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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

**DOCKETED**

OCT 31 2001

AT&T COMMUNICATIONS  
DOCUMENT CONTROL

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

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

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**AT&T'S RESPONSE IN OPPOSITION TO  
QWEST'S COMMENTS REGARDING STAFF'S FINAL  
RECOMMENDED DECISION ON CHECKLIST ITEM 1,  
INTERCONNECTION AND COLLOCATION**

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AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix, (collectively, "AT&T") hereby submits this Response in Opposition to Qwest's Comments Regarding Staff's Final Recommended Decision on Checklist Item 1, Interconnection and Collocation. AT&T will limit this Response to one issue, Qwest's statements regarding "commingling or ratching" in its Comments, the remainder of Qwest's Comments appear to exceed the ALJ's procedural ruling related to filings regarding Staff's Proposed and Final Reports.<sup>1</sup>

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<sup>1</sup> On September 4, 2001, the ALJ ruled:

[I]f you're changing your position from what you originally argued, filing comments to that effect, brief comments. It's not a time to present additional facts or additional legal argument. If you want to do that, you should do it by motion . . . . Or again, in the instance where Staff adds between the proposed findings and the final report, if Staff somehow mischaracterizes a statement that's relied on in their final conclusion, that would be inappropriate comment. 9/4/01 AZ Tr. at pp. 13-14.

## INTRODUCTION

If a consumer places a banana, a pretzel and a steak in his basket, would it be fair for the market to charge the consumer three times the price of the steak simply because the consumer enjoys the convenience of carrying the other items in the same basket? The obvious answer is “no,” it is inequitable to charge the consumer for more than he receives. Likewise, would it be fair to demand that if the consumer wants to purchase these seemingly unrelated items at their appropriate individual prices, he must use separate baskets for each item? Again, the obvious answer is “no,” it would be inefficient and wasteful for the consumer to carry more baskets than necessary simply for the convenience of paying the appropriate price for the individual items.

Competitive local exchange carriers (“CLECs”) should be treated no differently than this hypothetical consumer. In fact, Qwest has conceded that CLECs may use—for example—the DS-3 facility or “basket” to carrier interconnection trunks, UNE trunks<sup>2</sup> and special access trunks. Just like the grocery shopper, CLECs too should pay the appropriate price for each item they purchase from Qwest. This is what AT&T means when it employs the term “ratcheting.” AT&T is not asking to commingle local and long distance traffic using the same trunk; AT&T is not asking to pay less than it should for the items it purchases.<sup>3</sup> In contrast, Qwest is asking that CLECs pay more than they should either through the inefficiencies of having to carry and buy more “baskets” than they need or by paying disproportionately for the highest priced item they need. If nothing else, simple fairness suggests Qwest’s proposal should be rejected.

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<sup>2</sup> “UNE,” as you know, means unbundled network elements. “UNE trunks” in this context means the trunks CLECs employ to access UNEs.

<sup>3</sup> 6/23/00 WA Tr. at pp. 617, ln. 19 – 618, ln. 20.

## DISCUSSION

There are at least two fundamental flaws in Qwest's Comments regarding Staff's Final Report on Interconnection, SGAT § 7.2.2.9.3.2. They are: (1) contrary to Qwest's claim, the Federal Communications Commission ("FCC") has not prohibited what AT&T requests that Arizona adopt and what Washington adopted; and (2) again, contrary to Qwest's claim, the Arizona Staff and the Washington ALJ's decision in regard to the efficient use of interconnection trunks and access to UNEs is consistent with other State Commissions decisions and the adoption of such a proposal will not harm Universal Service Funding ("USF").

### **I. Both Arizona and Washington's Decisions are Consistent with the FCC's Decisions and the Telecommunications Act of 1996 ("Act").**

In its Comment, Qwest argues that the FCC's Supplemental Orders expressly prohibit the "ratcheting" proposed by AT&T. Qwest further claims that the *ex parte* submission made by WorldCom addressed this very proposal, which the FCC allegedly rejected. Qwest is simply wrong. To put forward its argument, Qwest attempts to extend the FCC's rulings beyond their clear and unambiguous scope.

On its face, the *Supplemental Order*<sup>4</sup> and *Supplemental Order Clarification*<sup>5</sup> are limited to commingling of access traffic/long distance on unbundled network elements/loops. Paragraph 2 in the *Supplemental Order* describes the FCC's concern; it plainly states:

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<sup>4</sup> *Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Supplemental Order Clarification*, CC Docket No. 96-98, FCC 99-370 (Rel. Nov. 24, 2000) [hereinafter "***Supplemental Order***"].

<sup>5</sup> *Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Supplemental Order Clarification*, CC Docket No. 96-98, FCC 00-183 (Rel. June 2, 2000) [hereinafter "***Supplemental Order Clarification***"].

In the *Third Report and Order*, we explained that incumbent LECs routinely provide the functional equivalent of combinations of unbundled loop and transport network elements (also referred to as the enhanced extended link) through their special access offerings. Because section 51.315(b) of the Commission's rules precludes the incumbent LECs from separating loop and transport elements that are currently combined, we stated that a requesting carrier could obtain these combinations at unbundled network element prices. At the same time, we stated our concern that allowing requesting carriers to use loop-transport combinations solely to provide exchange access service to a customer, without providing local exchange service, could have significant policy ramifications because unbundled network elements are often priced lower than tariffed special access services. Because of concerns that universal service could be harmed if we were to allow interexchange carriers (IXCs) to use the incumbent's network without paying their assigned share of the incumbent's costs normally recovered through access charges, we agreed that we should further explore these considerations, recognizing that full implementation of access charge and universal service reform was still pending.

