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ORIGINAL

PUBLIC VERSION

BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman
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MARC SPITZER
Commissioner

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IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE WITH
§ 271 OF THE
TELECOMMUNICATIONS ACT OF
1996.

DOCKET NO. T-00000B-97-0238

**BRIEF OF QWEST CORPORATION IN
SUPPORT OF ITS COMPLIANCE WITH
THE REQUIREMENTS OF 47 U.S.C. § 272**

Qwest Corporation ("QC" or "the BOC") respectfully submits this brief to address the Section 272 issues raised in this proceeding.

INTRODUCTION

To receive Section 271 interLATA relief, a BOC must demonstrate that "the requested authorization will be carried out in accordance with the requirements of section 272."¹ Section 272 defines the separate structure and business relationship that the BOC must establish with its affiliate that will be providing interLATA services following Federal Communications Commission ("FCC") approval.

Sections 272(a) and (b) require this affiliate to be structurally "separate" from the BOC. Specifically, Section 272(b) requires the separate affiliate to operate independently; maintain separate books, records and accounts in accordance with FCC rules; have separate officers, directors and employees; not to permit a creditor to have recourse to the BOC's assets in case of default; and to conduct all transactions with the

¹ 47 U.S.C. § 271(d)(3)(B).

BOC at arm's length and reduce any such transactions to writing and make them available for public inspection. 47 U.S.C. § 272(b)(1)-(5). Section 272(c) requires the BOC to account for transactions with its 272 affiliate in accordance with FCC-approved accounting principles and prohibits the BOC from discriminating in favor of its Section 272 affiliate in the provision of goods and services. *Id.* § 272(c). Section 272(d) requires a biennial audit of the BOC's compliance with Section 272 by an independent auditor following receipt of interLATA authorization. *Id.* § 272(d)(2). Section 272(e) imposes certain non-discrimination and accounting requirements on the BOC concerning telephone exchange and exchange access. *Id.* § 272(e). Finally, Section 272(g) requires that a 272 affiliate "may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service" to do so as well. *Id.* § 272(g). These requirements generally sunset three years after the FCC approves a BOC's 271 application, although the FCC may extend that period. *Id.* § 272(f)(1).

While these structural and transactional separation requirements are extensive, they do not mandate that a BOC and its 272 affiliate be wholly unrelated. The 272 affiliate is, of course, an "affiliate," defined in the Communications Act of 1934 (the "Act") to include an entity "under common ownership or control with" another entity. *Id.* 47 U.S.C. § 153(1). Accordingly, the FCC has rejected the argument that Section 272 requires "fully separate operations."² Indeed, the FCC has noted that "such provisions as the arm's length requirement in section 272(b)(5), the nondiscrimination requirement in section 272(c)(1), the Commission's accounting principles implemented in accordance

with section 272(c)(2), and the joint marketing provision in section 272(g) suggest that Congress envisioned the type of sharing” that the BOCs’ entrenched long distance competitors argued -- and that AT&T continues to argue here -- should be prohibited.³

In the prefiled testimony of Judith L. Brunsting and Marie E. Schwartz, QC demonstrated that it has established an affiliate, Qwest Communications Corp. (“QCC”), that will comply with each of Section 272’s foregoing separation requirements. QC further showed that QC and QCC have adopted a wide range of internal training programs and accounting and other controls designed to make this commitment a reality -- controls that are “reasonably designed to prevent, as well as detect and correct, any noncompliance with section 272.”⁴

Ms. Brunsting, Senior Director, 272 Business Development, is responsible for implementing the Section 272 compliance requirements for QCC.⁵ She has provided comprehensive testimony demonstrating that QCC is prepared to offer service in compliance with Section 272 once QC obtains 271 approvals, and that in fact QCC is 272-compliant now. In particular, she has confirmed the following:

² Third Order on Reconsideration, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 14 FCC Rcd 16,299 ¶ 18 (1999) (“*Third Order on Reconsideration*”).

³ *Id.*

⁴ Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18,354 ¶ 398 (2000) (“*SBC Texas Order*”); Memorandum Opinion and Order, *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*, 15 FCC Rcd 3953 ¶ 405 & n. 1253 (1999) *aff’d AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000) (“*BANY Order*”).

⁵ Judith L. Brunsting Rebuttal Affidavit (filed May 29, 2001), 7 Qwest 4 (“*Brunsting Ariz. Rebuttal Aff.*”) at 1. Mrs. Brunsting was also previously employed by Qwest Long Distance, Inc. (“*Qwest LD*”), the prior Section 272 affiliate of QC, from March 1997 until March 26, 2001, and held the position of Director, Regulatory and Network. In the Matter of U S WEST Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. T-00000A-97-0238, Transcript, June 11-12, 2001 (“*Ariz. Tr.*”), at 32-33, 45 (June 11). Prior to the Qwest – U S WEST merger, Qwest LD was named U S WEST Long Distance, Inc. (“*U S WEST LD*”).

1. QCC is a separate subsidiary. Both QCC and QC are wholly owned indirect subsidiaries of Qwest Communications International Inc. ("QCI"). Neither QCC nor QC owns any stock in the other. Judith L. Brunsting Affidavit (filed March 26, 2001), 7 Qwest 3 ("Brunsting Ariz. Direct Aff.") at 5-6.

2. QCC does not and will not jointly own with QC any telecommunications transmission and switching facilities, or the land and buildings on which such facilities are located. QCC is not providing and will not provide operations, installation, or maintenance ("OI&M") services in connection with QC's switching and transmission facilities. Nor will it accept such services from QC or any of its affiliates. *Id.* at 7-8.

3. QCC maintains a Chart of Accounts separate from that of QC, has a separate ledger system and maintains separate accounting software, which is kept at a separate geographic location. *Id.* at 9-11; 6/11/01 Ariz. Tr. at 74.

4. QCC and QC do not and will not have overlapping officers, directors, or employees. Brunsting Ariz. Direct Aff. at 11-12. All services performed by one of these corporations for the other are documented by work orders or task orders, and the rates, terms, and conditions are available for public inspection. *Id.* at 13-14.

5. QCC is separately capitalized by a non-BOC financial subsidiary of QCI. It has not requested and will not request any co-signature that would allow a creditor to obtain recourse to QC's assets. Its intracorporate debt is non-recourse to QC, and its Master Services Agreement with QC provides that QCC's contracts are non-recourse to QC. *Id.* at 16.

6. QCC will account for all transactions with QC in accordance with the FCC's affiliate transaction rules, and such transactions are and will be posted on QCI's Internet Home Page site. *Id.* at 17.

7. QCC is prepared to follow the joint marketing restriction of Section 272(g). *Id.* at 18-19.

8. QCC informs employees about the guidelines to restrict the sharing of nonpublic information between Qwest entities. Brunsting Ariz. Rebuttal Aff. at 8. QCC has also implemented a series of other controls designed to ensure compliance with the requirements of Section 272, including internal controls and external audits, training programs and materials, a compliance advice telephone line, and color-coded employee badges. *Id.* at 8-9; Brunsting Ariz. Direct Aff. at 13, 14, 17-18, 19-20.

Ms. Schwartz, Director in FCC Regulatory Accounting for QC, the BOC, is responsible for ensuring QC's regulatory accounting compliance with Section 272.⁶ Ms.

⁶ Marie E. Schwartz Affidavit (filed March 26, 2001), 7 Qwest 1 ("Schwartz Ariz. Direct Aff."), at 1.

Schwartz has separately confirmed that QC, too, is prepared to satisfy each of the requirements of Section 272 applicable to the BOC. Schwartz Ariz. Direct Aff. at 8-34. She has corroborated Ms. Brunsting's testimony, and has described additional controls to establish Section 272 compliance that include the following:

1. QC is monitoring asset transfers on a quarterly basis to ensure against joint ownership of network facilities. *Id.* at 12.
2. To ensure that QC will not perform OI&M functions for QCC, over 50 network department leaders received extensive one-on-one training. *Id.* QC has implemented a number of additional training programs and procedures designed to ensure Section 272 compliance, which are summarized below. *See id.* at 21-22, 35-37, & Exhs. MES-9 to MES-12C (confidential).
3. QC requires QCC to contact QC's IXC Sales Executive Team representative to obtain services in the same non-discriminatory manner as every interexchange carrier. *Id.* at 26-27. New requests are forwarded to QC's FCC/Regulatory Compliance Manager for review. *Id.* QC's Compliance Oversight Team, which is comprised of regulatory accounting, legal, and public policy experts, assesses the nondiscrimination obligation concerning the requested service. *Id.* at 22, 27 & Exh. MES-5. QCC is neither represented on nor a member of this team. Brunsting Ariz. Rebuttal Aff. at 13.
4. On a monthly basis, QC reconciles its Internet postings of transactions with QCC against its billing data, in order to correct any discrepancies on a prompt basis. Ariz. Tr. at 42-43.

