

ORIGINAL



0000023270

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

2001 SEP 19 P 12: 08

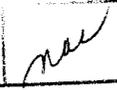
WILLIAM A. MUNDELL  
Chairman  
JAMES M. IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

Arizona Corporation Commission

DOCKET

AZ CORP COMMISSION  
DOCUMENT CONTROL

SEP 19 2001

DOCKETED BY 

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  
)  
)  
)  
)  
)

---

**AT&T'S CLOSING BRIEF ON GENERAL TERMS & CONDITIONS  
AND SGAT SECTIONS 11, 12, 17, 18 & EXHIBITS F & I**

---

AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix, (collectively, "AT&T") hereby submit this Closing Brief for the workshop on General Terms and Conditions ("GT&Cs") including, but not limited to, the Statement of Generally Available Terms ("SGAT")<sup>1</sup> §§ 11, 12, 17, 18, Exhibit F and Exhibit I.

**INTRODUCTION**

In the context of considering § 271 compliance or lack thereof, GT&Cs are an integral part of how Qwest Communications, Inc. ("Qwest") purports to implement its specific checklist requirements. For example, if a competitive local exchange carrier

---

<sup>1</sup> For purposes of this brief all references to the SGAT are to the 9/7/01 SGAT Lite unless otherwise noted or reference is to the interconnection, collocation, resale workshops. The 9/7/01 SGAT Lite is attached hereto as **Exhibit A**. References to the interconnection, collocation, resale workshop SGATs are to the last filed SGAT Lites in those workshops.

(“CLEC”) desires to interconnect using a particular SGAT provision, it may—under the Act— “pick and choose” such provision. With respect to GT&Cs, SGAT Section 1.8 purports to allow CLECs the “pick and choose” right as defined under the Act. The discussion that follows in this brief on SGAT Section 1.8, however, reveals that Qwest is not complying with its obligations under the Act and that Qwest’s conduct is nothing more than an exercise in delay tactics that result in the creation of competitive barriers.

Thus, if the GT&Cs are particularly onerous or implemented such that they diminish Qwest’s provision of some checklist items and, hence, its full compliance with § 271, then they create a barrier that the Commission should insist that Qwest remove. Without removal of these barriers, Qwest—as a matter of law—should not receive a finding of compliance with § 271 from the Commission.

Rather, as a matter of law, to demonstrate compliance with the requirements of § 271’s competitive checklist, Qwest must show that “it has ‘fully implemented the competitive checklist [item]... .’”<sup>2</sup> Thus, Qwest must plead, *with appropriate supporting evidence, the facts* necessary to demonstrate it has complied with the particular requirements of the checklist item under consideration.<sup>3</sup> This means that Qwest’s GT&Cs cannot undermine compliance by creating ridiculous hurdles that the CLECs must overcome before they may enjoy the competitive rights provided under the Act. Furthermore, and as noted in the example provided above, merely offering SGAT language with little or no supporting evidence that Qwest is actually doing that which its SGAT claims, provides insufficient grounds upon which to conduct an investigation or

---

<sup>2</sup> *In the Matter of 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*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Rel. Dec. 22, 1999) at ¶ 44 [hereinafter “**FCC BANY 271 Order**”].

<sup>3</sup> *Id.* at ¶ 49.

develop any recommendation for the Federal Communications Commission (“FCC”) regarding Qwest’s actual compliance with § 271. As noted in AT&T’s Affidavits and throughout the GT&Cs workshop, Qwest has consistently failed to provide sufficient supporting evidence that it is doing what its SGAT claims.<sup>4</sup> Thus, AT&T requests that the Commission judge not only the words in the SGAT, but also Qwest’s conduct as shown through the appropriate evidence, if any.

### DISCUSSION OF DISPUTED ISSUES

Generally, the discussion that follows is organized sequentially by SGAT section (*e.g.*, General Terms, Interpretation & Construction, Definitions, etc.) and then within those sections the disputes are discussed by SGAT section proceeding *seriatim* unless a general topic discussion warrants combining a group of SGAT sections to avoid redundancy.

#### I. GENERAL TERMS - SGAT § 1.0

##### A. SGAT § 1.7.2; Pending Commission Approval of New Rates, Terms and Conditions for New Products or Services, Qwest Should Employ Rates, Terms and Conditions that are Substantially Similar to Rates, Terms and Conditions for Comparable Products.

Potentially, Qwest may “roll-out” new products for various reasons (*e.g.*, in response to CLEC demand, because of a change in law, or, as previous workshops have revealed, because Qwest is creating more terms and conditions for service offerings already contained in the SGAT).<sup>5</sup> Regardless of the reason, CLECs and Qwest have

---

<sup>4</sup> Much of Qwest’s actual performance may not be determined until after the Test Advisory Group (“TAG”) concludes its OSS and performance measurement testing. Nevertheless, TAG is not even considering some of Qwest’s performance, as identified in this brief and elsewhere. In these instances Qwest must meet its burden of proof by placing evidence of compliance in this record. Vague, conclusory statements reiterating SGAT language alone, does not constitute evidence of compliance.

<sup>5</sup> Recall that the single point of interconnection per LATA while allegedly provided in the SGAT § 7.1.2 was made into a new product through Qwest’s SPOP product with terms and conditions not contained in the SGAT (and contrary to the law).

agreed that Qwest will make new products available to CLECs as soon as possible and before Qwest goes through the task of amending its SGAT or any other mechanism it might employ to obtain Commission approval of such products and their associated rates.<sup>6</sup> This was agreed to as a way to lessen the delay and lag-time CLECs face when having to await Qwest's creation of Commission-approved terms, conditions and rates coupled with the further delay of having to amend individual interconnection agreements to accommodate the new products.<sup>7</sup>

During the interim period before Commission approval, AT&T requested that Qwest apply the rates, terms and conditions of its current products that most closely resembled the new product to the interim offering.<sup>8</sup> The SGAT language proposed by AT&T that would accomplish this goal was:

Proposed SGAT Section 1.7.2

Qwest agrees that the rates, terms and conditions applicable to new products and services that are not contained in this SGAT shall be substantially the same as the rates, terms and conditions for comparable products and services that are contained in this SGAT. Qwest shall have the burden of demonstrating that new products and services are not comparable to products and services already contained in this SGAT.<sup>9</sup>

This language merely ensures that Qwest makes new product offerings actually accessible to the CLECs by matching them to previously approved terms and rates.<sup>10</sup>

Thus, CLECs may actually compete with respect to the new product and do not suffer the illusion of timely receiving the new product while being bogged down by the delay inherent in negotiation with Qwest.

---

<sup>6</sup> 8/21/01 CO Tr. at pp. 17-27; 7/9/01 WA Tr. at pp. 3857-3866 (introduced by Qwest as exhibit 6 Qwest 83).

<sup>7</sup> See generally, 8/21/01 CO Tr. at p. 18; 7/9/01 WA Tr. at pp. 3857-3867.

<sup>8</sup> 8/21/01 CO Tr. at p. 19; 7/0/01 WA Tr. at pp. 3853-3858.

<sup>9</sup> See also, 8/21/01 CO Tr. at pp. 17-18; 7/9/01 WA Tr. at p. 3855.

<sup>10</sup> 8/21/01 CO Tr. at p. 19; 7/9/01 WA Tr. at pp. 3866-3867.

In fact, Qwest provided no substantive reason that its rates, terms and conditions should not be fairly consistent for similar products. An example best illustrates why AT&T's position is sound. Assume, for argument's sake, that Qwest's SPOP product is—as it claims—appropriately a new product not available under the current SGAT. This new product allegedly offers CLECs the opportunity to interconnect with Qwest at a single point of interconnection per LATA as opposed to Qwest's previous position of requiring a single point per rate center.<sup>11</sup> Qwest's SGAT<sup>12</sup> § 7.0 already contains sufficient terms, conditions and rates that should form the basis for Qwest's SPOP offering; that is, it contains terms for interconnection via DS-1 or DS-3 facilities which would form the trunk to the SPOP from the CLEC facilities;<sup>13</sup> it provides that Qwest will furnish such facilities “at least equal in quality to those its provides to itself;”<sup>14</sup> it provides for the exchange of traffic and billing;<sup>15</sup> it provides for the transport and termination of the traffic carried on these trunks;<sup>16</sup> and it provides for direct trunk transport, among other things.<sup>17</sup> These SGAT items, while not specifically linking to the new SPOP product, are indeed substantially similar to the terms and conditions necessary for dedicated trunk interconnection between the CLEC's network and Qwest's network at a single point in the LATA. It would be astounding if Qwest came up with rates, terms and conditions that were substantially different than what it already offers given that SPOP is largely made up of interconnection piece parts already offered in the SGAT and Exhibit A. Thus, AT&T's position makes interim offerings similar to current offerings

---

<sup>11</sup> See generally, transcript discussions involving the SPOP issue, 2/13/01 AZ Tr. at pp. 1283-1309.

<sup>12</sup> Rates are contained in Exhibit A to the SGAT and are largely being considered in various rate cases around Qwest's 14-state region.

<sup>13</sup> SGAT § 7.1.2.

<sup>14</sup> *Id.* at § 7.1.1.1.

<sup>15</sup> *Id.* at § 7.2.1 *et seq.*

<sup>16</sup> *Id.* at § 7.2.2 *et seq.*

<sup>17</sup> *Id.* at § 7.3.2 *et seq.*

available to the CLECs at rates, terms and conditions that are consistent with what Qwest has already acquired. Qwest suffers no disadvantage here and competition will benefit; therefore, AT&T requests that the Commission adopt this proposal.

**B. SGAT §§ 1.8 & 1.8.1;<sup>18</sup> When CLECs Exercise their Rights Under the “Pick and Choose” Provisions of the Act, Qwest’s Conduct Thwarts the CLECs’ Ability to Timely and Efficiently Opt Into SGAT and Interconnection Agreements in Violation of §§ 252(i) and 271.**

While the parties to this proceeding have agreed to the SGAT language, they are unable to agree that Qwest’s conduct, apart from what the SGAT states, is in actual compliance with the law.<sup>19</sup> In order to judge Qwest’s conduct, AT&T offers an examination of what the law requires and then applies that law to specific conduct that demonstrates Qwest’s lack of compliance.

1. The Law Related to 47 U.S.C. § 252(i).

The law imposes upon ILECs, like Qwest, the duty to “negotiate in good faith” with its competitors in the creation of interconnection agreements.<sup>20</sup> In furtherance of that obligation, the Act instructs incumbent local exchange carriers (“ILECs”) to allow for the creation or amendment of interconnection agreements through a mechanism known as “pick and choose.” The Act states:

A local exchange carrier shall make available any interconnection service, or network elements provided under an agreement approved under this section to which it is a party to any other requesting telecommunications

---

<sup>18</sup> AT&T cites to the most recent version of the SGAT available at the time of this brief; this is not necessarily the late-filed frozen SGAT, but should be fairly consistent with it.

<sup>19</sup> AT&T verified Comment at pp. 9-15; *see also*, 6/1/01 AZ Tr. at p. 606; 8/21/01 CO Tr. at pp. 140-141; 7/9/01 WA Tr. at pp. 3874-3875; 6/28/01 Multi-State Tr. at pp. 91-100.

<sup>20</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, First Report and Order, FCC 96-325 (Rel. Aug. 8, 1996) at ¶¶ 138 – 171 [hereinafter “*First Report and Order*”].

carrier upon the same terms and conditions as those provided in the agreement.<sup>21</sup>

In addition, the *First Report & Order* states:

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

During its consideration of § 252(i) of the Act, the FCC recognized, among other things, the incumbent-monopolist's superior bargaining position and its lack of incentive to actually cooperate with its competitors during negotiations.<sup>23</sup> In fact, the FCC concluded that it was vital to the growth of competition that states be ever vigilant in their efforts to prevent incumbents from creating barriers to entry and handicaps that delay or destroy the new entrants' opportunities to meaningfully compete.<sup>24</sup> Thus the FCC promulgated the following rules related to "pick and choose:"

Availability of provision of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available *without unreasonable delay* to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, *upon the same rates, terms, and conditions as those provided in the agreement*. An incumbent LEC may not limit the

---

<sup>21</sup> 47 U.S.C. § 252(i).

<sup>22</sup> *First Report and Order* at ¶ 1316.

<sup>23</sup> *Id.* at ¶¶ 15 & 141.

<sup>24</sup> *Id.* at ¶¶ 16 – 20.

availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements *shall remain available* for use by telecommunications carriers pursuant to this section *for a reasonable period of time after the approved agreement is available* for public inspection under section 252(f) of the Act.<sup>25</sup>

In evaluating this rule, the United States Supreme Court affirmed that “an incumbent LEC may require requesting carrier[s] to accept all terms that *it can prove* are ‘legitimately related’ to the desired term.”<sup>26</sup>

Thus, the law is quite clear; Qwest must not act in a manner that unreasonably delays CLECs from obtaining “any” individual interconnection, service or element contained in “any” Qwest agreement approved by the State. Thus, when Qwest desires that the CLEC adopt terms in addition to those sought by the CLEC, Qwest must prove to the Commission that such terms are “legitimately related.”

Finally, the particular provisions chosen by the CLEC should at least be made available under the “same rates, terms, and conditions as those provided in the agreement.” And for Arizona the Commission’s preliminary thoughts on what constitutes a reasonable time is: (a) the original agreement must be available for “picking

---

<sup>25</sup> 47 C.F.R. § 51.809 (emphasis added).

<sup>26</sup> *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S. Ct. 721, 738 (1999)(emphasis added; citing FCC *First Report & Order* at ¶ 1315).

and choosing” for a period equal to the duration of the contract (e.g., two year term equals a two year availability for other CLECs); and (b) all subsequent arrangements adopted in previous agreements must be available for pick and choose for nine months.

2. Qwest’s Conduct that is Contrary to the Above-cited Law.

Here, the record reflects Qwest’s failure to fully and timely comply with its obligations under § 252(i). In its verified Comments, AT&T outlined three illustrative examples of its recent commercial experience with Qwest in exercising the “pick and choose” right. Briefly, they were: (a) Qwest applying termination dates different than those in the original agreements such that CLEC obtains any given provision with the remaining time the original CLEC has on its contract as opposed to the original termination date in the original agreement;<sup>27</sup> (b) Qwest exaggerating and abusing the “legitimately related” requirement along with failing to provide AT&T with any proof of legitimate relation;<sup>28</sup> and (c) Qwest refusing to allow AT&T to opt into approved agreements.<sup>29</sup> AT&T will examine each of these examples in turn and consider Qwest’s response or lack thereof.

(a) Applying terms different than those in the original agreements.

As outlined in AT&T’s comments, Qwest applies to the “opting-in” CLEC, the “term” remaining for the original CLEC on a particular contract. So, where the original CLEC enjoyed all the provisions in its contract for a term of two years, Qwest is essentially denying that two year term to the opting-in CLECs and demanding instead

---

<sup>27</sup> ATT Comments at pp. 9-15.

<sup>28</sup> *Id.* at pp. 12-15.

<sup>29</sup> *Id.*

that opting-in CLECs receive a lesser term based upon whatever time remains for the original CLEC.<sup>30</sup>

Qwest's interpretation is contrary to the law cited above. That is, Qwest must provide the opting-in CLEC with the same terms and expiration as the original CLEC enjoyed, not a lesser term or expiration.

Nevertheless, in an attempt to support its position, Qwest argues that its interpretation is required to allow it to "sunset" certain agreements. Here too, Qwest's position is contrary to the law.<sup>31</sup> The FCC, as noted above in its rules, has created three alternatives for Qwest to offer terms and conditions other than what the original CLEC acquired. Those three alternatives are: (i) if Qwest can prove that the service is more costly than providing it to the original carrier; (ii) if Qwest can prove that it is technically infeasible to provide the service to the opting-in carrier; or (iii) if Qwest can demonstrate that the particular contract has been available for an unreasonable amount of time after its approval.<sup>32</sup> Each of these three provisions provides Qwest with ample opportunity to protect its interests while balancing the CLECs' need to opt into agreements without the unreasonable delay of having to renegotiate and re-arbitrate every provision every time they are needed.

During the workshops, Qwest provided no legal or evidentiary support for its position to provide a lesser duration of contract provisions than the original agreement

---

<sup>30</sup> 6/1/01 AZ Tr. at pp.607-609; 8/21/01 CO Tr. at p. 143; 7/9/01 WA Tr. at pp. 3882-3883 (citing to Brotherson Rebuttal Testimony containing a greater explanation of the application Qwest uses). In addition, Mr. Brotherson's testimony cites to dicta in a footnote to an FCC order that is not on point. Nevertheless, even assuming the footnote is correct, it does not support Qwest's interpretation, but rather, it confirms AT&T's position.

<sup>31</sup> *Id.*

<sup>32</sup> 47 C.F.R. § 51.809(b) & (c).

offers. Such conduct, without a showing of one of the three reasons for restricting an option, fails as a matter of law and fact, and requires a finding of non-compliance.

(b) Exaggerating and abusing the “legitimately related” requirement.<sup>33</sup>

In its Comments AT&T provided two examples of Qwest’s exaggerated and abusive use of the “legitimately related” requirement. They were, (i) where AT&T sought to adopt the SGAT provision related to Qwest providing AT&T with interconnection trunk blocking reports and Qwest demanded that AT&T also adopt the wholly unrelated SGAT forecasting provisions,<sup>34</sup> and (ii) where AT&T sought to adopt a single point of interconnection (“POI”) per LATA, Qwest demanded that AT&T also pick and choose SGAT provisions irrelevant to a single POI.

In response to these claims, Qwest’s lawyer summarily dismissed the problems as disputes that the Commission must resolve.<sup>35</sup> Qwest placed no evidence of its compliance or rebuttal information in the record. Examination of the exhibits attached to the AT&T Affidavit reveal Qwest’s actual understanding and conduct in the course of its business operations outside the scrutiny of the § 271 proceeding. For example, in relation to the blocking reports, Qwest clearly understood that AT&T desired to adopt the SGAT provision related solely to blocking reports and Qwest clearly demanded that AT&T also adopt SGAT § 7.2.2.8 on forecasting.<sup>36</sup> There exists no counter evidence from Qwest on this point, no proof that the provisions were technically inseparable and no proof that separation would cause an increase in the underlying costs.

---

<sup>33</sup> AT&T objects to Qwest’s attempt to re-define its obligation regarding “legitimately related” using its SGAT definitions section. Filed simultaneously herewith, AT&T is offering the definitions language that AT&T and Qwest have agreed to; the only dispute with respect to these definitions is the definition of “legitimately related.”

<sup>34</sup> ATT Comments at pp. 12-13.

<sup>35</sup> 8/21/01 CO Tr. at pp. 152-163; 7/9/01 WA Tr. at p. 3881.

<sup>36</sup> ATT Comments at Exhibit C.

Furthermore, Qwest, when asked during the workshop, would provide nothing in the way of evidence to suggest that Qwest's exercise of the "legitimately related" requirement is anything other than a purely subjective and arbitrary decision on the part of whomever is consulted for any given provision.<sup>37</sup> The FCC, however, has plainly stated that "we conclude that the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service or element being requested under section 252(i)."<sup>38</sup> Moreover, the FCC has clarified that the "incumbent LECs may not require as a 'same' term ... the new entrant's agreement to terms ... relating to other interconnection, services or elements in the approved agreement."<sup>39</sup> Finally, the FCC mandates that "incumbent LEC efforts to restrict availability of interconnection, services, or elements under section 252(i) also must comply with the 1996 Act's general nondiscrimination provisions."<sup>40</sup>

The statements offered by Qwest, through outside counsel—not a witness—provide absolutely no evidence that Qwest employs any consistent criterion to ensure that it, in fact, requires the "same" terms relating solely to the provision sought or that it has any mechanism whatsoever for ensuring nondiscrimination among CLECs, itself or its affiliates. In short, the only evidence in the record clearly indicates that Qwest does not comply with its obligations under § 252(i) and hence, § 271. Absent proof that Qwest has created a mechanism that more objectively determines "legitimately related" sections and it applies such mechanism in a nondiscriminatory fashion, the Commission should not recommend a finding of compliance to the FCC.

---

<sup>37</sup> 6/1/01 AZ Tr. at p. 627; 8/21/01 CO Tr. at pp. 152-163; 7/9/01 WA Tr. at pp. 3881.

<sup>38</sup> *First Report and Order* at ¶ 1315.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

- (c) Failing to allow lawful requests to opt into Commission-approved agreements.

In the final example, Qwest has insisted that AT&T not opt into the agreement it designates, but rather that if the designated agreement was one that was opted into and slightly modified by another CLEC, AT&T—according to Qwest—could not opt into the agreement it selected, but rather, AT&T had to select the previous agreement that had formed the underlying basis for the designated agreement that AT&T sought.

Nothing in the law supports this conclusion. Nothing in the facts in this record supports Qwest’s conduct. Thus, Qwest is yet again, acting outside the scope of the SGAT and engaging in conduct that is contrary to the law and posed to delay CLECs’ efforts to obtain agreements. In fact, as of the date of the Arizona workshops, AT&T still had not successfully concluded what should have otherwise begun in March and had been a simple opt-in with SGAT provisions modifying the original agreement.

All three examples provided by AT&T constitutes a failure to negotiate in good faith in relation to the pick and choose obligations and all three acts create barriers to entry, while undermining Qwest’s full compliance with the Act, in particular § 271. Furthermore, in AT&T’s experience Qwest’s process for handling “pick and choose” requests is consistent from state-to-state. Hence, regardless of the state, AT&T’s experience will be largely the same because it must deal with the same people and departments at Qwest. Therefore, Qwest is not in compliance with § 271 of the Act.

## **II. INTERPRETATION & CONSTRUCTION – SGAT § 2.0**

- A. SGAT §§ 2.1 & 2.3; Qwest’s Tariff Filings should not Automatically Amend Interconnection Agreements or the SGAT.**

Tariff filings generally provide a carrier's standard offerings, with all terms, conditions and prices applicable. Commissions may proactively approve tariffs or they may simply go into effect via the passage of time without any review. Where tariffs become effective without review, they are still subject to challenge. Generally, tariffs are subject to change at the sole discretion of the carrier.

In Arizona, Qwest has state access tariffs and state retail tariffs.<sup>41</sup> As with all tariffs, these tariffs contain their own terms, conditions and prices. Qwest provided no evidence during the workshops to indicate whether these tariffs contain conflicting terms, conditions or prices with those contained in its SGAT. Nor did Qwest provide any evidence regarding how or where in the SGAT such tariffs are employed, if at all. Nonetheless, Qwest seeks the right to have such tariffs unilaterally and automatically alter the terms, conditions and prices contained in the SGAT and executed interconnection agreements based thereon.

From AT&T's review, there exist in the SGAT already limited sections, such as SGAT § 6 on resale, that describe how Qwest retail tariffs may alter the SGAT and to what extent it is altered.<sup>42</sup> Nothing more is needed to protect Qwest's interests.

Apart from the specific tariff references already contained and dealt with in the SGAT, Qwest's request to obtain an overarching tariff-revision provision violates the fundamental requirements of the U.S. Constitutional right to contract and the carrier's right to rely on promises made.<sup>43</sup> Moreover, several Commissions have already approved

---

<sup>41</sup> See <http://tariffs.uswest.com> (Administrative Notice); cf. <http://cei.uswest.com/ppnb.nsf>, which apparently constitutes the most recent change in the URL for Qwest's tariff web site.

<sup>42</sup> See e.g., SGAT §§ 6.2.2.7, 6.2.4, 6.2.13, 6.2.14, 6.3.1, 6.3.3, 6.3.6, 6.3.9, 6.3.10, and 6.5.1; see also, SGAT § 7.2.1.1.

<sup>43</sup> See cites to the U.S. Constitutional ex post facto and contract rights and discussion in the section that follows.

interconnection agreements that bar Qwest from attempting to alter interconnection agreements through changes in its tariff filings.<sup>44</sup> Nothing presented during these workshops should change this position.

In its latest version of the SGAT Lite dated September 7, 2001, Qwest attempted to add language to these provisions, which serves to confuse—rather than clarify and make legal, this particular provision. Therefore, using Qwest’s recent language for SGAT §§ 2.2 and 2.3, AT&T offers the adjustments to that language contained in **Exhibit B** to this brief that provide a fairer and clearer alternative. Nevertheless, AT&T believes the preferable language for the SGAT is the language originally proposed by AT&T in its Comments and re-issued below in subsection B.

**B. SGAT § 2.2; Simply By Virtue of a Change in the Law, Qwest Should Not be Allowed to Alter Interconnection Agreements or SGAT Provisions Until Such Change has been Addressed in the Change of Law Provisions in the Agreements or SGAT.**

Article I, Section 10, Clause 1 of the United States Constitution states, in relevant part: “No State shall ... pass any ex post facto law, or law impairing the obligation of contracts ... .” The primary focus in construing this Clause is upon prohibiting a new law that is designed to repudiate or adjust pre-existing contractual arrangements.<sup>45</sup> As a general rule, then, a change in law, without more, cannot alter a pre-existing interconnection agreement or SGAT adopted as such.

Nevertheless, during the § 271 workshops, Qwest has made it abundantly clear that it wants to be bound by what it considers the “current” interpretations of the Act and state law as soon as such pronouncements can be considered final adjudications

---

<sup>44</sup> See AT&T ICAs with Qwest in: Idaho, Part A § 53; Iowa, Part A, § 20; Nebraska, Part A, § 20; and Utah, Part A, § 53.

<sup>45</sup> See *Keystone Bituminous Coal Assoc. v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 1251 (1987).

regardless of the pre-existing agreements.<sup>46</sup> While parties to a contract may generally modify such contract by mutual agreement,<sup>47</sup> Qwest takes it a step further. Qwest asks that the Commission provide Qwest with the right to force upon the CLECs an immediate change to contracts for “immaterial” changes and very a abbreviated opportunity to modify agreements to accommodate “material” changes in law.<sup>48</sup> Qwest’s proposal works almost exclusively to Qwest’s advantage because—as Qwest admits—it can cease providing a service to the CLECs far faster than it can begin offering a new service to the CLECs.<sup>49</sup> Thus, where Qwest would like to avoid some provision it is already offering, all it must do is say “no more,” but where CLECs desire to immediately purchase a new service made available by a change in law, Qwest wants time to develop terms and conditions. Such request not only puts CLECs in an untenable position in relation to relying on the contracts they forge with Qwest, but it also removes Qwest’s treatment of itself under its interconnection agreements and SGAT from any semblance of parity. Furthermore, Qwest creates a resource draining and impractical double arbitration process by making the parties arbitrate interim agreements pending the outcome of the primary arbitration.<sup>50</sup>

AT&T’s position, on the other hand, is legally sound and far more equitable by actually balancing the course of modifying agreements to accommodate changes in law. AT&T proposes that the parties perform under the agreement or SGAT until such time as the parties have either mutually agreed upon a change or until any disputes associated

---

<sup>46</sup> SGAT §§ 2.1 & 2.2; 6/1/01 AZ Tr. at p. 550; 8/21/01 CO Tr. at pp. 178-179; 7/9/01 WA Tr. at p. 3917.

<sup>47</sup> *Yeazell v. Copins*, 402 P.2d 541, 545 (Ariz. 1965)(contracts may not be unilaterally modified); *Ruck Const. Co. v. Tucson*, 570 P.2d 220, 222 (Ariz. 1980)(one party cannot alter contract terms without consent from the other party).

<sup>48</sup> 6/1/01 AZ Tr. at p. 552-555; 8/21/01 CO Tr. at pp. 194-195; 7/9/01 WA Tr. at p. 3919.

<sup>49</sup> 7/9/01 WA Tr. at pp. 3921-3925; Multi-State Transcript at pp. 111-114.

<sup>50</sup> SGAT §§ 2.2 & 2.3.1.

with differing views of the change in law are resolved. This proposal “cuts” equally both ways. That is, if either party experiences an adverse or positive change in law, either party has sufficient time to modify the interconnection agreement or SGAT either through dispute resolution or mutual agreement. The ability to rely upon the current contract is held at *status quo* until the modification is worked out. This proposal is consistent with both state law and the U.S. Constitutional requirements related to contracts and ex post facto laws. AT&T’s original and preferable proposal<sup>51</sup> can be found in the AT&T Comments. For convenience the relevant sections are repeated here, and are as follows:

2.2 The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the “Existing Rules”). Among the Existing Rules are the results of arbitrated decisions by the Commission, which are currently being challenged by Qwest or CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Many of the Existing Rules, including rules concerning which Network Elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme Court opinion. Among the Existing Rules are the FCC’s orders regarding BOCs’ applications under Section 271 of the Act. Qwest is basing the offerings in this Agreement on the Existing Rules, including the FCC’s orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by Qwest concerning the interpretation or effect of the Existing Rules or an admission by Qwest that the Existing Rules should not be 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, dismissed, stayed or modified, provided that such positioning shall not interfere with performance of the obligations set forth herein.

2.2.1 In the event that any legally binding legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of CLEC or Qwest to perform any material terms of this Agreement, CLEC or Qwest may, on thirty (30) days’ written notice require that such terms be renegotiated,

---

<sup>51</sup> AT&T proposes its provision over any proposed modifications shown in Exhibit B.

and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within thirty (30) days after such notice, or if at any time during such 30-day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) days, the dispute shall be resolved as provided in Section 5.18, for expedited Dispute Resolution. For purposes of this Section 2.2.1, legally binding means that the legal ruling has not been stayed, no request for a stay is pending, and if any deadline for requesting a stay is designated by statute or regulation, it has passed.

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

### III. TERMS & CONDITIONS – SGAT § 5.0

A. **SGAT §§ 5.8.1 et seq.; Qwest’s Limitations of Liability are so Narrowly Drawn that They Undermine Qwest’s Incentives to Perform Under Interconnection Agreements, its SGAT and the Act. The Limitations Further Create a Disincentive or Barrier to Competition for the CLECs.**

How much damage may Qwest do to an individual CLEC by failing to perform under the terms of the interconnection agreement or SGAT before it is held accountable to that CLEC for such damage? This is the fundamental question that the SGAT limitation of liability provisions address.

Qwest’s view, as revealed by SGAT § 5.8.1 *et seq.*, is that generally it should not be liable for anything other than the cost of the service the CLEC paid or would have paid to Qwest in the year in which the nonperformance arose.<sup>52</sup> In fact, Qwest’s view

---

<sup>52</sup> See generally SGAT §§ 5.8.1, 5.8.2 and 5.8.4 (excluding willful misconduct from the limitation) for greater detail on the further limitation of the costs that Qwest will repay.

may be even more stringent than this, if its Post Entry Performance Plan (“PEPP”)<sup>53</sup> is “adopted” by the CLEC.<sup>54</sup> Under SGAT § 5.8.3 where the CLEC “adopts” that Plan, the CLEC may suffer harm from Qwest’s breach and not be compensated at all.<sup>55</sup> Either way, whether the CLEC “adopts” the PEPP or whether the CLEC is skewered by the SGAT limitations, it loses. It suffers harm at the hands of Qwest, its business is harmed, its customers and personnel are possibly harmed and it recovers nothing that actually resembles or comes close to the cost of the harm suffered.<sup>56</sup> Qwest, on the other hand, blissfully avoids any real accountability. All incentives to perform under the terms of the agreement, SGAT and Act are lost in relation to Qwest’s interactions with that CLEC (and in fact with all CLECs). Thus, Qwest’s promise to perform under the contract becomes illusory at best because it suffers no real threat of liability should it fail to perform while the CLEC essentially loses the benefit of the bargain and potentially suffers even greater damage.<sup>57</sup>

By and large the proposed limitations protect Qwest, not CLECs, even though the provisions are reciprocal. Qwest is the primary supplier of services and access to the local market, and the CLECs pay Qwest for such services and access to customers. If

---

<sup>53</sup> When used herein and in the SGATs, the parties have employed the terms PEPP or PAP synonymously.

<sup>54</sup> 8/22/01 CO Tr. at pp. 17-18; 7/10/01 WA Tr. at pp. 3992-3993; SGAT §5.8.3 (CLEC may “adopt” PAP). During the Multi-State workshop, Qwest’s counsel noted that “the PAP has limitations that basically say if a CLEC accepts this, they’re voluntarily agreeing that the PEPP is a liquidated damages plan ... and it becomes ... virtually an exclusive remedy to CLECs in terms of recovering money ... in the event Qwest fails to perform.” 6/25/01 Multi-State Tr. at 72(introduced as 6 Qwest 82). The issue of whether Qwest has the authority to not comply with the PEPP in relation to individual CLECs and whether it can make such Plan an exclusive remedy are issues largely within the FCCs control, and in any event, are more properly considered in relation to the PAP/PEPP consideration itself. Nevertheless, no State in this proceeding should allow Qwest the opportunity to avoid compliance with a performance assurance plan if a CLEC refuses to “adopt” it and forego any recovery for Qwest’s breaches. Furthermore, the FCC confirms that it does not consider the PEPP/PAP an exclusive remedy. *SWBT Texas 271 Order* at ¶ 421.

<sup>55</sup> Qwest Revised 5-30-01 PAP creates a tiered system for CLEC recovery related to only certain performance measurements that have been missed in an aggregate threshold amount to qualify for recovery.

<sup>56</sup> 8/22/01 CO Tr. at p. 18; 7/10/01 WA Tr. at pp. 3992-3994.

<sup>57</sup> E. Allan Farnsworth, *Contracts* § 2.13 (3d ed. 1999)(noting that illusory promises constitute a failure of consideration).

CLECs don't pay, Qwest obtains its money and remedy as spelled out in the SGAT under sections unencumbered by these limitations.<sup>58</sup> CLECs, however, are hugely dependent upon Qwest's services to compete in the local market. Considering the resources necessary to enter a local market, it is doubtful that a CLEC would enter under conditions where Qwest, its primary supplier and monopoly bottleneck to customers, could fail to perform under the terms of an interconnection agreement or SGAT and be essentially insulated from any accountability for the harm actually caused to the CLEC. It is also doubtful, as a matter of law, that the courts would find such an agreement met with the fundamental principles of contract formation. That is, the parties to a contract must be mutually bound to honor their performance promises (*e.g.*, consideration must exist on both sides of the deal).<sup>59</sup> If Qwest can simply not perform and not face any real liability for its breach, there exists a failure to create the contract required under the Act. In essence, Qwest has avoided full compliance with 47 U.S.C. §§ 251, 252 and 271.<sup>60</sup>

In an attempt to level the playing field and provide all parties to the interconnection agreements and/or SGATs with the proper incentive to perform, AT&T proposed revising Qwest's limitations sections as follows:

~~5.8.1 Except for losses relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement,~~  
Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure including without limitation any penalty, reparation or liquidated damages assessed by the Commission or under a Commission-ordered agreement (including without limitation penalties or liquidated damages assessed as a result of cable cuts), resulting from the causing Party's conduct or the conduct of its agents or contractors.

5.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages

---

<sup>58</sup> SGAT § 5.8.5.

<sup>59</sup> John D. Calamari & Joseph M. Perillo, *Contracts* 228 (3d ed. Hornbook Series 1987).

<sup>60</sup> *Cf. FCC BANY 271 Order* at ¶ 436 (recognizing that a relatively low potential liability would be unlikely to provide meaningful incentives).

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. For purposes of this Section 5.8.2, amounts due and owing to CLEC, or CLECs as a group, pursuant to any backsliding plan applicable to this Agreement shall not be considered to be indirect, incidental, consequential, or special damages.

~~5.8.3 Except for indemnity obligations, or as otherwise set forth in this Section, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, whether in contract or in tort, 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, including without limitation direct damages for loss of or damaged to CLEC's collocated equipment located within the Collocation space.~~

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

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification specified in Section 5.9 of this Agreement, nor shall this Section 5.8 limit a Party's liability for failing to make any payment due under this Agreement.<sup>61</sup>

5.8.6 CLEC is liable for all fraud associated with service to its end-users and accounts. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless Qwest is responsible for such fraud, whether is the result of any intentional act of Qwest, or gross negligence of Qwest, or otherwise. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's accounts, Qwest will promptly inform CLEC and, at the direction of CLEC, take reasonable action to mitigate the fraud where such action is possible.<sup>62</sup>

Qwest has in its more recent SGATs replaced § 5.8.3 with a sentence that reads  
“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

---

<sup>61</sup> 9/7/01 SGAT Lite.

<sup>62</sup> ATT Comments at pp. 30-32.

Plan.”<sup>63</sup> However, Qwest also announced during the Multi-State workshops that the PAP/PEPP was an exclusive remedy for the CLEC if adopted.<sup>64</sup> The notion that Qwest may avoid compliance with the PEPP/PAP in relation to a CLEC that opts for the limitation section of the SGAT, rather than the PEPP/PAP, is astounding. The FCC has made the existence and compliance with such plans probative evidence of an RBOC’s meeting its § 271 obligations.<sup>65</sup> Furthermore, the FCC has made clear that the PAP/PEPP-type plans are not the sole method for ensuring the BOC’s performance; rather, the FCC looks to an array of damage recovery mechanisms, including damages under PAP/PEPPs, damages under interconnection agreements and damages under state commission service quality rules.<sup>66</sup> Qwest should not be allowed to opt out of its backsliding measures and utterly eliminate a CLEC’s right of recovery for breach of contract in its SGAT limitations. The Commission should ensure fundamental fairness by rejecting Qwest’s SGAT limitations and adopting AT&T’s proposals.<sup>67</sup>

**B. SGAT §§ 5.9 et seq.;<sup>68</sup> As with Limitations of Liability, Qwest’s Indemnity Provisions are so Narrowly Drawn that They Undermine Qwest’s Incentives to Perform Under Interconnection Agreements, its SGAT and the Act. The Indemnities Further Create a Disincentive or Barrier to Competition for the CLECs.**

The indemnity provisions of the SGAT must work hand-in-hand with the limitations of liability and the PEPP/PAP plans to create sufficient incentives for

---

<sup>63</sup> 9/701 SGAT Lite.

<sup>64</sup> See footnote 45, above.

<sup>65</sup> FCC BANY 271 Order at ¶¶ 433 & 436 (noting that a Plan with low liability would likely provide no meaningful incentive to maintain performance).

<sup>66</sup> SWBT Texas 271 Order at ¶ 421.

<sup>67</sup> There exists substantial confusion as to the interplay between Qwest’s PEPP/PAP, the SGAT indemnity provisions and the post merger agreements on service quality. At this point it is difficult to entirely resolve this issue without the benefit of a complete record on such interplay. Nevertheless, the CLECs—as a matter of contract law—deserve to have their contracts with Qwest be enforceable real agreements that provide each party the incentive to perform.

<sup>68</sup> As an initial matter, AT&T notes that all SGAT sections on indemnity are at impasse with the exceptions of §§ 5.9.2.1 – 5.9.2.3.

monopolists to “play fair” and not engage in anti-competitive and discriminatory conduct. The FCC, in its § 271 orders, relies upon several avenues of enforcement and incentive for RBOCs, not the least of which are “private causes of action” against RBOCs if they fail to perform.<sup>69</sup> Qwest, on the other hand, wants to limit its liability and refuse to adequately indemnify CLECs such that where Qwest causes CLECs harm and causes CLECs to become the subject of end-user or personal injury claims, Qwest enjoys a “home-free” card because it escapes liability for its conduct, while CLEC is stuck defending itself and Qwest.

