BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 272 OF THE TELECOMMUNICATIONS ACT OF 1996	]]]]]	**DOCKET NO. T-00000B-97-238**

REBUTTAL AFFIDAVIT OF

MARIE E. SCHWARTZ
RE: 272

QWEST CORPORATION

May 29, 2001

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I. IDENTIFICATION OF AFFIANT

My name is Marie E. Schwartz and my business address is 1314 Douglas-On-The-Mall, Floor 10, Omaha, Nebraska 68102. I previously filed an affidavit on March 26, 2001 to demonstrate that Qwest Corporation is prepared to satisfy all of the relevant requirements of Section 272 of the Act, and related FCC rules, following Qwest Corporation's receipt of in-region interLATA authority in Arizona.

II. PURPOSE OF REBUTTAL AFFIDAVIT

The purpose of my rebuttal affidavit is to address issues raised by AT&T's witness Cory Skluzak in an affidavit filed on May 17, 2001. I will show that Qwest Corporation ("QC" or "the BOC") does have the appropriate controls and processes in place to enable it to meet the Section 272 rules as required by the FCC, once granted interLATA relief. Although I have chosen to address only the more substantial of AT&T's arguments, that does not infer that I agree with any AT&T statements that are not specifically addressed here.

III. SUMMARY OF REBUTTAL AFFIDAVIT

In my rebuttal affidavit, I provide additional evidence and information regarding the controls and processes that the BOC has in place to ensure that it is compliant with

Section 272 rules. I address the transitional period from the merger until the current time period and how transactions during that transitional period are not indicative of ongoing compliance. I also address issues raised by AT&T regarding Section 272(b) structural and transactional requirements, Section 272(c) regarding non-discrimination issues, Section 272(e) regarding the imputation of access charges, and Section 272(g) on joint marketing activities.

COMMISSION REVIEW OF SECTION 272 COMPLIANCE

The BOC agrees that the state Commission must review the past history of Qwest Long Distance ("Qwest LD") as a predictive indicator of Section 272 compliance. The Commission must also look at present practices in addition to past practices to get a complete picture of a company's compliance.

When Qwest LD was the designated 272 Affiliate, the BOC did have processes in place to ensure that all Section 272 compliance requirements were met. For example, Qwest LD was a separate entity with separate officers and employees, all transactions with Qwest LD were documented and posted to an Internet website, creditors of Qwest LD had no recourse to BOC assets, as well as other controls to ensure compliance. The processes and controls that were in place with Qwest LD have now been applied to the new 272 Affiliate, Qwest Communications Corporation ("QCC"), to ensure that the BOC remains in compliance with Section 272 requirements.

DATA PROVIDED TO AT&T

The BOC has provided to AT&T the information that AT&T has requested in data requests. AT&T mentioned in their affidavit some difficulties it had in obtaining data, but the BOC has responded to all AT&T data requests and made documents available as requested. AT&T has visited the BOC's offices a number of times to review volumes of data regarding transactions between the BOC and Qwest LD or QCC. The BOC is not aware of any data request from AT&T that it has not addressed, and AT&T has not identified any requests which are still outstanding.

IV. COMPLIANCE WITH SECTION 272(b) – STRUCTURAL AND TRANSACTIONAL REQUIREMENTS

THE TRANSITION TO THE NEW 272 AFFILIATE

The BOC currently has appropriate processes in place to meet the FCC requirements for identifying, accruing, billing and posting transactions with QCC. These processes include identification and training of employees who perform the affiliate transaction functions, regularly scheduled conference calls with those employees to discuss affiliate transaction issues, and monthly reconciliation of the QCC affiliate billing. Qwest has expended large amounts of resources to ensure that its affiliate transactions are now Section 272 compliant and will remain so.

The transactional issues identified by AT&T in its affidavit (not accruing for services, delayed billing, delayed posting) were all a direct result of the strategic changes caused by the merger of two major corporations and the major activity associated with consolidating operations, eliminating duplicate functions, employee turnover, realignment of responsibilities and other merger changes, including identification of a new 272 Affiliate. I referenced this period of time in my affidavit as a "transitional period" which is a necessary and reasonable time to put processes in place to comply with the 272 requirements[1]. As a result of the merger activities, identifying affiliate transactions with the merged Qwest entities was hampered, and until those transactions could be identified, the accruals, posting and billing could not be completed. Qwest takes its compliance responsibilities seriously, which is precisely why the BOC supplemented its staff with accounting professionals from Arthur Andersen ("AA") to assist in transition efforts [2].