These extensive showings concerning the intention of both QCC and QC to comply with each of the requirements of Section 272 were modeled after, and are consistent with, those provided in support of the showings approved by the FCC in its earlier 271 approval orders, as well as with the FCC's *Accounting* and *Non-Accounting Safeguards Orders*.⁷

ARGUMENT

⁷ Report and Order, *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17,539 (1996) ("*Accounting Safeguards Order*"); First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21,905 (1996) ("*Non-Accounting Safeguards Order*").

I. THE TRANSITION FROM QWEST LD TO QCC AS QC'S SECTION 272 AFFILIATE FOLLOWING THE QWEST - U S WEST MERGER DEMONSTRATES THAT QC HAS TAKEN ITS SECTION 272 RESPONSIBILITIES SERIOUSLY.

We address below the specific testimony relating to each of the requirements of Section 272 as they relate to the issues identified by the parties in the Arizona and multistate workshops. However, a number of these issues relate to the transition from Qwest LD to QCC as QC's Section 272 affiliate, which QC did not implement until March 26, 2001. A primary theme of AT&T's testimony appears to be that QCC became a Section 272 affiliate by operation of law as of the date of the Qwest – U S WEST merger on June 30, 2000, and that its failure to be Section 272 compliant on that date means that it is not Section 272 compliant now. Thus, as AT&T acknowledged at the workshop, if the relevant date for QCC's compliance with Section 272 is the date on which it was established as QC's Section 272 affiliate, that conclusion "probably is going to eliminate a lot of the issues."⁸

AT&T's testimony obscures the most important fact about QCC's compliance with Section 272: virtually all of the claims made by AT&T involve the timeliness of posting or accounting for transactions that either predate QCC's being identified as the Section 272 affiliate, or that occurred during the less than three-month transition period in which QCC was being retooled as such.⁹ This focus ignores Qwest LD's prior and continuing record of compliance with the affiliate transaction rules; QCC's current record; the comprehensive review, posting, and accounting for all of QCC's prior transactions in the three-month period of establishing it as the Section 272 affiliate;

⁸ 6/11/01 Ariz. Tr. at 126.

QCC's clear commitments and extensive procedures for future Section 272 compliance; and QC's comprehensive system of accounting and other controls. AT&T would prefer that the Commission examine instead whether QCC happened to meet the extensive requirements for a Section 272 affiliate *before it was even identified as such*, or during this brief transition period.

This argument makes no sense. Section 272 is necessarily forward looking. BOCs cannot provide the kinds of in-region, interLATA services required to be provided through Section 272 affiliates until and unless they receive 271 approvals from the FCC to do so.¹⁰ Thus, the FCC must find, in reviewing a Section 271 application, that such future services "*will be carried out* in accordance with the requirements of Section 272."¹¹

AT&T's testimony relies heavily on the FCC's observation that this finding will be informed by a review of the applicant's "past and present behavior."¹² But this hardly means that the FCC intends to ignore a record of past compliance by a BOC's former 272 affiliate, and a record of present compliance by its current 272 affiliate, in favor of evidence about an affiliate that was not following Section 272 procedures when it was not a 272 affiliate and was previously engaged in wholly unrelated activities.

Ameritech Michigan, upon which AT&T purports to rely, is not to the contrary. That case involved Ameritech's effort to demonstrate that ACI met the requirements of Section 272(b). The FCC held that ACI had not met those requirements. But even in that

⁹ In the Matter of Investigation into U S WEST Communications, Inc.'s Compliance with section 271 of the Telecommunications Act of 1996, Seven State Collaborative Section 271 Workshop, 6/7/01 Transcript, Public Version, June 7, 2001, ("6/7/01 MS Tr.") at 165-66.

¹⁰ 47 U.S.C. § 272(a).

¹¹ *Id.* § 271(d)(3)(B) (emphasis added).

¹² Cory W. Skluzak Affidavit (filed May 17, 2001) 7 AT&T 1 ("Skluzak Aff.") ¶ 53 (citing *Ameritech Michigan Order* ¶ 347).

context, the FCC did not then proceed to adopt the view that AT&T is taking here – that instances of “past noncompliance” disqualify a BOC from demonstrating its ability to comply with Section 272 in the future. The FCC simply instructed Ameritech and ACI to address the issue “in order to demonstrate compliance . . . in a future application.”¹³

Here, that is what QCC has done in its comprehensive three-month review of all of its prior transactions with QC back to the date of the merger.¹⁴ Similarly, in approving the SBC-Ameritech merger, the FCC noted that the advanced services affiliate created at the time of the merger would not be qualified to provide interLATA services until such time as it complied with the conditions of Section 272.¹⁵ Under AT&T’s view of Section 272, the FCC would have concluded that SBC-Ameritech had disqualified itself from ever providing interLATA services through such an affiliate because that affiliate had not been instantaneously pre-qualified to do so.

Moreover, Congress itself recognized in Section 272(h) what the FCC later did in SBC-Ameritech -- that the requirements for Section 272 separation are extensive and therefore “you don’t turn a 272 up on [a] dime.”¹⁶ Thus, even in those situations in which a BOC had pre-1996 Act permission to provide in-region interLATA services, Congress provided it with a full year to come into compliance with these separation

¹³ Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20, 543 ¶ 371 (1997) (“*Ameritech Michigan Order*”).

¹⁴ See Brunsting Ariz. Rebuttal Aff. at 4-5; Marie E. Schwartz Rebuttal Affidavit (filed May 29, 2001) 7 Qwest 2 (“*Schwartz Ariz. Rebuttal Aff.*”) at 5, 7; 6/11/01 Ariz. Tr. at 77. In fact, QC has made all Section 272 affiliate transactions since February 8, 1996, the date of passage of the Telecommunications Act of 1996, publicly available. Schwartz Ariz. Direct Aff. at 23.

¹⁵ Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, for Consent to Transfer Control*, 14 FCC Rcd 14,712, at App. C n. 40 (1999).

¹⁶ 6/8/01 MS Tr. at 143.

requirements.¹⁷ Indeed, in the Nebraska workshop, AT&T itself acknowledged that “[t]here has to be some amount of transition time” to effectuate Section 272 compliance.¹⁸

Contrary to AT&T’s suggestions, there was nothing nefarious about the transition from Qwest LD to QCC as the company’s Section 272 affiliate of choice. As the extensive testimony has made clear, this decision involved a rational change of business strategy by the newly merged entity to allow QC to use a Section 272 affiliate that had acquired extensive long distance experience, which Qwest LD (formerly U S WEST LD) had been legally barred from obtaining.

As noted above, this particular transition was occasioned by an unprecedented merger, between a BOC and the parent of QCC, which was the fourth largest interexchange carrier in the United States. The FCC order approving that merger required the merged entity to divest all of QCI’s in-region interLATA operations prior to that date, in order to comply with Section 271.¹⁹ Thus, after the closing, QCC was no longer permitted to provide the kinds of interLATA services that, following the merger, would have required it to comply with Section 272.

Nevertheless, the merger significantly transformed U S WEST and had significant impacts on all operational areas of its business. It “required the integration of a

¹⁷ 47 U.S.C. § 272(h). Of course, Section 272(h) was addressing the question of how long it should take to comply with Section 272 when a BOC was providing in-region interLATA activities on the date of enactment of the 1996 Act. But this provision reflects an analogous recognition by Congress that the requirements of Section 272 are extensive enough to require considerable time in which to come into compliance -- even where the BOC is *already* providing in-region interLATA services. Here, QCC has already come into compliance with Section 272 in a far shorter period than one year, and well in advance of providing such interLATA services following receipt of 271 approvals.

¹⁸ In the Matter of Qwest Corporation, Denver, Colorado, Seeking Approval of its Revised Statement of Generally Available Terms (SGAT) Pursuant to Section 252(f) of the 1996 Telecommunications Act, Application No. C-1830, C-2537 Transcript, July 9, 2001, (“NE Tr.”) at 249-250, 264.

nonregulated corporate culture with a regulated culture.”²⁰ Given the new perspective of the merged entity, the merger ultimately led to a number of strategic and operational changes. Among these was the decision to revisit business plans for how best to introduce interLATA service following future receipt of Section 271 approvals. These strategic discussions did not begin until the fall of 2000.²¹ In January 2001, they ultimately led to a decision to abandon the strategy of relying on U S WEST’s prior resale model for providing interLATA service, using U S WEST LD,²² in favor of integrating such future in-region interLATA service into the extensive out-of-region facilities-based long distance network that QCC had established long before the merger.²³

Once QCI determined to make this change, Ms. Brunsting led a team that moved quickly to overlay on QCC the extensive Section 272 requirements to which Qwest LD had already been subject.²⁴ This overlay, however, “c[ould]n’t happen overnight.”²⁵ Unlike Qwest LD (formerly U S WEST LD), which had long been an affiliate of a BOC, QCC had no affiliations previous with a BOC. Thus, as Ms. Brunsting explained, the overlay took from approximately January 15 to March 26, 2001, and required numerous steps.²⁶ These included a review of QCC’s asset records to ensure against prohibited joint ownership, implementation of the special billing controls required for a Section 272 affiliate, realignment of employees, examination of contract provisions to ensure against

¹⁹ Memorandum Opinion and Order, *Qwest Communications International, Inc. and U S WEST, Inc. Applications for Transfer of Control*, 15 FCC Rcd 5376 ¶ 3 (2000).

