



1           **1. Disputed issue No. 1 – Point of Interconnection (“POI”) in each local calling**  
2 **area**

3           WorldCom agrees with the Staff's conclusion that a single POI per LATA is  
4 appropriate. Moreover, Qwest has agreed to a single POI per LATA at Section 7.1.2;  
5 therefore, this issue appears resolved.

6           **2. Disputed Issue No. 2 - Private Line rates for transport between local**  
7 **calling areas**

8           The bulk of Staff's discussion addresses TELRIC pricing for UNE Loops /EELs,  
9 not interconnection trunks or facilities a CLEC might lease as part of its network on the  
10 CLEC's side of the POI. Staff appears to believe that the FCC's Supplemental Order on  
11 Clarification (released June 2, 2000) has applicability with regard to establishing the proper  
12 rate for Qwest to charge the CLECs for transport of traffic to a POI outside Qwest's local  
13 calling area. This is incorrect. The FCC has reaffirmed its rules prohibiting such charges.  
14 The UNE Remand Order requires Qwest to convert circuits to TELRIC rates.  
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16           Of course, Qwest will gladly allow a CLEC to establish a single POI per LATA, as  
17 long as the CLEC pays Qwest for the transport to the CLEC's POI. On this issue the FCC  
18 states, “Our current reciprocal compensation rules preclude an ILEC from charging  
19 carriers for local traffic that originates on the ILEC's network.” Again the FCC seeks  
20 comment on the appropriateness of the ILEC's desire to levy transport charges on the  
21 CLEC.<sup>1</sup> Therefore this too would be inconsistent with current FCC rules.  
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25 \_\_\_\_\_  
26 <sup>1</sup> FCC Notice of Proposed Rulemaking, CC Docket No. 01-92, released April 27,  
2001, ¶ 112 and footnote 180.

1           Accordingly, Qwest must amend its SGAT to remove the concept of charging a  
2 CLEC for delivery of traffic to a POI within the same LATA as the origination of that  
3 traffic. Qwest has removed section 7.1.2.4; therefore, WorldCom believes this matter is  
4 now resolved.

6           **3. Disputed Issue No. 3 - Tandem rate for host /remote trunking**

7           Although WorldCom did not raise this issue, WorldCom concurs in the concerns  
8 raised by AT&T.

10           **4. Disputed Issue No. 4 - Definition of tandem office switch**

11           While Staff accepts AT&T's definition of a tandem switch, (which does indicate  
12 that a CLEC's switch could be considered a tandem if it serves a geographic area  
13 comparable to Qwest's tandem switch), it also accepts Qwest's language that provides that  
14 if a switch meets the definition of a tandem but only switches the traffic once, then only  
15 the tandem switching rate will apply, thereby excluding the transport and end office  
16 switching rates.

18           The FCC has resolved the issue of symmetry by reaffirming its current rules. The  
19 FCC, in its NPRM<sup>2</sup>, resolves this issue by stating;

21           In addition, section 51.711(a)(3) of the Commission's rules requires  
22 only that the comparable geographic area test be met before carriers are  
23 entitled to the tandem interconnection rate for local call termination.  
24 Although there has been some confusion stemming from additional language  
25 in the text of the Local Competition Order regarding functional equivalency,  
26 section 51.711(a)(3) is clear in requiring only a geographic area test.  
Therefore we confirm that a carrier demonstrating that its switch serves "a

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<sup>2</sup> FCC Notice of Proposed Rulemaking, CC Docket No. 01-92, released April 27,  
2001, ¶ 105

1 geographic area comparable to that served by the incumbent LEC's tandem  
2 switch: is entitled to the tandem interconnection rate to terminate local  
3 telecommunications traffic on its network.

4 Qwest's proposed language is based on the functionality (number of times  
5 traffic is switched) of the CLEC's switch. The FCC has clearly indicated that meeting the  
6 geographic scope test is sufficient for the CLEC switch to receive the tandem  
7 interconnection rate (tandem switching, transport and end office switching). Therefore,  
8 Staff's proposal is inconsistent with the FCC's rule.  
9

10 **5. Disputed Issue No. 5 - Reciprocal Compensation for ISP traffic**

11 Staff has correctly recited the status of the disputes regarding reciprocal  
12 compensation for ISP traffic. As noted by Staff, the FCC has recently determined that ISP  
13 traffic is not relevant to whether Qwest has complied with Checklist Item 13. However, as  
14 Staff states, Qwest must, nonetheless, modify its SGAT. WorldCom agrees with Staff's  
15 conclusions.  
16

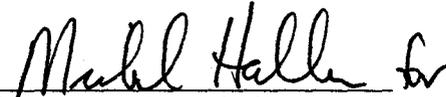
17 **6. Minor corrections to report.**

18 Attached to these comments is a "redlined" version of Staff's Report which  
19 identifies and corrects some minor errors.  
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**IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION**

**ACC Docket No. T-00000A-97-0238**

**REPORT ON QWEST'S COMPLIANCE**

**With**

**CHECKLIST ITEM: NO. 13 - RECIPROCAL  
COMPENSATION**

**May 15, 2001**

## I. FINDINGS

### A. PROCEDURAL HISTORY

1. On February 17, 2000, the first Workshop on Checklist Item No. 13 (Reciprocal Compensation) took place at the Commission's offices in Phoenix. Qwest<sup>1</sup> filed testimony on its compliance with Checklist Item 13 on March 25, 1999. Comments were filed on February 10, 2000 by AT&T and TCG (collectively "AT&T") and Cox. MCI WorldCom ("MCIW") filed its comments February 8, 2000. Qwest filed reply comments on February 16, 2000. Parties appearing at the Workshop included Qwest, AT&T, MCIW, Sprint-, Cox, e-spire and the Residential Utility Consumer Office ("RUCO").

2. On March 7, 2000, -another Workshop took place to resolve any and all outstanding issues regarding Checklist Item No. 13. At the conclusion of the Workshop, parties were directed to attempt resolution on all remaining disputed issues.

3. While many issues were successfully resolved between the parties, Checklist Item 13 was deemed "disputed" due to the parties' inability to come to agreement on four issues, which eventually went to impasse. The Proposed Findings of Fact and Conclusions of Law contain Staff's recommendation as to each of the disputed issues.

