



0000023276

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

OCT - 3 2001

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

DOCKETED BY 

5
6 IN THE MATTER OF U. S. WEST
COMMUNICATIONS, INC.'S COMPLIANCE
7 WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

DECISION NO. 64060

ORDER

8
9 Open Meeting
September 13, 2001
10 Phoenix, Arizona

11 **BY THE COMMISSION:**

12 Having considered the entire record herein and being fully advised in the premises, the
13 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. The Federal Telecommunications Act of 1996 ("1996 Act") added Section 271 to the
16 Communications Act of 1934. The purpose of Section 271 is to specify the conditions that must be
17 met in order for the Federal Communications Commission ("FCC") to allow a Bell Operating
18 Company ("BOC"), such as Qwest Corporation ("Qwest" or the "Company"), formerly known as US
19 WEST Communications, Inc. ("US WEST")¹ to provide in-region interLATA services. The
20 conditions described in Section 271 are intended to determine the extent to which local phone service
21 is open to competition.

22 2. Section 271 (c)(2)(B) sets forth a fourteen point competitive checklist which specifies
23 the access and interconnection a BOC must provide to other telecommunications carriers in order to
24 satisfy the requirements of Section 271. Section 271 (d)(2)(B) requires the FCC to consult with state
25 commissions with respect to the BOC's compliance with the competitive checklist. Also Subsection
26 (d)(2)(A) requires the FCC to consult with the United States Department of Justice.

27 3. In Decision No. 60218 (May 27, 1997) the Commission established a process by

28 ¹ For purposes of this Order, all references to US WEST have been changed to Qwest.

1 which Qwest would submit information to the Commission for review and a recommendation to the
2 FCC whether Qwest meets the requirements of Section 271 of the 1996 Act.

3 4. On February 8, 1999, Qwest filed a Notice of Intent to File with the FCC and
4 Application for Verification of Section 271(c) Compliance ("Application"), and a Motion for
5 Immediate Implementation of Procedural Order. On February 16, 1999, AT&T Communications of
6 the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications
7 Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI WorldCom, Inc., on behalf of its
8 regulated subsidiaries ("MCIW"), and e-spire Communications, Inc. ("e-spire") filed a Motion to
9 Reject Qwest's Application and Response to Qwest's Motion.

10 5. On March 2, 1999, Qwest's Application was determined to be insufficient and not in
11 compliance with Decision No. 60218. The Application was held in abeyance pending
12 supplementation with the Company's Direct Testimony, which was ordered pursuant to Decision No.
13 60218 and the June 16, 1998 Procedural Order. On March 25, 1999, Qwest filed its supplementation.

14 6. By Procedural Order dated October 1, 1999, the Commission bifurcated Operational
15 Support System ("OSS") related Checklist Elements from non-OSS related elements. The Procedural
16 Order categorized Checklist Items 3, 7, 8, 9, 10, 12 and 13 as being non-OSS related.

17 7. In its December 8, 1999 Procedural Order, the Commission instituted a collaborative
18 workshop process to evaluate the non-OSS Checklist Items. The December 8, 1999 Procedural Order
19 directs Staff to file draft proposed findings of fact and conclusions of law for review by the parties
20 within 20 days of each Checklist Item being addressed. Within ten days after Staff files its draft
21 findings, the parties are to file any proposed additional or revised findings and conclusions. Staff has
22 an additional ten days to issue its Final Recommended Report.

23 8. For "undisputed" Checklist Items, the Commission Staff submits its Report directly to
24 the Commission for consideration at an Open Meeting. For "disputed" Checklist Items, Commission
25 Staff submits its report to the Hearing Division, with a procedural recommendation for resolving the
26 dispute.

27 9. On August 16, 2000, the first Workshop on Checklist Item No. 1 (Interconnection and
28 Collocation), No. 11 (Number Portability) and No. 14 ("Resale") took place at Hewlett-Packard's

1 offices in Phoenix. Parties appearing at the Workshop included Qwest, / T&T, Sprint, ELI, MCIW,
2 Rhythms Links, Inc. ("Rhythms") and the Residential Utility Consumer Office ("RUCO"). Qwest
3 relied on its testimony submitted in March 1999 and a Supplemental Affidavit filed on June 30, 2000.
4 AT&T, MCIW, Rhythms and ELI filed Additional Comments on August 3, 2000. Qwest filed
5 Rebuttal Comments on August 10, 2000.

6 10. On February 13, 2001, another Workshop convened to resolve outstanding issues
7 regarding Checklist Item Nos. 1 and 14.

8 11. The parties were able to resolve many issues at the two workshops, but were unable to
9 come to agreement on two issues concerning Checklist Item 14, which are "disputed".

10 12. Pursuant to the June 12, 2000, Procedural Order, on June 26, 2001, Staff filed its
11 Proposed Findings of Fact and Conclusions of Law for Checklist Item No. 14 ("Proposed Report").

12 13. No party filed comments on Staff's Proposed Report.

13 14. On July 27, 2001, Staff filed its Final Report on Qwest's Compliance with Checklist
14 Item No. 14 - Resale. On August 2, 2001, Staff filed a revised Final Report that corrected several
15 non-substantive errors in the July 27, 2001 Final Report. A copy of Staff's revised July 27, 2001,
16 Final Report is attached hereto as Exhibit A and incorporated herein by reference.

17 15. On August 6, 2001, Qwest filed Comments on the August 1, 2001 Final Report,
18 reiterating its opposition to what it terms "double recovery" by CLECs for service quality incidents:
19 once under its Service Quality Tariff and once under the proposed Performance Assurance Plan
20 ("PAP"). Qwest's comments include the resolution of the same issue by the facilitator in the Multi-
21 State proceeding. Qwest stated it is prepared to accept all of Staff's other recommendations in the
22 Final Report.

23 16. On August 20, 2001, AT&T filed a Motion to strike Qwest's Comments on the Final
24 Report on the grounds that the June 12, 2000 Procedural Order does not allow for further comment
25 by the parties unless the Hearing Division sets the matter for further briefing or argument, and
26 because Qwest's comments act to add arguments never placed in the workshop record.

27 17. We find that the existing record is sufficiently developed to resolve the disputed issues
28 relating to Checklist Item No. 14 without a hearing.

1 18. The first disputed issue is whether language in Qwest's Statement of Generally
2 Available Terms ("SGAT") Sections 6.4.1 and 6.6.3 pertaining to misdirected calls to another carrier
3 is appropriate. The revised Final Report discusses this issue in paragraphs 117 through 122.

4 19. Section 6.4.1 of Qwest's SGAT provides in relevant part:

5 "CLEC, or CLEC's agent, shall act as the single point of contact for its end users'
6 service needs CLEC's end users contacting Qwest in error will be instructed to
7 contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to
8 contact Qwest. In responding to calls, neither Party shall make disparaging remarks
9 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 or 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 users
who call the other Party."

10 20. AT&T and MCIW believe the current language in SGAT Section 6.4.1 would permit
11 Qwest to use misdirected calls as a marketing opportunity to win back the CLEC customer. AT&T
12 suggested adding the phrase "seeking such information" to the end of Section 6.4.1. MCIW
13 concurred with AT&T.

14 21. Qwest argues that AT&T's proposed language is not needed or appropriate as it is not
15 proper to limit Qwest's ability to talk with a caller about subjects the caller asks about. Qwest also
16 believes it would be difficult to enforce the restriction.

17 22. Staff believes that AT&T and MCIW raise a legitimate concern and that end users that
18 mistakenly call Qwest should be instructed to contact their respective CLEC without being subjected
19 to a marketing attempt to switch carriers, unless the end user requests that information. Staff,
20 therefore, recommends that AT&T's proposed language be adopted and that Qwest should modify its
21 SGAT accordingly.

22 23. We concur with Staff, and in its Comments to the Final Report, Qwest accepts Staff's
23 recommended resolution of this issue. Qwest should modify SGAT Section 6.4.1 such that the final
24 phrase reads as follows: "however, nothing in this Agreement shall be deemed to prohibit Qwest or
25 CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other
26 Party seeking such information."

27 24. The second impasse issue is whether the indemnification language contained in SGAT
28 Sections 6.2.3.1 and 6.2.3.2 is appropriate. The revised Final Report discusses this issue in

1 paragraphs 123 through 130.

2 25. Section 6.2.3 of Qwest's SGAT 4th Revision, issued February 12, 2001 provides as
3 follows:

4 6.2.3 Qwest shall provide to CLEC Telecommunication Services for resale that are at least
5 equal in quality and in substantially the same time and manner that Qwest provides
6 these services to itself, its subsidiaries, its affiliates, other resellers, and Qwest's retail
7 end users. Qwest shall also provide resold services to CLEC in accordance with the
8 Commission's retail service quality requirements, if any. Qwest further agrees to
reimburse CLEC for credits or fines and penalties assessed against CLEC as a result of
Qwest's failure to provide service to CLEC, subject to the understanding that any
payments made pursuant to this provision will be an offset and credit toward any other
penalties voluntarily agreed to by Qwest as part of a performance assurance plan, and
further subject to the following provisions:

9 6.2.3.1 Qwest shall provide service credits to CLEC for resold services in accordance
10 with the Commission's retail service requirements that apply to Qwest retail
service, if any. Such credits shall be limited in accordance with the following:

- 11 (a) Qwest service credits to CLEC shall be subject to the wholesale discount;
12 (b) Qwest shall only be liable to provide service credits in accordance with the
resold services provided to CLEC. Qwest is not required to provide service
13 credits for service failures that are the fault of the CLEC;
14 (c) Qwest shall not be liable to provide service credits to CLEC if CLEC is not
subject to the Commission's service quality requirements;
15 (d) Qwest shall not be liable to provide service credits to CLEC if CLEC does not
provide service quality credits to its end users;
16 (e) In no case shall Qwest's credits to CLEC exceed the amount Qwest would pay a
Qwest end user under the service quality requirements, less any wholesale
discount applicable to CLECS's resold services.