²⁰ 6/11/01 Ariz. Tr. at 21.

²¹ Brunsting Ariz. Direct Aff. at 6.

²² As noted above, following the merger U S WEST LD was renamed Qwest LD.

²³ Schwartz Ariz. Direct Aff. at 7.

²⁴ 6/11/01 Ariz. Tr. at 33-34; 6/7/01 MS Tr. at 218.

²⁵ 6/7/01 MS Tr. at 239.

²⁶ In the Matter of Investigation into U S WEST Communications, Inc.’s Compliance with section 271 of the Telecommunications Act of 1996, Seven State Collaborative Section 271 Workshop, 6/8/01 Transcript, Public Version, June 8, 2001, (“6/8/01 MS Tr.”) at 146.

recourse to QC, and a review of every transaction between QC and QCC following the merger.²⁷ QC supplemented its staff with accounting professionals from Arthur Andersen in its efforts to identify all of these transactions, in a review that included the conduct of approximately 150 interviews with BOC personnel to identify services being provided between the BOC and the affiliate.²⁸ By the end of March 2001, QCC was able to turn up a new website with all the transactions posted that had been identified by this extensive process.²⁹ As a result, billing of QCC and QC does and will continue to occur regularly as specified in the agreements posted on the Internet.³⁰ Meanwhile, Qwest LD has also posted its QC transactions,³¹ and accrued those transactions,³² on a timely basis.

Thus, the transition of QCC to a Section 272 affiliate following the merger hardly suggests the absence of any commitment to the requirements of Section 272. It demonstrates that QC has continued to take its Section 272 responsibilities seriously following the transition from Qwest LD, and that it has established a series of controls, discussed below and in the record, that will help to ensure Section 272 compliance once QCC is permitted to provide in-region interLATA service.

II. QC HAS DEMONSTRATED THAT QCC WILL PROVIDE IN-REGION INTERLATA SERVICES IN ACCORDANCE WITH EACH OF THE REQUIREMENTS OF SECTION 272.

As noted above, Section 272 includes a variety of specific separation requirements, and QC has provided testimony demonstrating that it will comply with each of them. AT&T has challenged only certain of these showings, and the parties have

²⁷ Schwartz Ariz. Rebuttal Aff. at 7; 6/8/01 MS Tr. at 143-45.

²⁸ Schwartz Ariz. Direct Aff. at 19. A subsequent final count of these interviews indicates that the total number was approximately 140.

²⁹ *Id.* at 19-20; Schwartz Ariz. Rebuttal Aff. at 6-7.

³⁰ Schwartz Ariz. Rebuttal Aff. at 8.

³¹ 7 Qwest 13; Brunsting Ariz. Rebuttal Aff. at 11.

³² See pages 24-29 *infra*.

identified six impasse issues on which to focus their briefs.³³ We address these issues below as they address the specific subsections of Section 272.

A. Sections 272(a) and (b)

Section 272(a) provides that a BOC may not provide in-region interLATA services except through an affiliate that is both “separate” from the BOC and meets the requirements of Section 272(b). 47 U.S.C. § 272(a)(1)(A)-(B). AT&T does not take issue with QC’s showing that QCC is separate from QC – *i.e.*, that both are wholly owned by the same parent rather than investors in each other, and that they do not jointly own transmission and switching facilities or provide each other with OI&M services in connection therewith. Thus, AT&T acknowledges that “[i]f you meet 272(B) . . . you would meet 272(A).”³⁴

Most of the Section 272 separation requirements are contained in Section 272(b). QC has demonstrated that QCC is prepared to satisfy those requirements, and AT&T has conceded in its testimony that some of its original objections here are no longer at issue.³⁵ Its remaining concerns relate to the requirements that the separate affiliate (1) maintain its separate books, records, and accounts in accordance with the accounting methods approved by the FCC; (2) have separate officers, directors and employees; and (3) post a description of each of its transactions with the BOC on the Internet within 10 days.

1. Separate Books, Records and Accounts (AZ Issue 272-1)³⁶

³³ See Issues Log for the Arizona Workshop on Section 272 Issues, 7 Qwest 5. In the multistate workshop on 272 issues, the parties identified 20 separate impasse issues. These are designated throughout this brief as MS Issue 1, MS Issue 2, etc.

³⁴ 6/7/01 MS Tr. at 176. As a result, MS Issue 1, relating to Section 272(a), is essentially duplicative of the Section 272(b) issues.

³⁵ AT&T now acknowledges that QC and QCC have separate charts of accounts and, although Section 272 does not require that they do so, use separate accounting software. See 6/7/01 MS Tr. at 189, 191 (separate software and operating locations, one in Virginia and one in Colorado). See also 6/11/01 Ariz. Tr. at 25 (discussing separate charts of accounts).

³⁶ MS Issues 2 and 3.

Section 272(b)(2) provides that the 272 affiliate “shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate.” 47 U.S.C. § 272(b)(2). The FCC further requires a Section 272 affiliate to maintain its books, records and accounts pursuant to Generally Accepted Accounting Principles (“GAAP”), and separate from the BOC.³⁷

QCC has demonstrated that it follows GAAP.³⁸ AT&T claims otherwise. QCC’s separate books, records, and accounts are maintained in accordance with GAAP and consolidated into QCI’s financial statements.³⁹ The audit opinion of Arthur Andersen accompanying QCI’s consolidated financial statements confirms that QCI also follows GAAP in all material respects with respect to these consolidated operations.⁴⁰ The FCC has found that such a showing “provides sufficient assurances that [a 272 affiliate] maintains its books, accounts, and records in accordance with GAAP.”⁴¹ QC also follows GAAP.⁴² It also has consistently complied with the FCC’s affiliate transaction rules, as confirmed by Arthur Andersen’s Joint Cost Audit of a representative sample of QC’s affiliate transactions.⁴³ The FCC’s reviews of QC’s ARMIS reports have not

³⁷ Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20,599 ¶ 328 (1998) (“*BellSouth Louisiana II Order*”); *Accounting Safeguards Order* ¶ 170.

³⁸ Brunsting Ariz. Direct Aff. at 9; 6/11/01 Ariz. Tr. at 25-26.

³⁹ Brunsting Ariz. Direct Aff. at 9.

⁴⁰ 6/7/01 MS Tr. at 150. *See also* Qwest Auditor’s Opinion, 7 Qwest 7.

⁴¹ *BellSouth Louisiana II Order* ¶ 328 & n.1029 (BSLD submitted evidence of corporate policies and instructions and an independent audit program to ensure GAAP compliance and a Form 10-K indicating that independent accountants audited Bell South Corporation’s consolidated financial statements). QCC has provided each of these items as well. Brunsting Ariz. Direct Aff. at 9, 10-11.

⁴² Schwartz Ariz. Direct Aff. at 15.

⁴³ *Id.* at 28-29.

identified any discrepancies with respect to QC's affiliate transactions in the past three years.⁴⁴

AT&T's claims concerning GAAP really involve only one issue: whether QCC has timely accrued and paid for its expenses attributable to QC (and vice versa). These issues are discussed below in connection with the affiliate transaction rules. However, as the Facilitator recognized at the multistate workshop, GAAP is "not really where it's at here" in these Section 272 proceedings; the real issue here is whether the transactions are "being posted timely" and "giving CLECs what they need to know."⁴⁵ As shown below, since its transition to become the Section 272 affiliate on March 26, 2001, QCC has been posting these transactions in less than half the time required by the FCC and with all the detail required by the FCC for the benefit of other interexchange carriers.

2. Separate Officers, Directors and Employees (AZ Issues 272-2 and 272-3)⁴⁶

Section 272(b)(3) provides that the 272 affiliate "shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate." 47 U.S.C. § 272(b)(3). This requirement "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."⁴⁷ And it does not prohibit overlaps between a Section 272 affiliate and the parent of a BOC (such as QSC or its parent, QCI). In this case, QCC and QC provided detailed lists of officers and directors, which contain no overlap.⁴⁸ The BOC also

⁴⁴ *Id.* at 29.

⁴⁵ 6/7/01 MS Tr. at 183-84.

⁴⁶ MS Issues 5-10.

⁴⁷ *Non-Accounting Safeguards Order* ¶ 178 (emphasis added).

⁴⁸ Brunsting Ariz. Direct Aff. at 12 and Exhs. JLB-5 and JLB-6; 6/11/01 Ariz. Tr. at 26.