### B. DISCUSSION

#### 1. Checklist Item No. 13

##### a. FCC Requirements

4. Section 271(c)(2)(B)(xiii) of the Telecommunications Act of 1996 requires that a Section 271 applicant's access and interconnection include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."

5. Section 251(b)(5) imposes upon -all local exchange carriers the obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

6. Section 252(d)(2) states that "[f]or purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not

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<sup>1</sup> As of the date of this Report, U S WEST has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S WEST have been changed to Qwest.

consider the terms and conditions for reciprocal compensation to be just and reasonable unless--(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

7. Section 252(d)(2)(B) further states that "[t]his paragraph shall not be construed to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."

## **b. Background**

8. "Reciprocal compensation arrangements" refer to agreements between interconnecting carriers with regard to charges for the transport and termination of local telecommunications traffic over their respective networks.

9. When two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation under Section 251(b) of the Act.

10. Under a reciprocal compensation agreement the originating carrier pays the terminating carrier for the use of the terminating carrier's end office switch, transport facilities and tandem switch facilities when used. USW-18 at p. 26.

11. The FCC defines "termination" for purposes of Section 251(b)(5) as the switching of traffic from the terminating carrier's end office and delivery of that traffic between their respective networks. USW-18 at p. 26.

12. Call transport is the transport of traffic originating at one carrier's network and terminating at another carrier's end office switch. USW-18 at p. 26.

13. Direct trunked transport involves two switches and a single path. USW-18 at p. 30. Direct trunked transport is an uninterrupted path between two end offices. Direct trunks link a Qwest end office to another Qwest end office or CLEC end office. USW-18 at p. 28. The transport facility originates at the point of interconnection between the Qwest network and the CLEC network and terminates at the Qwest switch. Id.

14. Tandem switched traffic involves at least three switches and two paths. USW-18 at p. 30. Tandem switched transport links two or more end offices through the tandem switch. Id. Tandem switched transport connects a CLEC' switch to a Qwest wire center through an intermediate Qwest tandem switch. The dedicated facility originates at the point of interconnection between the Qwest network and the CLEC

network and terminates at the Qwest tandem switch. USW-18 at p. 28. Tandem trunks connect the tandem switch to each end office switch in the local calling area. Id. These trunks are "common" trunks because they are not dedicated to any particular CLEC but are used by U S- WEST and many CLECs. Id.

15. The combination of switching at the tandem switch and the common trunks is entitled "tandem switched transport." Tandem switched transport allows the CLEC access to every central office connected to the local tandem switch for the exchange of local traffic. Id. The mix of end office switching and tandem switching is important to ensure the most efficient and cost effective form of transport between networks. USW-18 at p. 29

### **c. Position of Qwest**

16. On March 25, 1999, Qwest witness Michael J. Weidenbach provided Direct Testimony stating that Qwest meets the requirements of Checklist Item 13, through its proposed SGAT and its various interconnection agreements between Qwest and the CLECs in -Arizona.

17. Qwest offers Local Interconnection Service ("LIS") configured with both direct trunk transport and tandem switched transport. USW-18, p. 27.

18. CLECs may also elect to purchase transport services from each other, a third party, or from a third party that has leased a Private Line Transport Service facility from Qwest. Id. At p. 27.

19. Wherever possible, Qwest offers two-way trunking. USW-18, p. 27. The Qwest SGAT, Section 7.2.2.1.3 provides:

Two-way trunk groups will be established wherever possible; however, either Party may elect to provision its own one-way trunks for delivery of local traffic to be terminated on the other Party's network.

20. LIS ordered to a local tandem will be provided as direct trunked transport. USW-18, p. 29.

21. Direct-trunked transport has two rate elements:

- 1) a fixed, per month charge
- 2) a fixed per mile charge

22. Both fixed charges vary with the length of the dedicated facility provided (based on airline mileage), as measured from the serving wire center to the tandem or end office. USW-18, p. 32. Different charges apply for DS1 and DS3 transmission levels. USW-18, p. 33. Direct trunk charges are adjusted when the trunks are established as two-way trunks. USW-18, p. 32. In this arrangement the CLEC pays only for Qwest

transport facilities used by the CLEC to deliver its originating traffic to the Qwest end office switch. USW-18, p. 32. The reverse is true if the CLEC provides the direct trunks to Qwest. Section 7.3.2.3 of Qwest's SGAT addresses this issue.

23. Tandem-switched transport has two rate elements:

- 1) a transport element
- 2) a switching element.

USW-18, at p. 33.

24. Both the transport element and the tandem switching element are fixed, per minute of use rates. *Id.*

25. Qwest states that it has reciprocal compensation arrangements in place in accordance with Section 252(d)(2) of the Act. USW-18, p. 33. Qwest also states that it has a concrete legal obligation to pay reciprocal compensation. *Id.* Section 7.3 of the proposed SGAT states that "the reciprocal compensation provisions of this SGAT shall apply to the exchange of local traffic between CLEC's network and Qwest's network." USW-18, at p. 33.

26. Moreover, the reciprocal compensation rates in the proposed SGAT and the existing interconnection arrangements are symmetrical. USW-18, p. 33. Symmetrical compensation arrangements obligate Qwest to pay a CLEC for transport and termination of traffic originated by—Qwest at the same rate that Qwest charges to transport and terminate traffic originated by the CLEC. USW-18, p. 33. The proposed SGAT states that "[t]he Parties agree that per minute of use call termination rates as described in Exhibit A of this SGAT will apply for the termination of EAS/Local traffic. *Id.* at p. 33.

27. Qwest will record, bill, and pay in accordance with the proposed SGAT and the various interconnection agreements in Arizona. USW-18 at p. 34.

28. All call types must be routed between networks, accounted for, and settled between the CLECs and Qwest. USW-18, at p. 34. Qwest uses a CroSS7 Platform System Seven (SS7) Network to determine requirements for billing and reporting. *Id.* at p. 34. Qwest states that where possible and appropriate, existing accounting and settlement records will be used to exchange records and bill. *Id.* at p. 34.

