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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
DOCKETED

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

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S COMMENTS ON STAFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW ON QWEST'S COMPLIANCE WITH
GENERAL TERMS AND CONDITIONS, BFR AND FORECASTING**

Qwest Corporation ("Qwest") respectfully submits these comments on Staff's Proposed Findings of Fact and Conclusions of Law on Qwest's Compliance with General Terms and Conditions, BFR and Forecasting ("Staff's Proposed Findings" or "Staff Report"),¹ dated December 28, 2001.

INTRODUCTION

Staff's Proposed Findings recommend resolution of fifteen impasse issues (some of which include several sub-issues) associated with the general terms and conditions provisions of Qwest's Statement of Generally Available Terms ("SGAT") that the parties were not able to resolve during the Workshop on General Terms and Conditions, BFR and SRP. In workshops across its region, Qwest has tried to accept resolutions to impasse issues proposed by staff or

¹ Staff's Proposed Findings of Fact and Conclusions of Law on Qwest's Compliance with General Terms and Conditions, BFR and Forecasting, *In the Matter of Qwest Corporation's Section 271 Application*, ACC Docket No. T.00000A-97-0238 (rel. Dec. 28, 2001) ("Staff's Proposed Findings" or "Staff Report").

facilitators in the spirit of collaboration and to demonstrate its commitment to bringing competition to the local and long distance telecommunications markets as quickly as possible. Furthermore, Qwest operates as a competitive local exchange carrier ("CLEC") out of region, and therefore must balance its advocacy to be consistent with both its incumbent and CLEC operations and responsibilities.² Accordingly, although Qwest believes that its policies, practices and SGAT in Arizona meet the requirements of the Telecommunications Act of 1996 and all relevant Federal Communications Commission ("FCC") orders, it accepts most of the recommendations in Staff's Proposed Findings and will modify its SGAT to comply with those recommendations.

However, Qwest must challenge certain proposed findings that are inconsistent with the Act or FCC rules and are otherwise unsupported in the record. Moreover, the proposed findings Qwest challenges are inconsistent with decisions of other commissions that have ruled on these impasse issues. With respect to those proposed findings with which Qwest disagrees, Qwest explains its positions below and respectfully requests that Qwest's proposed resolution of the impasse issue be adopted.

COMMENTS

I. DISPUTED ISSUE NO. 3: What is the Appropriate Scope of Indemnification with the SGAT? (G-10, SGAT Section 5.9)

A. Qwest's Proposed Language Should Be Considered on Its Merits.

Section 5.9 addresses the issue of indemnity. Consistent with its approach throughout the collaborative workshop process in Arizona and in other states, Qwest incorporated a number of revisions to the indemnification provisions of the SGAT at the request of AT&T and in response

² The FCC recently remarked that Qwest's positions on local competition issues are particularly worthy of note because it operates as both a CLEC and incumbent LEC. *See* Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 01-204 ¶¶ 35, 80 (Aug. 8, 2001) ("*Collocation Remand Order*").

to comments of the parties. Despite these revisions, the parties were unable to reach consensus on what the indemnity obligations should be with respect to claims made by third parties. Accordingly, in their respective briefs on this impasse issue, Qwest, AT&T, and WorldCom each proffered differing indemnity language and differing views on why the proffered language was appropriate, reflected industry practice, and advanced proper public policy objectives.³ No party suggested that the indemnity provisions contained in Qwest's interconnection agreements with AT&T and WorldCom should be incorporated into the SGAT.

Against this backdrop, Staff's Proposed Findings do not address the indemnity provisions and positions of the parties. Instead, Staff recommends that, rather than "revisit all of the issues raised anew," Qwest be required to incorporate into the SGAT the indemnification provisions contained in the interconnection agreements with AT&T and WorldCom.⁴ In support of this recommendation, Staff states the indemnification provisions in these agreements "are likely currently standardized" and that "considerable time was probably devoted to working out these provisions when the agreements were originally negotiated."⁵ Additionally, Staff states it is confident that the indemnification provisions contained in the interconnection agreements "would be balanced and suitable for incorporation into the SGAT" because AT&T and WorldCom are two of the largest CLECs nationwide and thus are highly sophisticated entities."⁶

Qwest appreciates the guidance and perspective that language in interconnection agreements provides on issues raised during the workshop process. Qwest believes, however,

³ Brief of WorldCom Addressing General Terms and Conditions and Public Interest Issues, September 18, 2001 ("WorldCom Brief") at 3; AT&T's Closing Brief on General Terms and Conditions and SGAT Sections 11, 12, 17, 18 and Exhibits F & I, September 18, 2001 ("AT&T Brief") at 22-24.

⁴ Staff Report at ¶ 464.

⁵ *Id.*

⁶ *Id.*

that the language discussed by the parties throughout the workshop process and now proffered by the parties for inclusion in the SGAT represents the most current views of the parties on the issue and should be evaluated on its merits⁷. In this regard, Qwest notes that the give and play of the workshop process and resulting scrutiny accorded a party's proffered language and position has frequently resulted in provisions that are improved, updated, and more suitable for incorporation in the SGAT than any provisions in interconnection agreements to which they may be compared.

Further, in evaluating Qwest's indemnification provisions, it is important to note what the SGAT is and is not. The SGAT is Qwest's standard contract offering, intended to accommodate those CLECs who choose to forego the time and expense associated with negotiating an individual interconnection agreement addressing their individual requirements and CLECs who desire to pick and choose portions of the SGAT into their *existing interconnection agreement*. Even after the SGAT has been adopted by the Commission, CLECs will remain free to negotiate with Qwest their own customized interconnection agreement if they wish, as many of the larger CLECs undoubtedly will do. Finally, even after the SGAT has been adopted by the Commission, CLECs will remain free to pick and choose existing interconnection agreements pursuant to governing pick and choose rules.