In its affidavit, AT&T portrays the transactions that occurred during the transitional period as indicative of a lack of compliance, without any acknowledgment that Qwest was going through a major company reorganization at the time, or that these transactions relate to a new 272 Affiliate which was just decided a few months ago. Section 272(h) of the Act allowed the BOC one year to become 272 compliant, therefore

[1] Affidavit of Marie E. Schwartz dated March 26, 2001 ("Schwartz Affidavit") at 7,lns 9-11.
[2] Schwartz Affidavit at 19, ln 6.

it is not surprising that Qwest did not have all 272 compliance issues resolved immediately when the new 272 Affiliate was announced and needed a transitional period.

As part of the transitional effort, Arthur Andersen provided loaned employees as additional staff that the BOC used to identify affiliate transactions. These personnel worked under the supervision of the BOC and their work was limited to conducting interviews with BOC personnel to identify any services being provided between the BOC and 272 Affiliate. After AA completed the interviews, the interview information was given to the BOC so that the BOC could ensure that any transactions identified were documented, posted and billed. Contrary to AT&T's footnote[3], AA did not develop additional affiliate procedures, or have any involvement in the billing of these transactions.

TRANSACTIONS FROM THE TRANSITIONAL PHASE POSTED TO THE WEBSITE

The new 272 Affiliate website for QCC became available on March 27, 2001 at the time that the BOC filed testimony in Arizona. In January 2001, QCC was designated to be a 272 Affiliate, and by the end of March, the new website was created with all of the transactions posted that had been identified at that time. The website for Qwest Long Distance, the former 272 Affiliate, has been available for several years.

The "Interim" Services shown on the Internet website pertain to services that were being provided between the BOC and the 272 Affiliate before employee realignments were completed. These services generally cover the time period between the merger and March 2001 when over 7,500 employees changed payrolls in order for Qwest to become Section 272 compliant. Many of the examples in AT&T's Affidavit, such as Interim Common Supervision, were the result of transitional activities and are no longer being provided. In an effort to be very conservative, the BOC identified all transactions with the 272 Affiliate and posted them to the website, even though many of those transactions were only provided from the July 1, 2000 merger date through the transitional period until employee realignments could be completed.

The transitional period cannot be used to conclude how the BOC will meet the 272 requirements on a going forward basis. It would be completely unreasonable to look only at this transitional period and conclude that the BOC will not meet the Section 272 rules going forward under more typical circumstances. The BOC has taken significant steps to ensure that QCC transactions will be processed accurately and in a timely manner going forward. These steps include hiring AA as loaned staff to assist in assuring that transactions were identified, retroactive billing back to the merger date when needed, extensive employee training and other measures as discussed in my affidavit. The transitional period was a one-time event which is not indicative of on-going operations or future behavior.

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[3] *Affidavit of Cory W. Skluzak dated May 17, 2001, ¶ 38 footnote 38 ("Skluzak Affidavit").*

ONGOING PROCESSES AND CONTROLS

Now that the transitional period has ended, monthly billing is taking place between the BOC and the 272 Affiliate. In April 2001, the BOC issued approximately 30 invoices to QCC. Many of these invoices dated back to the merger, and were the "catch-up" billing to bring the transactions current. Although the May billing is not yet complete, the BOC expects to issue approximately 30 additional invoices to QCC. Now that the immense work has been completed to identify and price all of the transactions, billing can and will occur regularly as specified in the affiliate agreements posted on the Internet.

Occasional manual errors in the data or in postings on the Internet do not mean a company does not have sufficient processes in place to comply with Section 272. Data collection and posting processes contain some elements of manual effort, therefore human errors occur from time to time. This does not mean the company is out of compliance with Section 272. The company's efforts to correct occasional discrepancies through accounting controls in a timely manner should also be a consideration in determining whether they are in compliance with Section 272 requirements. The ability to find and correct errors is evidence that the company's controls are in place and are working. As noted in the FCC's order approving Southwestern Bell's Texas application, the FCC says that, "In its application, SWBT demonstrates that it has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with Section 272."[4] Also, in the Bell Atlantic-New York order, the FCC found that "the value of the posting discrepancies is small, totaling less that the amount of the discrepancies at issue in the Second BellSouth Louisiana Order. Given these factors, we conclude that these isolated instances are not sufficient to show systemic flaws in Bell Atlantic's ability to comply with section 272(b)(5)."[5]