29. Qwest will make reciprocal compensation payments for local traffic in a timely manner as required by the FCC. *Id.* at p. 34. However, the CLEC must submit a bill which distinguishes between local traffic and non-local traffic. *Id.* at p. 34. The proposed SGAT states: "Amounts payable under this SGAT are due and payable within thirty (30) calendar days after the date of invoice." See Section 5.4.2.

33. Qwest's proposed SGAT contains a provision which excludes ISP traffic from reciprocal compensation requirements. See SGAT Section 7.3.4.1.4. Qwest states that this provision complies with existing requirements and rulings at both the State and Federal levels. USW-18, p. 35.

34. Qwest has developed detailed processes that support reciprocal compensation billing and payments to CLECs. USW-18, p. 37. A CLEC or Qwest may request an audit of reciprocal compensation billing. *Id.* The terms and conditions of the audit process are defined in Section 18.0 of Qwest's SGAT. *Id.* The party requesting the audit may review the non-requesting party's records, books and documents. USW-18, p. 37.

### **c. Competitors' Position**

35. In their July 22, 1999 preliminary Statements of Position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest was not in compliance with the requirements of Checklist Item 13. AT&T stated that Qwest is failing to pay CLECs reciprocal compensation amounts that are contractually due. Cox stated that it had inadequate information at this time to determine whether Qwest is in compliance with this Checklist Item.

36. Other CLECs filing preliminary Statements of Position on July 22, 1999, included Sprint, MCIW, NEXTLINK Arizona, L.L.C ("NEXTLINK"), ELI, e-spire, and Rhythms. ELI stated that Qwest refuses to honor the terms of its contract agreement with ELI in Arizona for reciprocal compensation. Specifically, Qwest refuses to pay for ISP traffic as required by the ELI/Qwest Interconnection Agreement. ELI has been forced to litigate the issue before the Commission in Docket No. T-01051B-99-0689. e-spire stated that it had inadequate information at this time to determine whether Qwest is in compliance with this Checklist Item. MCIW stated that Qwest is failing to pay reciprocal compensation due in Arizona. Rhythms did not offer a Statement of Position on Checklist Item No. 13. NEXTLINK stated that its experience in other states shows Qwest does not honor its reciprocal compensation obligations.

37. Sprint stated that it is possible the Commission will soon take up the issue of reciprocal compensation for ISP-bound traffic in a Sprint/Qwest arbitration proceeding. Based on the FCC's requirement that arbitrations be concluded within 9 months from the date on which a request for negotiations is served, it is possible that the Sprint/Qwest arbitration will precede the hearing on Qwest's 271 application. -Should this Commission rule during that arbitration proceeding that ISP-bound traffic is subject to reciprocal compensation, Qwest's current position would be contrary to the Commission's rules, and, unless modified, would fail to meet the requirements of Checklist Item 13.

38. Two parties filed additional comments before the first Workshop on Checklist Item 13. AT&T filed additional comments on February 8, 2000; and MCIW filed additional comments on February 10, 2000.

39. AT&T's comment set forth five main areas of concern with Qwest's compliance with Checklist Item 13. First, AT&T claims -that Qwest's SGAT confuses interconnection trunks with Qwest's local interconnection service offering called LIS. AT&T-10 at p. 10. Qwest language in the SGAT should be more generic in nature, for interconnection trunks, and should be more definitive that either party may provide interconnection trunks, since it is doubtful that the CLEC would have a product called LIS. AT&T-10 at p. 10.

40. Second, AT&T argues that Qwest's SGAT improperly assumes that the CLEC must have a Point of Interconnection (POI) at every Qwest wire center. AT&T-10 at p. 10. This discriminates against the CLEC, forcing the CLEC to provision and pay for a trunking network as large as the Qwest network. AT&T-10 at p. 10. AT&T states that while this provision is not in the reciprocal compensation portion of the SGAT, it impacts the reciprocal compensation section as the cost sharing provisions contained in paras. 7.3.1.1.3.1 and 7.3.2.3(a) assume the CLECs are required to trunk to the Qwest wire center rather than some other point of the CLEC's choice. AT&T-10, p. 10.

41. Third, AT&T states that Qwest's SGAT Section 7.3.1 excludes the use of third party transit providers for the exchange of traffic "absent a separately negotiated agreement ...". The SGAT should be revised to indicate the type of agreement that would be acceptable for this arrangement. AT&T-10 at p. 11.

42. Fourth, AT&T states that in paragraphs 7.3.1.1.3.1, 7.3.2.3 (a), and 7.3.4.1.3 of the SGAT, Qwest assumes that the factor for ISP traffic, or any traffic to an enhanced service provider, will be totally ignored for purposes of reciprocal compensation. AT&T-10 at p. 11. AT&T argues that the Commission has not determined that ISP traffic should be excluded for purposes of reciprocal compensation. AT&T-10 at p. 11. AT&T states that in a recent interconnection complaint matter that ISP traffic should be treated as local in nature. See In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement with Qwest Communications, Inc., Decision No. 62015 (Nov. 2, 1999). AT&T-10, p. 11. AT&T states that until the FCC adopts rules relating to this traffic, the SGAT should be consistent with the Commission's Electric Lightwave Order which treats this traffic as local for purposes of reciprocal compensation. AT&T-10, p. 11.

43. AT&T's final issue is with SGAT Section 7.3.4.2.3. AT&T-10, p. 11. AT&T states that through this provision, Qwest is requiring that the host switch for a remote office be considered as a tandem switch. AT&T-10, p. 11. This provision would burden the CLEC with tandem switching charges in a discriminatory manner, where no such charge is warranted. AT&T-10 at p. 11. There is no provision in the Act or FCC orders which would support this definition of tandem switching. AT&T-10, at p. 12.

The distance between the remote office and the host switch cannot be counted as tandem access. AT&T-10 at p.12.