In the multistate workshop, AT&T raised concerns about the positions held by two officers, Robin Szeliga and Augustine Cruciotti. See 6/7/01 MS Tr. at 247-249. Ms. Szeliga is the Executive Vice President and Chief Financial Officer of QCC. In the Matter of Qwest Corporation's Compliance with §

conducted an analysis of the payroll registers of both entities, again demonstrating no such overlap.⁴⁹ AT&T has made no claim to the contrary.⁵⁰ A comparison of the QC and QCC officer and director lists and a payroll comparison satisfies the FCC's test for Section 272(b)(3) compliance.⁵¹ AT&T also concedes that the FCC does not require separate payroll administration.⁵² The payroll function for both QC and QCC is performed by QC at published rates, terms and conditions that are available to other carriers.⁵³ This is expressly permitted under the *Non-Accounting Safeguards Order*, in order to permit "the economies of scale and scope inherent in offering an array of services."⁵⁴

AT&T's remaining Section 272(b)(3) concerns are efforts to challenge the very fact that QC and QCC are affiliates controlled by a common parent, or to relitigate the

272 of the Telecommunications Act of 1996, Seven State 271 Collaborative Process, Rebuttal Testimony of Judith L. Brunsting (May 23, 2001) ("Brunsting MS Rebuttal") at 9-10. She is no longer an officer of QC, and was not an officer of QC when she signed the officer verification for QC. 6/7/01 MS Tr. at 251-253. At that time, the position of controller of QC had not yet been filled; she was a financial officer of the parent of QC and had also previously signed the ARMIS reports for QC. *Id.* However, the certification to the FCC requires the signature of a BOC officer. *Id.* Accordingly, QC replaced the certification with one signed by Mark A. Schumacher, controller for QC, on May 11, 2001. *See* Schwartz Ariz. Rebuttal Aff. at MES-1. Ms. Szeliga signed in error because "she did not realize that she had to be an officer of the BOC to make the certification." 6/7/01 MS Tr. at 254. Since QCC became the 272 affiliate on March 26, 2001, Augustine Cruciotti has not been an officer, director or employee of QCC. Mr. Cruciotti is an employee and officer of QSC and a Director of QC. In the Matter of Investigation into U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996, Seven State Collaborative Section 271 Workshop, 6/8/01 Transcript, Confidential Version, June 8, 2001 ("6/8/01 MS confidential Tr.") at 265.

⁴⁹ Schwartz Ariz. Direct Aff. at 16 (payroll analysis of QC and QCC, identified as "272 Affiliate"); 6/11/01 Ariz. Tr. at 26.

⁵⁰ *See* 6/7/01 MS Tr. at 295.

⁵¹ *BANY Order* ¶ 409 & n.1261; *SBC Texas Order* ¶ 401 n.1164.

⁵² 6/8/01 MS Tr. at 25:

MR. SKLUZAK: . . . Issue two, on the separate payroll administration, Ms. Schwartz is correct. I was in error when I said that it was an FCC requirement that there be separate payroll administration.

⁵³ 6/7/01 MS Tr. at 190:

MS. SCHWARTZ: The payroll functions are performed at Q[w]est Corporation, the BOC. And that is – that's identified on the Internet and available for other interexchange carriers. The BOC provides payroll services for the Qwest family of companies and bills and prices accordingly.

⁵⁴ *Non-Accounting Safeguards Order* ¶¶ 178-81.

legitimacy of employee transfers or sharing arrangements, the benefits of which the FCC has expressly recognized.⁵⁵

Subsidiary-Parent Relationship. As noted above, the Act specifically contemplates that the BOC and the 272 affiliate would both have the same parent company; that is inherent in the very definition of an affiliate. In the *Non-Accounting Safeguards Order*, the FCC made this point clear.⁵⁶ Additionally, in the *Ameritech Michigan Order*, the FCC stated that having the Presidents of both the BOC and the 272 affiliate reporting to the same officer in the parent company “underscores the importance of the separate directors requirement.”⁵⁷ The FCC did not prohibit this structure; it simply noted that the reporting structure would highlight the need for the separate directors requirement (with which QC and QCC fully comply). In *BellSouth Louisiana II*, the FCC rejected a similar AT&T argument requiring any specification of the “reporting structure of [the BOC’s] officers,” and made clear that “[n]either the statute nor our implementing regulations require a BOC to outline the reporting structure of its affiliate’s Board of Directors.”⁵⁸

As the FCC recognized in *Ameritech Michigan*, “[g]enerally, corporate officers report to their board of directors.”⁵⁹ That general principle is applicable here: the

⁵⁵ *Third Order on Reconsideration* ¶ 18.

⁵⁶ *Non-Accounting Safeguards Order* ¶ 182.

⁵⁷ *Ameritech Michigan Order* ¶ 362.

⁵⁸ *BellSouth Louisiana II Order* ¶ 330. The holding in *Ameritech Michigan* is not to the contrary. In that case, neither the BOC nor the 272 affiliate had any directors at all. State law in those unusual circumstances deemed the sole shareholder of both companies (the parent company) to be the “director” of both companies. *Ameritech Michigan Order* ¶ 353. QC and QCC do have Boards of Directors, and the directors do not overlap.

⁵⁹ *Ameritech Michigan Order* ¶ 362.

fiduciary obligation of the QCC officers is to the QCC directors.⁶⁰ The fact that the boards of both QC and QCC are in turn answerable to a common shareholder parent does not raise any Section 272 concerns. To the contrary, this structure is specifically contemplated by the Act.

Employee Transfers. Nor is the transfer of employees between a BOC and its Section 272 affiliate barred by Section 272. As noted above, the FCC found in the *Non-Accounting Safeguards Order* that Section 272(b)(3) simply prohibits “simultaneously” serving as an employee of both.

However, QC and QCC have put safeguards in place designed to eliminate the flow of information and the use of proprietary information following any such transfer to another company in the Qwest corporate family. QC and QCC have adopted procedures that an employee leaving QCC for another QC affiliate must follow. Prior to resignation, a departing 272 affiliate employee must return 272-affiliate-owned assets and account for documents in his/her possession, and must review and sign an acknowledgment form stating that the employee no longer has access to QCC information or other assets and may no longer disclose QCC information after his/her departure date.⁶¹ Upon acceptance of a position with another Qwest entity, the employee is also required to sign a non-disclosure statement to prevent the sharing of non-public information between the companies.⁶²

⁶⁰ In the Matter of Qwest’s Compliance with § 271 of the Telecommunications Act of 1996, Seven State 271 Collaborative Process, Testimony of Judith L. Brunsting Re: 272 (March 30, 2001) (“Brunsting MS Direct”) at 16.

⁶¹ Brunsting Ariz. Direct Aff. at 14; Brunsting Ariz. Rebuttal Aff. at 8 and Exhs. JLB-11 and JLB-12.

⁶² Brunsting Ariz. Rebuttal Aff. at 8.

QC and QCC also have implemented ongoing procedures and training programs to ensure that they conduct business in accordance with the provisions of Section 272. These programs are mandatory, not voluntary.⁶³ Employees are required to review the Code of Conduct annually, which provides guidelines governing the relationship and business transactions between the various affiliates of QC.⁶⁴ In addition, 272 compliance training is conducted as new employees join QCC, QC or any other Qwest affiliate.⁶⁵ The training and Code of Conduct emphasize that violations of these policies or guidelines will not be tolerated.⁶⁶ Employees who violate these policies or guidelines are subject to disciplinary action up to and including termination from employment.⁶⁷ In addition to educating employees about 272 rules, Qwest also has a policy to separate the offices of QC and QCC employees, and a “dot” program of color-coded badges to identify QC, QCC and QSC employees.⁶⁸

Mr. Skluzak seemed to rely on the fact that the FCC’s biennial audit procedures require later collection of information about employee transfers to suggest that the FCC prevents or restricts such transfers. But such guidelines do not and cannot overrule the clear language of the *Non-Accounting Safeguards Order* limiting the statutory restriction to simultaneous employment. Rather, as Mr. Skluzak recognized, they reflect that “the FCC wasn’t ready to say [transfers] should be prohibited, but that they should be policed.”⁶⁹ The purpose of policing these transfers, according to the terms of these procedures, is to “determine whether the company’s internal controls have been

⁶³ *Id.* at 8-9.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* 8-9.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Schwartz Ariz. Rebuttal Aff. at 17-18.