For all these reasons, Qwest respectfully submits that its SGAT indemnity provisions should be evaluated on the merits. As addressed below, the indemnity language that Qwest asks the Commission to adopt is reasonable, balanced and market-based. Moreover, in response to recommendations made by the Multistate Facilitator in the collaborative proceeding including

⁷ The language offered by the parties for inclusion in the SGAT has also been tailored to reflect their agreements and the current version of the SGAT, and hence is intended to be consistent with other provisions of the SGAT. Staff's recommendation is silent on the issue of whether the interconnection agreement indemnification language is to be incorporated verbatim, or whether it is to be tailored to accommodate other provisions of the SGAT upon which the parties have achieved consensus. The interconnection agreement indemnification language, for example, includes third party intellectual property issues. The SGAT addresses intellectual property in Section 5.10, with provisions on which the parties agree.

the states of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah and Wyoming,⁸ Qwest has agreed to modify further its SGAT indemnity provisions. With these modifications, Qwest's indemnity provisions have been endorsed by other commissions considering this impasse issue, and for the reasons set forth below, should be endorsed here.

B. Qwest's Indemnification Language Provides a Reasonable, Market-Based Approach to the Parties' Competing Interests and Has Been Endorsed by Commissions Considering This Impasse Issue.

Qwest's indemnification provisions incorporate reasonable reciprocal indemnity rights and obligations. They provide a market-based approach to the possibility that either party may attempt to use very narrow liability limitations with its end users as a marketing tool based on the assumption that service interruptions that may be attributable to the other party will effectively be passed through to that party.

1. Indemnification for Bodily Injury Should Be Limited to Failure to Perform under the Agreement.

As set forth in Qwest's Legal Brief on Impasse Issues Relating to General Terms and Conditions, filed herein on September 17, 2001 ("Qwest's Brief"), the first issue under Section 5.9 concerns AT&T's contention that Section 5.9.1.1 should not be limited to claims, including claims for bodily injury and damage to tangible property, made by third parties (other than end users of either party) resulting from a breach of or failure to perform under the agreement.⁹ Read

⁸ Facilitator's *General Terms and Conditions, Section 272 & Track A Report*, (Sept. 21, 2001) in Multistate proceeding involving state commissions of Idaho, Iowa, Montana, Nebraska, New Mexico, North Dakota, Utah, and Wyoming ("Multistate GTC Report") at 30-35; *see also* Staff's Report on General Terms and Conditions, Section 272 and Track A, *In the Matter of US West Communications, Inc.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (Utah P.S.C., Oct. 4, 2001).

⁹ *See, e.g.*, Ex. 6-Qwest-82 (Hydock WA Aff.) at 36-37 (striking similar provisions of earlier Qwest proposals for § 5.9.1.1); AT&T Brief at 24 (offering modifications contained in Exhibit C to AT&T's Brief). Because of the substantial overlap between the SGAT general terms and conditions issues in this proceeding and those in the Multistate proceeding and in other jurisdictions, and because of the evolving nature of the issues actually in dispute, the parties agreed to "import" into the record here the records developed (transcripts and exhibits) in other proceedings. Consistent with this agreement, on

in conjunction with Section 5.9.1.2, discussed below, and prevailing industry practice, this provision equitably allocates exposure between the parties. Section 5.9 states:

5.9.1 The Parties agree that unless otherwise specifically set forth in this Agreement the following constitute the sole indemnification obligations between and among the Parties:

5.9.1.1 Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any Person or entity, for invasion of privacy, bodily injury or death of any Person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

5.9.1.2 In the case of claims or loss alleged or incurred by an End User Customer of either Party arising out of or in connection with services provided to the End User Customer by the Party, the Party whose End User Customer alleged or incurred such claims or loss (the Indemnifying Party) shall defend and indemnify the other Party and each of its officers, directors, employees and agents (collectively the Indemnified Party) against any and all such claims or loss by the Indemnifying Party's, End User Customers regardless of whether the underlying service was provided or Unbundled Element was provisioned by the Indemnified Party, unless the loss was caused by the willful misconduct of the Indemnified Party.

Qwest's proposed Section 5.9.1.1, as limited by section 5.9.1.2, only applies to claims brought by persons or entities that are not end users of either party. As to such strangers to both parties, Qwest proposes that contractual indemnification rights would apply only if there is some nexus to the agreement between Qwest and the CLEC – i.e., a breach of or failure to perform under the agreement. It makes no sense to contractually obligate the parties to indemnify each other for any claim brought by any party relating to any conduct of the parties, even if unrelated to the agreement. Under AT&T's approach, if an AT&T employee were to injure someone, with

August 27, 2001, Qwest filed its Notice of Filing of Transcripts and Exhibits from the Colorado Workshop Regarding General Terms and Conditions. The Notice includes the exhibit numbers assigned the materials in Colorado and Qwest uses those numbers when identifying and citing to them in these comments.

no contractual relationship to either Qwest or AT&T, in connection with AT&T's provision of service to an end user, the contract might be read to require Qwest to indemnify AT&T for the claim.

Qwest's proposal to limit the parties' indemnification obligations regarding claims brought by those other than end users of either party comports with established industry practice. For example, in its template interconnection agreement for use in Texas, Southwestern Bell Telephone Company includes language similarly limiting the parties' indemnification obligations.¹⁰ This language has been approved by the Texas Public Utility Commission and endorsed, at least indirectly, by the FCC in approving SBC's 271 application in Texas. In addition, although indemnification provisions between ILECs and CLECs in general contract offerings such as the SGAT do not have an exact analogue in the agreements or tariffs of carriers, CLECs routinely include indemnity language in their tariffs and agreements with end users that requires end users to indemnify the carrier for any claims brought by third parties relating to the use of the services provided by the carrier to the end user.¹¹

The point is this: because there are literally thousands of scenarios under which one party conceivably could legally be obligated to indemnify the other at law, they should be contractually obligated to indemnify each other for claims of third parties other than end users only where the underlying conduct bears some connection with a party's breach or failure to perform under the agreement. Qwest's language adequately covers such situations. Qwest's proposed Section 5.9.1.1 should be adopted.

¹⁰ See, e.g., SWBT Interconnection Agreement (T2A), § 7.3.1 (a copy of which is available online at https://clec.sbc.com/1_common_docs/interconnection/t2a/agreement/00-tc.pdf).

¹¹ See, e.g., Sprint Arizona Tariff No. 1, § 4.14; MCIMetro Arizona Tariff No. 1, § 2.1.4.12 (both of which are available online at www.cc.state.az.us/utility/tariff/index.htm).