DEFINITION OF A "TRANSACTION" AS USED BY THE FCC AND THE BOC

In the Accounting Safeguards Order, the FCC describes the requirement of 272(b)(5) "transactions" as follows:

> To satisfy Section 272(b)(5)'s requirement that transactions between Section 272 affiliates and the BOC of which they are an affiliate be "reduced to writing and available for public inspection," we require the separate affiliate, at a minimum, to provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page.[6]

The FCC also provided examples of what constituted a transaction in the Accounting Safeguards Order:

> We note, however that once the BOC and its affiliate have agreed upon the terms and conditions for telephone exchange and exchange access such

[4] *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services Inc. d/b/a/ Southwestern Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, Inter-LATA Services in Texas,* CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, (rel. June 30, 2000), ¶ 398*("SBC-Texas Order")*

[5] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to provide In-Region, interLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, (rel. Dec. 22, 1999), ¶ 412 (*"Bell Atlantic- New York Order").*

[6] *In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. December 24, 1996) ¶122 ("Accounting Safeguards Order").*

> agreement would constitute a "transaction." For clarification, we also find that agreements between a BOC and its affiliate for the provision of unbundled elements and facilities pursuant to explicit terms and conditions also constitutes a 'transaction'.[7]

Nowhere does the FCC require that individual billings be construed as "transactions" that must be posted on the Internet as AT&T has suggested in its testimony. In the Bell Atlantic-New York Order, the FCC "likewise reject[ed] AT&T's assertion that Bell Atlantic's Internet posting do not contain sufficient detail to show that Bell Atlantic will comply with section 272(b)(5). As required by [its] section 272(b)(5) rules, [the FCC concluded that] Bell Atlantic discloses 'the number and type of personnel assigned to the project, the level of expertise of such personnel, any special equipment used to provide the service, and the length of time required to complete the transaction."[8] The BOC's Internet postings contain those same FCC required components of information, i.e., rates, terms, conditions, frequency, number and type of personnel, and level of expertise. Additional billing detail is not required to be posted. AT&T contends that "this type of information should be posted as it assists unaffiliated interexchange carriers in observing what the BOC and 272 affiliate are actually doing…"[9], but those contentions are not relevant in light of the FCC's rulings. The BOC has, however, made additional billing detail available to AT&T on a confidential basis through responses to data requests.

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[7] *Id.*, ¶ *124.*
[8] *Bell Atlantic- New York Order,* ¶ *413.*
[9] *Skluzak Affidavit,* ¶ *69.*

OTHER ISSUES RAISED BY AT&T

In its affidavit, AT&T lists some specific examples of invoices between the BOC and the 272 Affiliate, and raises issues regarding that billing. For example, in Paragraph 106, item a, AT&T mentions "artificially high bill rates"[10]. However, the bill rates used in that example appear very reasonable. According to invoice QC002, QCC billed at a Fully Distributed Cost ("FDC") of $75.20 per hour. That fully distributed cost includes direct costs such as salary, benefits, office space, and computers; and corporate overhead loadings such as Executive, HR, and IT. QCC's FDC rate is very similar to the rate that the BOC charges for the same salary grades. Therefore, the billing rate used is not "artificially high".

In item b, AT&T states supervisors that were billed at $307 per hour. However, these supervisors were Executive Vice Presidents, so the rate billed is reasonable for the level of employees performing the work.

In item e, AT&T mentions an untraceable account code, and is concerned that a transfer of assets could be occurring. Those concerns are unfounded. The Task Order that is posted on the Internet website clearly states that the BOC receives no ownership in the lines that are being leased. The account code that was used on the invoice is a Field

[10] *Skluzak Affidavit, ¶ 106.*

Reporting Code which directs those expenses to book to Account 6423.2, Buried Cable Expense. There is no basis for concerns regarding asset transfers for this transaction.

As these examples point out, many of the concerns and issues pointed out by AT&T are unfounded or overstated, and can be reasonably explained.