17 6.2.3.2 Fines and Penalties—Qwest shall be liable to pay to CLEC fines and penalties
18 for resold services in accordance with the Commission's retail service
requirements that apply to Qwest retail services, if any. Such credits shall be
19 limited in accordance with the following:

- 20 (a) Qwest's fines and penalties paid to CLEC shall be subject to wholesale discount;
21 (b) Qwest shall only be liable to provide fines and penalties in accordance with the
resold services provided to CLEC. Qwest is not required to pay fines and penalties
22 for service failures that are the fault of the CLEC;
23 (c) Qwest shall only be liable to provide fines and penalties to CLEC if CLEC is not
subject to the Commission's fine and penalty requirements for service quality;
24 (d) In no case shall Qwest's fines and penalties to CLEC exceed the amount Qwest
would pay the Commission under the service quality plan, less any wholesale
25 discount applicable to CLEC's resold services;
26 (e) In no case shall Qwest be required to provide duplicate reimbursement or payment
to CLEC for any service quality failure incident.

26 26. AT&T and MCIW object to the language of SGAT Sections 6.2.3.1 and 6.2.3.2
27 because Qwest is attempting to offset Commission-imposed service penalties for faulty or defective
28 service with any penalties that would be assessed under its Performance Assurance Plan ("PAP").

1 The CLECs also object to Qwest's attempt to limit any payment to the CLEC to the wholesale
2 *discounted amount*, currently only 85 percent of the amount Qwest would be required to pay its own
3 customer. The CLECs argue that Qwest should reimburse the CLEC for the amount the end user
4 actually paid for the service.

5 27. Qwest argues that it should not be forced to credit the CLEC for the amount of money
6 the CLEC charges the end user because Qwest has no control over the amount a CLEC charges and
7 chooses to pay its customer for service problems. Qwest also argues that it is unreasonable and
8 unduly punitive to subject Qwest to two penalties for the same service problem and would allow the
9 CLECs to obtain a windfall by recovering twice.

10 28. Staff recommends that Qwest credit the CLEC the amount of money that Qwest would
11 reimburse its own retail end user and that the CLEC pass through this amount to its end user
12 customer. Staff agrees that the PAP and penalties paid under Qwest's Service Quality Tariff are two
13 different types of penalties and Staff does not agree with Qwest's claim that it is being penalized
14 twice for the same service problem. The PAP assesses penalties for failure to meet certain
15 performance requirements related to proving wholesale services and are paid to the CLEC. The
16 Commission-imposed service quality penalties are paid to the end-user or the state, based on failure
17 to meet service quality objectives. Staff recommends that Qwest be required to revise its SGAT
18 language to comply with Staff's recommendations.

19 29. Staff further recommends that the parties revisit Qwest's SGAT indemnification
20 language in the final General Terms and Conditions workshop to attempt to arrive at a consensus.

21 30. We concur with Staff's recommendations concerning Qwest's SGAT indemnification
22 provisions. The penalties paid to CLECs pursuant to the PAP are intended to be distinct from and in
23 addition to penalties Qwest must pay to end users under the retail service quality tariff. Payments
24 under the PAP are intended to encourage Qwest to provide parity between the service it provides to
25 the CLEC and that which it provides to its own customers and to encourage Qwest to meet agreed
26 upon performance benchmarks where there are no retail equivalents. Payments under the retail
27 service quality tariff compensate end-user consumers for performance failures. Because technically,
28 the CLEC is Qwest's end-user with respect to resold services, we further agree with Staff that

1 penalties Qwest pays to CLEC end users under the Service Quality Tariff should be limited to the
 2 amount Qwest would pay to its own end users for the same failures, and that the CLECs should pass
 3 such payments on to their end users. Reducing payments to CLECs by the wholesale discount does
 4 not provide sufficient incentive to Qwest to meet service goals. By passing on the payments or
 5 credits to end-users, CLECs will not receive a windfall and the real injured party receives the benefit.

6 31. With respect to Qwest's Comments to the Final Report and AT&T's objections
 7 thereto, we believe that the facilitator's comments in the Multi-State proceeding on the issue of
 8 penalties may be interesting, but not relevant to the disposition of the issue in Arizona. We note that
 9 the final terms of the PAP are still in dispute and have not come before the Commission for
 10 resolution at this time. Without knowing the ultimate form of the PAP, it is premature to judge the
 11 equities of payments potentially owing thereunder. We reserve the right to revisit this issue in
 12 conjunction with our review and approval of the PAP.

13 CONCLUSIONS OF LAW

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

17 2. The Commission, having reviewed the revised Final Report dated July 27, 2001, and
 18 conditioned upon Qwest's satisfactory compliance with the recommendations contained in the
 19 revised Final Report and adopted herein, and further subject to Qwest passing relevant performance
 20 measurements in the third-party OSS test, concludes that Qwest has met the requirements of Section
 21 271 pertaining to Checklist Item No. 14, and the Commission hereby approves and adopts the revised
 22 Final Report on Qwest's compliance with Checklist Item No. 14.

23 ORDER

24 IT IS THEREFORE ORDERED that the revised Final Report dated July 27, 2001, on
 25 Qwest's compliance with Checklist Item No. 14 is hereby adopted.

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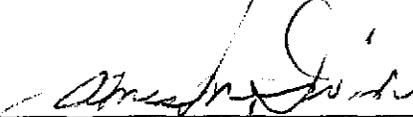
1 IT IS FURTHER ORDERED that Qwest Corporation shall file within seven days of the
2 effective date of this Order, a revised SGAT incorporating the Findings and Conclusions herein.

3 IT IS FURTHER ORDERED that CLECs and other interested parties shall have ten days
4 following Qwest Corporation's filing of the revised SGAT to file written comments concerning the
5 proposed SGAT language.

6 IT IS FURTHER ORDERED that Commission Staff shall file within twenty days of Qwest
7 Corporation's filing, its recommendation to adopt or reject the proposed SGAT language and a
8 procedural recommendation for resolving any remaining dispute.

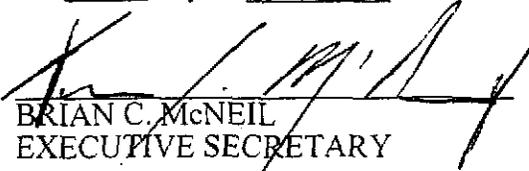
9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11 12 13	 CHAIRMAN	 COMMISSIONER	 COMMISSIONER
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15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 3rd day of October, 2001.

20 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

21 DISSENT _____
22 JR:dap

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1 SERVICE LIST FOR:

U S WEST COMMUNICATIONS, INC. (SECTION
271)

3 DOCKET NO.

T-00000A-97-0238

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EXHIBIT A

**IN THE MATTER OF QWEST CORPORATION'S
SECTION 271 APPLICATION**

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

FINAL REPORT ON QWEST'S COMPLIANCE

With

CHECKLIST ITEM: NO. 14 - RESALE

July 27, 2001

DECISION NO.

64060

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On August 16, 2000, the first Workshop on Checklist Items No. 1 (Interconnection and Collocation), No. 11 (Number Portability) and No. 14 (Resale) took place at Hewlett-Packard's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation ("Qwest")¹, AT&T Communications of the Mountain States, Inc. ("AT&T"), MCI WorldCom, Inc. ("MCIW"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), Rhythms Links, Inc. ("Rhythms") and the Residential Utility Consumer Office ("RUCO"). Qwest relied upon its original testimony submitted in March, 1999. Qwest also relied upon its Supplemental Affidavit filed on June 30, 2000. Additional Comments were filed on August 3, 2000 by AT&T, MCIW, Rhythms and ELI. Qwest filed Rebuttal Comments on August 10, 2000.

2. On February 13, 2001, an additional Workshop was conducted on Checklist Items 1 and 14.

3. The Parties resolved many issues at the two Workshops held on August 16, 2000 and February 13, 2001. Outstanding issues from the August 16, 2000 Workshop included a commitment by the parties to address take back issues for resolution at the follow-up workshop held on February 13, 2001. With the exception of two issues, all outstanding issues between the parties on Checklist Item 14 were resolved.

4. Staff submitted proposed Findings of Fact and Conclusions of Law on June 26, 2001 in accordance with the Commission's June 12, 2001 Procedural Order. Because, two issues could not be resolved between the parties, Checklist Item 14 was filed as a disputed Checklist Item. No party submitted comments on Staff's proposed Findings of Fact and Conclusions of Law which Staff filed on June 26, 2001. Staff hereby files its Final Report on Checklist Item 14.

B. DISCUSSION

1. Checklist Item No. 14

a. FCC Requirements

5. Section 271(c)(2)(B)(xiv) of the Telecommunications Act of 1996 requires a Section 271 applicant to make "[t]elecommunications services... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

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

6. Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

7. Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on resale, with the exception that "a State commission may, consistent with the regulations prescribed by the commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

8. Section 252(d)(3) sets forth the basis for determining "wholesale rates" as the "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and any other costs that will be avoided by the local exchange carrier."

9. In the *Local Competition First Report and Order*, the FCC adopted several rules regarding the scope of the resale requirement and permissible restrictions on resale that a LEC may impose. See 47 C.F.R. Sections 51.623-51.617.

10. As part of this Checklist Item and Checklist Item 2, a Bell Operating Company ("BOC") must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.

b. Background

11. "Resale" describes the sale by a CLEC of Qwest's finished retail telecommunications services to an end user. Qwest 2-8 at p. 41. Qwest actually delivers the service to the CLEC's end user, but Qwest's "customer of record" is the CLEC, and all interactions regarding the service take place between Qwest and the CLEC. The CLEC's end user interacts only with the CLEC, and not with Qwest. *Id.*

12. The parties to this docket agreed that Qwest should track 11 different performance measures for resale. Qwest 2-9 at p. 12. These measurements concern either the installation/provisioning of resold services or the repair/maintenance of resold services and are listed below. *Id.*

Installation Commitments Met (OP-3) measures the percentage of orders for which Qwest meets the scheduled due date. Qwest 2-9 at p. 13. For resold services, Qwest reports performance results for both resale and Qwest retail end users for 11 different services: Residence Business, Centrex, Centrex 21, PBX, Basic ISDN and ADSL (service requiring dispatch within MSAs, service requiring dispatch outside MSAs and service with no dispatch) and Primary ISDN, DS0, DS1, and DS3 (high density, low density). *Id.*

Installation Interval (OP-4) measures the average interval, in business days, between the application date and the completion date for service orders. Qwest 2-9 at p. 17. Qwest reports installation interval data for the same 11 services and the same categories identified for OP-3 above

New Service Installation Without Trouble Reports (OP-5) measures the monthly average percentage of new installations that are free of trouble reports within 30 calendar days of installation. Qwest 2-9 at p. 17. Qwest reports performance results for OP-5 for eight different services: Residence, Business, Centrex, PBX, Primary ISDN, DS0, DS1, and DS3. Id.