In a competitive market, a willing seller and a willing buyer would approach this issue on level ground, and they would create more balanced indemnity provisions much like those the Commissions have approved in the AT&T/U S WEST interconnection agreements.<sup>70</sup> Here, however, the SGAT bill slants dramatically in favor of Qwest. Under the SGAT, Qwest will indemnify CLECs narrowly, by—among other things—excluding from indemnity, claims brought against CLECs by end-users and injured parties, and by limiting monetary recovery under the indemnity provisions to “the total amount that is or would have been charged for services not performed or improperly performed.”<sup>71</sup>

During the workshop, Qwest suggested that its indemnity provisions to CLECs should mirror its indemnity provisions for its mass-marketed services to end-users.<sup>72</sup> Unlike mass-marketed products, however, Qwest is entering into far fewer individual interconnection agreements in an effort to open its monopoly markets to competition

---

<sup>69</sup> *SWBT Texas 271 Order* at ¶ 421.

<sup>70</sup> ATT Comments at p. 32-35; *see also*, Schneider Direct Testimony at p. 19 and his oral comments at 7/10/01 WA Tr. at p. 4008-4009.

<sup>71</sup> 6/20/01 CO Tr. at pp. 82-83; 7/10/01 WA Tr. at pp. 4007-4008.

<sup>72</sup> 6/20/01 CO Tr. at pp. 82-83; 7/10/01 WA Tr. at pp. 4007-4008.

under the Act. Moreover, both parties to the SGAT would benefit from each others' indemnity provisions as between themselves and the end-users. These indemnities simply limit some lawsuits and allow carriers to offer basic services under regulatory price caps, among other things. They have no application as between carriers, especially where CLECs are paying large sums to Qwest for service, and where CLECs are heavily reliant upon Qwest to provide service to customers. Thus, the indemnity provisions as between carriers should more closely mirror those found in competitive markets between willing buyers and sellers. Here too, many commissions have previously approved such indemnity provisions in interconnection agreements between U S WEST/Qwest and AT&T.

Therefore, the Commission's goal ought to be the creation of a market environment that replicates and eventually becomes competitive. To do this, AT&T offers the modifications contained in **Exhibit C** of this brief, which alter Qwest's indemnity language. These modifications bring Qwest's SGAT provisions more in line with indemnity provisions that willing parties create in a competitive market and that Commissions have previously approved in interconnection agreements between AT&T and U S WEST (a/k/a Qwest).

**C. SGAT § 5.10.1 et seq. ; Intellectual Property SGAT Sections.**

During the workshops, AT&T and Qwest had disputes related to certain sections of the intellectual property provisions of the SGAT.<sup>73</sup> Since the close of the workshops, however, Qwest and AT&T have agreed upon the language attached hereto in SGAT

---

<sup>73</sup> 5/30/01 AZ Tr. at pp. 103-124; 8/21/01 CO Tr. at pp. 269-270; 7/10/01 WA Tr. at pp. 4011-4023.

§ 5.10 contained in Exhibit A to this brief.<sup>74</sup> Assuming Qwest brings such language forward into the Arizona SGATs, the issues are resolved.

**D. SGAT § 5.12.2; Detrimentally Impacts the Public Policy Protections for End-Users, Harms CLECs' Contract Rights and Avoids Qwest's Obligations Under the Act in the Case of Sale of Exchanges.**

The current status of this particular SGAT section is rather unclear. Qwest's SGAT originally contained the sale of exchange provision in SGAT § 5.12.2,<sup>75</sup> then later SGAT Lites, moved the provision to SGAT § 5.12.4. As of this date, the most recent SGAT Lite appears to delete § 5.12.2 and not add a § 5.12.4.<sup>76</sup> Nonetheless, AT&T believes that the parties are at impasse insofar as Qwest's sale of exchanges has an impact upon Qwest's contract or SGAT obligations with CLECs. The impasse issues are more precisely set out by examining AT&T's proposed language.<sup>77</sup> It states:

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

- a. obtain a written agreement from the Transferee, prior to the Transfer (in form and substance reasonably satisfactory to AT&T), that Transferee agrees to be bound by the interconnection and intercarrier compensation obligations set forth in this Agreement with respect to the portion of Qwest's telephone operations so transferred, until an interconnection agreement between CLEC and the Transferee becomes effective.
- b. provide CLEC with prompt written notice of any agreement or understanding relating to any proposed Transfer, and in any event at least one hundred eighty (180) days prior written notice of the completion of such Transfer;

<sup>74</sup> 8/21/01 CO Tr. at pp. 269-270; 7/18/01 WA Tr. at p. 5208.

<sup>75</sup> 8/22/01 CO tr. at p. 118; 7/10/01 WA Tr. at p. 4025.

<sup>76</sup> See e.g., Qwest's August 21<sup>st</sup> SGAT Lite.

<sup>77</sup> ATT Comment at p. 43.

- c. use its best efforts to facilitate discussions between CLEC and the Transferee with respect to Transferee's assumption of Qwest's obligations pursuant to the terms of this Agreement;
- d. serve CLEC with a copy of any Transfer application or other related regulatory documents associated with the Transfer when filed with the Commission or the FCC;
- e. not oppose CLEC's intervention in any proceeding relating to the Transfer; and not challenge the Commission's authority in any proceeding relating to the Transfer to hear the issue of whether the Transferee should be required to adopt any or all of the terms of this Agreement.

The purpose of this language is to require Qwest to consider its contract obligations with the CLECs when it sells its exchanges. The language is not intended to prevent Qwest from selling, but rather, it creates some consistency and transition related to the buyer, Qwest and the CLEC.<sup>78</sup> As a matter of public policy alone, carriers should work together to implement transparent transitions for end-users when the underlying providers of service change. AT&T's language expressly requires such cooperation.

Contrary to Qwest's unsupported assertions, AT&T's proposal does not "lock in" rates that the buyer could not at some point change.<sup>79</sup> All AT&T's proposal does is ensure that carriers work together for a smooth transition and that Qwest treat its wholesale customers as though it was concerned about performing under their contracts as well.

With respect to AT&T's proffered language, Qwest dismissed it out of hand stating that the Commission approval process for an incumbent's sale of exchanges was sufficient.<sup>80</sup> Qwest's cavalier attitude reveals that it is more interested in selling its rural exchanges than it is in ensuring that its wholesale customers and competitors or their

---

<sup>78</sup> 8/22/01 CO Tr. at pp. 128-129; 7/10/01 WA Tr. at pp. 4023-4024.

<sup>79</sup> 7/10/01 WA Tr. at p. 4026.

<sup>80</sup> 8/22/01 CO Tr. at pp. 118-119; 7/10/01 WA Tr. at pp. 4025-4027.

customers are taken care of. And as to Qwest's performance under the contract with the CLECs, from Qwest's perspective this appears to be wholly optional when Qwest wants to cease performance and sell exchanges.

Under contract law, federal law and public policy, Qwest's position should be rejected. Thus, AT&T requests that the Commission adopt its SGAT language.

**E. SGAT § 5.16; Qwest Defies its Confidentiality Responsibilities in this SGAT, the Act and ICAs and it Misuses CLEC Confidential Information For its Retail Marketing Advantage.**

SGAT § 5.16 indicates that all information furnished by one party to another, including but not limited to end-user specific information—other than end-user information necessary for providing directory listings—constitutes confidential and proprietary information as designated by the owner of such information. This provision goes on to state “[e]ach Party shall keep all of the other Party’s Proprietary Information confidential and shall use the other Party’s Proprietary Information only in connection with this agreement.” AT&T’s interconnection agreements with Qwest contain similar requirements. The SGAT provisions are consistent with 47 U.S.C. § 222, which states in regard to carriers sharing information:

(a) In General—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufactures and customers, including telecommunications carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of Carrier Information—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing a telecommunications service shall use such information only for such purpose, *and shall not use such information for its own marketing efforts.*<sup>81</sup>

---

<sup>81</sup> 47 U.S.C. § 222 (a) & (b) (emphasis added).

AT&T concurs in some of the language of SGAT § 5.16; AT&T does not, however, concur that Qwest's conduct meets this standard or the Act's § 222. In fact, Qwest's conduct violates this standard as demonstrated in CO Exhibit 6 ATT 71.<sup>82</sup> This Exhibit reveals that Qwest is able to and does engage in "win-back" marketing efforts of future AT&T customers before the customer has even switched carriers. In the case of a new AT&T Broadband customer, such as Mr. Tade, the only way Qwest gets access to the customer switch request is by receipt of AT&T's local service request ("LSR").<sup>83</sup> The LSR is sent to Qwest from AT&T seeking a scheduled cut-over.<sup>84</sup> The information on AT&T's LSRs is confidential information that should not be flowing to Qwest's retail marketing arm such that it can solicit those customers before they've even left Qwest. Most customers don't understand that Qwest should not be soliciting them at this point, so the problem can easily go undetected.

Moreover, the fact that the Exhibit explains an occurrence in Minnesota does not diminish its probative value here. Qwest's LNP process is provided region-wide to CLECs.<sup>85</sup> Likewise, Qwest's OSS system is provided region-wide to CLECs for ordering, pre-ordering, maintenance and repair.<sup>86</sup> According to Qwest its own service representatives across the region employ the same OSS systems.<sup>87</sup> Thus, if Qwest can engage in such conduct in Minnesota, it can do so in other states as well.

---

<sup>82</sup> 8/22/01 CO Tr. at pp. 213-214; 7/18/01 WA Tr. at p. 5208; *see also*, **Exhibit D** (Tade Affidavit referenced in the Colorado transcript and the Washington transcript). Qwest agreed to incorporate the transcripts into the Arizona record to complete the workshop.

<sup>83</sup> 8/22/01 CO Tr. at pp. 266-271.

<sup>84</sup> 6/27/01 Multi-state Tr. at pp. 133-135.

<sup>85</sup> 8/22/01 CO Tr. at pp. 266-271; *see generally*, 6/27/01 Multi-state Tr. at pp. 115-127; *see also*, SGAT § 12.0 and Direct Testimony of Margaret Baumgartner Re: Checklist Item No. 11 at p. 13 *et seq.* & Rebuttal Testimony of Margaret Baumgartner Re: Checklist Item Nos. 1 and 11 at p. 94 *et seq.*

<sup>86</sup> SGAT § 12.0.

<sup>87</sup> 6/27/01 Multi-state Tr. at p.138-139; *see also* SGAT §§ 12.1.1 & 12.1.2.

Furthermore, CLECs discovered that Qwest, at least at one time, was providing confidential CLEC information to the Qwest sales and service representatives directly through the representatives' access generally to the end-user customers' account information and history. As it turned out, the CLECs inquiries regarding customer service and information obtained through the OSS interface was being collected and recorded for the Qwest representatives to see and use.<sup>88</sup> It would appear from Qwest's win-back efforts that a similar or the same capability still exists within its customer records.

AT&T requests that the Commission find Qwest in non-compliance with its § 271 obligations, until it explains how the information from AT&T's pending LSR orders related to Mr. Tade's service ended up in the hands of Qwest sales personnel and Qwest demonstrates that it has corrected every mechanism through which Qwest's retail marketing people gain access to CLEC service order information.

**F. SGAT § 5.16.9; Contrary to Qwest's Previous Statements During Various Workshops, Qwest intends to Misuse CLEC Forecasts in Violation of its SGAT, 47 U.S.C. § 222 and its Obligations Under § 271.**

In previous workshops, Qwest had agreed to abide by the confidentiality provisions proposed in SGAT §§ 7 and 8 regarding CLEC forecasts.<sup>89</sup> Now, however, Qwest rejects those provisions and offers new less restrictive nondisclosure provisions to govern CLEC forecasts.<sup>90</sup> Basically the new language would allow a far wider, ill-

---

<sup>88</sup> 6 ATT 84 at pp. 89-91 (copies of this exhibit to be provided upon request if Qwest does not import the entire Colorado record for completion of the Arizona workshop).

<sup>89</sup> See agreed to SGAT §§ 7.2.2.8.12 (interconnection trunk forecasts) and 8.4.1.4.1 (collocation forecasts).

<sup>90</sup> A condition precedent to AT&T agreeing to the SGAT forecasting requirements in the first instance was that Qwest agreed to provide the protection of those forecasts noted in the SGAT sections on interconnection and collocation. Apparently Qwest has *carte blanche* to revise its positions throughout these workshops and the CLECs and Commissions must simply adjust. AT&T will ask the FCC and the Commissions to reconsider whether forecasts should be required if Qwest goes back on its word regarding their protection.

defined group of Qwest personnel to see the forecasts<sup>91</sup> and it would allow, at least under Qwest's interpretation, Qwest unfettered authority to use the information from the forecasts in any way it wanted, as long as it aggregates that information in some fashion.<sup>92</sup>

During the interconnection and collocation workshops, Qwest claimed it needed CLEC forecasts to ensure it could meet CLEC demand for trunks and collocation space. Other than CLECs providing these forecasts to Qwest it would not have access to such information.

Arizona is among the many states that have adopted the Uniform Trade Secrets Act.<sup>93</sup> These acts generally define trade secrets as information, including a formula, pattern compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from being secret; and (b) the subject of reasonable efforts to maintain its secrecy.<sup>94</sup> "A purpose of trade secrets law is to maintain and promote standards of commercial ethics and fair dealing in protecting those secrets."<sup>95</sup> Furthermore, the "necessary element of secrecy is not lost ... if the holder of the trade secret reveals the trade secret to another in confidence ... ."<sup>96</sup> Thus, the secret may not be disclosed in any form other than that authorized by the owner.<sup>97</sup>

---

<sup>91</sup> 7/10/01 WA Tr. pp. 4039-4041; Oral Testimony of Larry Christensen of Qwest noting product managers, process, network, costing etc. teams want access to forecasts, and that product teams want access including those that may cross over between Qwest marketing, etc. 6/20/01 Colo. Tr. at 192-220.

<sup>92</sup> 6/20/01 CO Tr. at p. 223; 7/10/01 WA Tr. at p. 4041; 6/28/01 Multi-state Tr. at p. 56.

<sup>93</sup> Unif. Trade Secrets Act, 14 U.L.A. 152 (1985 & Supp. 1989); *see also*, A.R.S. § 44-401 *et seq.* (Ariz. Uniform Trade Secrets Act).

<sup>94</sup> *See generally*, definitions sections; specifically *see* A.R.S. § 44-401(4).

<sup>95</sup> *Ed Nowogroski Ins., Inc. v. Rucker*, 971 P.2d 936, 942 (Wash. 1999) (discussing the purpose of the Uniform Trade Secrets Act).

<sup>96</sup> *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 94 S.Ct. 1879, (1974); *Boeing Co. v. Sierracin Corp.*, 738 P.2d 665, 676 (Wash. 1987).

<sup>97</sup> *Kewanee Oil*, 416 U.S. 470, 94 S.Ct. at 1883.

Numerous types of information have been determined by the courts interpreting these uniform acts to fit the definition of trade secret, including business and strategic plans such as forecasts.<sup>98</sup> Trade secrets in the form of forecasts are the property of the CLEC, not Qwest, and Qwest's SGAT §§ 5.10.1 and 5.16.1 confirms this position.<sup>99</sup>

In addition to state law, federal law also confirms the confidentiality of such forecasts. As cited above, 47 U.S.C. § 222(b), instructs that telecommunications carriers that receive "proprietary information from another carrier for purposes of providing a telecommunications service shall use such information only for such purpose ...."<sup>100</sup>

In light of the law, how Qwest can conclude that it may take confidential carrier information and combine it with other confidential carrier information and thereby disclose such information for its own regulatory or other purposes is beyond reason. Furthermore, during the workshop Qwest went on to state "aggregate forecasts, ... we do not believe are confidential."<sup>101</sup> Under the law and Qwest's own SGAT, trade secrets do not lose their secrecy or become the property of another simply because the recipient combines them with others or wants to create a larger list of combined information.<sup>102</sup>

---

<sup>98</sup> See e.g., *Enterprise Leasing Co. v. Ehmke*, 3 P.2d 1064, 1070 (Ariz. 2000)(financial documents, customer service worksheets, internal records helpful to managing the office were all trade secrets); *Ed Nowogroski*, 971 P.2d at 943 (soliciting customers on confidential list violates trade secret); *Boeing Co.*, 738 P.2d at 674 (Wash. 1987)(fact of marketing product did not make drawings and specifications non-trade secrets); *Henry Hope X-Ray Prods, Inc. v. Marron Carrel, Inc.*, 674 F.2d 1336, (9<sup>th</sup> Cir. 1982)(business process is a trade secret); *Dekar Indus., Inc. v. Bissett-Berman Corp.*, 434 F.2d 1304, 1305 (9<sup>th</sup> Cir. 1970)(research and development is a trade secret); *Forro Precision, Inc. v. IBM Corp.*, 673 F.2d 1045, 1057 (9<sup>th</sup> Cir. 1982)(future plans for product parts are trade secrets); see also, Restatement 3d of Unfair Competition § 39, comment d (listing various types of common trade secrets); *U S WEST Communications, Inc. v. Office of Consumer Advocate*, 498 N.W. 2d 711, 714 (Iowa 1993)("[t]here is virtually no category of information that cannot, as long as the information is protected from disclosure to the public, constitute a trade secret.").

<sup>99</sup> As does case law.

<sup>100</sup> 47 U.S.C. § 222(b)(emphasis added).

<sup>101</sup> 7/10/01 WA Tr. at pp. 4041-4042; 6/28/01 Multi-state Tr. at p. 56.

<sup>102</sup> SGAT § 5.16.1; see *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S. Ct. 2862, 2872 (1984)(property right exists in trade secret); *Envirotech Corp. v. Callahan*, 872 P.2d 487, 494 (Utah Ct. App. 1994)("a trade secret is a property right"); *Mann v. Tatge Chem. Co.*, 440 P.2d 640, 646 (Kan. 1968)(property right exists in trade secret).

No property right is transferred to Qwest in the trade secret, Qwest obtains merely a license to use the information for the purpose intended (*e.g.*, meet CLEC customer demand for interconnection trunks and collocation space).<sup>103</sup> Qwest may not as a matter of state contract law, trade secret law or federal law divulge such secrets in any form according to its own discretion.

While Qwest may cite in its brief 47 U.S.C. § 222(c) as support for its aggregation theory, such reference would be stretching the law beyond its express application. This particular section applies to end-user customer proprietary information, not the carrier-to-carrier information at issue here. Simply put, if Qwest intends—as it has confessed—to disclose CLEC forecasts in aggregate or any other form it is in direct violation of state and federal law and its own SGAT.

Nor should Qwest be allowed to argue that aggregation is the key to allowing those Qwest personnel that need to see the forecasts an opportunity to see them. The SGAT as previously agreed upon made clear that the individuals that needed to see forecasts to accomplish the goals for which the forecasts were intended. These individuals could combine the information and use it to accomplish their goal of meeting CLEC customer wholesale demand (and truth be told, meeting Qwest PID measurements). These individuals may not, however, destroy the secrecy required to maintain the trade secrets by creating combinations of the forecasts and disclosing them at will.

With respect to its latest position, Qwest unfortunately has yet to provide a list of the personnel that would have access to CLEC trade secret forecasts. In fact, from workshop to workshop we've seen the list of personnel expand and become apparently

---

<sup>103</sup> *Kewanee Oil*, 470 U.S. 470, 94 S.Ct. 1879, 1883.

unknowable such that Qwest may allow almost whomever it designates access to CLEC forecasts. Courts would not expect any trade secret holder to turn over its secrets under such circumstances. Nor should regulatory commissions. Thus, given Qwest's clear intent, it is going to fail or already has failed to comply with the SGAT, the Act and state law. Qwest cannot, therefore, pass the public interest portion of the § 271 test or any other.

#### **IV. ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS) – SGAT § 12**

##### **A. SGAT § 12.2.6; Contrary to Full Compliance with Its § 271 Obligations, Qwest's Current Change Management Process Fails to Comply with the FCC's Requirements.**

The Co-Provider Industry Change Management Process or "CICMP" is a part of SGAT § 12.2.6 *et seq.* With respect to change management processes, the FCC's § 271 orders consistently require that "the evidence demonstrate" the existence of the following five factors for adequacy:

- (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;
- (2) that competing carriers had substantial input in the design and continued operation of the change management process;
- (3) that the change management plan defines a procedure for the timely resolution of change management disputes;
- (4) the availability of a stable testing environment that mirrors production;
- and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.<sup>104</sup>

---

<sup>104</sup> *In the Matter of 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*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Rel. June 30, 2000) at ¶ 108 (hereinafter "*SWBT Texas 271 Order*").

The record evidence shows that Qwest's current CICMP fails to meet these standards.<sup>105</sup>

Thus, Qwest has suspended consideration of the current CICMP in this docket pending its revision in the CICMP process itself. While AT&T supports the revision of a failed process, it is important to bear in mind that the FCC mandates:

in order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on the evidence in the record that a BOC has actually demonstrated compliance with the requirement of section 271.<sup>106</sup>

Presently, Qwest cannot be found to be in compliance with its obligations under § 271, and this status must remain so until Qwest adequately demonstrates its actual compliance through evidence of actual implementation of the revised CICMP for the consideration of this tribunal. Thus, AT&T requests a notation in the Report that indicates non-compliance pending the outcome of further proceedings and consideration of a revised CICMP process.

## V. BONA FIDE REQUEST PROCESS – SGAT § 17.0

### A. SGAT § 17.1; Qwest's Evidence Fails to Demonstrate that It Actually Treats CLECs in a Non-Discriminatory Manner When Employing the BFR Process.

According to Qwest's witness, Qwest employs the bona fide request ("BFR") process when a CLEC requests "something that's not contained in the SGAT."<sup>107</sup> In fact, the BFR process is called for in a number of circumstances in the SGAT where differing types of or deviations from the standard offerings are requested (*e.g.*, SGAT § 8.2.4.1

---

<sup>105</sup> 6 ATT 5 (Qwest's discovery responses providing business records demonstrating the ineffective, untimely and poor process); *see also*, Supporting Affidavit of John F. Finnegan Regarding Section 12 at pp. 15-25 and Exhibits attached thereto as Exhibits A & B; 8/23/01 CO Tr. at pp. 191-249 *cf.* 6/25/01 Multi-State Tr. at pp. 71-93; 6/27/01 Multi-State Tr. at pp. 112-254; 6/18/01 Multi-State Tr. at pp. 5-133 (with each successive discussion of CICMP, Qwest alters its plan for presenting CICMP in this forum).

<sup>106</sup> FCC *BANY 271 Order* at ¶ 37.

<sup>107</sup> 6/13/01 AZ Tr. at p. 644; 6/22/01 CO Tr. at p. 4; 7/10/01 WA Tr. at p. 4109; 6/25/01 Multi-state Tr. at p. 100.

requiring BFR for microwave and wireless entrance facilities; SGAT § 9.14.2.1 for all AIN customized service; SGAT § 9.11.1.1.2.9 deviations from virtual access to GR-303, etc.). Like Qwest's tariffs, when a service is requested that deviates from the standard offering, Qwest requires the service be specially requested, whether the request flows through a process called BFR or a process called special assembly or special service arrangements.<sup>108</sup>

The Act imposes upon Qwest the duty to treat CLECs in a nondiscriminatory manner. Qwest's SGAT acknowledges that duty by repeating it throughout the document, and in fact, Qwest claims to do just that in relation to its BFR process. SGAT § 17.1 states in pertinent part: "Qwest will administer the BFR process in a nondiscriminatory manner." The nondiscrimination standards are not merely Qwest treating all CLECs equally although that is a part of the equation. Nondiscrimination also requires that Qwest treat itself, its affiliates and its end-users substantially the same as it treats CLECs. When asked during the workshops just how Qwest ensures non-discrimination in this context, Qwest's witnesses gave explanations that changed over time and contradicted responses provided under oath on different records. For example, in Arizona<sup>109</sup> at the first workshop on these issues, Qwest's witness Mr. Brotherson responded that Qwest employed a process known as "AQCB" for both wholesale and retail customers seeking services not offered in tariffs.<sup>110</sup> Allegedly, Qwest ran all BFRs and special retail orders through the AQCB process that ensured that similar services

---

<sup>108</sup> See <http://tariffs.uswest.com>; cf. <http://cei.uswest.com/ppnb.nsf> (which appears to be the new URL for this web site).

<sup>109</sup> 6/22/01 CO Tr. at pp. 28-39; 7/10/01 WA tr. at pp. 4093-4095; 6/25/01 Multi-State Tr. at p. 113.

<sup>110</sup> 5/31/01 AZ Tr. at pp. 388-390 (introduced as 6 Qwest 81).

were supplied at similar prices.<sup>111</sup> During the Arizona follow-up workshop, however, Qwest brought the required documentation to the workshop and at that point revealed that the AQCB process was not in fact employed for CLECs' orders.<sup>112</sup> Qwest then changed its position to state that there existed no corollary between the BFR process and what Qwest does for its own customers because the BFR concept was unique to CLECs.<sup>113</sup> Examination of Qwest's tariffs, however, reveals that Qwest does employ ICB processes, special assembly and special request processes for its retail and access customers.<sup>114</sup> These processes form the basis for an investigation into Qwest's alleged non-discrimination, but Qwest failed to provide any evidence.

Rather, the latest version of how Qwest purportedly ensures nondiscrimination allegedly involves a single non-technical person that reviews all BFR requests across the region and informs the CLECs whether, based upon the BFR "wording," other substantially similar BFRs exist.<sup>115</sup> Just how long Qwest maintains files of previous BFRs or how close the "wording" must be is unknown. Given that the only comparison made is allegedly between BFRs and not between similar Qwest retail customer requests or affiliate requests, it is hard to imagine that CLECs receive anything remotely resembling parity, and Qwest has failed to prove it provides parity. Therefore, Qwest has failed in its case to prove compliance; in particular compliance with any mandatory BFR requests related to checklist items.

---

<sup>111</sup> *Id.*; see also, 6/13/01 AZ Tr. at pp. 725-726.

<sup>112</sup> 6/15/01 AZ Tr. at pp. 1108-1111.

<sup>113</sup> 6/13/01 AZ Tr. at p. 659; 7/10/01 WA Tr. at pp. 4083-4084.

<sup>114</sup> See also, 6/13/01 AZ Tr. at pp. 738-742; 6/25/01 Multi-State Tr. at pp. 108-110.

<sup>115</sup> 6/13/01 AZ Tr. at pp. 726-730; 6/25/01 Multi-State Tr. at p.128. In Colorado, Qwest noted that the standard was "identical" and now has been changed to "substantially similar," but the witness was unable to clearly define substantially similar other than to speculate that "to the extent that the interface, the network functionality that's being requested is the same—nearly the same, it would be considered to be substantially similar." 8/21/01 CO Tr. at p. 57-58.

**B. SGAT § 17.12; Qwest's BFR Process Fails to Provide CLECs Parity Because it Offers No Notice of Previously Approved, Similar BFR Requests, and it Fails to Provide a Consistent Practice of Developing Products From BFR Requests.**

Similar to not providing parity treatment within the proper scope of comparison, Qwest also creates the untenable demand that CLECs rely exclusively on it for information regarding whether Qwest has granted or denied a substantially similar BFR.<sup>116</sup> Setting aside for the moment that retail-customers obtaining, for example, special assembly private line service might be a good comparison for CLEC interconnection service that deviates from the standard, multiple CLECs seeking—for example—interconnection that deviates from Qwest's standard offerings have no way of knowing: (1) whether Qwest has provided such interconnection before; or (2) whether they must pay for and go through the same BFR process again until after they have already created the same BFR and paid for its consideration by Qwest. There exists no objective, efficient mechanism for determining non-discrimination even among CLECs seeking similar BFRs.

As requested by AT&T and other CLECs, Qwest could provide notice to CLECs of BFR requests such that the notice does not reveal the name of the CLEC or the location of the service.<sup>117</sup> This notice would allow CLECs to avoid needless preparation of BFRs and payment therefore along with saving them time and providing an objective measure of non-discrimination at least among CLECs. But alas, Qwest refused on the claim of BFR confidentiality.<sup>118</sup> Qwest's witnesses claimed Qwest wouldn't provide

---

<sup>116</sup> 8/21/01 CO Tr. at pp. 54-55.

<sup>117</sup> *Id.* at pp. 59-64.

<sup>118</sup> *Id.* at 54.

notice because one CLEC considered the BFRs confidential in another proceeding.<sup>119</sup> That CLEC was New Edge and the proceeding was the Multi-State. Ms. Bewick from New Edge clarified her position in Colorado, and she agreed with AT&T and the other CLECs that notice of BFRs that excluded the name of the CLEC and location of the service would be appropriate.<sup>120</sup> It is hard to imagine that Qwest can provide service to one CLEC and call the service itself secret such that the service could not be revealed in provisioning and such that Qwest would not have to make such service available on a nondiscriminatory basis to other CLECs.

Moreover, Qwest has no process for determining when it should create a product offering of substantially similar BFRs or when and if it will ever submit its terms, conditions and prices for any given BFR to any Commission for approval. In short, to acquire service that deviates from the Qwest standard offerings, CLECs must engage in a cloak-and-dagger, subjective process with Qwest. This is not the process Qwest's end-user customers must endure. Rather, Qwest's end-user customers seeking services that deviate from tariff offerings obtain their price quotes from a database (the AQCB, database listed above) and customers seeking special assemblies obtain their quotes in an undisclosed interval and through a process that—in all likelihood is much more user friendly than Qwest's cloak-and-dagger process for CLECs.

In any event, the burden of proof is on Qwest to prove parity, and it has failed to do so. The evidence simply does not provide sufficient proof that Qwest is not discriminating against CLECs in the use of its BFR process and its creation of products there from.

---

<sup>119</sup> *Id.*

<sup>120</sup> 8/21/01 CO Tr. at p. 71.

## VI. AUDIT PROCESS – SGAT § 18.0

### A. SGAT § 18.1.1; the Scope of Qwest's Audit Provisions are too Narrowly Drawn because they Do not Allow the Parties to Confirm that Each Other is Protecting Information Or Abiding By other Provisions of the SGAT or Agreements.

The issue with respect to audit authority is the scope of such authority.<sup>121</sup> Qwest essentially believes that audit authority should be granted only so it can audit CLECs' billing practices and payments. CLECs believe the audit authority should be expanded to include the right to examine services performed under the agreement (*e.g.*, confirm that Qwest is maintaining CLEC forecasts in the manner prescribed by the law). Such audit authority is routinely granted under technology contracts where parties exchange intellectual property. These interconnection agreements and SGAT are no different.

It is important to note that this audit authority is reciprocal. Both parties should have an opportunity to monitor billing and the safe keeping of their confidential information, among other things. AT&T proposed these modifications to Section 18 to broaden its scope:

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the ~~above~~ services performed under this Agreement Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

WorldCom too supported broader audit authority and pointed out that such authority is standard in interconnection agreements it has with Qwest.<sup>122</sup> The audit authority sought by the CLECs assists all parties in ensuring that each is complying with the requirements of the Agreement; it should therefore be adopted by the Commission.

## VII. SPECIAL REQUEST PROCESS – SGAT EXHIBIT F

---

<sup>121</sup> 8/22/01 CO Tr. at p. 208; 7/10/01 WA Tr. at pp. 4121-4124; *see also*, ATT Comments at p. 58 *et seq.*

<sup>122</sup> 7/10/01 WA Tr. at p. 4123.

**A. SGAT Exhibit F, ¶ 1; Qwest's Application of its SRP Process is too Narrow in Scope Creating a Disparity of Treatment Among Service Types that is Unjustified and Inefficient for CLECs.**

Originally, Qwest developed its SRP process to accommodate CLEC requests for UNE combinations that deviated from the standard offering, but required no technical feasibility test.<sup>123</sup> AT&T requested that Qwest enlarge the scope of the SRP process to encompass similar interconnection and collocation requests that likewise would require no technical feasibility test.<sup>124</sup> Qwest refused. Its logic for such refusal is unclear.

Creating a streamline process for CLECs to obtain services that deviate slightly from the standard offerings and do not require Qwest to engage in an entire BFR process are ripe for inclusion in the SRP process. Requiring CLECs to endure the more extended BFR process for every request, except the few listed in Exhibit F that deviates only slightly from a standard offering is to no one's advantage and actually harms CLECs by unnecessarily delaying access to the interconnection or collocation requested. This is consistent with the Act's goal and the FCC's efforts to open the local markets to CLECs in the most efficient manner possible.

**B. Exhibit F; Qwest Failed to Establish a Mechanism for Treating CLECs at Parity in Relation to SRP.**

Rather than repeating arguments here, AT&T incorporates by reference its discussion of the issues associated with non-discrimination and productization discussed in regard to SGAT § 17, above.

**VIII. INDIVIDUAL CASE BASIS PROCESS – SGAT EXHIBIT I**

**A. Exhibit I; Qwest Failed to Establish a Mechanism for Treating CLECs at Parity in Relation to ICB.**

<sup>123</sup> 5/31/01 AZ Tr. at pp. 335-336; 6/22/01 CO Tr. at p. 5; 7/10/01 WA Tr. at p. 4109; 6/25/01 Multi-State Tr. at p. 149.

<sup>124</sup> 5/31/01 AZ Tr. at pp. 346-347; 8/21/01 CO Tr. at pp. 89-90; 6/25/01 Multi-State Tr. at p. 149.

ICB is generally used to establish prices. Rather than repeating arguments here, AT&T incorporates by reference its discussion of the issues associated with non-discrimination discussed in regard to SGAT § 17, above. Importantly, there exists even less evidence in relation to ICB and Qwest's process for CLECs than the BFR process. In addition, ICB creates a similar "productizing" problem, but in relation to pricing. In summary, there is insufficient evidence in this record upon which the Commission could base a recommendation that Qwest complies with its parity requirements. Qwest has failed to meet its burden of proof. As the FCC has noted, the "ultimate burden of proof that its application satisfies all the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement[,]" rests upon Qwest.<sup>125</sup>

### CONCLUSION

For the foregoing reasons, AT&T requests that the Commission either (a) find Qwest in non-compliance in relation to its overall § 271 obligations found in all checklist items for failing to comply with the above referenced GT&Cs, or (b) order that Qwest make the adjustments suggested herein and await the outcome of the ROC performance testing to make any final decision in relation to recommending Qwest's compliance to the FCC.

---

<sup>125</sup>*FCC BANY 271 Order* at ¶ 47.

Respectfully submitted this 18<sup>th</sup> day of September 2001.

**AT&T COMMUNICATIONS  
OF THE MOUNTAIN STATES, INC.  
AND AT&T LOCAL SERVICES ON  
BEHALF OF TCG PHOENIX**

By: Letty S.D. Friesen by DRF

Mary B. Tribby  
Letty S.D. Friesen  
AT&T Law Department  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202  
(303) 298-6475

Exhibit A

**Section 1.0 - GENERAL TERMS**

1.1 This Statement of Generally Available Terms and Conditions (SGAT) for Interconnection, Unbundled Network Elements, ancillary services, and resale of Telecommunications Services is filed by Qwest Corporation (Qwest), a Colorado Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.

~~1.2 If this document is being used as the basis for negotiations of an Interconnection Agreement, it is between \_\_\_\_\_, (Competitive Local Exchange Carrier or CLEC) a \_\_\_\_\_ corporation and Qwest Corporation (Qwest), a Colorado corporation, pursuant to Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and the rules and regulations promulgated thereunder.~~ Intentionally Left Blank

1.3 This Agreement SGAT sets forth the terms, conditions and pricing under which Qwest will offer and provide to any requesting CLEC network Interconnection, access to Unbundled Network Elements, ancillary services, and Telecommunications Services available for resale within the geographical areas in which both Parties Qwest is are providing local Exchange Service exchange service at that time, and for which Qwest is the incumbent Local Exchange Carrier within the state of Oregon for purposes of providing local Telecommunications Services. This Agreement SGAT is available for the term set forth herein.

1.4 Individual CLECs may adopt this SGAT, in lieu of entering into an individually negotiated Interconnection agreement, by signing the Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT to Qwest, pursuant to the notification notice provision of this SGAT contained in Section 5.21. Upon adoption of the The date on SGAT by CLEC, the SGAT becomes an Interconnection agreement which Qwest receives an executed copy of this SGAT shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Qwest shall notify CLEC of the Effective Date pursuant to the notice provision. The Parties shall satisfy all state Interconnection agreement filing requirements.

1.5 This SGAT, once it is approved or permitted to go into effect by the Commission, offers CLECs an alternative to negotiating an individual Interconnection agreement with Qwest, or adopting an existing approved Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i) of the Act. In this respect, neither the submission nor approval of this SGAT nor any provision herein shall affect Qwest's willingness to negotiate an individual agreement with any requesting carrier pursuant to Section 252 of the Telecommunications Act of 1996.

~~1.6 Qwest may modify this SGAT prior to the date it is approved or permitted to go into effect. If Qwest files a modification, the section modified shall be considered withdrawn, and the section as modified will be approved or permitted to go into effect pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of the Schedule for Review set forth in section 252(f) of the Act, the sixty (60) day timeframe for this SGAT to take effect shall commence from the filing of this SGAT and shall not be affected by the filing of any modification.~~

~~1.7 Following the date this SGAT is approved or allowed to take effect, Qwest may file amendments to this SGAT, which shall be approved or permitted to take effect pursuant to the~~

Exhibit A

~~Schedule for Review set forth in Section 252(f) of the Act. At the time any amendment is filed, the section amended shall be considered withdrawn, and no CLEC may adopt the section considered withdrawn following the filing of any amendment, even if such amendment has not yet been approved or allowed to take effect.~~

~~1.7.1 Notwithstanding the above or anything contained in Section 1 of this Agreement, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this Agreement, no formal amendment to the Interconnection agreement is necessary. Qwest will notify CLEC of the availability of these new services through the product notification process through the Co-Provider Industry Change Management Process (CICMP). CLEC must first update the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. Then by placing its orders, CLEC agrees to abide by all of the then current rates, terms and conditions as set forth in the then current template agreement applicable to such new services. If CLEC wishes to negotiate an amendment with different terms and conditions than defined in the then current template agreement, CLEC agrees to abide by those terms and conditions until the amendment is approved and a parallel processing letter agreement is executed.~~

~~1.8 This SGAT represents Qwest's standard contract offer and, as such, CLECs with a current Interconnection agreement may opt into, any individual Interconnection, service, or network element arrangement in this SGAT, in accordance with Section 252(i) requirements in the Telecommunications Act of 1996, and the Washington Utilities and Transportation Commissions' Interpretive and Policy Statement issued in Washington Docket UT 990355, by executing an appropriate amendment to its current Interconnection agreement.~~  
Intentionally Left Blank

1.7 Once this SGAT is approved or permitted to go into effect, any amendment to the SGAT by Qwest will be accomplished through Section 252 of the Act. When Qwest files an amendment to the SGAT with the Commission, Qwest shall provide notice of such filing through the Co-Provider Industry Change Management Process (CICMP). Qwest shall also request that the Commission notify all interested parties of the filing. In addition, any amendment to the SGAT filed by Qwest shall have no effect on the SGAT (either to withdraw or replace effective provisions or to add provisions) until such amendment is approved by the Commission or goes into effect by operation of law. Once CLEC executes Section 22 and delivers a signed copy to Qwest pursuant to the notice provisions of this SGAT, the currently effective SGAT will become the Interconnection Agreement between the CLEC and Qwest (this Agreement), and shall be subject to the same rules and laws as other Interconnection Agreements in effect in this state. Once this SGAT becomes the Interconnection Agreement between CLEC and Qwest, this Agreement can only be amended in writing, executed by the duly authorized representatives of the Parties.