⁶⁹ 6/7/01 MS Tr. at 293-94.

implemented.”⁷⁰ The biennial audit will therefore assess whether QCC has complied with the foregoing protections with respect to such transfers, which in any event have so far involved only approximately 100 employees moving between QC and QCC, out of a total of approximately 51,000 employees – 49,000 QC employees⁷¹ and approximately 2,000 QCC employees.⁷²

Shared Services. The FCC has expressly rejected the contention that permitting sharing of services between a BOC and its 272 affiliate would undermine the “separate employee” requirement.⁷³ Instead, the FCC has repeatedly reaffirmed the benefits “inherent in the integration of some services.”⁷⁴ Because services other than the sharing of OI&M do not involve any bottleneck transmission and switching facilities, the FCC has determined that “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 outweighs any potential for harm to competition created thereby.”⁷⁵

The BOC charges QCC the same prices for services that the BOC would charge any other carrier.⁷⁶ The pricing used by the BOC for services provided to QCC follows the pricing hierarchy of the rules contained in 47 C.F.R. § 32.27 and the *Accounting Safeguards Order*.⁷⁷ Methods and procedures are contained in the BOC’s Cost Allocation Manual (“CAM”) that has been approved by the FCC.⁷⁸ QC’s external

⁷⁰ 6/7/01 MS Tr. at 291; Skluzak Aff. at ¶ 44.
⁷¹ Qwest Corporation Form 10-K (filed April 2, 2001) at 7.
⁷² 6/7/01 MS Tr. at 159; 6/11/01 Ariz. Tr. at 50.
⁷³ *Third Order on Reconsideration* ¶ 18.
⁷⁴ *Id.*
⁷⁵ *Id.*
⁷⁶ Schwartz Ariz. Rebuttal Aff. at 21.
⁷⁷ *Id.* at 21-22.
⁷⁸ *Id.*

auditors have reviewed this process in conjunction with their audits, without any findings of non-compliance.⁷⁹ These services are also provided pursuant to written agreements posted on the Internet.⁸⁰ In these instances, other IXC's can obtain similar services and/or functions from QC under the same rates, terms and conditions.⁸¹ Likewise, when a 272 affiliate provides services to the BOC, the same Internet posting processes are followed to be in compliance with the Section 272 rules.⁸² Because QC's methods and procedures conform to the requirements of Section 272(b)(3), these issues should be resolved in QC's favor.⁸³

3. Internet Postings of Affiliate Transactions (AZ Issue 272-4)⁸⁴

Section 272(b)(5) requires that QCC make its transactions with QC "available for public inspection." 47 U.S.C. § 272(b)(5). In the *Accounting Safeguards Order*, the FCC implemented this provision by requiring a description of such transactions to be posted on the Internet within ten days of execution.⁸⁵ There is no dispute in this case that QCC is currently posting its transactions on a timely basis. Instead, AT&T argues that QC did not post transactions between QC and QCC before QCC became the Section 272 affiliate. AT&T also asserts that QC is not posting sufficient billing detail on its website. Both of these arguments lack merit.

Timeliness of Postings. QC has a long history of meeting the ten-day posting requirement. QCC's predecessor (Qwest LD) satisfied this posting requirement,

⁷⁹ See *id.*

⁸⁰ Schwartz Ariz. Direct Aff. at 16-17.

⁸¹ *Id.* at 20.

⁸² 6/7/01 MS Tr. at 300-301.

⁸³ QC and QCC have also committed to implement a policy prohibiting full-time loans of employees to each other for more than four months out of any twelve-month period. 6/12/01 Ariz. Tr. at 151; 6/8/01 MS Tr. at 175. As noted above, this is more than Section 272(b)(3) requires.

⁸⁴ MS Issues 11-14.

averaging less than six days.⁸⁶ Following the transition to QCC on March 26, 2001, postings have been completed even more promptly, with an average posting date of less than five days.⁸⁷ Moreover, QC has implemented a process of monthly reconciliations of QCC's Internet postings with the billing detail, as essentially a kind of ongoing internal audit process.⁸⁸ These reconciliations demonstrated that QCC had already reduced the discrepancies between its postings and its billings to less than 1% for postings in April 2001.⁸⁹ Pursuant to its undertaking in the workshops,⁹⁰ QC has recently supplemented the record to demonstrate that this less than 1% discrepancy rate continued after monthly reconciliations for postings in both May and June 2001 as well.⁹¹

This is the "past and present behavior" that is relevant to Section 272 compliance -- not whether an entity that was *not* yet established as a Section 272 affiliate happened to comply with the special Internet posting requirements of that provision. Moreover, QCC has posted *all* of its affiliate transactions back to the date of the merger.⁹² This was not because QCC was operating as a Section 272 affiliate as of the date of the merger; as noted above, QCC was no longer providing the in-region interLATA services requiring Section 272 status after the date of the merger. Rather, it was in order to address any concern that other interexchange carriers might not have access to this data.⁹³ In these

⁸⁵ *Accounting Safeguards Order* ¶ 122.

⁸⁶ Multistate Exh. S7-QWE-MES-13; Qwest LD Internet Posting Summary, 7 Qwest 13 (only one posting made beyond 10 days due to problems with update procedures during initial weeks after site activation in 1998).

⁸⁷ Schwartz Ariz. Rebuttal Aff. at 7-8; 6/8/01 MS Tr. at 37; 7 Qwest 9.

⁸⁸ 6/11/01 Ariz. Tr. at 28; 6/07/01 MS Tr. at 207-08; 6/8/01 MS Tr. at 141.

⁸⁹ 6/11/01 Ariz. Tr. at 39-40; 7 Qwest 6, at 16.

⁹⁰ 6/11/01 Ariz. Tr. at 28; 6/7/01 MS Tr. at 153.

⁹¹ See E-mail from Joanne Ragge to Arizona distribution list (Aug. 8, 2001) ("July QCC Reconciliation of Billing Summaries," reconciling June Internet postings); E-mail from Joanne Ragge to M. Scott, et al. (July 30, 2001) ("Qwest's QCC Updates," providing reconciliations for the April and May Internet postings). See also 6/11/01 Ariz. Tr. at 28.

⁹² Schwartz Ariz. Rebuttal Aff. at 7.

⁹³ 6/7/01 MS Tr. at 43, 46.

circumstances, as *Ameritech Michigan* makes clear,⁹⁴ QC has plainly met its burden of demonstrating that it is prepared to provide interLATA service in compliance with the posting requirements of Section 272.

Sufficient Detail in Postings. AT&T asserts that the BOC's Internet postings do not contain sufficient detail because actual billing detail and volume information are not disclosed. Contrary to Mr. Skluzak's assertions,⁹⁵ nowhere has the FCC required that individual billings under an agreement be construed as "transactions" that must be posted on the Internet. In the *BANY Order*, the FCC rejected AT&T's similar assertion that Bell Atlantic's Internet postings did not contain sufficient detail to show that Bell Atlantic would comply with Section 272(b)(5). The FCC indicated that because Bell Atlantic disclosed the number and type of personnel assigned to a 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, it had sufficiently posted the "transaction" on the Internet.⁹⁶ The general test established by the FCC is whether the transaction description is sufficiently detailed to "facilitate the purchasing decisions of unaffiliated third parties."⁹⁷

Here, QC's Internet postings contain all of these FCC-required components: rates, terms, conditions, frequency, number and type of personnel, and level of expertise.⁹⁸ As Ms. Schwartz testified:

You would be able to basically find out the rates, terms, and conditions and level of expertise. How are we providing that service? Are there VPs associated with

⁹⁴ In *Ameritech Michigan*, the FCC directed ACI (which had failed to post any of its affiliate transactions) to post such transactions "in order to demonstrate compliance . . . in a future application." *Ameritech Michigan Order* at ¶ 371.

⁹⁵ Skluzak Aff. ¶¶ 62-63.

⁹⁶ *BANY Order* ¶ 413.

⁹⁷ *Id.* ¶ 413. See also *BellSouth Louisiana II Order* ¶ 337; *SBC Texas Order* ¶ 405 n.1178.

⁹⁸ Schwartz Ariz. Rebuttal Aff. at 10; 7 Qwest 10A; 7 Qwest 10B.

the provision of the service? Directors? Technicians? What are the rates associated with that? There would also be a description of the service. What types of services or benefits can you expect if you purchase public relations service? What are you going to get for that?⁹⁹

In addition, all existing work orders and task orders are posted on the QCI home page.¹⁰⁰

In these respects, QCC has also conformed its postings to those made and approved in *SBC Texas*.¹⁰¹ And in that order, the FCC rejected *precisely the same claim* by AT&T that it raises here. SBC had submitted evidence showing that its website contained the full text of written agreements with its 272 affiliate, individual schedules showing a description of the service provided, the price charged, the execution date of the schedules, and any additional service contracts.¹⁰² SBC did not post actual billing detail.¹⁰³ In particular, it did not post “the billing details about individual occurrences of services provided pursuant to its agreements,” such as “periodic billing,” in light of the competitively sensitive nature of such details.¹⁰⁴ AT&T vigorously opposed that policy, arguing that “details of its individual transactions with SWBT” must be disclosed on the 272 affiliate’s website.¹⁰⁵ The FCC flatly rejected that argument and found SBC’s postings “sufficiently detailed” to comply with Section 272(b)(5).¹⁰⁶

AT&T’s witness did not even review the SBC website to determine what level of posting detail the FCC had deemed adequate.¹⁰⁷ Qwest did study the SBC website, as

⁹⁹ 6/8/01 MS Tr. at 62. *See also* Schwartz Ariz. Direct Aff. at 19-24.