Delayed Days (OP-6) measures the average number of business days that service is delayed beyond the original due date. Qwest 2-9 at p. 18. This measurement is further broken down into two categories: 1) delays caused for facility reasons; and 2) delays caused for nonfacility reasons. Id.

Out-of-Service Cleared within 24 Hours (MR-3) measures the percentage of time that Qwest clears an out-of-service situation within 24 hours of receipt of notification. Qwest 2-9 at p. 19.

All Troubles Cleared within 48 Hours (MR-4) measures the percentage of time that Qwest clears all trouble reports, whether it be out-of-service or otherwise, on nondesignated services within 48 hours from notification. Qwest 2-9 at p. 22.

All Troubles Cleared within Four Hours (MR-5) measures the percentage of time that Qwest clears trouble reports on designated services within four hours of notification. Qwest 2-9 at p. 24. Qwest reports performance results for MR-5 for both resale and Qwest retail end users for three services in two different categories: DS0, DS1 and DS3 (High density and low density). Id.

Mean Time to Restore (MR-6) measures the average time Qwest takes to resolve repair requests. Qwest 2-9 at p. 25. Qwest reports performance results for MR-6 for both resale and Qwest retail end users for eight services in the following categories: Residence, Business, Centrex, Centrex 21 and PBX (service requiring dispatch within MSAs, service requiring dispatch outside MSAs and service with no dispatch) and DS0, DS1 and DS3 (High density and low density). Id.

Repair Repeat Report Rate (MR-7) measures the percentage of repair reports that are reported again within 30 days of the first report. Qwest 2-9 at p. 25

Trouble Rate (MR-8) measures the percentage of lines in service that experience trouble in any one month compared to the total number of lines in service. Qwest 2-9 at p. 26. Qwest reports performance results for MR-8 for both resale and Qwest end users for four services: Residence, Business, Centrex and PBX. Id.

Repair Appointments Met (MR-9) measures the percentage of time that Qwest meets its repair appointments. Qwest 2-9 at p. 28. Qwest reports performance results for MR-9 for both resale and Qwest retail end users for five services in the following categories: Residence, Business, Centrex, Centrex 21 and PBX (service requiring dispatch within MSAs, service requiring dispatch outside MSAs and service with no dispatch). Id.

c. Position of Qwest

13. On March 25, 1999, Qwest witness Lori A. Simpson provided Direct Testimony stating that Qwest provides telecommunications services for resale through the nondiscriminatory terms and conditions of its proposed SGAT and approved interconnection and resale agreements. Qwest 2-8 at p. 38. On June 30, 2000, Qwest witness Lori A. Simpson filed Supplemental Testimony providing updated volumes of services provided for resale, a more comprehensive description of the processes Qwest has implemented to ensure CLECs obtain resold services in substantially the same time and manner as Qwest's retail end users, and recent performance results regarding Checklist Item 14. Qwest 2-9 at p. 3.

14. Section 6.1.1 of the SGAT sets forth Qwest's obligation to provide retail services for resale:

U S WEST Basic Exchange Telecommunications Service, Basic Exchange Features, and IntraLATA Toll originating from U S WEST exchanges will be available for resale from U S WEST pursuant to the Act and will include terms and conditions (except prices) in U S WEST Tariffs, where applicable.

15. Qwest currently provides, among local exchange lines, other services to CLECs for resale in Arizona including, but not limited to, ISDN service, Public Access Lines, PBX trunks, and DS1 service. Qwest 2-8 at p.43.

16. Ms. Simpson also states that Qwest offers the resale of Contract Service Arrangements ("CSAs") with essentially the same restrictions that were found to be reasonable and nondiscriminatory by the FCC for BellSouth in BellSouth's second Louisiana application.² Id. at pps. 40-41. Qwest's SGAT at Section 6.2.2.5 provides that Qwest will offer CSAs for resale in aggregations of customers where CLEC end users are similarly situated to the original CSA end user. Id. at p. 41.

17. Qwest provides services for resale to CLECs at a 12% discount for residence lines and at an 18% discount for all other services available for resale, and product-specific nonrecurring charges. Id.

² See *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, CC Docket No. 98-121, (rel. Oct. 13, 1998) at para. 316.

18. The proposed SGAT and Commission-approved interconnection and resale agreements establish limited restrictions on resale by CLECs. Specifically, the proposed SGAT provides:

6.2.2 Basic Exchange Telecommunications Service, Basic Exchange Features, and IntraLATA Toll may be resold only for their intended or disclosed use and only to the same class of end user to which Qwest sells such service (e.g., residence service may not be resold to business end users). Service provided directly to CLEC for its own use and not resold to end users, such as administrative services, must be identified by CLEC, and CLEC must pay the full retail rates and prices for such services.

6.2.2.1 Promotional offerings of ninety (90) days or less are available for resale. Such promotions are available for resale under the same terms and conditions that are available to end-users, with no wholesale discount.³

6.2.2.2 Residential services, services that are grandfathered, and Lifeline/Link-up services are available only to the same class of customer eligible to purchase these services from Qwest.

6.2.2.3 Non-telecommunications services, such as inside wiring, calling cards and CPE, are not available for resale.

6.2.2.4 Enhanced services, such as voice messaging, are not available for resale.

19. When a CLEC resells a residence or business local exchange service, certain ancillary services are also provided with that service, unless the CLEC makes other arrangements. Qwest 2-8 at p. 42. These ancillary services include directory assistance and operator services. Additionally, Qwest continues to provide access to 911 service for resold business and residence local exchange lines. *Id.* To ensure 911 service for a CLEC's resale end users, Qwest uploads end user information to the Automatic Location Identification ("ALI") database from its service order processing systems each evening. Qwest 2-8 at p. 42. This database is used to provide a 911 dispatcher with address information associated with a 911 caller's telephone number. Ms. Simpson states that the same end user information is extracted for CLEC and Qwest end users, using the same time interval for extraction of information, using the same processes, methods and procedures. *Id.*

³ Qwest's SGAT initially contained a provision which restricted the availability of promotional offerings of ninety (90) days or less for resale. Qwest modified this provision in its June, 2000 testimony.

20. CLECs may submit orders for resold services to Qwest electronically through Qwest's operational support systems interfaces, EDI or IMA, or by facsimile. Ms. Simpson states that CLECs receive the same intervals for installation, provisioning, maintenance, and repair of resold services that Qwest retail end users receive. Id. CLECs' orders are processed and entered into Qwest's services order processor ("SOP") by Qwest centers. After they are entered into Qwest's SOP, they are processed by the same systems and the same personnel that process Qwest's retail orders for the same services. Id.

21. Ms. Simpson states that Qwest's processes and procedures for providing services to CLECs neither discriminate between CLECs nor between CLECs and Qwest's retail operation. Qwest 2-8 at p. 43. Ms. Simpson states that CLECs receive the same provisioning intervals for the same service as Qwest end users. Qwest 2-8 at p. 44. The same technicians who handle Qwest retail service orders handle CLEC resale orders for the same services. Id. The technicians use the same systems, processes, and procedures for CLEC and Qwest orders. Id. CLECs receive the same repair commitments as Qwest's end users receive for the same service. The same personnel, systems, and processes are used to repair services, whether resold by CLECs or purchased by Qwest's retail end users. Qwest 2-8 at p. 44.

22. For preordering, ordering and provisioning services, service representatives in Qwest's retail operation complete the same activities completed by CLECs. First, an end user calls a CLEC representative to order service; just as an end user calls Qwest business office to order service. Second, the CLEC representative may complete preordering and ordering activities by interfacing with Qwest electronically. Third, the CLEC completes the activities comparable to Qwest retail ordering and provisioning activities by accessing the same information from the same systems as Qwest's retail representative. These steps may include address validation, service availability check, customer service record retrieval, facility availability check, telephone number assignment, and appointment scheduling. Qwest 2-9 at p. 6.

23. CLEC and Qwest retail orders are entered into the same service order processor (SOP) and they flow through Qwest's legacy systems in exactly the same manner. CLECs and Qwest retail service representatives receive a due date upon completing ordering activities. CLECs and Qwest retail operation receive the same due date intervals for the same services for the orders placed at the same time.

24. Factors such as how service requests are provisioned, how technicians are assigned, and so on, depend solely on variables that are not related to the identity of the local service provider, such as order type, type of service ordered, facility availability, personnel availability weather conditions, and other variables. Qwest 2-8 at pps. 47-48.

25. A CLEC may perform preordering, ordering, and provisioning activities for resale of Qwest's services electronically or manually, i.e. via telephone and facsimile. Qwest 2-8 at p. 48. CLECs that perform these activities electronically have two choices;

they can use the EDI interface or they can use the IMA interface. *Id.* In Arizona, reseller CLECs use IMA to complete preordering, ordering, and/or provisioning activities for their resale service requests, and some CLECs choose to use manual processes to complete these activities. *Id.*

26. To perform preordering activities in IMA, the CLEC accesses applicable preordering screens. Qwest 2-8 at p. 48. To perform ordering activities, the CLEC completes industry standard LSR forms in IMA and sends them electronically to Qwest's Interconnect Service Center ("ISC"). *Id.* The ISC representative screens the LSR forms for accuracy and completeness and contacts the CLEC to resolve any errors. Errors that cannot be resolved within two hours result in the LSR being rejected. Qwest 2-8 at p. 49. The LSR forms for resale service requests that "flow through" are electronically converted into Qwest's service orders and transmitted to Qwest's SOP. *Id.* The LSR forms for other resale service requests are forwarded electronically to an ISC order specialist for entry into the SOP. *Id.*

27. If a CLEC chooses to fax its service requests for resale to Qwest, the CLEC requests a copy of the CSR by sending a faxed request to Qwest at a toll-free number. Qwest faxes or e-mails the CSR to the CLEC according to its request. Qwest 2-8, at p. 49. The CLEC completes preordering activities by contacting the ISC. *Id.* The CLEC completes resale ordering activities by completing LSR forms for resale of services and faxing them to Qwest's ISC. The ISC receives faxed LSR forms as an electronic image, screens such forms for completeness and accuracy, and electronically passes the forms to an ISC order specialist for entry into the SOP. Qwest 2-8, at p. 49.

