of this Agreement. Qwest
4 warrants and further covenants that it has not and will not knowingly modify
5 any existing license agreements for any network facilities, equipment or
6 services, including software, in whole or in part for the purpose of
7 disqualifying CLEC from using or interconnecting with such facilities,
8 equipment or services, including software, pursuant to the terms of this
9 Agreement. To the extent that providers of facilities, equipment, services or
10 software in Qwest's network provide Qwest with indemnities covering
11 intellectual property liabilities and those indemnities allow a flow-through
12 of protection to third parties, Qwest shall flow those indemnity protections
13 through to CLEC.

14 The indemnity proposed by AT&T in section 5.10.3.2 is important as a method to
15 enforce Qwest's duty to obtain intellectual property rights to the facilities, equipment and
16 services Qwest provides to CLEC under this Agreement. If Qwest fails to obtain these
17 rights and CLEC is exposed to infringement claims, then this will harm CLECs. In the
18 end, harm to CLECs is beneficial to Qwest as a competitor. If Qwest is held accountable
19 for failing to obtain all of the rights necessary, then Qwest will have a strong incentive to
20 perform.

21 5.10.3.2 Qwest shall indemnify and hold CLEC harmless from and
22 against any loss, cost, expense or liability arising out of a claim that
23 CLEC's use, pursuant to the terms of this Agreement, of any facilities,
24 equipment, services or equipment (including software) used by Qwest in
25 the performance of this Agreement infringes, misappropriates or otherwise
26 violates the intellectual property rights of any third party.

27 AT&T has stricken the first and last parts of section 5.10.7. Both provisions
28 overreach on what they ask of the CLEC. Simply put, each party should simply adhere to
29 applicable law and the ownership rights and infringement issues are covered. The
30 stricken language would open a significant debate over what Qwest is entitled to under
31 applicable law and what additional rights it is trying to extract from CLECs in the SGAT.
32 In the balance of the provision, AT&T simply made the provision reciprocal. This should

1 not be a one-way protection, and CLEC's trademarks should gain the same benefits under
2 this agreement that Qwest's do.

3 5.10.7 ~~CLEC acknowledges the value of the mark "Qwest" Qwest and~~
4 ~~the goodwill associated therewith and acknowledges that such goodwill is a~~
5 ~~property right belonging to Qwest Communications International Inc.~~
6 ~~Qwest (the "Owner"). Qwest and CLEC each recognizes that nothing~~
7 ~~contained in this Agreement is intended as an assignment or grant to the~~
8 ~~other CLEC of any right, title or interest in or to the Mtrademarks or service~~
9 ~~marks of the other (the "Marks") and that this Agreement does not confer~~
10 ~~any right or license to grant sublicenses or permission to third parties to use~~
11 ~~the Marks of the other and is not assignable. Neither party CLEC will do~~
12 ~~nothing inconsistent with the other's Owner's ownership of their~~
13 ~~respective Marks, and all rights, if any, that may be acquired by use of the~~
14 ~~Marks shall inure to the benefit of the their respective Owners. The~~
15 ~~Parties shall comply will all applicable law governing Marks worldwide~~
16 ~~and neither Party will infringe the Marks of the other. CLEC will not adopt,~~
17 ~~use (other than as authorized herein), register or seek to register any mark~~
18 ~~anywhere in the world which is identical or confusingly similar to the Mark~~
19 ~~or which is so similar thereto as to constitute a deceptive colorable~~
20 ~~imitation thereof or to suggest or imply some association, sponsorship, or~~
21 ~~endorsement by the Owner. The Owner makes no warranties regarding~~
22 ~~ownership of any rights in or the validity of the Mark.~~

23 AT&T has proposed a new section 5.10.8. This section calls for the disclosure of
24 certain information by Qwest to the ILEC regarding intellectual property. The FCC, calls
25 for the disclosure of this information and states that failure by the ILEC to make this
26 disclosure could constitute a violation of sections 251(c)(1) and 251(c)(3).²⁴

27 5.10.8 For all intellectual property owned, controlled or licensed by
28 third parties associated with the unbundled network elements provided by
29 Qwest under this Agreement, either on the Effective Date or at any time
30 during the term of the Agreement, Qwest shall promptly disclose to CLEC
31 in writing (i) the name of the party owning, controlling or licensing such
32 intellectual property, (ii) the facilities or equipment associated with such
33 intellectual property, (iii) the nature of the intellectual property, and (iv) the
34 relevant agreements or licenses governing Qwest's use of the intellectual
35 property. Within five (5) business days of a request by CLEC, Qwest shall
36 provide copies of any relevant agreements or licenses governing Qwest's
37 use of the intellectual property to AT&T. To the extent Qwest is prohibited
38 by confidentiality or other provisions of an agreement or license from

²⁴ Intellectual Property Order, ¶ 17.

1 disclosing to CLEC any relevant agreement or license, Qwest shall
2 immediately (i) disclose so much of it as is not prohibited, and (ii) exercise
3 best efforts to cause the vendor, licensor or other beneficiary of the
4 confidentiality provisions to agree to disclosure of the remaining portions
5 under terms and conditions equivalent to those governing access by and
6 disclosure to Qwest.

7 **11. Section 5.11 -- Warranties**

8 AT&T has proposed certain warranties in section 5.10 of the SGAT. To be
9 consistent with that proposed addition, AT&T has made the following change to section
10 5.11.1.

11 5.11.1 Except as expressly set forth in notwithstanding any other
12 provision of this agreement, the parties agree that neither party has made,
13 and that there does not exist, any warranty, express or implied, including
14 but not limited to warranties of merchantability and fitness for a particular
15 purpose and that all products and services provided hereunder are provided
16 “as is,” with all faults.

17 **12. Section 5.12 -- Assignment**

18 This SGAT represents the commitments of Qwest, as an ILEC, under the
19 Telecommunications Act of 1996. If Qwest seeks to assign its obligations under this
20 Agreement to an affiliate without CLEC’s consent (AT&T added the consent language
21 because we believe that is what Qwest intended) then Qwest should remain responsible if
22 that affiliate fails to perform. This is appropriate because CLECs will not have any
23 control over whether the Qwest affiliate is capable of meeting all of the obligations under
24 the SGAT. In addition, AT&T struck the language prohibiting assignment by CLEC to a
25 CLEC affiliate. This is confusing and requires explanation from Qwest. All CLECs have
26 the right to pick and choose some or all of the terms of existing interconnection
27 agreements under section 252(i) of the Act and section 1.8 of this SGAT. The stricken
28 language seems to infringe on that right.

1 5.12.1 Neither Party may assign or transfer (whether by operation of
2 law or otherwise) this Agreement (or any rights or obligations hereunder)
3 to a third party without the prior written consent of the other Party.
4 Notwithstanding the foregoing, either Party may assign or transfer this
5 Agreement to a corporate affiliate or an entity under its common control
6 without the consent of the other Party; provided that the performance of
7 this Agreement by any such assignee is guaranteed by the assignor.
8 ~~however, if CLEC's assignee or transferee has an Interconnection~~
9 ~~agreement with Qwest, no assignment or transfer of this Agreement shall~~
10 ~~be effective without the prior written consent of Qwest. Such consent shall~~
11 ~~include appropriate resolutions of conflicts and discrepancies between the~~
12 ~~assignee's or transferee's Interconnection agreement and this Agreement.~~
13 Any attempted assignment or transfer that is not permitted is void ab initio.
14 Without limiting the generality of the foregoing, this Agreement shall be
15 binding upon and shall inure to the benefit of the Parties' respective
16 successors and assigns.

17 AT&T has stricken section 5.12.2 for two reasons. First, this provision negatively
18 impacts a CLEC's right to pick and choose under section 252(i) of the Act. Change of
19 control of a CLEC is irrelevant to Qwest's obligations under the Act. That CLEC could
20 opt into this or any other Qwest interconnection agreement post-corporate change as a
21 matter of right. Second, even if one or more legal entities merge, if they remain separate
22 legal entities with their own certificates, there is nothing under the law the would prevent
23 each from having its own interconnection agreement with different terms if that is what
24 those entities choose. Qwest should not be allowed to abridge this right in an SGAT
25 where Qwest is supposed to demonstrate compliance with the Act. If, after a business
26 combination, a CLEC did want to consolidate from many to a single interconnection
27 agreement, it is CLEC's choice alone which agreement to continue with, and CLEC
28 cannot be required to come to an agreement with Qwest on this. That would vitiate
29 CLEC's rights under section 252(i) of the Act. Qwest only has a role in the
30 determination of which interconnection agreement to maintain if the CLEC chooses to
31 consult with Qwest. Even in that case, Qwest's role would be advisory only.

1 ~~5.12.2 Without limiting the generality of the foregoing subsection, any~~
2 ~~merger, dissolution, consolidation or other reorganization of CLEC, or any~~
3 ~~sale, transfer, pledge or other disposition by CLEC of securities~~
4 ~~representing more than fifty percent (50%) of the securities entitled to vote~~
5 ~~in an election of CLEC's board of directors or other similar governing~~
6 ~~body, or any sale, transfer, pledge or other disposition by CLEC of~~
7 ~~substantially all of its assets, shall be deemed a transfer of control. If any~~
8 ~~entity, other than CLEC, involved in such merger, dissolution,~~
9 ~~consolidation, reorganization, sale, transfer, pledge or other disposition of~~
10 ~~CLEC has an Interconnection agreement with Qwest, the Parties agree that~~
11 ~~only one agreement, either this Agreement or the Interconnection~~
12 ~~agreement of the other entity, will remain valid. All other Interconnection~~
13 ~~agreements will be terminated. The Parties agree to work together to~~
14 ~~determine which Interconnection agreement should remain valid and which~~
15 ~~should terminate. In the event the Parties cannot reach agreement on this~~
16 ~~issue, the issue shall be resolved through the Dispute Resolution process~~
17 ~~contained in this Agreement.~~

18 AT&T proposes the addition of a new section 5.12.2 dealing with the sale of
19 Qwest exchanges. This addition is warranted, as AT&T has seen Qwest sell many of its
20 exchanges during the term of its current interconnection agreements. The current
21 interconnection agreements with Qwest do not have sale of exchange provisions, and the
22 process occurred in a contentious and inefficient manner. When a CLEC enters into an
23 interconnection agreement with an ILEC, that CLEC may have plans to enter the market
24 in a particular way or may actually have customers in an area that is being sold. The
25 selling ILEC should not be allowed to simply exit the territory and leave a CLEC and its
26 customers without an understanding of their rights going forward. This provision seeks
27 to have the purchasing carrier abide by the terms of the ILEC interconnection agreement
28 with respect to interconnection and intercarrier compensation provisions until an
29 interconnection agreement with the purchasing carrier can be reached. It also calls for
30 Qwest's full cooperation in facilitating negotiations with the purchasing entity to ensure
31 the smooth transfer that will have minimal impact on CLEC and its customers. AT&T
32 would expect that this proposal would be acceptable to Qwest, as it tracks fairly closely

1 with the process Qwest purported to follow when it sold some of its exchanges to
2 Citizens. A copy of one of the notifications received by AT&T is attached as Exhibit E.

3 5.12.2 Transfer of all or Part of Qwest Telephone Operations. If
4 Qwest directly or indirectly (including without limitation through a
5 transfer of control or by operation of law) sells, exchanges, swaps, assigns,
6 or transfers ownership or control of all or any portion of Qwest's
7 telephone operations (any such transaction, a "Transfer") to any purchaser,
8 operator or other transferee (a "Transferee"), Qwest must:

9 a) obtain a written agreement from the Transferee, prior to the
10 Transfer (in form and substance reasonably satisfactory to
11 AT&T), that Transferee agrees to be bound by the interconnection
12 and intercarrier compensation obligations set forth in this
13 Agreement with respect to the portion of Qwest's telephone
14 operations so transferred, until an interconnection agreement
15 between CLEC and the Transferee becomes effective.

16 b) provide CLEC with prompt written notice of any agreement
17 or understanding relating to any proposed Transfer, and in any
18 event at least one hundred eighty (180) days prior written notice of
19 the completion of such Transfer;

20 c) use its best efforts to facilitate discussions between CLEC
21 and the Transferee with respect to Transferee's assumption of
22 Qwest's obligations pursuant to the terms of this Agreement;

23 d) serve CLEC with a copy of any Transfer application or
24 other related regulatory documents associated with the Transfer
25 when filed with the Commission or the FCC;

26 e) not oppose CLEC's intervention in any proceeding relating
27 to the Transfer; and not challenge the Commission's authority in
28 any proceeding relating to the Transfer to hear the issue of whether
29 the Transferee should be required to adopt any or all of the terms
30 of this Agreement.

31 **13. Section 5.16 -- Nondisclosure**

32 AT&T proposes additions to the language in section 5.16.1 to (1) specifically
33 identify a category of information that is very sensitive and requires protection even if not
34 marked and (2) to address the potential situation where one Party fails to identify
35 information as Proprietary at the time of disclosure or within 10 days after an oral

1 disclosure. It does not create a further burden on the receiving party because the
2 confidentiality obligation only runs from the time the information is identified as being
3 confidential or proprietary.

4 5.16.1 All information, including but not limited to specifications,
5 microfilm, photocopies, magnetic disks, magnetic tapes, drawings,
6 sketches, models, samples, tools, technical information, data, employee
7 records, maps, financial reports, and market data, (i) furnished by one
8 Party to the other Party dealing with business or marketing plans, end user
9 specific, facility specific, or usage specific information, other than end
10 user information communicated for the purpose of providing directory
11 assistance or publication of directory database, or (ii) in written, graphic,
12 electromagnetic, or other tangible form and marked at the time of delivery
13 as "Confidential" or "Proprietary", or (iii) communicated and declared to
14 the receiving Party at the time of delivery, or by written notice given to the
15 receiving Party within ten (10) calendar days after delivery, to be
16 "Confidential" or "Proprietary" (collectively referred to as "Proprietary
17 Information"), shall remain the property of the disclosing Party. A Party
18 who receives Proprietary Information via an oral communication may
19 request written confirmation that the material is Proprietary Information.
20 A Party who delivers Proprietary Information via an oral communication
21 may request written confirmation that the Party receiving the information
22 understands that the material is Proprietary Information. Each Party shall
23 have the right to correct an inadvertent failure to identify information as
24 Proprietary Information by giving written notification within thirty (30)
25 days after the information is disclosed. The receiving Party shall, from
26 that time forward, treat such information as Proprietary Information.

27 AT&T has proposed changes to section 5.16.3 to outline in greater detail the
28 protections that confidential information requires and certain circumstances where
29 confidential information may be disclosed. These modifications also bring in section 222
30 of the Act, Privacy of Customer Information.