1.7.1 Notwithstanding the above, if the Commission orders, or Qwest chooses to offer and CLEC desires to purchase, new Interconnection services, access to additional Unbundled Network Elements, additional ancillary services or Telecommunications Services available for resale which are not contained in this SGAT or a Tariff, Qwest will notify CLEC of the availability of these new services through the product notification process through the CICMP. CLEC must first complete the relevant section(s) of the New Product Questionnaire to establish ordering and billing processes. In addition, the

Exhibit A

Parties shall amend this Agreement under one (1) of the following two (2) options:

1.7.1.1 If CLEC is prepared to accept Qwest's terms and conditions for such new product, CLEC shall execute a form Advice Adoption Letter (the form of which is attached hereto as Exhibit L), to be furnished by Qwest, and include as an attachment, the discreet terms and conditions available on Qwest's wholesale website, that Qwest has identified as pertaining to the new product. CLEC shall submit the Advice Adoption Letter to the Commission for its approval. CLEC shall also provide the Advice Adoption Letter to Qwest pursuant to the notice provisions in this Agreement and may begin ordering the new product pursuant to the terms of this Agreement as amended by such Advice Adoption Letter.

1.7.1.2 If CLEC wishes to negotiate an amendment with different terms and conditions than defined by Qwest for such new product, CLEC agrees to abide by those terms and conditions on an interim basis by executing the Interim Advice Adoption Letter (the form of which is attached hereto as Exhibit M) based upon the terms and conditions available on Qwest's wholesale website that Qwest has identified as pertaining to the new product. The Interim Advice Adoption Letter will terminate when the final amendment is approved. The rates, and to the extent practicable, other terms and conditions contained in the final amendment will relate back to the date the Interim Advice Adoption Letter was executed. No new product offering or accompanying Interim Advice Adoption Letter will be construed to limit or add to any rates, terms or conditions existing in this Agreement.

1.8 Because this SGAT is Qwest's standard contract offer, CLECs with a current Interconnection Agreement may opt into, through Section 252(i) of the Act, any provision of the SGAT by executing an appropriate amendment to its current Interconnection Agreement.

1.8.1 When opting into a provision, Qwest may require CLEC to accept legitimately related provisions to ensure that the provision retains the context set forth in the SGAT. At all times, Qwest bears the burden of establishing that an SGAT provision is legitimately related.

1.8.2 To opt into a provision of the SGAT through Section 252(i), CLEC must provide Qwest with written notice of such intention specifying in detail the provisions of the SGAT selected in the form of a proposed amendment to the Interconnection Agreement which has been signed by CLEC. Qwest shall make a form or sample amendment as well as the currently effective SGAT, available in electronic form for use by CLEC to prepare the written notice. Once Qwest receives such written notice, it shall have a reasonable period of time to submit a formal written response either accepting the change and signing the amendment or identifying those additional provisions that Qwest believes are legitimately related and must also be included as part of the amendment. If Qwest identifies additional provisions that Qwest believes are legitimately related, Qwest shall specify the provisions in the proposed amendment, if any, to which the additional provisions are not legitimately related and which could be included in a revised proposed amendment that would be acceptable to Qwest. Under ordinary circumstances, a reasonable period of time shall be deemed to be fifteen (15) business days. In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions legitimately related, including legal, technical, or other considerations. In extraordinary

Exhibit A

circumstances, where CLEC's requested modification is complex, Qwest shall have additional time to perform its review. When such extraordinary circumstances exist, Qwest will notify CLEC in writing within fifteen (15) business days from the notice and advise CLEC that additional time is necessary. In no event shall a reasonable period of time be deemed to be greater than twenty (20) business days from the time of CLEC's notice.

1.8.3 If Qwest has identified additional provisions that Qwest believes are legitimately related and has specified provisions in the proposed amendment to which those provisions are not legitimately related, CLEC may provide Qwest with a revised proposed amendment that deletes the disputed provisions, which Qwest shall accept and sign. Regardless of whether CLEC provides Qwest with a revised proposed amendment, if CLEC disputes Qwest's written response that additional SGAT provisions are legitimately related, then CLEC may immediately demand that the dispute be submitted to dispute resolution and CLEC shall submit such dispute to dispute resolution within fifteen (15) days from such receipt of Qwest's response. CLEC may, at its sole option, elect to have the dispute resolution conducted through one of the following methods of dispute resolution:

1.8.3.1 The dispute may be settled by the Commission. Such dispute resolution shall be conducted pursuant to Commission rules or regulations specifying a procedure for submission, hearing and resolving issues pursuant to Section 252(i) of the Act or rules and regulations specifying procedures for submission of a dispute arising under an Interconnection agreement, as appropriate. Agreement, as appropriate. If the Commission shall not have established any such rules or regulations, CLEC may file a complaint with the Commission. The Commission may elect to hear the complaint under expedited procedures.

1.8.3.2 The dispute may be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator. The arbitration proceedings shall be conducted under the then-current rules of the American Arbitration Association (AAA). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. All expedited procedures prescribed by AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Except for a finding of bad faith as set forth in 1.8.3.3, each Party shall bear its own costs and attorney's fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually agreed upon location.

1.8.3.3 Each Party to the dispute shall bear the responsibility of paying its own attorney's fees and costs in prosecuting/defending the action. However, if either Party is found to have brought or defended the action in "bad faith", then that Party shall be responsible for reimbursing the other Party for its reasonable attorney's fees and costs in prosecuting or defending the action.

1.8.4 If Qwest accepts a CLEC proposed change to adopt certain SGAT language and signs the amendment, the Parties shall begin abiding by the terms of the amendment immediately upon CLEC's receipt of the signed amendment. Qwest shall be responsible for submitting the proposed change to the Commission for its approval within ten (10) business days from receipt of the signed amendment. The amendment shall be deemed effective upon approval of the amendment by the Oregon Commission.

## Section 2.0 - INTERPRETATION AND CONSTRUCTION

2.1 ~~This Agreement (Agreement) includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule or Tariff applies to such agreement, instrument, statute, regulation, rule or Tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision). This Agreement ("Agreement") includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Qwest or other third party offerings, guides or practices), statute, regulation, rule or Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition agreement, instrument, (including any amendments, supplements, addenda, or successors) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of telecommunications industry administrative or technical standards that is in effect as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or Tariff, to any successor provision). Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule, regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of telecommunications industry administrative or technical standards.~~

2.2 ~~The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the Existing Rules). Among the Existing Rules are the results of arbitrated decisions by the Commission which are currently being challenged by Qwest or 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 CLEC. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in AT&T Corp., et al. v. Iowa Utilities Board, et al. on January 25, 1999. Many of the Existing Rules, including rules concerning which network elements are subject to unbundling requirements, may be changed or modified during legal proceedings that follow the Supreme~~

~~Court opinion. Among the Existing Rules are the FCC's orders regarding BOCs' applications under Section 271 of the Act. Qwest is basing the offerings in this Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications. Nothing in this Agreement shall be deemed an admission by Qwest concerning the interpretation or effect of the Existing Rules or an admission by Qwest that the Existing Rules should not be 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, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the modification or change of the Existing Rules, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. This Section 2.2 shall be considered part of the rates, terms and conditions of each Interconnection, service and network element arrangement contained in this Agreement, and this Section 2.2 shall be considered legitimately related to the purchase of each Interconnection, service and network element arrangement contained in this Agreement.~~

~~2.3 In cases of conflict between Qwest's wholesale Product Catalog (PCAT) (formerly IRRG), product descriptions, methods and procedures, or a technical publication, and this Agreement, the rates, terms and conditions of this Agreement shall prevail over such PCAT product descriptions, methods and procedures, or a technical publication.~~

~~2.4 This SGAT will take effect by operation of law pursuant to Section 252 (f)(3)(B) of the Act within sixty (60) days of its submission to the Commission. While the SGAT is "in effect", Qwest will not represent the SGAT as Commission approved. The Commission also retains authority to review this SGAT after it is "in effect".~~

~~Section 3.0 - IMPLEMENTATION SCHEDULE 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 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 up to sixty (60) days. If the Parties fail to agree on an amendment during~~

the 60 day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. 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.

2.3 Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

2.3.1 If either Party believes, in good faith, that a change in Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT abridges or expands its rights or obligations under this SGAT and that change has not gone through CICMP, the Parties will resolve the matter under the Dispute Resolution process. Any amendment to this Agreement that may result from such Dispute Resolution process shall be deemed effective on the effective date of the change for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of the Dispute Resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. If the Parties fail to resolve the dispute during the first sixty days after the CLEC institutes Dispute Resolution, the Parties agree that the first matter to be resolved during formal Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of formal Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented.

### Section 3.0 - CLEC INFORMATION

3.1 Except as otherwise required by law, Qwest will not provide or establish Interconnection, Unbundled Network Elements, ancillary services and/or resale of Telecommunications Services in accordance with the terms and conditions of this Agreement prior to CLEC's execution of this Agreement. ~~The date on which CLEC signs and delivers an executed copy of this Agreement, in accordance with Section 1, shall hereafter be referred to as the "Effective Date" of the Agreement between Qwest and CLEC. Thereupon, the Parties shall complete Qwest's "CLEC Questionnaire," and negotiate an Interconnection implementation schedule as it applies to CLEC's obtaining of Interconnection, Unbundled Network Elements, ancillary services, and/or resale of Telecommunications Services hereunder.~~

3.2 Prior to placing any orders for services under this Agreement, the Parties will jointly complete the following sections of Qwest's "New CLEC Questionnaire":

General Information

Billing and Collection (Section 1)

Credit Information

Billing Information

Summary Billing

OSS and Network Outage Notification Contact Information

System Administration Contact Information

Ordering Information for LIS Trunks, Collocation, and Associated Products (if CLEC plans to order these services)

Design Layout Request - LIS Trunking and Unbundled Loop (if CLEC plans to order these services)

Qwest's "CLEC Questionnaire". 3.2.1 The remainder of this questionnaire must be completed within two (2) weeks of completing the initial portion of the questionnaire for Qwest to continue processing new orders. This questionnaire will then be used to:

Determine geographical requirements;

Identify CLEC identification codes;

Determine Qwest system requirements to support CLEC's specific activity;

Collect credit information;

Obtain billing information;

Create summary bills;

Establish input and output requirements;

Create and distribute Qwest and CLEC contact lists; and

Identify CLEC hours and holidays.

~~3.3 Prior to placing any orders for services under this Agreement, the Parties will finalize an Interconnection implementation schedule. Subject to the terms and conditions of this Agreement, each Party shall exercise reasonable efforts to adhere to the Interconnection implementation schedule. 3.2.12 CLECs that have previously completed a Questionnaire need not fill out a new CLEC Questionnaire; however, CLEC will update its CLEC Questionnaire with any changes in the required information that have occurred and communicate those changes to Qwest if no changes in the information required have occurred. Before placing an order for a new product, CLEC will need to complete the relevant new product questionnaire and amend this Agreement, which may include an amendment pursuant to Section 1.7.1.~~

3.3 Intentionally Left Blank

3.4 Intentionally Left Blank

## Section 4.0 – DEFINITIONS

4.1 ~~\_\_\_\_\_~~ “Access Service Request” or “ASR” means the industry guideline standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

4.2 ~~\_\_\_\_\_~~ “Access Services” refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

“Access Tandem Switch” is a switch used to connect End Office Switches to interexchange Carrier switches. Qwest’s Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

4.3 ~~\_\_\_\_\_~~ “Act” means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the ~~Telecommunications Act of 1996,~~ and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

“Advanced Intelligent Network” or “AIN” is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

“Advanced Services” refers to high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video telecommunications using any technology.

“Affiliate” means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term ‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.

“AMI T1” is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code.

“Applicable Law” means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

4.4 ~~\_\_\_\_\_~~ “Application Date” or “APP” means the date CLEC provides Qwest ~~a firm commitment and sufficient~~ an application for service containing required information to provide service as set forth in this Agreement.

“ATIS” or “Alliance for Telecommunications Industry Solutions” is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and interconnection for telecommunications products and services. -ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Location Identification" or "ALI" is a the automatic display at the Public Safety Answering Point ("PSAP") of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

4.5 ~~—————"Automatic Number Identification" or "ANI" means a Feature Group D signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.~~

"Automatic Number Identification" or "ANI" is the billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit switch routing table or system.

4.6 ~~—————"Basic Exchange Features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.~~

4.7 ~~—————"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.~~

"Bill Date" means the date on which a billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process

claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

~~4.8 "Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17 means a request for a new Interconnection or unbundled element not already available in this Agreement for the provision of local Telecommunications Services.~~

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User and the Serving Wire Center or extending beyond the End User Customer's location.

~~4.9 "Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.~~

~~4.10 "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter, (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.~~

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

~~4.11 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:~~

~~4.11.1 "End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and~~

~~4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact-based consideration of geography and function should be used to classify any switch. Qwest Aaccess Tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.~~

~~"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact based consideration of geography or function should be used classify any switch.~~

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Centrex" shall have the meaning set for the in Section 6.2.2.9.

"CLC" or "Carrier Liaison Committee" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

4.12 ~~\_\_\_\_\_~~ "Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest unbundled network elements. ~~Unbundled Network Elements. Qwest offers eight (8) Collocation arrangements: Virtual Collocation, Caged Physical Collocation, Cageless Physical Collocation, Shared Caged Physical Collocation, Adjacent Collocation, Interconnection Distribution Frame Collocation, Common Area Splitter Collocation, and Remote Collocation.~~

4.12(a) ~~\_\_\_\_\_~~ "Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where the CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

4.13 ~~\_\_\_\_\_~~ "Commission" means the \_\_\_\_\_.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

4.14 ~~\_\_\_\_\_~~ "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a **digital signaling network** fully separate from the Public Switched Network that carries the **actual** call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

4.15 ~~\_\_\_\_\_~~ "Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to Sections 1 and 3 of this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications

~~Services pursuant to the terms of this Agreement.~~ A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data " means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between locations designated by CLEC to which a CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest wire centers, Qwest End Office Switches, and Qwest Tandem Switches. The path may operate at DS-1 or higher transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

4.16 "Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a

service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

4.17 ——— "Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

4.18 ——— "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

4.19 ——— "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals (multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from

the End User Customer to the Central Office) over one copper pair.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Sections 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Assistance Lists" shall have the meaning set forth in Sections 10.6.1.1.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and

facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 1.4.

"Electronic Bonding" is real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more eCarriers.

4.20 "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with additional, different or restructured information; or involve End-User Customer subscriber-end-user interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Sections 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

4.30 "Exchange Access (IntraLATA Toll)" as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the SGAT shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

4.21 "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a ~~Bellcore~~Telcordia document that defines industry standards for exchange message records.

4.22 "Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling areas ~~as defined by Qwest's then current EAS/local serving areas,~~ and as determined by the Commission.

4.23 ~~"Facility Complete Date" or "FCD" means the date all pre-service tests are performed, including stress tests.~~

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed-upon location.

4.23 (a) "Finished Services" means complete end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

4.24 ~~"Firm Order Confirmation Date"~~ "Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for the type of SS7 messages being submitted for transmission to the Hub Provider.

4.24(a) ~~Individual Case Basis or- (ICB) shall have the meaning set forth in Exhibit I. - Each UNE or resale product marked as ICB will be handled individually on a pricing and/or interval commitment basis. Where ICB appears, CLEC should contact their account team for pricing, ordering, provisioning or maintenance information.~~

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service.

"INP" or "Interim Number Portability" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network with as little

impairment of quality, reliability and convenience to the customer as possible, but does not comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23 (a).

4.25 "Integrated Digital Loop Carrier" means a subscriber loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

4.26 "Interconnect & Resale Resource Guide" (IRRG) is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the IRRG. The IRRG is available on Qwest's Web site:

<http://www.uswest.com/carrier/guides/interconnect/index.html>. Intentionally Left Blank

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

4.27 "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When a CLEC signs and delivers a copy of this SGAT to Qwest pursuant to the notice provision of the SGAT, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(f) of the Act.

4.28 "Interexchange Carrier" or "IXC" means a carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

4.29 "Internet Related Traffic" refers to dial-up access through an entity which may include computer processing, protocol conversions, information storage or routing with transmission to enable users to access internet content or data services.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately related" terms and conditions are those rates, terms, and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other interconnection, services or elements in the approved Interconnection Agreement. These rates, terms and aconditions are those that, when taken together, are the necessary rates, terms and condtions for establishing the business relationship between the Parties as to that particular interconnection, service or element. This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

4.31 ——— "Local Exchange Carrier" or "LEC" means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXCs to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

4.32 ——— "Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Sswitch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

4.33 ——— "Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP shall have the meaning set forth in Section 10.2.1.1.

4.34 ——— ~~"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1. "Local Loop Transmission" or "Loop" or "Unbundled Loop" is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC Central Office and the loopecentral office and the Loop demarcation point at an end user's premises, including inside wire owned by the incumbent LEC. The local looppremises. The Local Loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber,Dark Fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers (DSLAM)), and line conditioning. The local~~

loopLocal Loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.Loops.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and billing processes for ordering local services.

4.35 "Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

4.36 "Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the Qwest technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the Qwest technician performs work on a business day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply

when the Qwest technician performs work on either a Sunday or Qwest-recognized holiday.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.39 ~~\_\_\_\_\_~~ "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service including phone to phone voice interexchange traffic that is transmitted over a carrier's packet switched network using protocols such as TCP/IP to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

4.40 ~~\_\_\_\_\_~~ "Mid-Span Meet" means an Interconnection between two networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities. ~~The Meet Point is the demarcation establishing ownership of and responsibility for each Carrier's portion of the transmission facility; provided however, this definition does not impact the cost recovery for use of the facilities.~~ is a Point of Interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

4.40(a) ~~\_\_\_\_\_~~ "Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A, and include the following activities or charges: additional engineering, additional labor installation, additional labor other, testing and maintenance, maintenance of service, additional cooperative acceptance testing, nonscheduled cooperative testing, nonscheduled manual testing, additional dispatch, date change, design change, expedite charge and cancellation charge. These activities are described in Qwest's Access Services Tariff.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for

access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the carrier in the call routing process immediately preceding the terminating carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of telecommunications service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for maintenance and repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Sections in 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

4.41 ——— "North American Numbering Plan" or "NANP" means the basic numbering plan for the telecommunications networks located used in the United States that also serves as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

4.42 "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where technically feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User customers, its Affiliates or to any other party.

4.43 "Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes

to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

4.44 ——— "Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

4.45 ——— "Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

4.46 ——— "Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office switch but does not include switch features. The Port serves as the hardware termination for line or trunk side facilities connected to the Central Office switch. Each line side port is typically associated with one or more telephone numbers that serve as the customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density or "PSD" Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

4.46(a) ——— "Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing loop eConcentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

4.46(b) ——— "Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pcat/>

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7.

4.47 ——— "Proof of Authorization" ("POA"). POA shall consist of verification of the end user's

selection and authorization adequate to document the end user's selection of its local service provider. ~~Section 5.3 of this Agreement lists acceptable forms of documentation.~~

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXC's and CMRS providers that use the NANP in connection with the provision of switched services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center; and 2) the corresponding geographic area -which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLEC) for its provision of Telephone Exchange Services.

~~4.49 "Rate Center Area" is the geographic area within which basic exchange services Basic Exchange Services are provided for NPA-NXX designations associated with a particular Rate Center.~~

4.49 (a) "Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for provisioning by the RFS date.

4.50 "Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network . If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User

Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

4.50(a) ~~.....~~ "Remote Premises" means all Qwest Premises as defined in 4.46(a), other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital loop carriers, fiber hubs, DSLAMs, etc.

4.51 ~~.....~~ "Reseller" is a category of local exchange service ~~Local Exchange Service~~ provider that obtains dial tone and associated Telecommunications Services from another provider through the purchase of finished services for resale to its end users.

"Reseller" is a category of ILECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

4.52 ~~.....~~ "Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

4.53 ~~.....~~ "Service Control Point" or "SCP" means a signaling end point that acts as a database to provide information to another signaling end point (i.e., Service Switching Point or another SCP) for processing or routing certain types of network calls. A query/response mechanism is typically used in communicating with an SCP.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

4.54 “Serving Wire Center” denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

4.55 “Service Date” or “SD” means the date service is made available to the End User Customer. This also is referred to as the “Due Date.”

“Shared Transport” shall have the meaning set forth in Section 9.8.1.1.

4.56 “Signaling Transfer Point” or “STP” means a Packet Switch signaling point that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common Channel Signaling (“CCS”) messages.

“Signaling System 7” or “SS7” is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part (“MTP”), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part (“SCCP”), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part (“ISUP”), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part (“TCAP”), which provides for transfer of non-circuit related information between signaling points.

“Special Request Process” or (SRP) shall have the meaning set forth in Exhibit F.

“Spectrum Compatibility” means the capability of two Copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of crosstalk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all loop lengths, model loops, or loss values within the requirements for the specific transmission system.

“Splitter” means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the loop in order to provide both voice and data over a single loop.

“Stand-Alone Test Environment” or (“SATE”) shall have the meaning set forth in Section 12.2.9.3.2.

“Subloop” shall have the meaning set forth in Section 9.3.1.1.

“Suspended Lines” means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, and Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

4.57 "Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B, Feature Group D, ~~Phone to Phone IP Telephony~~, 8XX access, and 900 access and their successors or similar Switched Access ~~services~~. Services.

"Switched Access Traffic" as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association ("ECSA") for the American National Standards Institute ("ANSI").

4.58 "Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules and catalogs.

"Technically Feasible." Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

4.59 "Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises

Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

4.60 "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary transaction sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Unbundled Network Element" is a network element that has been defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, or for which unbundled access is provided under this Agreement.

4.61 ~~"Unbundled Network Element Platform (UNE-P)" – is a pre-existing combination of unbundled network elements, Unbundled Network Elements as set forth in Section 9.23, including, but not necessarily limited to, a NID, Unbundled Loop, Unbundled Local Switching and Shared Transport. There are several forms of UNE-P, including but not limited to single line residence, single line business, and PBX Trunks.~~

4.62 ~~"UNE Combination" means a pre-existing combination of legally binding and effective Section 251(c)(3) unbundled network elements that have been defined to meet the necessary and impair requirements of Section 251(d)(1). UNE Combinations are provided to CLEC in its pre-existing combined state, on an "as is" combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network, as required by the FCC, the or Commission or this Agreement, provided for in this Agreement, basis, and at Section 252(d)(1) rates. UNE Combinations include UNE-P and Private Line Combinations.~~

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

4.63 "Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

4.64 "Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

4.65 Terms not otherwise defined here, but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

## Section 5.0 - TERMS AND CONDITIONS

### 5.1 General Provisions

5.1.1 ~~Each Party shall use its best efforts to comply with the Implementation Schedule provisions that will be mutually agreed upon by the Parties. Intentionally Left Blank~~

5.1.2 The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

5.1.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users. ~~Each End User Customers. In addition, neither Party's provision of or use of services shall interfere with the services related to or provided under this Agreement.~~

5.1.3.1. If such impairment is material and poses an immediate threat to the safety of either Party's employees, customers or the public or poses an immediate threat of a service interruption operational or physical integrity of the other Party's facilities, that Party shall provide immediate notice by email to the other Party's designated representative(s) for the purposes of receiving such notification. Such notice shall include 1) identification of the impairment (including the basis for identifying the other party's facilities as the cause of the impairment), 2) date and location of the impairment, and 3) the proposed remedy for such impairment for any affected service. Either Party may discontinue the specific service that violates this provision or refuse to provide the same type of service if it reasonably appears that that particular service would cause similar harm, until the violation of this provision has been corrected to the reasonable satisfaction of that Party and the service shall be reinstated as soon as reasonably possible. The Parties shall work cooperatively and in good faith to resolve their differences. In the event either Party disputes any action that the other Party seeks to take or has taken pursuant to this provision, that Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.2 If the impairment is service impacting but does not meet the parameters set forth in section 5.1.3.1, such as low level noise or other interference, the other party shall provide written notice within five (5) calendar days of such impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If the impairment has not been corrected or cannot be corrected within five (5) business days of receipt of the notice of non-compliance, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.3 If either Party causes non-service impacting impairment the other Party shall provide written notice within fifteen (15) calendar days of the impairment to the other Party and such notice shall include the information set forth in subsection 5.1.3.1. The Parties shall work cooperatively and in good faith to resolve their differences. If either Party fails to correct any such impairment within fifteen (15) calendar days of written notice, or if such non-compliance cannot be corrected within fifteen (15) calendar

days of written notice of non-compliance, and if the impairing Party fails to take all appropriate steps to correct as soon as reasonably possible, the other Party may pursue immediate resolution by expedited or other Dispute Resolution.

5.1.3.4 It is the responsibility of either Party to inform its End User Customers of service impacting impairment that may result in discontinuance of service as soon as the Party receives notice of same.

5.1.4 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers. This provision is not intended to limit the liability of either Party for its failure to perform under this Agreement.

5.1.5 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

5.1.6 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement. Notwithstanding the foregoing, Qwest shall not assess any charges against CLEC for services, facilities, unbundled network

~~5.1.7 A Telecommunications Carrier that receives or obtains proprietary information from another carrier for purposes of providing any Telecommunications Services shall use such information only for such purpose, and shall not use such information for its own marketing efforts, elements, ancillary service and other related works or services covered by this Agreement, unless the charges are expressly provided for in this Agreement. All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.~~

## 5.2 Term of Agreement

5.2.1 ~~This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act. The date on which CLEC submits a written request, on the date set forth in Section 41.4 pursuant to Section 3.1 of this Agreement, to obtain services pursuant to this Agreement shall hereafter be referred to as the "Effective Date" of this Agreement between CLEC and Qwest. 252 of the Act. This Agreement shall be is binding upon the Parties upon the Effective Date and for a term of two (2) years and shall terminate expire on \_\_\_\_\_ two (2) years from the Effective Date.~~

5.2.2 Upon expiration of the term of this Agreement, this Agreement shall continue in force and effect until terminated by either Party on one hundred sixty (160) days written notice to the other Party. The date of this notice will be the starting point for the one hundred sixty (160) day negotiation window under Section 252 of the Act. If the Parties reach agreement, this Agreement will terminate on the date specified in the notice or on the date the Agreement is approved by the Commission, whichever is later. If the Parties arbitrate, this Agreement will terminate when the new Agreement is approved by the Commission.

~~5.2.2.1~~ ~~\_\_\_\_\_~~ ~~Prior~~ ~~Prior~~ to the conclusion of the ~~two (2) year~~ term specified in Section 5.2.1 above, CLEC may obtain Interconnection services under the terms and conditions of a then-existing Agreement ~~SGAT or agreement~~ to become effective at the conclusion of the ~~two (2) year term~~ ~~term or prior to the conclusion of the term if CLEC so chooses.~~

### 5.3 Proof of Authorization

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

~~5.3.1.1~~ ~~\_\_\_\_\_~~ ~~The end user's electronic or written Letter of Authorization.~~

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

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

~~5.3.2~~ ~~\_\_\_\_\_~~ ~~The Parties shall make POAs available to each other upon request~~ request in the event of an allegation of an unauthorized change in accordance with all applicable laws and rules. ~~Unless prohibited by applicable laws or regulations, a charge equal to the amount of the Customer Transfer Charge as reflected on Exhibit A (slamming charge) will be assessed if the POA cannot be rules and shall be subject to any penalties contained therein.~~ ~~provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.~~

### 5.4 Payment

~~5.4.1~~ ~~\_\_\_\_\_~~ ~~Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice, or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.~~ calendar days after receipt of the invoice, whichever is later (payment due date). ~~If the payment due date is not a business day, the payment shall be due the next business day.~~

~~5.4.2~~ ~~\_\_\_\_\_~~ ~~Qwest may discontinue processing orders for the failure of CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within thirty (30) days of the due date on CLEC's bill. Qwest will notify CLEC in writing at least ten (10) days prior to discontinuing the processing of orders. If Qwest does not refuse to accept additional orders on the date specified in the ten (10) days notice, and CLEC's non-compliance continues, nothing contained herein shall preclude Qwest's right to refuse to accept additional orders from the noncomplying CLEC without further notice. For order processing to resume, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest may require a deposit (or additional deposit) from CLEC, pursuant to this section.~~

~~5.4.3 Qwest may disconnect any and all services for failure by CLEC to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the services provided under this Agreement within sixty (60) days of the due date on CLEC's bill. CLEC will pay the Tariff charge required to reconnect each resold end user line disconnected pursuant to this paragraph. Qwest will notify CLEC in writing at least ten (10) business days prior to disconnection of the service(s). In case of such disconnection, all applicable charges, including termination charges, shall become due. If Qwest does not disconnect CLEC's service(s) on the date specified in the ten (10) days notice, and CLEC's noncompliance continues, nothing contained herein shall preclude Qwest's right to disconnect any or all services of the noncomplying CLEC without further notice. For reconnection of service to occur, CLEC will be required to make full payment of all past and current charges. Additionally, Qwest will request a deposit (or additional deposit) from CLEC, pursuant to this section. Qwest agrees, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles.~~

~~5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the monthly billing under this Agreement, the Parties will notify each other in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. CLEC and Qwest shall pay all amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. If the resolved amount does not appear as a credit on the next invoice after resolution of the dispute, the resolved amount plus interest from the date of payment will be applied. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it not been paid on time. Similarly, in the event a Party withholds payment for a disputed charge, and upon resolution of the matter it is determined that such payments should have been made, the billing Party is entitled to collect interest on the withheld amount, subject to the above provisions.~~

~~5.4.5 Qwest will determine CLEC's credit status based on previous payment history with Qwest or credit reports such as Dun and Bradstreet. If CLEC has not established satisfactory credit with Qwest or if CLEC is repeatedly delinquent in making its payments, Qwest may require a deposit to be held as security for the~~5.4.2 One Party may discontinue processing orders for the failure of the other party to make full payment for the relevant service, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar days following the payment due date. The billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.3 The billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) calendar

days following the payment due date. The billed Party will pay the applicable reconnect charge set forth on Exhibit A required to reconnect each resold end user line disconnected pursuant to this paragraph. The billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business day notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant service. Additionally, the billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.

5.4.4 Should CLEC or Qwest dispute, in good faith, any portion of the non-recurring nonrecurring charges or monthly billing under this Agreement, the Parties will notify each other in writing within fifteen (15) calendar days following the payment due date -identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts, promptly provide all documentation regarding the amount disputed that is reasonably requested by CLEC the other Party, and work in good faith in an effort to resolve and settle the dispute through informal means prior to initiating any other rights or remedies.

5.4.4.1 If a Party disputes charges and does not pay such charges by the payment due date, such charges may be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the withholding Party shall pay the disputed amount and applicable late payment charges no later than the second Bill Date following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the disputing Party, the billing Party shall credit the bill of the disputing Party for the amount of the disputed charges and any late payment charges that have been assessed no later than the second Bill Date after the resolution of the dispute. If a Party pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.

5.4.4.2 If a Party pays the disputed charges disputed at the time of payment or at any time thereafter pursuant to Section 5.4.4.3, at any time and the dispute is resolved in favor of the disputing Party, the billing Party shall, no later than the second Bill Date after the resolution of the dispute: (1) credit the disputing Party's bill for the disputed amount and any associated interest or (2) pay the remaining amount to CLEC, if the disputed amount is greater than the bill to be credited. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.

5.4.4.3 If a Party fails to dispute a charge and discovers an error on a bill it has paid after the period set forth in section 5.4.4, the Party may dispute the bill at a later time through an informal process, through an Audit pursuant to the Audit provision of this Agreement, through the Dispute Resolution provision of this Agreement, or

applicable state statutes or commission rules.

5.4.5 Each Party will determine the other Party's credit status based on previous payment history or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the billing Party due to a previous nonpayment situation, the billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or payment of charges before reconnection of service. "Repeatedly delinquent" means any payment received thirty (30) calendar days or more after the payment due date, three (3) or more times during a twelve (12) month period. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) period months for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to Qwest, the billing Party, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ten (10) thirty (30) calendar days after demand.

5.4.6 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs, regulations. Cash deposits and accrued interest will be credited to CLEC's the billing Party's account or refunded, as appropriate, upon the expiration earlier of the two (2) year term of the Agreement or the establishment of satisfactory credit with the billing Qwest, Party, which will generally be one full year of timely payments of undisputed amounts in full by CLEC, the billed Party. Upon a material change in financial standing, the billed Party may request and the billing Party will consider a recalculation of the deposit. The fact that a deposit has been made does not relieve CLEC from any requirements of this Agreement.

5.4.7 Qwest The billing Party may review CLEC's the other Party's credit standing and modify the amount of deposit required but in no event will the maximum amount exceed the amount stated in 5.4.5.

5.4.8 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

5.4.9 CLEC agrees to inform end user in writing of Each Party shall be responsible for notifying its End-User Customers of any pending disconnection by CLEC to allow end user of a non-paid service by the billed Party, if necessary, to allow those customers to make other arrangements for Telecommunications Services, such non-paid services.

## **5.5 Taxes**

5.5.1 Each Party purchasing services hereunder shall pay or otherwise be responsible for all Any federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges from the

purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## 5.6 Insurance

5.6.1 ~~CLEC~~Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of ~~B+XIII~~.~~B+XIII~~ with respect to liability arising from that Party's operations for which that Party has assumed legal responsibility in this Agreement. If either Party or its parent company has assets equal to or exceeding \$10,000,000,000, that Party may utilize an affiliate captive insurance company in lieu of a "Best's" rated insurer. To the extent that the parent company of a Party is relied upon to meet the \$10,000,000,000 asset threshold, such parent shall be responsible for the insurance obligations contained in this Section 5.6.1, to the extent its affiliated Party fails to meet such obligations.

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

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

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

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

5.6.1.5 "All Risk" Property coverage on a full replacement cost basis insuring all of CLEC personal property situated on or within the premises. ~~CLEC may elect to purchase business interruption and contingent business interruption insurance. Qwest~~

~~has no liability for loss of profit or revenues should an interruption of service occur.~~

5.6.2 ~~CLEC shall~~Each Party will initially provide certificate(s) of insurance evidencing coverage, and annually thereafter within ten (10) calendar days of renewal of any coverage maintained pursuant to this Section thereafter will provide such certificate(s) upon request. Such certificates shall (1) name Qwestthe other Party as an additional insured under commercial general liabilitycoverage as respects Qwest's interests; coverage; (2) provideQwest thirty (30) calendar days prior written notice of cancellation of, material change or exclusions in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased by Qwest; and (4) providethe other Party; and (4) acknowledge severability of interest/cross liability coverage.

## 5.7 Force Majeure

5.7.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, ~~equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions, inability~~conditions (collectively, a "Force Majeure Event"). ~~(collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without that Party's fault or negligence.~~ The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

## 5.8 Limitation of Liability

5.8.1 ~~Except for losses~~Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, each Party shall be liable to the other for direct damages for any loss, defect or equipment failure including without limitation any penalty, reparation or liquidated damagesunder 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 assessed by the Commission or under a Commission-ordered agreement (including without limitation penalties or liquidated damages assessed as a result of cable cuts), resulting from the causing Party's conduct or the conduct of its agents or contractors.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.

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.

~~5.8.3 Except for indemnity obligations, or as otherwise set forth in this Section, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided result. If the Parties enter into a Performance Assurance Plan under this Agreement, whether in contract or in tort, shall be limited to the total amount that is nothing in this Section 5.8.2 shall limit amounts due and owing under any Performance Assurance Plan or any penalties associated with Docket No. \_\_\_\_\_.~~

~~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, including without limitation direct damages for loss of or damaged to the CLEC's collocated equipment located within the Collocation space.~~  
5.8.3 Intentionally Left Blank

5.8.4 Nothing contained in this Section 5.8 shall limit either Party's liability to the other for willful or intentional misconduct.

5.8.5 Nothing contained in this Section 5.8 shall limit either Party's obligations of indemnification as specified in the Indemnity Section of Section 5.9 of 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 CLEC is liable for all fraud associated with service to its end users and accounts customers. Qwest takes no responsibility, will not investigate, and will make no adjustments to CLEC's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of Qwest. Notwithstanding the above, if Qwest becomes aware of potential fraud with respect to CLEC's accounts customers, Qwest will promptly inform CLEC and, at the direction and sole cost of CLEC, take reasonable action to mitigate the fraud where such action is possible.

## 5.9 Indemnity

5.9.1 ~~With respect to third party claims, the Parties agree to indemnify each other as follows:~~ 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 ~~Except for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, 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 other party or person, person or entity, for invasion of privacy, personal 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 performance.~~ Indemnifying Party's breach of applicable law, or status of its employees, agents and subcontractors; or for 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 ~~Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party, then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional and malicious misconduct of the other Party.~~

~~5.9.1.3 If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim. In the case of claims or loss alleged or incurred by an end user of either Party arising out of or in connection with services provided to the end user by the Party, the Party whose end user 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 users 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.~~

5.9.1.3 Reserved for Future Use

5.9.1.4 ~~For purposes of this Section 5.9, Section 5.9.1.2, where the Parties have agreed to provision Line Sharingline sharing using a POTS splitter: Claims made by end users or customers of one Party against the other Party" refers to claims relating to the provision of DSL services made against the Party that provides voice services, or claims relating to the provision of voice service made against the Party that provides DSL services; and "immediate provider of the Telecommunications Service to the end user or customer" refers to the Party that provides DSL service"end user" means the DSL provider's end user for claims relating to DSL services, and to the Party that provides voice service provider's end user for claims relating to voiceservices. For purposes of this Section 5.9, "customer" refers to the immediate purchaser of the Telecommunications Services, whether or not that customer is the ultimate end user of that service.~~

5.9.2 The indemnification provided herein shall be conditioned upon:

5.9.2.1 ~~The indemnifiedIndemnified Party shall promptly notify the indemnifyingIndemnifying Party of any action taken against the indemnifiedIndemnified Party relating to the indemnification. Failure to so notify the indemnifyingIndemnifying Party shall not relieve the indemnifyingIndemnifying Party of any liability that the indemnifyingIndemnifying Party might have, except to the extent that such failure prejudices the indemnifyingIndemnifying Party's ability to defend such claim.~~

5.9.2.2 ~~TheIf the indemnifying Party wishes to defend against such action, it shall give written notice to the indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnifiedIndemnified Party~~

may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

5.9.2.3 In no event shall the ~~indemnifying~~Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the ~~indemnified Party.~~Indemnified Party. In the event the Indemnified Party withholds consent, the Indemnified Party may, at its cost, take over such defense, provided that, in such event, the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement.

## 5.10 Intellectual Property

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

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

5.10.3 ~~As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, the Party providing access may require the other, upon written notice, from time to time, to obtain a license or permission for such access or use, make all payments in connection with obtaining such license, and provide evidence of such license.~~

5.10.4 ~~Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned.~~ Except for a license to use any facilities or equipment (including software) solely for the purposes of this Agreement or to receive any service solely (a) as provided in this Agreement or (b) as specifically required by the then-applicable federal and state rules and regulations relating to Interconnection and access to

telecommunications facilities and services, nothing contained within this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trade name, trade mark, service mark, trade secret, or other proprietary interest or intellectual property, now or hereafter owned, controlled or licensable by either Party. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trade or service marks.