28. When a CLEC's resale order enters Qwest's SOP, the ISC order specialist sends the CLEC a Firm Order Confirmation ("FOC") which confirms the due date the CLEC received when it completed preordering activities. Qwest 2-8 at pps. 49-50. When CLEC and Qwest orders are completed, all appropriate Qwest systems are updated. Qwest 2-8 at p. 50. CLECs receive daily reports showing all orders completed the prior day for resale, including new, additional, or discounted services. *Id.*

29. CLECs are responsible for reporting to Qwest trouble experienced by their end users relating to resold services obtained by CLECs from Qwest. Qwest 2-8 at p. 50. CLECs may complete repair requests electronically or manually. *Id.* CLECs that file repair reports electronically can use the Electronic Bonding - Trouble Administration ("EB-TA") interface or the IMA interface. Qwest 2-8 at p. 50. CLECs can also submit trouble reports by calling Qwest. *Id.* CLEC trouble reports are handled in the same way that Qwest's retail end users' reports are handled. Qwest 2-8 at p. 51. CLECs' trouble reports receive the same priority as Qwest end user trouble reports and are handled on a "first-in, first-out" basis. *Id.*

30. CLECs may receive bills from Qwest electronically or in paper copy. Qwest 2-8 at p. 51. The Business Procedure section of the IRRG contains CLEC bill format options under "Media Type - Output and Reports." CLECs can receive electronic bills for resold services using a national standard electronic interface, the Network Data

Mover ("NDM") CLECs that want paper bills receive statewide, monthly statements that itemize charges for each end user to whom they have resold services. Id.

31. The processes for installation and repair are the same for identical services whether resold by CLECs and or sold by Qwest's retail operation. Qwest 2-9 at p. 6. When a service order enters Qwest's service order processor, it is handled exactly the same way, by the same personnel, and by the same systems, whether it is a CLEC order or a Qwest retail order. Id.

32. Repair requests are also handled by the same processes whether they are CLEC requests or Qwest retail requests. Qwest 2-9 at p. 6. The same systems and the same technicians process and complete all repair requests. Id. The same installation and repair intervals apply whether the services are resold by CLECs to their end users, or sold by Qwest retail operations to its end users. Qwest 2-9 at p. 7.

33. According to Ms. Simpson, Qwest also provides extensive support, training, and information to assist CLECs in doing business with Qwest and successfully reselling Qwest's telecommunications services. Qwest 2-8 at p. 44. Qwest provides products/services training classes and ordering classes. Qwest 2-8 at p.42. Qwest provides training in the following areas: products and services, white pages directory listings and directory assistance listings, and electronic interfaces. Id. Section 6.2.1 of Qwest's SGAT states:

Qwest shall offer CLEC training on procedures that CLEC must use to request services from Qwest, including product information, listing, and access to Qwest systems.

34. Qwest provides several types of training for CLECs both on an instructor-led basis, a web-based basis, and by providing training materials that CLECs may download from a Qwest web site. Qwest 2-9 at p. 7. More specifically, Qwest provides the following resale training classes for reseller CLECs: Basic Exchange Services Training, Complex Business Services Training, POTS LSR Order Process Training, and Interconnect Mediated Access Training. Qwest 2-8 at p. 45. Qwest posts class schedules on its internet web site at

<http://www.uswest.com/com/customers/carrier/interconnect/html/businesstraining.html>

Id. Qwest provides the following training documents to CLEC representatives attending the classes listed above: Basic Business and Residence Services, Centrex Services and Single Line Services-ISDN, Private Line, Analog and Digital Point Services, Switchnet 56, DS1, DS3, and Contingency Services, PBX Services, Analog Services, Digital Switched Services and Primary Rate Services. Qwest 2-8 at p. 45

35. Qwest has implemented a web site at <http://www.uswest.com/wholesale/>, which is the on-line source for current information on partnering with Qwest for retail telecommunications services that ease market penetration and expansion for reseller

CLECs. West 2-9 at p. 7. The following Qwest training for CLECs is available via this web site, including the capability to register on-line for training:

Instructor Led Training

Interconnect Mediated Access/Graphical User Interface Listings

Web Based Interactive Training

Customer ASR and LSR Web Based Training

Downloadable Training

IMA Learning Guide – Class Companion

IMA User's Guide, Release 5.0

IMA System Administration Guide

IMA Repair Guide

Download Held, Escalated & Expedited Tool (HEET) Job Aid

Id.

36. Qwest also publishes its "Interconnection and Resale Resource Guide" ("IRRG") on the internet at:

<http://www.uswest.com/com/customers/carrier/interconnect/index.html>.

Qwest 2-8 at p. 46. The IRRG contains product and service descriptions, objective intervals for provisioning services, preordering and ordering information, maintenance, repair, and billing information, Qwest contact telephone numbers, and schedules for training classes, as well as other information. Id. The Qwest IRRG contains the following information:

- Section 1. Business Procedures
- Section 2. Preordering Information
- Section 3. Product Information – Resale
- Section 4. Product Information – Interconnect
- Section 5. Manual Ordering Process/Forms
- Section 6. Training

Qwest 2-9 at p. 8-9.

37. Additionally, Qwest publishes its Interconnect Mediated Access ("IMA") guide and provides CLECs with access to it. Qwest 2-8 at p. 46. The IMA guide contains an IMA user guide, IMA training schedules, answers to frequently asked questions, and IMA future release information. Id.

38. Qwest also publishes an EDI guide and provides CLECs with access to it. Qwest 2-8 at p. 46. Qwest also has help desks for CLECs on EDI and IMA to provide answers to questions and other assistance. And EDI coordinator is also available by

phone to provide assistance and information about EDI. Id. at p. 46. Additionally, Qwest provides support for CLECs by assigning an individual account manager from Qwest's Wholesale Markets organization to each CLEC once the CLEC signs an interconnection or resale agreement with Qwest. Qwest 2-8 at p. 46.

39. Additionally, Qwest provides extensive support to CLECs via on-line product and service materials and information and other reference materials, located at the web site <http://www.uswest.com/wholesale/>, including, but not limited to, the following:

Product and Service Information

This site includes Product and Service Description Strategy, Features/Benefits, Applications, Pricing, Implementation, Qwest Contact Numbers, and Questions and Answers. The following materials are available on-line:

How Resale is Offered
Your Responsibilities as a Reseller
Becoming a Reseller
Qwest Services for Resale

Tariffs – on-line library of state and federal Qwest tariffs

Service Interval Guide for Resale & Interconnection Services

Customer Services

Qwest 2-9 at p. 8.

40. As of March, 1999, CLECs had resold, and Qwest currently provided, 19,734 local exchange lines and numerous other services to 30 CLECs in Arizona. Qwest 2-8 at p. 43. This included 10,642 residential lines and 9,092 business lines. Id. As of June 30, 2000, CLECs had resold, and Qwest provided more than 21,300 local exchange lines and other services to 33 reseller CLECs in Arizona. Qwest 2-9 at p. 4. This included more than 16,000 residential lines and 4,700 business lines. As of March, 1999, Qwest also provided other services for resale including, but not limited to, ISDN service, Public Access Lines, PBX trunks, and DS1 service. Qwest 2-8 at p. 43. As of June 30, 2000, Megabit services were made available for resale from Qwest at a discount. Qwest 2-9 at p. 4. See SGAT Section 6.2.2.11.

41. Qwest claims it is meeting the various performance measurements agreed to in this Docket and which are also being tested in a third party test conducted by CAP Gemini and HP. Of the 29 different resale measurement categories under installation commitments met, Qwest states that only three have more than one month that falls below parity. Qwest 2-9 at p. 15. These three measurement categories are 1) residence

service requiring a dispatch within MSAs; 2) residential service not requiring a dispatch; and 3) business service not requiring a dispatch. Id.

42. For residential service with a dispatch within an MSA, Qwest states that it met between 77 percent and 84 percent of its commitments for CLECs and between 82 percent and 88 percent of its commitments for itself. Qwest 2-9 at p. 15.

43. Qwest claims that the data found in OP-4, average installation interval, shows that CLECs, on average, get residential service with a dispatch within MSAs between 2.4 days and 3.5 days faster than for Qwest's retail end users. Id. It also shows that, when a delay beyond the due date occurs, the delay is generally shorter for CLECs. Finally, it shows that the trouble rate that both CLECs and Qwest's end users experience on lines are statistically indistinguishable. Id. When the data is viewed wholistically, it is clear, according to Qwest, that Qwest provides nondiscriminatory access to resold residential service with a dispatch within MSAs. Id.

44. For residential service without a dispatch, Qwest's data shows similar results. Qwest 2-9 at p. 15. Qwest states that it met between 92 percent and 97.5 percent of its commitments for CLECs and 99 percent of its commitments for itself. Id. Again as mentioned above, Qwest states that the data found in OP-4, average installation interval, shows that CLECs get resold residential service without a dispatch in between 1.9 days and 2.3 days. Id. That is, on average, between 0.3 days and 1.2 days faster for CLECs than for Qwest's own retail end users. Id. It also shows, according to Qwest, that when a delay beyond the due date occurs, delays for nonfacility reasons are virtually identical for both CLECs' and Qwest end users, and the delays for facility reasons are substantially shorter for CLECs. Finally, Qwest argues that it shows that the trouble rate that both CLECs' and Qwest's end users experience on lines are statistically indistinguishable. Id. Qwest states that when the data is viewed wholistically, it is clear that Qwest provides nondiscriminatory access to resold residential service without a dispatch. Id.

45. Qwest states that for business service without a dispatch, the data shows similar results. Qwest 2-9 at p. 16. Qwest met between 89 percent and 99 percent of its commitments for CLECs and met 98 percent to 99 percent of its commitments for itself. Id. Again as mentioned above, the data found in OP-4, average installation interval, shows that CLECs obtain resold business service without a dispatch in virtually identical timeframes as Qwest's own retail end users. Id. It also shows that, when a delay beyond the due date occurs, delays are virtually identical for both CLECs' and Qwest end users. Id. Finally, it shows that the trouble rate that for all resold business lines, both CLECs' and Qwest's end users experienced no trouble, literally non, on resold business lines at any time in the last four months. Id. When the data is viewed wholistically, Qwest states it is providing nondiscriminatory access to resold business service without a dispatch. Id.