31 5.16.3 In addition to any requirements imposed by Applicable Law,
32 including, but not limited to, 47 U.S.C. § 222, Each Party shall keep all
33 of the other Party's Proprietary Information confidential, and shall use the
34 other Party's Proprietary Information only for the purpose of performing
35 under in connection with this Agreement, shall disclose it to no one other
36 than its employees having a need to know for the purpose of performing
37 under this Agreement, and shall safeguard it from unauthorized use or
38 disclosure with at least the same degree of care with which the receiving
39 Party safeguards its own Proprietary Information. If the receiving Party

1 wishes to disclose the disclosing Party's Proprietary Information to a third
2 party agent or consultant, such disclosure must be mutually agreed to in
3 writing by the Parties to this Agreement, and the agent or consultant must
4 have executed a written agreement of non-disclosure and non-use
5 comparable in scope to the terms of this Section. Neither Party shall use
6 the other Party's Proprietary Information for any other purpose except
7 upon such terms and conditions as may be agreed upon between the
8 Parties in writing.

9 AT&T has proposed an addition to section 5.16.5 that further explains that
10 confidential information may be disclosed for certain regulatory or enforcement
11 purposes, as long as the confidential information is protected. To be clear, Qwest should
12 not be allowed to use confidential CLEC information for its own regulatory agenda
13 unrelated to the purpose for which such information was collected by or supplied to
14 Qwest.²⁵ This seems to be consistent with Qwest's desire to have the freedom to make
15 certain disclosures to regulators.

16 5.16.5 Nothing herein is intended to prohibit a Party from supplying
17 factual information about its network and Telecommunications Services
18 on or connected to its network to regulatory agencies including the Federal
19 Communications Commission and the Commission so long as any
20 confidential obligation is protected. In addition, either Party shall have the
21 right to disclose Proprietary Information to any mediator, arbitrator, state
22 or federal regulatory body, the Department of Justice or any court in the
23 conduct of any proceeding arising under or relating in any way to this
24 Agreement or the conduct of either Party in connection with this
25 Agreement, including without limitation the approval of this Agreement,
26 or in any proceedings concerning the provision of interLATA services by
27 Qwest that are or may be required by the Act. The Parties agree to
28 cooperate with each other in order to seek appropriate protection or
29 treatment of such Proprietary Information pursuant to an appropriate
30 protective order in any such proceeding.

31 CLECs have had discussions with Qwest in previous workshops about forecasts
32 and the particularly sensitive nature of forecasts. AT&T proposes additional language in
33 a new section 5.16.7 of the SGAT to address certain concerns previously raised.

²⁵ 47 U.S.C. § 222 (Confidentiality of carrier information).

1 5.16.7 CLEC Forecasts

2 a) CLEC forecasts shall be Proprietary Information and Qwest
3 may not distribute, disclose or reveal, in any form, whether in
4 aggregated, disaggregated, unattributed or otherwise, CLEC
5 forecasts other than as allowed and described in subsections “b)”
6 and “c)” below.

7 b) Qwest may disclose, on a need to know basis only, CLEC
8 forecasts, to Qwest network and growth planning personnel
9 responsible for ensuring that Qwest’s local network can meet
10 wholesale customer demand. In no case shall the Qwest network
11 and growth planning personnel that have access to CLEC forecasts
12 be involved in or responsible for Qwest’s retail marketing, sales or
13 strategic planning. Qwest will inform all network and planning
14 personnel with access to CLEC forecasts of the confidential nature
15 of such forecasts, and Qwest will have such personnel sign non-
16 disclosure agreements related thereto. The non-disclosure
17 agreements shall inform such personnel that, upon threat of
18 termination, they may not reveal or discuss CLEC forecasts with
19 those not authorized to receive such information.

20 c) Qwest shall maintain CLEC forecasts in secure files and
21 locations such that access to the forecasts is limited to the
22 personnel designated in subsection “b)” above and such that no
23 other personnel have computer access to such information.

24 Because of the importance and sensitive nature of confidential information, it is
25 customary for parties in a commercial contract to expressly state that they may seek
26 remedies, including injunctive relief and specific performance. These give the disclosing
27 party a fairly prompt method of enforcing the confidentiality obligations. AT&T has
28 proposed a new section 5.16.8 to expressly provide for this alternative.

29 5.16.8 Each Party agrees that the disclosing Party would be
30 irreparably injured by a breach of this Agreement by the receiving Party or
31 its representatives and that the disclosing Party shall be entitled to seek
32 equitable relief, including injunctive relief and specific performance, in
33 the event of any breach of the provisions of this Agreement. Such
34 remedies shall not be deemed to be the exclusive remedies for a breach of
35 this Agreement, but shall be in addition to all other remedies available at
36 law or in equity.

1 **14. Section 5.17 -- Survival**

2 The change proposed by AT&T to section 5.17.1 is intended to make it clear that
3 the SGAT may expire or terminate prior to the end of the two year term or after the end
4 of the initial two year term if the parties agree to an extension.

5 5.17.1 Any liabilities or obligations of a Party for acts or omissions
6 prior to the termination or expiration of this Agreement~~completion of the~~
7 ~~two-year term~~, and any obligation of a Party under the provisions
8 regarding indemnification, Confidential or Proprietary Information,
9 limitations of liability, and any other provisions of this Agreement which,
10 by their terms, are contemplated to survive (or to be performed after)
11 termination of this Agreement, shall survive cancellation or termination
12 hereof.

13 **15. Section 5.18 -- Dispute Resolution**

14 Not only are the general dispute resolution provisions of the SGAT, section 5.18,
15 applicable to general disputes as they arise, they are specifically implicated in other
16 processes outlined in the SGAT. Such processes include the BFR process, Special
17 Request Process ("SRP") and pick and choose. By the time the parties get to dispute
18 resolution, there is a significant problem that has lingered for some period of time. In the
19 case of the BFR, SRP and pick and choose processes, quite a bit of time may have passed
20 getting through the applicable steps. The parties need a detailed process they can follow
21 and they need the ability to have that process move quickly. AT&T proposes its own
22 language to replace section 5.18. It is both thorough and provides for an expedited
23 resolution process. Accordingly, AT&T proposes that sections 5.18.1 through 5.18.4 of
24 the SGAT be replaced with the language set forth in Exhibit F.

25 One further comment about Qwest's section 5.18. AT&T objects to the
26 requirement in section 5.18.2 that any discussions between the parties be deemed
27 confidential and not subject to the discovery, production or otherwise admissible in any

1 proceeding, including arbitration of the dispute. If these section 271 workshops have
2 indicated anything, it is that Qwest responds most readily when issues are discussed
3 openly and candidly with arbitrators, Commissions and commission staff. A “gag”
4 provision such as this, not only violates the CLECs’ rights to protect their interests in
5 future litigation and arbitration, it also makes such negotiations less productive and may
6 seriously jeopardize any subsequent investigation of Qwest’s compliance with the SGAT
7 or the law. If the parties (including the CLEC) deem at any time that confidential
8 negotiations between the parties would result in a beneficial outcome, they could
9 voluntarily agree to enter into a confidentiality agreement covering such discussions. No
10 SGAT language would be required to accommodate that desire. However, it is
11 inappropriate to mandate that such discussions be deemed confidential from the outset.

12 **16. Section 5.19 -- Controlling Law**

13 In section 5.19, AT&T has replaced the reference to “the terms of the Act” with
14 “applicable federal law.” This broader reference will capture the Act, rules and orders of
15 the FCC. In addition, it will capture any other federal law that would apply to Qwest’s
16 obligations, including laws that may be passed in the future. The entire body of
17 applicable federal law must be used in the interpretation and enforcement of this
18 Agreement just as the Arizona state law (broadly referenced in this section) will apply.

19 5.19.1 This Agreement is offered by Qwest and accepted by CLEC in
20 accordance with applicable federal law~~the terms of the Act~~ and the State
21 law of Arizona. It shall be interpreted solely in accordance with
22 applicable federal law~~the terms of the Act~~ and the State law of Arizona.

23 **17. Section 5.21 -- Notices**

24 The changes AT&T has proposed in section 5.21 allow for two additional
25 methods of delivery of notices called for under this Agreement. These methods (personal

1 delivery and overnight courier) can be very important when time is of the essence.
2 Waiting for delivery by the U.S. Postal Service may not address the urgency of certain
3 situations. The change in the last sentence is to make sure that each party is properly
4 notified of changes in the other party's notice party or notice address.

5 5.21.1 Any notices required by or concerning this Agreement shall be
6 in writing and shall be sufficiently given if delivered personally, delivered
7 by prepaid overnight express service, or sent by certified mail, return
8 receipt requested, to Qwest and CLEC at the addresses shown below:

9 Qwest Corporation
10 Director Interconnection Compliance
11 1801 California, Room 2410
12 Denver, CO 80202

13 With copy to:

14 Qwest Attention:
15 Corporate Counsel, Interconnection
16 1801 California Street, 49th Floor
17 Denver, CO 80202

18 and to CLEC at the address shown below:

19 Name:

20 _____
21 _____
22 _____

23 Each Party shall inform the other of any change in the above contact
24 person and/or address using the method of notice called for in this Section
25 5.22.

1 **18. Section 5.30 -- Amendments**

2 AT&T proposes a new section 5.30.1.1. The proposed language sets forth a
3 process for amendments that calls for dispute resolution in the event the parties are
4 unable to agree on an amendment. Setting a time period for negotiations and the
5 availability of the dispute resolution provisions will prevent amendment negotiations
6 from dragging on and negatively impacting the requesting party.

7 5.30.1 When this document is being used as an Interconnection
8 agreement, it can only be amended in writing, executed by the duly
9 authorized representatives of the Parties.

10 5.30.1.1 Either party may request an amendment to this
11 Agreement at any time by providing to the other party in writing
12 information about the desired amendment and proposed language
13 changes. If the parties have not reached agreement on the
14 requested amendment within sixty (60) calendar days after receipt
15 of the request, either party may pursue resolution of the
16 amendment through the dispute resolution provisions of this
17 Agreement.

18 **19. SGAT Section 17 -- Bona Fide Request Process ("BFR")**

19 Qwest's proposed BFR process is deficient. It fails to provide CLECs an
20 expedient and nondiscriminatory process for obtaining access to network elements,
21 ancillary services or interconnection. The deficiencies of Qwest's BFR process are both
22 general and specific.

23 **a. General Deficiencies of Qwest's BFR Proposal**

24 A primary flaw of Qwest's BFR process is that it presupposes that the process to
25 obtain certain types of interconnection or access to unbundled network elements "not
26 already available" in the SGAT is clear. *See* section 17.1. AT&T's experience with its
27 AT&T/Qwest interconnection agreements ("ICAs") is that numerous interpretative
28 disputes arise with Qwest in which AT&T believes the ICA provides for a certain kind of

1 access or interconnection, but Qwest deems such access or interconnection is not a
2 “product,” offered by Qwest, and therefore, not available to AT&T. Accordingly, AT&T
3 has been forced to engage in lengthy discussions about the supposed absence of a
4 “product,” although reasonable interpretations of AT&T’s ICAs would accommodate
5 such access or interconnection. In short, Qwest controls the “product” and has an
6 incentive to require that all requests for deviations, however minor or immaterial, go
7 through the BFR process. Qwest should explicitly provide that accommodations of
8 minor requests will not be treated as a BFR and commit to resolving them in a fair, quick
9 and nondiscriminatory manner.

10 In addition to this primary flaw, Qwest’s proposal has other general deficiencies.
11 Tellingly, nowhere in the BFR does Qwest commit itself to actually provisioning
12 interconnection or access requested in a BFR application. In the event Qwest agrees to
13 offer requested interconnection or access, or a dispute has been resolved to require
14 interconnection or access, Qwest should specify that access will be permitted and that
15 such access will occur within a specific, expedient interval. Further, upon resolution of
16 the dispute or agreement to offer such access or interconnection, Qwest should make such
17 services immediately available to the CLEC without the need for any cumbersome
18 “amendment” process.

19 In addition, Qwest takes an unreasonable amount of time to process the BFR
20 applications. It takes Qwest over two weeks to merely “acknowledge receipt of an
21 application and advise ... of missing information.” Section 17.3. Qwest takes three
22 weeks after it determines it has all relevant information to provide a “preliminary
23 analysis.” Section 17.4. After that, Qwest may take an additional 10 days to prepare a

1 written report. Sections 17.5 and 17.6. These time frames are excessive and create
2 “needless delay” and barriers to competition.

3 Finally, Qwest should streamline the BRF process by: (1) explicitly
4 acknowledging that previous forms of interconnection and access resolved through the
5 BFR process or through the dispute resolution process throughout its 14-state region,
6 would be presumptively binding on Qwest under the present SGAT without the need for
7 further BFR or dispute resolution proceedings; and (2) in keeping with the FCC’s tenets,
8 determinations about technical feasibility made throughout the nation should create a
9 rebuttable presumption on Qwest that such access or interconnection is technically
10 feasible within its own network.

11 **b. Specific Deficiencies of Qwest’s BFR Proposal**

12 Qwest’s proposal contains numerous specific deficiencies.

13 In section 17.2, Qwest specifies the content and nature of the “appropriate Qwest
14 form for BFRs.” Qwest’s provision is ambiguous and affords Qwest the opportunity to
15 treat CLECs in a discriminatory manner. First, Qwest should be required to attach, as an
16 exhibit, the actual form to be used by Qwest. In this way, the Commission, Qwest and
17 the CLECs can be assured of what information is required of every CLEC seeking to use
18 the BFR process. Likewise, Qwest’s list of information required of CLECs (sections
19 17.2(a) through (h)) is described as a “minimum” requirement, implying that Qwest can
20 make additional demands for information required to complete the application. Because,
21 Qwest needs to process the application only after Qwest has all information “necessary to
22 process it” (section 17.4), Qwest could in its discretion interminably delay the processing
23 of a BFR. Although CLECs would likely be willing to cooperate in good faith to ensure

1 that Qwest has the necessary information required to process a BFR application, Qwest's
2 obligations to move the application forward should be clear from the outset. This section
3 should be revised to make reference to a specific BFR application form and eliminate the
4 phrase "at a minimum."

5 Qwest requires, in sections 17.2(g) and (h), that a CLEC submit documentation
6 demonstrating that access to a proprietary element is necessary or that denial of access to
7 either proprietary and non-proprietary elements would impair a CLEC's ability to provide
8 the services a CLEC seeks to offer. This requirement presupposes (1) that the CLECs
9 and Qwest know what element is proprietary (usually an issue saved for an adjudicative
10 determination); and (2) that such access could not be negotiated with or agreed to by
11 Qwest without a showing of compliance with the "necessary and impair standard"
12 (indeed, nothing in the Act or FCC prevents Qwest and a CLEC agreeing to any kind of
13 non-discriminatory arrangement). Further, Qwest requires a CLEC to essentially "make
14 its case" as a precondition to mere completion of the application. This implies that Qwest
15 acts in a quasi-adjudicative role. In a dispute about access, CLECs may be required to
16 show how their request satisfies the necessary and impair standard. But in this early part
17 of the application process, such dispute is not known. It is for Qwest to deny access and
18 specify its reasons. If a CLEC determines that its reasons are flawed or the denial is
19 otherwise inappropriate, the CLEC should have an opportunity to make its case in dispute
20 resolution. Sections 17.2(g) and (h) should be eliminated.