2. Each Party Should Contractually Indemnify the Other for All Claims Brought by a Party's End User.

As to claims brought by the end-users of either party, the Commission must ensure that the party in the best position to reasonably limit the potential liability do so. In the absence of a mechanism requiring each party to indemnify the other for any claims brought by their end user customers, AT&T could, as a marketing tool, offer to not exclude liability for consequential damages resulting from service outages, notwithstanding its own long practice to the contrary, on the assumption that under the contract, it will be able to shift that liability to Qwest. Such lenient liability rules could provide a significant competitive advantage to a CLEC willing to offer them to end users engaged in telemarketing, for example. Without the end-user indemnification provision proposed by Qwest in Section 5.9.1.2, a CLEC may choose to offer such terms and then attempt to pass through any resulting liability for consequential or incidental (e.g., lost profits) damages to Qwest. In effect, the CLEC could foist upon Qwest unlimited liability relating to service outages.

By contrast, under Qwest's proposed language, while each party remains free to engage in such marketing tactics, it will do so at its own peril. Should a CLEC wish to use lenient liability limits as a marketing point, it will have to do so with the knowledge that it will not be able to pass the costs of that decision to Qwest. In this way, Qwest has proposed a rational, market-based approach to both the issues of indemnity and liability limits vis-à-vis consumers. As summarized by the Multistate Facilitator "[a] CLEC that wishes to offer liberal service-interruption benefits should bear their costs; the reason is that such a rule makes the causer of costs responsible for incurring them."¹² Qwest's approach also incents each of the parties to maintain the longstanding contract and tariff-based limits that restrict customer damages

¹² Multistate GTC Report at 34.

resulting from performance-related breaches to direct damages and the cost of the services affected.

AT&T's fundamental contention appears to be that the indemnification section should expose Qwest to more, rather than less, liability because otherwise Qwest will not be "accountable" or "there will be little incentive left to insure Qwest's performance of interconnection agreements."¹³ Such claims simply cannot provide appropriate standards for evaluating SGAT indemnification provisions; indemnification provisions are not intended to function as substitute remedies for breach, as AT&T appears to believe. Instead, the indemnification provision of the SGAT should be aimed at reflecting standard practices within the telecommunications industry, consistent with the fair allocation of responsibility between the parties.¹⁴

In the Multistate proceeding, the Multistate Facilitator recognized that AT&T should not be permitted to pass the risks of liberal service-interruption benefits to Qwest. The Multistate Facilitator also recognized that Qwest should be responsible for any acts or omission that cause injury. In addressing these considerations the Multistate Facilitator recommended the following language to be included at the end of Section 5.9.1.2:

The obligation to indemnify with respect to claims of the Indemnifying Party's end users shall not extend to any claims for physical bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnified Party.¹⁵

¹³ See Ex. 6-Qwest-82 (Brotherson WA Reb.) at 53, 55.

¹⁴ *Id.* Qwest's proposed indemnity provisions comport with industry practice as reflected, for example, in the template agreement approved by the Texas Public Utility Commission, and subsequently endorsed by the FCC in order approving Southwestern Bell Telephone Company's petition for authority to provide in-region long distance in that state. Sections 7.3.1 and 7.3.2 of the Texas template interconnection agreement (T2A) incorporate an approach similar to that proposed by Qwest here whereby the parties' indemnification obligations turn on the status of the claimant as an end user of the one of the parties. For the reasons set forth above, that approach is reasonable and should be adopted.

¹⁵ Multistate GTC Report at 34-35.

This language limits the obligation to indemnify against claims from end users and appropriately addresses the concern regarding a party's accountability for physical bodily injury or death and for property damage. Qwest has agreed to incorporate the recommended language in its SGAT.

Other commissions that have reviewed this impasse issue have agreed that Qwest's SGAT provision is appropriate. Commissions in the states of Nebraska,¹⁶ New Mexico,¹⁷ and Montana¹⁸ have adopted the language Qwest proposes here. The Hearing Commissioner of the Colorado Public Utilities Commission, while modifying and adopting AT&T's proposed language for Section 5.9.1.9,¹⁹ and modifying and adopting Qwest's proposed language for 5.9.1.2, has substantially embraced the position advocated by Qwest.

In sum, Qwest's proposed indemnity provisions, taken together with its limitation of liability provisions (discussed separately below), properly balance the parties' contractual indemnity obligations and properly incent those in the best position to reasonably limit liability to consumers to do so, consistent with longstanding practices. Accordingly, Qwest respectfully submits that Qwest's indemnity provisions be adopted here.

¹⁶ See Order Approving SGAT in Part (Group 5 Report), *In the Matter of Qwest Corporation seeking approval of its revised statement of generally available terms (SGAT) pursuant to Section 252(f) of the 1996 Telecommunications Act*, Application No. C-2537 (Neb. P.S.C., entered Jan. 8, 2002) ("Nebraska Group 5 Report") at 12-14.

¹⁷ See Order Regarding SGAT General Terms and Conditions, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (N.M.P.R.C., Dec. 18, 2001) ("New Mexico GTC Order") at 20-22.

¹⁸ See Final Report on SGAT General Terms & Conditions and Responses to Comments Received on Preliminary Report, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, (Mont. P.S.C., Dec. 20, 2001) ("Montana GTC Order") at 16-17.

¹⁹ See Resolution of Volume VIA Impasse Issues, *In the Matter of the Investigation Into U S West Communications, Inc.'s Compliance with § 271(c) of the Telecommunications Act of 1996*, Dkt. No. 97-I-198T, Decision No. R01-1193 (Colo. P.U.C. Nov. 20, 2001) ("Colorado GTC Order"), Motion to Modify *denied*, Decision R01-1283-I (Colo. P.U.C., Dec. 17, 2001) at 23-27.

II. DISPUTED ISSUE NO. 5: Should SGAT Provisions Expire Upon Expiration Of Terms For SGAT Or Other Interconnection Agreements If Provision Are Selected Through The "Pick And Choose" Process For Incorporation Into New Or Existing Interconnection Agreements? (G-22, SGAT Section 1.8)

The issue presented is whether "pick and choose" provisions that are taken from existing interconnection agreements and imported into new interconnection agreements should have the expiration date of the original agreements from which they are taken. Qwest respectfully disagrees with Staff's recommendation that AT&T's position should be adopted and the termination date that originally accompanied the provision at issue should be ignored.