46. Of the 15 different resale measurement categories under MR-3, Qwest states that only two have more than one month that falls below retail parity – 1) business

service with dispatch within MSAs; and 2) Centrex 21 service with dispatch within MSAs. Qwest 2-9 at p. 20.

47. For business service with a dispatch within MSAs, Qwest states that it cleared between 43 percent and 77 percent of its out-of-service troubles within 24 hours for CLECs and between 40 percent and 73 percent for itself. Qwest 2-9 at p. 20. Almost uniformly, "across the board", Qwest stated that it provided slightly better repair (although not always statistically significant) on this service for itself in January and April and better repair for CLECs in February and March. Id. When a trouble ticket requires a dispatch, the amount of time that ticket takes to be cleared is highly dependent on a number of factors, according to Qwest, including weather, distance, and the specific trouble experienced. Id. It is not surprising that there is disparity between repair results in that some instances, it redounds to the benefit of Qwest and in other instances, to the benefit to the CLECs. Id. Qwest states that the conclusion is further supported by the fact that the problem occurs in isolated months and does not persist over time. Id. When the data is viewed as a whole, Qwest is providing nondiscriminatory repair of out-of-service trouble for business service with a dispatch, according to Qwest. Id.

48. According to Qwest, for Centrex 21 service with dispatch within MSAs, Qwest cleared between 37 percent and 66 percent of its out-of-service trouble reports for CLECs within 24 hours and between 43 percent and 74 percent for itself. Qwest 2-9 at p. 21. Again, the statistical disparity requires a closer look as the overall data for repair of Centrex 21 shows that Qwest is repairing Centrex 21 on a nondiscriminatory basis. Id. Qwest presents the example that it cleared trouble within 48 hours (MR-4) on a nondiscriminatory basis, mean time to restore the service was provided in a nondiscriminatory fashion (MR-6), and CLECs experienced substantially less repeat trouble (MR-7) after the service was restored the first time. Id. Qwest states that when the data is viewed as a whole, Qwest is providing nondiscriminatory repair of out-of-service trouble for Centrex 21 service with a dispatch. Id.

49. Qwest states that of the 15 different resale measurement categories under MR-4, only two have more than one month that falls below retail parity - 1) business service with dispatch within MSAs; and 2) business service without a dispatch. Qwest 2-9 at p. 23. For business service with a dispatch within MSAs, Qwest cleared between 68 percent and 92 percent of its trouble reports within 48 hours for CLECs and between 63 percent and 86 percent for itself. Qwest 2-9 at p. 23. Qwest states the same reasoning as described when responding to out of service situations (MR-3). Id. Qwest again argues that when the data is viewed as a whole, Qwest is providing nondiscriminatory repair of troubles for business service with a dispatch. Id.

50. For business service without a dispatch, Qwest cleared between 92 percent and 97 percent of its troubles within 48 hours for both CLECs and for itself. Qwest 2-9 at p. 23. Qwest states that the overall data for repair of business service without a dispatch shows that Qwest is repairing business lines on a nondiscriminatory basis. Id. When the data is viewed as a whole, Qwest states that it is providing nondiscriminatory repair of troubles for business service without a dispatch. Id.

51. Qwest witness Simpson states that for residential service, the percentage of lines with trouble ranged between 3.28 percent and 5.66 percent for CLECs and between 3.11 percent and 4.78 percent for Qwest retail. Qwest 2-9 at p. 27. The data found in out-of-service trouble reports cleared within 24 hours (MR-3), trouble reports cleared within 48 hours (MR-4), mean time to restore (MR-6), repair repeat report rate (MR-7), and repair appointments met (MR-9) for dispatches within MSAs show that Qwest's performance in clearing trouble for CLECs' resold residential service is superior for each measurement, in each month reported, to that provided for Qwest's retail residential service. Id. Furthermore, according to Qwest, the data found that the measurements MR-3, MR-4, MR-6, MR-7 and MR-9 for dispatches outside MSAs, and for nondispatched trouble reports, show that Qwest's performance in clearing trouble for Qwest retail residential service, is either statistically indistinguishable, or superior, for CLECs. Id. According to Qwest, when the data is viewed as a whole, Qwest is providing nondiscriminatory repair of trouble for residential service. Id.

52. For Centrex service, the percentage of lines with trouble ranged between 0.24 percent and 0.44 percent for CLECs and between 0.11 percent and 0.16 percent for Qwest retail. Qwest 2-9 at p. 27. These performance results show that CLECs are experiencing a rate of trouble on their resold Centrex lines that is less than one half of one percent. Id. Despite the statistical significance of the difference in the results, Qwest states that it is providing nondiscriminatory repair performance for CLECs' resold Centrex service. Id.

53. For business service with a dispatch within MSAs, Qwest states that it met between 63 percent and 85 percent of its repair appointments for CLECs and between 82 percent and 88 percent for itself. Qwest 2-9 at p. 29-30. As stated previously under MR-3, Qwest believes the data shows that it provides nondiscriminatory performance when responding to out-of-service situations. Id. When the data is viewed as a whole, Qwest states that it is providing nondiscriminatory repair of troubles for business service with a dispatch. Id. Qwest also claims that for business service with a dispatch outside MSAs, the data found in MR-3, MR-4, MR-6 and MR-7, dispatches outside MSAs show that Qwest's performance in clearing trouble for CLECs' resold business service with dispatch outside of MSAs is least equivalent to, and in some cases superior to, the performance for Qwest retail in each month reported. Qwest 2-9 at p. 30. Once again, Qwest argues that when the data is viewed as a whole, Qwest is providing nondiscriminatory repair of troubles for business service with a dispatch outside of MSAs. Id.

54. For Centrex service not requiring a dispatch, the percentage of repair appointments met ranged between 79 percent and 89 percent for CLECs and between 89 percent and 96 percent for Qwest retail. Qwest 2-9 at p. 30. The data found in MR-3, MR-4, MR-6 and MR-7, for nondispatched Centrex repair service shows that Qwest's overall performance for CLECs compared to Qwest retail is statistically indistinguishable. Id. Qwest argues that when the data is viewed as a whole, Qwest is providing nondiscriminatory repair of trouble for nondispatched Centrex service. Id.

55. For Centrex 21 service with a dispatch within MSAs, the data found in MR-3, MR-4, MR-6 and MR-7, show that Qwest's overall performance for CLECs is nondiscriminatory. Qwest 2-9 at p. 31. When the data is viewed as a whole, Qwest states that it is providing nondiscriminatory repair of trouble for Centrex 21 service without a dispatch within MSAs. Id. For Centrex 21 service not requiring a dispatch, the percentage of repair appointments met ranged between 73 percent and 93 percent for CLECs and between 95 percent and 97 percent for Qwest retail. Qwest 2-9 at p. 31. The data found in MR-3, MR-4, MR-6 and MR-7, for nondispatched Centrex 21 repair service shows that Qwest's overall performance for CLECs compared to Qwest retail is statistically equivalent. Id. Qwest states that it is providing nondiscriminatory repair of trouble for nondispatched Centrex 21 service, when the data is viewed as a whole. Id.

d. Competitors' Position

56. In their July 22, 1999, preliminary statements of position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest has failed to meet its obligation to provide for resale at wholesale rates certain services that it provides to its retail customer. AT&T Ex. 1 at p. 14. In addition, the rates established for resold services are arbitrary and do not comply with the requirements of Section 252 (d)(3) of the Act. Id. AT&T also argues that the data Qwest provided for the resale checklist item demonstrates that Qwest is not providing resale services to CLECs at a level of quality at least equal to the level that it provides to its retail customers. AT&T Ex. 1 at p. 14.

57. MCIW stated that Qwest has failed to meet its obligations to provide for resale at wholesale rates certain services that it provides to its retail subscribers. MCImetro and Qwest participated in a test for resale orders and after completion of the test, Qwest was unable to properly transfer or disconnect test customers in Arizona. There is very little data that allows MCIW determine if it received service that is at a level of quality at least equal to the level that it provides to itself.

58. Sprint stated that Qwest has placed a roadblock to providing resold services at the ordering stage of the process and that Qwest has intentionally limited Sprint's knowledge of the products that are available for resale. Without the ability to order the products Qwest offers for resale, Qwest's claim that it makes resale available is vacant.

59. Other CLECs filing comments on July 22, 1999, included Cox, ELI, e-spire, Rhythms, and NEXTLINK. ELI stated it joined in the position statements filed by the other CLECs. Cox and e-spire stated that it had inadequate information to determine whether Qwest is in compliance with Checklist Item 14. NEXTLINK stated that it did not have information on Checklist Item 14. Rhythms did not offer a Statement of Position on Checklist Item 14.

60. AT&T and MCIW filed additional comments on Checklist Item 14 on August 3, 2000.

61. AT&T had numerous concerns relating to the description of Qwest's resale obligation in general as contained in Qwest's SGAT. AT&T argues that the language contained in Section 6.1.1 of the SGAT appears to 1) be slightly inconsistent with the § 251 (c)(4) of the Act, and 2) appears to limit the resale obligation to only those products identified in Qwest's tariff. AT&T 2-1 at p. 75. Neither the Act nor the Arizona rules limit resale to tariffed products. *Id.* AT&T goes on to state that while tariffs are certainly a good guide to any carriers' product offerings, most carriers offer service through contracts and by other means. Further, the tariffs contain their own terms and conditions that may not mirror this SGAT. AT&T 2-1 at p. 76. The 7/21/00 SGAT changed this provision slightly but appeared to inappropriately limit Qwest's resale obligation to service sold to the public. AT&T 2-1 at p. 76.

62. AT&T further took objection to Section 6.1.2 of Qwest's SGAT, in which Qwest, according to AT&T, was inappropriately and unilaterally describing the resale obligations of the CLEC that employs the SGAT. AT&T 2-1 at p. 76. AT&T stated that Qwest should not be defining those obligations for the CLEC because their obligation does not mirror that of the incumbent. *Id.*

63. Section 6.2.1 of the SGAT incorporates by reference Qwest's training procedures, which includes manuals and other material. AT&T 2-1 at p. 77. AT&T recommends that Qwest produce this material for examination. *Id.* AT&T also references SGAT Section 6.4.2 and states that Qwest has not placed in this record for investigation the materials it intends to use under the SGAT and should put this material as part of this investigation. AT&T 2-1 at p. 84.