REQUIREMENT FOR SEPARATE BOOKS, RECORDS AND ACCOUNTS

The FCC has no requirement that the 272 Affiliate have separate accounting software or that it be maintained at a separate location from the BOC. The requirement to maintain separate books, records, and accounts does not include being in separate locations, as AT&T has asserted. To the contrary, in its Non-Accounting Safeguards Order, the FCC states "we believe the economic benefits to consumers from allowing a BOC and its Section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby. Therefore, we permit the sharing of administrative and other services."[11] The FCC would also allow the same accounting software to be used in processing transactions for both the BOC and the 272 Affiliate, but QCC has chosen to use a separate general ledger system as described in my affidavit.

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[11] *See In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. December 24, 1996)., ¶ 168 ("Non-Accounting Safeguards Order").*

Qwest has in place the controls necessary to ensure that the 272 Affiliate's books, records, and accounts are maintained separately from the BOC's even though both companies may use the same accounting software in the same location.

COMPLIANCE WITH GAAP

The BOC follows GAAP which requires accrual accounting to properly record expenses in the period incurred. The audit opinion of our external auditors, Arthur Andersen, confirms that the Company follows GAAP in all material respects. The BOC did accrue for approximately $1.5 million of revenue as a receivable from QCC for the year 2000 for affiliate services that had been identified. No expenses were accrued as a payable to QCC because services being provided by QCC had not yet been identified. However, the BOC believes that the transactions that could not be identified were immaterial compared to the total affiliate transactions for the BOC in 2000. For example, the invoices from QCC (expense to the BOC) applicable to 2000 were approximately $4 million compared to approximately $892 million of affiliate expense that the BOC booked in the year 2000, which is less than 1% compared to the total.

REPORTING STRUCTURE REQUIREMENTS FOR SECTION 272(b)(3)

The FCC does not require the BOC to discuss reporting structures to prove compliance with Section 272(b)(3). In the Non-Accounting Safeguards Order, the FCC states that "the Section 272(b)(3) requirement that a BOC and a Section 272 affiliate have separate officers, directors and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its Section 272 affiliate."[12]

Further, in the BellSouth Louisiana Order, the FCC rejected AT&T's assertion that BellSouth failed to meet the "separate officers, directors, and employees" requirement because BellSouth did not adequately explain the reporting structure of its officers.[13] Thus, there is no such requirement.

As the Corporate Officer exhibits for QCC and QC show, each company has separate officers and directors as the rules require.[14]

It is permissible for the officers in the BOC and the 272 Affiliate to report to the same officer in the parent company. According to the FCC's Non-Accounting Safeguards Order, the Section 272(b)(3) requirements do not preclude the parent company of the BOC and the Section 272 affiliate from performing functions for both the BOC and the Section 272 affiliate. The FCC states:

> Instead, we agree with the view that the Section 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its Section 272 affiliate.[15]

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[12] *Non-Accounting Safeguards Order, ¶ 178.*

[13] *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. October 13, 1998), ¶ 329 *("Bell South -Louisiana Order").*

[14] *Schwartz Affidavit, Exhibit MES-3 and Affidavit of Judith L. Brunsting dated March 26, 2001, Exhibit JLB-5.*

[15] *Non-Accounting Safeguards Order, ¶ 182.*

Moreover, in the FCC's order on Ameritech's application for 271 authority in Michigan, the FCC declined to condemn a reporting relationship in which officers of both the BOC and its 272 affiliate reported to an officer of the parent; rather, the FCC simply stated that such a reporting relationship "underscores the importance of the separate directors requirements,"[16] so that the officers of the BOC and the 272 report to separate boards. Thus, contrary to AT&T's testimony that reporting to the same officer at the parent is a violation of the separate employees requirement, this is a permissible arrangement.

The BOC and the 272 Affiliate have separate officers, directors, and employees. The 272 Affiliate's officers, directors and employees are not officers, directors or employees of the BOC. Additionally, no BOC officer, director or employee is also an officer, director or employee of the 272 Affiliate.

The BOC and the 272 Affiliate have separate employees, paid from separate payrolls. The FCC does not require the separate "administration" of payrolls. While separate payroll registers provide evidence of separate books, records and accounts, the "administration" function is an allowable shared service function. Per the Non-Accounting Safeguards Order, the FCC states:

[16] *Application of Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan,* CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶ 362 *("Ameritech- Michigan Order").*

> We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to Section 272(b)(1), a BOC and a Section 272 affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services.[17]

As long as the "administration" transaction is provided on an "arms length" basis and reduced to writing and available for public inspection, and offered on non-discriminatory terms and conditions, it meets the Section 272 requirements. Qwest complies with these requirements.