21 As discussed briefly above, Qwest's section 17.3 implies that additional
22 information needed to complete the analysis of the BFR must be provided to Qwest for
23 processing the application. Although AT&T would not oppose an obligation on the part

1 of CLECs to cooperate with Qwest in good faith in the BFR process, AT&T opposes any
2 implication that an application could be suspended or otherwise held up if, in Qwest's
3 sole determination, the application is incomplete.

4 Sections 17.4, 17.5 and 17.6, when read together, are unclear. Section 17.4
5 describes Qwest's obligation to provide a "preliminary analysis," suggesting that such
6 analysis is not a final determination. Such preliminary analysis must be delivered within
7 21 days after Qwest determines that it has the information required to make such
8 analysis. In Sections 17.5 and 17.6, Qwest implies that within such 21-day period it must
9 make a determination on whether or not such interconnection or access "is required under
10 the Act" (further implying that if not permitted, Qwest will not provide such access).
11 Under these circumstances, Qwest's obligation to provide a "preliminary analysis" is
12 unclear. Whether appropriate or not, such analysis appears not to matter if it may be
13 superceded by a more conclusive determination. What CLECs require, simply, is a quick
14 decision, yes or no, with supporting reasons and sufficient evidence. AT&T's experience
15 has shown that "preliminary" anything with Qwest does not provide a meaningful
16 opportunity to persuade or negotiate for a change in position, but merely affords Qwest
17 the opportunity for further delay.

18 Section 17.10 states that dispute resolution procedures are available under the
19 Agreement. This provision should make clear that a dispute arising from the BFR
20 process should be presumptively treated as if it had been escalated, so that the parties
21 may disregard the escalation requirement of section 5.18.2 (although note that AT&T
22 proposes the deletion of Qwest's section 5.18 in favor of AT&T's proposed process,
23 Exhibit F). Further, because disputes regarding a determination of access,

1 interconnection price and costs have broad applicability, CLECs should have the option
2 to have the disputes over such items appealed directly to the Commission.

3 Qwest specifies that certain “development costs” and construction charges will be
4 assessed a requesting CLEC as part of the BFR process. *See* sections 17.7 and 17.9.
5 Because requests for interconnection and access processed as a BFR will likely be made
6 by more than one CLEC and, necessarily, be made available to all CLECs, such
7 development costs, where appropriate, should be shared among all requesting CLECs, not
8 merely those bold enough to make the first request.

9 **c. The Real World -- Qwest’s Bona Fide Request Process**

10 AT&T’s current experience with Qwest’s BFR process in Oregon underscores
11 how many of the general and specific deficiencies of the Qwest BFR process hinders
12 AT&T’s ability to serve its customers in a timely and cost effective manner. What
13 follows is a real life example of how these SGAT provisions or similar ICA provisions
14 translate into a BFR process that moves at best on geologic time.

15 **(i) Background**

16 In October 2000, AT&T acquired a customer in Oregon consisting of many state
17 agencies, all of which require total network reliability. The network must be able to
18 provide these agencies with calls at all times.

19 When AT&T embarked on developing the interconnection and network routing
20 required to provision the customer, it discovered Qwest did not have the diversity in its
21 SS7 network required for AT&T to provide back-up routing to its customer. To address
22 this problem, AT&T ordered SS7 signaling and requested routing to use the MF wink
23 start trunks as a back-up in case of an SS7 outage.

1 **(ii) General Deficiencies of Qwest's Oregon BFR Process**

2 AT&T's concerns regarding ICA interpretive disputes outlined on these
3 comments regarding the BFR process became a reality in this situation. Although AT&T
4 considered its orders justified and provided for under its interconnection agreement,
5 Qwest disagreed and maintained that the ICA does not provide for SS7 Signaling or MF
6 Wink Start Signaling. Qwest demanded AT&T amend the ICA if it wanted to obtain the
7 requested signaling. Under protest, AT&T initiated the amendment process on October
8 26, 2000. By November 30, 2000, AT&T obtained what it thought was a fully executed
9 amendment to the ICA granting AT&T the ability to order and access MF Wink Start
10 Signaling from Qwest. However, when AT&T attempted to place its order, Qwest
11 ignored the amended provision and demanded that AT&T enter the BFR process.

12 Another concern expressed in these comments is the excessive amount of time
13 Qwest takes to complete the BFR process. AT&T placed its BFR request on December
14 5, 2000. How the result of the process would constitute an *expedited* BFR process is a
15 mystery. Exhibit G shows AT&T received its final analysis and quote from Qwest on
16 March 30, 2001, nearly four calendar months after it filed its request and nearly five
17 calendar months from when it made its first inquiry into ordering the MF wink start
18 trunks and routing.

19 Unfortunately, the process has not concluded. Qwest has not provided AT&T
20 with intervals for the remainder of the BFR process and most importantly has not
21 provided a delivery date. This is not surprising in that Qwest's proposed BFR process
22 does not commit to actually provisioning the interconnection or access requested.

1 Meanwhile, this delay renders AT&T unable to provide the required service to its
2 customer in Oregon.

3 The specific deficiencies discussed above are indeed reality. AT&T's experience
4 with Qwest's Oregon BFR process made them glaringly obvious. First, Qwest doesn't
5 attach the proper BFR form to the SGAT or interconnection agreement. In this case,
6 AT&T sent Qwest what it considered the appropriate BFR form only to receive a
7 message that the form submitted was not the form used by Qwest.²⁶ AT&T was directed
8 to a website and was required to submit the Qwest-approved form. Because the proper
9 form was not available, AT&T lost six days in the ordering process.

10 Second, SGAT sections 17.2(a) through (h) are described as a minimum set of
11 requirements. AT&T's experience in Oregon has shown Qwest exploits the implication
12 that it may require additional information to complete the application. Qwest formally
13 acknowledged receipt of AT&T's BFR request on December 18, 2000, and requested
14 clarifying information. Yet in an electronic mail message dated January 31, 2000, Qwest
15 demanded AT&T provide a list of emergency telephone numbers ("TNs") for routing to
16 the MF trunks in order for Qwest to develop its implementation plan.²⁷ It is not clear
17 from subsequent correspondence with Qwest if this is the last request for information
18 associated with this BFR. AT&T received a quote from Qwest on March 30, 2001.

19 **20. SGAT Section 18 -- Audit Process**

20 As a general matter, AT&T fails to understand why Qwest needs to have the right
21 to audit CLECs. Qwest is the service provider under the SGAT and is in the position to

²⁶ See Exhibit H attached.

²⁷ See Exhibit I attached.

1 have information that the customer, CLEC, needs to verify performance and billing
2 matters. This section should grant audit rights to the CLEC, but not to Qwest.

3 Section 18.1 states that an audit means a review of data relating to certain things
4 like billing, provisioning and maintenance. This is too narrow. CLECs should also have
5 the right to audit other aspects of Qwest's performance, including its processes and
6 adherence to contract obligations. For example, CLECs have expressed concern about
7 how Qwest uses CLEC forecasts and who is permitted to see them. At any point in time,
8 a CLEC should have the right to audit Qwest's handling of CLEC forecasts. Another
9 example has to do with LSRs. When Qwest receives a CLEC LSR, it should be used
10 only by people who need it to provision the service. The LSRs or any information in the
11 LSR should not be related to the retail side of Qwest's business so that they can begin a
12 winback opportunity.

13 Section 18.2.4 provides that no more than two audits may be requested in any 12
14 month period. AT&T requests that a calendar year be used rather than a 12 month
15 period. Also, two audits per year may be insufficient if an error is found that needs to be
16 monitored to ensure that it has been remedied by Qwest. AT&T requests the following
17 language be added:

18 CLEC may audit Qwest's books, records and documents more frequently
19 than twice during any calendar year (but no more frequently than once in
20 each calendar quarter) if the immediately preceding audit found previously
21 uncorrected net variances, inaccuracies or errors in invoices in Qwest's
22 favor with an aggregate value of at least two percent (2%) of the amounts
23 payable by CLEC for services, Interconnection or Network Elements
24 provided during the period covered by the Audit.

25 Section 18.2.7 limits the audit to transactions that occurred in the last 24 months. AT&T
26 submits that this time period is insufficient. The appropriate period of time is the statute
27 of limitations for contractual disputes in the State, which is 3 years.

1 AT&T requests that section 18.2.8 be amended to add the following language:

2 Qwest will reimburse CLEC for its expenses in the event that an Audit
3 finds that an adjustment should be made in the charges or in any invoice
4 paid or payable by CLEC hereunder by an amount that is, on an
5 annualized basis, greater than two percent (2%) of the aggregate charges
6 for the services, Interconnection, and Network Elements during the period
7 covered by the Audit.

8 Section 18.2.9 provides that an audit may be conducted by a mutually agreed-to
9 independent auditor, to be paid for by the requesting party (which should be the CLEC,
10 since the audit rights should extend only to CLECs). AT&T fails to understand why
11 Qwest should have the right to agree to the independent auditor if the cost is paid by the
12 CLEC. The phrase "mutually agreed-to" should be deleted.

13 Section 18.2.11 should be amended so that the parties' disputes regarding audit
14 results will be handled under the dispute resolution section of the SGAT.

15 **G. SPECIAL REQUEST PROCESS**

16 AT&T is aware from workshops and other proceedings that Qwest has developed
17 what it calls a "Special Request Process." Unfortunately, Qwest did not file its Special
18 Request Process with the testimony of Larry B. Brotherson on April 4, 2001. In addition,
19 Mr. Brotherson did not present testimony on the Special Request Process, so AT&T is
20 not in a position to provide responsive comments at this time. AT&T requests that Qwest
21 file both its process and substantive comments detailing the SRP and describing how it
22 satisfies Qwest's obligations under the Act.

23 Generally, Qwest needs to completely describe the interplay between the SRP and
24 BFR. Qwest should also explain how the SRP works with the Qwest wholesale product
25 development process (AT&T notes that Qwest's Wholesale Product Development

1 Guide²⁸ makes no reference to this process). It would be helpful if Qwest would file an
2 updated version of the Wholesale Product Development Guide in this docket before the
3 workshop. In addition, Qwest should identify every request that is subject to the SRP so
4 that there is no question about what issues are subject to that process. Historically, the
5 SRP was created to allow CLECs to request that features of a switch be loaded and/or
6 activated. The role of the SRP has since mushroomed, but remains unclear.

7 Next, AT&T requests confirmation from Qwest, in its comments and in the SGAT
8 language describing the SRP, that once an issue is subjected to the SRP it will not be
9 “bounced” out of that process into the BFR process because an issue of “technical
10 feasibility” has arisen. All the issues referred to SRP should be pre-identified as clearly
11 issues that do not implicate technical feasibility. This, along with a satisfactory
12 resolution of the issues outlined with the BFR process, will give CLECs greater comfort
13 that Qwest will not abuse such process.

14 **H. INDIVIDUAL CASES BASIS (“ICB”)**

15 AT&T has repeatedly stated that Qwest should provide a definite process for
16 handling the determination of any and all pricing and terms and conditions that have been
17 identified as “individual cost basis” or “individual case basis” (“ICB”) in the SGAT.
18 AT&T is concerned that without such a process, Qwest has no specific obligation to be
19 responsive to a CLEC request, nor would there be any clear recourse if Qwest’s ICB
20 response is inappropriate. In addition, AT&T requests that Qwest provide definite and
21 concrete language for inclusion in the SGAT describing the nature of ICB

²⁸ See generally, AZ section 271 proceeding, Docket No. T-00000A-97-0238, Qwest’s Responses to AT&T/TCG’s Fifteenth Set of Data Request and Multi-state Proceeding Qwest’s Supplemental Responses to AT&T’s Eighth Set of Data Requests, filed January 24, 2001.

1 determinations. Finally, AT&T requests that Qwest supports its proposal with
2 appropriate testimony.

3 **I. CO-PROVIDER INDUSTRY CHANGE MANAGEMENT PROCESS**
4 **(CICMP) PROCESS**

5 Qwest has apparently developed a process called the Co-Provider Industry
6 Change Management Process (“CICMP”). Qwest has referenced this process during
7 workshops. Qwest has even included a reference to its “change management process” in
8 section 7.4.7 of the SGAT. To date, however, Qwest has brought not documentation or
9 other useful information into this docket that explains this process. Neither has Qwest
10 filed any testimony, although this was clearly one of the issues the parties intended to
11 discuss at the workshop on General Terms and Conditions. As a result, AT&T is not in a
12 position to file substantive comments on this process, although AT&T takes this
13 opportunity to raise a few questions and concerns.

14 As an initial matter, AT&T requests that Qwest supplement its testimony to
15 include a description of the CICMP process as well as internal Qwest documentation that
16 describes the CICMP, including the location of where this information can be readily
17 found and referenced. AT&T would like Qwest to explain several things: (1) to what
18 does the CICMP apply; (2) how does the process work; (3) what level of involvement do
19 CLECs have in the process (initiation of change; notice of changes Qwest wishes to
20 make; rights to advance CLEC interests); (4) if CLECs and Qwest do not agree on how a
21 matter should be handled, how is it resolved; (5) how do activities of the CICMP process
22 affect the rights and obligations of the parties under the SGAT; (6i) how does CICMP
23 affect Qwest’s wholesale product development process, including the “products” already
24 included in the SGAT; (7) what role have CLECs had in the initial development the

1 CICMP and what role do they have going forward; (8) does CICMP provide for a stable
2 testing environment of all processes before a CLEC is required to use them in market; (9)
3 what information is available to demonstrate the efficacy of this process to date; (10) how
4 long has CICMP in its current form been available?

5 The SGAT does not currently contain language about CICMP. Depending on
6 how this process will be used and the information Qwest provides, it may be necessary to
7 have detailed provisions in the SGAT that make clear what the process is, what the rights
8 of the parties are and what controls are needed. For example, AT&T notes that Qwest
9 has pledged to submit revisions of technical publications to the CICMP process. As
10 noted throughout the workshops and in these comments, Qwest's technical publications
11 are expressly referenced by the SGAT. Any changes to the technical publications may
12 have a material affect on the parties' obligations.

13 **J. FORECASTING**

14 With respect to forecasting, the filings for this workshop include only the
15 testimony of Margaret Bumgarner (collocation forecasts) and Thomas Freeberg
16 (interconnection forecasts). Qwest has stated on the record in previous workshops that it
17 has or will withdraw all forecasting obligations aside from those already addressed in the
18 interconnection and collocation sections of the SGAT. Based on these statements, AT&T
19 is acting on reliance upon Qwest to withdraw all such forecasting requirements. Because
20 Qwest has apparently refiled its forecasting information here, it is appropriate for Qwest
21 to reconfirm its previous withdrawal of all forecasting obligations (except those related to
22 interconnection and collocation) that are on the record here.

1 AT&T has offered additional language for section 5.16 of the SGAT to
2 specifically deal with confidentiality concerns around CLECs' provision of forecasts to
3 Qwest. AT&T has also proposed changes to the audit process (SGAT section 18)
4 regarding the right to audit Qwest processes, including the use of forecasts.