64. AT&T expressed concern with both SGAT Sections 6.1.3, 6.2.2 and 6.3.1 since they, as written, appear to limit Qwest's resale obligations. For instance, Sections 6.2.2 and 6.3.1 list some services as opposed to simply using the term "telecommunications services". AT&T 2-1 at p. 77.

65. AT&T also sought clarification in several instances where Qwest appeared to be limiting the availability of certain services for resale, including Section 6.2.2.4 on Universal Emergency Number Service (911) and Section 6.2.2.6 which contained a restriction on the resale of enhanced/informational services, such as voicemail. AT&T 2-1 at p. 78.

66. AT&T also argued that Qwest should modify Section 6.2.2.7 of its SGAT which limits the availability of Contract Service Arrangements for resale. AT&T 2-1 at p. 78. SGAT Exhibit A states that negotiated contract agreements receive a 0% discount. The discount issue, according to AT&T, should be addressed in the cost docket. In addition the imposition of tariff rates on all CSAs is not necessarily appropriate especially where are not applied in the particular CSA.

67. AT&T states that Section 6.2.2.8 of the SGAT should be deleted since it withdraws "Grandfathered Services" from resale. AT&T 2-1 at p. 78. According to

AT&T, this restriction violates the FCC's First Report and Order, ¶ 968, requiring incumbents to extend to resellers such services. Id.

68. AT&T also expressed concerns with SGAT Section 6.2.2.11. First, it is not clear why Qwest requires CLECs to employ an interstate tariff for resale of Megabit Service rather than an intrastate tariff. Second, the term "retail end user" is not defined, and thus, this provision attempts to limit Qwest's resale obligation to only those end users that it dubs "retail" end users. AT&T 2-1 at p. 79. AT&T recommended that both references be deleted. Id.

69. AT&T also argued for clarification of SGAT Section 6.2.3 which described Qwest's resale quality of service obligation so that it was clear that it extended to all of the other resale provisions. AT&T 2-1 at p. 79.

70. SGAT section 6.2.5 imposes upon resellers an obligation to provide Qwest with a 2-year forecast. AT&T 2-1 at p. 80. Since resellers use Qwest facilities, Qwest's forecasts are more relevant and should be supplied to the CLEC. Id. Therefore, AT&T recommended Qwest modify this section to remove references to CLEC and replace it with Qwest. Id.

71. AT&T also recommended deletion of SGAT Section 6.2.6 which it claimed was confusing and attempted to prescribe the CLEC's numbering obligations. AT&T 2-1 at p. 80. Numbering obligations are more extensive than that described in this provision and apply equally to all carriers. Id.

72. SGAT Section 6.2.9, pertaining to resold operator services with the standard Qwest branding, should be rewritten or deleted since it, according to AT&T, diminishes the CLEC's right to obtain unbranded and rebranded operator services and illegally transferred the burden to the CLEC to seek such branding under various sections of the SGAT. Id.

73. AT&T also argued that SGAT Section 6.2.10 indemnified Qwest for any slamming claims against the reseller. AT&T 2-1 at p. 80. AT&T claimed that there should be disclaimers protecting the CLEC reseller from slamming claims against Qwest; otherwise, this section should be deleted. Id.

74. AT&T pointed out that SGAT Section 6.2.14 should be deleted due to it attempting to limit Qwest's resale obligation to locations in which "facilities currently exist". AT&T 2-1 at p. 81. This limitation is an unreasonable and discriminatory limitation on Qwest's resale obligation under the Act, the FCC rules and the Commission's rules. Id.

75. As to Sections 6.3.1 and 6.37, AT&T again expressed concern regarding the limitation of services available and recommended that the references to Exhibit A be deleted. AT&T 2-1 at pps. 81 and 82.

76. AT&T recommended modification of Sections 6.2.5 and 6.3.6 which address CLEC payments to Qwest for end-users use of features. AT&T 2-1 at p. 80-81. While Qwest modified its 7/21/00 SGAT to state that charges will be applied to all end users the same way Qwest applies charges to its end user customers, Qwest should inform the CLEC of what those methods are and how they are applied to end users. Id.

77. AT&T suggested modification to SGAT Section 6.3.8 on Qwest modifications to billing. AT&T 2-1 at p. 82. AT&T states that as it was previously written, Qwest had the right to not bill the correct amount. Id. Rates should be billed from the date they become effective, not whenever Qwest gets around to it. Id. Further, SGAT Sections 6.3.9 and 6.3.10 should be modified for clarity to indicate that the rates billed are Commission approved rates. AT&T 2-1 at p. 82-83.

78. AT&T expressed concerns over SGAT Section 6.4.1, or the ordering process, which AT&T claims would allow Qwest to turn a competitor's customer inquiry about the competitor's service into a marketing opportunity for Qwest. AT&T 2-1 at p. 83. AT&T states that this is particularly inappropriate in the wholesale environment and likely an unfair trade practice and that the section should be modified. Id. AT&T suggested appropriate modifications to this provision.

79. SGAT Section 6.4.3 should be clarified to incorporate the same performance standards Qwest may use for CLEC orders as Qwest provides itself or any subsidiary, affiliate, or any other party to which Qwest directly provides the service, such as end users. AT&T 2-1 at p. 84.

80. AT&T requests that Qwest the deletion of the word "retail" in the 7/21/00 version of the SGAT Section 6.4.5 as Qwest appears to have reduced its resale obligations which is inappropriate as previously discussed. AT&T 2-1 at p. 84-85.

81. SGAT Section 6.4.8 should be modified for clarity on due date intervals. AT&T 2-1 at p. 85. AT&T argues that rather than this section reflecting the current state of the law which requires service quality at levels equal to that Qwest provides itself, its customers and its subsidiaries, Qwest appeared in this provision to be limiting the quality to the equivalent given its own end users. Id.

82. Finally, AT&T expressed concerns over SGAT Section 6.6.3 which deals with the procedures for handling misdirected repair calls as specified in Section 12.3.8 of the SGAT. AT&T at p. 85. AT&T concerns were with subsection 12.3.8.1.5 that allowed Qwest and CLECs to respond to the misdirected end-user's inquiries with "accurate information in answering end-user questions". Id. This section should be modified to limit responses to inquiries about repair information and exclude marketing or other sales questions and should be directed to other telephone numbers. Id. Additionally, this section limits the scope of Qwest's obligations to "repair" calls and should read "all calls from CLEC existing customers and those with orders pending". Id.

83. MCIW stated in their comments that they have had limited experience with Qwest's products and services available for resale in Arizona. MCIW 2-1 at p. 41. MCIW however, believes that Qwest must demonstrate that it has resolved a substantial resale migration issue before approval is given with regard to Checklist Item 14. *Id.* MCIW stated that in the latter part of 1997, it initiated a customer test of Qwest's provisioning systems and processes under the direction of the Colorado Commission. MCIW 2-1 at p. 41. Its two objectives were to 1) determine the effectiveness of Qwest's pre-order, ordering and billing processes for resale customers, and 2) determine the manner in which to migrate customers back to Qwest to ensure a smooth process for customers wishing to move services among local service providers. *Id.* The first phase of the test was completed in December 1997. *Id.*

84. In January 1998, Phase two commenced to test the effort to either migrate the test customers back to Qwest or to disconnect their service. MCIW 2-1 at p. 41. MCIW test customers immediately began to experience problems with the Qwest migration and disconnect process such as: Qwest Customer Service representatives were not trained to handle the migration, customer orders were lost by Qwest and Qwest kept customers on hold for long periods of time. MCIW 2-1 at p. 42. While eventually Qwest had the test customers work with one assigned Qwest Service Representative to resolve the majority of the resale migration and disconnect problems, MCIW claims that it is still in the process of working with Qwest to resolve outstanding billing problems associated with these test customers. *Id.*

85. Although all of these problems occurred 2-3 years ago, all of the outstanding problems have yet to be resolved, and MCIW is not convinced that Qwest has adequately addressed this issue or is prepared in its service centers to handle resale migration issues in the future. MCIW 2-1 at p. 42. Final approval of Checklist Item 14 must await the success of the Third Party OSS test in Arizona and demonstrate that the resale migration issues have been resolved. *Id.*

86. MCIW also had specific concerns with the language of Qwest's SGAT. Specifically SGAT Section 6.1.1 should be modified to allow a CLEC to purchase at a discount any service offered by Qwest at retail if so desired, so as to be able to offer CLEC's customers comparable service related promotions, 911, voice mail, etc., on a competitive footing with Qwest. MCIW 2-1 at p. 43.

87. SGAT Section 6.1.2 should be deleted. MCIW stated that ILECs are obligated to offer their services for resale at wholesale rates under the Act. MCIW 2-1 at p. 43. The Act does not apply such requirements to CLECs and therefore, the CLEC should not be bound by the resale provisions of this agreement. *Id.* For that reason, SGAT Section 6.1.2 should be modified. *Id.*

88. SGAT Section 6.2.2.1 should be modified to allow CLECs to resell any service or order based promotional offerings, without any timeframe restrictions, if such restrictions do not exist for Qwest. MCIW 2-1 at p. 44. SGAT Section 6.2.2.4 should be modified to allow resell of any "N11" such as 311, 411, 611 and others, with the

wholesale discount should Qwest make N11 services available to its customers. MCIW 2-1 at p. 44-45.

89. MCIW expressed concern as to SGAT Section 6.2.3 which uses the term "substantially the same." This is ambiguous and creates the opportunity for conflicting interpretations by the parties and should simply be changed so that Qwest is required to provide these services at parity. MCIW 2-1 at p. 45.