SHARED EMPLOYEES AND SHARED SERVICES

Employees on the BOC payroll that provide services to the 272 Affiliate are not considered shared employees. The FCC's shared employees test is that no employee is on both payrolls at the same time. By comparing payroll registers, the BOC has verified that no employees are on both payrolls and therefore no employees are shared.

As I previously cited, the FCC contemplated and specifically allowed the provision of shared services between the BOC and the 272 Affiliate. The FCC also prohibits "shared employees"; therefore, it must follow that the FCC does not consider shared services to equate to shared employees. There are no prohibitions by the FCC regarding how many services can be provided, how many employees can be used, or which specific services can be provided (except for rules regarding in-region, interLATA joint marketing; and operating, installation and maintenance services). The services provided back and forth between the BOC and the 272 Affiliate do not violate any shared employee rules.

The arrangement whereby the BOC purchases Finance services from the 272 Affiliate, and also the 272 Affiliate purchases Finance services from the BOC, is not an issue. Many Finance functions are centralized and performed for the entire Qwest family; the billing back and forth simply reflects the fact that employees on different payrolls are performing these services for all Qwest companies. Finance functions performed by the BOC for the 272 Affiliate are posted on the web and are available to other carriers, such as AT&T, on a nondiscriminatory basis.

TRANSFER OF EMPLOYEES BETWEEN A BOC AND A SECTION 272 AFFILIATE

There are no explicit limitations from the FCC nor any mention of rules governing the transfer of employees between the BOC and the 272 Affiliate in either the Accounting Safeguards Order or the Non-Accounting Safeguards Order nor in any Section 272 approval order. The biennial audit procedures that AT&T quotes in its testimony are merely procedures to ensure that where transfers occur, internal controls are working. Internal controls such as the Code of Conduct which prohibits the sharing of confidential information, Qwest's policy to physically separate the BOC and 272

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[17] *Non-Accounting Safeguards Order,* ¶ *179.*

Affiliate employees, the extensive efforts undertaken to educate employees on Section 272 rules, and the "dots" that indicate which company an employee works for, are all measures to help ensure that no unauthorized information sharing takes place between the BOC and the 272 Affiliate.

REQUIREMENT FOR A SIGNED OFFICER CERTIFICATION

The BOC has just executed a new officer certification that was signed by Mark Schumacher, a BOC officer. At the time the previous certification was done, the officers at the BOC, the 272 Affiliate and QSC ("Services Company") were in a state of flux. In order to not delay the certification statement, Robin Szeliga, who signed the ARMIS filings, agreed to sign on behalf of the BOC. However, the certification requires signature by a BOC officer, and since Robin is an officer of QSC and not QC, QC has now replaced the certification that was signed by Ms. Szeliga. The new certification is attached as Rebuttal Exhibit MES-1.

THIRD PARTY REQUESTS FOR SERVICES POSTED ON THE INTERNET TO DATE

To date, no third party carrier has expressed any interest in purchasing any of the Section 272 services posted on the website. The FCC's intent in requiring posting of Section 272 transactions was to ensure that third party carriers could purchase services provided to the Section 272 Affiliate at the same rates, terms and conditions.[18] However, even though AT&T has spent hours going through and analyzing the posted transactions as evidenced by the detailed analysis of these transactions contained in AT&T's Affidavit, AT&T has yet to ask to purchase any service.

NON-CASH TRANSACTIONS CONDUCTED BETWEEN THE BOC AND THE 272 AFFILIATE

There are no non-cash transactions conducted between the BOC and the 272 Affiliate. All transactions are on a cash basis. Transactions for services provided are billed and payments are rendered. Asset transfers follow the same process. Any concerns regarding non-cash transactions are moot, because all 272 Affiliate transactions are done on a cash basis. Processes to review asset transfers are merely another control to ensure that those transactions are identified, posted, invoiced and paid with cash, and that no network assets are transferred between the BOC and the Section 272 Affiliate.

V. COMPLIANCE WITH SECTION 272(c) – NON DISCRIMINATION SAFEGUARDS

The FCC has considered historical results of the annual Joint Cost Audit in order to assess Section 272 Compliance in Section 271 applications. In the Bell Atlantic-New

[18] BellSouth-Louisiana Order, ¶343.