5.10.2 Subject to Section 5.9.2, each Party (the Indemnifying Party) shall indemnify and hold the other Party (the Indemnified Party) harmless from and against any loss, cost, expense or liability arising out of a claim that the use of facilities of the Indemnifying Party or services provided by the Indemnifying Party provided or used pursuant to the terms of this Agreement misappropriates or otherwise violates the intellectual property rights of any third party. In addition to being subject to the provisions of Section 5.9.2, the obligation for indemnification recited in this paragraph shall not extend to infringement which results from (a) any combination of the facilities or services of the Indemnifying Party with facilities or services of any other person (including the Indemnified Party but excluding the Indemnifying Party and any of its Affiliates), which combination is not made by or at the direction of the Indemnifying Party or (b) any modification made to the facilities or services of the Indemnifying Party by, on behalf of or at the request of the Indemnified Party and not required by the Indemnifying Party. In the event of any claim, the Indemnifying Party may, at its sole option (a) obtain the right for the Indemnified Party to continue to use the facility or service; or (b) replace or modify the facility or service to make such facility or service non-infringing. If the Indemnifying Party is not reasonably able to obtain the right for continued use or to replace or modify the facility or service as provided in the preceding sentence and either (a) the facility or service is held to be infringing by a court of competent jurisdiction or (b) the Indemnifying Party reasonably believes that the facility or service will be held to infringe, the Indemnifying Party shall notify the Indemnified Party and the parties shall negotiate in good faith regarding reasonable modifications to this Agreement necessary to (1) mitigate damage or comply with an injunction which may result from such infringement or (2) allow cessation of further infringement. The Indemnifying Party may request that the Indemnified Party take steps to mitigate damages resulting from the infringement or alleged infringement including, but not limited to, accepting modifications to the facilities or services, and such request shall not be unreasonably denied.

5.10.3 To the extent required under applicable federal and state law, Qwest shall use its best efforts to obtain, from its vendors who have licensed intellectual property rights to Qwest in connection with facilities and services provided hereunder, licenses under such intellectual property rights as necessary for CLEC to use such facilities and services as contemplated hereunder and at least in the same manner used by Qwest for the facilities and services provided hereunder. Qwest shall notify CLEC immediately in the event that Qwest believes it has used its best efforts to obtain such rights, but has been unsuccessful in obtaining such rights.

5.10.3.1 Qwest covenants that it will not enter into any licensing agreements with respect to any Qwest facilities, equipment or services, including software, that contain provisions that would disqualify CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. Qwest warrants and further covenants that it has not and will not knowingly modify any existing license agreements for any network facilities, equipment or services, including software, in whole or in part for the purpose of disqualifying CLEC from using or interconnecting with such facilities, equipment or services, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities, equipment,

services or software in Qwest's network provide Qwest with indemnities covering intellectual property liabilities and those indemnities allow a flow-through of protection to third parties, Qwest shall flow those indemnity protections through to CLEC.

5.10.4 Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or controlled or licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate licensable by either Party. Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement between the Parties.

5.10.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates; 2) it is part of a joint business association or any similar arrangement with the other or its affiliates; 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services; or 4) with respect to its marketing, advertising or promotional activities or materials, the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates in any marketing, advertising or promotional activities or materials.

5.10.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by U S WEST Qwest pursuant to an applicable provision herein, CLEC may use the phrase "CLEC is a Reseller of U S WEST Communications services" (the "Authorized Phrase") "CLEC" is a "Reseller of Qwest Services" (the Authorized Phrase) in CLEC's printed materials provided:

\_\_\_\_\_5.10.6.1 The Authorized Phrase is not used in connection with any goods or services other than U S WEST Qwest services resold by CLEC.

\_\_\_\_\_5.10.6.2 CLEC's use of the Authorized Phrase does not cause end users to believe that CLEC is U S WEST Qwest.

\_\_\_\_\_5.10.6.3 The Authorized Phrase, when displayed, appears only in text form (CLEC may not use the U S WEST Qwest logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of CLEC's name and in no event shall exceed 8 point size.

\_\_\_\_\_5.10.6.4 CLEC shall provide all printed materials using the Authorized Phrase to U S WEST Qwest for its prior written approval.

\_\_\_\_\_5.10.6.5 ~~If U S WEST~~5.10.6.5 If Qwest determines that CLEC's use of the Authorized Phrase causes end user confusion, U S WEST Qwest may immediately terminate CLEC's right to use the Authorized Phrase.

5.10.6.6 Upon termination of CLEC's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and CLEC shall immediately cease any and all such use of the Authorized Phrase. CLEC shall either promptly return to U.S. WEST/Qwest or destroy all materials in its possession or control displaying the Authorized Phrase.

~~5.10.7 CLEC acknowledges the value of the marks "U.S. WEST" and "U.S. WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U.S. WEST, Inc. and U.S. WEST respectively (the "Owners"). CLEC recognizes Qwest and CLEC each recognize that nothing contained in this Agreement is intended as an assignment or grant to CLEC/the other of any right, title or interest in or to the Mark/strademarks or service marks of the other (the Marks) and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks of the other and is not assignable. CLEC will do nothing/Neither Party will do anything inconsistent with the Owner's/other's ownership of their respective Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. CLEC will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar/their respective Owners. The Parties shall comply with all applicable law thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks.~~

## ~~5.11 Warranties~~

~~5.11.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS. governing Marks worldwide and neither Party will infringe the Marks of the other.~~

5.10.8 Upon request, for all intellectual property owned or controlled by a third party and licensed to Qwest associated with the Unbundled Network Elements provided by Qwest under this Agreement, either on the Effective Date or at any time during the term of the Agreement, Qwest shall within ten (10) business days, unless there are extraordinary circumstances in which case Qwest will negotiate an agreed upon date, then disclose to CLEC in writing (i) the name of the Party owning, controlling or licensing such intellectual property, (ii) the facilities or equipment associated with such intellectual property, (iii) the nature of the intellectual property, and (iv) the relevant agreements or licenses governing Qwest's use of the intellectual property. Except to the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license within ten (10) business days of a request by CLEC, Qwest shall provide copies of any relevant agreements or licenses governing Qwest's use of the intellectual property to CLEC. To the extent Qwest is prohibited by confidentiality or other provisions of an agreement or license from disclosing to CLEC any relevant agreement or license, Qwest shall immediately, within ten (10) business days (i) disclose so much of it as is not prohibited, and (ii) exercise best efforts to cause the vendor, licensor or other beneficiary of the confidentiality provisions to agree to disclosure of the

remaining portions under terms and conditions equivalent to those governing access by and disclosure to Qwest.

## **5.11 Warranties**

5.11.1 Except as expressly set forth in this aAgreement, the Parties agree that neither Party has made, and that there does not exist, any warranty, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose and that all products and services provided hereunder are provided "as is," with all faults.

## **5.12 Assignment**

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

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

5.12.3 \_\_\_\_\_ Nothing in this section is intended to restrict CLEC's rights to opt into Interconnection Agreements under § 252(i) of the Act.

## **5.13 Default**

5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance

shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

#### 5.14 Disclaimer of Agency

5.14.1 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

#### 5.15 Severability

5.15.1 In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

#### 5.16 Nondisclosure

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

5.16.2 Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

5.16.3 Each Party shall keep all of the other Party's Proprietary Information confidential and will disclose it on a need to know basis only. In no case shall retail marketing, sales personnel, or

strategic planning have access to such Proprietary Information. The Parties shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

5.16.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- a) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- b) is or becomes publicly known through no wrongful act of the receiving Party; or
- c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
- d) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- e) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
- f) is approved for release by written authorization of the disclosing Party; or
- g) is required to be ~~made public~~disclosed by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

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

5.16.6 Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

5.16.7 Each Party agrees that the disclosing Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement by the receiving Party or its representatives and that the disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

5.16.8 Nothing herein should be construed as limiting either Party's rights with respect to its own Proprietary Information or its obligations with respect to the other Party's Proprietary Information under Section 222 of the Act.

5.16.9 ~~CLEC~~ forecasts provided by either Party to the other Party ~~Qwest~~ and forecasting information disclosed by ~~Qwest~~ to ~~CLEC~~ shall be deemed Confidential Information and the Parties may not distribute, disclose or reveal, in any form, this material other than as allowed and described in subsections 5.16.9.1 and 5.16.9.2. ;

5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall ~~retail marketing, sales or strategic planning~~ have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a nondisclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.

5.16.9.1.1 ~~Qwest~~The Parties willshall use aggregated CLECforecast information to fulfill regulatory filing requirements and as required to fulfill ~~their~~ obligations under this SGAT. In no case willshall ~~Qwest~~a Party disclose aggregated information if such disclosure would, by its nature, reveal an individual CLECparty's forecast information. Also, in no case shall ~~Qwest~~a Party provide access to this information to its retail marketing, sales or strategic planning personnel.

5.16.9.2 The Parties shall maintain confidential forecasting information in secure files and locations such that access to the forecasts is limited to the personnel designated in subsection 5.16.9.1 above and such that no other personnel have computer access to such information.

## 5.17 Survival

5.17.1 Any liabilities or obligations of a Party for acts or omissions prior to the completion of the ~~two (2) year term, termination of this Agreement,~~ and any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to

survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

## 5.18 Dispute Resolution

5.18.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with the dispute resolution process set forth in this Section. Section, provided, that nothing in this Section shall be interpreted to preclude either Party from using available procedures for relief before the Commission. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith herewith. Dispute resolution under the procedures provided in this Section 5.18 shall be the preferred, but not the exclusive, remedy for all disputes between Qwest and CLEC arising out of this Agreement amendment or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 5.18 shall limit the right of either Qwest or CLEC, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 5.18. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

5.18.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

5.18.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within thirty (30) fifteen (15) calendar days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate matter is referred to them, such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar days after the date of the Resolution Request, then either Party may demand request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be Such an settled by arbitration two (2) calendar days after the Resolution Request pursuant to the terms of Section 5.18.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the telecommunications industry. The arbitration proceedings for commercial disputes shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates (AAA) dispute resolution under this Section 5.18. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for

resolution of a Dispute. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s). The Party which sends the Resolution Request must notify the Secretary of the Commission of the arbitration proceeding within forty eight (48) hours of the determination to arbitrate.

5.18.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its End User Customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 5.18.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

5.18.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. Qwest and CLEC shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either Qwest or CLEC may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between Qwest and CLEC, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

5.18.3.3 Arbitrator's Decision.

5.18.3.3.1 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

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

5.18.3.4 To the extent that any information or materials disclosed in the course of an

arbitration proceeding contain proprietary, trade secret or confidential information of either Party, it shall be safeguarded in accordance with Section 5.16 of this Agreement, or if the parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or confidential information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided however that the Party seeking to disclose the information shall first provide fifteen (15) calendar days notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or confidential information, in which event the procedures for disclosure of such information shall apply.

5.18.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

5.18.5 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

5.18.6 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

5.18.7 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

5.18.8 This Section does not apply to any claim, controversy or dispute between the Party's, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or service mark of a Party.

## **5.19 Controlling Law**

5.19.1 This Agreement is offered by Qwest and accepted by CLEC in accordance with the ~~terms of the Act~~applicable federal law and the state law of Oregon. It shall be interpreted solely in accordance with the ~~terms of the Act~~applicable federal law and the state law of Oregon.

## **5.20 Responsibility for Environmental Contamination**

5.20.1 Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

5.20.2 In the event any suspect materials within Qwest-owned, operated or leased facilities are identified to be asbestos containing, CLEC will ensure that to the extent any activities which it undertakes in the facility disturb such suspect materials, such CLEC activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation of asbestos-containing material, CLEC does not have any responsibility for managing, nor is it the owner of, nor does it have any liability for, or in connection with, any asbestos-containing material. Qwest agrees to immediately notify CLEC if Qwest undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC personnel, equipment or operations, including, but not limited to, contamination of equipment.

## 5.21 Notices

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

Qwest Corporation  
Director Interconnection Compliance  
1801 California, Room 2410  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

With copy to:  
Qwest Law Department  
Attention: Corporate Counsel, Interconnection  
1801 California Street, 49th Floor  
Denver, CO 80202  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

and to CLEC at the address shown below:

Name: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_

If personal delivery is selected to give notice, a receipt acknowledging such delivery must be obtained. Each Party shall inform the other of any

change in the above contact person and/or address using the method of notice called for in this Section 5.21.

## 5.22 Responsibility of Each Party

5.22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, and (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

## 5.23 No Third Party Beneficiaries

~~5.23.1 Unless specifically set forth herein, this Agreement does not provide and shall not be construed to provide third parties~~The provisions of this Agreement are for the benefit of the Parties and not for any other Person. This Agreement will not provide any Person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action, or other privilege right in excess of those existing by reference in this Agreement.

## ~~5.24 Referenced Documents Reserved for future use~~

~~5.24.1 All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Qwest practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Qwest practice, or publication of industry standards. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.~~

## 5.25 Publicity

5.25.1 Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings. ~~that it might initiate to enforce this Agreement.~~

## 5.26 Executed in Counterparts

5.26.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

## 5.27 Compliance

5.27.1 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, Qwest and CLEC agree to keep and maintain in full force and effect all permits, licenses, certificates, and other authorities needed to perform their respective obligations hereunder.

## 5.28 Compliance with the Communications Assistance Law Enforcement Act of 1994

5.28.1 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance Law Enforcement Act of 1994 (CALEA). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

## 5.29 Cooperation

5.29.1 The Parties agree that this Agreement involves the provision of Qwest services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis. Electronic processes and procedures are addressed in Section 12 of this Agreement.

## 5.30 Amendments

~~5.30.1 When this document is being used as an Interconnection agreement, it can only be amended in writing, executed by the duly authorized representatives of the Parties. Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing information about the desired amendment and proposed language changes. If the Parties have not reached agreement on the requested amendment within sixty (60) calendar days after receipt of the request, either Party may pursue resolution of the amendment through the Dispute Resolution provisions of this Agreement.~~

## 5.31 Entire Agreement

~~5.31.1 This Agreement constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations,~~

~~understandings, proposals and undertakings with respect to the subject matter hereof.~~

This Agreement, including all Exhibits and subordinate documents attached to it or referenced within, all of which are hereby incorporated herein, constitutes the entire agreement between Qwest and CLEC and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

**5.32 Reserved for Future Use**

## Section 11.0 - NETWORK SECURITY

11.1 Protection of Service and Property. Each Party shall exercise the same degree of care to prevent harm or damage to the other Party and any third parties, its employees, agents or end users, or their property as it employs to protect its own personnel, end users and property, etc.

11.2 Each Party is responsible to provide security and privacy of communications. This entails protecting the confidential nature of telecommunications transmissions between end users during technician work operations and at all times. Specifically, no employee, agent or representative shall monitor any circuits except as required to repair or provide service of any end user at any time. Nor shall an employee, agent or representative disclose the nature of overheard conversations, or who participated in such communications or even that such communication has taken place. Violation of such security may entail state and federal criminal penalties, as well as civil penalties. CLEC is responsible for covering its employees on such security requirements and penalties.

11.3 The ~~Qwest Parties'~~ telecommunications ~~network is~~ networks are part of the national security network, and as such, ~~is~~ are protected by federal law. Deliberate sabotage or disablement of any portion of the underlying equipment used to provide the network is a violation of federal statutes with severe penalties, especially in times of national emergency or state of war. ~~CLEC is~~ The Parties are responsible for covering ~~its~~ their employees on such security requirements and penalties.

11.4 Qwest and CLEC share responsibility for security and network protection for each Collocation arrangement. Each Party's employees, agents or representatives must secure their own portable test equipment, spares, etc. and shall not use the test equipment or spares of other parties. Use of such test equipment or spares without written permission constitutes theft and may be prosecuted. Exceptions are the use of Qwest ladders in the Wire Center, either rolling or track, which CLEC may use in the course of work operations. Qwest assumes no liability to CLEC, its agents, employees or representatives, if CLEC uses a Qwest ladder available in the Wire Center.

11.5 Each Party is responsible for the physical security of its employees, agents or representatives. Providing safety glasses, gloves, etc. must be done by the respective employing Party. Hazards handling and safety procedures relative to the telecommunications environment is the training responsibility of the employing Party. Proper use of tools, ladders, and test gear is the training responsibility of the employing Party.

11.6 In the event that one Party's employees, agents or representatives inadvertently damage or impair the equipment of the other Party, prompt notification will be given to the damaged Party by verbal notification between the Parties' technicians at the site or by telephone to each Party's 24 x 7 security numbers.

11.7 Each Party shall comply at all times with Qwest security and safety procedures and requirements while performing work activities on Qwest's Premises.

11.8 Qwest will allow CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space, in a manner consistent with that used by Qwest.

11.9 Qwest will limit the keys used in its keying systems for enclosed collocated spaces which contain or house CLEC equipment or equipment enclosures to its employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

11.10 Keys may entail either metallic keys or combination electronic ID/key cards. It is solely the responsibility of CLEC to ensure keys are not shared with unauthorized personnel and recover keys and electronic ID/keys promptly from discharged personnel, such that office security is always maintained. Qwest has similar responsibility for its employees.

11.11 CLEC will train its employees, agents and vendors on Qwest security policies and guidelines.

11.12 When working on Qwest ICDF Frames or in Qwest's common or CLEC equipment line-ups, Qwest and CLEC employees, agents and vendors agree to adhere to Qwest quality and performance standards provided by Qwest and as specified in this Agreement.

11.13 CLEC shall report all material losses to Qwest Security. All security incidents are to be referred directly to local Qwest Security – 1-888-U S WEST-SECURE. In cases of emergency, CLEC shall call 911 and 1-888-U S WEST-SECURE.

11.14 Qwest and CLEC employees, agents and vendors will display the identification/access card above the waist and visible at all times.

11.15 ~~CLEC employees will~~ Qwest and CLEC shall ensure adherence by ~~its~~their employees, agents and vendors to all applicable Qwest environmental health and safety regulations. This includes all fire/life safety matters, OSHA, EPA, Federal, State and local regulations, including evacuation plans and indoor air quality.

11.16 Qwest and CLEC employees, agents and vendors will secure and lock all doors and gates.

11.17 CLEC will report to Qwest all property and equipment losses immediately, any lost cards or keys, vandalism, unsecured conditions, security violations, anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.

11.18 ~~CLEC's~~Qwest and CLEC employees, agents and vendors willshall comply with Qwest ~~central office~~Central Office fire and safety regulations, which include but are not limited to, wearing safety glasses in designated areas, keeping doors and aisles free and clean of trip hazards such as wire, checking ladders before moving, not leaving test equipment or tools on rolling ladders, not blocking doors open, providing safety straps and cones in installation areas, using electrostatic discharge protection, and exercising good housekeeping.

11.19 Smoking is not allowed in Qwest buildings, Wire Centers, and ~~all~~ other Qwest facilities. No open flames shall be permitted anywhere within the buildings, Wire Centers or other facilities. Failure to abide by this restriction willmay result in immediate denial of access for that individual and willmay constitute a violation of the access rules, subjecting CLEC employee, agent or vendor to denial of unescorted access. Qwest shall provide written notice within five (5) calendar days of thea CLEC violation of this provision hazardous CLEC work activity to CLEC prior to denial of access and such notice shall include: 1) identification of the violation of

this provision and the personnel involved hazardous work activity, 2) identification of the safety regulation violated, and 3) date and location of such safety violation. CLEC will have five (5) calendar days to remedy any such safety violation for which it has received notice from Qwest. In the event that CLEC fails to remedy any such safety violation of which it has received notice within such five (5) calendar days following receipt of such notice, CLEC shall be denied unescorted access to the affected premises. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited Dispute Resolution.

11.20 No flammable or explosive fluids or materials are to be kept or used anywhere within the Qwest buildings or on the grounds.

11.21 No weapons of any type are allowed on Qwest premises. Vehicles on Qwest property are subject to this restriction as well.

11.22 Except as otherwise provided in this SGAT, CLEC's employees, agents or vendors may not make any modifications, alterations, additions or repairs to any space within the building or on the grounds, provided, however, nothing in Section 11. shall prevent CLEC, its employees or agents from performing modifications, alterations, additions or repairs to its own equipment or facilities.

11.23 Qwest employees may request CLEC's employees, agents or vendors to stop any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the Qwest Premises building, Qwest equipment or for Qwest services within the facility until the situation is remedied. CLEC employees may report any work activity that in their reasonable judgment is a jeopardy to personal safety or poses a potential for damage to the building, CLEC equipment or CLEC services within the facility, to Qwest Service Assurance (800-713-3666) and the reported work activity will be immediately stopped until the situation is remedied. In the event such non-compliant activity occurs in a Qwest Central Office, notification of the non-compliant activity may be made to the Central Office Supervisor, and the Central Office supervisor shall immediately stop the reported work activity until the situation is remedied. QwestThe compliant Party shall provide immediate notice of the non-compliant work activity to CLECthe non-compliant Party and such notice shall include: 1) identification of the non-compliant work activity, 2) identification of the safety regulation violated, and 3) date and location of safety violation., and 4) remedy for safety violation. If such safety violationsnon-compliant work activities pose an immediate threat to the safety of Qwestthe other Party's employees, interference with the performance of Qwest'seitherthe other Party's service obligations, or pose an immediate threat to the physical integrity of Qwest'seitherthe other Party's facilities, Qwestthe compliant Party may perform such work and/or take action as is necessary to correct the condition at CLEC'sthe non-compliant Party's expense. In the event CLECthe non-compliant Party disputes any action Qwestthe compliant Party seeks to take or has taken pursuant to this provision, CLECthe non-compliant Party may pursue immediate resolution by the Commission or a court of competent jurisdiction expedited Dispute Resolution. If CLECthe non-compliant Party fails to correct any safety non-compliance within fifteen (15)ten (10) calendar days of written notice of non-compliance, or if such non-compliance cannot be corrected within fifteen (15)ten (10) calendar days of written notice of non-compliance, and if CLECthe non-compliant Party fails to take all appropriate steps to correct as soon as reasonably possible, Qwestthe compliant Party may pursue immediate resolution by the Commission- expedited or Dispute Resolution.

11.24 Qwest is not liable for any damage, theft or personal injury resulting from CLEC's employees, agents or vendors parking in a Qwest parking area.

~~11.25 CLEC's~~ 11.25 CLECs employees, agents or vendors outside the designated CLEC access area, or without proper identification ~~will~~may be asked to vacate the premises and Qwest Security ~~security will~~may be notified. Continued violations may result in termination of access privileges. Qwest shall provide immediate notice of the security violation to CLEC and such notice shall include: 1) identification of the security violation, 2) identification of the security regulation violated, and 3) date and location of security violation. CLEC will have five (5) calendar days to remedy any such alleged security violation before any termination of access privileges for such individual. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by expedited or other Dispute Resolution.

11.26 Building related problems may be referred to the Qwest Work Environment Centers:

800-879-3499 (CO, WY, AZ, NM)  
800-201-7033 (all other Qwest states)

11.27 CLEC will submit a Qwest Collocation Access Application form for individuals needing to access Qwest facilities. CLEC and Qwest will meet to review applications and security requirements.

11.28 CLEC employees, agents and vendors will utilize only corridors, stairways and elevators that provide direct access to CLEC's space or the nearest restroom facility. Such access will be covered in orientation meetings. Access shall not be permitted to any other portions of the building.

11.29 CLEC will collect identification/access cards for any employees, agents or vendors no longer working on behalf of CLEC and forward them to Qwest Security. If cards or keys cannot be collected, CLEC will immediately notify Qwest at 800-210-8169.

11.30 CLEC will assist Qwest in validation and verification of identification of its employees, agents and vendors by providing a telephone contact available 7 days a week, 24 hours a day.

11.31 Qwest and CLEC employees, agents and vendors will notify Qwest Service Assurance (800-713-3666) when prior to gaining access into a central office after hours. Central Office after hours, for the purpose of disabling Central Office alarms for CLEC access. Normal business hours are 7:00 a.m. to 5:00 p.m.

11.32 CLEC will notify Qwest if CLEC has information that its employee, agent or vendor poses a safety and/or security risk. Qwest may deny access to anyone who in the reasonable judgment of Qwest threatens the safety or security of facilities or personnel.

11.33 CLEC will supply to Qwest Security, and keep up to date, a list of its employees, agents and vendors who require access to CLEC's space. The list will include names and social security numbers. Names of employees, agents or vendors to be added to the list will be provided to Qwest Security, who will provide it to the appropriate Qwest personnel.

11.34 \_\_\_\_\_ Revenue Protection. Qwest shall make available to CLEC all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes, information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively; call blocking of domestic, international, 800, 888, 900, and NPA-976, 700 and 500 numbers. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems which include but are not limited to LIDB Fraud monitoring systems.

11.35 Law Enforcement Interface. Qwest provides emergency assistance to 911 centers and law enforcement agencies seven days a week/twenty-four hours a day. Assistance includes, but is not limited to, release of 911 trace and subscriber information; in-progress trace requests; establishing emergency trace equipment, release of information from an emergency trap/trace or \*57 trace; requests for emergency subscriber information; assistance to law enforcement agencies in hostage/barricade situations, kidnappings, bomb threats, extortion/scams, runaways and life threats.

11.36 Qwest provides trap/trace, pen register and Title III assistance directly to law enforcement, if such assistance is directed by a court order. This service is provided during normal business hours, Monday through Friday. Exceptions are addressed in the above paragraph. The charges for these services will be billed directly to the law enforcement agency, without involvement of CLEC, for any lines served from Qwest Wire Centers or cross boxes.

11.37 In all cases involving telephone lines served from Qwest Wire Centers or cross boxes, whether the line is a resold line or part of an Unbundled Local Switching or Unbundled Loop element, Qwest will perform trap/trace Title III and pen register assistance directly with law enforcement. CLEC will not be involved or notified of such actions, due to non-disclosure court order considerations, as well as timely response duties when law enforcement agencies are involved. Exceptions to the above will be those cases, as yet undetermined, where CLEC must participate due to technical reasons wherein its circuitry must be accessed or modified to comply with law enforcement, or for legal reasons that may evolve over time. CLEC will provide Qwest with a 24 hour a day, 7 days a week contact for processing such requests, should they occur.

## Section 12.0 - ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

### 12.1 Description

12.1.1 \_\_\_\_\_ Qwest has developed and shall continue to provide Operational Support Systems (OSS) interfaces using electronic gateways and manual processes. These gateways act as a mediation or control point between CLEC's and Qwest's OSS. These gateways provide security for the interfaces, protecting the integrity of the Qwest OSS and databases. Qwest's OSS interfaces have been developed to support Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing. This section describes the interfaces and manual processes that Qwest has developed and shall provide to CLEC. Additional technical information and details shall be provided by Qwest in training sessions and documentation, such as the "Interconnect Mediated Access User's Guide." Qwest will continue to make improvements to the electronic interfaces as technology evolves, providing Qwest's legacy systems improve, or CLEC needs require. Qwest shall provide notification to CLEC consistent with the provisions of this Section the Co-Provider Industry Change Management Process (CICMP) set forth in Section 12.2.6.

12.1.2 \_\_\_\_\_ Through its electronic gateways and manual processes, Qwest shall provide CLEC non-discriminatory access to Qwest's OSS for Pre-ordering, Ordering and Provisioning, Maintenance and Repair, and Billing for resale and Unbundled Network Elements functions. For those functions with a retail analogue, such as pre-ordering and ordering and provisioning of resold services, Qwest shall provide CLEC access to its OSS in substantially the same time and manner as it provides to itself. For those functions with no retail analogue, such as pre-ordering and ordering and provisioning of unbundled elements Unbundled Elements, Qwest shall provide CLEC access to Qwest's OSS sufficient to allow an efficient competitor a meaningful opportunity to compete. Qwest will comply with the standards for access to OSS set forth in Section 20. Qwest shall deploy the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions. Qwest shall provide assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall provide CLEC sufficient electronic and manual interfaces to allow CLEC equivalent access to all of the necessary OSS functions. Through its website, training, disclosure documentation and development assistance, Qwest shall disclose to CLEC any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. Qwest shall provide training to enable CLEC to devise its own course work for its own employees. Through its documentation available to CLEC, Qwest will identify how its interface differs from national guidelines or standards. Qwest shall provide OSS designed to accommodate both current demand and reasonably foreseeable demand.

### 12.2 OSS Support for Pre-Ordering, Ordering and Provisioning

#### 12.2.1 Local Service Request (LSR) Ordering Process

12.2.1.1 Qwest shall provide electronic interface gateways for submission of LSRs, including both an Electronic Data Interchange (EDI) interface and a Graphical User Interface (GUI).

12.2.1.2 The interface standards guidelines for EDI are based upon the Order & Billing Forum (OBF) Local Service Order Guidelines (LSOG), the Telecommunication Industry Forum (TCIF) Customer Service Guidelines; and the American National Standards Institute/Accredited Standards Committee (ANSI ASC) X12 protocols.

Exceptions to the above ~~standards~~guidelines shall be specified in the EDI disclosure documents.

12.2.1.3 The GUI shall provide a single interface for Pre-Order and Order transactions from CLEC to Qwest and is browser based. The GUI interface shall be based on the LSOG and utilizes a WEB standard technology, Hyper Text Markup Language (HTML), JAVA and the Transmission Control Protocol/Internet Protocol (TCP/IP) to transmit messages.

12.2.1.4 Reserved for Future Use Functions Pre Ordering Qwest will provide real time, electronic access to pre-order functions to support CLEC's ordering via the electronic interfaces described herein. Qwest will make the following real time pre-order functions available to CLEC:

12.2.1.4.1 Features, services and Primary Interexchange Carrier (PIC) options for IntraLATA toll and InterLATA toll available at a valid service address;

12.2.1.4.2 Access to customer service records (CSRs) for Qwest retail or resale end users. The information will include billing name, service address, billing address, service and feature subscription, directory listing information, and long distance carrier identity;

12.2.1.4.3 Telephone number request and selection;

12.2.1.4.4 Reservation of appointments for service installations requiring the dispatch of a Qwest technician on a non-discriminatory basis;

12.2.1.4.5 Information regarding whether dispatch is required for service installation and available installation appointments;

12.2.1.4.6 Service address verification;

12.2.1.4.7 Facility availability, loop qualification, including resale-DSL, and loop make-up information, including, but not limited to, loop length, presence of bridged taps, repeaters, and loading coils. This Section 12.2.1.4.1.7 shall apply only to CLEC orders for Unbundled Loops or Loop combinations.

12.2.1.4.8 A list of valid available CFAs for Unbundled ILoops.

12.2.1.4.9 A list of 1-5 individual meet points or a range of meet points for shared Loops.

~~This section has been moved to 12.2.1.9~~12.2.1.4. Ordering and Provisioning Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

~~12.2.1.4.9.2~~ Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning

~~services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.~~

~~12.2.1.4.9.3 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry standard formats and which states when the order was completed.~~

~~12.2.1.4.9.3.1 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry standard formats and which states when the order was completed.~~

~~12.2.1.4.9.3.2 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.4.2.3.3 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.~~

~~12.2.1.4.2.3.4 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.~~

#### 12.2.1.5 Dial-Up Capabilities

12.2.1.5.1 Reserved for Future Use

12.2.1.5.2 Reserved for Future Use

12.2.1.5.3 When CLEC requests from Qwest more than fifty (50) SecurIDs, SecurIDs for use by CLEC customer service representatives at a single CLEC location, CLEC shall use a T1 line instead of dial-up capabilities access at that location. If CLEC is obtaining the line from Qwest, then CLEC shall be able to use SECURIDs until such time as Qwest provisions the T1 line and the line permits pre-order and order information to be exchanged between Qwest and CLEC.

#### 12.2.1.6 Access Service Request (ASR) Ordering Process

12.2.1.6.1 Qwest shall provide a computer-to-computer batch file interface for submission of ASRs based upon the OBF Access Service Order Guidelines (ASOG). Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

#### 12.2.1.7 Facility Based EDI Listing Process

Qwest shall provide a Facility Based EDI Listing interface to enable CLEC listing data to be translated and passed into the Qwest listing database. This interface is based upon OBF LSOG and ANSI ASC X12 standards. Qwest shall supply exceptions to these guidelines in writing in sufficient time for CLEC to adjust system requirements.

12.2.1.8 Qwest will establish interface contingency plans and disaster recovery plans for the interfaces described in this Section. Qwest will work cooperatively with CLECs through the CICMP process to consider any suggestions made by CLECs to improve or modify such plans. CLEC specific requests for -modifications to such plans will be negotiated and mutually agreed upon between Qwest and CLEC.

12.2.1.9 Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules.

12.2.1.9.1 Qwest shall provide all provisioning services to CLEC during the same business hours that Qwest provisions services for its End User Customers. Qwest will provide out-of-hours provisioning services to CLEC on a non-discriminatory basis as it provides such provisioning services to itself, its End User Customers, its Affiliates or any other Party. Qwest shall disclose the business rules regarding out-of-hours provisioning on its wholesale website.

12.2.1.9.2 When CLEC places an electronic order, Qwest will provide CLEC with an electronic firm order confirmation notice (FOC). The FOC will follow industry-standard formats and contain the Qwest due date for order completion. Upon completion of the order, Qwest will provide CLEC with an electronic completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.3 When CLEC places a manual order, Qwest will provide CLEC with a manual firm order confirmation notice. The confirmation notice will follow industry-standard formats. Upon completion of the order, Qwest will provide CLEC with a completion notice which follows industry-standard formats and which states when the order was completed.

12.2.1.9.4 When CLEC places an electronic order, Qwest shall provide notification electronically of any instances when (1) Qwest's Committed Due Dates are in jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.5 When CLEC places a manual order, Qwest shall provide notification of any instances when (1) Qwest's Committed Due Dates are in

jeopardy of not being met by Qwest on any service or (2) an order is rejected. The standards for returning such notices are set forth in Section 20.

12.2.1.9.6 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6.

12.2.1.9.7 ~~Ordering and Provisioning - Qwest will provide access to ordering and status functions. CLEC will populate the service request to identify what features, services, or elements it wishes Qwest to provision in accordance with Qwest's published business rules. Where Qwest provides installation on behalf of CLEC, Qwest shall advise the CLEC End User Customer to notify CLEC immediately if the CLEC End User Customer requests a service change at the time of installation.~~

12.2.1.10 Business rules regarding rejection of LSRs or ASRs are subject to the provisions of Section 12.2.6. Reserved for future use

## **12.2.2 Maintenance and Repair**

12.2.2.1 Qwest shall provide electronic interface gateways for reporting trouble, including an electronic bonding interface and a GUI interface, to facilitate for reviewing a customer's trouble history at a specific location, conducting testing of a customer's service where applicable, and reporting trouble to facilitate the exchange of updated information and progress reports between Qwest and CLEC while the Trouble Report (TR) is open and a Qwest technician is working on the resolution. resolution CLEC may also report trouble through manual processes. For designed services, the TR will not be closed prior to verification by CLEC that trouble is cleared.

## **12.2.3 Interface Availability**

12.2.3.1 Qwest shall make the its OSS interfaces available to CLECs during the hours listed in the Gateway Availability PIDs in Section 20.

12.2.3.2 Qwest shall notify CLECs in a timely manner regarding system downtime through mass email distribution and pop-up windows in the IMA GUI.

12.2.3.3 Reserved for Future Use

## **12.2.4 Billing**

12.2.4.1 For products billed out of the Qwest Interexchange Access Billing System (IABS), Qwest will utilize the existing CABS/BOS format and technology for the transmission of bills.

12.2.4.2 For products billed out of the Qwest Customer Record Information System (CRIS), Qwest will utilize the existing EDI standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of

the ANSI/ASC X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing. Any deviance from these standards and guidelines shall be documented and accessible to CLEC.

### 12.2.5 Outputs

Output information will be provided to CLEC in the form of bills, files, and reports. Bills will capture all regular monthly and incremental/usage charges and present them in a summarized format. The files and reports delivered to CLEC come in the following categories:

Usage Record File	Line Usage Information
Loss and Completion	Order Information
Category 11	Facility Based Line Usage Information
SAG/FAM	Street Address/Facility Availability Information

#### 12.2.5.1 Bills

12.2.5.1.1 CRIS Summary Bill - The CRIS Summary Bill represents a monthly summary of charges for most wholesale products sold by Qwest. This bill includes a total of all charges by entity plus a summary of current charges and adjustments on each sub-account. Individual sub-accounts are provided as billing detail and contain monthly, one-time charges and incremental/call detail information. The Summary Bill provides one bill and one payment document for CLEC. These bills are segmented by state and bill cycle. The number of bills received by CLEC is dictated by the product ordered and the Qwest region in which CLEC is operating.

12.2.5.1.2 IABS Bill - The IABS Bill represents a monthly summary of charges. This bill includes monthly and one-time charges plus a summary of any usage charges. These bills are segmented by product, LATA, billing account number (BAN) and bill cycle.

#### 12.2.5.2 Files and Reports

12.2.5.2.1 Daily Usage Record File provides the accumulated set of call information for a given day as captured or recorded by the network switches. This file will be transmitted Monday through Friday, excluding Qwest holidays. This information is a file of unrated Qwest originated usage messages and rated CLEC originated usage messages. It is provided in Alliance for Telecommunication Industry Solution (ATIS) standard (Electronic Message Interface) EMI format. This EMI format is outlined in the document SR-320; which can be obtained directly from ATIS. The Daily Usage Record File contains multi-state data for the Data Processing Center generating this information. Individual state identification information is contained with the message detail. Qwest will provide this data to CLEC with the same level of precision and accuracy it provides itself. This file will be provided for the following list of products:

- a) Resale; and

b) Unbundled Switch Port.

12.2.5.2.2 The charge for this Daily Usage Record File is contained in Exhibit A of this Agreement.

12.2.5.2.3 Routing of in-region IntraLATA Collect, Calling Card, and Third Number Billed Messages - Qwest will distribute in-region IntraLATA collect, calling card, and third number billed messages to CLEC and exchange with other CLECs operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain these records for these types of calls as well.

12.2.5.2.4 Loss Report provides CLEC with a daily report that contains a list of accounts that have had lines and/or services disconnected. This may indicate that the end user has changed CLECs or removed services from an existing account. This report also details the order number, service name and address, and date this change was made. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch Port; Port; and
- e) UNE-P for POTS.

12.2.5.2.5 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the service(s) requested is complete. It details the order number, service name and address and date this change was completed. Individual reports will be provided for the following list of products:

- a) Interim Number Portability;
- b) Resale;
- c) Unbundled Loop; and
- d) Unbundled Line-side Switch; Switch; and
- e) UNE-P for POTS.

12.2.5.2.6 Category 11 Records are Exchange Message Records (EMR) which provide mechanized record formats that can be used to exchange access usage information between Qwest and CLEC. Category 1101 series records are used to exchange detailed access usage information.

12.2.5.2.7 Category 1150 series records are used to exchange summarized Meet Point Billed access minutes-of-use.

~~The Qwest will post the transmission method/media types available for these mechanized records are available the PCAT located at [http://www.qwest.com/carrier/guides/resource\\_guides.html](http://www.qwest.com/carrier/guides/resource_guides.html) on its website.~~

12.2.5.2.8 SAG/FAM Files. The SAG (Street Address Guide)/ FAM (Features Availability Matrix) files contain the following information:

- a) ~~SAG provides address and serving central office information; and~~ Address and Serving Central Office Information.
- b) FAM provides USOCs and descriptions by state (POTS services only), and USOC availability by NPA-NXX with the exception of Centrex. InterLATA/IntraLATA carriers by NPA-NXX.

These files are made available via a download process. They can be retrieved by ftp (file transfer protocol), NDM connectivity, or a Web browser.