44. MCIW's comments on Checklist Item 13 took issue with many key provisions in the SGAT governing reciprocal compensation. MCIW-1, at pp. 4-12. MCIW recommended the following modifications/clarifications to specific SGAT provisions:

a. The existing End Office definition is too restrictive. End office switches are not limited to terminating station loops and perform much broader functions and services. Id. at p. 4. The tandem definition should be changed so that a CLEC switch could be classified as a tandem. Id.

b. The CLEC tandem should be able to charge both the EO switching, tandem switching and related tandem transmission. Where the CLEC switches cover a comparable geographic area as Qwest's tandem switches, the reciprocal compensation rate for all local traffic terminated by that CLEC should include both the end office and the tandem switching rate as set forth by the FCC in 47 C.F.R. Section 51.711. Id. at p. 5. Section 7.3.4.1.5 should be rewritten to permit a CLEC to get tandem treatment for a CLEC switch. Id. at p. 10.

c. The definition of "Exchange Service" contained in SGAT Section 4.22 should be modified to remove the words "as defined by Qwest's then-current EAS/local serving areas". Id. The local calling area is determined by the Commission and allowing Qwest the unilateral right to modify this definition is inappropriate. Id.

d. The reference to "Qwest's tariffed Switched Access rates" should be removed and replaced with "the billing Party's tariffed Switched Access rates." Id. at p. 5. CLECs should be able to bill IXC customers and the ILEC based on a CLEC tariff, not Qwest's. Each party is permitted by law to establish ~~its~~<sup>their</sup> own Access Tariff rates. Id. at p. 6.

e. In Section 7.3.1.1.2, since the Entrance Facility is used for local interconnection purposes, it should be priced at TELRIC rates and included in the pricing appendix and not taken from Qwest's access tariffs. Id. at p. 6.

f. Section 7.3.1.1.3.1 rewrites the way CLECs compensate for facilities used for 2-way trunking. Id.

g. ISP traffic should not be excluded. Id. ISP traffic imposes no different costs of transport and termination on local exchange carriers than does voice traffic. Forcing CLECs to terminate this category of traffic without compensation is not justified by current FCC decisions and provides Qwest with an unfair advantage by granting it a "free ride" on the networks of the CLECs. Id. at p. 6. The requirement to track such traffic in order to exclude it from facilities

compensation calculations also places an onerous administrative burden on the CLECs and increases the CLEC's costs associated with LIS two-way trunks. *Id.* at pp. 6-7. Therefore, Section 7.3.4.1.3 should be stricken in its entirety. *Id.* at p. 10.

h. In existing markets where a CLEC already has traffic data, the above method should apply. In new markets, CLECs should be able to wait one quarter and then bill in arrears based on the relative traffic flow for that quarter.<sup>2</sup> *Id.* at p. 7. This should also apply to EICT when collocation is used. *Id.* at p. 7. The same facilities cost sharing method should also be applied to Direct Trunk Transport ("DTT"). *Id.* at p. 8. MCIW recommended the same change to Section 7.3.2.4.1, dealing with the DS1/DS3 MUX. *Id.* at p. 9. MCIW further recommended the same change to Section 7.3.3.1.1 governing trunk installation NRCS, if CLECs are required to pay the nonrecurring charges for trunk installation. MCIW Ex.-1, p. 9. MCIW's primary position, however, on trunk installation NRCs is that CLECs should not have to pay the nonrecurring charges for trunk installation. *Id.* MCIW argues that in the existing MCIW interconnection agreement with Qwest, the parties do not charge each other NRCs for trunk installation. *Id.* at p. 9.

i. Section 7.3.7 should be revised to provide that transit traffic rates should apply to all parties. *Id.*

j. Qwest should be able to identify traffic without calling party name ("CPN") at its tandem or it should have the ability to work with the originator of the traffic to determine the jurisdiction of the traffic and be made whole. *Id.* at p. 11. In addition, MCIW proposed one alternative solution to calls passed without CPN. The parties could use a "charge-to-number" as a proxy for CPN. This is a standard industry solution. MCIW-1 at p. 11.

### e. Qwest Response

45. Qwest filed Reply Comments on February 16, 2000. In its Comments, Qwest stated that it meets the reciprocal compensation requirements of the 1996 Act through its SGAT and its interconnection agreements in Arizona. USW-19 at p. 12. Qwest also replied that the reciprocal compensation rates provided for in its agreements are cost-based under Section 252(d)(2).

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<sup>2</sup> MCIW recommends the following language: "The provider of the EF will share the cost of the EF as follows: (i) for augmentation of an existing trunk group, the initial relative use factor will be the relative use of the existing trunk group for the quarter immediately prior to the establishment of the new EF, or (ii) for establishment of a trunk group in a new market where no traffic has been exchanged, the Parties shall bill each other 3 months in arrears based on the relative use of the trunk groups for the 3 months prior. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to the initial relative use factor for one quarter. Thereafter, the relative use factor will be adjusted on a quarterly basis based upon actual minutes of use data for all traffic." *Id.* at p. 7.

46. Section 7.3.4.1.3 of Qwest's SGAT describes what Qwest believes its obligations are with regard to the payment of reciprocal compensation to Exchange Service (EAS/Local) Traffic. USW-19 at p. 12.

As set forth above, the Parties agree that reciprocal compensation only applies to Exchange Service (EAS/Local) Traffic and further agree that the FCC has determined that traffic originated by either Party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to the enhanced service provider (the "Delivering Party") is interstate in nature .

47. Qwest states that it is within its rights to exclude ISP traffic from the definition of reciprocal compensation, and therefore its SGAT specifically excludes traffic to enhanced service providers. USW-19 at p. 13.

48. Qwest further states that the language excluding ISP-bound traffic from the definition of local traffic is also contained in Qwest's SGAT. Qwest points to a recent Declaratory Ruling<sup>3</sup> by the FCC which found that -ISP-bound traffic is non-local interstate traffic.<sup>4</sup>

49. Qwest would not agree to ~~MCIW~~WorldCom's proposed change that would define a CLEC switch as a tandem switch for purposes of reciprocal compensation if the CLEC's switch has the capability of serving the ~~same~~comparable geographic area as Qwest's tandem. USW-19 at p. 14.