As set forth in Qwest's Legal Brief, Qwest's position is supported by the clear majority of authority, including the FCC and every commission to consider the impasse issue to date. That authority plainly holds that provisions taken from existing interconnection agreements pursuant to "pick and choose" rights have an expiration date that is coterminous with the expiration date of the original agreement. As Qwest explained, if AT&T's position that "pick and choose" provisions should be decoupled from their original expiration dates is adopted, CLECs will be able to extend "pick and choose" provisions indefinitely. In this regard, the Multistate Facilitator noted during the Multistate workshop that different expiration dates would allow CLECs to "perpetuate an offering forever" by permitting one CLEC to opt into a provision and to extend its term to the expiration date of its interconnection agreement.²⁰ Then, the CLEC from whom the provision was originally taken could opt into the exported "pick and choose" provision (in connection with a new interconnection agreement) and extend its term.²¹ This circular "pick and choose" scheme could extend a provision indefinitely and, as the Facilitator stated, leave "Qwest sort of picked and choose forever."²²

²⁰ Multistate Tr. (6/28/01) at 87.

²¹ *Id.*

²² *Id.*

To prevent a perpetual "pick and choose" provision, the Multistate Facilitator adopted Qwest's view and recommended coterminus expiration dates. The Multistate Facilitator found that although there needs to be an appropriate means for changing the terms and conditions under which Qwest provides service to CLECs over time, AT&T's proposal was improper. The Multistate Facilitator concluded:

Absent compelling circumstances (AT&T showed none here; it was arguing for a generally applicable rule), it should be concluded that the duration of the agreement from which the provision is being picked or chosen forms an integral part of any substantive provision that a CLEC seeks to use. Under this rule, a CLEC could take the provisions from the agreement with the longest remaining duration, if it considered duration to be of primary importance. Where it did so, it would be extending the duration of any commitment Qwest was already willing or obligated to accept. There should, however, be no right, in the case of picking and choosing, to require Qwest to make an offering at a time beyond that for which it is already obligated. If a CLEC wants to do that, it should employ the Act's negotiation and arbitration procedures.²³

Moreover, coterminous expiration dates should be adopted and perpetual "pick and choose" provisions prevented because perpetual provisions like those proposed by AT&T and endorsed by Staff's Proposed Findings here would deprive Qwest of the ability to appropriately respond to evolving and changing market conditions. Further, such an approach deprives Qwest of incentives to enter into innovative provisions for fear that if these provisions turn out differently than expected, Qwest would be subject to the contract provisions in perpetuity.

Finally, Qwest's position should be adopted because coterminous expiration dates are in accord with relevant FCC decisions. In *In re Global NAPs, Inc.*, the FCC discussed the "pick and choose" provisions of the Act and stated that any language taken from an existing agreement must keep the expiration date of the original agreement.²⁴ In that case, Global Naps complained that Bell Atlantic-New Jersey would not allow it to opt into a 1996 interconnection agreement

²³ Multistate GTC Report at 25.

²⁴ *In re Global NAPs, Inc.*, CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999).

between Bell Atlantic-New Jersey and MFS. The issue before the FCC was whether it should preempt the New Jersey Board because of its alleged failure to take timely action on the recommendation of the arbitrator. Because the Board did eventually act, the FCC declined to do so. In its ruling, however, the FCC made a number of comments pertinent to the issue of pick-and-choose and "opt-in" rights under section 252(i) and the implementing FCC rules (47 C.F.R. § 51.809). In footnote 25, the FCC stated that there should be a streamlined process for opting-in and "[i]n such circumstances, the carrier opting-into an existing agreement takes all the terms and conditions of that agreement (or portions of the agreement), including its original expiration date." The FCC thus recognized that "pick and choose" provisions have the same expiration date as the original interconnection agreement from which they are chosen.

In sum, Qwest respectfully submits that the Commission should adopt Qwest's position and SGAT language providing that "pick and choose" provisions have the same expiration date as the original interconnection agreement from which they are chosen.

III. DISPUTED ISSUE NO. 6: Should Tariffs Or Changes In Regulations Automatically Amend The SGAT? (G-23, SGAT Section 2.1).

Qwest's language for SGAT Section 2.1 is standard contract language that provides that any references to statutes, regulations, rules, tariffs or technical publications and other such documentation shall be deemed to be a reference to the most current version or edition of the authority or documentation referenced. By way of Section 2.1, Qwest seeks to avoid any confusion about which *version or edition* of a referenced document the parties should be working with when implementing this SGAT as their interconnection agreement over the course of the term of the agreement. Certainly, some of the documents referenced in this agreement will be updated during the term of the agreement. To avoid potential confusion as to which version or edition of a document the parties should be referencing as they implement their agreement, Qwest's proposed language makes it clear that the parties should be using the most current version or edition. Absent such clarity, the parties surely will have questions regarding whether

they should refer to the versions of the referenced documents that were applicable at the time the agreement was entered into or whether the parties should be working with the most current version. In a field where many publications and standards change to keep pace with technical progress and a changing network and marketplace, the issue of which version or edition to use during the three-year term of the agreement is an appropriate one to address in the agreement.

Although the Staff recognizes the merits of Qwest's Section 2.1, and generally endorses it, the Staff Report recommends several modifications. First, Staff recommends that the term "tariffs" be stricken from the section and that Qwest be required to post on its web site all new tariff filings and the date filed.²⁵ Second, Staff proposes that the SGAT be revised to require Qwest to publish on its web site "any new statutes, rules, technical references, technical administrative or technical standards and any other applicable technical publications which it intends to invoke or use on a going forward basis pursuant to Section 2.1 of the SGAT which would represent a change in Qwest's current policy or relationship with CLECs."²⁶ Qwest respectfully submits that neither recommendation is appropriate and that Qwest's Section 2.1 provision be accepted without change.

First, with respect to the proposal to strike "tariffs," Qwest understands the concern that tariffs (or any other referenced authority or documents) which are periodically revised not substantively change or alter the parties' contractual rights and obligations. This concern, however, is fully resolved in Qwest's proposed language, which provides that Section 2.2 (the change of law provision of the agreement) governs any material changes in the law, rules, regulations or their interpretation. With respect to changes in tariffs, technical publications and other documents referenced in the SGAT, Section 2.3 specifies that in cases of conflict, the rates,

²⁵ Staff Report at ¶ 489.