¹⁰⁰ Schwartz Ariz. Direct Aff. at 23.

¹⁰¹ 6/8/01 MS Tr. at 51.

¹⁰² Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas, FCC CC Docket No. 00-4, filed Jan. 10, 2000 (“*SBC Application*”), Weckel Aff. att. T. *See also* SWBT Ex Parte (Mar. 7, 2000).

¹⁰³ SWBT Ex Parte (Mar. 7, 2000).

¹⁰⁴ *SBC Application* at 66; Weckel Aff. ¶ 54.

¹⁰⁵ AT&T Kargoll Affidavit ¶¶ 24, 26 n.25 (quoting and criticizing the language of the Weckel Affidavit set forth above).

¹⁰⁶ *SBC Texas Order* ¶¶ 405, 407.

¹⁰⁷ 6/8/01 MS Tr. at 53-54.

well as the website of Verizon, and found its website mirrored the level of detail posted on those companies' websites.¹⁰⁸ And it similarly will make volume and other confidential data available to interexchange carriers pursuant to a confidentiality agreement.¹⁰⁹ AT&T's effort to relitigate its argument yet again should not be entertained.

Timeliness of Billing and Accruing Affiliate Transactions (AZ Issue 272-5)¹¹⁰

AT&T also claims that QC has failed to comply with the affiliate transaction requirements of Section 272 because bills or accruals for such transactions were not made more promptly. None of these claims identifies any transactions that occurred after the overlay of Section 272 controls on QCC, which was completed on March 26, 2001.

The BOC billed QCC's predecessor Section 272 affiliate (Qwest LD) for services in accordance with the affiliate transaction rules, and posted those transactions appropriately. Although AT&T suggests that the BOC had been permitting Qwest LD the benefit of a "float" on these bills by not charging interest, QC demonstrated that this was in fact not the case: **[PROPRIETARY:**

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¹⁰⁸ *Id.* at 51.
¹⁰⁹ *Id.* at 60-61.
¹¹⁰ MS Issue 13.

billing detail, all the accrual detail, and all the agreements and potential agreements.”¹²¹

Moreover, the revised Master Services Agreement now requires that interest be calculated from the point in time at which the QC invoice should have been issued.¹²²

Thus, there is no “float” for QCC.

AT&T also claims that QC failed to timely accrue for its transactions with QCC. Ms. Brunsting confirmed that GAAP requires accrual accounting and that QCC follows this practice.¹²³ So does QC.¹²⁴ QC accrued approximately \$1.5 million of revenue as a receivable from QCC for the year 2000 for affiliate services that had been identified.¹²⁵ QC did not accrue expenses as a payable to QCC prior to QCC’s becoming QC’s Section 272 affiliate because services being provided by QCC had not yet been identified, but these transactions constituted less than 1% of the total affiliate transactions for the BOC in 2000.¹²⁶

Once again, AT&T concedes that it has identified no untimely accruals following the overlay of Section 272 controls on QCC.¹²⁷ As noted above, it is this “past and present behavior” that is most probative of the question of QCC’s future compliance with Section 272, because that question is “in essence a predictive judgment regarding the future behavior of the BOC.”¹²⁸ Whether QCC met the extensive requirements of Section 272 before it was ever designated to do so sheds no light on that question. In light of the comprehensive review undertaken in order to overlay Section 272 controls on QCC

¹²¹ 6/11/01 Ariz. Tr. at 112.

¹²² See Amendment 1 to the Master Services Agreement, *available at* <http://qwest.com/about/policy/docs/qcc/cdAmend1MSA2001.doc> (executed July 18-19, 2001).

¹²³ Brunsting Ariz. Rebuttal Aff. at 5; Schwartz Ariz. Rebuttal Aff. at 13.

¹²⁴ Schwartz Ariz. Rebuttal Aff. at 13.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ 6/11/01 Ariz. Tr. at 64.

¹²⁸ *Ameritech Michigan Order* ¶ 347.

during this transition, including the extensive training procedures now in place,¹²⁹ AT&T's claims certainly are "not sufficient to show systemic flaws."¹³⁰ They do not undermine QC's showing that it will comply with the affiliate transaction requirements of Section 272 following receipt of Section 271 approval.

AT&T also claims that QCC's predecessor (Qwest LD) failed to accrue its transactions with QC on a timely basis. As Ms. Brunsting made clear, Qwest LD follows GAAP and uses accrual accounting for its transactions with QC, with such accruals included in the general ledger.¹³¹ At the workshop, Ms. Schwartz also vigorously disputed AT&T's suggestion that QC did not accrue its Qwest LD transactions in a timely manner.¹³² In fact, the few allegedly untimely accruals by Qwest LD that are scattered throughout Mr. Skluzak's affidavit and referred to at the workshop¹³³ actually appear to consist of only four specific examples, and they hardly demonstrate any significant problems with Qwest LD's accruals:

1. Skluzak Aff. ¶ 35(a) refers to approximately [**PROPRIETARY: XXXXXXXXXXXXXXXX**] in work performed by QC's Consumer Services division for Qwest LD from January to December 1999 in connection with the calling card program.

¹²⁹ These training procedures are summarized at pages 17-18 *supra* and 33 *infra*.

¹³⁰ *BANY Order* ¶ 412.

¹³¹ Brunsting Ariz. Rebuttal Aff. at 5. *See also* 6/8/01 Confidential MS Tr. at 80 and Multistate Exh. S7-QWE-MES-14; Ariz. Tr. 96 ("[a]ccrued on the general ledger for U S WEST's long distance accounting processes. They accrued on a monthly basis.").

¹³² 6/11/01 Ariz. Tr. at 80, 91, 96.

¹³³ *See* 6/11/01 Ariz. Tr. at 106-110. At the Arizona workshop, the parties agreed to address the specific circumstances of these claims at subsequent proceedings in Nebraska, which would be imported into this record. QC introduced exhibits in those proceedings addressing the specifics of these claims, which are referred to below.

Contrary to Mr. Skluzak's unsupported assertion, Qwest LD accrued for this expense in 1999, as evidenced by the accrual and general ledger documents in the record.¹³⁴

2. Skluzak Aff. ¶ 76(c) refers to invoice A575131 for work involving the [PROPRIETARY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX] for the first six months of 2000, and authorized for payment by Qwest LD in December 2000. This was not paid earlier because of a billing dispute, but it was also accrued on a timely basis¹³⁵ -- pursuant to the dispute policy reflected in the agreement as posted on the website.¹³⁶

3. Skluzak Aff. ¶ 76(a) refers to invoice A538926 dated January 20, 2000, involving [PROPRIETARY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX] services in the last quarter of 1999. As evidenced by the "affiliate invoice review checksheet," this invoice was also not initially authorized for payment because QLD disputed payment in March 2000. It was therefore accrued in June 2000.¹³⁷

4. Skluzak Aff. ¶ 76(b) refers to invoices for [PROPRIETARY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX] (A533932 and A515501) of even smaller amounts [PROPRIETARY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]. These amounts would not be material by any standard, but both were billed within five

¹³⁴ Multistate Exh. S7-QWE-MES-14; 6/8/01 MS Confidential Tr. at 78-80. [PROPRIETARY: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX] Skluzak Aff. ¶ 63(c) refers to an unidentified transaction for precisely the same period. Because AT&T fails to identify that transaction, its claim is impossible to address. But this appears to be the same transaction.

¹³⁵ 6/8/01 MS Tr. at 149. See also Brunsting Nebraska Confidential Exh. JLB-6C (filed July 9, 2001) (Neb. PSC Nos. C-1830, C-2537), "A/P Accruals, JE#: RE3601, 06/30/2000."

¹³⁶ 6/8/01 MS Tr. at 149-51. The billing dispute procedure is set forth in Article 4 of the Master Services Agreement, which was posted on the website. 7 Qwest 10A.

¹³⁷ See Brunsting Nebraska Confidential Exhibits JLB-4C and JLB-6C, "U S WEST Long Distance, Inc. Affiliate Invoice Review Checksheet" dated 1/20/2000, and "A/P Accruals, JE#: RE3601, 06/30/2000."

days of the date of the services, and the larger one (for services in December 1999) was accrued by June 30, 2000.¹³⁸

Thus, even with respect to these isolated earlier instances involving Qwest LD, there is no evidence of any significant failure to bill or accrue expenses on a timely basis. Moreover, it would be immaterial for Section 272 purposes whether an expense was paid late: as noted above, under the posted agreement applicable to all interexchange carriers on a nondiscriminatory basis, Qwest LD was charged 18% interest for any such late payment.¹³⁹ Such isolated transactions do not warrant a finding that QCC will not comply with Section 272 following receipt of Section 271 approval.¹⁴⁰ QCC has demonstrated that its current system of controls for timeliness in accruing, billing, and posting transactions with QC satisfies the FCC's requirements, particularly in light of the protections offered through the biennial audit process.¹⁴¹

B. Section 272(c)¹⁴²

The only issue raised at the multistate workshop with respect to Section 272(c)'s non-discrimination requirements is whether services that Advanced Technologies ("AT"), an affiliate of the BOC, provided to Qwest LD should have been made available to other carriers.¹⁴³ Section 272(c) bans certain discrimination by "a Bell operating company" in "its" dealings with "its" 272 affiliate. 47 U.S.C. § 272(c). Because these transactions

¹³⁸ See Brunsting Nebraska Confidential Exhibits JLB-5C and JLB-6C, Invoice Nos. A533932 and A515501 and "A/P Accruals, JE#: RE3601, 06/30/2000."