50. With respect to AT&T's SGAT issues, Qwest stated that there was no distinction between LIS trunks and interconnection trunks. Throughout the SGAT the terms LIS trunk and interconnection trunks are used interchangeably. USW-19 at p. 19. Contrary to AT&T's assertion that the SGAT requires a POI per "wire center", the SGAT actually requires a POI per "calling area." Id. Qwest went on to state that in a large metropolitan area, a calling area may include multiple wire centers. And, in the event a CLEC, like AT&T, wants Qwest to extend facilities from each wire center or calling area in a LATA to a single point - presumably at the CLEC's switch - the SGAT provides for this as well. USW-19, p. 19.

51. Finally, Qwest stated that it made many of the revisions to its SGAT requested by the parties, including Cox, WorldCom and AT&T. USW-19, p. 19.

### e. Workshops

52. During the February 17, 2000 Workshop, the parties agreed that because of the FCC's conclusion in the Bell Atlantic 271 Order that -ISP bound traffic is nonlocal

<sup>3</sup> In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Declaratory Ruling (Rel. February 26, 1999).

<sup>4</sup> On appeal to the D.C. Circuit, this issue was remanded for further examination by the FCC. See *Bell Atlantic Telephone Companies v. FCC*, 2000 WL 273383 (D.C.Cir.).

interstate traffic and that the reciprocal compensation requirements of Section 251(B)(5) of the Act does not govern, that it is not a Checklist Item 13 or 271 compliance issue. Additionally, the parties agreed that reciprocal compensation obligations regarding this type of traffic was appropriate for review in the Wholesale Pricing Docket. Many issues were subsequently resolved throughout the workshop with many being left open to be discussed off-line in an attempt at resolution. It was determined at the conclusion of this workshop that another full-day workshop would be necessary to finalize any and all remaining issues.

53. A final workshop was conducted on March 7, 2000 at the Commission's offices in Phoenix. The parties discussed all remaining outstanding issues. At the conclusion of the March 7, 2000 workshop, Checklist Item 13 was deemed disputed on the issues set out in Section f below.

#### **f. Disputed Issues**

54. The parties were unable to agree on the four issues which went to impasse involving reciprocal compensation. Statements of Position on the impasse issues were filed by AT&T on March 23, 2000, and Qwest on March 31, 2000. MCIW filed a letter on March 24, 2000 which concurred with the AT&T position. In addition, at the time of the Workshops on this checklist item, the D.C. Court of Appeal's decision was entered which vacated and remanded the FCC's ISP Order<sup>5</sup> back to the FCC for further review.<sup>6</sup> The parties later filed briefs on the effect of the D.C. Circuit Court's order, which resulted in one additional impasse issue on the ISP reciprocal compensation issue which is contained in Disputed Issue No. 5 below.

#### **DISPUTED ISSUE NO. 1: Whether the SGAT's Requirement that the CLECs Establish a POI in each Local Calling Area is Consistent with the Act and Existing Commission Decisions?**

##### **a. Summary of Qwest and CLEC Positions**

55. AT&T argues that Qwest's SGAT Section 7.1.2 requires CLECs to establish a point of interconnection ("POI") in each local calling area. AT&T March 23, 2000 Letter at p. 2.<sup>7</sup> If a CLEC does not wish to establish a POI in every Qwest local calling area, it must negotiate with Qwest. Section 7.1.2.4 of the SGAT permits interconnection to a hub location on a negotiated basis; however, under the SGAT the CLEC must purchase Qwest's private line facilities at existing private line rates (which are not cost-based) from the hub location to the CLEC POI. Section 7.1.2.5 and TR 222-223. AT&T argues that these rules are inconsistent with the 1996 Act, the FCC's order and rules, which permit interconnection at any technically feasible point. AT&T March

<sup>5</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999).

<sup>6</sup> *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. March 24, 2000).

<sup>7</sup> Letter dated March 23, 2000 from Richard S. Wolters, Attorney for AT&T, to Charles Steese, Attorney for Qwest.

23, 2000 Letter at p. 2. In addition, AT&T argues that in Arizona, and most other States, the CLECs arbitrated and won the right to establish one POI per LATA. Qwest's requirement of one POI per calling area is inefficient and would inappropriately shift more of the cost burden for interconnection and reciprocal compensation on the CLEC and, therefore, is discriminatory.

56. AT&T also argues that Qwest has ignored the one POI per LATA requirement set forth in the AT&T/Qwest interconnection agreement recently in Phoenix by forcing trunking to more than one POI. Letter at p. 2. AT&T claims that Qwest is ignoring AT&T's established POI and, instead, seeks to require trunks to be put in place to all Qwest end offices. AT&T Letter at p. 2. It is a highly inefficient trunking arrangement, requiring unnecessary trunks and switch terminations. It is causing delays in provisioning which is resulting in delays for AT&T's local business.

57. Qwest on the other hand argues that the SGAT offers CLECs four different standard options for interconnection with the Qwest network: 1) entrance facilities; -2) collocation; 3) meet point arrangements; and 4) interlocal calling arrangements. Section 7.1.2 of the SGAT sets forth these four standard arrangements and Section 17 states that Qwest will consider any other technically feasible interconnection request. Qwest argues that AT&T and MCIW's argument that Qwest is denying CLECs the ability to obtain one POI per LATA misses the mark in that Qwest's fourth method of interconnection - interLocal Calling Area - offers CLEC the opportunity to obtain one actual POI per LATA.

58. Qwest argues that the real issue in dispute between the parties is the price that Qwest can charge for the transport of calls that it carries outside of a local calling area to a distant part of the LATA. If calls going in each direction are in balance, then the parties split the actual cost 50/50. However, in Arizona, 90 percent of the traffic is flowing from Qwest to CLECs (primarily due to ISPs) which could require Qwest to pay 90 percent of the cost of the facilities to any location in the entire LATA.

59. Qwest further argues that AT&T and MCIW's position is premised on the point that one POI per LATA constitutes "interconnection" as set forth in the Act and therefore, in their opinion, Qwest must construct facilities for CLECs at TELRIC rates no matter how untenable the request. Section 251(c)(2)(A) states that Qwest has a "duty to provide interconnection for the "transmission and routing of telephone exchange service and exchange access." Similarly, Section 252(d)(1), the TELRIC provision, only applies to interconnection as defined in Section 251(c)(2). Therefore, Qwest need not build for CLECs or charge TELRIC rates if the one POI per LATA does not meet the definition of "telephone exchange service" or "exchange access."