²⁶ *Id.*

terms and conditions of the SGAT shall prevail. Further, Section 2.3 addresses the situation where a new version of a document may not “conflict” with the SGAT but may abridge or expand the rights or obligations of either party. In this situation, Section 2.3 provides that the rates, terms and conditions of the agreement shall control.

Examining the relationship between Qwest’s Section 2.1 language dealing with referenced documents, including tariffs, and the protections accorded CLECs under Section 2.2 and 2.3, the Multistate Facilitator and the Colorado Hearing Commissioner agreed that Qwest’s approach was appropriate.²⁷

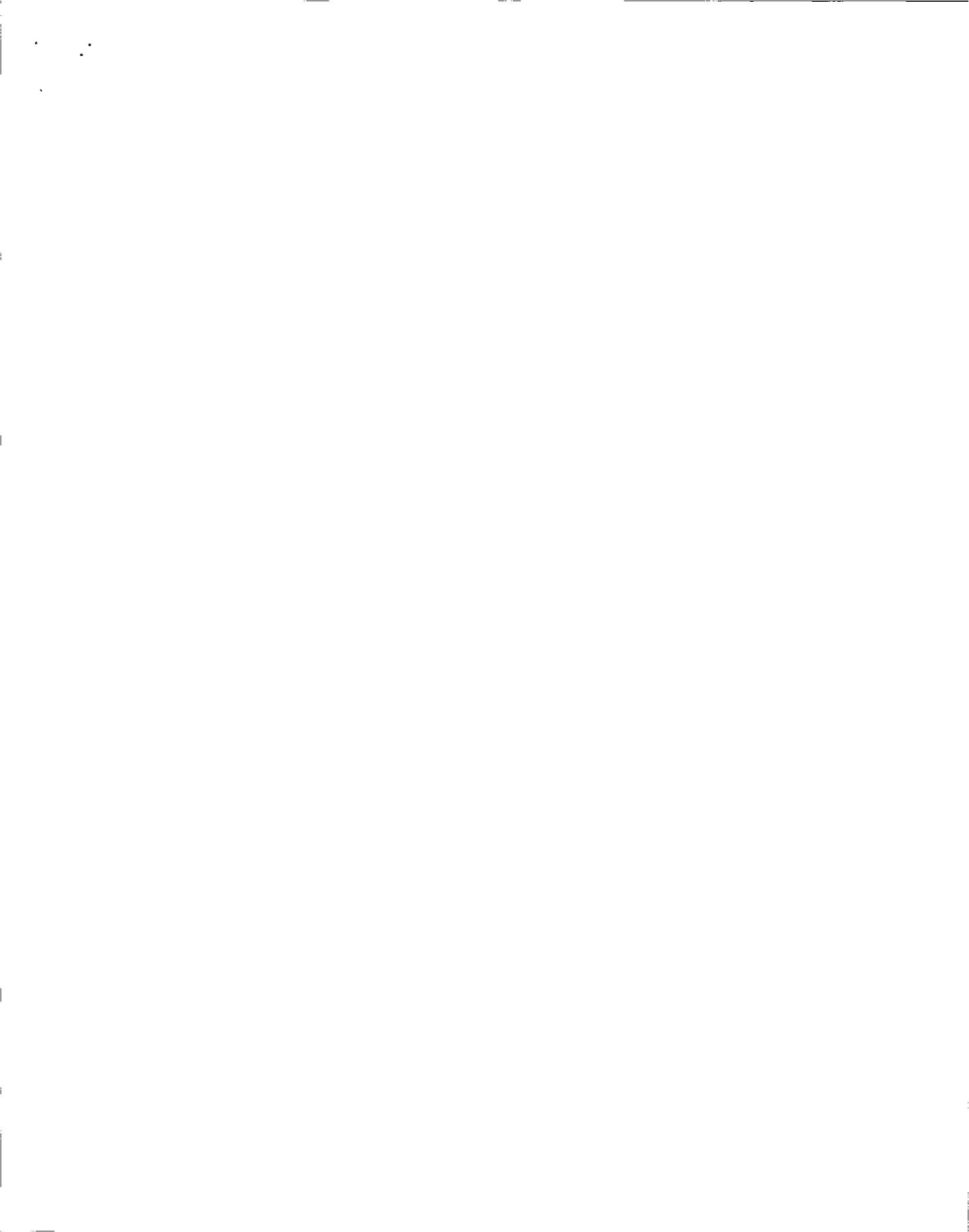
As the Colorado Hearing Commissioner observed:

Qwest’s SGAT § 2.1 is acceptable. The CLECs’ main concern is related to conflicts between the SGAT and tariffs. The parties, however, have already agreed in other SGAT sections to subject certain aspects of their contractual relationship to tariffs. Tariffs are, by their very nature, documents that can be changed by Qwest, and CLECs can challenge those alterations. As the Multistate Facilitator has found, “[h]ad there been intent to freeze the tariff provisions to those existing at the time of SGAT adoption, the words of the tariff, then existing rather than a mere reference to it, could have been used.” Otherwise, § 2.1 merely states that the most recent version of these outside resources will apply when referenced in the SGAT. When read in combination with SGAT §§ 2.2 and 2.3, which are discussed below, I do not find that this provision grants Qwest the ability unilaterally to alter the terms and conditions of the SGAT.²⁸

Thus far, every state commission participating in the Multistate proceeding that has considered this impasse issue has agreed with the Multistate Facilitator’s conclusion that Qwest’s SGAT language properly addresses the concern that a new tariff filing not change the provisions of the agreement. In sum, Staff’s concern is already fully addressed and no SGAT modifications are appropriate on this issue.

²⁷ See Multistate Report at 27-29; see also Colorado GTC Order at 14-16.

²⁸ Colorado GTC Order at 15.



Second, with respect to Staff's recommendation that Qwest provide notice of its tariff filings on its web site, Qwest notes that Qwest already provides such notice, and that it is unnecessary to include this requirement in the SGAT.

Qwest respectfully submits that Staff's recommendation regarding the publication on Qwest's web site of essentially any updated version of any documentation that might be encompassed by Section 2.1's straightforward reference to current versions is unduly burdensome and unwarranted. Section 2.1 simply sets forth the standard contract clarification regarding the use of the most current version of the document referenced. CLECs expressed concern that Section 2.1 not be construed to permit new tariff filings to change the terms and conditions of the agreement. This concern was the core of the impasse issue surrounding Section 2.1. As addressed above, that the concern is fully resolved in the unambiguous provisions of Section 2.1, 2.2 and 2.3.