5 Mr. Freeberg's testimony makes references to provision in section 7 of the SGAT;
6 however, these provisions were not filed with Mr. Freeberg's testimony. Qwest should
7 file the language that Mr. Freeberg references so that the parties will be reading from the
8 most current form when these matters are discussed at the workshop on May 30, 2001.

9 AT&T has objected to the requirements of section 7.2.2.8.6.1 of the SGAT in
10 previous workshops and continues to object to this requirement. AT&T has addressed in
11 its brief on interconnection and collocation filed in this docket.

Respectfully submitted this 3rd day of May, 2001.

**AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC. AND TCG
PHOENIX**

By: 
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Appendix

Table

Table 1

Table

DEFERRED ITEMS TO G&T WORKSHOP
THROUGH 4/20/01

HOW TO AMEND THE ICA/ PRODCUTIZING ISSUES:

Section 1.7 and 1.8: How a CLEC can take advantage of new product offering without the necessity of negotiating a new amendment to ICA. For example, there is a Single POI per LATA product which establishes Qwest's policy on Single POI per LATA. See 2 ATT 37. Staff: Would Qwest amend its "approved" SGAT as new products are offered? Problems with Qwest "productizing" interconnection or other services, such as collocation products, and then requiring amendments to ICAs. Need language to address this problem.

ICB, SRP, BFR AND CICMP:

Qwest will address ICB, BFR, Special Order Processes and CICMP in BFR workshop and G & T.

(Issue SW-6 and 7) 9.11.2.1: CLECs suggested that Qwest develop a process for activating features in switches. In response, Qwest has developed the Special Request Process (SRP) and Form (Exhibit F). Special request process available to request activation of features in switch. Closed. Defer to BFR, Special Request, ICB workshop.

Loop 9b: 4.24(a), 9.2.2.3.1: What does "ICB" mean? New definition of ICB in 4.24(a). "Each UNE or resale product marked as ICB will be handled individually on a pricing and/or interval commitment basis. Where ICB appears, CLEC should contact their account team for pricing, ordering, provisioning or maintenance information." Closed. Defer to General Terms and Conditions

(Issue 1-7) Section 7.4.7: See 2 Qwest-23. CICMP is not before this workshop, but it needs to be addressed in G&T. Defer to G&T

PRIORITIZATION OF SGAT VIS-À-VIS TECH PUBS, IRRG, M&Ps, ETC.:

Section 2.3: Qwest will add Section 2.3 construing SGAT vs. Tech pubs, etc.

(Issue SW-26) Technical publications updates. UNE, EEL, UDIT and Switching technical publications are being rewritten. 4 Qwest 97 45 days to update technical publications, etc. and use of CCIMP. Qwest will add: "Qwest will take affirmative action following the close of a workshop to communicate to appropriate personnel and to implement the agreements made in such workshop." In last sentence, change "order or report". This agreement and commitment by Qwest will be then implemented in G&T.

Loop 5a: Multiple SGAT sections: AT&T claims SGAT should not reference IRRG and technical publications. Relevant Tech. Pub. 77384 and IRRG. IRRG now known as PCAT found at: www.qwest.com/wholesale/PCAT. See 5 ATT-23 (description of

EXHIBIT -- A

deficiencies in Tech. Pub and IRRG in comparison to SGAT) Closed. Defer to General Terms and Conditions.

Loop 5b: Multiple SGAT sections: AT&T claims that IRRG is inconsistent with SGAT. Closed. Defer to General Terms and Conditions.

Loop 5c: Defer to General Terms and Conditions. Closed. Defer to General Terms and Conditions.

9.3.4.2: (formerly 9.3.3) Technical publications available on Qwest website. Copyright issues, deferred to General Terms and Conditions.

TERMINATION NOTICES:

6.2.12: Whether Qwest should give notice to CLEC customers of termination of resold service. OCC issue. "subject to the termination provisions of this agreement" in lieu of "for any reason". Open for OCC to provide language. To be addressed in general Terms and Conditions.

6.4.7: Defer to discussion on Section 5.3 of General Terms and Conditions. Closed.

Also relates to notices in Section 9.2 on UNEs.

AT&T INDEMNIFICATION LANGUAGE:

(Issue CL2-5): 9.1.2: Look to 51.311 and incorporate language from the rule. Staff agrees and says we should use "equal in quality" not "substantially the same time and manner". Qwest says that FCC interpreted "equal in quality" as in "substantially the same time and manner". Qwest will not accept AT&T's indemnification (Issue CL2-5b deferred to G&T workshop)

LOOP ISSUES DEFERRED:

9.3 SB-29: What is disposition by Qwest or CLEC concerning stranded plant, eg., subleasing, reservation by CLEC, waive utilization requirement, use by Qwest etc. for purchase of subloop under conditions described in SB-28. Defer to General Terms and Conditions.

CONFIDENTIALITY/ NON DISCLOSURE PROVISIONS IN SGAT:

9.7.2.2: Qwest proposes: Strike "**nor shall a failure by Qwest to consider or use such forecasts give rise to any liability on the part of Qwest.**" Subject to confidentiality discussion in G&T workshop.

EXHIBIT -- A

MAINTENANCE AND REPAIR ISSUES:

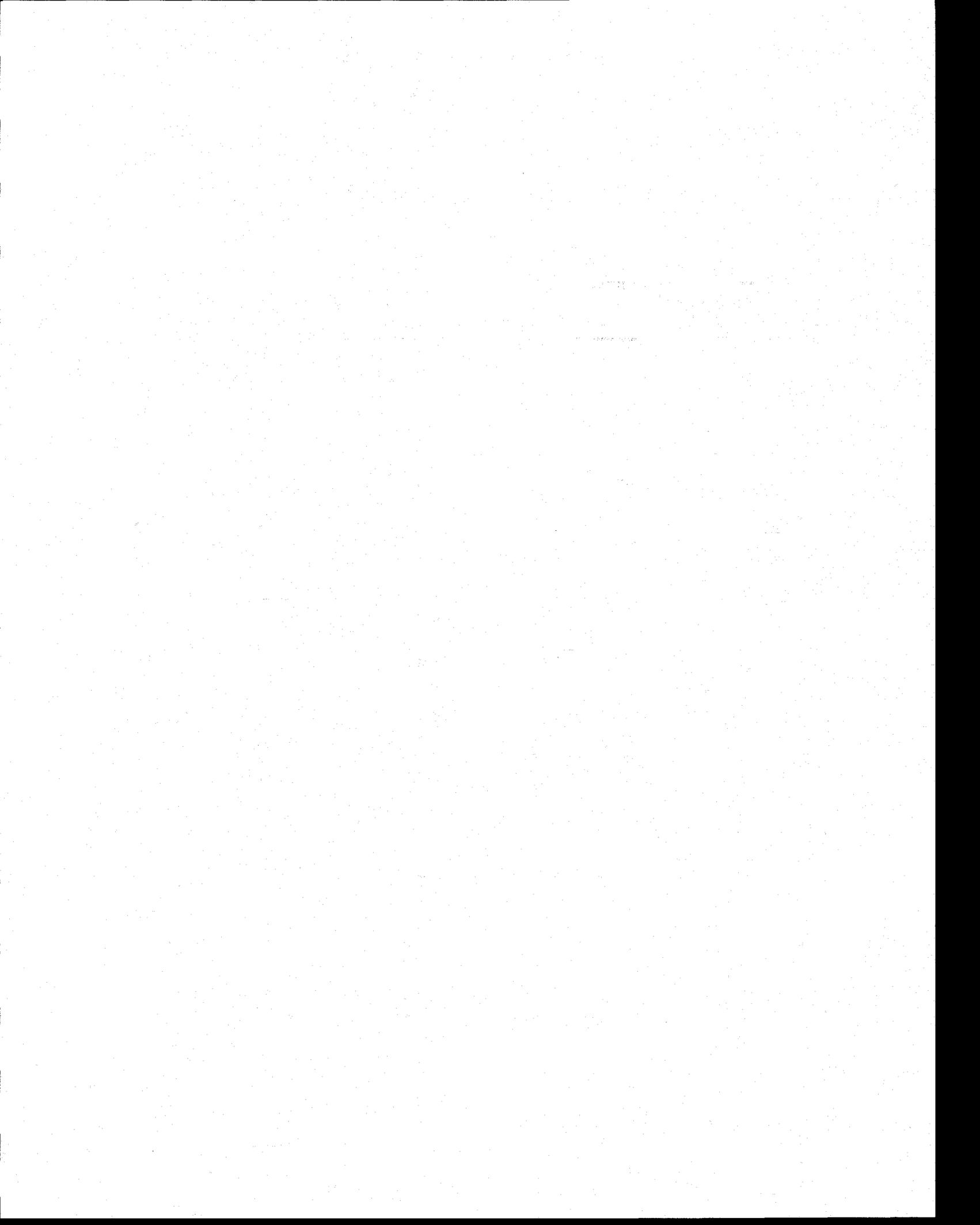
9.1.8: Maintenance and repair is described herein. The Repair Center contact telephone numbers are provided in the Interconnect & Resale Resource Guide, which is located on the Qwest Web site. Defer to G&T

9.20.5: Is Qwest sure that there will be no CLEC involvement in M&R for unbundled packet switching since it states that Qwest is solely responsible? Qwest will address. Other **M&R** issues can be addressed when **Section 12** is discussed in General Terms and Conditions workshop. Since section 9.20 incorporates Section 12, then AT&T believes Section 12 must be discussed.

(Issue CL2-1) 12.2.9.3: AT&T advised that it was conducting UNE-P pre-market entry tests, entering market in NY with residential product via UNE-P. Qwest provided alternate language to address testing in Section 12.2.9.3 that provides connectivity testing, interoperability testing, and controlled production process. Qwest is also developing a stand-alone testing environment. Closed and deferred to G&T.

EXHIBIT C SERVICE INTERVALS:

Convert references to intervals in IRRG and place in separate Exhibit C to SGAT so that Qwest cannot unilaterally change intervals. Discuss intervals in G&T.



MR. WILSON: I understand. I meant a section such as this which is not features and functions but a supportive paragraph. I understand your other caveats.

The second question is, in picking language from an existing contract if, say, the language in the current the contract -- if the current contract that you want to pick from only has a six-month life expectancy left, in other words say it's expiring in June of 2001, can a CLEC pick a provision from that for a new contract for two or three years?

MR. MUNN: Again, if there's any change in this position I'll report back to the group. I believe the answer to that issue is no.

Qwest's position is it would not allow a CLEC to basically create -- in picking and choosing not be able to create a new -- you would change the terms of what you're picking and choosing so that the term -- say, if there's six months left on a contract and you pick and choose a particular provision out of it, plug it into some new three-year contract you're negotiating, you can pick and choose the provision but it will only have the life of the contract that you did the picking and choosing from. So in this instance under your example it would be the six-month provision and you could do that but it would expire at the end of the term of the original agreement.

I think this is of course just from a -- the perspective -- two reasons. One, I think when you pick and choose from a contract you're simply able to stand in the shoes of whoever it was that negotiated that provision and you would be allowed to do that. But to extend it -- for example, say there was a position that was a former position of a particular commission in a state and they've changed the analysis or decision on it after the years have passed since the agreement was approved by that commission, you, in essence, eliminate a commission's ability to ever change its mind because you would perpetuate ad infinitum any particular provision and it would have no end. That's not what was contemplated in the agreement that you were picking and choosing from. It had a term after which it would expire and I think you're being put in the same position as whoever's contract you were picking and choosing from.

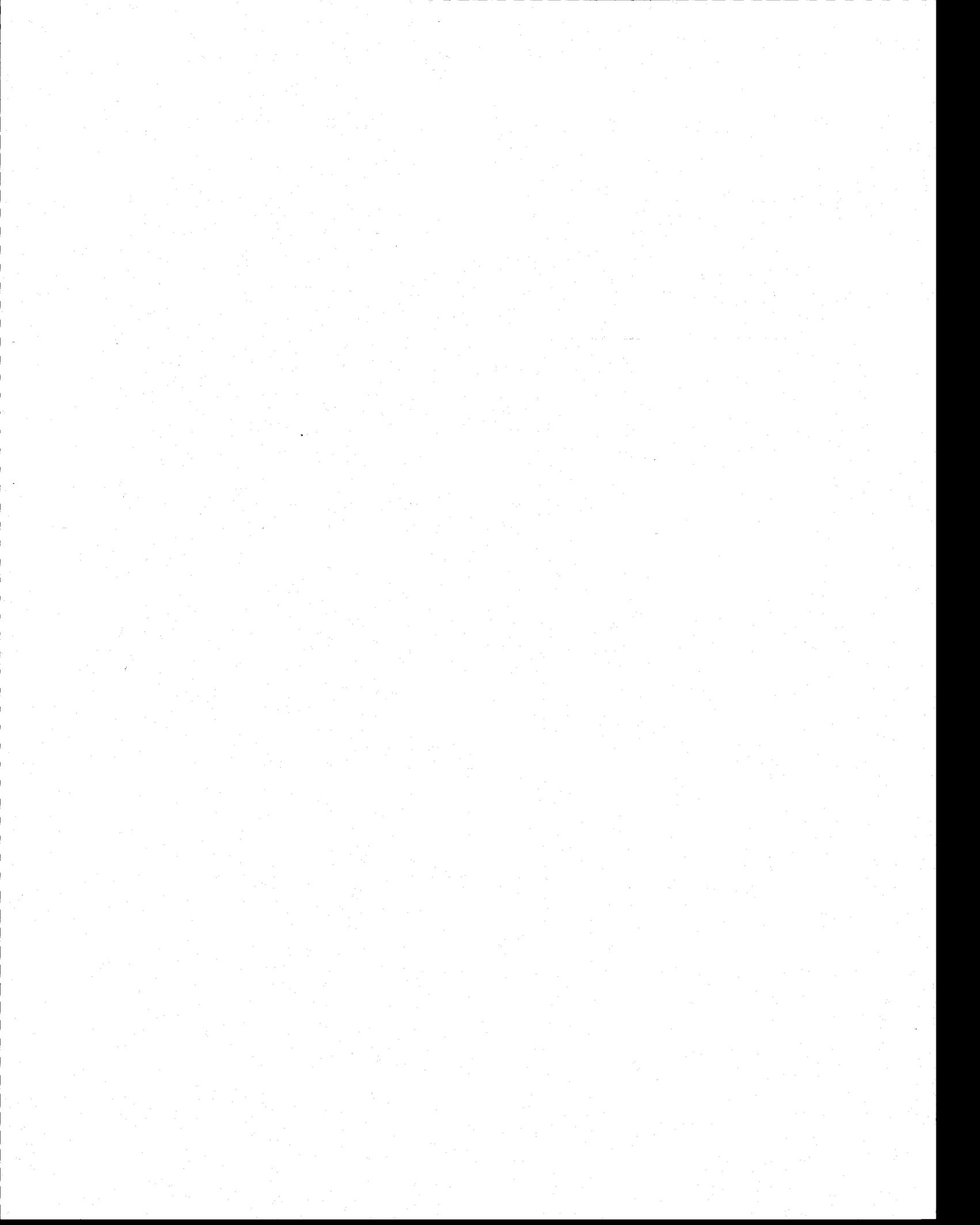


Exhibit C

Voice Message left for Tim Boykin, AT&T, by Scott Schipper, Qwest, April 30, 2001:

Hi Tim. This is Scott Schipper and I wanted to touch base with you on the blocking report behind the tandem. I'm waiting to get this in writing Tim, but here is what I understand. In order for AT&T to receive the detailed report by end office on trunk groups that home on the tandem you need to amend your interconnection agreements and adopt the SGAT language in Section 7.2.2.8 and upon adoption of that in your contract, you will then begin receiving the report and the network people I have talked to are firm on that, that is the way we are doing it with all CLECs and it keeps it consistent. I am not sure whether you have heard this or not before but I want to share it with you and then we can go from there but that is what I am being told and I should have it in writing this afternoon and certainly I will forward that to you upon receipt of it. Thanks Tim. Any questions, (612) 663-3026. My understanding also is that AT&T agreed to that in the workshops so I am not a part of those, I don't know if you are. When people say these things, I am repeating them back to you not because I have first hand knowledge but because I have been told that. So that is what I understand. I will also make a quick call Greg Terry and let him know that that is where we are at right now.