¹³⁹ 6/8/01 MS Tr. at 150. This 18% annual rate is set forth as a 1.5% monthly rate in Article 4C of the Master Services Agreement posted on the website. Multistate Exh. S7-QWE-MES-10.

¹⁴⁰ *BANY Order* ¶ 412.

¹⁴¹ *SBC Texas Order* ¶¶ 398, 405; *BANY Order* ¶¶ 405 & n.1253, 413.

¹⁴² MS Issue 15.

¹⁴³ Skluzak Aff. ¶¶ 124-125. MS Issue 16 involves AT&T's suggestion that its concerns with respect to Section 272(b)(5), discussed above, prevent a finding that QC satisfies Section 272(c)(2). *Id.* ¶ 129. Section 272(c)(2) provides that in dealing with its 272 affiliate, a BOC "shall account for all transactions with an affiliate described in subsection (a) of this section in accordance with accounting principles

involve the BOC and no assets or services from the transaction were provided to the BOC; therefore those services are not subject to the non-discrimination requirements.¹⁵⁰ For these reasons, the services that AT provided to Qwest LD need not have been made available to other carriers under Section 272(c)(1). Accordingly, this issue should be resolved in QC's favor.

III. THERE IS NO BASIS FOR AT&T'S EFFORTS TO IMPOSE ADDITIONAL REQUIREMENTS ON QC NOT REQUIRED BY SECTION 272 OR IMPOSED ON OTHER BOCS.

AT&T also raises four additional arguments that would impose special obligations on QC not required by Section 272 or imposed by the FCC on any other BOC. These claims are utterly baseless.

1. Review of Marketing Scripts.¹⁵¹ Section 272(g) has only one limitation at issue here: that the 272 affiliate "may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services." 47 U.S.C. § 272(g)(1). Both QC and QCC have demonstrated their commitment to compliance with Section 272(g).¹⁵² Only one issue remains at impasse with respect to this provision: whether the Commission can and should review and approve the marketing scripts of QC as a prerequisite of providing compliance with Section 272(g).¹⁵³

¹⁵⁰ Schwartz Ariz. Rebuttal Aff. at 20-21.

¹⁵¹ MS Issue 18.

¹⁵² Brunsting Ariz. Direct Aff. at 18-19; 6/11/01 Ariz. Tr. at 19.

¹⁵³ At the workshop, AT&T suggested another issue, as to whether QC was participating in the planning, design, and development of QCC's strategic development on a discriminatory basis. See 6/12/01 Ariz. Tr. at 166-69. AT&T asked that this issue be designated at AZ Issue 272-6. (This was also MS Issue 272-19. See Skluzak Aff. ¶¶ 143-44.) However, QC made clear its intent to comply with the nondiscrimination obligations in this regard. AT&T could provide no evidence that any such discrimination was or is occurring, and it conceded that "we'll have to review whether this . . . continues to be an issue or not." 6/12/01 Ariz. Tr. at 166, 168-69. It never subsequently provided any such evidence.

Citing the popularity of other BOCs' interLATA services in New York and Texas, AT&T seeks "[a] more thorough explanation of [QC's] marketing practices."¹⁵⁴

This request should be rejected. There is no basis in the language of Section 272(g), the FCC's decisions, or the procompetitive policies of the Act for such a request of a new entrant from AT&T, the most entrenched IXC. AT&T concedes as much, acknowledging that it is asking the Commission to "suggest to the FCC a higher standard [for] Qwest."¹⁵⁵ In particular, the FCC has clearly rejected similar AT&T efforts to review BOC interLATA marketing scripts: "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."¹⁵⁶ There is no basis for applying any different standard to QC here.

2. A Pre-Approval Audit.¹⁵⁷ AT&T concedes that "[u]nder section 272(d), an audit of the section 272 affiliate is not mandated until twelve months after section 271 approval."¹⁵⁸ However, it "suggest[s]" that in light of "Qwest LD's present and historical failure to fully account for and disclose its required transactions . . . an opening audit

In light of QC's demonstration and AT&T's failure to provide any evidence on the question, this issue should be resolved in QC's favor.

¹⁵⁴ Skluzak Aff. ¶ 140.

¹⁵⁵ 6/8/01 MS Tr. at 166.

¹⁵⁶ Memorandum Opinion and Order, *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*, 13 FCC Rcd 539 ¶ 236 (1997) ("*BellSouth South Carolina Order*"). See also *BANY Order* ¶ 419 ("We reject as inconsistent with Commission precedent AT&T's contention that Bell Atlantic must submit proposed marketing scripts in order to demonstrate compliance with section 272(g)."); *Brunsting Ariz.* Direct Aff. at 18-19.

¹⁵⁷ MS Issue 4.

¹⁵⁸ Skluzak Aff. ¶ 35(f).

should be required.”¹⁵⁹ As demonstrated above, the premise of this claim with respect to Qwest LD’s accounting and posting of affiliate transactions is wholly unwarranted. But the suggestion is inconsistent with Section 272(d) in any event.

Section 272(d)(1) provides for a biennial audit “to determine whether [the BOC] has complied with this section and the regulations promulgated under this section.” 47 U.S.C. § 272(d)(1). As AT&T acknowledges, it does not require an audit to determine threshold eligibility for 271 approval. The FCC, in the *Accounting Safeguards Order*, “require[d] the first audit of BOC compliance with [s]ection 272 . . . to begin at the close of the first full year of operations.”¹⁶⁰ This requirement reflects a statutory focus on “an operational period”¹⁶¹ that begins “*after* receiving interLATA authorization.”¹⁶² Thus, neither Congress nor the FCC contemplated opening audits, and no other BOCs have been required to obtain one prior to obtaining Section 271 relief. Any imposition of an opening audit requirement would constitute disparate regulatory treatment for QC, particularly in light of the lack of any demonstration by AT&T that Qwest LD has failed adequately to account for and post its affiliate transactions.¹⁶³

As discussed above, QC is complying with the disclosure requirements for transactions with QCC. Moreover, it has appropriate controls in place to ensure compliance with Section 272.¹⁶⁴ As Ms. Schwartz has noted, these include quarterly monitoring of asset transfers, monthly reconciliations of Internet postings, extensive one-

¹⁵⁹

Id.

¹⁶⁰ *Accounting Safeguards Order* ¶ 203. Under the Joint Federal/State Oversight Group audit procedures, this audit will cover the first year after the date of Section 271 approval, and planning and preliminary work for the audit engagement may begin prior to the end of that one-year period. Schwartz Ariz. Direct Aff. Exhibit MES-8, p. 9.

¹⁶¹

Id.

¹⁶² *SBC Texas Order* ¶ 409 (emphasis added). See also *Accounting Safeguards Order* ¶ 203.

¹⁶³ 6/7/01 MS Tr. at 205; Skluzak Aff. ¶ 35(f) (“[A]n audit of the section 272 affiliate is not mandated until twelve months after section 271 approval.”).

on-one training of key network leaders, and a Compliance Oversight Team that reviews every QCC transaction for compliance purposes.¹⁶⁵ They also include annual corporate Code of Conduct training and certification for all employees that includes review of the affiliate transaction rules, a specific explanation of Section 272 requirements for management employees with an “ask272@qwest.com” e-mail response system, targeted training to QC sales executives who conduct business with QCC, physical separation and different color coding of employee badges and nameplates, a compliance hotline, and a special training manual.¹⁶⁶ QCC employees receive further Section 272-specific training.¹⁶⁷ The FCC has found that similar safeguards demonstrate that the applicant “has implemented internal control mechanisms reasonably designed to prevent, as well as detect and correct, any noncompliance with Section 272.”¹⁶⁸ Accordingly, there is no basis for AT&T’s unprecedented suggestion.

3. Section 272(e) Compliance.¹⁶⁹ AT&T also suggests that the Commission should conduct an additional investigation with respect to whether QC satisfies Section 272(e).¹⁷⁰ Section 272(e) contains a number of requirements designed to ensure that a BOC will not favor a 272 affiliate or itself in the timing, conditions, charges, facilities or services provided in connection with telephone exchange service, exchange access, or interLATA or intraLATA service. 47 U.S.C. § 272(e). QC has demonstrated its commitment to complying with these requirements.¹⁷¹ AT&T’s only objection is that QC

¹⁶⁴ 6/7/01 MS Tr. at 206-208.