Importantly, no party expressed the view that the SGAT provision should be changed to require the web postings suggested by Staff, nor does Staff provide any proposed language or any support or rationale for the recommendation. Further, Staff's recommendation would not advance or improve upon the clarity of Section 2.1, and, would potentially introduce ambiguity and confusion concerning the status of the wide-ranging and changing documentation published on Qwest's web site. Section 2.1 as currently drafted plainly states that the most current version of any referenced documentation should be used when implementing the agreement. Qwest believes that any questions the parties may have during the term of the agreement concerning the most current version of a specific document can be readily addressed by consultation between the parties at the time a question arises.

In short, Qwest respectfully submits that Staff's recommendations regarding SGAT Section 2.1 are unwieldy, burdensome, confusing and unnecessary. For these reasons, Qwest respectfully submits Section 2.1 should be adopted without further modification.

IV. DISPUTED ISSUE NO. 7: What Is The Appropriate Process For Updating The Agreement When There Is A Change In Law? (G-24, SGAT Section 2.2).

Although Qwest continues to believe in the merits of an interim operating agreement, Qwest agrees to implement Staff's proposal to exclude from Section 2.2 the provision for an interim operating agreement to govern the parties during the dispute resolution process. Qwest believes, however, that Qwest's proposed Section 2.2 should otherwise be adopted. In this regard, Qwest observes that there are minor differences between the 2.2 language set forth by WorldCom in its brief (and carried forward in the Staff Report) and the language proposed by Qwest.²⁹ Because WorldCom's argument concerning Section 2.2 was devoted exclusively to its view that the interim operating agreement language should be stricken from Qwest's proposed Section 2.2, and not to other aspects of Qwest's Section 2.2 language,³⁰ Qwest believes that the differences between the 2.2 language set forth by WorldCom and Qwest should be resolved in favor of Qwest's language. Reconciling these language differences in favor of Qwest's Section 2.2 will conform the language to that used in SGATs in other states and avoid potential confusion about differences. For these reasons, Qwest respectfully submits that its Section 2.2 language, as follows, should be adopted:

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of the date hereof (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to

²⁹ Compare WorldCom proposed § 2.2 with Qwest proposed § 2.2.

³⁰ See WorldCom Brief at 8-10.

agree upon such an amendment within sixty (60) days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected, or if requested by CLEC, amended as set forth in Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Any amendment shall be deemed effective on the Effective Date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

V. DISPUTED ISSUE NO. 9: Should Liability For Losses Related To Performance Under The Agreement Be Limited To Total Charges Billed To CLEC During The Contract Year, Except For Willful Misconduct? (G-35, SGAT Section 5.8).

A. Qwest's Proposed Language Should Be Considered on Its Merits.

Section 5.8 addresses the issue of the proper scope and purpose of limitations on the parties' liability to each other. In response to CLEC comments and suggestions in this and other proceedings, Qwest substantially revised its proposed limitation of liability provisions set forth in Section 5.8. As a result, the parties were able to significantly narrow the issues in dispute relating to liability limitations. They were not, however, able to come to consensus on all issues. As with Impasse Issue 3 regarding indemnity provisions, the parties proffered differing limitation of liability provisions and views on why the proffered language was appropriate, reflected industry practice and advanced proper public policy objectives.³¹ No party suggested that the limitation of liability provisions contained in Qwest's interconnection agreements with AT&T and WorldCom should be incorporated into the SGAT.

³¹ See, e.g., Qwest Brief at 18-26; AT&T Brief at 18-22.

Against this backdrop, Staff's Proposed Findings do not address the limitation of liability provisions offered by the parties nor the positions of the parties. Instead, taking the same approach it takes on indemnity, Staff recommends that the SGAT incorporate the language contained in the AT&T and WorldCom interconnection agreements.³² In support of this recommendation, Staff states this language "has likely been subject to extensive negotiation between the parties" and there is no need to "reinvent the wheel" when such provisions have already been negotiated between the major CLECs and Qwest.³³

For all the reasons set forth above in the discussion of why Qwest's indemnification provisions should be considered on the merits, and as explained below, Qwest's limitation of liability provisions should similarly be considered on the merits and adopted by the Commission.

B. Section 5.8 – Qwest's Limitation of Liability Provisions Should Be Adopted.

As with indemnification impasse issues discussed above, the issues remaining in dispute relating to limitations on liability stem from a fundamental disagreement between Qwest and AT&T about the proper scope and purpose of the limitation section. On the one hand, AT&T seeks to address through these provisions perceived problems that it claims derive from Qwest's supposed position as "the monopoly competitor."³⁴ In other words, instead of addressing these terms on the merits of industry practice and business risk allocation, AT&T views this section as an opportunity to provide "meaningful incentives" to Qwest to be "accountable" and to avoid "backsliding."³⁵ In this way, AT&T has confused the purposes of this section with those of Qwest's integrated, self-executing quality performance assurance plan ("QPAP").

³² See Staff Report at ¶ 506.

³³ *Id.*

³⁴ See Ex. 6-Qwest-82 (Hydock WA Aff.) at 32.

³⁵ *Id.* at 33-35.

By contrast, as set forth in Qwest's Legal Brief on Impasse Issues, and repeated here, the purposes of this section are straightforward. Section 5.8 aims at limiting the parties' potential liability to each other and to third parties in a way that is both consistent with established industry practice and comports with existing state law.³⁶ Qwest's proposals adequately accommodate payments made under the QPAP entered into between the parties without unnecessarily confusing the purposes of these provisions and any remedial scheme adopted by the state commissions in connection with Qwest's 271 approval.³⁷ As currently drafted, the provisions set forth in Section 5.8 relating to liability limitations address the CLECs' legitimate comments and conform to longstanding industry practice. Those provisions are as follows:

5.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to CLEC under this Agreement during the contract year in which the cause accrues or arises. Payments pursuant to the QPAP should not be counted against the limit provided for in this SGAT Section.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

5.8.3 Intentionally Left Blank.

5.8.4 Nothing contained in this Section shall limit either Party's liability to the other for willful misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.

5.8.6 Intentionally Left Blank

³⁶ See generally Ex. 6-Qwest-82 (Brotherson WA Reb.) at 46-53.