## 12.2.6 Change Management

Qwest agrees to maintain a change management process, known as the Co-Provider Industry Change Management Process (CICMP), that is consistent with industry guidelines, standards and practices. Qwest and CLEC shall participate in discussions of OSS development in the Qwest Co-Provider Industry Change Management Process (CICMP), (CICMP), as set forth in Exhibit G. The CICMP shall: (i) provide a forum for CLEC and Qwest to discuss CLEC and Qwest change requests (CR), release notifications (RN), systems release life cycles, and communications; (ii) provide a forum for CLECs as an industry to discuss and prioritize their CLEC-initiated and Qwest-initiated CRs; (iii) develop a mechanism to track and monitor CLEC-CRs and Qwest-RNs; and (iv) establish communication intervals where appropriate in the process. After following the process set forth in Exhibit G, CLEC and Qwest may escalate issues pursuant to the CICMP escalation process set forth in Exhibit H. Escalations subject to the process of Exhibit H include issues related to the CICMP process itself, including the processes set forth in Exhibit G. Qwest will inform CLECs through the CICMP of all planned changes to Qwest software, local interconnection products, business processes and technical publications, Technical Publications, including additions, deletions, or changes which affect any document or information CLEC receives from Qwest or any document or information Qwest sends CLEC to allow CLEC to transact business. CLEC. Qwest will seek CLEC input on the planned changes and will report such consideration in a timely manner. Through the CICMP, Qwest will give notice of the establishment of new OSS interfaces and the retirement of OSS interfaces. Qwest will maintain an escalation process so that CICMP issues can be escalated to a Qwest representative authorized to make a final decision.

12.2.6.1 In the course of establishing operational ready system interfaces between Qwest and CLEC to support local service delivery, CLEC and Qwest may need to define and implement system interface specifications that are supplemental to existing standards. CLEC and Qwest will submit such specifications to the appropriate standards committee and will work towards their acceptance as standards.

12.2.6.2 Release updates will be based on regulatory obligations as dictated by the FCC or Commissions and, as time permits, the agreed upon changes requested by the CLEC Industry Change Management Process (CICMP). Qwest will provide to CLEC

the features list for modifications to the interface. Specifications for interface modifications will be provided to CLEC three weeks prior to the release date.

### 12.2.7 CLEC Responsibilities for Implementation of OSS Interfaces

12.2.7.1 Before any CLEC implementation can begin, CLEC must completely and accurately answer the CLEC New CLEC Questionnaire as required in Section 3.2.

12.2.7.2 Once Qwest receives a complete and accurate New Customer CLEC Questionnaire, Qwest and CLEC will mutually agree upon time frames for implementation of connectivity between CLEC and the OSS interfaces.

### 12.2.8 Qwest Responsibilities for On-going Support for OSS Interfaces

12.2.8 Qwest will support previous EDI releases for six (6) months after the next subsequent EDI release has been deployed. Qwest will use all reasonable efforts to provide sufficient support to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.8.1 Qwest will provide written notice to CLEC of the need to migrate to a new release.

12.2.8.2 Qwest will provide an EDI Implementation Coordinator to work with CLEC for business scenario re-certification, migration and data conversion strategy definition.

12.2.8.3 Re-certification is the process by which CLECs demonstrate the ability to generate correct transactions for the functional enhancements not previously certified. Qwest will provide the suite of tests for re-certification to CLEC with the issuance of the disclosure document.

12.2.8.4 Reserved for Future Use Qwest shall provide training mechanisms for CLEC to pursue in educating its internal personnel. Qwest shall provide training necessary for CLEC to use Qwest's OSS interfaces and to understand Qwest's documentation, including Qwest's business rules.

### 12.2.9 CLEC Responsibilities for On-going Support for OSS Interfaces

12.2.9.1 If using the -GUI interface, CLEC must work with Qwest will take reasonable efforts to train CLEC personnel on the -GUI functions that CLEC will be using. Qwest and CLEC shall concur on which GUI functions should be included in CLEC's training. Qwest and CLEC shall make reasonable efforts to schedule training in a timely fashion.

12.2.9.2 An exchange protocol will be used to transport EDI formatted content. CLEC must perform certification testing of exchange protocol prior to using the EDI interface.

12.2.9.3 Qwest will provide CLEC with access to a stable testing environment that mirrors production to certify that its OSS will be capable of interacting smoothly and efficiently with Qwest's OSS. Qwest has established the following test processes to assure the implementation of a solid interface between Qwest and CLEC:

12.2.9.3.1 Connectivity Testing – CLEC and Qwest will conduct connectivity testing calls. This test will establish the ability of the trading partners to send and receive EDI data messages effectively. This test verifies the communications between the trading partners. Connectivity is established during each phase of the implementation cycle. This test is also conducted prior to eControlled pProduction Certification Testing and before going live in the production environment if CLEC or Qwest has implemented environment changes when moving into production.

12.2.9.3.2 Stand-Alone Testing Environment (“SATE”) – ~~Qwest is developing a Qwest’s stand-alone testing environment to~~ will take pre-order and order requests, pass them to the stand-alone database, and return responses to CLEC during its development and implementation of EDI. The ~~Stand-Alone Testing Environment~~ SATE provides CLEC the opportunity to validate its technical development efforts built via Qwest documentation without the need to schedule test times. This testing verifies CLEC’s ability to send correctly formatted EDI transactions through the EDI/AMA system edits successfully. ~~Stand Alonesuccessfully for both new and existing releases. SATEStand-Alone Testing uses test account data. All stand-alone testdata supplied by Qwest. Qwest will make additions to the test beds and test accounts as it introduces new OSS electronic interface capabilities, including support of new products and services, new interface features, and functionalities. All SATEStand-Alone test pre-order queries and orders are subjected to the same edits as production orders-pre-order and order transactions.~~ This testing phase is optional.

12.2.9.3.3 Interoperability Testing – CLEC has the option of participating with Qwest in interoperability testing to provide CLEC with the opportunity to validate technical development efforts and to quantify processing results. Interoperability testing verifies CLEC’s ability to send correct EDI transactions through the EDI/AMA system edits successfully. Interoperability testing requires the use of account information valid in Qwest data production systems. All interoperability pre-order queries and orders are subjected to the same edits as production orders. This testing phase is optional when CLEC has conducted Stand-Alone Testing successfully. Qwest shall process pre-order transactions in Qwest’s production OSS and order transactions through the business processing layer of the EDI interfaces.

12.2.9.3.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production orders-pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned.

12.2.9.3.5 If CLEC is using EDI, Qwest shall provide CLEC with a pre-

allotted amount of time to complete certification of its business scenarios. Qwest will allow CLEC a reasonably sufficient amount of time during the day and a reasonably sufficient number of days during the week to complete certification of its business scenarios consistent with the CLEC's business plan. It is the sole responsibility of CLEC to schedule an appointment with Qwest for certification of its business scenarios. CLEC must comply with the agreed upon dates and times scheduled for the certification of its business scenarios. If the certification of business scenarios is delayed due to CLEC, it is the sole responsibility of CLEC to schedule new appointments for certification of its business scenarios. Qwest will make reasonable efforts to accommodate CLEC schedule. Conflicts in the schedule could result in certification being delayed. If a delay is due to Qwest, Qwest will honor CLEC's schedule through the use of alternative hours.

12.2.9.4 If CLEC is using the EDI interface, CLEC must work with Qwest to certify the business scenarios that CLEC will be using in order to ensure successful transaction processing. Qwest and CLEC shall mutually agree to the business scenarios for which CLEC is required to be certified. Certification requires certification. Certification will be granted only for a specific release of the EDI for the specified release of the EDI interface. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel if technically feasible.

12.2.9.4.1 For a new software release or upgrade, Qwest will provide CLEC a stable testing environment that mirrors the production environment in order for CLEC to test the new release. For software releases and upgrades, Qwest has implemented the testing processes set forth in Section 12.2.9.3.2, 12.2.9.3.3 and 12.2.9.3.4.

12.2.9.4.2 Intentionally Left Blank — For a new software release or upgrade, Qwest will provide CLEC the stand alone testing environment, as set forth in Section 12.2.9.3.2, prior to implementing that release or upgrade in the production environment.

12.2.9.5 New releases of the EDI interface may require re-certification of some or all business scenarios. A determination as to the need for re-certification will be made by the Qwest coordinator in conjunction with the release manager of each IMA EDI release. Notice of the need for re-certification will be provided to CLEC as the new release is implemented. The suite of re-certification test scenarios will be provided to CLEC with the disclosure document. If a CLEC is certifying multiple products or services, CLEC has the option of certifying those products or services serially or in parallel, if technically feasible.

12.2.9.6 CLEC will contact the Qwest EDI Implementation Coordinator to initiate the migration process. CLEC may not need to certify to every new EDI release, however, CLEC must complete the re-certification and migration to the new EDI release within six (6) months of the deployment of the new release. CLEC will use reasonable efforts to provide sufficient support and personnel to ensure that issues that arise in migrating to the new release are handled in a timely manner.

12.2.9.6.1 The following rules apply to initial development and certification of EDI interface versions and migration to subsequent EDI interface versions:

12.2.9.6.1.1 Stand Alone and/or Interoperability testing must begin on the prior release before the next release is implemented. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.2 New EDI users must be certified and in production with at least one product and one order activity type on a prior release two months after the implementation of the next release. Otherwise, CLEC will be required to move their implementation plan to the next release.

12.2.9.6.1.3 Any EDI user that has been placed into production on the prior release not later than two months after the next release implementation may continue certifying additional products and activities until two months prior to the retirement of the release. To be placed into production, the products/order activities must have been tested in the interoperability environment before two months after the implementation of the next release.

12.2.9.7 CLEC will be expected to execute the re-certification test cases in the stand alone and/or interoperability test environments. CLEC will provide Purchase Order Numbers (PONs) of the successful test cases to Qwest.

12.2.9.8 Reserved for Future Use.

12.2.9.9 Reserved for Future Use

~~12.2.9.9 In the event of electronic interface trouble, CLEC shall use its best efforts to isolate and resolve the trouble using the guidelines. If CLEC cannot resolve the problem, then CLEC should contact the CLEC Systems Help Desk. The CLEC Systems Help Desk is CLEC's Single Point of Contact for electronic interface trouble.~~

~~12.2.9.10 CLEC will use all reasonable efforts and provide sufficient support and personnel to ensure that issues that arise in migrating to a new release of the IMA interface are handled in a timely manner.~~

## 12.2.10 CLEC Support

12.2.10.1 Qwest shall provide documentation and assistance for CLEC to understand how to implement and use all of the available OSS functions. Qwest shall ~~dis~~provide to CLEC in writing any internal business rules and other formatting information necessary to ensure that CLEC's requests and orders are processed efficiently. This assistance will include contacts to the CLEC account team, training, documentation, and CLEC Help Desk. Qwest will also supply CLEC with an escalation level contact list in the event issues are not resolved via contacts to the CLEC account team, training, documentation, -and CLEC Help Desk.

12.2.10.2 CLEC Help Desk

12.2.10.2.1 The CLEC Systems Help Desk will provide a single point of entry for CLEC to gain assistance in areas involving connectivity, system availability, and file outputs. The CLEC Systems Help Desk areas are further described below.

12.2.10.2.1.1 Connectivity covers trouble with CLEC's access to the Qwest system for hardware configuration requirements with relevance to EDI and GUI interfaces; software configuration requirements with relevance to EDI and GUI interfaces; modem configuration requirements, T1 configuration and dial-in string requirements, firewall access configuration, SecurID configuration, Profile Setup, and password verification.

12.2.10.2.1.2 System Availability covers system errors generated during an attempt by CLEC to place orders or open trouble reports through EDI and GUI interfaces. These system errors are limited to: POTS; Design Services and Repair.

12.2.10.2.1.3 File Outputs covers CLEC's output files and reports produced from its usage and order activity. File outputs system errors are limited to: Daily Usage File; Loss / Completion File, IABS Bill, CRIS Summary Bill, Category 11 Report and SAG/FAM Reports.

12.2.10.3 Additional assistance to CLECs is available through various public web sites. These web sites provide electronic interface training information and user documentation and technical specifications and are located on Qwest's wholesale web site at <http://www.uswest.com/carrier/>. Qwest will provide an Interconnect Service Center Help Desks which will provide a single point of contact for CLEC to gain assistance in areas involving order submission and manual processes.

12.2.11 Compensation/Cost Recovery ~~Recurring~~~~On-going~~ and ~~non-recurring~~~~one-time~~ OSS startup charges, as applicable, will be billed at rates set forth in Exhibit A. Any such rates will be consistent with Existing Rules. Qwest shall not impose any ~~recurring~~~~ongoing~~ or ~~non-recurring~~~~one-time~~ OSS start up charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

## **12.3 Maintenance and Repair**

### **12.3.1 Service Levels**

12.3.1.1 Qwest will provide repair and maintenance for all services covered by this Agreement in ~~a substantially the same time and manner in substantially the same time and manner~~as that which Qwest provides for ~~itself, itself, its End User Customers, its Affiliates, or any other party.~~ Qwest shall provide CLEC repair status information in substantially the same time and manner Qwest provides for its retail services.

12.3.1.2 During the term of this Agreement, Qwest will provide necessary maintenance business process support to allow CLEC to provide similar service quality to that provided by Qwest to ~~its end users, itself, its End User Customers, its Affiliates, or any other party.~~

12.3.1.3 Qwest will perform repair service that is substantially the same in timeliness and quality to that which it provides to ~~its own end users, itself, its End User Customers, its Affiliates, or any other party.~~ Trouble calls from CLEC shall receive response time priority that is substantially the same as that provided to Qwest, its End

User Customers, its Affiliates, or any other party and shall be handled in a nondiscriminatory manner.

### 12.3.2 Branding

~~12.3.2.1 Should Qwest need to use various forms for communication with CLEC end users (while out on premises dispatches on behalf of CLEC, for example), Qwest will use unbranded forms.~~

~~12.3.2.2 If required by CLEC, Qwest will use branded forms at CLEC's full expense, covering training costs, storage, printing, distribution and all other branding-related costs. Qwest shall use unbranded maintenance and repair forms while interfacing with CLEC End User Customers. Upon request, Qwest shall use CLEC provided and branded maintenance and repair forms. Qwest may not unreasonably interfere with branding by CLEC.~~

~~12.3.2.2 Except as specifically permitted by CLEC, in no event shall Qwest provide information to CLEC subscribers about CLEC or CLEC product or services.~~

~~12.3.2.3 This section shall confer on Qwest no rights to the service marks, trademarks and trade names owned by or used in connection with services offered by CLEC or its Affiliates, except as expressly permitted by CLEC.~~

### 12.3.3 Service interruptions

12.3.3.1 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to the plant of the other Party, its affiliated companies, or its connecting concurring carriers involved in its services; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".

12.3.3.2 If it is confirmed that either Party is causing an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the ~~Impaired Party~~ Impaired Party) shall promptly notify the Party causing the Impairment of Service (the ~~Impairing Party~~ Impairing Party) of the nature and location of the problem. ~~The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required.~~ The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. ~~If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.~~

12.3.3.3 To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a repair center for such service.

12.3.3.4 Each Party shall furnish a trouble reporting telephone number for the designated repair center. This number shall give access to the location where records are normally located and where current status reports on any trouble reports are readily available. If necessary, alternative out-of-hours procedures shall be established to ensure access to a location that is staffed and has the authority to initiate corrective action.

12.3.3.5 Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

12.3.3.5.1 In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting CLECs ~~and itself as itself, its End User Customers, its Affiliates, or any other party.~~

12.3.3.5.2 The Parties shall cooperate in isolating trouble conditions.

#### 12.3.4 Trouble Isolation

~~12.3.4.1 CLEC is responsible for its own End User Customer base and will have the responsibility for resolution of any service trouble report(s) from its End User Customers. CLEC will perform trouble isolation on services it provides to its End User Customers to the extent the capability to perform such trouble isolation is available to CLEC, prior to reporting trouble to Qwest. CLEC shall have access for testing purposes at the Demarcation Point, NID, or Point of Interface. Qwest will work cooperatively with CLEC to resolve trouble reports when the trouble condition has been isolated and found to be within a portion of Qwest's network. Qwest and CLEC will report trouble isolation test results to the other. Each Party shall be responsible for the costs of performing trouble isolation on its facilities, subject to Sections 12.3.4.2 and 12.3.4.3.~~

~~12.3.4.1 Pursuant to the applicable exchange and network service catalog, Qwest will bill appropriate~~ 12.3.4.2 ~~When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service charges, set forth in Exhibit A, for dispatched work done by Qwest where~~ charge will apply if the trouble is found to be on the end user's side of the NID or trouble is found to be in CLEC's portion of the End User Customer's side of the Demarcation Point. If the trouble is in on the End User Customer's side of the Demarcation Point, and the CLEC authorizes network.

~~12.3.4.2 Maintenance of Service, Qwest to repair trouble on the CLECs behalf, Qwest will charge CLEC the appropriate Additional Labor Charge set forth in Exhibit A, may be imposed by Qwest on CLEC for other internal repair work incurred on behalf of CLEC and later found to be in CLEC network components.~~ A in addition to the Maintenance of Service charge.

~~12.3.4.3 When CLEC elects not to perform trouble isolation and Qwest performs tests at CLEC request, a Maintenance of Service charge shall apply if the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC. Maintenance of Service charges are set forth in Exhibit A. When trouble is found on Qwest's side of the Demarcation Point, or Point of Interface during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) days, Maintenance of Service charges shall not apply.~~

### 12.3.5 Inside Wire Maintenance

Except where specifically required by state or federal regulatory mandates, Qwest will not perform any maintenance of inside wire (premises wiring beyond the end user's demarcation point) for CLEC or its end users.

### 12.3.6 Testing/Test Requests/Coordinated Testing/UNEs

~~12.3.6.1 Qwest shall have no obligation to test an end user's line or circuit, but may in appropriate circumstances. Where CLEC does not have the ability to diagnose and isolate trouble on a Qwest line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User Customer, Qwest will conduct testing, to the extent testing capabilities are available to Qwest, to diagnose and isolate a trouble in substantially the same time and manner that Qwest provides for itself, its End User Customer, its Affiliates, or any other party.~~

~~12.3.6.2 Prior to any test being conducted Qwest conducting a test on a line, circuit, or service provided in this Agreement that CLEC is utilizing to serve an End User, Qwest must receive a trouble report from CLEC.~~

~~12.3.6.3 Qwest end users are not given test results. On manually reported trouble for non-designed services, Qwest will provide readily available test results to CLEC or test results to CLEC in accordance with any applicable Commission rule for providing test results to End User Customers or CLECs. On manually reported trouble for designed services trouble, Qwest will not provide to CLEC the test results for its trouble reports provided in this Agreement, Qwest will provide CLEC test results upon request. For electronically reported trouble, CLEC may be provided various basic test results. Qwest will provide CLEC with the ability to obtain basic test results in substantially the same time and manner that Qwest provides for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.6.4 Qwest's test systems do not support testing of Unbundled Network Elements. CLEC shall isolate the trouble condition on UNE end users to Qwest's portion of the end user's service line, circuit, or service provided in this Agreement before Qwest accepts a trouble report for that line, circuit or service. Once Qwest accepts the trouble report from CLEC, Qwest shall process the trouble report in substantially the same time and manner Qwest does for itself, its End User Customers, its Affiliates, or any other party.~~

~~12.3.6.5 Qwest shall test to ensure electrical continuity of all UNEs, including central office Demarcation Point, and services it provides to CLEC prior to closing a trouble report.~~

### 12.3.7 Work Center Work Center Interfaces

12.3.7.1 Qwest and CLEC shall work cooperatively to develop positive, close working relationships among corresponding work centers involved in the trouble resolution processes.

### 12.3.8 Misdirected Repair Calls

12.3.8.1 CLEC and Qwest will employ the following procedures for handling misdirected repair calls:

12.3.8.1.1 CLEC and Qwest will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.

12.3.8.1.2 End users of CLEC shall be instructed to report all cases of trouble to CLEC. End users of Qwest shall be instructed to report all cases of trouble to Qwest.

12.3.8.1.3 To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with Service.

~~CLEC's or Qwest's end users who call the other Party.~~

12.3.8.1.4 CLEC and Qwest will provide their respective repair contact numbers to one another on a reciprocal basis.

12.3.8.1.5 In responding to repair calls, CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's End User Customers who call the other Party seeking such information.

### 12.3.9 Major Outages/Restoral/Notification

12.3.9.1 Qwest will notify CLEC of major network outages ~~as seen as is practical in substantially the same time and manner as it provides itself, its End User Customers, its Affiliates, or any other party.~~ This notification will be via e-mail to CLEC's identified contact. With the minor exception of certain proprietary information such as customer information, Qwest will utilize the same thresholds and processes for external notification as it does for internal purposes. This major outage information will be sent via e-mail on the same ~~frequency~~ schedule as is provided internally within Qwest. The email notification schedule shall consist of initial report of abnormal condition and estimated restoration time/date, abnormal condition updates, and final disposition. Service restoration will be non-discriminatory, and will be accomplished as quickly as possible according to Qwest and/or industry standards.

12.3.9.2 Qwest will meet with associated personnel from CLEC to share contact information and review Qwest's outage restoral processes and notification processes.

12.3.9.3 Qwest's emergency restoration process operates on a 7X24 basis.

### **12.3.10 Protective Maintenance**

12.3.10.1 Qwest will perform scheduled maintenance of substantially the same type and quality to that which it provides to itself, its End User Customers, its Affiliates, or any other party.

12.3.10.2 Qwest will work cooperatively with CLEC to develop industry-wide processes to provide as much notice as possible ~~CLEC~~ of pending maintenance activity. ~~Such process work will include establishment of reasonable thresholds and notification standards.~~ Qwest shall provide notice of potentially CLEC customer impacting maintenance activity, to the extent Qwest can determine such impact, and negotiate mutually agreeable dates with CLEC in substantially the same time and manner as it does for itself, its End User Customers, its Affiliates, or any other party.

12.3.10.3 Qwest shall advise CLEC of non-scheduled maintenance, testing, monitoring, and surveillance activity to be performed by Qwest on any Services, including, to the extent Qwest can determine, any hardware, equipment, software, or system providing service functionality which may potentially impact CLEC and/or CLEC End User Customers. Qwest shall provide the maximum advance notice of such non-scheduled maintenance and testing activity possible, under the circumstances; provided, however, that Qwest shall provide emergency maintenance as promptly as possible to maintain or restore service and shall advise CLEC promptly of any such actions it takes.

### **12.3.11 Hours of Coverage**

12.3.11.1 Qwest's repair operation is seven days a week, 24 hours a day. Not all functions or locations are covered with scheduled employees on a 7X24 basis. Where such 7X24 coverage is not available, Qwest's repair operations center (always available 7X24) can call-out technicians or other personnel required for the identified situation.

### **12.3.12 Escalations**

12.3.12.1 Qwest will provide trouble escalation procedures to CLEC. Such procedures will be based on the ~~processes~~ substantially the same type and quality as Qwest employs for its own end users, itself, its End User Customers, its Affiliates, or any other party. Qwest escalations are manual processes.

12.3.12.2 Qwest repair escalations begin with calls to the up-front may be initiated by either calling the trouble reporting centers-center or through the electronic interfaces. Escalations sequence through five tiers: tester, duty supervisor, manager, director, vice president. The first escalation point is the tester. CLEC may request escalation to higher tiers in its sole discretion. Escalations status is available through telephone and the electronic interfaces.

12.3.12.3 Qwest shall handle chronic troubles on non-designed services, which are those greater than 3 troubles in a rolling 30 day period, pursuant to Section 12.2.2.1.

### **12.3.13 Dispatch**

12.3.13.1 ~~Qwest will provide maintenance dispatch personnel on the same schedule in substantially the same time and manner as it provides for its own end users, itself, its End User Customers, its Affiliates, or any other party.~~

12.3.13.2 ~~Upon the receipt of a trouble report from CLEC, Qwest will do all that is reasonable and practical, according to follow internal processes and industry standards, to resolve the repair condition. Qwest will dispatch repair personnel on occasion to repair the condition. It will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest reserves the right to make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble; should CLEC require a dispatch when Qwest believes the dispatch is not necessary, appropriate charges will be billed by Qwest to CLEC for those dispatch-related costs in accordance with Exhibit A if Qwest can demonstrate that the dispatch was in fact unnecessary to the clearance of trouble or the trouble is identified to be caused by CLEC facilities or equipment.~~

12.3.13.3 ~~For POTS lines, Qwest will not request authorization from CLEC prior to dispatch. For lines supported by Qwest's designed services process, Qwest may accept CLEC authorization to dispatch. Qwest's operational processes are regularly reviewed and may be altered in the future. Should processes be changed, CLEC will be notified.~~

12.3.13.4 ~~CLEC shall perform appropriate trouble isolation and screening prior to submitting a trouble report to Qwest. lines and designed service circuits, Qwest is responsible for all maintenance and repair of the line or circuit and will make the determination to dispatch to locations other than the CLEC customer premises without prior CLEC authorization. For dispatch to the CLEC customer premises Qwest shall obtain prior CLEC authorization with the exception of major outage restoration, cable rearrangements, and MTE terminal maintenance/replacement.~~

12.3.13.4 Intentionally Left Blank

#### **12.3.14 Electronic Reporting**

12.3.14.1 CLEC may submit Trouble Reports through the electronic bonding or GUI interfaces provided by Qwest.

12.3.14.2 The status of manually reported trouble may be accessed by CLEC through electronic interfaces.

#### **12.3.15 Intervals/Parity**

12.3.15.1 ~~Similar trouble conditions, whether reported on behalf of Qwest end users End User Customers or on behalf of CLEC end users, End User Customers, will receive similar commitment intervals. intervals in substantially the same time and manner as Qwest provides for itself, its End User Customers, its Affiliates, or any other party.~~

#### **12.3.16 Jeopardy Management**

12.3.16.1 Notification to CLEC will be given on the same basis Qwest will notify CLEC, in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party, that a trouble report

interval commitment (appointment or interval) has been or is likely to be missed. At CLEC option, notification may be sent by email or fax through the electronic interface. CLEC may telephone Qwest repair center or use the electronic interfaces to obtain jeopardy status.

### **12.3.17 Trouble Screening**

12.3.17.1 CLEC shall screen and test its end user trouble reports completely enough to insure, to the extent possible, that it sends to Qwest only trouble reports that involve Qwest facilities. For services and facilities where the capability to test all or portions of the Qwest network service or facility rest with Qwest, Qwest will make such capability available to CLEC to perform appropriate trouble isolation and screening.

12.3.17.2 Qwest will cooperate with CLEC to show CLEC how Qwest screens trouble conditions in its own centers, so that CLEC will may employ similar techniques in its centers.

### **12.3.18 Maintenance Standards**

12.3.18.1 Qwest will cooperate with CLEC to meet the maintenance standards outlined in this Agreement.

12.3.18.2 On manually reported manually-reported trouble, Qwest will inform CLEC of repair completion as soon as is practical after its completion. completion in substantially the same time and manner as Qwest provides to itself, its End User Customers, its Affiliates, or any other party. On electronically reported trouble reports the electronic system will automatically update status information, including trouble completion, across the joint electronic gateway as the status changes.

### **12.3.19 End User Interface Responsibilities**

12.3.19.1 CLEC will be responsible for all interactions with its end users including service call handling and notifying its end users of trouble status and resolution.

12.3.19.2 All Qwest employees who perform repair service for CLEC end users will be trained in non-discriminatory behavior.

12.3.19.3 Qwest will recognize the designated CLEC/DLEC as the customer of record for all services ordered by CLEC/DLEC and will send all notices, invoices and pertinent information directly to CLEC/DLEC. Except as otherwise specifically provided in this Agreement, customer of record shall be Qwest's single and sole point of contact for all CLEC/DLEC customers.

### **12.3.20 Repair Call Handling**

12.3.20.1 Manually reported Manually-reported repair calls by CLEC to Qwest will be answered with substantially the same quality and speed as Qwest answers calls from its own end users. End User Customers.

### **12.3.21 Single Point of Contact**

12.3.21.1 Qwest will provide a single point of contact for CLEC to report maintenance issues and trouble reports seven days a week, twenty-four hours a day. A single 7X24 trouble reporting telephone number will be provided to CLEC for each category of trouble situation being encountered.

### 12.3.22 Network Information

12.3.22.1 Qwest maintains an information database, available to CLEC for the purpose of allowing CLEC to obtain information about Qwest's NPAs, LATAs, Access Tandems and ~~central offices.~~ Central Offices.

12.3.22.2 This database is known as the ICONN database, available to CLEC via Qwest's Web site.

12.3.22.3 CPNI information and NXX activity reports are also included in this database.

12.3.22.4 ICONN data is updated every two weeks in substantially the same time and manner as Qwest updates the same data for itself, its End User Customers, its Affiliates, or any other party.

### 12.3.23 Maintenance Windows

12.3.23.1 Generally, Qwest performs major switch maintenance activities off-hours, during certain "maintenance windows". Major switch maintenance activities include switch conversions, switch generic upgrades and switch equipment additions.

12.3.23.2 Generally, the maintenance window is between 10:00 p.m. through 6:00 ~~am,a.m.~~ Monday through Friday, and Saturday 10:00 p.m. through Monday 6:00 am,a.m., Mountain Time. Time. Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Qwest will provide notification of any and all maintenance activities that may impact CLEC ordering practices such as embargoes, moratoriums, and quiet periods in substantially the same time and manner as Qwest provides this information to itself, its End User Customers, its Affiliates, or any other party.

~~12.3.23.2.1 Non-trunk related disconnect, record, billing change for non-switched products, and emergency orders may be issued with due dates within the quiet time interval. Other non-trunk related orders must be issued with a due date prior to or after the conversion quiet period.~~

~~12.3.23.2.2 Trunk related orders for augments to capacity or changes to facilities must be issued with a due date prior to or after the appropriate embargo interval as identified in the ICONN database.~~

~~12.3.23.2.3 Qwest shall provide CLEC with conversion trunk group service request (TGSR) no less than ninety (90) days before conversion.~~

~~12.3.23.2.4 CLEC shall issue conversion ASRs to Qwest no less than forty-~~

five (45) days before conversion.

12.3.23.2.5 — Frame conversion order embargo for major facility changes or upgrades shall extend from forty-five (45) days prior to conversion until five (5) days after conversion. Quiet time where no orders with due dates that fall within the quiet time period except those described in 12.3.23.2.1 are processed for the affected location extends from five (5) days prior to conversion until two (2) days after the conversion.

12.3.23.2.6 — End office and tandem switch conversion order embargo for major facility changes or upgrades shall extend from forty-five (45) days prior to conversion until five (5) days after conversion for LIS and ten (10) days prior to conversion until four (4) weeks after conversion for CENTREX services. Quiet time, where no orders with due dates that fall within the quiet time period except those described in 12.3.23.2.1 are processed, extends five (5) days prior to conversion until two (2) days after the conversion.

12.3.23.3 Although Qwest normally does major switch maintenance during the above maintenance window, there will be occasions where this will not be possible. Reserved For Future Use.

12.3.23.4 Planned generic upgrades to Qwest switches are included in the ICONN database, available to CLEC via Qwest's Web site.

#### 12.3.24 Switch and Frame Conversion Service Order Practices

12.3.24.1 Switch Conversions. Switch conversion activity generally consists of the removal of one switch and its replacement with another. Generic switch software or hardware upgrades, the addition of switch line and trunk connection hardware and the addition of capacity to a switch do not constitute switch conversions.

12.3.24.2 Frame Conversions. Frame conversions are generally the removal and replacement of one or more frames, upon which the switch ports terminate.

12.3.24.3 Conversion Date. The "Conversion Date" is a switch or frame conversion planned day of cut-over to the replacement frame(s) or switch. The actual conversion time typically is set for midnight of the Conversion Date. This may cause the actual Conversion Date to migrate into the early hours of the day after the planned Conversion Date.

12.3.24.4 Conversion Embargoes. A switch or frame conversion embargo is the time period that the switch or frame trunk-side facility connections are frozen to facilitate conversion from one switch or frame to another with minimal disruption to the End User Customer or CLEC services. During the embargo period, Qwest will reject orders for trunk-side facilities (see Section 12.3.24.4.1) other than conversion orders described in Section 12.3.24.4.3. Notwithstanding the foregoing and to the extent Qwest provisions trunk or trunk facility related service orders for itself, its End User Customers, its Affiliates, or any other party during embargoes, Qwest shall provide CLEC the same capabilities.

12.3.24.4.1 ASRs for switch or frame trunk-side facility augments to capacity

or changes to switch or frame trunk-side facilities must be issued by CLEC with a due date prior to or after the appropriate embargo interval as identified in the ICONN database. Qwest shall reject switch or frame trunk-side ASRs to augment capacity or change facilities issued by CLEC or Qwest, its End User Customers, its Affiliates or any other party during the embargo period, regardless of the order's due date except for conversion ASRs described in Section 12.3.24.4.3.

12.3.24.4.2 For switch and trunk-side frame conversions, Qwest shall provide CLEC with conversion trunk group service requests (TGSR) no less than ninety (90) days before the Conversion Date.

12.3.24.4.3 For switch and trunk-side frame conversions, CLEC shall issue facility conversion ASRs to Qwest no later than thirty (30) days before the Conversion Date for like-for-like, where CLEC mirrors their existing circuit design from the old switch or frame to the new switch or frame, and sixty (60) days before the Conversion Date for addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS).

12.3.24.5 Frame Embargo Period. During frame conversions, service orders and ASRs shall be subject to an embargo period for services and facilities connected to the affected frame. For conversion of trunks where CLEC mirrors their existing circuit design from the old frame to the new frame on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until 5 days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics (i.e., change of AMI to B8ZS) to the new frame, new facility ASRs shall be placed, and the embargo period shall extend from 60 days prior to the Conversion Date until 5 days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for frame conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.6 Switch Embargo Period. During switch conversions, service orders and ASRs shall be subject to an embargo period for services and facilities associated with the trunk side of the switch. For conversion of trunks where CLEC mirrors their existing circuit design from the old switch to the new switch on a like-for-like basis, such embargo period shall extend from thirty (30) days prior to the Conversion Date until five (5) days after the Conversion Date. If CLEC requests the addition of trunk capacity or modification of circuit characteristics to the new switch, new facility ASRs shall be placed, and the embargo period shall extend from sixty (60) days prior to the Conversion Date until five (5) days after the Conversion Date. Prior to instituting an embargo period, Qwest shall identify the particular dates and locations for switch conversion embargo periods in its ICONN database in substantially the same time and manner as Qwest notifies itself, its End User Customers, Affiliates, or any other party.

12.3.24.7 Switch and Frame Conversion Quiet Periods for LSRs. Switch and frame conversion quiet periods are the time period within which LSRs may not contain due dates, with the exception of LSRs that result in disconnect orders, including those related to LNP orders, record orders, billing change orders for non-switched products, and emergency orders.

12.3.24.7.1 LSRs of any kind issued during switch or frame conversion quiet periods create the potential for loss of End User Customer service due to manual operational processes caused by the switch or frame conversion. LSRs of any kind issued during the switch or frame conversion quiet periods will be handled as set forth below, with the understanding that Qwest shall use its best efforts to avoid the loss of End User Customer service. Such best efforts shall be substantially the same time and manner as Qwest uses for itself, its End User Customers, its Affiliates, or any other party.

12.3.24.7.2 The quiet period for switch conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed for the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion and is identified in the ICONN database.

12.3.24.7.3 The quiet period for frame conversions, where no LSRs except those requesting order activity described in 12.3.24.7 are processed or the affected location, extends from five (5) days prior to conversion until two (2) days after the conversion.

12.3.24.7.4 LSRs, except those requesting order activity described in 12.3.24.7, (i) must be issued with a due date prior to or after the conversion quiet period and (ii) may not be issued during the quiet period. LSRs that do not meet these requirements will be rejected by Qwest.

12.3.24.7.5 LSRs requesting disconnect activity issued during the quiet period, regardless of requested due date, will be processed after the quiet period expires.

12.3.24.7.6 CLEC may request a due date change to a LNP related disconnect scheduled during quiet periods up to 12:00 noon Mountain Time the day prior to the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.7 CLEC may request a due date change to a LNP related disconnect order scheduled during quiet periods after 12:00 noon Mountain Time the day prior to the scheduled LSR due date until 12 noon Mountain Time the day after the scheduled LSR due date. Such changes shall be requested by issuing a supplemental LSR requesting a due date change and contacting the Interconnect Service Center. Such changes shall be handled as emergency orders by Qwest.

12.3.24.7.8 In the event that CLEC End User Customer service is disconnected in error, Qwest will restore service in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, or any other party. Restoration of CLEC End User Customer service will be handled through the LNP escalations process.

12.3.24.8 Switch Upgrades. Generic switch software and hardware upgrades are not subject to the switch conversion embargoes or quiet periods described above. If such generic switch or software upgrades require significant activity related to

translations, an abbreviated embargo and/or quiet period may be required. Qwest shall implement service order embargoes and/or quiet periods during switch upgrades in substantially the same time and manner as Qwest does for itself, its End User Customers, its Affiliates, and any other party.

12.3.24.9 Switch Line and Trunk Hardware Additions. Qwest shall use its best efforts to minimize CLEC service order impacts due to hardware additions and modifications to Qwest's existing switches. Qwest shall provide CLEC substantially the same service order processing capabilities as Qwest provides itself, its End User Customers, Affiliates, or any other party during such switch hardware additions.

## **Section 17.0 - BONA FIDE REQUEST PROCESS**

17.1 Any request for Interconnection or access to an Unbundled Network Element or ancillary service that is not already available as described in other sections of this Agreement, including but not limited to Exhibit F or any other Interconnection Agreement, Tariff or otherwise defined by Qwest as a product or service shall be treated as a Bona Fide Request (BFR). Qwest shall use the BFR Process to determine the terms and timetable for providing the requested Interconnection, access to UNEs or ancillary services, ~~if available,~~ and the technical feasibility of new/different points of Interconnection. Qwest will administer the BFR Process in a non-discriminatory manner.

17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for BFRs. ~~CLEC and Qwest will work together to prepare the BFR form. This form shall be accompanied by the non-refundable Processing Fee specified in Exhibit A of this Agreement. The form will request, and CLEC will need to provide, they may work together to prepare the BFR form and either Party may request that such coordination be handled on an expedited basis. This form shall be accompanied by the Processing Fee specified in Exhibit A of this following information, as well as, any additional information that may be helpful in describing and analyzing CLEC's request:~~

- ~~a) a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;~~
- ~~b) the desired interface specification;~~
- ~~c) each requested type of Interconnection or access;~~
- ~~d) a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;~~
- ~~e) the quantity requested;~~

- f) ~~the specific location requested;~~
- g) ~~if the requested Unbundled Network Element is a proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that access to such Network Element is necessary, that the failure to provide access to such Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such requested proprietary element; and~~
- h) ~~if the requested Unbundled Network Element is a non-proprietary element as specified in Section 251(d)(2) of the Act, CLEC must submit documentation that demonstrates that denial of access to such non-proprietary Unbundled Network Element would impair the ability of CLEC to provide the services that it seeks to offer, and that CLEC's ability to compete would be significantly impaired or thwarted without access to such Unbundled Network Element.~~

~~17.3 Within fifteen (15) calendar days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR.~~

~~17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC a preliminary analysis of the BFR. The preliminary analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act.~~

~~17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than ten (10) calendar days after making such a determination, provide a written report setting forth the basis for its conclusion.~~

~~17.6 If Qwest determines during the twenty-one (21) day period that the BFR qualifies under the Act, it shall notify CLEC in writing of such determination within ten (10) calendar days. Agreement. Qwest will refund one-half of the Processing Fee if the BFR is cancelled within ten (10) business days of the receipt of the BFR form. The form will request, and CLEC will need to provide, the following information, and may also provide any additional information that may be reasonably necessary in describing and analyzing CLEC's request:~~

~~17.2.1 a technical description of each requested Network Element or new/different points of Interconnection or ancillary services;~~

~~17.2.2 the desired interface specification;~~

~~17.2.3 each requested type of Interconnection or access;~~

~~17.2.4 a statement that the Interconnection or Network Element or ancillary service will be used to provide a Telecommunications Service;~~

17.2.5 the quantity requested;

17.2.6 the specific location requested;

17.2.7 Intentionally Left Blank

17.2.8 Intentionally Left Blank

17.3 Within two (2) business days of its receipt, Qwest shall acknowledge receipt of the BFR and in such acknowledgment advise CLEC of missing information, if any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the need for any additional information required to complete the analysis of the BFR. If requested, either orally or in writing, Qwest will provide weekly updates on the status of the BFR.