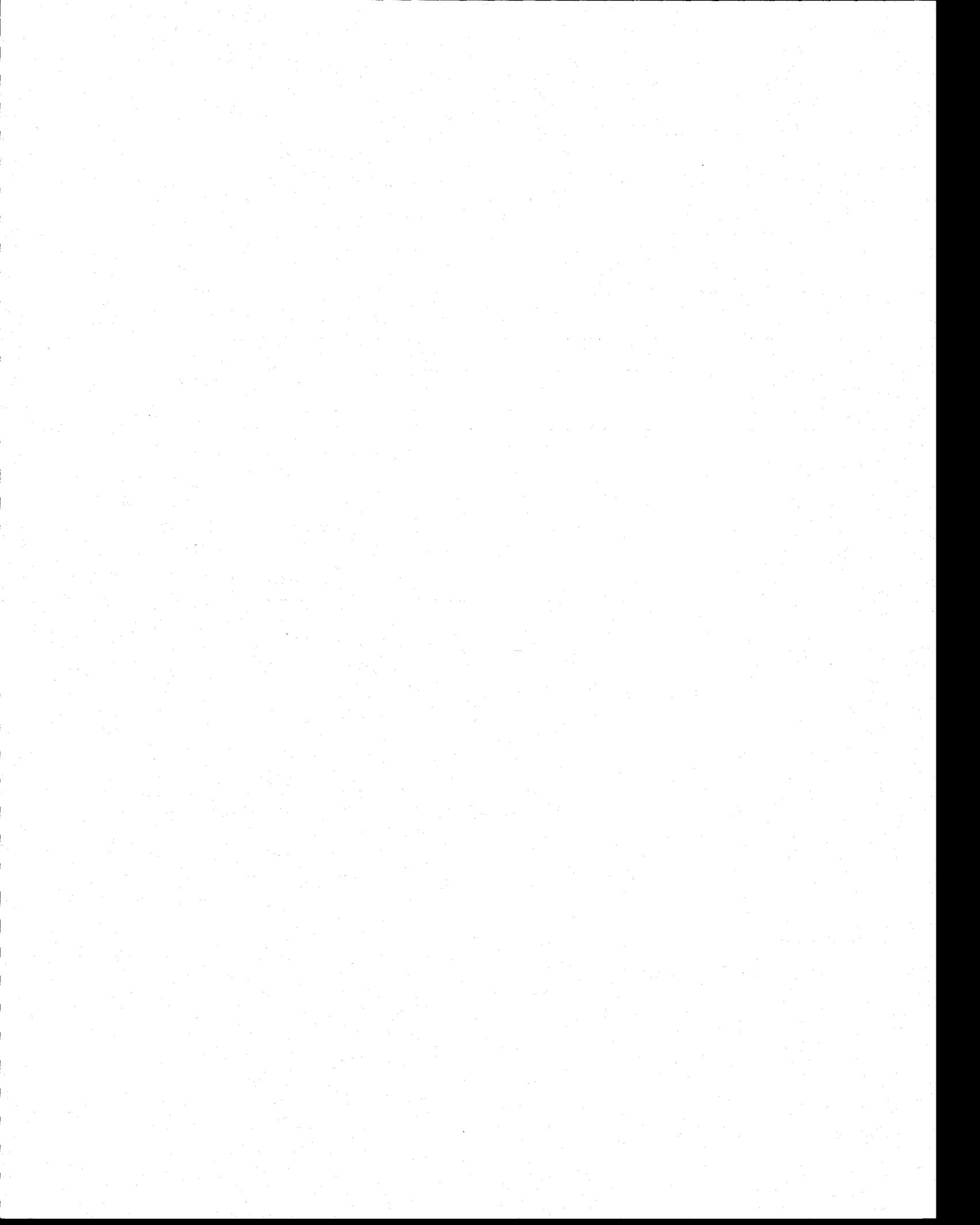


EXHIBIT D

-----Original Message-----

From: Chuck Ploughman [mailto:cplough@uswest.com]

Sent: Friday, April 06, 2001 3:19 PM

To: Schwartz, Christine, NCAM

Cc: Ford, Laura

Subject: Re: State of Wyoming Opt In

Christine,

This e-mail is in response to your e-mail to me dated March 30, 2001 regarding a new Wyoming Interconnection Agreement. You have requested to opt into the Interconnection Agreement between U S WEST Communications, Inc. (now Qwest Corporation) and New Edge Network, Inc. dba New Edge Networks dated August 18, 1999. Since New Edge Networks opted into the Covad agreement it is not available for adoption. However, you can opt into the underlying agreement with Covad.

We note that the Covad contract provides that negotiations for a new contract should begin on November 1, 2001. We are currently operating under the terms of Jeff Lord's letter to Dominick Sekich dated June 19, 2000 and Dom's letter to Jeff dated July 10, 2000 regarding the extension of the current Interconnection Agreements. For purposes of this new Wyoming Interconnection Agreement, Qwest reserves the right to request negotiations of a subsequent Wyoming Interconnection Agreement pursuant to these terms.

Since you have suggested various changes to the Agreement, we need to set a time to negotiate this new agreement. The Wyoming Covad Agreement does not contain the Line Sharing amendments so opting into that Agreement should somewhat simplify the discussions. Also, although the Wyoming SGAT does not contain the SGAT opt in language and the standard agreed to language contemplates an amendment to an existing agreement, Qwest will proceed under the spirit of the workshop discussions in these negotiations and discuss your opting into portions of the Wyoming SGAT. We will, of course need to discuss whether there are any legitimately related terms.

I would also appreciate if you would send the Multi-state SGAT Sections 7.1 thru 7.1.2.5 and 10.2 thru 10.2.9 referenced in your email. This language will be very helpful as we negotiate this new agreement.

Similar to your disclaimer, Qwest's agreement to proceed in this manner, as described in this letter, is without prejudice to any positions Qwest has taken previously or may take in the future in any legislative, regulatory or other forum addressing any matters, including those relating to the types of arrangements contained in the ultimate Wyoming Interconnection Agreement.

Thank you,

EXHIBIT D

Chuck Ploughman
Lead Negotiator

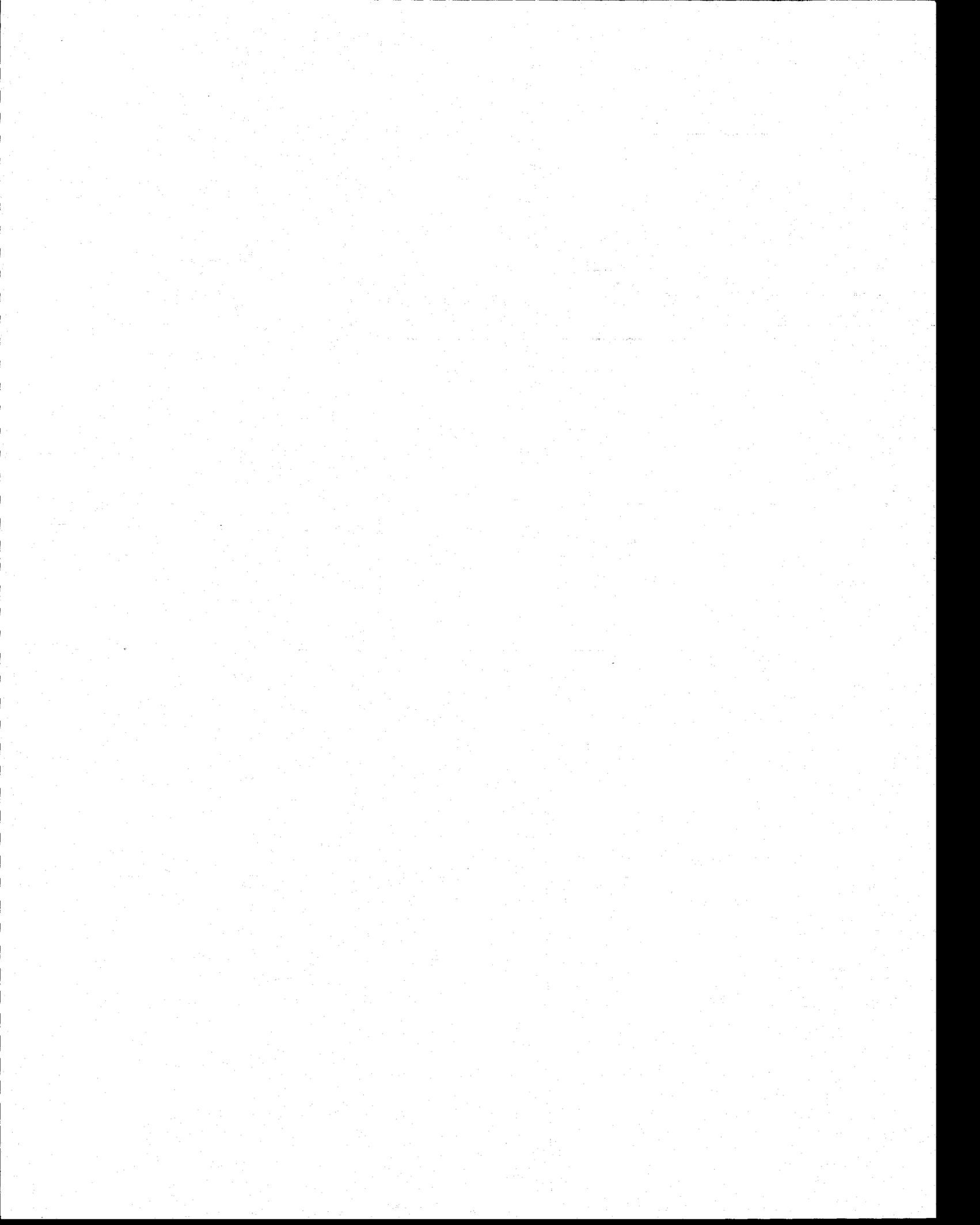


EXHIBIT E

1801 California Street
Room 2440
Denver, CO 80202
October 8, 1999

INTERCONNECT NOTIFICATION - ATX

John Blaszczyk
AT&T
1875 Lawrence St.
10th Floor
Denver, CO 80202

Dear John:

As you are probably aware, U S WEST recently reached an agreement with Citizens Utilities Company to sell certain exchanges in **Wyoming**. The exchanges being sold are **displayed on Attachment 1**. U S WEST and Citizens anticipate closing this transaction later this year or early in 2000.

Our records show you either currently have an interconnection agreement with U S WEST for some or all of these exchanges, or are in the process of negotiating an interconnection agreement with U S WEST for some or all of these exchanges. This letter addresses the impact of this sale upon your interconnection agreement with U S WEST.

With regard to the exchanges that are being sold to Citizens, your interconnection agreement with U S WEST will terminate on the date of closing because U S WEST will no longer be providing service in those exchanges. Your interconnection agreement with U S WEST will remain in effect for all exchanges in **Wyoming** covered by your agreement which are not being sold to Citizens, for the full term of the agreement.

While your agreement with U S WEST will terminate as to the sold exchanges upon closing, both U S WEST and Citizens recognize the importance of minimizing any disruption to your interconnection arrangements in those exchanges.

Therefore, during the period prior to closing, if U S WEST is providing interconnection services to you in any of the exchanges being sold, Citizens intends to initiate informal negotiations with you to establish a new interconnection agreement for those exchanges. Citizens would like to make this transition as seamless as possible, and would expect to enter into interconnection agreements for these exchanges effective on the date of closing, subject to any required governmental approvals. In the unlikely event that you cannot reach an agreement with Citizens prior to the closing of this transaction, Citizens will continue to provide interconnection services to you, under the same terms and conditions set forth in your agreement with U S WEST, to ensure that there is no disruption to you or your customers. Citizens will provide such transition interconnection services until such time as that agreement terminates, or you and Citizens establish a new, approved interconnection agreement for these exchanges.

EXHIBIT E

Page 2

Sale of Exchanges - Wyoming

If you currently receive any interconnection services in any of the sale exchanges, Citizens will contact you shortly to informally begin the process of establishing an interconnection agreement. We anticipate that you and Citizens should be able to agree on interconnection terms and conditions for the affected exchanges well in advance of the closing of this transaction. Citizens is committed to working with you in that regard. Questions concerning this process may be directed to Lawrence W. Wetzel at (214) 365-3343, email at lwetzel@czn.com.

While you will be working most closely with Citizens in arriving at interconnection agreements for the sale exchanges, please do not hesitate to contact me if you have any questions or concerns regarding this process.