³⁷ See *id.* at 47-48, 51.

1. **Qwest's Proposal to Limit Liability for Performance-Related Losses to the Cost of Service Is Reasonable and Supported By Extensive Industry Practice.**

AT&T argues that this Commission's goal should be to create a "market environment that replicates and eventually becomes competitive." By raising the issue of competition, AT&T unwittingly lends support to Qwest's position on the issues of liability limits and indemnity. Qwest's insistence upon the limits set forth in its proposed SGAT sections derives from the fact that as a heavily regulated entity, Qwest is not able to factor into the price at which it would be willing to sell the services and network elements covered by the SGAT risks associated with the expansive liability and indemnity obligations the CLECs seek. In a truly competitive market, Qwest would factor such risks in to its offering price and, indeed, vary that price according to the risk coverage sought by the purchaser CLEC. Here, however, Qwest is plainly not free to engage in such pricing practices. The price of the services and elements Qwest offers in Arizona is set by the Commission and is, under the Act's pricing rules, based on the cost of providing the element or service at issue. In this sense, AT&T is correct in noting that the process does *not* replicate a free market. However, rather than strengthening its position, this fact undermines the CLECs' criticisms of Qwest's proposed liability limits and indemnity provisions.

Courts and commissions have long recognized the need for such limits in the context of regulated industries for a number of reasons. First, commissions have indicated that it is in the public interest to limit liability of regulated industries such as public utilities in order to ensure public access to utility services at affordable rates. Without such limitations of liability, costs associated with the potential risk of lawsuits would otherwise be passed on to captive ratepayers thus raising rates and limiting wider public access of utility services.³⁸ Therefore as long

³⁸ See, e.g., *In the Matter of Sprint Communications Company L.P.'s Petition for Arbitration of with Contel of Minnesota, Inc. d/b/a/ GTE Minnesota Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Docket No. 407,466/M-96-1111 ¶ 34 (Minn. P.U.C. Jan 21, 1997) ("*Re Sprint Communications Co.*"); *Order Instituting Rulemaking on the Commission's Own Motion into*

recognized by the U.S. Supreme Court, "[t]he limitation of liability [is] an inherent part of this rate."³⁹

Another justification for limiting liability of public utilities is the highly regulated nature of the industry itself. As explained by one court,

The theory underlying [decisions upholding the right of regulated utilities to limit their liability] is that a public utility, being strictly regulated in all operations with considerable curtailment of its rights and privileges, shall likewise be regulated and limited as to its liabilities. In consideration of its being peculiarly the subject to state control, "its liability is and should be defined and limited." There is nothing harsh or inequitable in upholding such a limitation of liability when it is thus considered that the rates as fixed by the commission are established with the rule of limitation in mind. Reasonable rates are in part dependent on such a rule.⁴⁰

Further, the necessity to limit liability for a highly regulated industry also derives directly from the lack of a competitive market environment. For example, in *Re Sprint Communications*,⁴¹ the Minnesota Public Utilities Commission agreed that the ILEC's proposed limitation of liability language excluding negligence was appropriate within an interconnection agreement since it was consistent with the status quo of the industry and was necessary in the absence of a "legitimately competitive environment" where parties can negotiate "to adopt or not adopt such clauses, as their respective bargaining strength dictates."⁴² Therefore, when parties are otherwise unable to freely negotiate an agreeable level of liability risk and factor such risk into the offering price, contractual limitations such as those proposed by Qwest here are required.

Competition for Local Exchange Service, Decision 95-12-057 R.95-04-043 I.95-04-044 ¶ 28 (Cal. P.U.C. Dec. 20, 1995). (adopting ILEC's proposed language to exclude negligence).

³⁹ *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 571 (1921) (Brandeis, J.).

⁴⁰ *Waters v. Pacific Telephone Co.*, 523 P.2d 1161, 1164 (Cal. 1974) (quoting *Cole v. Pacific Telephone & Telegraph Co.*, 246 P.2d 686 (Cal. 1952)). See also *In Re Illinois Bell Switching Station Litig.*, 641 N.E.2d 440, 445-446 (Ill. 1994) (citations omitted).

⁴¹ *Re Sprint Communications*, Docket No. 407,466/M-96-1111 ¶ 34 (Minn. P.U.C. Jan 21, 1997).

⁴² *Id.*

As discussed in Qwest's Brief, Section 5.8.1 captures the traditional tariff limitation that limits liability to the cost of services that were not rendered or were improperly rendered to the end user.⁴³ AT&T does not challenge the fact that this limitation reflects longstanding industry practice, including its own contractual arrangements with its customers. Rather, AT&T speculates that this limitation could mean that recovery is disproportionate to potential damages.⁴⁴ AT&T's comments on this issue are misplaced.⁴⁵

2. The CLECs' Comments Relating to Payments Made Pursuant to a Performance Assurance Plan Are Misplaced.

Commenting on an earlier version of Qwest's limitation of liability language, AT&T proposed a revision carving out of the limitation provisions payments made pursuant to Qwest's QPAP.⁴⁶ In response to this suggestion, Qwest added the following language to section 5.8.2:

If the Parties enter into a Performance Assurance Plan under this Agreement, nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan.

This language should resolve AT&T's main concerns relating to how the limitations section will account for payments under the QPAP.

AT&T argues that Qwest's liability under the SGAT "is directly tied to Qwest's section 271 application because sufficiently high liability and accountability are the only way to continue to insure that Qwest will perform its contractual (and statutory) obligations once its § 271

⁴³ See 6-Qwest-82 (Brotherson WA Reb.) at 47, 50; *see also, e.g.*, XO Pennsylvania, Inc. Local Exchange Services Telephone PA P.U.C. No. 8 Tariff, § 2.1.4(a) (eff. July, 30, 2000) (limiting XO's liability for performance-related damage to the lesser of \$500 or "an amount equal to no more than the proportionate charge (based on rates then in effect) for the service during the period of time in which the service is affected").

⁴⁴ See Ex. 6-Qwest-82 (Hydock WA Aff.) at 33.

⁴⁵ AT&T's vague claims of "disproportionality" do not change the analysis. As Mr. Brotherson noted, to the extent that AT&T may be contractually exposed to third parties for liability beyond the cost of providing service, AT&T (and not Qwest) is in the best position to identify that potential liability and to take reasonable steps, through its contract and tariff language, to protect against those risks. Ex. 6-Qwest-82 (Brotherson WA Reb.) at 47.