York Order, the FCC states, "The Commission evaluates the sufficiency of a BOC's internet disclosures by referring to its ARMIS filings, its Cost Allocation Manuals, and the CAM audit workpapers."[19] In the SBC-Texas Order, the FCC states that, "Our review of SWBT's ARMIS data, its CAM, its independent auditor's workpapers, and the Internet disclosures supports SWBT's showing of compliance with the affiliate transactions rules."[20] Both of these orders are more recent than the BellSouth Louisiana Order quoted by AT&T, and contain a more current reflection of the FCC's position.

NON-BOC AFFILIATE PROVIDING SERVICES TO THE 272 AFFILIATE

Non-BOC affiliates that provide services to the 272 Affiliate are not required to offer those services to third parties. Section 272 applies only to BOC and Section 272 affiliates. Non-BOC affiliates may provide services to Section 272 affiliates without offering similar services to third parties, so long as the transaction is not a "chaining" transaction involving the BOC. Therefore, the services that Advanced Technologies ("AT") provided to Qwest LD are not required to be made available to others, contrary to AT&T's position that "Failure to also offer such services and information to an unaffiliated entity constitutes noncompliance with this section."[21]

The BOC did not provide any services to AT, which in turn "chained" those services to Qwest LD. The services that Qwest LD purchased from AT did not involve

[19] *Bell Atlantic- New York Order,* ¶ *411.*
[20] *SBC -Texas Order,* ¶ *406.*

the BOC, and therefore those services are not subject to the nondiscrimination requirements.

NONDISCRIMINATION STATEMENTS

The FCC has not issued a required list of nondiscrimination statements regarding transactions between a BOC and its 272 Affiliate. Also, many of the nondiscrimination items raised by AT&T concern Section 271 issues such as the processing of PIC orders; interconnection standards; performance standards, measurements, and tracking; and nondiscriminatory access to OSS and are better dealt with in the 271 forum. For concerns regarding the sharing of information between employees, all Qwest employees undergo annual Code of Conduct training regarding the use and sharing of confidential information.[22] Disregard for those company policies can result in disciplinary action up to and including employee dismissal.

HOW THE BOC PRICES THE SERVICES IT CHARGES TO THE 272 AFFILIATE

The BOC charges the 272 Affiliate the same prices that the BOC would charge any other carrier and does charge its non 272 affiliates, therefore there is no issue of discrimination. The pricing used by the BOC for services provided to the 272 Affiliate follows the pricing hierarchy of the rules contained in FCC Part 32.27 and CC Docket 96-

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[21] *Skluzak Affidavit, ¶ 124.*
[22] *Schwartz Affidavit, at 35 and Exhibit MES-9.*

150, the Accounting Safeguards order. Methods and procedures are contained in the BOC's CAM that has been approved by the FCC. The BOC's external auditors have reviewed this process in conjunction with their audits without any findings of non-compliance.

VI. COMPLIANCE WITH SECTION 272(e) – FULFILLMENT OF CERTAIN REQUESTS

The BOC has already stated that it will impute to itself rates for exchange and exchange access services. This imputation of access rates was specifically addressed in the response to data request AT&T Set 10, Request 105 where the BOC stated "When and if QC does use exchange access for the provision of its own services, QC will impute to itself the same amount it would charge an unaffiliated interexchange carrier."

AT&T complains that Qwest's assertion that it will comply with Section 272(e)(3) and (4) is not sufficient because "mere words" will not allow the Commission to make a predictive judgment. But such "mere words" are exactly what the FCC has found will suffice in demonstrating future compliance with this section:

> BellSouth states that BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. BellSouth also states that where BST uses exchange access for the provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier. Therefore, BellSouth has adequately

demonstrated that it will comply with the requirement of Section 272(e)(3).[23]

Furthermore, Qwest does not agree that the Commission should impose additional requirements to ensure QCC does not engage in price squeezes. Indeed, the FCC itself specifically rejected the assertion that such additional requirements should be imposed, concluding that "further rules addressing predatory pricing by BOC Section 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem."[24]

VII. COMPLIANCE WITH SECTION 272 (g) – JOINT MARKETING

The FCC has stated, "We do not require applicants to submit proposed marketing scripts as a precondition for Section 271 approval, nor do we expect to review revised marketing scripts on an ongoing basis once Section 271 authorization is granted. Applicants are free to tell us how they intend to joint market, although we do not require them to do so".[25]

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[23] *BellSouth -Louisiana Order, ¶ 354 (rel. October 13, 1998) (footnotes omitted);* see also id. *at ¶ 355 (finding that BellSouth will comply with Section 272(e)(4) because "BellSouth commits that, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates, terms, and conditions and will record any transactions between BST and BSLD in the manner prescribed in the* Accounting Safeguards Order. *")* .