60. Finally, Qwest argues that one POI per LATA does not meet the definition of "telephone exchange service". *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91 (rel Dec. 23, 1999)., the FCC defined "telephone exchange service" under the Act and held that "telephone exchange service must permit

'intercommunication' among subscribers within the equivalent of a local exchange area". *Id.* at 23 (emphasis added). The FCC also held that private line services do not meet this definition. *Id.* at 25-26.

**b. Discussion and Staff Recommendation**

61. In the parties' interconnection agreements, the Commission approved a single point of interconnection with Qwest per LATA. On appeal, the Arizona District Court held that it is within the Commission's discretion to determine not only whether a CLEC may interconnect at a given point, but how many points of interconnection a CLEC must (or may) have. *U S WEST v. Jennings*, 46 F.Supp.2d 1004, 1021 (Az. 1999). The Court went on to state that in so doing, the ACC could require a CLEC to compensate Qwest for costs resulting from an inefficient interconnection. *Id.*

62. Thus, to the extent the SGAT requires CLECs to establish a point of interconnection with Qwest in each local calling area, the Staff recommends that the SGAT be modified to eliminate this requirement. In *U S WEST v. Jennings*, the Arizona District Court specifically rejected Qwest's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. *Id.* at p. 1021. The Court held that this "could impose a substantial burden upon the CLECs, particularly if they employ a different network architecture than U. S. West." *Id.*

63. The real issue in dispute between the parties appears to be the price that Qwest can charge for the transport of calls that it carries outside of a local calling area to a distant part of the LATA, which is disputed issue No. 2 below. *See*, Qwest Statement of Position at p. 8.

**DISPUTED ISSUE NO. 2: Whether Qwest may Charge Private Line Rates for Transport Between Local Calling Areas or Whether the UNE Remand Order Requires Qwest to Convert Circuits to TELRIC Rates.**

**a. Summary of Qwest and CLEC Positions**

64. AT&T and WorldCom argue that Qwest is attempting to impose non-cost based rates for interconnection/reciprocal compensation trunks on the CLECs by requiring the CLEC to pay private line rates for transmission facilities between calling areas. AT&T Letter at p. 3. AT&T argues that the Act requires that interconnection facilities be cost-based and the FCC has determined that such rates must be based upon TELRIC. AT&T also states that Qwest's SGAT is inconsistent with positions Qwest has taken elsewhere regarding their inability to intermingle Private Line and Interconnection trunks. AT&T Letter at p. 3.

65. Qwest, on the other hand, argues that the FCC's UNE Remand Order<sup>8</sup> does not require it to convert circuits to TELRIC rates unless they carry a significant amount of local traffic. Qwest argues that it offers CLECs a number of options from which to choose to complete an interconnection arrangement with Qwest. Qwest Statement of Position at p. 10. One interconnection option offered to CLECs is the use of an "entrance facility," which means a facility that enters a Qwest central office. Qwest Statement of Position at p. 10. Qwest offers to construct such a facility for the CLEC and charge TELRIC rates for the entrance facility. As an alternative, however, Qwest also allows CLECs to use an existing private line facility. *Id.* This option allows CLECs the option that will allow them to use spare capacity from an existing private line rather than requiring the time and expense of installing new facilities. *Id.* Qwest's SGAT Section 7.3.1.1.2 states that "if CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state of Arizona or FCC Access Tariffs, the rates from those Tariffs will apply."

66. Qwest argues that AT&T and MCIW's position would require Qwest to convert a percentage of their Special Access circuits to TELRIC rates irrespective of the amount of local traffic on the circuit and that is not appropriate under FCC Orders. Qwest Statement of Position at p. 11. Qwest states that the FCC, in its UNE Remand Order, already decided this issue:

[I]nterexchange carriers (IXCs) may not convert special access circuits to combinations of unbundled loops and transport network elements, whether or not the IXCs self provide entrance facilities (or obtain them from third parties). This constraint does not apply if an IXC uses combinations of unbundled network elements to provide a significant amount of local exchange service, in addition to the exchange access, to a particular customer. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order at ¶ 2 (rel Nov. 24, 1999) (Emphasis added)

67. Qwest states that its SGAT, at Section 7.1.2.4, requires Qwest to provide TELRIC rates for the transport of the call within the local calling area, but charges private line rates outside of the calling area. Qwest claims that this matches the FCC definition exactly. Transport of a call outside of the local calling area is simply not "telephone exchange access;" therefore, it is not interconnection subject to the provisions of Section 252(d)(1). Therefore, Qwest states that its SGAT allows one POI per LATA and charges TELRIC rates within the local calling area; however, it charges private line rates outside of the local calling area. Qwest Statement of Position at p. 10. This is perfectly consistent with the Act and comported with the Arizona District Court Order, which allowed one POI per LATA, but required that Qwest receive reasonable compensation for the transport of these calls. *U S WEST Communications, Inc. v.*

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<sup>8</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. November 5, 1999).

*Jennings*, 46 F.Supp.2d 1004, .21021-22 (D. Ariz. 1999). Qwest Statement of Position at p. 10.

**b. Discussion and Staff Recommendation**

68. The Staff believes that this issue is governed by the FCC's Supplemental Order Clarification released June 2, 2000.<sup>9</sup> In its Supplemental Order Clarification the FCC stated that, pending completion of its Fourth FNPRM, IXCs may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. The FCC, however, adopted the following local usage options to provide a safe harbor pending final review at the federal level.

69. The FCC found that a requesting carrier is providing a "significant amount of local exchange service" to a particular customer if it meets one of three circumstances:

a. the requesting carrier certifies that it is the exclusive provider of an end user's local exchange service. The loop transport combinations must terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office. Under this option, the requesting carrier is the end user's only local service provider, and thus, is providing more than a significant amount of local exchange. The carrier can use the loop transport combinations that serve the end user to carry any type of traffic, including using them to carry 100 percent interstate access traffic.

b. the requesting carrier certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic. When a loop transport combination includes multiplexing, each of the individual DS1 circuits must meet this criteria. The loop transport combination must terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office.

c. the requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local

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<sup>9</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket NO. 96-98, Supplemental Order Clarification (Rel. June 2, 2000).

dialtone service and at least 50 percent of the traffic on each of these local dialtone channels is local voice traffic, and that the entire loop facility has at least 33 percent local voice traffic. When a loop transport combination includes multiplexing (e.g., DS1 multiplexed to a DS3 level), each of the individual DS1 circuits must meet this criteria. Under this option, collocation is not required.