17.4 Within twenty-one (21) calendar days of its receipt of the BFR and all information necessary to process it, Qwest shall provide to CLEC an analysis of the BFR. The analysis shall specify Qwest's conclusions as to whether or not the requested Interconnection or access to an Unbundled Network Element complies with the unbundling requirements of the Act or state law.

17.5 If Qwest determines during the twenty-one (21) day period that a BFR does not qualify as an Unbundled Network Element or Interconnection or ancillary service that is required to be provided under the Act or state law, Qwest shall advise CLEC as soon as reasonably possible of that fact, and Qwest shall promptly, but in no case later than the twenty-one (21) period, provide a written report setting forth the basis for its conclusion.

17.6 If Qwest determines during such twenty-one (21) day period that the BFR qualifies under the Act or state law, it shall notify CLEC in writing of such determination within ten (10) calendar days, but in no case later than the end of such twenty-one (21) day period.

17.7 As soon as feasible, but in any case within forty-five (45) calendar days after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each Interconnection, Network Element, and ancillary service, the quantity to be provided, any interface specifications, and the applicable rates (recurring and ~~non-recurring~~nonrecurring) including the separately stated development costs and construction charges of the Interconnection, Unbundled Network Element or ancillary service and any minimum volume and term commitments required, and the timeframes the request will be provisioned.

17.8 A CLEC has thirty (30) ~~CLEC has sixty (60)~~ business days upon receipt of the BFR quote, to either agree to purchase under the quoted price, or cancel its BFR, ~~or seek mediation or arbitration.~~BFR.

17.9 If CLEC has agreed to minimum volume and term commitments under the preceding paragraph, CLEC may cancel the BFR or volume and term commitment at anytime, but in the event of such cancellation CLEC will pay Qwest's reasonable development costs incurred in providing the Interconnection, Unbundled Network Element, or ancillary service to the extent that those development costs are not otherwise amortized. time but may be subject to termination liability assessment or minimum period charges.

17.10 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination or quoted price or cost, it may seek arbitration pursuant to invoke the Dispute Resolution provision of this Agreement.

17.11 All time intervals within which a response is required from one Party to another under this Section are maximum time intervals. Each Party agrees that it will provide all responses to the other Party as soon as the Party has the information and analysis required to respond, even if the time interval stated herein for a response is not over.

17.12 In the event CLEC has submitted a Request for an Interconnection, an Unbundled Network Elements or any combinations thereof, or ancillary services and Qwest determines in accordance with the provisions of this Section 17 that the request is Technically Feasible, subsequent requests or orders for substantially similar types of Interconnection, Unbundled Network Elements or combinations thereof or ancillary services by that CLEC shall not be subject to the BFR process. To the extent Qwest has deployed or denied a substantially similar Interconnection, Unbundled Network Elements or combinations thereof or ancillary services under a previous BFR, a subsequent BFR shall not be required and the BFR application fee shall be refunded immediately. Qwest may only require CLEC to complete a New Product Questionnaire before ordering such Interconnection, Unbundled Network Elements or combinations thereof, or ancillary services. ICB pricing and intervals will still apply for requests that are not yet standard offerings. For purposes of this Section 17.12, a "substantially similar" request shall be one with substantially similar characteristics to a previous request with respect to the information provided pursuant to Subsections (a)17.2.1 through (f)17.2.8 of Section 17.2 above. The burden of proof is upon Qwest to prove the BFR is not substantially similar to a previous BFR.

17.13 The total cost charged to CLEC shall not exceed the BFR quoted price.

17.14 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for the Interconnection, Unbundled Network Element or ancillary service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

## Section 18.0 - AUDIT PROCESS

18.1 Nothing in this Section 18 shall limit or expand the audit provisions in the Performance Assurance Plan ("PAP"). Nothing in the PAP shall limit or expand the audit provisions in this Section 18. For purposes of this section the following definitions shall apply:

18.1.1 "Audit" shall mean the comprehensive review of:

18.1.1 Data of the books, records, and other documents used in the billing process for services performed, including reciprocal compensation, including, without limitation, reciprocal compensation and facilities provided under this Agreement; and under this Agreement.

18.1.2 Data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for Interconnection or access to Unbundled Loops, ancillary and Finished Services. Intentionally Left Blank

18.1.2 "Examination" shall mean an inquiry into a specific element or process related to the above. Commencing on the Effective Date of this Agreement, either Party may perform Examinations as either Party deems necessary.

18.2 The data referred to above shall be relevant to any performance indicators that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise. This Audit shall take place under the following conditions:

18.2.1 Either Party may request to perform an Audit or Examination.

18.2.2 The Audit or Examination shall occur upon thirty (30) business days written notice by the requesting Party to the non-requesting Party.

18.2.3 The Audit or Examination shall occur during normal business hours. However, such audit will be conducted in a commercially reasonable manner and both Parties will work to minimize disruption to the business operations of the Party being audited.

18.2.4 There shall be no more than two Audits requested by each Party under this Agreement in any 12-month period. Either Party may audit the other Party's books, records and documents more frequently than twice in any twelve (12) month period (but no more than once in each quarter) if the immediately preceding audit found previously uncorrected net variances, inaccuracies or errors in invoices in the audited Party's favor with an aggregate value of at least two percent (2%) of the amounts payable for the affected services during the period covered by the Audit.

18.2.5 The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.

18.2.6 The location of the Audit or Examination shall be the location where the requested records, books and documents are retained in the normal course of business.

18.2.7 All transactions under this Agreement which are over twenty-four (24) months old will be considered accepted and no longer subject to Audit. The Parties agree to retain records of all transactions under this Agreement for at least 24 months.

18.2.8 Audit or Examination Expenses

18.2.8.1 Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be born by the requesting Party.

in connection with conduct of the Audit or Examination. The requesting Party will pay for the reasonable cost of special data extractions required by the Party to conduct the Audit or Examination. For purposes of this section, a "Special Data Extraction" means the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to the requesting Party's specification and at that Party's expense, the requesting Party will specify at the time of request whether the program is to be retained by the other Party for reuse for any subsequent Audit or Examination.

18.2.8.2 Notwithstanding the foregoing, the audited Party shall pay all of the Auditing Party's commercially reasonable expenses in the event an Audit or Examination identifies a difference between the amount billed and the amount determined by the Audit that exceeds five percent (5%) of the amount billed and results in a refund and/or reduction in the billing to the auditing Party.

18.2.9 The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor, which agreement will not be unreasonably withheld or delayed by the non-requesting Party. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit subject to Section 18.2.8.2.

18.2.10 In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.

Parties. The portion of this expense borne by the Auditing Party shall be borne by the Audited Party if the terms of Section 18.2.8.2 are satisfied.

18.2.11 Adjustments, credits or payments will be made and any corrective action must commence within thirty (30) days after the Parties receipt of the final audit report to compensate for any errors and omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. The interest 18.2.11 ~~The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s). All errors not corrected~~rate

payable shall be in accordance with Commission requirements. In the event that any of the following circumstances occur within thirty (30) business days shall be escalated to the Vice-President level.

after completion of the Audit or Examination, they may be resolved at either Party's election, pursuant to the Dispute Resolution Process: (i) errors detected by the Audit or Examination have not been corrected; (ii) adjustments, credits or payments due as a result of the Audit or Examination have not been made, or (iii) a dispute has arisen concerning the Audit or Examination.

18.2.12 Neither the right to examine and audit nor the right to receive an adjustment will be affected by any statement to the contrary appearing on checks or otherwise.

18.2.13 This Section will survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of the Agreement.

~~18.3~~ All 18.3 All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement in Section 5.16. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, CLEC and Qwest will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the Party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the Audit.

Audit. Information provided in an Audit or Examination may only be reviewed by individuals with a need to know such information for purposes of this Section 18 and who are bound by the nondisclosure obligations set forth in Section 5.16. In no case shall the Confidential Information be shared with the Parties' retail marketing, sales or strategic planning.

## Section 19.0 - CONSTRUCTION CHARGES

19.1 All rates, charges and initial service periods specified in this Agreement contemplate the provision of network Interconnection services and access to ~~Unbundled Loops~~unbundled loops or ancillary services to the extent existing facilities are available. Except for modifications to existing facilities necessary to accommodate Interconnection and access to ~~Unbundled Loops~~unbundled loops or ancillary services specifically provided for in this Agreement, Qwest will consider requests to build additional or further facilities for network Interconnection and access to ~~Unbundled Loops~~unbundled loops or ancillary services, as described in the applicable section of this Agreement.

19.2 All necessary construction will be undertaken at the discretion of Qwest, consistent with budgetary responsibilities, consideration for the impact on the general body of end users and without discrimination among the various carriers.

19.3 A quote for CLEC's portion of a specific job will be provided to CLEC. The quote will be in writing and will be binding for ninety (90) business days after the issue date. When accepted, CLEC will be billed the quoted price and construction will commence ~~after receipt of payment;~~ provided that when CLEC orders the same or substantially similar service available to Qwest end users, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff, or where such charges would not be applied to a Qwest end user ~~payment.~~ If CLEC chooses not to have Qwest construct the facilities, Qwest reserves the right to bill CLEC for the expense incurred for producing the engineered job design.

19.4 In the event a construction charge is applicable, CLEC's service Application Date will become the date upon which Qwest receives the required payment.

## **Section 20.0 - SERVICE PERFORMANCE**

Qwest is currently developing performance measures in a process created by the Regional Oversight Committee (ROC). Qwest will amend this Agreement when the ROC process is complete to incorporate all aspects of the ROC final decision pertaining to Service Performance. Qwest will also amend this Agreement when the Public Utilities Commission of Oregon completes its Performance Assurance Plan that is being conducted separately from the ROC.

**Section 22.0 - SIGNATURE PAGE**

~~IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.~~

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, CLEC adopts this SGAT and upon receipt by Qwest, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

**(CLEC)**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT F

1. The Special Request Process shall be used for the following requests:

1.1 Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.

1.2 Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor.

1.3 Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:

1.3.1 ~~that is made up of UNEs that are defined by Qwest as products, the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;~~

1.3.2 that is made up of UNEs that are ordinarily combined in the Qwest network.

1.4 Requesting an Unbundled Network Element that has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product, including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDIT, and EEL between OC-3 and OC-192 and new varieties of subloops.

~~1.52~~ Any request that requires an analysis of Technical Feasibility shall be treated as a Bona Fide Request (BFR), and will follow the BFR Process set forth in this Agreement. If it is determined that a request should have been submitted through the BFR process, Qwest will consider the BFR time frame to have started upon receipt of the original Special Request application form. ~~The BFR process shall be used for, among other things, the following:~~

~~a. Requests for interconnection not already available as described in this Agreement;~~

~~b. Requests for access to an unbundled network element that has not been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access;~~

~~c. Requests for UDIT and EEL above the OC-192 level;~~

~~d. Requests for combinations of Unbundled Network Elements that include UNEs that are not defined by Qwest as products, and~~

~~Requests for combinations of Unbundled Network Elements that are not currently ordinarily combined in the Qwest network.~~

23. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website. ~~The form must be completely filled out.~~

34. Qwest shall acknowledge receipt of the Special Request within two (2) ~~5~~ business days of receipt.

45. Qwest shall respond with an ~~an preliminary~~ analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the ~~preliminary~~ analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the ~~preliminary~~ analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

6. Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for Unbundled Network Elements that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

## Exhibit I – Individual Case Basis (ICB)

1. This Agreement contains references to both ICB rates and ICB intervals. The purpose of this exhibit is to identify how CLEC's ICB requests – whether they be for rates or intervals – are processed through and by Qwest.
2. ICB Rate Intervals
  - 2.1 For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.
  - 2.2 The purpose of this subsection is to identify those circumstances when the generic twenty (20) business day interval in the aforementioned subsection to this Exhibit does not apply. In these specified circumstances, Qwest shall provide CLEC with an ICB quote within the stated specific intervals:
    - 2.2.1 Quotes for all Bona Fide Requests (BFR) shall be provided in accord with Section 17.
    - 2.2.2 Quotes for all Special Request Processes (SRP) shall be provided in accord with Exhibit F.
    - 2.2.3 Quotes for all collocation requests, regardless of the type of collocation, shall be provided in accord with the Section 8 interval.
    - 2.2.4 Quotes for all Field Connection Point requests shall be provided in accord with Section 9.3.
    - 2.2.5 Quotes for all Advanced Intelligent Network (AIN) requests shall be provided in accord with Section 9.
  - 2.3 Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or cost studies for the Unbundled Network Element or service that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Consistent with the terms and conditions of any applicable vendor contract or agreement, Qwest shall diligently pursue obtaining the release of cost information as soon as reasonably possible. To the extent consistent with the terms and obligations of any applicable vendor contract or agreement, Qwest shall request the release of vendor cost information when Qwest communicates with the vendor(s) when Qwest seeks a quote for the costs of the ICB project. Such cost data shall be treated as confidential information if requested by Qwest under the non-disclosure sections of this Agreement.
3. ICB Provisioning Intervals

- 3.1 For those products and services provided pursuant to this SGAT that contain a provision for ICB interval but do not contain a specific provision for when the ICB interval shall be provided, the ICB interval shall be provided within twenty (20) business days of receipt of the order, request or application.
- 3.2 For ICB intervals for those products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, the Qwest representative, authorized to commit to intervals, shall meet with CLEC's representative within seven (7) business days of receipt of the request from CLEC to negotiate intervals.

**Exhibit L**

**ADVICE ADOPTION LETTER**

**Director of Interconnection Compliance**

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

---

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ (CLEC) hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

**CLEC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit M**  
**INTERIM ADVICE ADOPTION LETTER**

**Director of Interconnection Compliance**

C/O Heidi Higer  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Qwest Corporation ("Qwest") New Product: \_\_\_\_\_

---

Dear Sir or Madam:

By its signature below, \_\_\_\_\_ ("CLEC") hereby agrees to be bound by the rates, terms and conditions that Qwest has offered and provided on its Web Site for the New Qwest Product identified above as an interim amendment to its Interconnection Agreement with Qwest for the state(s) of \_\_\_\_\_.

CLEC certifies that the rates, terms, and conditions contained on Attachment A (attached hereto) are the rates, terms and conditions contained on Qwest's web site that have been provided for the New Product identified above.

Qwest acknowledges that CLEC believes that the rates, terms and conditions for the Qwest New Product should be altered and that CLEC enters into this Interim Advice Adoption Letter with the express intention to renegotiate the rates, terms and conditions associated with the Qwest New Product pursuant to the terms of Section 1.7.1.2 of the SGAT. CLEC enters into this Interim Advice Adoption Letter without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Advice Adoption Letter under the Interconnection Agreement, the Act, FCC or state Commission rules.

**CLEC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit B**  
**AT&T's Proposed Modifications to the 9/7/01 SGAT Lite Proposals**

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 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 or Dispute Resolution 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 up to sixty (60) days. ~~If the Parties fail to agree on an amendment during the 60-day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented. 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.~~

2.3 ~~Unless otherwise specifically determined by the Commission, i~~n cases of conflict between the SGAT and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT, then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

2.3.1 If either Party believes, in good faith, that a change in Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or

other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this SGAT abridges or expands its rights or obligations under this SGAT and that change has not gone through CICMP, the Parties will resolve the matter under the Dispute Resolution process. ~~Any amendment to this Agreement that may result from such Dispute Resolution process shall be deemed effective on the effective date of the change for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.~~ During the pendency of the negotiation or Dispute Resolution, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement, for up to sixty (60) days. ~~If the Parties fail to resolve the dispute during the first sixty days after the CLEC institutes Dispute Resolution, the Parties agree that the first matter to be resolved during formal Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) days of formal Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Agreement, until the interim operating agreement is implemented.~~

## Exhibit C

### AT&T's proposed changes to Section 5.9.

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

~~5.9.1.1 Except as otherwise provided in Section 5.10 for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, 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 (attorneys' fees, accounting fees, or other) whether suffered, made, instituted, or asserted by any other Party or person, for (i) invasion of privacy, (ii) personal injury to or death of any person or persons, or for loss, damage to, or destruction of property or the environment, whether or not owned by others, resulting from the indemnifying Party's performance, breach of applicable law, or status of its employees, agents and subcontractors, or (iii) breach of or failure to perform under this Agreement, regardless of the form of action, or (iv) for actual or alleged infringement of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property right, now known or later developed, to the extent that such claim or action arises from CLEC or CLEC's customer's use of the services provided under this Agreement.~~

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

~~5.9.1.3 If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the~~

~~indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim.~~

~~5.9.1.4 For purposes of this Section, where the Parties have agreed to provision line sharing using a POTS splitter: "claims made by end users or customers of one Party against the other Party" refers to claims relating to the provision of DSL services made against the Party that provides voice services, or claims relating to the provision of voice service made against the Party that provides DSL services; and "immediate provider of the Telecommunications Service to the end user or customer" refers to the Party that provides DSL service for claims relating to DSL services, and to the Party that provides voice service for claims relating to voice services. For purposes of this Section, "customer" refers to the immediate purchaser of the telecommunications service, whether or not that customer is the ultimate end user of that service.~~

5.9.2 The indemnification provided herein shall be conditioned

upon:

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

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

5.9.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party. In the event the indemnified Party withholds such consent, the indemnified Party may, at its cost, take over such defense, provided that, in such event, the indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant indemnified party against, any cost or liability in excess of such refused compromise or settlement.

STATE OF MINNESOTA )  
 )  
BROOKLYN CENTER, HENNEPIN COUNTY )

---

**AFFIDAVIT OF JAMES W. TADE**

---

I, James W. Tade, being first duly sworn upon oath, depose and state:

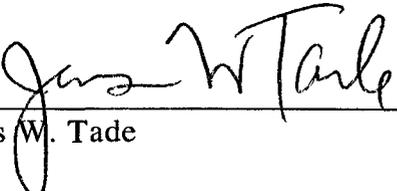
1. I make this affidavit of my personal knowledge and free will.
2. I am employed by AT&T Broadband in Saint Paul, Minnesota, which is an affiliate of the parent company of AT&T Corp. (collectively "AT&T"). I began my employment by AT&T in October, 1990.
3. Prior to June 1, I was a local telephone customer of Qwest Communications, Inc. for my local residential telecommunications service.
4. On or about May 18, 2001, I subscribed to AT&T local telephony service offered by AT&T Broadband; that is, I requested that AT&T switch my residential local telephone service away from Qwest to AT&T.
5. AT&T scheduled installation of its local service at my residence on June 1, 2001.
6. The week prior to the installation, Qwest sales people called me at my home four times. They called twice on or about May 28 and once on or about May 30. Qwest sales representatives called a fourth time the morning of the AT&T installation on June 1, 2001.
7. In each of the telephone solicitations, Qwest representatives indicated their desire to have me switch back to Qwest because they knew I had selected another carrier.

8. The first two times that Qwest representatives phoned me, I informed them that I was not interested in switching back to Qwest and then I hung up. The third time a Qwest representative phoned me, I told that person that I was not interested in returning to Qwest and asked them to not call again.

9. On the morning of the AT&T installation, I received the fourth solicitation call from Qwest. As in the previous conversations, the Qwest representative requested that I return to Qwest for my local residential telephone service. Not only had Qwest failed to honor my "do not call" request, but the sales representatives were extremely persistent in their efforts to win back my business before I even had an opportunity to switch my service.

Further the Affiant sayeth naught.

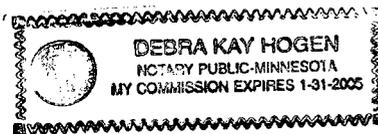
DATED this 21 day of June, 2001.

  
\_\_\_\_\_  
James W. Tade

Subscribed and sworn to before me this 21 day of June, 2001, by James W. Tade.

[Seal]

  
\_\_\_\_\_  
Notary Public



BEFORE THE ARIZONA PUBLIC REGULATION COMMISSION

**WILLIAM A. MUNDELL**

**Chairman**

**JAMES M. IRVIN**

**Commissioner**

**MARC SPITZER**

**Commissioner**

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

---

**AT&T'S SUPPLEMENTAL FILING TO UPDATE THE RECORD ON  
GENERAL TERMS & CONDITIONS CONCERNING THE  
SGAT SECTION RELATED TO DEFINITIONS**

---

AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix (collectively "AT&T") hereby submit this supplemental filing to update the Arizona record with the most recent definitions language for the Statement of Generally Available Terms ("SGAT"). As grounds for this supplement, AT&T states as follows:

1. SGAT § 4.0 contains the definitions for the SGAT as a whole. This section is voluminous and was largely negotiated "off-line" among the various parties to this proceeding.

2. Qwest provided a near final version of these definitions in the Colorado proceeding the week of August 21, 2001.

3. Qwest provided another version of these definitions in the Oregon proceeding the week of September 10, 2001.

4. AT&T reviewed the September 10<sup>th</sup> version and noted some minor modifications that Qwest had neglected to include. AT&T has made those adjustments to the September 10<sup>th</sup> definitions and presents the attached, Exhibit 1 for the convenience of this Commission. Exhibit 1 is the September 10<sup>th</sup> definitions as slightly modified by AT&T.

5. Examination of the definitions attached hereto will reveal that all, but one of the definitions, is agreed to by at least AT&T and Qwest (and in all likelihood the other parties as well). The disputed definition is of "Legitimately Related." Qwest has created its own definition that is inconsistent with the law; therefore, AT&T requests that a portion of the definition be stricken.

6. Other than the above-described dispute, AT&T offers Exhibit 1 as a benchmark of the definitions that AT&T believes should be incorporated into the SGAT in Arizona.

Respectfully submitted this 18<sup>th</sup> day of September, 2001.

**AT&T COMMUNICATIONS  
OF THE MOUNTAIN STATES, INC.  
AND AT&T LOCAL SERVICES ON  
BEHALF OF TCG PHOENIX**

By: Letty S.D. Friesen by DTRF  
Mary B. Tribby  
Letty S.D. Friesen  
AT&T Law Department  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202  
(303) 298-6475

## DEFINITIONS SECTION AS OF 9/17/01

*Following is AT&T's Best Effort to Bring Forward the SGAT Definitions  
Section as it Currently Stands*

### Section 4.0 – DEFINITIONS

"Access Service Request" or "ASR" means the industry guideline forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between CLEC and Qwest for Local Interconnection Service.

"Access Services" refers to the interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic.

"Access Tandem Switch" is a switch used to connect End Office Switches to interexchange Carrier switches. Qwest's Access Tandem Switches are also used to connect and switch traffic between and among Central Office Switches within the same LATA and may be used for the exchange of local traffic.

"Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"Advanced Intelligent Network" or "AIN" is a Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

"Advanced Services" refers to high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality, voice, data, graphics or video telecommunications using any technology.

"Affiliate" means a Person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"AMI T1" is a transmission system sometimes used on loops to transmit DS1 signals (1.544 Mbps) using Alternate Mark Inversion (AMI) line code. **AMI T1s are well-recognized Disturbers.**<sup>1</sup>

"Applicable Law" means all laws, statutes, common law, ordinances, codes, rules, guidelines, orders, permits and approval of any governmental regulations, including, but not limited to, the Act, the regulations, rules, and final orders of the FCC and the Commission, and any final orders and decisions of a court of competent jurisdiction reviewing the regulations, rules, or orders of the FCC or the Commission.

---

<sup>1</sup> AT&T has added the bold, underlined sentence because this sentence was agreed to by Qwest but inadvertently left out.

"Application Date" or "APP" means the date CLEC provides Qwest an application for service containing required information as set forth in this Agreement.

"ATIS" or "Alliance for Telecommunications Industry Solutions" is a North American telecommunication industry standards forum which, through its committees and working groups, creates, and publishes standards and guidelines designed to enable interoperability and interconnection for telecommunications products and services. ATIS Standards and Guidelines, as well as the standards of other industry fora, are referenced herein.

"Automated Message Accounting" or "AMA" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the AMA document, published by Telcordia Technologies, or its successors, as GR-1100-CORE which defines the industry standard for message recording.

"Automatic Location Identification Gateway" or "ALI Gateway" is a computer facility into which CLEC delivers Automatic Location Identification ("ALI") data for CLEC Customers. Access to the ALI Gateway will be via a dial-up modem using a common protocol.

"Automatic Location Identification" or "ALI" is a the automatic display at the Public Safety Answering Point ("PSAP") of the caller's telephone number, the address/location of the telephone and supplementary emergency services information for Enhanced 911 (E911).

"Automatic Location Identification/Database Management System" or "ALI/DBMS" is an Enhanced 911/(E911) database containing End User Customer location information (including name, service address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call and used by the PSAP for emergency call handling (i.e., dispatch of emergency aid).

"Automatic Number Identification" or "ANI" is the billing telephone number associated with the access line from which a call originates. ANI and Calling Party Number (CPN) usually are the same number.

"Automatic Route Selection" or "ARS" is a service feature that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into a circuit switch routing table or system.

"Basic Exchange Telecommunications Service" means, unless otherwise defined in Commission rules and then it shall have the meaning set forth therein, a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

"Bill Date" means the date on which a billing period ends, as identified on the bill.

"Billing" involves the provision of appropriate usage data by one Telecommunications Carrier to another to facilitate Customer Billing with attendant acknowledgments and status reports. It also involves the exchange of information between Telecommunications Carriers to process claims and adjustments.

"Binder Groups" means the sub-units of a cable, usually in groups of 25, 50 or 100 color-coded twisted pairs wrapped in colored tape within a cable.

"Bona Fide Request" or "BFR" shall have the meaning set forth in Section 17.

"Bridged Tap" means the unused sections of a twisted pair subtending the loop between the End User and the Serving Wire Center or extending beyond the End User Customer's location.

"Busy Line Verify/Busy Line Interrupt" or "BLV/BLI Traffic" means a call to an operator service in which the caller inquires as to the busy status of or requests an interruption of a call on another End User Customer's Basic Exchange Telecommunications Service line.

"Calling Party Number" or "CPN" is a Common Channel Signaling (CCS) parameter which refers to the ten digit number transmitted through a network identifying the calling party. Reference Qwest Technical Publication 77342.

"Carrier" or "Common Carrier" See Telecommunications Carrier.

"Central Office" means a building or a space within a building where transmission facilities or circuits are connected or switched.

"Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate end user station loops, or equivalent, for the purpose of interconnecting to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact-based consideration of geography and function should be used to classify any switch. Qwest access Tandems typically provide connections for exchange access and toll traffic, and Jointly Provided Switched Access traffic while local tandems provide connections for Exchange Service (EAS/Local) traffic. CLECs may also utilize a Qwest Access Tandem for the exchange of local traffic as set forth in this Agreement.<sup>2</sup>

---

<sup>2</sup> Qwest agreed to make this definition consistent with final state rulings on the issues associated with tandem switches.

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. A fact based consideration of geography or function should be used to classify any switch.

"Centralized Automatic Message Accounting" or "CAMA" trunks are trunks using MF signaling protocol used to record billing data.

"Centralized Message Distribution System" or "CMDS" means the operation system that Local Exchange Carriers use to exchange outcollect and IABS access messages among each other and other parties connected to CMDS.

"Charge Number" is a Common Channel Signaling parameter, which refers to the number, transmitted through the network identifying the billing number of the calling party. Charge Number frequently is not the Calling Party Number (CPN).

"Centrex" shall have the meaning set for the in Section 6.2.2.9.

"CLC" or "Carrier Liaison Committee" is under the auspices of ATIS and is the executive oversight committee that provides direction as well as an appeals process to its subtending fora, the Network Interconnection Interoperability Forum (NIIF), the Ordering and Billing Forum (OBF), the Industry Numbering Committee (INC), and the Toll Fraud Prevention Committee (TFPC). On occasion, the CLC commissions ad hoc committees when issues do not have a logical home in one of the subtending forums. OBF and NIMC publish business process rules for their respective areas of concern.

"Collocation" is an arrangement where Qwest provides space in Qwest Premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to Qwest Unbundled Network Elements.

"Collocation – Point of Interconnection" or "C-POI" is the point outside Qwest's Wire Center where CLEC's fiber facility meets Qwest's Fiber Entrance Facility, except where CLEC uses an Express Fiber Entrance Facility. In either case, Qwest will extend or run the Fiber Entrance Facility to CLEC's Collocation Space.

"Commission" means the \_\_\_\_\_.

"Commercial Mobile Radio Service" or "CMRS" is defined in 47 U.S.C. Section 332 and FCC rules and orders interpreting that statute.

"Common Channel Signaling" or "CCS" means a method of exchanging call set up and network control data over a digital signaling network fully separate from the Public Switched Network that carries the actual call. Signaling System 7 ("SS7") is currently the preferred CCS method.

"Communications Assistance for Law Enforcement Act" or "CALEA" refers to the duties and obligations of Carriers to assist law enforcement agencies by intercepting communications and records, and installing pen registers and trap and trace devices.

"Competitive Local Exchange Carrier" or "CLEC" refers to a Party that has submitted a request, pursuant to this Agreement, to obtain Interconnection, access to Unbundled Network Elements, ancillary services, or resale of Telecommunications Services. A CLEC is an entity authorized to provide Local Exchange Service that does not otherwise qualify as an Incumbent Local Exchange Carrier (ILEC).

"Confidential Information" shall have the meaning set forth in Section 5.16.

**"Cross Connection" is a cabling scheme between cabling runs, subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end.**<sup>3</sup>

"Custom Calling Features" comprise a group of features provided via a Central Office Switch without the need for special Customer Premises Equipment. Features include, but are not limited to, call waiting, 3-way calling, abbreviated dialing (speed calling), call forwarding, and series completing (busy or no answer).

"Custom Local Area Signaling Service" or "CLASS" is a set of call-management service features consisting of number translation services, such as call forwarding and caller identification, available within a Local Access and Transport Area ("LATA"). Features include, but are not limited to, automatic callback, automatic recall, calling number delivery, customer originated trace, distinctive ringing/call waiting, selective call forwarding and selective call rejection.

"Current Service Provider" means the Party from which an End User Customer is planning to switch its local exchange service or the Party from which an End User Customer is planning to port its telephone number(s).

"Customer" is a Person to whom a Party provides or has agreed to provide a specific service or set of services, whether directly or indirectly. Customer includes Telecommunication Carriers. See also, End User Customer.

"Customer Premises Equipment" or "CPE" means equipment employed on the premises of a Person other than a Carrier to originate, route or terminate Telecommunications (e.g., a telephone, PBX, modem pool, etc.).

"Customer Usage Data " means the Telecommunications Service usage data of a CLEC Customer, measured in minutes, sub-minute increments, message units or otherwise, that is recorded by Qwest AMA equipment and forwarded to CLEC.

"Dark Fiber" shall have the meaning set forth in Section 9.7.1.

"Day" means calendar days unless otherwise specified.

"Dedicated Transport" is a Qwest provided digital transmission path between locations

---

<sup>3</sup> While this agreed upon definition was in the 8/21 SGAT Lite, Qwest inadvertently failed to bring it forward into the 9/7 definitions.

designated by CLEC to which a CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest wire centers, Qwest End Office Switches, and Qwest Tandem Switches. The path may operate at DS-1 or higher transmission speeds. Dedicated Transport is also described in Section 9.

"Demarcation Point" means the point where Qwest owned or controlled facilities cease, and CLEC, End User Customer, premises owner or landlord ownership or control of facilities begin.

"Designed, Verified and Assigned Date" or "DVA" means the date on which implementation groups are to report that all documents and materials have been received and are complete.

"Desired Due Date" means the desired service activation date as requested by CLEC on a service order.

"Dialing Parity" shall have the meaning set forth in Section 14.1.

"Digital Cross-Connect System" or "DCS" is a function which provides automated cross connection of Digital Signal level 0 (DS0) or higher transmission bit rate digital channels within physical interface facilities. Types of DCS include but are not limited to DCS 1/0s, DCS 3/1s, and DCS 3/3s, where the nomenclature 1/0 denotes interfaces typically at the DS1 rate or greater with cross-connection typically at the DS0 rate. This same nomenclature, at the appropriate rate substitution, extends to the other types of DCS specifically cited as 3/1 and 3/3. Types of DCS that cross-connect Synchronous Transport Signal level 1 (STS-1 s) or other Synchronous Optical Network (SONET) signals (e.g., STS-3) are also DCS, although not denoted by this same type of nomenclature. DCS may provide the functionality of more than one of the aforementioned DCS types (e.g., DCS 3/3/1 which combines functionality of DCS 3/3 and DCS 3/1). For such DCS, the requirements will be, at least, the aggregation of requirements on the "component" DCS. In locations where automated cross connection capability does not exist, DCS will be defined as the combination of the functionality provided by a Digital Signal Cross-Connect (DSX) or Light Guide Cross-Connect (LGX) patch panels and D4 channel banks or other DS0 and above multiplexing equipment used to provide the function of a manual Cross Connection. Interconnection is between a DSX or LGX to a switch, another Cross Connection, or other service platform device.

"Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

"Digital Signal Level 0" or "DS0" is the 64 Kbps standard speed for digitizing one voice conversation using pulse code modulation. There are 24 DS0 channels in a DS1.

"Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing. There are 28 DS1s in a DS3.

"Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

"Digital Subscriber Line Access Multiplexer" or "DSLAM" is a network device that: (i) aggregates lower bit rate DSL signals to higher bit-rate or bandwidth signals

(multiplexing) and (ii) disaggregates higher bit-rate or bandwidth signals to lower bit-rate DSL signals (de-multiplexing). DSLAMs can connect DSL loops with some combination of CLEC ATM, Frame Relay or IP networks. The DSLAM must be located at the end of a copper loop nearest the Serving Wire Center (e.g., in a Remote Terminal, Central Office, or a Customer's premises).

"Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including, but not limited to, the following:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one copper pair.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

"IDSL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Directory Assistance Database" shall have the meaning set forth in Sections 10.5.2.2, 10.5.2.8, and 10.5.2.9.

"Directory Assistance Service" includes, but is not limited to, making available to callers, upon request, information contained in the Directory Assistance Database. Directory Assistance Service includes, where available, the option to complete the call at the caller's direction.

"Directory Assistance Lists" shall have the meaning set forth in Sections 10.6.1.1.

"Directory Listings" are any information: (1) identifying the listed names of subscribers of a Telecommunications Carrier and such subscriber's telephone numbers, addressees, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the Telecommunications Carrier or an Affiliate has published, caused to be published, or accepted for publication in any directory format.

"Disturber" is defined as a technology recognized by industry standards bodies that significantly degrades service using another technology (such as how AMI T1x affects DSL).

"Due Date" means the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable.

"DSX Panel" means a cross-connect bay or panel used for the termination of equipment and facilities operating at digital rates.

"Effective Date" shall have the meaning set forth in Section 1.4.

"Electronic Bonding" is real-time and secure electronic exchange of data between information systems in separate companies. Electronic Bonding allows electronic access to services which have traditionally been handled through manual means. The heart of Electronic Bonding is strict adherence to both International and National standards. These standards define the communication and data protocols allowing all organizations in the world to exchange information.

"Electronic File Transfer" means any system or process that utilizes an electronic format and protocol to send or receive data files.

"Emergency Service Number" or "ESN" is a three to five digit number representing a unique combination of Emergency Response Agencies (law enforcement, fire and emergency medical service) designed to serve a specific range of addresses within a particular geographical area. The ESN facilitates Selective Routing and transfer, if required, to the appropriate PSAP and the dispatch of proper Emergency Response Agency(ies).

"End User Customer" means a third party retail customer that subscribes to a Telecommunications Service provided by either of the Parties or by another Carrier or by two or more Carriers.

"Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on the format, content, code, protocol or similar aspects of a subscribers transmitted information; that provide the subscriber with additional, different or restructured information; or involve End-User Customer interaction with stored information.

"Enhanced 911" or "E911" shall have the meaning set forth in Sections 10.3.1.

"Environmental Hazard" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"Exchange Access (IntraLATA Toll)" as used in Section 7 is defined in accordance with Qwest's current IntraLATA toll serving areas, as determined by Qwest's state and interstate Tariffs and excludes toll provided using Switched Access purchased by an IXC. "Exchange Access" as used in the remainder of the SGAT shall have the meaning set forth in the Act.

"Exchange Message Interface" or "EMI" means the format used for exchange of Telecommunications message information among Telecommunications Carriers. It is referenced in the Alliance for Telecommunications Industry Solutions (ATIS) document that defines industry guidelines for the exchange of message records.

"Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information between telecommunications providers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, a Telcordia document that defines industry standards for exchange message records.

"Exchange Service" or "Extended Area Service (EAS)/Local Traffic" means traffic that is originated and terminated within the local calling area as determined by the Commission.

"FCC" means the Federal Communications Commission.

"Fiber Meet" means an Interconnection architecture method whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed-upon location.

"Finished Services" means complete end to end services offered by Qwest to wholesale or retail customers. Finished Services do not include Unbundled Network Elements or combinations of Unbundled Network Elements. Finished Services include voice messaging, Qwest provided DSL, Access Services, private lines, retail services and resold services.

"Firm Order Confirmation" or "FOC" means the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.

"Hub Provider" means an entity that (i) provides Common Channel Signaling (SS7) connectivity between the networks of service providers that are not directly connected to each other; or (ii) provides third party database services such as LIDB. The SS7 messages received by Hub Providers are accepted or rejected by the Hub Provider depending on whether a contractual arrangement exists between the Hub Provider and the message originator (sender) and whether the message originator has contracted for

the type of SS7 messages being submitted for transmission to the Hub Provider.

Individual Case Basis or (ICB) shall have the meaning set forth in Exhibit I.

"Information Service" is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via Telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a Telecommunications system or the management of a Telecommunications Service

"INP" or "Interim Number Portability" is a method of number portability, such as Remote Call Forwarding ("RCF") or any other comparable and technically feasible arrangement, that allows one Party to port telephone numbers from its network to the other Party's network with as little impairment of quality, reliability and convenience to the customer as possible, but does not comply with the Local Number Portability performance criteria set forth in 47 C.F.R. Section 52.23 (a).

"Integrated Digital Loop Carrier" means a subscriber Loop carrier system, which integrates multiple voice channels within the switch on a DS1 level signal.