[24] *Non-Accounting Safeguards Order,* ¶ 258.

[25] *Application of BellSouth Corporation, et. al. Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina,* CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997), ¶ 236 *("BellSouth- South Carolina Order").*

The BOC has posted to the Section 272 website a copy of all work orders describing the services provided by QC to QCC. When joint marketing services are provided, those services will also be posted to the Internet website. The BOC is not required to provide copies of actual marketing scripts used in the provision of joint marketing services.

The BOC has also posted services to the Internet website which involve product development and product management. These can be found under the work order labeled "Interim Product Development". All of the services posted to the Internet website are available for third parties to purchase on a nondiscriminatory basis.

UPDATED METHODS FOR AFFILIATE TRANSACTIONS ("MAT")

The BOC has updated the MAT to reflect the latest methods and procedures regarding affiliate transactions. The new version of the MAT was filed as an exhibit to my previous affidavit. The new MAT no longer contains the wording referenced by AT&T.[26]

MARKETING AGREEMENT REQUIREMENT

[26] *Skluzak Affidavit ¶ 145.*

Contrary to AT&T's concerns[27], there is no requirement that prevents a BOC from executing different agreements with different affiliates involving similar services. Indeed, the marketing agreements will pertain specifically to the circumstances regarding each service that is provided. For example, there is a Wireless joint marketing agreement that pertains to sales of BOC products in Wireless retail stores. It is very doubtful that a similar agreement will be relevant between the 272 Affiliate and the BOC. Therefore, the joint marketing services provided to different affiliates are likely to vary and a comparison of the services provided has no relevance to Section 272 compliance. The BOC complies with Section 272 by posting the transaction on the Internet.

VIII. CONCLUSION

In this rebuttal affidavit I have provided additional evidence that the BOC is in compliance with all aspects of Section 272. I have shown that the BOC is in compliance with the separate transaction requirements and does not need to have accounting systems at separate locations. The BOC and 272 Affiliate meet the test for separate officers regardless of the reporting structure. The transactions posted to the Internet website meet the FCC requirements regarding sufficiency, and the BOC is not required to post the "live" transactions. I have addressed the transitional period that the BOC encountered, and how that period is not representative of ongoing processes. Also, I clarified that

[27] *Skluzak Affidavit ¶ 147.*

there is no FCC requirement regarding the movement of employees between the BOC and 272 Affiliate, no need to have separate payroll administration, or a prohibition regarding administrative services that the BOC and 272 Affiliate may purchase from each other. I have also clarified that there were no chaining transactions occurring in the services provided from AT to Qwest LD, so those services are not subject to nondiscrimination requirements. I have confirmed that the BOC has stated that it will impute access charges when required and that this confirmation meets the FCC's requirement. Lastly, I have addressed the joint marketing issues raised by AT&T and have shown that the BOC has made product development services available by posting them to the Internet website if other parties wish to purchase those services.

By refuting each of the major issues raised by AT&T, I have shown that statements that the BOC does not comply with the 272 requirements are misleading, based on inaccurate data, or focused solely on the transitional period. Therefore, there is a reasonable and rational basis for the Commission to determine that the BOC does have appropriate processes and controls in place to enable it to meet the 272 compliance requirements.

This concludes my rebuttal affidavit.

Arizona Corporation Commission
Docket No. T00000B-97-0238
Qwest Corporation
Exhibit MES-1

CERTIFICATION

I certify that I am an officer of Qwest Corporation; that I have examined the Qwest Communications Corporation Section 272 Affiliate Transactions and that to the best of my knowledge, information, and belief, all statements of fact posted at that website are true and that said postings accurately reflect the transactions that have occurred between QC and QCC for the period July 1, 2000 through December 31, 2000.

PRINTED NAME Mark A. Schumacher

POSITION Controller

SIGNATURE Mark A Schumacher

DATE 5/11/01

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications act, 47 U.S.C. 220 (e).)