90. SGAT Section 6.2.5 should be modified, as it requires the CLEC to provide Qwest with annual two-year forecasts, within 90 days of requesting service. MCIW 2-1 at p. 45. A CLEC should not be required to provide any market information or order forecasts to its competitors for resale or UNE-P under any conditions. *Id.* A CLEC should be willing to generally estimate its use of OSS applications for scaling and throughput/system response time planning on Qwest's part, to allow Qwest to size and plan for its OSS resources. *Id.*

91. SGAT Section 6.2.9 should be modified as it obligates the CLEC to either use Qwest's branding or pay to have CLEC's branding applied, even if CLEC chooses to have no branding. MCIW 2-1 at p. 46. CLECs should be provided the option to order OS, DA, etc., without branding, at no additional charge. *Id.*

92. MCIW also stated that language should be added to SGAT Section 6.2.12 which allows Qwest to terminate resale service to CLEC for non-payment of charges. MCIW 2-1 at p. 47. This section does not address circumstances in which the CLEC is properly disputing such charges. *Id.* CLEC disputes of improper or incorrect billing by Qwest should not be subject to the threat of disconnection. *Id.*

93. MCIW expressed concerns over SGAT section 6.3.4 that requires a CLEC to pay primary interexchange carrier ("PIC") change charges without wholesale discount. MCIW 2-1 at p. 48. PIC changes should be considered a retail service that CLEC is able to purchase at the wholesale discount rate, as is the case with other ILECs such as Bell Atlantic. *Id.*

94. Finally, MCIW wants Qwest to clarify or delete SGAT Section 6.3.6 with respect to "miscellaneous charges" to which the CLEC may be subject to, without any description of what these charges are for, or when or how they may be assessed. MCIW 2-1 at p. 48.

e. Qwest Response

95. In its August 10, 2000 written response, Qwest addressed several of AT&T and MCIW's concerns. With respect to AT&T and MCIW's concerns regarding services available for resale, Qwest modified its SGAT language to clarify 6.1.1 to address AT&T's concern over limiting the resale obligation to only those products identified in Qwest's tariff. Qwest 2-10 at p. 2-3. Qwest did not agree to modify the language in 6.1.1 to address MCIW's concern of including 911 as it is provided with each

retail and resold local exchange service line provided to Qwest's retail end users to reseller CLECs. Qwest 2-10 at p. 4.

96. With respect to AT&T's comments on Section 6.2.2.6, Qwest stated that is not required to offer voice messaging service for resale as it is not a telecommunications service but an information service which is the position consistent with the FCC's holding in the BellSouth 271 decision. Qwest 2-10 at p. 5. Regarding MCIW's comments on section 6.2.2.4 pertaining to the resale of "N11" services, Qwest believes this is a dialing parity issue and not a resale issue. Qwest 2-10 at p. 5. However, should Qwest offer any other telecommunications services at retail that use an "N11" dialing arrangement, the underlying service would be available for resale, and the dialing arrangement would also be available (under dialing parity rules). *Id.*

97. Qwest did not agree to delete Section 6.2.2.8 regarding "Grandfathered Services" since Qwest provides for resale of grandfathered services precisely as required under the FCC's rules; however, did agree to clarify the language. Qwest 2-10 at p. 6-7. Qwest agreed to clarify its language based on AT&T's concern over Section 6.3.1 relating to its limitation of resold services by listing certain services in Exhibit A. Qwest 2-10 at p. 7-8. Finally, Qwest modified the language in Section 6.2.2.1 to address both AT&T and MCIW's concern regarding the 90 promotional offering by allowing CLEC's to resale, with any applicable wholesale discount, any re-offering of a promotion for a sequential 90 day or less promotion period. Qwest 2-10 at p. 8-9.

98. With respect to AT&T and MCIW's concerns regarding resale discounts, Qwest did not agree to change Section 6.3.4 regarding PIC change charges as MCIW suggested because charges to change an end user's PIC is not a retail telecommunications service and is not subject to the wholesale discount on that basis. Qwest 2-10 at p. 9. Finally, Qwest agreed to revise Section 6.3.6 to address both AT&T and MCIW's concerns over clarity as to what miscellaneous charges are and that wholesale discounts apply to miscellaneous charges. Qwest 2-10 at p. 10.

99. With respect to AT&T and MCIW's concerns regarding alleged restrictions on resale, Qwest agreed to revise Section 6.2.2 to address AT&T's concern that it needed to be clarified which services are available for resale and to clarify the cross-class restriction. Qwest 2-10 at p. 10. Qwest did not modify Section 6.2.2.7 regarding AT&T's concern over CSA's available for resale under limited terms and conditions. Qwest 2-10 at p. 11. Qwest states that the terms under which Qwest offers CSA's for resale are the same as those that the FCC approved in the Bell Atlantic New York 271 decision. *Id.* Also, Qwest stated it could find no reference in Exhibit A that negotiated agreements receive 0% discount as AT&T claims. Qwest 2-10 at p. 12.

100. Qwest agreed to revise Section 6.2.9 to address AT&T's concerns over branding. Qwest 2-10 at p. 13. However, Qwest did not agree to modify 6.2.9 to address MCIW's concerns over paying for branding services since Qwest must rebrand or unbrand OS and DA services where technically feasible, and the FCC clearly

contemplated an incumbent such as Qwest charging the CLEC for doing so. Qwest 2-10 at p. 14.

101. Qwest did not agree to modify Section 6.2.14 due to AT&T's concern that the SGAT limits Qwest's resale obligations in which "facilities currently exist" in that Qwest believes the SGAT does not limit resale. Qwest 2-10 at p. 14. Finally, Qwest did not agree with AT&T's comments on Section 6.1.3 that it placed any restrictions on resale of services, nor that "the legal presumption" referred to by AT&T may be made about a cross reference to another section of the SGAT and therefore did not make any revisions to this Section. Qwest 2-10 at p. 15.

102. With respect to AT&T and MCIW's remaining concerns on resale, Qwest agreed to modify section 6.1.2 to address AT&T and MCIW's concern over resale obligations of the CLEC. Qwest 2-10 at p. 15. Qwest also agreed to modify Section 6.2.10 as requested by AT&T so that this Section is reciprocal as to PIC changes. Qwest 2-10 at p. 16.

103. Qwest did not agree with AT&T's concern that under Section 6.2.1 it should produce all training materials referred to. Qwest 2-10 at p. 16. Qwest stated that it provided a list of the various training documents as well as the Qwest web site address where CLECs may access this information and materials. Id.

104. Qwest agreed to delete the last sentence in section 6.2.2 addressing AT&T's concern about CLECs paying an LSR fee. Qwest 2-10 at p. 17. In addition, Qwest proposed making that a separate subsection of the SGAT - 6.2.2.12. Id. at p. 17. Qwest also agreed with AT&T's suggestion to clarify language in Section 6.2.2.4 concerning 911 service. Qwest 2-10 at p. 17.

105. Qwest agreed to delete Section 6.2.2.11 pertaining to Megabit service to address AT&T's concern requiring CLECs to resell such service from the interstate tariff rather than the intrastate tariff. Qwest 2-10 at p. 18.

106. Qwest agreed to modify Section 6.2.3 to address AT&T's concern regarding its resale quality of service obligation. Qwest 2-10 at p. 18. However, Qwest does not agree that the use of the term "retail end users" is problematic and therefore made no changes to that specific language. Qwest 2-10 at p. 19. Qwest also did not make any changes to Section 6.4.5 regarding the use of the word "retail". Qwest 2-10 at p. 26. Additionally, Qwest did not change this Section of the SGAT to address MCIW's concern that "[t]he term "substantially the same" is ambiguous and creates the opportunity for conflicting interpretations by the parties". Qwest 2-10 at p. 19. Qwest states that its language in the SGAT is the same as the language of the Telecom Act and the FCC and therefore, it is appropriate for this to be the standard cited in the SGAT. Id.

107. Qwest rejected the suggestion of AT&T and MCIW that it modify Section 6.2.5 requiring CLEC resellers to provide Qwest with certain forecasts of their requirements for services for resale and that it require a CLEC to estimate its use of OSS

applications for scaling and throughput/system response time planning. Qwest 2-10 at p. 20. Regarding MCIW's proposal, Qwest reminds MCIW that Qwest's wholesale operations are not in competition with MCIW. Qwest 2-10 at p. 22.

108. Qwest did agree to modify its SGAT language to Section 6.2.12 at MCIW's request regarding termination of resale service to CLEC for non-payment of charges. Qwest 2-10 at p. 22.

109. Qwest agreed to modify Section 6.3.5 in response to AT&T's concerns over clarification of the billing detail that Qwest will provide. Qwest 2-10 at p. 23.

110. AT&T expressed concern over Section 6.3.8 regarding changes in rates that may apply to resale of services in the future. Qwest 2-10 at p. 23. While Qwest did not adopt the exact language proposed by AT&T, it did propose some modified language to address this issue. Id.

111. Qwest did agree to modify Section 6.3.9 and Section 6.3.10 in response to AT&T's concern to indicate that the rates billed are Commission-approved rates. Qwest 2-10 at p. 24.

112. Qwest did not agree to change Section 6.4.1 and Section 12.3.8.1.5 regarding AT&T's issue on allowing Qwest to turn a CLEC's end user's inquiry about the CLEC's service into a "marketing opportunity" for Qwest and also with misdirected repair calls from CLEC's end users to Qwest. Qwest 2-10 at p. 24-25. Qwest states that AT&T cited no authority for concluding that Qwest may not discuss its products and services to callers to its business office so long as those discussions are not discriminatory toward the CLEC or its services. Id. at p. 24. AT&T's suggestion to disallow such conversation is unreasonable and unfair to end users as well. Id.

113. Qwest did agree to clarify Section 6.4.3 to address AT&T's concern regarding performance standards Qwest may use for CLEC orders as well as itself or any subsidiary affiliate, or any other party to which Qwest directly provides the service, such as end users. Qwest 2-10 at p. 26.

114. Qwest also agreed to modify Section 6.4.8 to clarify the issue of due date intervals. Qwest 2-10 at p. 26-27.

115. Finally, Qwest stated that with regard to the 1997 test involving migration of resale services to MCIW, it was unable to respond to the claims presented by MCIW since MCIW provided very few details and no documentation concerning these claims. Qwest 2-10 at p. 27. In addition, this test took place three years ago which is a lifetime in the evolutionary world of interconnection and resale. Thus, Qwest believes it would be better to focus on the processes as they work today than the way they worked three years ago. Id. In the three intervening years since the 1997 test relied upon by MCIW, significant improvements have been made in the experience levels of personnel, the number of personnel, and in methods and procedures used by personnel to process and

deliver resold service requests. Qwest 2-10 at p. 28. There have also been upgrades and enhancements in the OSS used by CLECs and Qwest wholesale personnel to process resale orders. Id. All of these factors dictate the conclusion that resale today is very different from resale three years ago. Id.

f. Impasse Issues

116. At the August 18, 2000 and February 14, 2001 Workshops, Checklist Item 14 issues were discussed at length among the parties. The parties were able to resolve almost all of their disputed issues at the workshops. Some issues the parties agreed to defer to other workshops. Ultimately, there were only two issues that the parties were at impasse on and could not resolve. Following are the Staff's recommendations on resolution of the resale impasse issues.