"Integrated Services Digital Network" or "ISDN" refers to a digital circuit switched network service. Basic Rate ISDN (BRI) provides for channelized (2 bearer and 1 data) end-to-end digital connectivity for the transmission of voice or data on either or both bearer channels and packet data on the data channel. Primary Rate ISDN (PRI) provides for 23 bearer channels and 1 data channel. For BRI, the bearer channels operate at 64 Kbps and the data channel at 16 Kbps. For PRI, all 24 channels operate at 64 Kbps or 1.5 Mbps.

"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone Exchange Service traffic, Exchange Access and Jointly Provided Switched Access traffic.

"Interconnection Agreement" or "Agreement" is an agreement entered into between Qwest and CLEC for Interconnection, Unbundled Network Elements or other services as a result of negotiations, adoption and/or arbitration or a combination thereof pursuant to Section 252 of the Act. When a CLEC signs and delivers a copy of this SGAT to Qwest pursuant to the notice provision of the SGAT, it becomes the Interconnection Agreement between the Parties pursuant to Section 252(f) of the Act.

"Interexchange Carrier" or "IXC" means a carrier that provides InterLATA or IntraLATA Toll services.

"InterLATA Traffic" describes Telecommunications between a point located in a Local Access and Transport Area ("LATA") and a point located outside such area.

"IntraLATA Toll Traffic" describes IntraLATA Traffic outside the Local Calling Area.

"Interoperability" means the ability of a Qwest OSS Function to process seamlessly (i.e., without any manual intervention) business transactions with CLEC's OSS application, and vice versa, by means of secure exchange of transaction data models that use data

fields and usage rules that can be received and processed by the other Party to achieve the intended OSS Function and related response. (See also Electronic Bonding.)

"Legitimately related" terms and conditions are those rates, terms, and conditions that relate solely to the individual interconnection, service or element being requested by CLEC under Section 252(i) of the Act, and not those relating to other interconnection, services or elements in the approved Interconnection Agreement. ~~These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions for establishing the business relationship between the Parties as to that particular interconnection, service or element.~~ This definition is not intended to limit the FCC's interpretation of "legitimately related" as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction.<sup>4</sup>

"LERG Reassignment" or "NXX Reassignment" means the reassignment of an entire NXX code shown in the LERG from one Carrier to another Carrier.

"Line Information Database" or "LIDB" shall have the meaning as set forth in Section 9.15.1.1.

"Line Side" refers to End Office Switch connections that have been programmed to treat the circuit as a local line connected to a terminating station (e.g., an End User Customer's telephone station set, a PBX, answering machine, facsimile machine or computer).

"Local Access Transport Area" or "LATA" is as defined in the Act.

"Local Calling Area" is as defined by the Commission.

"Local Exchange Carrier" or "LEC" means any carrier that is engaged in the provision of telephone Exchange Service or Exchange Access. Such term does not include a carrier insofar as such carrier is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Local Exchange Routing Guide" or "LERG" means a Telcordia Technologies Reference Document used by LECs and IXC's to identify NPA-NXX routing and homing information as well as Network Element and equipment designations.

"Local Interconnection Service or "LIS" Entrance Facility" is a DS1 or DS3 facility that extends from CLEC's Switch location or Point of Interconnection (POI) to the Qwest Serving Wire Center. An Entrance Facility may not extend beyond the area served by the Qwest Serving Wire Center.

---

<sup>4</sup> AT&T has deleted the offending portions of this definition because they are inconsistent with the Act, the FCC's decisions and serve to create further ambiguity in determining those provisions that are "legitimately related." For fuller discussion of the problems associated with Qwest's execution of the "legitimately related" standard, see AT&T's closing brief.

"Local Interconnection Service" or "LIS" is the Qwest product name for its provision of Interconnection as described in Section 7 of this Agreement.

"Local Number Portability" or "LNP" shall have the meaning set forth in Section 10.2.1.1.

"Loop" or "Unbundled Loop" shall have the meaning set forth in Section 9.2.1.

"Local Service Ordering Guide" or "LSOG" is a document developed by the OBF to establish industry-wide ordering and billing processes for ordering local services.

"Local Service Request" or "LSR" means the industry standard forms and supporting documentation used for ordering local services.

"Loop Concentrator/Multiplexer" or "LCM" is the Network Element that does one or more of the following:

aggregates lower bit rate or bandwidth signals to higher bit rate or bandwidth signals (multiplexing);

disaggregates higher bit rate or bandwidth signals to lower bit rate or bandwidth signals (demultiplexing);

aggregates a specified number of signals or channels to fewer channels (concentrating);

performs signal conversion, including encoding of signals (e.g., analog to digital and digital to analog signal conversion); or

in some instances performs electrical to optical (E/O) conversion.

LCM includes DLC, and D4 channel banks and may be located in Remote Terminals or Central Offices.

"Location Routing Number" or "LRN" means a unique 10-digit number assigned to a Central Office Switch in a defined geographic area for call routing purposes. This 10-digit number serves as a network address and the routing information is stored in a database. Switches routing calls to subscribers whose telephone numbers are in portable NXXs perform a database query to obtain the Location Routing Number that corresponds with the Switch serving the dialed telephone number. Based on the Location Routing Number, the querying carrier then routes the call to the Switch serving the ported number. The term "LRN" may also be used to refer to a method of LNP.

"Main Distribution Frame" or "MDF" means a Qwest distribution frame (e.g., COSMIC™ frame) used to connect Qwest cable pairs and line and trunk equipment terminals on a Qwest switching system.

"Maintenance and Repair" involves the exchange of information between Carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combinations thereof from the other with attendant acknowledgments and status reports in order to ensure proper operation and functionality of facilities.

"Maintenance of Service charge" is a charge that relates to trouble isolation. Maintenance of Service charges are set forth in Exhibit A. Basic Maintenance of Service charges apply when the Qwest technician performs work during standard business hours. Overtime Maintenance of Service charges apply when the Qwest technician performs work on a business day, but outside standard business hours, or on a Saturday. Premium Maintenance of Service charges apply when the Qwest technician performs work on either a Sunday or Qwest-recognized holiday.

"Master Street Address Guide" or "MSAG" is a database of street names and house number ranges within their associated communities defining particular geographic areas and their associated ESNs to enable proper routing of 911 calls.

"Meet Point" is a point of interconnection between two networks, designated by two Telecommunications Carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

"Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

"Mid-Span Meet" means an Interconnection between two networks, designated by two Telecommunications Carriers, whereby each provides its own cable and equipment up to the Meet Point of the cable facilities.

"Miscellaneous Charges" mean cost-based charges that Qwest may assess in addition to recurring and non-recurring rates set forth in Exhibit A, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or non-recurring rates. Miscellaneous Charges are listed in Exhibit A.

"Multiple Exchange Carrier Access Billing" or "MECAB" refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"Multiple Exchange Carrier Ordering and Design" or "MECOD" Guidelines for Access Services - Industry Support Interface, refers to the document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC). It is published by Telcordia Technologies as SRBDS 00983.

"N-1 Carrier" means the carrier in the call routing process immediately preceding the terminating carrier. The N-1 Carrier is responsible for performing the database queries (under the FCC's rules) to determine the LRN value for correctly routing a call to a ported number.

"National Emergency Number Association" or "NENA" is an association which fosters the technological advancement, availability and implementation of 911 Service nationwide through research, planning, training, certification, technical assistance and legislative representation.

"Near Real Time" means that Qwest's OSS electronically receives a transaction from CLEC, automatically processes that transaction, returns the response to that transaction to CLEC in an automatic event driven manner (without manual intervention) via the interface for the OSS Function in question. Except for the time it takes to send and receive the transaction between Qwest's and CLEC's OSS application, the processing time for Qwest's representatives should be the same as the processing time for CLEC's representatives. Current benchmarks using TCIF 98-006 averages between two and four seconds for the connection and an average transaction transmittal. The specific agreed metrics for "near-real-time" transaction processing will be contained in the Performance Indicator Definitions (PIDs), where applicable.

"Network Element" is a facility or equipment used in the provision of telecommunications service. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

"Network Installation and Maintenance Committee" or "NIMC" is the ATIS/CLC sub-committee responsible for developing business process rules for maintenance and repair or trouble administration.

"Network Interface Device" or "NID" is a Network Element that includes any means of interconnection of Customer premises wiring to Qwest's Distribution plant, such as a cross connect device used for that purpose.

"New Service Provider" means the Party to which an End User Customer switches its local exchange service or the Party to which an End User Customer is porting its telephone number(s).

"911 Service" shall have the meaning set forth in Sections in 10.3.1.

"911/E911 Interconnection Trunk Groups" shall have the meaning set forth in Section 10.3.7.

"North American Numbering Council" or "NANC" means the federal advisory committee chartered by the FCC to analyze, advise, and make recommendations on numbering issues.

"North American Numbering Plan" or "NANP" means the basic numbering plan for the telecommunications networks located used in the United States as well as Canada, Bermuda, Puerto Rico, Guam, the Commonwealth of the Marianna Islands and certain

Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code) followed by a 3-digit NXX code and 4-digit line number.

"Number Portability Administration Center " or "NPAC" means one of the seven regional number portability centers involved in the dissemination of data associated with ported numbers. The NPACs were established for each of the seven, original Bell Operating Company regions so as to cover the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan area.

"Numbering Plan Area" or "NPA" is also sometimes referred to as an area code. It is a unique three-digit indicator that is defined by the "A," "B" and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA. "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code" (SAC Code), is typically associated with a specialized Telecommunications Service which may be provided across multiple geographic NPA areas; 500, Toll Free Service NPAs, 700, and 900 are examples of Non-Geographic NPAs.

"NXX," "NXX Code," "Central Office Code," or "CO Code" is the three digit switch entity code which is defined by the D, E and F digits of a 10 digit telephone number within the NANP.

"Ordering and Billing Forum" or "OBF" means the telecommunications industry forum, under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions, concerned with inter-company ordering and billing.

"Originating Line Information" or "OLI" is an CCS SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"Operational Support Systems" or "OSS" shall have the meaning set forth in Section 12.

"P.01 Transmission Grade of Service" means a circuit switched trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"Packet Switch" is a router designed to read the destination address in an incoming cell or packet, consult a routing table and route the packet toward its destination. Packetizing is done in originating CPE and reassembly is done in terminating CPE. Multiple packet formats or protocols exist (e.g., x.25, x.75, frame relay, ATM, and IP).

"Parity" means the provision of non-discriminatory access to Interconnection, Resale, Unbundled Network Elements and other services provided under this Agreement to the extent legally required on rates, terms and conditions that are non-discriminatory, just and reasonable. Where technically feasible, the access provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself, its End User customers, its Affiliates or to any other party.

"Party" means either Qwest or CLEC and "Parties" means Qwest and CLEC.

"Percent Local Usage" or "PLU" is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes sent between the Parties over Local Interconnection Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Performance Indicator Definitions" or "PIDs" shall have the meaning set forth in Exhibit B.

"Plant Test Date" or "PTD" means the date acceptance testing is performed with CLEC.

"Physical Collocation" shall have the meaning set forth in Section 8.1.1.

"Pole Attachment" shall have the meaning set forth in Section 10.8.1.

"Point of Interface", "Point of Interconnection," or "POI" is a demarcation between the networks of two LECs (including a LEC and CLEC). The POI is that point where the exchange of traffic takes place.

"Point of Presence" or "POP" means the Point of Presence of an IXC.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office switch but does not include switch features. The Port serves as the hardware termination for line or trunk side facilities connected to the Central Office switch. Each line side port is typically associated with one or more telephone numbers that serve as the customer's network address.

"POTS" means plain old telephone service.

"Power Spectral Density or "PSD" Masks" are graphical templates that define the limits on signal power densities across a range of frequencies to permit divergent technologies to coexist in close proximity within the same Binder Groups.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop Concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Product Catalog" or "PCAT" is a Qwest document that provides information needed to request services available under this Agreement. Qwest agrees that CLEC shall not be held to the requirements of the PCAT. The PCAT is available on Qwest's Web site:

<http://www.uswest.com/wholesale/pcat/>

"Project Coordinated Installation" allows CLEC to coordinate installation activity as prescribed in section 9.2.2.9.7.

"Proof of Authorization" ("POA"). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection of its local service provider.

"Proprietary Information" shall have the same meaning as Confidential Information.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services or Unbundled Network Elements or combinations thereof from the other with attendant acknowledgments and status reports.

"Pseudo Automatic Number Identification" or "Pseudo-ANI" is a number, consisting of the same number of digits as ANI, that is not a NANP telephone directory number and may be used in place of an ANI to convey special meaning, determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

"Public Safety Answering Point" or "PSAP" is the public safety communications center where 911/E911 calls for a specific geographic area are answered.

"Public Switched Network" includes all switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the NANP in connection with the provision of switched services.

"Rate Center" identifies 1) the specific geographic point identified by specific vertical and horizontal (V&H) coordinates, which are used to measure distance sensitive End User Customer traffic to/from the particular NPA-NXX designations with the specific Rate Center; and 2) the corresponding geographic area which is associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of Telephone Exchange Services.

"Ready for Service" or "RFS" – A Collocation job is considered to be Ready for Service when Qwest has completed all operational work in accordance with CLEC Application and makes functional space available to CLEC. Such work includes but is not necessarily limited to: DC power (fuses available, Battery Distribution Fuse Board (BDFB) is powered, and cables between the CLEC and power are terminated), cage enclosures, primary AC outlet, cable racking, and circuit terminations (e.g., fiber jumpers are placed between the outside plant fiber distribution panel and the central office fiber distribution panel serving CLEC) and APOT/CFA are complete, telephone service, and other services and facilities ordered by CLEC for provisioning by the RFS date.

"Records Issue Date" or "RID" means the date that all design and assignment information is sent to the necessary service implementation groups.

"Remote Call Forwarding" or "RCF" means the INP method that redirects calls within the telephone network. If an End User Customer changes its local service provider from one Party to the other Party, using RCF, the old service provider's switch will route the End User Customer's calls to the new service provider by translating the dialed number into another telephone number with an NXX corresponding to the new service provider's switch. The new service provider then completes the routing of the call to its new End User Customer.

"Remote Premises" means all Qwest Premises other than Qwest Wire Centers or adjacent to Qwest Wire Centers. Such Remote Premises include controlled environmental vaults, controlled environmental huts, cabinets, pedestals and other remote terminals.

"Remote Terminal" or "RT" means a cabinet, vault or similar structure at an intermediate point between the End User and Qwest's Central Office, where Loops are aggregated and hauled to the Central Office or Serving Wire Center using LCM. A Remote Terminal may contain active electronics such as digital loop carriers, fiber hubs, DSLAMs, etc.

"Reseller" is a category of CLECs who purchase the use of Finished Services for the purpose of reselling those Telecommunications Services to their End User Customers.

"Reserved Numbers" means those telephone numbers which are not in use but which are held in reserve by a Carrier under a legally enforceable written agreement for a specific End User Customer's future use.

"Scheduled Issued Date" or "SID" means the date the order is entered into Qwest's order distribution system.

"Selective Router" means the equipment necessary for Selective Routing.

"Selective Routing" is the automatic routing of 911/E911 calls to the PSAP that has jurisdictional responsibility for the service address of the caller, irrespective of telephone company exchange or Wire Center boundaries. Selective Routing may also be used for other services.

"Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point (SSP), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue call processing.

"Service Creation Environment" is a computer containing generic call processing software that can be programmed to create new Advanced Intelligent Network call processing services.

"Service Provider Identification" or "SPID" is the number that identifies a service provider to the relevant NPAC. The SPID may be a state specific number.

"Serving Wire Center" denotes the Wire Center from which dial tone for Local Exchange Service would normally be provided to a particular Customer premises.

"Service Date" or "SD" means the date service is made available to the End User Customer. This also is referred to as the "Due Date."

"Shared Transport" shall have the meaning set forth in Section 9.8.1.1.

"Signaling Transfer Point" or "STP" means a Packet Switch that performs message routing functions and provides information for the routing of messages between signaling end points, including SSPs, SCPs, Signaling Points (SPs) and other STPs in order to set up calls and to query call-related databases. An STP transmits, receives and processes Common Channel Signaling ("CCS") messages.

"Signaling System 7" or "SS7" is an out-of-band signaling protocol consisting of four basic sub-protocols:

- 1) Message Transfer Part ("MTP"), which provides functions for basic routing of signaling messages between signaling points;
- 2) Signaling Connection Control Part ("SCCP"), which provides additional routing and management functions for transfer of messages other than call setup between signaling points;
- 3) Integrated Services Digital Network User Part ("ISUP"), which provides for transfer of call setup signaling information between signaling points; and
- 4) Transaction Capabilities Application Part ("TCAP"), which provides for transfer of non-circuit related information between signaling points.

"Special Request Process" or (SRP) shall have the meaning set forth in Exhibit F.

"Spectrum Compatibility" means the capability of two Copper Loop transmission system technologies to coexist in the same cable without service degradation and to operate satisfactorily in the presence of crosstalk noise from each other. Spectrum compatibility is defined on a per twisted pair basis for specific well-defined transmission systems. For the purposes of issues regarding Spectrum Compatibility, service degradation means the failure to meet the Bit Error Ratio (BER) and Signal-to-Noise Ratio (SNR) margin requirements defined for the specific transmission system for all loop lengths, model loops, or loss values within the requirements for the specific transmission system.

"Splitter" means a device used in conjunction with a DSLAM either to combine or separate the high (DSL) and low (voice) frequency spectrums of the loop in order to provide both voice and data over a single loop.

"Stand-Alone Test Environment" or ("SATE") shall have the meaning set forth in Section 12.2.9.3.2.

"Subloop" shall have the meaning set forth in Section 9.3.1.1.

"Suspended Lines" means subscriber lines that have been temporarily disconnected.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Service" means the offering of transmission and switching services to Interexchange Carriers for the purpose of the origination or termination of telephone toll service. Switched Access Services include: Feature Group A, Feature Group B,

Feature Group D, 8XX access, and 900 access and their successors or similar Switched Access Services.

"Switched Access Traffic" as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's end users and terminates at an IXC point of presence, or originates at an IXC point of presence and terminates at one of the Party's end users, whether or not the traffic transits the other Party's network.

"Synchronous Optical Network" or "SONET" is a TDM-based (time division multiplexing) standard for high-speed fiber optic transmission formulated by the Exchange Carriers Standards Association ("ECSA") for the American National Standards Institute ("ANSI").

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs, price lists, and price schedules.

"Technically Feasible." Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Equipment" means equipment, other than Customer Premises Equipment, used by a Carrier to provide Telecommunications Services, and include software integral to such equipment, including upgrades.

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a service within a telephone exchange, or within

a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"TELRIC" means Total Element Long-Run Incremental Cost.

"Toll Free Service" means service provided with any dialing sequence that invokes Toll Free, i.e., 800-like, service processing. Toll Free Service currently includes calls to the Toll Free Service 800/888/877/866 NPA SAC codes.

"Transaction Set" is a term used by ANSI X12 and elsewhere that denotes a collection of data, related field rules, format, structure, syntax, attributes, segments, elements, qualifiers, valid values that are required to initiate and process a business function from one trading partner to another. Some business function events, e.g., pre-order inquiry and response are defined as complimentary transaction sets. An example of a Transaction Set is service address validation inquiry and service address validation response.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Unbundled Network Element" is a network element that has been defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, or for which unbundled access is provided under this Agreement.

"Unbundled Network Element Platform (UNE-P)" – is a combination of Unbundled Network Elements as set forth in Section 9.23.

"UNE Combination" means a combination of two (2) or more Unbundled Network Elements that were or were not previously combined or connected in Qwest's network, as required by the FCC, the Commission or this Agreement.

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an

aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here, but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act. **what's this?**

"Virtual Collocation" shall have the meaning set forth in Sections 8.1.1.1 and 8.2.2.1.

"Voluntary Federal Subscriber Financial Assistance Programs" are Telecommunications Services provided to low-income subscribers, pursuant to requirements established by the Commission or the FCC.

"Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped or recycled, associated with activities CLEC or Qwest or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or by products), except for substances and materials that CLEC, Qwest or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. Waste shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of Basic Exchange Telecommunications Services and Access Services, are located.

"Wired and Office Tested Date" or "WOT" means the date by which all intraoffice wiring is completed, all plug-ins optioned and aligned, frame continuity established, and the interoffice facilities, if applicable, are tested. This includes the date that switching equipment, including translation loading, is installed and tested.

"Work Locations" means any real estate that CLEC or Qwest, as appropriate, owns, leases or licenses, or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Terms not otherwise defined here, but defined in the Act and the orders and the rules implementing the Act, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

**IN THE MATTER OF U S WEST )  
COMMUNICATIONS, INC.'s )  
COMPLIANCE WITH SECTION 271 )  
OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )**

**Docket No. T-0000B-97-238**

**BRIEF OF AT&T REGARDING PUBLIC INTEREST AND TRACK A**

**(PUBLIC VERSION)**

**I. Public Interest.**

The fundamental problem with Qwest's presentation on the issue of public interest is that it improperly downplays, and in some instances completely ignores, the real and substantial market power which Qwest has, and its ability and incentive to use that market power to exclude competitors from the local exchange marketplace. The result is an almost bizarre bid on the part of the company to obtain from this Commission a willing suspension of disbelief akin to that of a movie-goer at a screening of Cocoon: according to Qwest, competition in Arizona will never get sick, and it will live forever.

The plain and simple fact is that Qwest cannot presently satisfy its burden to show that its interLATA authorization would be "consistent with the public interest, convenience, and necessity." 47 U.S.C. 271(d)(3)(C). Qwest has not demonstrated

compliance with the 14 point check list. But even more importantly, checklist compliance alone is not sufficient to satisfy the public interest requirement:

In making our public interest assessment, we cannot conclude that compliance with the checklist alone is sufficient to open a BOC's local telecommunications markets to competition. If we were to adopt such a conclusion, BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist. Such an approach would effectively read the public interest requirement out of the statute, contrary to the plain language of section 271, basic principles of statutory construction, and sound public policy....<sup>1</sup>

As the FCC has repeatedly confirmed, "the public interest requirement is independent of the statutory checklist and, under normal canons of statutory construction, requires an independent determination."<sup>2</sup> It requires the Commission "to review the circumstances presented by the applications to ensure that no other *relevant factors* exist that would frustrate the congressional intent that markets be open."<sup>3</sup> In short, the essence of the public interest inquiry is for the Commission to determine whether, notwithstanding checklist compliance, the BOC applicant's local markets are irreversibly open to competition.

---

<sup>1</sup> *In the Matter of the 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 20543 (1997), at para. 389.

<sup>2</sup> See, for example, *In the Matter of the Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, 2001 FCC LEXIS 1202, (2001) at para. 267; *In the Matter of the 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 18354 (2000), at para. 417; and *In the Matter of the 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 (1999), at para. 423.

<sup>3</sup> E.g., the *Kansas-Oklahoma 271 Order* at para. 267 (emphasis supplied); *New York 271 Order* at para. 423.

As shown below, numerous “relevant factors” confirm that local markets in Arizona are not by any means open to competition today, and—absent significant steps on the part of Qwest—will not be open to competition in the near future.

Qwest’s own data show that there is virtually no UNE-based competition for residential customers today. Moreover, there is no genuine prospect for increased UNE-based residential competition in the near future. Contrary to the letter and spirit of the federal Telecommunications Act of 1996, Qwest has blocked competitive entry using UNEs and UNE-P, and is forcing competitors to resort to the construction of separate facilities in order to enter the local market.

**A. Qwest Maintains Monopoly Power  
over Residential Service.**

There is no meaningful UNE-based competition for residential customers in Arizona today. This lack of competition is a factor directly relevant to whether the local market is open. To be sure, the FCC has repeatedly declined to identify a minimum market share that CLECs must capture before the commission will declare a market to be open. But this Commission need not impose a minimum market share in order to take into account the fact that *no* CLECs today are able to mount any kind of meaningful competitive threat whatsoever to Qwest’s monopoly control over residential local service in the state.

Even the data presented during the June 12 workshop show that CLEC penetration in Arizona to date is minimal and, in particular, facilities-based and

UNE-based competition for residential service is anemic.<sup>4</sup> David Teitzel, testifying on behalf of Qwest in these proceedings, has estimated aggregate CLEC competition in Arizona to consist of only [PROPRIETARY: XXXXXXXXX] of residential lines state-wide, with CLEC-owned facilities in the state accounting for little more than [PROPRIETARY: XXXXXXXX]. See 7 Qwest 16, confidential Teitzel exhibit DLT 2C. However, during the workshop, testimony from Brad Carroll indicated that Cox Arizona Telecom, certainly the primary facilities-based competitor for residential service and virtually the only such competitor, currently has approximately [PROPRIETARY: XXX] residential access lines in service in the state. Comparing this to Qwest's total of [PROPRIETARY: XXXXXXXXX] residential access lines means that facilities-based competition in Arizona accounts for less than [PROPRIETARY: XXXXXXXXX] of the residential local exchange market, a percentage that is substantially lower than Qwest's own estimate of CLEC penetration in North Dakota.<sup>5</sup>

More telling is the situation relating to UNE and UNE-P competition in the

---

<sup>4</sup> During the course of the workshop, it was decided to suspend cross examination on much of the data presented by Mr. Teitzel on behalf of Qwest. Transcript pp. 306-315. As a result, in this brief AT&T has limited the scope of its discussion of the data presented by Qwest which purports to estimate CLEC market presence. AT&T asserts that such data is unreliable. To the extent that Qwest's brief, or any other presentations, decisions, orders, recommendations, or results rely upon estimated CLEC market share, AT&T would note its objection here for the record. Such estimates have not been subject to review or cross-examination by the parties. In addition, AT&T is unaware of any release of CLEC line count data to the parties. In an effort to preserve the proprietary nature of CLEC line count data, AT&T has filed a Motion for Extraordinary Protective Order here; however, to AT&T's knowledge there has been no ruling on that Motion.

<sup>5</sup> See Teitzel Direct, confidential exhibit DLT-8, in the multi-state proceedings, Idaho Public Utilities Commission Docket No. USW-T-00-3, Iowa Utilities Board Docket No. INU-00-2, Montana Public Service Commission Docket No. D2000.5.70, North Dakota Public Service Commission Docket No. PU-314-97-193, Utah Public Service Commission Docket No. 00-049-08, Wyoming Public Service Commission Docket No. 70000-TA-00-599, and New Mexico Public Regulation Commission Docket No. 3269 ("Multi-State Proceedings").

residential local exchange market. By its own admission, Qwest is providing only [PROPRIETARY: XXXXX] unbundled loops in the entire state of Arizona.<sup>6</sup> Qwest has not provided any break down of this total between business and residential, and apparently would concede that all unbundled loops are used by CLECs to provision business services.<sup>7</sup> Thus, it is clear that UNE and UNE-P competition in the residential local exchange market in Arizona has been stymied and is simply non-existent.

When attention is turned to the resale market for residential service, the situation is very similar. Qwest's records demonstrate that there are only [PROPRIETARY: XXXXXXXXXXXXX] resold residential lines in the state, accounting for little more than [PROPRIETARY: XXXXXXXX] of the overall residential lines in service.

The fact is that Qwest retains a strangle hold on the residential market for local exchange service in Arizona. Each of the three available avenues to competitive entry—resale, UNE provisioning, and construction of facilities—is effectively blocked. According to available data, Qwest retains between [PROPRIETARY: XXXXXXXXXXXX XXXXXXXX] of the residential market in Arizona. And even millions of dollars worth of smoke and mirrors will not hide that fact.

**B. The Evidence of Insufficient Margins Demonstrates  
that Qwest's Local Residential Markets  
are Closed to Competition.**

Another relevant factor is whether, under prevailing UNE rates, competitive entry

---

<sup>6</sup> 7 Qwest 16, Affidavit of David L. Teitzel, confidential exhibit DLT-2C.

<sup>7</sup> The total number of unbundled loops in service, on the first line of confidential exhibit DLT-2C, does not enter the calculation of CLEC residential lines found on the ninth and sixteenth line of that exhibit. In order to arrive at that figure, Qwest adds resold residential access lines to its own estimate of CLEC-owned facilities providing residential service. As a result, Qwest has conceded that UNEs are not being used to provide residential service in Arizona. In view of the pricing disparity detailed in section B of the Public Interest portion of this brief, *supra*, this is certainly a reasonable conclusion.

is economically viable. As the FCC acknowledged in its *Ameritech Michigan 271 Order*, *supra*, “efficient competitive entry into the local market is vitally dependent upon appropriate pricing of the checklist items,” (*id.*, at para. 281), and so competitive pricing is obviously “a relevant concern in [the FCC’s] public interest inquiry under section 271(d)(3)(C).” *Id.*, at para. 288. That remains true whether or not a state commission has made a finding that UNE rates comply with TELRIC, because the FCC has made it clear that it is prepared to find that a wide range of rates can satisfy TELRIC. Accordingly, where the evidence indicates that UNE rates, set at the upper boundary of TELRIC, preclude competitors from profitably using UNEs to enter the local market, that fact is clearly relevant to whether the local market is open. In those circumstances, the fact that UNE-based entry is unprofitable need not necessarily entail a review of the applicant’s retail rates, for it would also be open to the BOC and the state commission to set new TELRIC rates at the lower, rather than the upper, reaches of what the FCC’s rules permit.

In the instant case, however, this analysis is simplified by the fact that, here in Arizona, Qwest’s UNEs are not priced according to TELRIC principles. Instead, UNEs are priced considerably above cost. The pricing of UNEs in excess of economic cost creates a clear barrier for CLEC entry into Qwest’s local residential market in Arizona. Although Mr. Teitzel states that Qwest has entered into interconnection agreements that provide for “cost-based pricing of access, interconnection, and unbundled network elements and for wholesale discounts to reflect avoided costs,”<sup>8</sup> the fact is that Qwest’s pricing is far from cost-based, and has been a primary factor in keeping its local, residential markets closed to competition.

---

<sup>8</sup> 7 Qwest 16, Teitzel Direct, p. 55, lines 14-16.

As demonstrated below, UNE rates are so high in comparison to retail rates, that CLECs cannot compete with Qwest for residential customers using the UNE-Platform (“UNE-P”):

Monthly Recurring Charges (“MRCs”)		Non-Recurring Charges (“NRCs”)	
UNE-P <sup>9</sup>	1FR	UNE-P	1FR
\$26.18	\$13.18	\$83.50	\$46.50

In other words, Qwest’s monthly recurring charges (“MRCs”) on the wholesale side are almost double Qwest’s own retail rates for residential lines; and the wholesale non-recurring charges which CLECs must pay Qwest for UNE-P are approximately 80 percent higher than the non-recurring charges Qwest’s retail customers pay.

Although Qwest may argue that competitors “have not availed themselves” of the opportunity to compete in Arizona using the UNE-Platform, the fact of the matter is that UNE-P pricing stands as an insurmountable barrier to such entry. Moreover, the FCC has made it clear that one important aspect of any public interest analysis is the question of whether and to what extent *all* statutory paths to competition are open:

[A]s we noted at the outset of this Order, it is essential to local competition that the various methods of entry contemplated by the 1996 Act be truly available. The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent’s network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large).<sup>10</sup>

<sup>9</sup> All UNE-P MRCs include analog loop, analog port, 750 minutes of local usage, and 400 minutes of shared transport.

<sup>10</sup> *Ameritech Michigan 271 Order*, para. 391.

In the instant case, the record demonstrates that the UNE path to residential competition is blocked as a result of the pricing disparity outlined above.<sup>11</sup>

The fact that local entry is unprofitable at prevailing UNE rates is, on its face, precisely the sort of “relevant factor” that “would frustrate the congressional intent that markets be open” before interLATA entry is approved, *Bell Atlantic New York 271 Order*, para. 423, particularly because it is obvious that local entry “is vitally dependent on appropriate pricing” of UNEs. *Ameritech Michigan 271 Order*, para. 281. Put simply, regardless of a BOC’s checklist compliance (which has not even been remotely demonstrated here by Qwest), if CLECs cannot profitably enter local telephone markets, then those markets, as a practical matter, are not open to competition. Because the fundamental purpose of section 271 is to bar BOC entry until such time as local markets are open to competition, the profitability of entry is necessarily relevant to the public interest analysis.<sup>12</sup>

The record in these proceedings demonstrates unequivocally that even a perfectly efficient CLEC could not profitably compete to provide local residential service in any of the states at issue here. This analysis confirms not only that unduly high UNE rates are helping keep CLEC customer-volumes low, but that the local residential market will remain closed to competition at least until such time as those rates are substantially reduced.

---

<sup>11</sup> See 7 AT&T 2, Rasher Direct at pages 7-9. The Commission is evaluating the existing UNE prices in the current cost case, Docket No. T-00000A-00-0194.

<sup>12</sup> The profitability of entry is also relevant to the competitive checklist because the inability for competitors to enter profitably is a strong indication that UNE prices exceed the incumbent’s costs, and thus violate the Act and the FCC’s pricing rules. While not conclusive proof of a checklist violation, such evidence is grounds for each individual state commission to conduct a more rigorous determination as to whether the applicant’s UNE prices are cost-based.

### **C. Prospects for Facilities-Based and UNE-Based Residential Competition are Poor.**

The obstacles to UNE-based residential competition are particularly important because neither resale nor facilities-based competition is likely to provide a significant, viable source of competition for Qwest during any foreseeable timeframe. Resale is an inherently limited competitive vehicle, because the competitor cannot alter the nature of the service it is reselling, and thus cannot provide competitors with innovative or improved service. And in any case, resale is priced in a manner that precludes its use in all but the most selectively chosen circumstances.<sup>13</sup>

The prospects for facilities-based competition are not brighter. In stark contrast to Qwest's dominant position, the CLEC industry now faces significant obstacles in raising the capital necessary to compete broadly with Qwest and the other BOCs. Competitive LECs have become "marginalized" because they do not "own the strategic assets" necessary to compete but must "rely on the ubiquitous Bell network," a network that remains largely closed to new entrants.<sup>14</sup> Qwest's anti-competitive actions, coupled with adverse market conditions, have now threatened the minute level of CLEC market penetration that existed in the local market. Despite five years and millions of dollars of investment, CLECs and Data Local Exchange Carriers ("DLECs") have been kept at bay

---

<sup>13</sup> The avoided cost discount has proven inadequate to provide CLECs a basis for profitable entry for most consumers. For example, as monopolists, the incumbents do not face (and therefore do not "avoid") the huge customer acquisition costs that CLECs confront, nor do they face the lack of economies of scale that a new entrant must address. For all of these reasons, CLECs seeking—over the long term—to provide a broad-based, significant competitive alternative to the incumbents' local residential monopoly cannot do so through the resale of local service.

<sup>14</sup> See 7 AT&T 2, Rasher Direct at 22, quoting J. Whitman, *New Entrants: Battling the Bells*, Wall Street Journal, at R17 (Sept. 18, 2000).

by Qwest's anti-competitive actions, and have been unable to make any significant inroads into Qwest's local markets. These same CLECs and DLECs are now suffering from the drought in the capital funding market and have either succumbed or are clinging precariously to life support. ICG Communications, Convergent Communications, Jato Communications, GST Telecommunications, eSpire, Pathnet, NorthPoint, PSINet, 360Networks, Inc., Winstar Communications, Inc., Teligent, REAnet, Rhythms NetConnections, Inc., and Covad Communications are all examples of CLECs and DLECs that have filed for bankruptcy in the last twelve months. And the list continues to grow.

In March, 2000, four of the major DLECs—Covad, NorthPoint, Rhythms, and DSL.Net—had a combined market capitalization of \$21.4 billion. One year later, the combined market capitalization of these DLECs was less than \$0.4 billion, or approximately 2 cents on the dollar compared to their standing a year ago. CLECs have not fared much better. The combined market capitalization of five major CLECs has collapsed from \$16.9 billion in March, 2000, to \$1.2 billion a year later, or approximately 7 cents on the dollar. Among the larger IXC's, AT&T, MCI WorldCom, and Sprint, have collectively lost over \$280 billion in market capitalization in the last year.<sup>15</sup>

Even SBC Communications, *itself a BOC*, has found it impossible to break into Qwest's monopoly local markets. Under the terms of its acquisition of Ameritech, two years ago, SBC had agreed to enter thirty new markets throughout the United States. It has now closed most of its newly-opened regional sales offices, including (in the Qwest service territory) Denver, Minneapolis, and Seattle.

---

<sup>15</sup> 7 AT&T 2, Rasher Direct, page 23.

Qwest might attempt to argue that some of these CLECs' and DLECs' problems stem from poor management, under-financing, or other sources. However, the point that cannot be ignored is that there is a trilogy of factors common to all of these carriers: their dependence on Qwest for interconnection, Qwest's poor level of wholesale service quality, and the excessive prices which Qwest charges for that interconnection.

At the same time that Qwest was successfully driving its DSL competitors out of the market, it ran full-page ads in local newspapers capitalizing on consumer's fears regarding the reliability of DSL providers, touting its own DSL service, and mocking the demise of the DSL providers. See Rasher Exhibit 8. Qwest also sent an e-mail with a similar message to its customers after Jato Communications folded its operations. See Rasher Exhibit 9. And more recently, Qwest's advertising campaign has included a message warning customers that changing to a CLEC "might not be worth the headaches." See attachment A to this brief. This message is particularly troublesome in view of the fact that Qwest's own anticompetitive behavior has been a significant factor in creating the very headaches it warns against.

As a result of these and other strategies, Qwest now leads the market in DSL penetration and plans to double its DSL customer base in 2001.<sup>16</sup> Meanwhile, its competitors are in shambles. Moreover, Qwest's anticompetitive behavior does not stop with its pricing and advertising practices, but extends much further. Many of the specifics of Qwest's anti-competitive behavior are being addressed in the Checklist Workshops. Still, it is instructive, and relevant from a public interest perspective, to

---

<sup>16</sup> 7 AT&T 2, Rasher Direct, page 24, quoting Qwest's annual report for the year 2000.

outline at least some of the more blatant abuses which competitors have suffered at the hands of Qwest. See Section E, *infra*.

In the face of all this, Qwest also maintains a “Competitive Response Program” which “provides incentives to former customers who have left Qwest for a local exchange competitor to consider returning once again to Qwest.”<sup>17</sup> In other words, new entrants are not just competing against Qwest’s existing prices and service quality, they must also compete against additional “incentives” which Qwest can present to a customer immediately upon receiving word of a disconnection. AT&T shares the concerns expressed by Mr. Carroll on behalf of Cox Arizona Telecom, when he stated:

[W]e feel that it’s quite unusual for Qwest, given the...dominant market power that it has in the state, the sheer number of commercial and residential access lines, having well over 90 percent of the market in Arizona at this point in time, to have something like this, a tariff that they can utilize to essentially go to customers that they have lost to competition for the purpose of taking them back to maintain the kind of market dominance that they currently have.

June 12 Transcript, at p. 178.

This is especially true where, as here, new entrants are completely dependent upon Qwest for their success. The very process of “cutting over” a customer to a new entrant requires the full cooperation of Qwest, and any difficulties that the customer experiences in the course of that cutover will reflect not on Qwest, but on the new entrant. Furthermore, these potential difficulties can occur in a variety of ways, from glitches in number portability, to the timing of service activation and disconnection, to delays in order processing. Qwest, in short, has innumerable opportunities—intentionally or not—to make a new entrant look bad in the eyes of the customer.<sup>18</sup>

---

<sup>17</sup> 7 Qwest 17, Teitzel Rebuttal, p. 9-11.

<sup>18</sup> June 12 Transcript, p. 274, line 25, through p. 275, line 3.