Supplemental Order Clarification at para. 22. In addition, no commingling of loop transport combinations with the LEC's tariffed services is allowed. *Id.* These three alternative circumstances represent the FCC's safe harbor for determining the minimum amount of local exchange service that a requesting carrier must provide in order for it to be deemed "significant." *Id.* at para. 23.

70. To the extent Qwest has not already done so, it shall be required to modify its SGAT language to reflect the most current FCC requirements on this issue, as set out above.

**DISPUTED ISSUE NO. 3: Whether a provision in the SGAT which requires CLECs to pay tandem transmission rates for trunking from Qwest's host switches to Qwest's remote offices is appropriate.**

**a. Qwest and CLEC Positions**

71. AT&T and WorldCom object to SGAT Section 7.3.4.2.3 since they argue that this provision essentially treats the host switch as a tandem switch in a host/remote situation, since it requires CLECs to pay tandem transmission rates for the trunking from Qwest's host switches to Qwest's remote offices when the CLEC interconnects at the host switch and terminates calls to customers that are served via the remote office. AT&T Letter at p. 3. AT&T states that this provision is contrary to the Act, cannot be supported by any FCC rule or order and is unprecedented in other regions.

72. AT&T states that a remote office is the site of one or more Remote Switching Units ("RSUs"). AT&T argues that the RSU is nothing more than a switching module on the host switch except for the distance between the RSU and the host switch. AT&T Letter at p. 3. According to AT&T, there is no basis for the imposition of tandem transmission rates on CLECs from the host switch to the remote switch. Because of the nature of the host/remote relationship, the distance between the remote office and the host switch cannot be considered as tandem access. The host switch is not performing a tandem function and applying a tandem transmission charge between the host and the remote would be inappropriate. AT&T Letter at p. 3.

73. Qwest argues that it should be paid for transporting traffic between host switches and their remote switches on behalf of CLEC. Qwest Statement of Position at p. 11. Qwest states that it serves many rural communities throughout Arizona which in many instances cannot justify the purchase of a unique switch to serve the community, so it installs a "host switch" in a more metropolitan area, which host has one or many "remote switches" - small pieces of the host switch - in more rural communities. *Id.* The

"remote" switch has the capacity to switch calls in that rural community without the use of the host; however, any call either to or from the rural community to an area not served by the remote switch must be switched and served by the "host switch". Qwest Statement of Position at p. 12. The latter calls require Qwest to transport the calls along dedicated trunks between the host and the remote.

**b. Discussion and Staff Recommendation**

74. Staff agrees with Qwest that it should be paid for the transport it provides to the CLECs. Staff does not believe that Qwest has supported its position for application of the tandem transmission rates in all host/remote scenarios, however. Staff believes that the application of tandem transmission rates in a host/remote situation would only be appropriate where the host and remote switching units are located in different wire centers. Where the host and remote switching units are located in the same wire center, Staff believes that tandem transmission rates would not be appropriate. Staff recommends that Qwest be required to modify its SGAT to incorporate this restriction.

**DISPUTED ISSUE NO. 4: Whether Qwest's definition of "tandem office switch" contained in SGAT Section 4.11.2 is appropriate.**

**a. Qwest and CLEC Positions**

75. AT&T and MCIW both requested that Qwest modify the SGAT definition of tandem switching so that a CLEC's switch will be considered a tandem when the switch serves the same geographic location as Qwest's tandem switch.

76. AT&T proposed the following definition of Tandem Office Switch to replace the existing definition contained in Qwest's SGAT Section 4.11.2. AT&T claims that this new definition more completely and accurately defines a tandem office switch.

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Offices Switches. CLEC switch(es) shall be considered a Tandem Office Switch to the extent such switch serves a geographic area comparable to that served by Qwest's Tandem Office Switch or where the CLEC switch provides an alternative routing function for a second CLEC switch. Access tandems provide connections for exchange access and toll traffic, while local tandems provide connections for EAS/Local traffic.

77. Qwest agrees to modify its definition of tandem switch so long as it is only required to pay CLEC for the switching it actually performs. Qwest Statement of Position at p. 6. Qwest's concern with AT&T and MCIW's definition is not the language, but the implementation. Section 7.3.4.2.1 of the SGAT states that "traffic delivered through a Qwest or CLEC local tandem switch (as defined in the SGAT), the tandem

switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above." (emphasis added). If Section 7.3.4.2.1 remained in its current form, and a CLEC's switch met the definition of a tandem switch, then the CLEC could theoretically charge Qwest both the "tandem switching rate" and "end office rate" even though CLEC only switched the traffic one time. Qwest Statement of Position at p. 6. The intention of section 7.3.4.2.1 was intended to compensate Qwest when it switched the traffic at both its end office switch and its tandem switch, meaning when it physically switched the traffic twice. Qwest Statement of Position at pp. 6-7. Qwest does not want to pay a CLEC as if it switched the traffic twice when it only switches the traffic once. Qwest Statement of Position at p. 7.

78. Qwest states that its proposal is identical to how Qwest charges CLECs for use of its tandem switch. Qwest does not charge CLECs both the end office rate and the tandem rate unless both switches are actually used. Section 7.3.7.1 of the SGAT makes this plain. When Qwest acts as a "Transit Provider" for CLEC; meaning the call does not originate or terminate with a Qwest customer - U S WEST's sole role is to transit the traffic between a CLEC switch and Qwest's tandem switch. In these circumstances, it only charges the CLEC the tandem switching rate; not the tandem switching and end office rates. Neither Qwest nor CLEC should be able to charge for switching it does not actually perform for the other.