Sincerely,

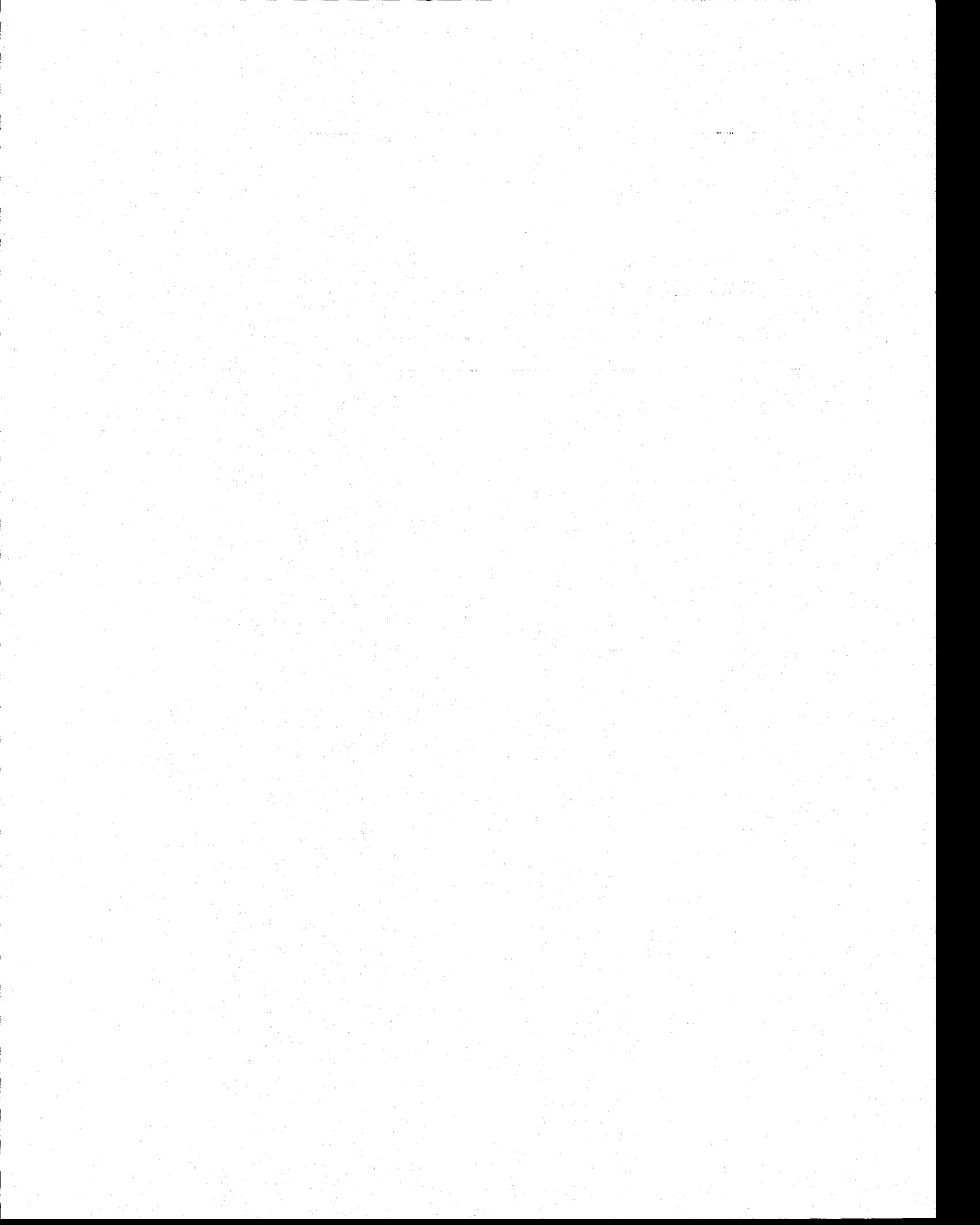
Patty Hahn, Account Manager

Attachment – Wyoming List of Exchanges Being Sold to Citizens

EXHIBIT E

Attachment 1

	STATE	EXCHANGE	CLLI	NPA	NXX
1.	WY	AFTON	AFTNWYMA	208(307)	225
2.	WY	AFTON	AFTNWYMA	208(307)	884
3.	WY	AFTON	AFTNWYMA	307	886
4.	WY	LAKE	LAKEWYMA	307	242
5.	WY	LUSK	LUSKWYMA	307	334
6.	WY	MAMMOTH	MMTHWYMA	307	344
7.	WY	OLD FAITHFUL	OLFTWYMA	307	545



5.18 **Alternative Dispute Resolution**

5.18.1 **General**

5.18.1.1 **Purpose:** This Section 15.18 is intended to provide for the expeditious resolution of all disputes between ILEC and AT&T concerning the construction, interpretation, or enforcement of this Agreement, and to do so in a manner that permits uninterrupted high quality services to be furnished to each Party's Customers.

5.18.1.2 **Non-Exclusive Remedy**

15.18.1.2.1 Dispute resolution under the procedures provided in this Section 15.18 shall be the preferred, but not the exclusive, remedy for all disputes between ILEC and AT&T arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction with respect to disputes as to which the Commission or such court, agency, or regulatory authority specifies a particular remedy or procedure.

15.18.1.2.2 If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes.

15.18.1.2.3 Nothing in this Section 15.18 shall limit the right of either ILEC or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 15.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

15.18.1.2.4 If, for any reason, the Commission or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Section 15.18, the following provisions shall apply:

15.18.1.2.4.1 The Arbitrator's award shall be binding with respect to those rights and liabilities of the Parties under the Agreement addressed in the award, unless the award is reversed, vacated, or modified on appeal by the Commission pursuant to Section 15.18.1.12.4 below.

15.18.1.2.4.2 To the extent that the agency ruling is inconsistent with the Arbitrator's award, the agency ruling shall be binding on the Parties to the extent allowed by law with respect to all matters addressed in the ruling other than those rights and liabilities of the Parties under the Agreement addressed in the award.

15.18.1.3 Submission to the Commission

15.18.1.3.1 In the event of a dispute between ILEC and AT&T arising under this Agreement, if both Parties agree, the dispute may be submitted for resolution to the Commission. The Commission may determine that it will not exercise its jurisdiction.

15.18.1.3.2 If a Party does not agree to submit a dispute to the Commission, it must inform the other Party within five (5) days of the other Party's request to submit the dispute to the Commission.

15.18.1.3.3 In the event both Parties do not agree to present the dispute to the Commission, or in the event the Parties agree to submit the dispute to the Commission, but the Commission determines not to exercise its jurisdiction at that time, then the provisions described herein shall apply.

15.18.1.4 Informal Resolution of Disputes

15.18.1.4.1 Prior to initiating an arbitration pursuant to the J.A.M.S./Endispute rules for commercial disputes, as described below, the Parties to this Agreement shall submit any dispute between ILEC and AT&T for resolution to an Inter-Company Review Board consisting of one representative each from AT&T and ILEC at the vice-president-or-above level (or at such lower level as the Parties agree to designate).

15.18.1.4.1.1 Each Party must designate its initial representative to the Inter-Company Review Board within fifteen (15) days of the Effective Date of this Agreement.

15.18.1.4.1.2 A representative shall be entitled to appoint a delegate to act in his or her place as a Party's representative on the Inter-Company Review Board for any specific dispute brought before the Board.

- 15.18.1.4.2 From time to time the Parties may also agree to other informal resolution processes for specific circumstances.
- 15.18.1.4.3 The Parties may enter into a settlement of any dispute at any time. The settlement agreement shall be in writing, and shall identify how the Arbitrator's fee for the particular proceeding, if any, will be apportioned.
- 15.18.1.4.4. By mutual agreement, the Parties may agree to submit a dispute to mediation prior to initiating arbitration.
- 15.18.1.4.5 At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrator of any statement or other action of a Party said or done during any meeting, mediation or negotiation sessions between the Parties pursuant to this Section 15.18.1 without each Party's consent.
- 15.18.1.5 Initiation of an Arbitration
- 15.18.1.5.1 If the Inter-Company Review Board is unable to resolve a non-service affecting dispute within fifteen (15) days (or such longer period as agreed to in writing by the Parties) of such submission, the Parties shall initiate an arbitration in accordance with the J.A.M.S/Endispute Comprehensive Arbitration Rules and Procedures for commercial disputes. Any dispute over a matter which directly affects the ability of a Party to continue providing high quality services to its Customers, *i.e.*, a service-affecting dispute, will be governed by the procedures described in Section 15.18.2 hereof. In the event the Parties, in good faith, do not agree that a service-affecting dispute exists, the dispute will be assumed to be a service-affecting dispute and will be resolved according to the procedures described in Section 15.18.2.
- 15.18.1.5.2 In the event the Parties initiate arbitration, the Parties must notify the Secretary to the Commission of the arbitration proceeding within forty eight (48) hours of the determination to arbitrate.
- 15.18.1.6 Governing Rules for Arbitration. The rules set forth below and the rules of the J.A.M.S/Endispute Comprehensive Arbitration Rules and Procedures shall govern all arbitration proceedings initiated pursuant to this Section 15.18; however, such arbitration proceedings shall not be conducted under the auspices of J.A.M.S/Endispute unless the Parties mutually agree. This restriction does not affect the rights of any Party to request an Arbitrator from J.A.M.S/Endispute, pursuant to Section 15.18.1.7 below. Where any of the rules set forth herein

conflict with the rules of the J.A.M.S/Endispute Comprehensive Arbitration Rules and Procedures, the rules set forth in this Section 15.18 shall prevail.

15.18.1.7 Appointment and Removal of Arbitrator

15.18.1.7.1 A sole Arbitrator (the "Arbitrator") will preside over each dispute submitted for arbitration under this Agreement.

15.18.1.7.2. The Parties shall appoint two (2) Arbitrators who will serve for the term of this Agreement, unless removed pursuant to this Section 15.18.1. The appointment will be made by mutual agreement in writing within thirty (30) days of the Effective Date (or such longer period as the Parties may mutually agree to in writing). Unless otherwise agreed by the Parties, the Arbitrators shall be selected using the following procedures:

15.18.1.7.2.1 Each Party shall propose a list of five (5) or more candidates to the other Party. The lists shall be exchanged simultaneously within seven (7) days of the Effective Date of the Agreement.

15.18.1.7.2.2 Each Party may strike for any reason up to two (2) candidates on the other Party's list. In addition, each Party may challenge an unlimited number of such candidates on the basis of a conflict of interest, the nature of which must be disclosed to the other Party. No Party may challenge any candidate appearing on its own list, unless the Party has learned of a conflict of interest affecting the candidate since the exchange of lists. The Parties shall exchange their strikes and challenges seven days after the exchange of lists, or within such other time agreed by them.

15.18.1.7.2.3 The Parties may jointly interview, in person or by telephone, each of those candidates not stricken or challenged in accordance with the foregoing procedures. If a Party declines to participate in such an interview, the other Party may conduct an ex parte interview, provided, however, that the Party conducting the ex parte interview shall not discuss the substance of any provisions of the Agreement with the candidate other than the provisions of this Section 15.18. If a Party conducts an ex parte interview in violation of this paragraph, the other Party may, at its option, disqualify the interviewed candidate from

further consideration. The Parties may exclude any candidate from further consideration by mutual agreement, on the basis of the interviews or otherwise.

15.18.1.7.2.4

Within seven (7) days of the Parties' exchange of their strikes and challenges, or within such other time agreed by them, the Parties shall exchange their rankings of the remaining candidates in order of preference, assigning a value of "1" to their first choice, "2" to their second choice, and so on. The Parties' respective rankings of each candidate shall be summed, and the candidate receiving the lowest score shall be the Arbitrator. If there is a tie between two (2) candidates, the Parties shall either agree between themselves which will be the Arbitrator or if unable to agree shall flip a coin to break the tie.

15.18.1.7.2.5

If there is no candidate remaining after the Parties' exercise of their strikes and challenges and the elimination of candidates by mutual agreement, or if one or both of the Arbitrators selected by the Parties using these procedures is unable or unwilling to serve, the Parties shall make a second attempt to select an Arbitrator using these procedures, unless the Parties agree that such attempt would be futile. If the second attempt is unsuccessful or is agreed to be futile, the Parties shall ask J.A.M.S/Endispute to select the Arbitrators for them.

15.18.1.7.3.

Once selected, the arbitrators shall alternate in presiding over any dispute between the parties according to the date of initiation of arbitration. That is, the first arbitrator (as determined by agreement of the parties or, if the parties cannot agree, by a coin toss) shall preside over the first-initiated arbitration; the second arbitrator shall preside over the second-initiated arbitration; the first arbitrator shall preside over the third-initiated arbitration; the second arbitrator shall preside over the fourth initiated arbitration; and so on. Only one arbitrator shall preside over any particular dispute. Should any arbitrator be unavailable after selection to preside over a particular dispute, the other arbitrator shall serve, and the first arbitrator shall preside over the next-arising dispute. Should both arbitrators be unavailable to preside over a particular dispute, the parties shall mutually agree upon an arbitrator to preside over that

dispute or shall ask J.A.M.S/Endispute to select an arbitrator for them.

15.18.1.7.4

The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator.

15.18.1.7.5

In the event that an Arbitrator resigns, is removed pursuant to this Section 15.18.1, or becomes unable to discharge his or her duties, the Parties shall, by mutual written agreement, appoint a replacement Arbitrator within thirty (30) days after such resignation, removal, or inability, unless a different time period is mutually agreed upon in writing by the Parties. Any matters pending before the Arbitrator at the time he or she resigns, is removed, or becomes unable to discharge his or her duties, will be assigned to the replacement Arbitrator as soon as the replacement Arbitrator is appointed.

15.18.1.7.6

In the event that the Parties do not appoint an Arbitrator within the time limit set forth in Section 15.18.1.7.2, an additional Arbitrator within the time limit set forth in Section 15.18.1.7.3, or a replacement Arbitrator within the time limit set forth in Section 15.18.1.7.5, either Party may apply to J.A.M.S/Endispute for appointment of an Arbitrator. Prior to filing an application with J.A.M.S/Endispute, the Party filing such application shall provide fifteen (15) days prior written notice to the other Party to this Agreement.

15.18.1.8

Duties and Powers of the Arbitrator

15.18.1.8.1

The Arbitrator shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrator shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of a preliminary or permanent injunction, issuance of a declaratory ruling, or imposition of sanctions for abuse or frustration of the arbitration process.

15.18.1.8.2

The Arbitrator shall not have the authority to limit, expand, or otherwise modify the terms of this Agreement.

- 15.18.1.9. Discovery. There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. ILEC and AT&T shall attempt, in good faith, to agree on a plan for document discovery. Should they fail to agree, either ILEC or AT&T may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between ILEC and AT&T, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.
- 15.18.1.10 Privileges. The Arbitrator shall, in all cases, apply the attorney-client privilege and the work product immunity doctrine.
- 15.18.1.11 Location of Hearing. Unless both Parties agree otherwise, any hearings shall take place in [City, State].
- 15.18.1.12 Decision.
- 15.18.1.12.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.
- 15.18.1.12.2 Within thirty (30) days of the decision and award, the Arbitrator's decision must be submitted to the Commission for review. Each Party must also submit its position on the award and statement as to whether the Party agrees to be bound by it or seeks to challenge it.
- 15.18.1.12.3 The Commission will determine whether to review the dispute within fifteen (15) days of the date of receipt of the decision submitted for review. If the Commission does not exercise its jurisdiction within fifteen (15) days of receipt, the Arbitrator's decision and award shall be final and binding on the Parties, except as provided below. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision.
- 15.18.1.12.4 A decision of the Arbitrator shall not be final in the event the dispute concerns the misappropriation or use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party, and the decision and award is appealed by a Party to a federal or state court with jurisdiction over the dispute.
- 15.18.1.12.5 Each Party agrees that any permitted appeal must be commenced within thirty (30) days after the Arbitrator's

decision in the arbitration proceeding becomes final and binding.

15.18.1.12.6 In the event an agency or court agrees to hear the matter on appeal, a Party must comply with the results of the arbitration process during the appeal process.