In this context, Qwest's Competitive Response Program calls into question the incentives which Qwest may have, now and in the future, to make the cutover process seamless to customers and competitors. Also, when viewed in light of Qwest's various advertising programs, *supra*, the Competitive Response Program begs the question of whether Qwest is in fact bringing to bear the necessary and appropriate resources to open its local markets, in a manner consistent with the letter and spirit of the federal Telecommunications Act of 1996.

The critical element relating to the prospects for competition is that Qwest does not provide the same level of service to its wholesale customers that it provides to its retail customers. The net effect of that anti-competitive and discriminatory behavior is that the prospects for facilities-based and UNE-based competition are poor. Moreover, this situation is aggravated by the current well-publicized drought in available capital. For now, and in the immediate future, progress toward a competitive local exchange market is stalled, and customers and competitors are unable to reap the benefits of competition envisioned by Congress and the states. The local exchange market is not open, and it would therefore be premature and contrary to the public interest to allow Qwest into the interLATA market.

**D. Qwest's Proposed InterLATA Market Entry Will Not Make that Market More Competitive.**

Qwest argues that it should be allowed into the interLATA market in order to provide a "one-stop shopping" alternative to customers in geographic areas which "CLECs have decided are not attractive to serve at this time." Teitzel Direct at 55.

Qwest also states that it is somehow “ironic” that Qwest is the only local exchange carrier not allowed to compete for intrastate, interLATA business.<sup>19</sup>

The fact is that Qwest’s entry into the long distance market is entirely inconsistent with the public interest because Qwest’s exorbitant intrastate access rates, priced significantly above cost, provide it with a source to subsidize its other products and services. These access rates are set out in detail on the record in 7 AT&T 2, Rasher Direct, at page 9. Briefly, however, Qwest’s current intrastate access charges in Arizona stand at approximately \$0.034 per “originating” access minute, and \$0.0467 per “terminating” access minute.<sup>20</sup> The FCC, on the other hand, has established an interstate access target rate for BOCs of \$0.0055 per access minute, or slightly more than one-half cent per access minute.<sup>21</sup> The costs of providing intrastate access are no different than the costs of providing interstate access. Moreover, the FCC target rate is based on a variety of cost studies, and is therefore a proper surrogate for the cost of intrastate

---

<sup>19</sup> Far from being “ironic,” however, the prohibition on Qwest’s entry into the interLATA marketplace is firmly grounded in law, and in a recognition of the RBOCs’ ability (including Qwest’s) to abuse competitors by means of their control over bottleneck local exchange facilities. Initially, the prohibition was put into force and effect by the U.S. District Court as a result of the largest and most extensive antitrust litigation in history. See *United States v. American Tel. and Tel. Co.*, 552 F.Supp. 131 (1982). Subsequently, the prohibition became part of the Telecommunications Act of 1996, P.L. 104-104, codified at 47 U.S.C. 271(a) and 271(b). The legislative history of the federal Act reveals that Qwest’s predecessor, U S WEST, supported passage of the federal Act, including the prohibition mentioned. The fact that Qwest now finds this prohibition “ironic” demonstrates its continuing efforts to downplay—or, as here, its hope and expectation that others will completely ignore—the substantial market power which it wields.

<sup>20</sup> An “access” minute is either the originating or terminating end of a call. A “conversation” minute combines both the originating and terminating ends of a call. Carriers are billed for access on both ends of a call, or “per conversation minute.” However, an IXC might be billed by one ILEC for both originating and terminating access, or it might be billed by one ILEC for “originating” access on a call, and another ILEC for “terminating” access, depending on where the call begins and where the call ends. Thus, if access charges are quoted at a rate of \$0.034 per “originating” access minute, and \$0.0467 per “terminating” access minute, the charges for access paid by the IXC will ultimately be \$0.0807 per “conversation” minute. See 7 AT&T 2, at p. 9.

<sup>21</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, FCC No. 00-193, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (released May 31, 2000), §61.3(qq), p. B-21.

switched access, at least until Qwest's actual costs for intrastate access have been expressly determined.

For toll calls that originate and terminate in Arizona (*i. e.*, a two-sided call, which is also termed a "conversation minute"), using the interstate target rate as a cost surrogate, it is conservative to estimate that Qwest's intrastate access rates are approximately 733.6 percent in excess of its costs.

So, for example, with Qwest's intrastate access charges set at current levels, Qwest's competitors will be required to pay more than eight cents per minute for access. This means that, for an IXC to make money on that call, it must charge its own end user a minimum of 8.07 cents per minute, plus the IXC's own costs, including network costs, call set-up, and other costs and overhead. Essentially, however, 8.07 cents per minute (plus its own costs) represents a floor below which the IXC cannot price that call.

On the other hand, Qwest's *cost* of providing *itself* access—as opposed to its *price* for providing access to IXCs—is only about one cent per conversation minute (using the FCC target rate as a surrogate for cost). Clearly, then, Qwest can price its own retail long distance service well below eight cents per minute and still make money.

At the present time, most states have "imputation" requirements, which means that Qwest must "impute" within its own retail rates the access rates it charges other carriers. And on the face of things, this might appear to be an equitable arrangement: after all, so long as imputation requirements are in place, Qwest is unable to undercut its competitors prices. However, the problem is that ultimately, when companies are competing head to head, the question becomes, "Which company has the stronger margins?" That company will ultimately be the winner.

Competition within the interLATA long distance market is strong today because incumbent monopoly local exchange carriers, including Qwest, have been excluded from that market. The excessive margins they derive from access are not a factor in the interLATA market because these ILECs are not able to compete head to head in that market. But were Qwest to enter the interLATA long distance market, it would be able to bundle its local service with a long distance offering.<sup>22</sup> Competitors, not afforded the same monopoly subsidization contained in intrastate switched access rates, will be squeezed out of *both* the local and long distance markets. Rather than being a boon to consumers, as Qwest has portrayed it, the notion that Qwest might provide “one stop shopping” where others cannot will actually sound a death knell for competition in those markets. The result, rather than fostering and encouraging competition, will be the remonopolization of the local and long distance markets.

This Commission must address Qwest’s anti-competitive, exorbitant access charges *before* Qwest receives approval to provide in-region interLATA services in Arizona.<sup>23</sup> The forward-looking economic cost for Qwest to provide access to itself for intrastate long distance calls is substantially less than the price that Qwest charges IXCs for the same, identical access. As demonstrated above, Qwest’s competitors will be

---

<sup>22</sup> As it did illegally in 1997 and 1998. See discussion in Section E of this brief, *infra*. See also *AT&T Corporation, et. al. v. U S West Communications, Inc., and Qwest Corporation*, file No. E-98-42 (consolidated with File Nos. E-98-41 and E-98-43), FCC 98-242, Memorandum Opinion And Order (rel. to the public October 7, 1998) para. 52.

<sup>23</sup> AT&T is encouraged in this regard by actions taken by state commissions, including Arizona, to examine access pricing policies. For example, the Colorado Commission has opened Docket No. 001-494T to examine all forms of intercarrier compensation. In addition, the Montana Commission has opened a docket to examine the impact of access charge prices on interLATA competition in a post-271 environment. See *In the Matter of the Commission’s Investigation of the Need to Reduce Qwest’s Carrier Access Charge Rates with Associated and Necessary Rebalancing and Mitigation Measures*, Utility Division Docket No. D2001.6.76 (Montana, June 28, 2001).

disadvantaged by a perpetuation of the current access pricing structure, unless it is corrected prior to Qwest's entry into the in-region long distance market. To allow that entry prior to fixing access rates at or near the true cost of providing access will be contrary to the public interest, and will ultimately damage or destroy the vibrant competition which currently exists in the interLATA marketplace.

**E. Qwest has Exhibited a Constant and Continuing Pattern of Anti-Competitive Behavior.**

Another relevant factor which the FCC takes into account when examining whether a 271 application is in the public interest is whether the BOC has cooperated in opening its local market to competition, or whether it has engaged in tactics to stall or frustrate market entry. To quote the FCC directly in this regard:

Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anti-competitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.<sup>24</sup>

Thus, evidence that a BOC has either (1) disobeyed federal or state telecommunications regulations or (2) engaged in a pattern of anticompetitive conduct, is sufficient to demonstrate that the BOC has not cooperated in opening its local market to competition. The evidence that Qwest has not cooperated in opening its local market to

---

<sup>24</sup> *Ameritech Michigan 271 Order*, para. 397.

competition is particularly compelling because the evidence consists of *both* types of behavior.

There is no question that Qwest (and its predecessor USWest) has outinely disobeyed federal telecommunications regulations. Indeed, the company now know as Qwest violated section 271 as early as April, 1997, when the federal Act was little more than one year old. Without opening its local markets to competition and without even seeking FCC approval, Qwest entered the long distance market in violation of the statutory framework involved in these multi-state proceedings. The FCC ruled this year, three and a half years after the complaint was filed, that:

In sum, USWest's participation in the long distance market through its 1-800-4USWEST Service enables it to obtain significant competitive advantages...The Service allows USWest to build goodwill with its local-service customers, depicting itself as a full-service provider prior to receiving section 271 approval. Indeed, the full-service, or one-stop shopping, advantages provided by the Service appear to have been USWest's primary objective in implementing the Service in the first place. As the Commission held in the *1-800-AMERITECH Order*, these competitive advantages could reduce USWest's incentive to open its local market to competition and, thus, run counter to Congress's intent in enacting section 271.<sup>25</sup>

Similarly, in another proceeding, the FCC found that the former USWest's "provision of nonlocal directory assistance service to its in-region subscribers constitutes the provision of in-region, interLATA service as defined in section 271(a) of the Act."<sup>26</sup> So, once again, Qwest provided in-region, interLATA service without first demonstrating

---

<sup>25</sup> *In the Matter of AT&T Corporation v. US WEST Communications, Inc., In the Matter of MCI Telecommunications Corporation, Inc. v. US WEST Communications, Inc.*, Memorandum Opinion and Order, Adopted February 14, 2001, Released February 16, 2001, DA 01-418, para. 19. Footnotes omitted.

<sup>26</sup> *See Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of US WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, Memorandum Opinion and Order, FCC 99-133 (rel. Sept. 27, 1999), paras. 2, 63.

that its local markets were open to competition, without FCC approval, and in violation of Section 271.

In yet a third proceeding, the FCC addressed USWest's pre-merger business arrangement with Qwest, and Ameritech's similar arrangement with Qwest.<sup>27</sup> Under the business arrangement, USWest and Ameritech provided their local customers with a "one-stop shopping" opportunity that included interLATA services, without first opening their local markets to competition, without FCC approval, and in violation of Section 271.<sup>28</sup> With the local market not open to competition, the results of offering local customers one-stop shopping were astoundingly anti-competitive. By leveraging its dominance in the local market to gain long distance customers, USWest persuaded 130,000 of its local customers to purchase Qwest's long distance service in just four weeks of marketing the one-stop shopping program.<sup>29</sup> Consequently, if Qwest is granted 271 relief before its local markets are open to competition, the same anti-competitive results will occur. Qwest will be able to leverage its dominance in the local market and extend it into the long distance market.

Qwest's violations of Section 271 are ongoing. Through review of Qwest's April 16, 2001 Auditor's Report and the accompanying certification submitted to the FCC as required in the FCC's approval of the Qwest-USWest merger, AT&T discovered Qwest's further violations of Section 271. The Auditor's Report finds that in-region private line services for 266 large business customers were "billed and branded as Qwest services"

---

<sup>27</sup> *AT&T Corporation, et. al. v. US West Communications, Inc., and Qwest Corporation*, file No. E-98-42 (consolidated with File Nos. E-98-41 and E-98-43), FCC 98-242, Memorandum Opinion And Order (rel. to the public October 7, 1998) para. 52.

<sup>28</sup> *Id.*, para. 44.

<sup>29</sup> *Id.*

and that revenues associated with these services from July 2000 through March 2001 exceeded \$2.2 million. Through its branding of in-region interLATA transport services as its own, Qwest has once again violated Section 271, and there is no knowing when Qwest will stop doing so.

AT&T has requested that the FCC take action against Qwest for its continuing violations of Section 271.<sup>30</sup> Good grounds exist to believe that Qwest is further violating section 271 by reason of its teaming arrangements with long distance carriers to provide long distance services to federal agencies located within Qwest's local region.

Most recently, Touch America, Inc., has filed a complaint against Qwest asserting *inter alia* that, contrary to its obligations under both section 271 and the USWest merger agreement, Qwest continues to market and provide in-region interLATA services through its "Q-Wave" service, which provides interLATA capable dark fiber facilities. See *Touch America, Inc. v. Qwest Communications International, Inc.*, Cause No. CV 01 148 M-DWM, U.S. District Court, District of Montana, Missoula Division (J. Molloy), filed August 22, 2001.

Also related to Qwest's outright violations of section 271 are Qwest's efforts in Arizona and other states to make an end run around the law and provide long distance service without opening its local market to competition and without FCC approval. Qwest sought to remove the LATA boundary within Arizona by asking this Commission to abolish the boundary. Qwest's plan was that once the LATA boundary was gone, Qwest could provide long distance service throughout the state because such service could not be characterized as "interLATA service" within the prohibitions of section 271.

---

<sup>30</sup> See 7 AT&T 2, Rasher Direct, exhibit 1.

The FCC responded by threatening to initiate charges against USWest (now Qwest) if it were to proceed with its plan.<sup>31</sup>

Although Qwest may claim to welcome competition with open arms, its actions demonstrate that it actually seeks entrance into the long distance market without fulfilling its obligation to let other carriers into its local markets. Qwest has a long history of maintaining its firm grip on its local markets through the use of anti-competitive behavior. Other examples include:

- Qwest's violation of state and federal law (and violation of its interconnection agreement with AT&T) in Minnesota by its refusal to cooperate with various testing procedures. The matter is currently before the Minnesota Public Utilities Commission.
- Qwest's refusal to provide access to NIDs and inside wiring at multi-tenant dwellings in the state of Washington. Qwest's behavior reached a new level of outrageousness here, and included ripping out wiring installed by AT&T technicians, and padlocking control panels to exclude competitors.
- Qwest's failure and refusal to convert SunWest Communications' customers from resale lines to UNEs in Colorado. In addition, Qwest has deliberately failed to provide interconnection to SunWest customers, depriving them of telephone service entirely.
- Qwest's apparently deliberate delay in providing interconnection to MCI Metro in the state of Washington, which recently caused WUTC Chair Levinson to write: "This is a consistent pattern of behaviors that all operated to USWest's advantage, gave it undue preferences, and subjected MCI to an undue competitive disadvantage and improper discrimination."
- Qwest's refusal to provide Rhythms, and other competitors, with ADSL- capable loops and ISDN-capable loops in Colorado and throughout the 14 Qwest states.<sup>32</sup>

Although these examples are state-specific, Qwest's operating systems, processes and training are region-wide. Thus, it is reasonable to conclude that this same anti-

---

<sup>31</sup> 7 AT&T 2, Rasher Direct, exhibit 2.

<sup>32</sup> For additional details on these violations, see 7 AT&T 2, Rasher Direct, pp. 15-21.

competitive behavior by Qwest is not restricted by state boundary. These examples make it clear that Qwest continues to have no intention of opening its local market.

Qwest's numerous past and ongoing violations of section 271, coupled with its continuing efforts to avoid compliance, should cause this Commission to conclude that Qwest has truly failed and refused to open its local markets in compliance with section 271. The Commission should also lack confidence that Qwest will comply with section 271 in the future.<sup>33</sup>

**F. Qwest has not Provided Adequate Assurances that its  
Local Markets, Once Opened to Competition,  
Will Remain So.**

Another factor the FCC considers under the public interest requirement is whether the BOC has provided adequate assurance that its local markets will remain open to competition if the FCC grants 271 relief and allows the BOC to enter the interLATA market in its service region.<sup>34</sup> Mr. Teitzel's testimony indicates that Qwest will rely on a Performance Assurance Plan ("PAP") to demonstrate such assurance.<sup>35</sup> However, because Mr. Teitzel does not present a version of the PAP for consideration, it is impossible to find in his testimony any assurance whatsoever of future market openness. The closest to an assurance which Mr. Teitzel can offer here is in his direct testimony, when he states:

While I am not an expert on the Qwest PAP, I do know that Qwest has developed its plan by adopting the statistical testing and payment structure

---

<sup>33</sup> See *Ameritech Michigan 271 Order*, para. 399, "[W]e need to be confident that we can rely on the petitioning BOC to continue to comply with the requirements of section 271 after receiving authority to enter into the long distance market." It is difficult to have such confidence with Qwest, given its history of noncompliance with Section 271.

<sup>34</sup> *SBC Texas 271 Order*, para. 420; *SBC Kansas/Oklahoma 271 Order*, para. 269.

<sup>35</sup> See 7 Qwest 16, Teitzel Direct, p.44.

elements of the SBC plans that have been reviewed and approved by the FCC in SBC's 271 applications in Texas, Kansas, and Oklahoma.<sup>36</sup>

In fact, while the PAP was filed with the Arizona Commission last May, it has yet to be finalized. See June 12 Transcript, pp. 295-6. One must speak of the Arizona PAP, if at all, in the future tense. It is currently the subject of a number of impasse issues which have been briefed and which are now before the Commission for resolution. At this point, it is certainly premature to characterize the PAP as providing any assurances that Qwest's markets, once open, will remain so. The resolution PAP-related issues in Arizona is clearly a work in progress at this time.

Thus, even assuming that at some time in the future Qwest's local markets will be open to competition (a point which AT&T does not concede), Qwest has not yet provided any genuine assurances that its local markets will remain open to competition.

Furthermore, Qwest has consistently and vigorously resisted any and all attempts to establish backsliding penalties in the various states. For example, Iowa House Study Bill ("HSB") 158 had sought to (1) establish continuing standards for the provision of interconnection by ILECs to competitors; (2) allow competitors to pursue private rights of action in order to enforce those continuing standards; and (3) allow for the recovery of actual and punitive damages by competitors harmed by any failure on the part of ILECs to meet those continuing standards. Qwest's direct and vigorous opposition to this bill is another strong indicator of its true intention regarding any accountability once it has received 271 relief.

Qwest has made a shell game of the question of state and federal authority over any PAP, claiming to state authorities that jurisdiction resides with the FCC, and

---

<sup>36</sup> Id.

claiming in front of the FCC that such authority resides with the states. For example, before the New Mexico Public Regulation Commission, Qwest argued:

The aforementioned subsections of proposed Rule 17.11.18 address quality of service standards, performance measures, minimum performance standards and financial incentives relating to the failure to achieve minimum performance standards. These proposed rules are unnecessary and conflict with the federal rules; therefore they should not be adopted by the Commission.<sup>37</sup>

In Minnesota, Qwest again challenged the State Commission's authority to establish wholesale quality service standards. Qwest argued federal preemption over quality of service standards proposed by the MPUC.<sup>38</sup>

However, at the FCC, Qwest argued:

**States do not need guidance with respect to implementation of Sections 251 and 252.** They have primary jurisdiction over privately-negotiated contracts under those sections, and have been exercising such authority through legislatively-endorsed mediation and arbitration authority unencumbered by federal rules regarding performance measurements for quite some time... There are considerable jurisdictional questions around the establishment of federal performance measurements under Sections 251 and 252.<sup>39</sup>

Furthermore, Qwest has resisted any efforts to make a performance assurance plan mandatory. Qwest informed the Executive Committee for the Regional Oversight Committee ("ROC") for the Operational Support Systems ("OSS") test effort currently

---

<sup>37</sup> *Before the New Mexico Public Regulation Commission, In The Matter Of The Adoption Of A Rule Ensuring The Accessibility Of Interconnection By Competitive Local Exchange Carriers In Both Urban And Rural Areas Of New Mexico Pursuant To House Bill 400*, Utility Case No. 3439, Qwest's Comments To The Proposed Rules For Interconnection And Unbundled Network Elements, p. 19.

<sup>38</sup> *Before the Minnesota Public Utilities Commission ("MPUC"), In the Matter of Qwest Wholesale Service Quality Standards*, MPUC Docket No. P421/AM-00-849, Qwest Corporation's Reply Comments Regarding The Joint Proposal For Qwest Wholesale Service Quality Standards, January 25, 2001.

<sup>39</sup> *Before the Federal Communications Commission; In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56; RM-9101, Comments of U S WEST Communications, Inc.; June 2, 1998, p. 15 (bolded text included in the original U S WEST filing, footnote omitted) and p. 20 (footnote omitted).

underway, that “a performance assurance plan is not a 271 requirement, nor is it designed to prove 271 compliance. Instead, *it is a voluntary undertaking*, which creates future obligations with significant corresponding penalties. *Qwest cannot allow* a voluntary undertaking of this magnitude to be subject to modification through an informal ROC governance process where the lines are not clearly drawn between negotiations participants and decision makers.”<sup>40</sup>

AT&T believes that “adequate assurances” that markets will remain open after a grant of 271 authority should not begin and end with a PAP. Instead, the Commission should look to a combination of potential rights and remedies, including:

- Automatic and self-executing penalties imposed by a PAP;
- Private rights of action for violation of interconnection agreements, wholesale service quality standards, state rules and regulations, and federal law;
- A wide spectrum of potential remedies, including fines payable to the state general fund, penalties payable directly to a CLEC’s end user customers, recovery of actual and punitive damages; and imposition of other penalties and assessments.

Consideration should also be given to the structural separation of Qwest’s wholesale and retail operations. There is a clear, fundamental conflict of interest between Qwest’s relationship with its retail customers, on the one hand, and its relationship with its wholesale customers on the other. Since the passage of the federal Act, Qwest and its predecessor USWest have failed and refused to recognize any of their obligations to wholesale customers. The only way to remedy this situation is to require the structural separation of Qwest’s retail group from its wholesale operations, and require the retail group to buy from Qwest’s wholesale group in the same way that CLECs do.

---

<sup>40</sup> Letter from R. Steven Davis, Qwest, Senior Vice President, Policy and Law, to Bob Rowe, Allan Thoms, Marilyn Showalter, Stephen F. Mecham, Anne Boyle, Ray Gifford, and Ed Garvey, December 15, 2000, p. 2, (emphasis added).

Until a comprehensive approach is taken to eliminate Qwest's anti-competitive behavior, with proper safeguards in place to curb Qwest's discriminatory treatment of CLECs, it is premature for the Commission to determine whether the public interest would be served by Qwest's entry into the long distance market. The clear danger here is that, absent such an approach, the result will be a remonopolization of the local and long distance markets in Arizona.

## II. Track A

In addition to the foregoing analysis, which shows that Qwest has failed and refused to open its local markets to competition as required by the federal Act, and that the likelihood of those markets being open in the immediate future is virtually non-existent, Qwest has also failed to sustain its burden of demonstrating compliance under the so-called "Track A" pathway to 271 compliance.

The standard for determining compliance with 47 U.S.C. 271(c)(1)(A) ("Track A") is as follows:

- a) The RBOC must have entered into one or more binding agreements that have been approved by a state commission in accordance with section 252;
- b) The agreement or agreements must specify the terms and conditions under which the RBOC is providing access and interconnection for one or more unaffiliated competing providers of telephone exchange service;
- c) The agreement or agreements must relate to the provision of exchange service by the unaffiliated competing provider, which is a "commercial alternative" to Qwest, is "operational," and is providing telephone exchange service to residential and business subscribers for a fee;
- d) The competing provider is providing exchange service to a significant number of customers (more than a *de minimis* number) either exclusively

over its own facilities, or “predominantly” over its own facilities in combination with resale of another provider’s services.<sup>41</sup>

Qwest’s burden is to establish each Track A element in each state in which it seeks approval to provide interLATA service.<sup>42</sup> However, Mr. Teitzel’s testimony, on both direct and rebuttal, fails to demonstrate compliance with either items (c) or (d) here in Arizona.

In his rebuttal, Mr. Teitzel infers that the only way to satisfy these two requirements to AT&T’s satisfaction would be to submit tariffs, price lists, or catalogs for each provider.<sup>43</sup> But this is certainly not true, and misses the point of AT&T’s testimony in these proceedings.

The problem is that none of the competitors which Qwest names in support of its “item (c) claim” can be considered a *commercial alternative* to Qwest until those competitors have the ability to provide service on the same level of quality as Qwest, and are able to handle order volumes of a significant—or “commercial”—volume. Qwest has not demonstrated that, and indeed AT&T’s testimony in these proceedings proves the exact opposite, namely that such parity certainly does not yet exist.<sup>44</sup> The issue here is not the competence or lack of competence of the new entrants, but rather the absence of

---

<sup>41</sup> *Ameritech Michigan 271 Order*, paras. 71, 74, and 75. See also *Application of SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, FCC 97-228, Memorandum Opinion and Order (rel., June 26, 1997), paras. 14, 17.

<sup>42</sup> See *SBC Kansas/Oklahoma 271 Order*, paras. 41-43 (Kansas Track A), and para. 44 (Oklahoma Track A).

<sup>43</sup> 7 Qwest 17, Teitzel Rebuttal, at 14.

<sup>44</sup> This issue is being examined more thoroughly in other workshops, *viz.*, those dealing with OSS issues. However, even in the public interest workshop there has been discussion of the numerous problems confronting new entrants, and preventing them from operating at parity with Qwest. See, *e.g.*, June 12 Transcript at p. 179, lines 18-21, where Mr. Carroll, on behalf of Cox Arizona Telecom, describes as “significant” the difficulties Cox has experienced with respect to number portability. See also June 12 Transcript at p. 275, lines 16-24, where Mr. Price, on behalf of WorldCom, discusses Qwest’s poor performance record in providing special access connections to new entrants.

appropriate procedures and practices on the part of Qwest. The question, in short, is whether or not Qwest's own systems will allow for the seamless processing of orders from new entrants, in what could reasonably be considered to be commercial volumes. That has not been demonstrated here.

Track A does not envision a grant of 271 authority to Qwest or any other RBOC when the first embryonic CLEC begins its initial attempts to provide service. Nor does it entail the creation and propping up of a competitive straw man or two by Qwest. The notion that competitors must be providing a true "commercial alternative" must be given meaning, and that will only occur when CLECs stand on a par with Qwest in the provisioning of service, and, most importantly, in the handling of orders.

Qwest has the data in its possession to prove, or disprove, the existence of such "commercial alternatives." It has not presented any of that data here, however.

Similarly, Qwest's case is insufficient to establish its compliance with "item (d)" above. This element requires a showing that competing carriers are providing service to a "significant" number of business and residential subscribers, either exclusively over their own facilities, or "predominantly" over their own facilities, in combination with resale. In his direct testimony, Mr. Teitzel asserts first that there are "conservatively" over 214,000 access lines now served by CLECs in Arizona, and secondly that this total satisfies the "significant" threshold. 7 Qwest 16, Teitzel Direct, at pp. 30-32.

AT&T disputes the accuracy of Qwest's estimated CLEC line count, as well as Qwest's assertion that the number of business and residential customers served by CLECs in Arizona is "significant." In addition, Qwest has not demonstrated that those

business and residential customers are being served by new entrants either “exclusively” or “predominantly” over the new entrants’ own facilities.

The available data indicate that competitors are serving only a minute sliver of the residential customers in Arizona. See section A of the Public Interest portion of this brief, *supra*. As for business customers, the available data are based on estimates generated by Qwest, and challenged by AT&T. Qwest admits that it has no knowledge of the number of CLEC-owned loops. 7 Qwest 16, Teitzel Direct, at p. 31, lines 12-13. However, Qwest’s estimate of CLEC-owned loops is premised on the false notion that a statistical link exists between the number of ported numbers and Qwest-provided unbundled loops, on the one hand, and CLEC-owned facilities, on the other. 7 Qwest 16, Teitzel Direct, at p. 31. AT&T has attempted to challenge Qwest’s methods but was prevented from doing so on the record. June 12 Transcript at pp. 221-250. These estimates also purport to lend credence to Qwest’s assertion that CLECs are serving this “significant” number of business and residential customers either “exclusively” or “predominantly” over their own facilities. However, the fact remains that there is no evidence on the record to support this assertion.

AT&T therefore stands by its initial position, expressed during the workshop, that Qwest has failed to demonstrate that a “significant” number of business customers are being served by CLECs in the state of Arizona either “exclusively” or “predominantly” over the CLECs’ own facilities. Qwest has therefore failed to demonstrate compliance with Track A here in Arizona.

### III. Conclusion

The record in these proceedings demonstrates that Qwest has failed to satisfy the requirements of Track A, and has failed and refused to open its local markets to competition as required by section 271 of the federal Act. Indeed, Qwest retains an obvious stranglehold on the local exchange market, and especially the residential market, in Arizona. Moreover, the prospects for the development of competition in those markets are, at present, extremely poor.

In addition, the record shows that Qwest's proposed entry into the interLATA market will not make that market more competitive; in fact, quite the contrary. Qwest's proposed entry, without a prior adjustment to access charge rates and pricing structure, will result in one player having substantially greater margins on its own long distance services, and having the unique ability to profit from calls placed over its competitors' facilities.

Qwest's continued pattern of anti-competitive behavior, and violation of state and federal law present additional impediments to its 271 application, especially in the context of a public interest analysis. The public interest will not be served by rewarding this constant and prolonged behavior through a grant of 271 authority.

Lastly in this regard, the record here shows a complete lack of appropriate, adequate assurances that Qwest will keep its local exchange markets open, once they are made open to competitors. The PAP upon which Qwest relies here is at best a work in progress, lacking in finality, and deeply flawed in its current iteration.

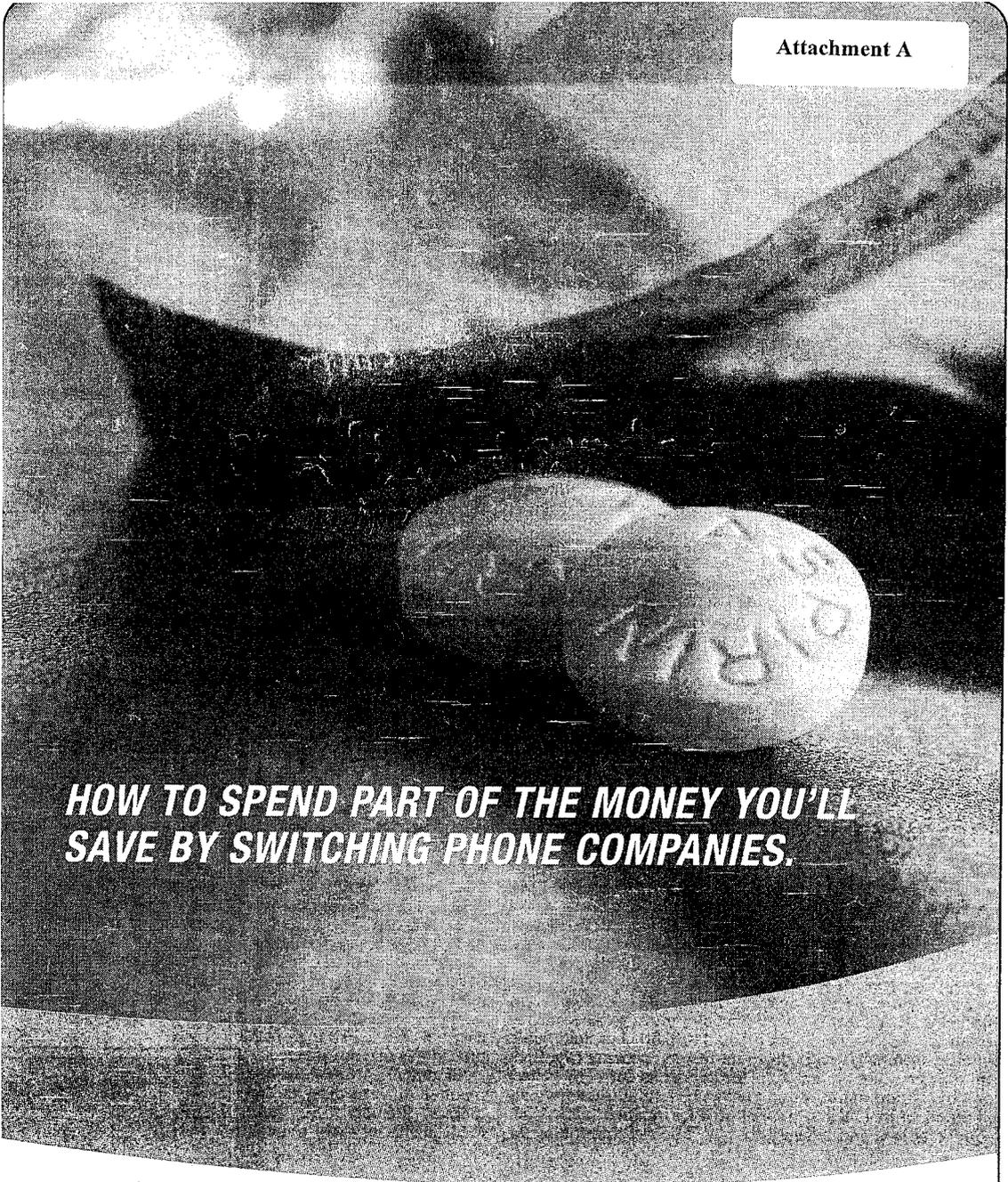
Pure and simple, it is not presently in the public interest for Qwest to be granted authority to provide in-region long distance service on an interLATA basis. The

Commission should deny Qwest's application for that authority until such time as the numerous public interest issues have been properly resolved.

Respectfully submitted this 18<sup>th</sup> day of September, 2001.

**AT&T COMMUNICATIONS  
OF THE MOUNTAIN STATES, INC.  
AND AT&T LOCAL SERVICES ON  
BEHALF OF TCG PHOENIX**

By: *Gary B. Witt*  
Mary B. Tribby  
Gary Witt  
AT&T Law Department  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202  
(303) 298-6163



**HOW TO SPEND PART OF THE MONEY YOU'LL  
SAVE BY SWITCHING PHONE COMPANIES.**

Thinking of switching your local phone service? The savings might not be worth the headaches. Because you won't find the broad choice of features you've come to expect. And you may start getting a handful of invoices instead of one easy, consolidated bill. Call us at 1-888-561-7691 for more information. And stay connected with Qwest.<sup>®</sup> It's not just smarter. It's painless.

*"My experience has been that all of the rigmarole and the offers of saving money and this type of thing, I'm better off if I stick with who I know."*

*— Dick Dahlgard  
Returned Qwest Customer*

ride the light  
**Qwest**

Broadband Internet Voice Dex Wireless

## CERTIFICATE OF SERVICE

I certify that the originals and 10 copies each of AT&T's Closing Brief on General Terms & Conditions and SGAT Sections 11, 12, 17, 18 & Exhibits F & I, AT&T's Supplemental Filing to Update the Record on General Terms & Conditions Concerning the SGAT Section Related to Definitions, and the public version\* of AT&T's Brief Regarding Public Interest and Track A in Docket No. T-00000A-97-0238 were sent by overnight delivery on September 18, 2001 to:

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

and true and correct copies were sent by overnight delivery on September 18, 2001 to:

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

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

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

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

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

and true and correct copies were sent by U. S. Mail on September 18, 2001 to:

Thomas F. Dixon \*  
WorldCom, Inc.  
707 – 17<sup>th</sup> Street, #3900  
Denver, CO 80202

Terry Tan \*  
WorldCom, Inc.  
201 Spear Street, 9th Floor  
San Francisco, CA 94015

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

Bradley Carroll  
Cox Arizona Telcom, L.L.C.  
1550 West Deer Valley Road  
Phoenix, AZ 85027

\* The public version of AT&T's Brief Regarding Public Interest and Track A has information redacted that Qwest claims is proprietary. The unredacted pages are being filed under seal with the Commission and sent to Qwest and to parties that AT&T is aware of who have signed a confidentiality agreement.

Michael M. Grant  
Gallagher and Kennedy  
2575 East Camelback Road  
Phoenix, AZ 85016-9225

Gena Doyscher  
Global Crossing Local Services, Inc.  
1221 Nicollet Mall, Suite 300  
Minneapolis MN 55403

Traci Kirkpatrick  
Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue  
Portland, OR 97201

Michael W. Patten  
Roshka Heyman & DeWulf, PLC  
400 North Fifth Street, Suite 1000  
Phoenix, AZ 85004-3906

Joyce Hundley  
United States Dept. of Justice  
Antitrust Division  
1401 H Street NW, Suite 8000  
Washington, DC 20530

Daniel Pozefsky  
Residential Utility Consumer Office  
2828 North Central Ave., #1200  
Phoenix, AZ 85004

Mark N. Rogers  
Excell Agent Services, L.L.C.  
2175 W. 14th Street  
Tempe, AZ 85281

Mark P. Trinchero  
Davis Wright Tremaine  
1300 SW Fifth Ave., Suite 2300  
Portland OR 97201-5682

Penny Bewick  
New Edge Networks  
3000 Columbia House Blvd., Suite 106  
Vancouver, WA 98661

Thomas H. Campbell  
Lewis & Roca LLP  
40 N. Central Avenue  
Phoenix, AZ 85004

Karen L. Clauson  
Eschelon Telecom, Inc.  
730 2nd Avenue South, Suite 1200  
Minneapolis, MN 55402

Joan S. Burke  
Osborn Maledon, P.A.  
2929 N. Central Avenue, 21<sup>st</sup> Floor  
Phoenix, AZ 85067-6379

Eric S. Heath  
Sprint Communications Company L.P.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Jeffrey W. Crockett  
Snell & Wilmer, LLP  
One Arizona Center  
Phoenix, AZ 85004-0001

Todd C. Wiley  
Gallagher & Kennedy, P.A.  
2575 East Camelback Road  
Phoenix, AZ 85016-9225

Michael B. Hazzard  
Kelley, Drye & Warren, LLP  
1200 19th Street, NW, Fifth Floor  
Washington, DC 20036

Andrew Crain \*  
Qwest Corporation  
1801 California Street, Suite 4900  
Denver, CO 80202

Daniel Waggoner  
Davis Wright Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Janet Livengood  
Regional Vice President  
Z-Tel Communications, Inc.  
601 S. Harbour Island Blvd., Suite 220  
Tampa, FL 33602

Timothy Berg \*  
Fennemore Craig, P.C.  
3003 North Central Ave., #2600  
Phoenix, AZ 85012

Charles W. Steese \*  
Qwest Corporation  
1801 California Street, Suite 4900  
Denver, CO 80202

Raymond S. Heyman  
Randall H. Warner  
Roshka Heyman & DeWulf  
Two Arizona Center  
400 N. Fifth Street, Suite 1000  
Phoenix, AZ 85004

Bill Haas  
Richard Lipman  
McLeodUSA Telecommunications  
Services, Inc.  
6400 C Street SW  
Cedar Rapids, IA 54206-3177

Diane Bacon, Legislative Director  
Communications Workers of America  
Arizona State Council  
District 7 AFL-CIO, CLC  
5818 N. 7th Street, Suite 206  
Phoenix, AZ 85014-5811

Mark Dioguardi  
Tiffany and Bosco, P.A.  
500 Dial Tower  
1850 North Central Ave.  
Phoenix, AZ 85004

Andrea P. Harris  
Senior Manager, Regulatory  
Allegiance Telecom, Inc.  
2101 Webster, Suite 1580  
Oakland, CA 94612

Brian Thomas  
Vice President – Regulatory  
Time Warner Telecom, Inc.  
520 S.W. 6th Avenue, Suite 300  
Portland, OR 97204

K. Megan Doberneck  
Covad Communications Company  
7901 Lowry Blvd.  
Denver, CO 80230