¹⁶⁵ Schwartz Ariz. Direct Aff. at 22, 35-37; Schwartz Ariz. Rebuttal Aff. at 7.

¹⁶⁶ Schwartz Ariz. Direct Aff. at 35-36 and Exhs. MES-9 to MES-12 (Confidential).

¹⁶⁷ Brunsting Ariz. Rebuttal Aff. at 8.

¹⁶⁸ *SBC Texas Order* ¶ 398; *BANY Order* ¶ 405 & n.1253.

¹⁶⁹ MS Issue 17.

¹⁷⁰ Skluzak Aff. ¶ 136.

¹⁷¹ Schwartz Ariz. Direct Aff. at 32.

must develop performance standards for implementing these provisions, and further confirmation that it will impute to itself charges where appropriate.¹⁷²

No prior FCC 271 orders have imposed any such requirements. Section 272(e)(3)'s requirement that a BOC impute access charges to itself is only triggered if the BOC directly provides in-region interLATA service, which could only occur after sunset of Section 272. QC has already stated that it will impute when necessary.¹⁷³ Before the sunset of 272, QC will actually charge, bill, and require QCC to pay the same interstate and intrastate switched access charges that all other IXC's are charged.¹⁷⁴ As the FCC concluded in the *BellSouth Louisiana II Order*, a 271 applicant need not do more than this:

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).¹⁷⁵

The FCC has similarly rejected the assertion that it should impose additional requirements concerning possible predatory pricing because "adequate mechanisms are available to address this potential problem."¹⁷⁶ Further, the FCC has stated that the appropriate forum for addressing such issues is a complaint proceeding,¹⁷⁷ and not an

¹⁷² Skluzak Aff. ¶¶ 130-131.

¹⁷³ Schwartz Ariz. Direct Aff. at 32-33.

¹⁷⁴ 6/8/01 MS Tr. at 158-159.

¹⁷⁵ *BellSouth Louisiana II Order* ¶ 354.

¹⁷⁶ *Non-Accounting Safeguards Order* ¶ 258. See also Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587 ¶¶ 19-20 (2000).

¹⁷⁷ Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region,*

additional investigation into the hypothetical possibility that the BOC itself might (1) later provide in-region interLATA service and (2) do so in violation of its own commitments.¹⁷⁸ Accordingly, the Commission need not conduct an additional investigation with respect to whether QC satisfies Section 272(e).

4. Qwest's "History of Violations."¹⁷⁹ AT&T's final stratagem is to change the subject. Mr. Skluzak first asserts that QC -- or, more accurately, QC's predecessor -- has a "rich history of violations pertaining to [s]ection 271." He then argues that this supposed "history" should somehow be "part of the calculus" in determining whether QC has made a sufficient showing of the independence of QCC required by Section 272.¹⁸⁰ This effort at character assassination cannot serve to undermine QC's straightforward demonstration that QCC satisfies all of the legal requirements set forth in Section 272. Indeed, as AT&T's own representative conceded at the multistate workshop, "It's not relevant to 272."¹⁸¹

Each of the three cases cited by AT&T involved a good faith view by QC's predecessor (and, in two cases, by Ameritech as well) that a service or product offering did not involve it in the provision of interLATA service. The Buyer's Advantage case, for example, involved the question of whether the prohibition in Section 271 against "provid[ing]" interLATA services could be read to extend to programs by U S WEST and Ameritech in which those BOCs marketed (but did not transmit) an independent third party provider's interexchange service. On review, the D.C. Circuit upheld as not

InterLATA Services in Massachusetts, CC Docket No. 01-9, FCC 01-130 ¶ 231 (rel. Apr. 16, 2001) ("Verizon Massachusetts Order").

¹⁷⁸ See *id.* ¶ 230 (declining to address concerns about provision of special access service because FCC cannot predict prior to 271 whether the 272 affiliate might later receive favorable treatment).

¹⁷⁹ MS Issue 20.

¹⁸⁰ Skluzak Aff. ¶ 152.

¹⁸¹ 6/8/01 MS Tr. at 172.

unreasonable (and therefore entitled to judicial deference) the FCC's "case-by-case judgment[t]" that it could.¹⁸² The calling card programs developed by U S WEST and Ameritech involved similar analyses of whether these BOCs would be deemed to be "provid[ing]" interLATA service by marketing a calling card for use with an independent third party provider's interexchange service.¹⁸³ Finally, U S WEST's National Directory Assistance program involved the question whether providing nonlocal directory assistance from an out-of-region data base -- which would have been permissible under Section 271(g)(4) had the data base been owned by U S WEST itself -- so qualified where the data base was owned by a third party.¹⁸⁴

None of these cases involved anything more than a dispute about the scope of the term "provide" as used in Section 271 -- which the D.C. Circuit recognized in the Buyer's Advantage case has no plain meaning in this context,¹⁸⁵ and which the FCC interpreted not to mean the same thing as used in the alarm monitoring provisions of 47 U.S.C. § 275, upon which the BOCs had relied.¹⁸⁶ More importantly, none of them sheds any light on QC's commitment to compliance with Section 272. In determining to look to "[p]ast and present behavior" of a BOC in a Section 272 case, the FCC was referring to past compliance with the requirements of Section 272 itself -- in that case, the affiliate

¹⁸² *U S WEST Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), cert. denied, 528 U.S. 1188 (2000).

¹⁸³ See Memorandum Opinion and Order, *AT&T Corp. v. U S WEST Communications, Inc.*, File No. E-97-28, DA 01-418 (rel. Feb. 16, 2001).

¹⁸⁴ Memorandum Opinion and Order, *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 14 FCC Rcd 16,252 (1999) ("National Directory Assistance").

¹⁸⁵ See 177 F.3d at 1058 ("The statutory term 'provide' appears to us somewhat ambiguous in the present context.").

¹⁸⁶ *Id.* at 1061.

transaction requirements of Section 272(b)(5).¹⁸⁷ It was not suggesting the kind of roving examination of the BOC's past compliance (or that of its predecessor) with other provisions of the Communications Act now being suggested by AT&T.¹⁸⁸ Moreover, there is no evidence, nor even an allegation, that any conduct at issue in these three cases continued in any respect after the FCC order was issued clarifying its interpretation of the Act.

Here, in particular, whether or not U S WEST's interpretations of the contours of Section 271 in the foregoing cases ultimately proved correct, none of these cases (as AT&T has conceded) had anything to do with any commitment to comply with Section 272. The whole premise of each of the programs in these cases was that the offering did not involve the provision of interLATA service, therefore did not require Section 271 approval, and therefore triggered no such Section 272 undertaking.¹⁸⁹ Here, in contrast, QC has sought Section 271 approvals for a variety of states, and in connection with that application has established a Section 272 affiliate to provide interLATA service. AT&T's efforts to change the subject cannot serve to outweigh those clear commitments, QC's demonstration of its satisfaction of the specific requirements of Section 272 over the course of many years, its extensive system of controls designed to detect any noncompliance with those requirements,¹⁹⁰ as well as the further protections the FCC has

¹⁸⁷ See *Ameritech Michigan Order* ¶¶ 366 et seq.

¹⁸⁸ See *BANY Order* ¶ 445 (any temporary non-compliance with Section 271(g)(4) with respect to National Directory Assistance programs "does not warrant a finding that granting this application would not be in the public interest").

¹⁸⁹ Indeed, in the *National Directory Assistance* case, U S WEST petitioned for - and obtained - an FCC order forbearing from application of the separate affiliate requirements of section 272 in connection with any such program that met the terms of Section 271(g)(4) of the Act. *National Directory Assistance* ¶ 63.

¹⁹⁰ Mr. Skluzak also notes (at ¶ 163 of his affidavit) that the Arthur Andersen report following the U S WEST - Qwest merger found that certain customer account records included interLATA service component codes. This matter is currently under review by the FCC, which is the appropriate forum for

recognized will be afforded by the biennial audit process. The matters raised by AT&T are not relevant to QC's demonstrated readiness to comply with Section 272.

CONCLUSION

As demonstrated above, QC's demonstration of compliance with the requirements of Section 272 is fully consistent with the FCC's decisions, and none of AT&T's suggestions to the contrary has any merit. The Commission should determine that the requirements of Section 272 have been satisfied.

DATED this 24th day of August, 2001.

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resolving any issue relating to that audit. It has no probative value with respect to QC's Section 272 compliance demonstration, for the reasons set forth above. But as QC has stated to the FCC, the error involved services provisioned by Touch America (not QC). The services were erroneously billed in the name of Qwest. QC did not provision the services, did not market them or obtain any material benefits associated with packaging them with local service, did not hold itself out as the provider of them, and did not perform any other functions of an interexchange carrier. Here again, AT&T is grasping at straws. This matter involved a simple billing error, not a violation of Section 271.

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