15.18.1.12.7 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be appealed to the Commission immediately, but no later than ten (10) business days after the appellant's receipt of the decision appealed from. During the pendency of any such appeal, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the Commission determines that it will review a decision and award granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

15.18.1.13 Fees.

15.18.1.13.1 The Arbitrator's fees and expenses that are directly related to a particular proceeding dispute shall be paid by the losing Party. In cases where the Arbitrator determines that neither Party has, in some material respect, completely prevailed or lost in a proceeding, the Arbitrator shall, in his or her discretion, apportion fees and expenses to reflect the relative success of each Party. Those fees and expenses not directly related to a particular proceeding dispute shall be shared equally. In accordance with Section 15.18.1.4.3, in the event that the Parties settle a dispute before the Arbitrator reaches a decision with respect to that dispute, the Settlement Agreement must specify how the Arbitrator's fees for the particular proceeding will be apportioned.

15.18.1.13.2 In an action to enforce a decision of the Arbitrator, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, costs, and expenses without regard to the local rules of the district in which the suit is brought.

15.18.1.14 Confidentiality - To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or confidential information of either Party, it

shall be safeguarded in accordance with Section 15.16 of this Agreement, or if the parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or confidential information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information in the event the Parties cannot agree upon an agreement to govern the handling of such information. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.

15.18.1.15 Service of Process.

15.18.1.15.1 Service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three business days if sent by first class certified U.S. mail; (iii) the next business day if sent by overnight courier service; (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

15.18.1.15.2 Service by AT&T to ILEC and by ILEC to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to ILEC or AT&T, respectively. Once counsel for a Party has appeared in a dispute, service shall be made on the Party's counsel of record.

15.18.1.15.3 The Parties shall notify each other within three (3) days of the Effective Date of the initial address for service of documents pursuant to this Part.

15.18.2 **Expedited Procedure for Resolution of Service-Affecting Disputes**

15.18.2.1 Purpose: This Section 15.18.2 describes the procedures for an expedited resolution of disputes between ILEC and AT&T arising

under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its Customers, and which cannot be resolved using the procedures for informal resolution of disputes contained in Section 15.18.1. Except as otherwise specifically provided in this Section 15.18.2, the provisions of Section 15.18.1 shall apply, provided, however, that the J.A.M.S/Endispute Streamlined Arbitration Rules and Procedures shall apply instead of the J.A.M.S/Endispute Comprehensive Arbitration Rules and Procedures.

15.18.2.2

Initiation of an Arbitration.

15.18.2.2.1

If the Inter-Company Review Board is unable to resolve a service-affecting dispute within two (2) business days (or such longer period as agreed to in writing by the Parties) of submission to it of the dispute, and the Parties have not otherwise entered into a settlement of their dispute, either Party may initiate an arbitration in accordance with the requirements of this Section 15.18.2. A dispute will be deemed submitted to the Inter-Company Review Board on the date a Party requests Inter-Company Review Board action in writing, transmitted by facsimile and confirmed. Such request must be transmitted to each Party's representative designated pursuant to Section 15.18.1.4.1.1.

15.18.2.2.2

A proceeding for arbitration will be commenced by a Party ("Complaining Party") filing a complaint ("Complaint") with the Arbitrator and simultaneously serving a copy on the other Party (the "Respondent Party"), and the Secretary to the Commission.

15.18.2.2.3

Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Respondent Party which affect the Complaining Party's ability to offer a specific service (or group of related services) to its Customers.

15.18.2.2.4

A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Respondent Party in dispute and identify with particularity how the Complaining Party's service to its Customers is affected.

15.18.2.3

Response to Complaint. A response to the Complaint must be filed within five (5) business days after service of the Complaint.

15.18.2.4

Reply to Response. A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the

response. The reply must be limited to those matters raised in the response.

15.18.2.5 Discovery. The Parties shall cooperate on discovery matters as provided in Section 15.18.1.9, but following expedited procedures as prescribed by the Arbitrator, or if no such procedures are prescribed by the Arbitrator, the J.A.M.S/Endispute Streamlined Arbitration Rules and Procedures.

15.18.2.6 Hearing.

15.18.2.6.1 The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the Parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

15.18.2.6.2 The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. At the Arbitrator's discretion and for extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing. No exhibit may be identified on the list or introduced at the hearing unless it has been produced to the opposing Party at least two (2) days prior to the date on which the exhibit lists are due, absent extraordinary reasons.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose a summary of the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title, and other identifying characteristics the exhibits to be used at the arbitration. Testimony from witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing, absent extraordinary reasons not known prior to commencement of the hearing.

- 15.18.2.6.3 The Parties shall make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.
- 15.18.2.6.4 Witnesses will testify under oath. A complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.
- 15.18.2.7 Decision.
- 15.18.2.7.1 The Arbitrator will issue and serve his or her decision and award on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.
- 15.18.2.7.2 The Parties shall take the actions necessary to implement the decision and award of the Arbitrator immediately upon receipt of the Arbitrator's decision.
- 15.18.2.7.3 The Parties shall submit the decision and award of the Arbitrator, along with each Party's position on the award and statement as to whether the Party agrees to be bound by it or seek to challenge it, to the Commission within three (3) days of receipt of the Arbitrator's award and decision. The Commission will determine whether to review the dispute within seven (7) days of receipt. If the Commission does not exercise its jurisdiction in seven (7) days, the Arbitrator's decision and award shall be final and binding on the Parties, except as provided in Section 15.18.1.2.4.1 and 15.18.1.2.4.2.
- 15.18.2.7.4 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be appealed to the Commission immediately, but no later than two (2) business days after the appellant's receipt of the decision appealed from. During the pendency of any such appeal, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the Commission determines that it will review a decision and award granting or denying an application for preliminary relief, such review shall be concluded and a decision issued within seven (7) days after the Commission has determined to undertake the review.

Rushing,Cassandra J - LGA

From: Moran, John C (John) [jcmoran@avaya.com]
Sent: Thursday, May 03, 2001 9:53 AM
To: Rushing,Cassandra J - LGA
Subject: RE: a couple things

Cassie,

Very interesting information about sale of houses in your area.

Please hang onto the menu.

Did you think that the catfish was to salty last night? Dishwashers are sure wonderful things. Thank you very much for scraping the food off the plates that really helped in loading the dishwasher. I did the hand wash before going to bed so once David puts away the dishes from the dishwasher things are done except for washing the table cloth and napkins. (I did notice that some of your friends used their napkins so the napkins have to be washed now.) For all my fears of having to much food, it turned out to be the right amount. At least, I would have not wanted less.

As I listened to you last night during the study portion, I realized once again what an amazing person you are. You are so intelligent and have such insight that I am proud and happy just to be associated with you. You are truly an remarkable person.

Sincerely yours,

John

-----Original Message-----

From: Rushing,Cassandra J - LGA [mailto:cjrushing@att.com]
Sent: Wednesday, May 02, 2001 1:53 PM
To: Moran, John C (John)
Subject: a couple things

John: I have the menu from the Berthoud Restaurant. Shall I send it to you or just hold on to it (assuming we won't have to go to it)....

I just rec'd. a call from Jackie Hollenbeck, the realtor. She reports that homes like mine, in the Clearvale area, are selling in the following range:

\$147,500 to \$169,900.00

She referenced a listing from last August, 4676 Dover (next block over from me) that is 952 sq. feet with one a car garage, hardwood floors, recently remodeled that sold for \$160,250.00. (My house is 969 sq. feet - not much larger but a little bit larger).

She said it is the "last affordable housing area in Wheat Ridge" --- I guess I could see the glass as half empty or half full here.

She is going to e-mail her results to me. I'll copy them to you when I receive them.

I asked her about the Jefferson County Assessment Notice. She said they have all gone up and mine would be approx. \$25,000.00 to \$30,000.00 lower than the market value but that is standard.

5/3/2001

Interesting news . . .

Cassie

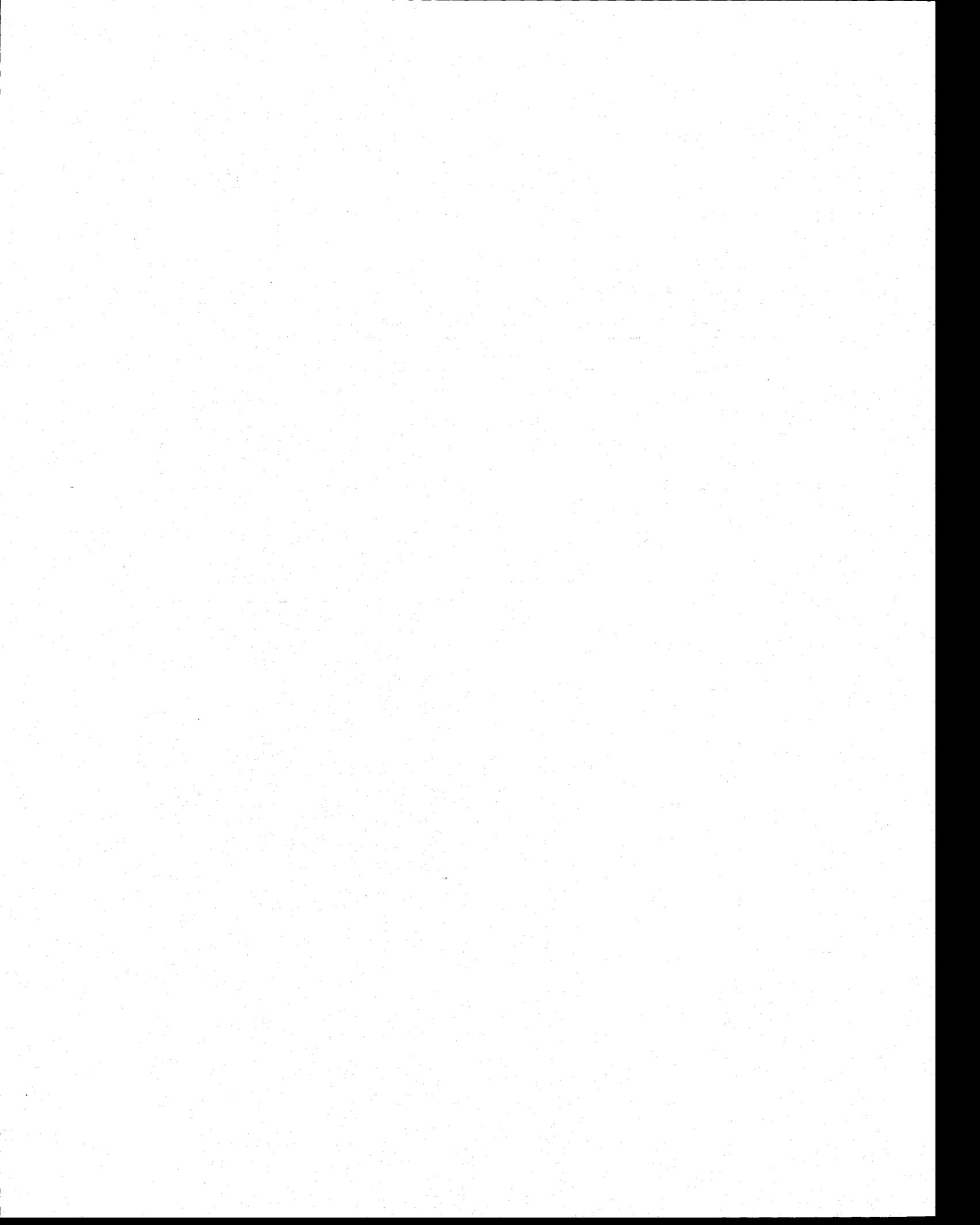


EXHIBIT G



March 30, 2001

Christine Schwartz
AT&T
1875 Lawrence Street, Room 10-74
Denver, CO 80004

Dear Ms Schwartz:

Following is the analysis of your request for MF trunks as the final route in the AT&T CLEC network in Oregon where Qwest does not have SS7 network route diversity. Included with this analysis are the applicable rates for nonrecurring charges associated with the implementation of this request in specific Oregon locations.

As previously stated, Qwest is willing to establish MF trunk groups with AT&T in specific locations, on an interim basis, until SS7 route diversity is available. However, there are numerous limitations when using MF signaling trunks for this purpose. For example,

- MF signaling is not capable of supporting SS7 signaling databases used for services such as Caller ID, 800 service, Local Number Portability, Number Pooling, etc.
- MF signaling has a slower call set-up time than SS7 signaling.
- MF trunks cannot capture LIS usage. Reciprocal compensation will not apply to these trunk groups.
- The special MF trunks will be utilized only in the event of a failure of the SS7 network.

Ordering and Provisioning of Special MF Trunks

- AT&T will be responsible for sizing and ordering the special MF trunks.
- AT&T will order the MF trunks using the ASR process. However, reciprocal compensation will not apply to the trunks as with regular LIS trunks.
- AT&T will indicate on the order form that the trunk groups are for SS7 route diversity.
- AT&T will provide to Qwest account team personnel a complete list of telephone numbers (TNs) to be routed to the MF trunks in the event of an SS7 failure.
- AT&T needs to communicate to its personnel that no traffic will be going over the trunks except in the unlikely event there is a failure of the SS7 network.
- AT&T will provide subsequent TN additions, changes, deletions to Qwest account team personnel.

EXHIBIT G

- Within 60 days of notification that SS7 route diversity has been established, AT&T must place orders to disconnect the MF signaling facilities and trunks.
- Qwest will implement the MF trunks using standard trunking intervals plus 5 days. The additional 5 days are required to establish a line by line route index for the TNs designated by AT&T.
- Qwest will communicate to appropriate personnel that no traffic will be going over the trunks, except in the unlikely event there is a failure of the SS7 network. This information is necessary so the trunks are not reported as underutilized, or designated for activity that would impact their use as the final route for diversity.
- Qwest will bill AT&T for all unique charges associated with establishing and maintaining these trunks, such as the line translations that are not normally required for ASR orders. Charges will be identified in a quote and will be billed as nonrecurring charges via BART.
- Qwest will be unable to test the viability of utilizing MF trunks as the final route for SS7 route diversity, because such a test would require disabling of the SS7 network. In addition to the Limitation of Liability, as described in the Oregon TCG interconnection agreement with Qwest, the following Limitation of Liability will apply to this nonstandard arrangement:

Except for indemnity obligations, Qwest's liability to TCG for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, whether in contract or tort, shall be limited to the total amount that is or would have been charged to TCG by Qwest for the service(s) or function(s) not performed or improperly performed.

Due to the unique nature of this offering, we will need to sign a Letter of Agreement memorializing these terms. The Letter of Agreement will be provided upon acceptance of the terms and conditions outlined in this letter.

Please call me if you have any questions.