79. CLECS do have the option of bypassing Qwest's tandem switch (and therefore the tandem switching rate) altogether by connecting directly to the Qwest end office. CLEC's who pay both the tandem switching and end office switching rates do so at their choice. Qwest states that modifying the definition of "tandem switch" without the concomitant change authorizing CLECS to only recover for the actual switching it performs, denies Qwest the option of bypassing the CLEC's functional tandem.

80. Qwest agrees to modify its definition of tandem switch to almost the exact language proposed by AT&T and MCIW so long as Section 7.3.4.2.1 is also modified as well. Qwest proposed SGAT language reads:

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches.

7.3.4.2.1 For traffic delivered through a Qwest or CLEC local tandem switch (as defined in this SGAT), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if CLEC or Qwest only switches the traffic once and this switch meets the

definition of tandem switch in Section 4.11.2, then only the tandem switching rate shall apply.

81. Qwest states that the modifications will ensure that a CLEC switch can and will be treated as a "tandem switch" where appropriate, but only allows the parties to charge for the switching and transport they actually perform for the other.

**b. Discussion and Staff Recommendation**

82. Staff agrees with that the changes requested by both and AT&T and Qwest are appropriate. The modifications requested by AT&T will ensure that a CLEC switch can and will be treated as a "tandem switch" where appropriate. The additional change requested by Qwest will -allow the parties to charge for the switching and transport they actually perform for the other, thus preventing a windfall to either party. This will prevent charging both the "tandem switching rate" and "end office rate" for switching traffic twice in those instances where traffic is actually switched only once. Staff therefore recommends Qwest make its proposed changes to its SGAT language.

**DISPUTED ISSUE NO. 5: Whether Qwest must pay Reciprocal Compensation to the CLEC for Calls Terminated to ISP's Served by the CLEC**

**a. Qwest and CLEC Positions**

83. On April 14, 2000, AT&T, MCIW and Sprint jointly submitted their Statement of Position addressing reciprocal compensation for ISP traffic. The treatment of ISP traffic from consideration as a Checklist Item 13 issue was removed by the FCC in the Bell Atlantic ("BANY") Order based upon its ISP order.<sup>10</sup> That order was eventually vacated by the D.C. Circuit. The D.C. Circuit found that such calls most likely terminate at the ISP and are, therefore, local calls.

84. Based on the D.C. Circuit Court ruling on this issue, the CLECs argue that Qwest should be directed to modify its Arizona SGAT to treat ISP traffic as local traffic subject to reciprocal compensation. They argue that Qwest's SGAT section 7.3.4.1.3 should be changed to read as follows:

~~As set forth above, t~~The parties agree that reciprocal compensation ~~only~~ applies to Exchange Service (EAS/Local) Traffic and further agree ~~that the FCC has determined~~ that traffic originated by either party (the "Originating Party") and

<sup>10</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 et.al., Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (Rel. February 26, 1999).

delivered to the other Party, which in turn delivers the traffic to the enhanced service provider (the "Delivering Party") is interstate Exchange Service (EAS/Local) Traffic in nature. ~~Consequently, the Delivering Party must identify which, if any, of this traffic is Exchange Service (EAS/Local) Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be Exchange Service (EAS/Local) Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.~~

85. On April 21, 2000, Qwest submitted its Statement of Position on the appellate rulings and its effect, if any, on Checklist Item 13. Qwest argued that neither court decision affects the treatment of ISP reciprocal compensation in this docket and remains irrelevant to Section 271 and Checklist Item 13.

86. Qwest notes that the FCC's ISP Order ruled that reciprocal compensation was not required under Section 251 of the Telecommunications Act of 1996. Subsequently, in the BANY Order, the FCC dealt with the issue of whether ISP reciprocal compensation was required under Checklist Item 13 of Section 271. In the latter instance, the FCC ruled that ISP reciprocal compensation was not a requirement under 271. Qwest states that this ruling was not affected by either of the appellate rulings at issue, including the D.C. Circuit's decision in Bell Atlantic, except insofar as the Fifth Circuit opinion confirmed the correctness of the FCC's reasoning.

**b. Discussion and Staff Recommendation**

87. Since this issue was briefed by the parties, the FCC issued its Order on Remand and Report and Order.<sup>11</sup>

88. In its Order on Remand and Report and Order, the FCC found that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. ISP Remand Order at para. 1. The FCC once again found that Section 251(b)(5) do not extend to ISP-bound traffic and that the traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act. *Id.*

89. Under prior FCC 271 orders, the FCC had also found that ISP-bound traffic was not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2); and was therefore, irrelevant to Checklist Item 13.<sup>12</sup> In that the FCC has ruled once again that ISP-bound traffic is not subject to the provisions of section 251(b)(5), it is irrelevant to this Commission's findings as to whether Qwest meets the requirements of Checklist Item 13. In addition, Qwest is, to the Commission's knowledge, following the

<sup>11</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 et al., Order on Remand and Report and Order (Rel. April 27, 2001) ("ISP Remand Order").

<sup>12</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.

ACC's interpretations and requirements promulgated under its interpretation of existing interconnection agreements decided before the FCC issued its recent ISP Remand Order.

90. However, Qwest is hereby required to revise its SGAT to be consistent with the recent FCC order, and this Commission's determinations resulting from the wholesale pricing docket.

#### **f. Verification of Compliance**

91. Section 271(c)(2)(B)(xiii) of the Act requires a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)". In turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

92. Based upon the record, and subject to Qwest revising its SGAT to incorporate the impasse resolutions contained in subpart f above, Staff believes that Qwest has demonstrated that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) and that it satisfies the requirements of Checklist Item 13.

93. Qwest has agreed to allow CLECs to opt into any revised SGAT language resulting from the Workshops and this proceeding.

## **II. CONCLUSIONS OF LAW**

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, *inter alia*, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Section 271(c)(2)(B)(xiii) of the Telecommunications Act of 1996 requires Qwest to provide access and interconnection arrangements which includes reciprocal compensation in accordance with the requirements of Section 252(d)(2).

8. Section 252(d)(2) provides that for purposes of compliance by an ILEC with Section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

9. As a result of the proceedings and record herein, Qwest provides access and interconnection arrangements which include reciprocal compensation in accordance with the requirements of Section 252(d)(2), subject to its incorporating revisions to its SGAT which reflect the Commission's findings in subpart f above.