DISPUTED ISSUE NO. 1: Whether Language in Qwest's SGAT Sections 6.4.1 and 6.6.3 Pertaining to Misdirected Calls to Another Carrier is Appropriate?

a. Summary of Qwest and CLEC Positions.

117. AT&T believes that the SGAT language in Sections 6.4.1 and 6.6.3 which addresses misdirected calls to another carrier is too broad and would permit Qwest to use these instances as a marketing opportunity to win back the CLEC customer. 2/13/01 TR at p. 1381. AT&T believes that more specific language is necessary that would prohibit Qwest or another carrier from taking advantage of misdirected calls in this fashion. AT&T proposed adding the phrase "seeking such information" at the end of the last sentence in Section 6.4.1 to address this concern. AT&T Brief at p. 16.

118. MCIW agreed with AT&T's proposed language changes. MCIW stated that its existing MCIMetro interconnection agreement with Qwest approved by the Arizona Commission provides in Section 2.2 of Attachment 2 addressing Resale as follows:

Nothing in this agreement shall be deemed to prohibit either party from discussing its products and services with customers of the other Party who solicit such information or who are directly contacted by a Party. (Emphasis added). MCIW Brief at p. 8.

119. MCIW claims that this language is very similar to the language offered by AT&T which Qwest rejects.

120. Qwest claims that the proposed language is not necessary or appropriate. 2/13/01 TR. at p. 1382. Qwest argues that it would not be proper to restrict its ability to talk with a caller to their business office about subjects that the caller asked about. 8/18/00 TR at p. 612. Qwest also argued that it would be very difficult to enforce this

restriction in terms of trying to reconstruct any potential conversation that may have occurred. Id. Qwest also stated that it believes that it would be too difficult to distinguish between conversation that is appropriate versus language that is inappropriate. 8/18/00 TR at p. 618. Qwest also argued that denying it the ability to market to a subset of customers would constitute an inappropriate limitation on resale.

b. Discussion and Staff Recommendation.

121. Staff believes that the CLECs have raised a legitimate concern which needs to be addressed. End users that mistakenly call Qwest should be instructed to contact their respective CLEC without a marketing attempt to solicit business from that end user by Qwest, unless the end user specifically requests that information. Moreover, as noted by MCIW, Qwest has already agreed to similar language in its current interconnection agreement with MCIW. Staff, therefore, recommends that AT&T's proposed language should be adopted and that Qwest should modify its SGAT, Section 6.4.1 accordingly.

122. With the proposed language change requested by AT&T, Section 6.4.1 of Qwest's SGAT would read as follows:

CLEC, or CLEC's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users 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 users who call the other Party seeking such information.

DISPUTED ISSUE NO. 2: Whether Qwest's SGAT Indemnification Language is Appropriate? (SGAT Sections 6.2.3.1 and 6.2.3.2).

a. Summary of Qwest and CLEC Positions.

123. The CLECs disagree with Qwest's SGAT language in terms of the limited extent to which those credits or fines and penalties should be passed on in terms of the wholesale discount and under what circumstances. Id. AT&T argues that the new language seeks only to give the CLECs a discounted amount of penalties. 2/13/01 TR at

p. 1383. For example, if the wholesale discount is 15%, Qwest would only give the CLEC 85% of the penalty, whereas the CLEC would no doubt want to give its customer 100% of the credit as Qwest would give its end-users. 2/13/01 TR at p. 1383. AT&T went on to state that the Qwest language would not give any compensation where a State may assess fines or penalties on the CLEC. 2/13/02 Tr at p. 1383-1384. See also AT&T Brief at p. 7. ("The credit is "partial" because Qwest will only agree to reimburse those harmed end-user customers the wholesale amount paid by the CLEC and not the amount the end-user actually paid for the service. In order to be in business at all the reseller is not likely charging its end-user the wholesale rate it receives from Qwest for the service the reseller provides to its customers; rather it must adjust the cost of that service to meet its own expenses and realize a profit—while still providing service at competitive prices. ... Thus, in the case of poor service quality, the innocent reseller not only did not acquire the service for which it paid, but it may be liable to its end-user customer for the full cost of the end-user's service while Qwest—the cause of the problem---would limit its liability to a fraction of the actual damage it caused. This is manifestly unfair and certainly not at parity with what Qwest would have to do in regard to making its own end-user customers whole for their losses under the retail service quality tariff.")

124. AT&T also takes issue with subpart (e) of Section 6.2.3.1 which provides: "In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident." AT&T argues that the Qwest language essentially would allow offsetting of any penalties that are assessed under the SGAT from any penalties that would be assessed under the Performance Assurance Plan in Arizona. 2/13/01 TR at p. 1385. AT&T argues that the SGAT provisions and the Performance Assurance Plan are separate and should be treated as such. 2/13/01 TR at p. 1385. The indemnity AT&T seeks in the resale section of the SGAT would be to compensate their end-users directly for per occurrence type situations. Id. The Performance Assurance Plan is to compensate the CLEC for poor service by Qwest.

125. MCIW concurs with the comments of AT&T. 2/13/01 TR at p. 1385. MCIW argues that the Qwest language in Section 6.2.3 unreasonably limits its liability for harm caused by Qwest's poor service quality to the reseller's end-user. MCIW Brief at p. 5. MCIW argues that Qwest's proposal is manifestly unfair and not at parity with what Qwest would have to do in regard to making its own end-user customers whole for their losses under the retail service service quality standards. MCIW Brief at p. 5. MCIW also agrees with AT&T that the penalties assessed under the Performance Assurance Plan and Qwest's SGAT are two different penalties and should not offset one another. MCIW Brief at p. 4.

126. Qwest states that if it has violated its quality of service conditions, the SGAT requires Qwest to credit the reseller CLEC with the entire amount the reseller CLEC paid Qwest for the service: Qwest's retail rate minus the wholesale discount. Qwest Brief at p. 4. Qwest argues that it should not be forced to also credit the CLEC the amount of money that the CLEC charged the end-user. Id. Qwest argues that AT&T's demand is unreasonable in that Qwest has absolutely no control over the amount a CLEC chooses to pay to its customer for service problems, and indeed, not circumscribing this

remedy would open the door for potential abuse. *Id.* To refund credit in the amount that exceeds what the CLEC paid Qwest would, in effect, establish a standard of care with respect to the end-user, as opposed to the party with which Qwest has its contractual relationship. Qwest Brief at p. 5.

127. Finally, Qwest believes that Section 6.2.3.1, subpart (e) is reasonable. Qwest states that it is unreasonable and unduly punitive to subject Qwest to two redundant penalties for the same service problem Qwest Brief at p. 5. Qwest claims that absent this provision, CLEC resellers would be permitted to obtain a windfall by recovering twice: once through the Performance Assurance Plan and once through the SGAT. Qwest Brief at p. 5.

b. Discussion and Staff Recommendation

128. Staff recommends that Qwest credit the CLEC the amount of money that Qwest would reimburse its own retail end-user customer and that the CLEC pass through this amount to its end-user customer. Staff does not believe that application of the wholesale discount is appropriate since a reseller CLEC has no control over the quality of service provided by Qwest to the CLEC's end-user customers and they should be entitled to the same amount received by Qwest's own end-user customers for poor service quality. However, Staff also believes that Qwest should not have to credit the CLEC the amount of money that the CLEC charged the end user as AT&T and MCIW argue, since Qwest has no control over the amount a CLEC chooses to charge its customers for service. Staff recommends that Qwest be required to revise its SGAT language accordingly.

129. Staff agrees with AT&T and MCIW that the penalties assessed against Qwest under its Performance Assurance Plan and the Service Quality Tariff or its SGAT are separate and distinct plans and should be applied independently of one another. Performance Assurance Plan penalties reflect Qwest's failure to provide service parity to wholesale customers (CLECs) and those penalty amounts are awarded to the individual CLECs. The penalties called for under the SGAT are penalties paid by Qwest to the end-user or state based on individual incidents of unacceptable service to its end-users. Therefore, Staff does not agree with Qwest's claim that it is being penalized twice for the same service problem. Staff recommends that Qwest be required to revise its SGAT language accordingly.

130. Staff also recommends that the indemnification language contained in Qwest's SGAT be revisited in the final General Terms and Conditions workshop to determine whether consensus can be achieved.

g. Verification of Compliance

131. Section 271(c)(2)(B)(xiv) of the Act requires a Section 271 applicant to make "telecommunications services...available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

132. Based upon the record, and subject to Qwest (1) revising its SGAT to incorporate the impasse resolutions contained in subpart f above, and (2) passing all relevant performance measurements discussed above in the Third Party OSS Test currently underway in Arizona, Qwest has demonstrated that it complies with Checklist Item 14 and makes available "telecommunications services" for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

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

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

7. Section 271(c)(2)(B)(xiv) of the Telecommunications Act of 1996 requires Qwest to make "telecommunications services... available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

8. Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

9. Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on resale, with the exception that "a State may, consistent with FCC regulations under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

10. Section 252(d)(3) sets forth the basis for determining "wholesale rates" as the "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and any other costs that will be avoided by the local exchange carrier."

11. As a result of the proceedings and record herein, Qwest's provision of resale services is undisputed absent resolution of the two-impasse issue as described above.

12. Qwest complies with the requirements of Checklist Item No. 14, subject to it updating its SGAT with language to incorporate the impasse resolutions contained in subpart g above

13. Qwest's compliance with Checklist Item 14 is also contingent on its passing of any relevant performance measurements in the third-party OSS test now underway in Arizona.

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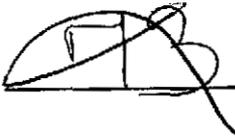
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INTERESTED PARTIES: WATER/SEWER/ELECTRIC

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- 15 County Board of Supervisors
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- Jose Saguid - (AZ Dept. of Revenue): Electric/CC&N/Rates
- David Derron - (AZ Dept. of Revenue): Telecomm/CC&N/Rates
- J. Calkins (AZ Dept. of Environmental Quality): Water Quality Division

A.D.E.Q

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U-5

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

QWEST CORPORATION
(CHECKLIST ITEM NO. 14)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 12:00 p.m. on or before:

SEPTEMBER 7, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 11, 2001 AND SEPTEMBER 12, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.



BRIAN C. McNEIL
EXECUTIVE SECRETARY