Sincerely,

Christina Valdez
Account Executive
Qwest Wholesale Markets
303 896-1517

EXHIBIT G

**QWEST NONRECURRING CHARGES FOR
MF TRUNKS USED AS THE FINAL ROUTE FOR SS7 ROUTE DIVERSITY**

Date: March 30, 2001

Quote Expiration Date: March 31, 2002

Rate Element

RCMAC line translations charges

Rate

\$.52 per telephone number

Trunk provisioning charges

Facilities

DS0

\$553.60 - First trunk

98.00 - Each additional trunk

DS1

\$503.60 - First trunk

48.00 - Each additional trunk

DS3

\$500.00 - First trunk

44.50 - Each additional trunk

Termination

DS0

\$556.88 - per POT

DS1

\$790.28 - per POT

DS3

\$3372.56 - per POT

Orders can be processed upon acceptance of terms and rates in this letter and upon receipt of the ASR order form and a list of designated telephone numbers. You may indicate your acceptance via electronic mail. In doing so, receipt of your email by your designated Qwest account team representative indicates your acceptance and agreement to the terms and conditions. A bill for nonrecurring charges will be issued based upon number of trunks ordered, and number of telephone numbers to be routed to those trunks. Qwest will complete RCMAC line translations upon receipt of payment of all nonrecurring charges.

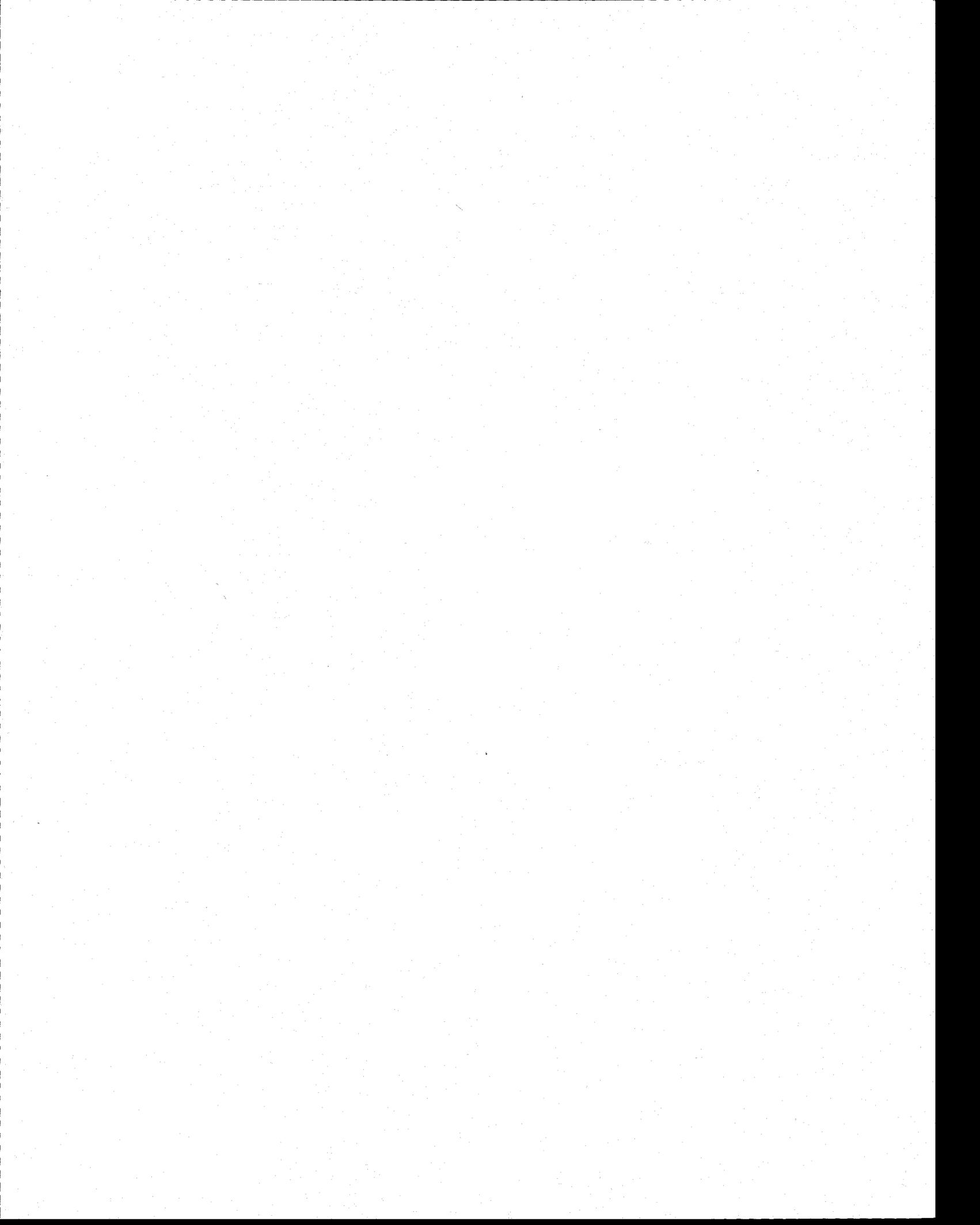


EXHIBIT H

From: Mark Miller [mailto:mxmille@uswest.com]
Sent: Wednesday, December 06, 2000 7:29 AM
To: Schwartz, Christine, NCAM
Cc: jgottsc@uswest.com; mxmille@qwest.com; Boykin, Timothy (Tim), NCAM;
Hydock, Michael F, NCAM; sschipp@qwest.com; sschipp@uswest.com;
cplough@uswest.com; Schwartz, Christine, NCAM; Laurie Eide
Subject: Re: Expedited BFR

Christine,

Qwest has a formal process for submitting a Bona Fide Request (BFR). The information and form can be located on the Interconnect Resale Resource Guide.

<http://www.uswest.com/wholesale/productsServices/irrg/index.html>

Once you locate this address please click on: Review Pre Order Procedures.
Now
you can scroll down to the BFR information and download Qwest procedures and forms.

Qwest must receive your BFR request on this form. If you have any questions about the form or are unable to locate this address please let me know.

Thanks,

Mark Miller
303 896-2330

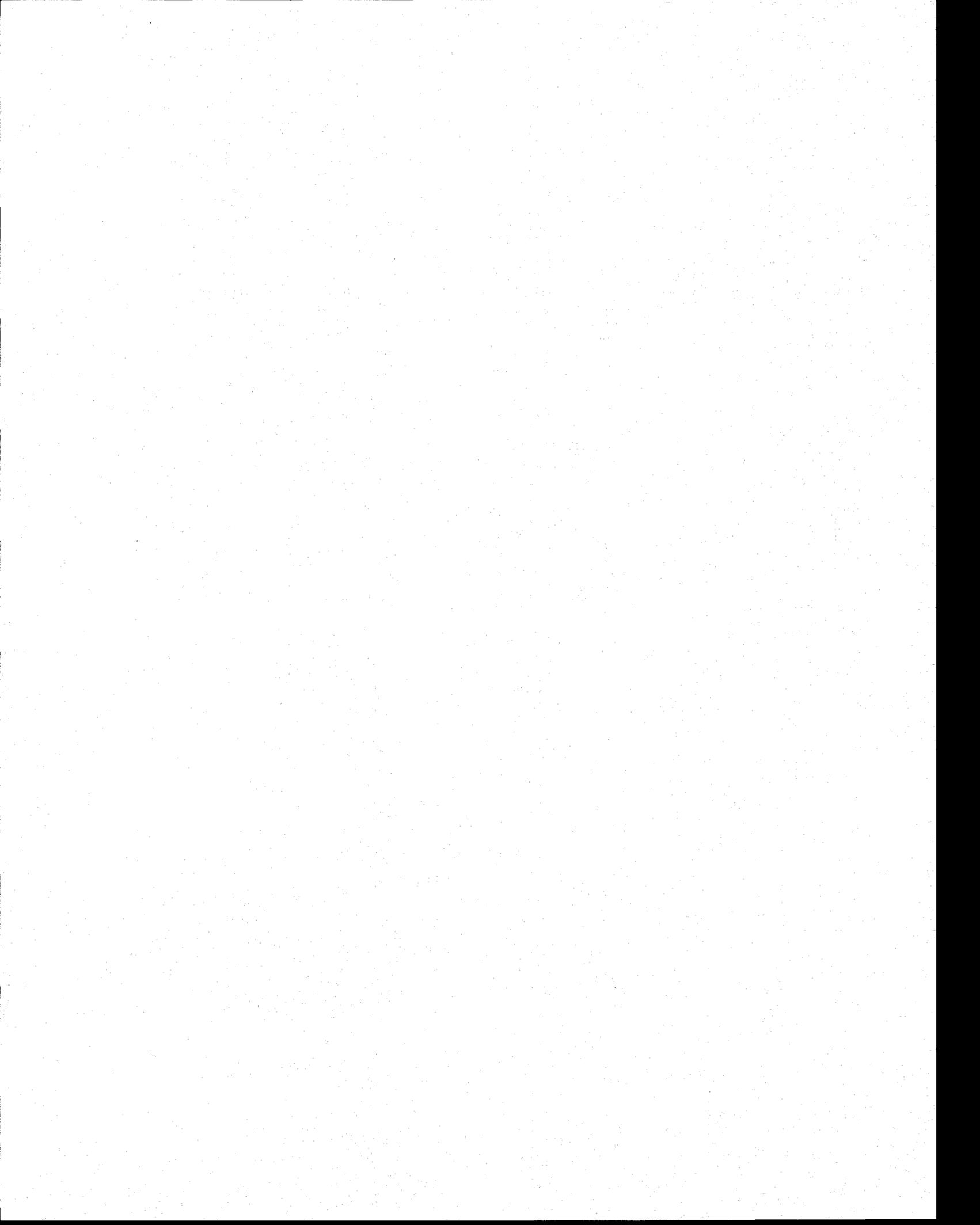


EXHIBIT I



December 18, 2000

Christine Schwartz
AT&T Local Services
1875 Lawrence Street
10th Floor
Denver, CO 80202

Dear Christine,

Qwest has received your bona fide request in which you ask Qwest to consider the use of MF trunks as the final route in the AT&T CLEC network where Qwest does not have SS7 network route diversity.

Qwest will continue to move forward with your request. However, the following questions require an answer in order to be able to fully assess your request:

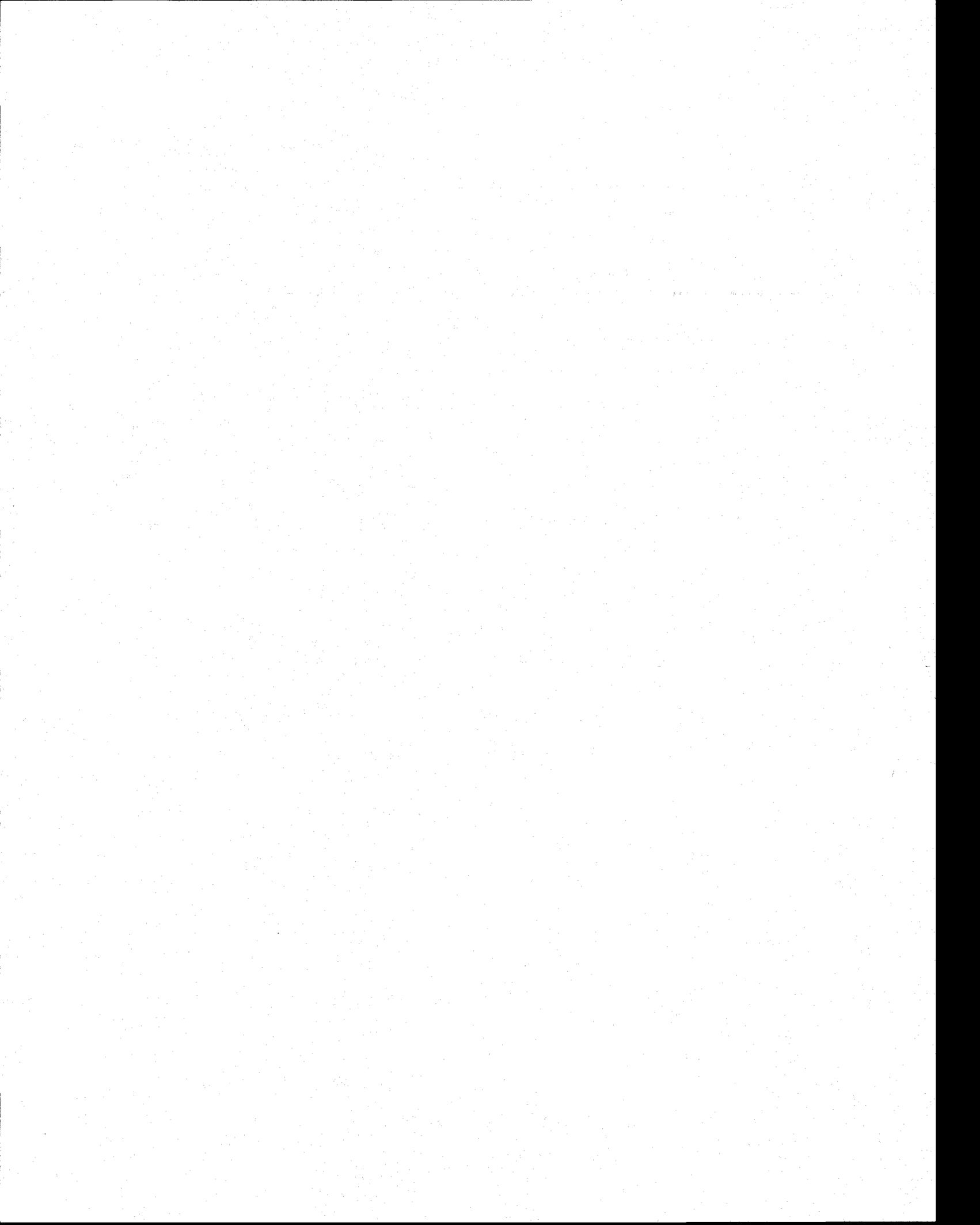
1. What are the current interconnection configurations in the locations identified in the BRF application? Please provide diagrams.
2. Is AT&T proposing one way trunking between Qwest's Host (Class 5) offices and AT&T's offices (Class 5) or Remote to remote for MF signaled trunks?
3. Please explain the call flow process that you would like Qwest to implement.

Please be advised that the feasibility for your request is due back to you by no later than Wednesday, January 10, 2001.

Please contact me at 303 896-1517 or Teresa McKenzie at 515 286-6845 if you have any questions.

Sincerely,

Christina Valdez
Teresa McKenzie
Account Manager
Qwest Wholesale Markets



CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Initial Comments on Forecasting, Bona Fide Request Process and General Terms and Conditions in Docket No. T-00000A-97-0238 were sent by overnight delivery on May 3, 2001 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on May 3, 2001 to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

Deborah Scott
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by U. S. Mail, postage prepaid, on May 3, 2001 to:

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WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Terry Tan
WorldCom, Inc.
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San Francisco, CA 94015

Douglas Hsiao
Rhythms Links, Inc.
9100 E. Mineral Circle
Englewood, CO 80112

Bradley Carroll
Cox Arizona Telcom, L.L.C.
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Diane Bacon, Legislative Director
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