⁴⁶ See Ex. 6-Qwest-82 (Hydock WA Aff.) at 33-34.

application is approved."⁴⁷ This argument is without merit. As Mr. Brotherson pointed out, the real issue is whether the SGAT's limitation of liability provisions "should be used as a basis for shifting liability to Qwest, regardless of standard industry practices."⁴⁸ AT&T has provided no commercial reason for its proposed changes and has not disputed that Qwest's approach comports with longstanding industry norms.⁴⁹

3. Qwest's Reluctance to Expand the "Willful Misconduct" Exclusion Is Well Supported and Should Be Adopted.

AT&T has also proposed several revisions to section 5.8.4, which provides an exception to the limitation of liability for willful misconduct.⁵⁰ In each case, AT&T's proposals are misguided and should be rejected.

First, AT&T suggests that the exception for willful misconduct be expanded to include gross negligence.⁵¹ Second, AT&T proposes a further expansion of the exception to include "bodily injury, death or damage to tangible real or tangible personal property caused by such Party's negligent act or omission or that of their [*sic*] respective agents, subcontractors or employees."⁵² As with the other suggested modifications to this section discussed above, AT&T's suggestions reflect a misunderstanding of the purpose of the limitation provision in general and the willful misconduct exception in particular.

⁴⁷ *Id.* at 34.

⁴⁸ Ex. 6-Qwest-82 (Brotherson WA Reb.) at 49.

⁴⁹ Even AT&T acknowledges that this issue "may need to be revisited after the Commission adopts a backsliding plan." Ex. 6-Qwest-82 (Hydock WA Aff.) at 33. Thus, unless and until the commission adopts and the parties agree to enter into an approved QPAP, the remaining language proposed by AT&T for section 5.8.2 and its claim of a "direct tie" between "Qwest's liability/accountability under this SGAT" and Qwest's 271 application are premature. *Id.* at 34; *see also* Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48.

⁵⁰ Ex. 6-Qwest-82 (Hydock WA Aff.) at 34.

⁵¹ *Id.*

⁵² *Id.*

Qwest included the term "willful misconduct" in its proposed exception in Section 5.8.4 because that is the standard exclusion contained in the telecommunications tariffs, including those of both Qwest and AT&T.⁵³ AT&T has not challenged Mr. Brotherson's observation that the proposed inclusion of "gross negligence" in this provision would be inconsistent with established practice in the industry. Nor has AT&T provided any independent commercially reasonable basis for the expansion of the exclusion it proposes. The Multistate Facilitator agreed with Qwest, noting that AT&T's proposal to include "gross negligence" was inappropriate because, among other reasons, "gross negligence is often an elusive thing to prove" and "there is precedent and good cause for leaving it out of commercial contracts."⁵⁴

The Multistate Facilitator evaluated AT&T's other proposed modifications to Section 5.8.4 and suggested the following additional language for Section 5.8.4:

Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of their respective agents, subcontractors or employees.⁵⁵

Although this provision is different from Qwest's proposal, Qwest has agreed to make the change in its SGAT for Arizona.

4. Section 5.8.6 Is No Longer Required Given The Inclusion Of Section 11.34 (Revenue Protection).

Following the submission of briefs on Impasse Issue No. 9, the parties agreed to delete Section 5.8.6 as moot in light of Qwest's agreement in Section 11.34 to make available to CLECs fraud prevention or revenue protection features. Accordingly, the parties have resolved their differences regarding the appropriate SGAT language on this issue and it is now moot as a subpart of Impasse Issue No. 9.

⁵³ Ex. 6-Qwest-82 (Brotherson WA Reb.) at 48-49.

⁵⁴ Multistate GTC Report at 32.

⁵⁵ *Id.*

5. Qwest's Limitation of Liability Approach Has Been Endorsed by Commissions Considering This Impasse Issue.

As with Qwest's indemnity language and approach, other commissions that have reviewed this impasse issue have agreed that Qwest's SGAT provision is appropriate. The Nebraska,⁵⁶ New Mexico,⁵⁷ and Montana⁵⁸ Commissions have adopted the language Qwest proposes here. The Colorado Hearing Commissioner has substantially embraced the position advocated by Qwest.

In sum, Qwest's limitation of liability provisions, taken together with its provisions relating to indemnity, properly balance the parties' liability consistent with longstanding industry practices. Accordingly, Qwest respectfully submits that the Commission set aside Staff's proposed resolution of this issue and adopt Qwest's limitation of liability provisions as set forth here.

IV. DISPUTED ISSUE NO. 15: Use of Confidential Information (G-62, SGAT Section 5.16)

Qwest addresses this Disputed Issue 15 here only to clarify that the issue is resolved and that no SGAT changes are appropriate beyond those that Qwest has already agreed to make in response to Staff's recommendation concerning Disputed Issue No. 2.

In its summary of the parties' positions on Disputed Issue 15, Staff states that the parties' position on this issue was addressed in their discussion of Disputed Issue No. 2.⁵⁹ In its recommendation, Staff states that to the best of its knowledge, the issue has been closed in Arizona.⁶⁰ Staff further states that, "nonetheless, Qwest should be required to add language to its

⁵⁶ See Nebraska Group 5 Order at 10-12.

⁵⁷ See New Mexico GTC Order at 17-20.

⁵⁸ See Montana GTC Order at 14-16.

⁵⁹ Staff Report at ¶ 530.

⁶⁰ *Id.*

SGAT concerning the treatment of confidential information in general.”⁶¹ Because no language disputes remain with Qwest’s agreement to incorporate Staff’s recommendation concerning Disputed Issue No. 2, Qwest agrees with Staff that this Disputed Issue No. 15 is closed.

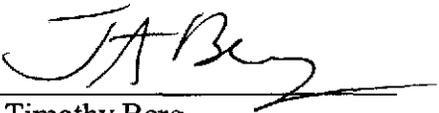
CONCLUSION

Qwest accepts most of Staff’s proposed findings and agrees to incorporate most of them in the Arizona SGAT. With respect to those proposed findings with which Qwest disagrees, Qwest respectfully requests that Qwest’s proposed resolution be adopted, for the reasons set forth.

DATED this 14th day of January, 2002.

Respectfully submitted,

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⁶¹ *Id.*

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