To address this concern, the FCC stated that interexchange carriers ("IXCs") may not convert special access services to combinations of unbundled loops and transport network elements, until resolution of the Fourth FNPRM.<sup>6</sup> The FCC further stated that this limitation would not apply if an IXC used combinations of unbundled loop and transport network elements to provide a significant amount of local exchange services, in addition to exchange access service, to a particular customer.<sup>7</sup> This determination was confirmed in the *Supplemental Order Clarification*.<sup>8</sup>

The *Supplemental Order* does not address spare trunks used exclusively to provide local interconnection service as AT&T proposed. Instead, the *Supplemental Order* only addressed incumbent local exchange carriers ("ILECs") concerns that IXCs might use their right to obtain UNEs as a vehicle to convert dedicated access lines to UNEs and thus pay less than they should for access lines.

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<sup>6</sup> *Id.* at ¶ 4.

<sup>7</sup> *Id.* at ¶ 5.

<sup>8</sup> *Supplemental Order Clarification* at ¶ 8.

In addition, nothing in the *Supplemental Order Clarification* altered the FCC's fundamental ruling in the *Supplemental Order*. Rather, in the *Supplemental Order Clarification*, the Commission adopted a definition of "a significant amount of local service" that was proposed jointly by the largest ILECs and four CLECs.<sup>9</sup> That definition limits the use of loop-transport combinations, or EELs, to three "options" that the Commission found "presented a reasonable compromise proposal under which it may be determined that a requesting carrier has taken affirmative steps to provide local exchange service to a particular end user and is not seeking to use unbundled loop-transport combinations solely to bypass tariffed special access service."<sup>10</sup> Each of the options limits the use of unbundled network elements to carry tariffed access services.

Furthermore, Qwest cites to paragraph 28 of the *Supplemental Order Clarification* to support its argument. Paragraph 28 provides as follows:

We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudice any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

This paragraph of the FCC's Order does not in any way address the proposal at issue here. Therefore, Qwest's Motion should be rejected as contrary to the Act and FCC Orders regarding interconnection and access to UNEs. To the extent individual trunks on a DS3 facility, which also carry special access trunks, are being used for local interconnection purposes, the Act requires that the interconnection trunks be priced

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<sup>9</sup> *Supplemental Order Clarification* at ¶ 21.

<sup>10</sup> *Id.*

appropriately.

Finally, as an aside, the Ninth Circuit Court of Appeals has upheld the combination of traffic types, including long distance and local traffic. Arizona is governed by the Ninth Circuit.<sup>11</sup>

## **II. The Efficient Use of Trunk Facilities and Access to UNEs is Consistent with Other State Commissions and Such Decision does Not Harm USF.**

In its Comment Qwest claims that “Colorado, Utah, Wyoming, New Mexico, Iowa and North Dakota” have all considered the same issue and have found it “inappropriate.”<sup>12</sup> In addition, Qwest further confuses the issue by suggesting that the universal service subsidy is in jeopardy by adopting the Staff’s proposal.<sup>13</sup>

Turning to the first issue, every single Commission (or Facilitator in the case of the Multi-State), with the exception of Colorado,<sup>14</sup> agrees with Washington’s decision that CLECs should be able to use the spare trunks found on the DS3 or special access type facilities for interconnection.<sup>15</sup> Likewise, each Commission and the Facilitator has determined that interconnection trunks may be used for access to UNEs.<sup>16</sup> The question, then, is how must CLECs pay for such usage. Decisions on this point vary and because of the apparent confusion of this issue with the commingling issue, either the FCC or the various states will have to re-visit and resolve the rate issue specifically.

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<sup>11</sup> *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F. 3d 1112, 1124-25 (9<sup>th</sup> Cir. 1999); likewise, Arizona previously, Utah, New Mexico, Montana and Idaho have all allowed commingling of LD and local traffic paid for via PLU factors.

<sup>12</sup> Qwest Comment at p. 3.

<sup>13</sup> *Id.* at p. 4.

<sup>14</sup> Because the Colorado Reports in question suffer from some significant procedural and substantive problems, other Commissions would be wise not to rely on such reports.

<sup>15</sup> See e.g., Multi-State Facilitator’s Second Report Workshop One at p. 36; Arizona Final Report on Interconnection and Collocation at p. 51, ¶ 303; and Oregon Workshop 2 Report at p. 7.

<sup>16</sup> *Id.*

From a technical standpoint, what AT&T proposes is as follows. AT&T would purchase, as it typically does, a DS3 facility from Qwest. A DS3 facility contains 28 DS1 trunks.<sup>17</sup> Some of the DS1 trunks would be designated as carrying special access (long distance) traffic and some would be designated as carrying local traffic (interconnection trunks). Still others might be designated as being used to access UNEs. Qwest would know which trunks are which and no traffic that should be routed over the local traffic trunk could traverse the special access trunks. Furthermore, AT&T would pay for the DS1 trunks according to their designations.<sup>18</sup> Thus, the DS1s designated for interconnection would be paid for using TELRIC rates, the DS1s designated for special access would be paid for using the access rates, and the DS1s used to access UNEs would be paid for using TELRIC rates.

Because the DS1s designated for special access or long distance would be specifically identified and billed according to required access rates, USF funding would remain intact. CLECs as IXCs would be paying the appropriate amount for continued support of USF. Thus, Qwest's attempt to suggest that adopting Washington's approach means that the "sky is falling" with respect to USF because Qwest cannot over-bill the CLECs is nothing more than a red herring. USF should be funded appropriately and Qwest should not enjoy a windfall on the backs of its local competitors simply because Qwest may overcharge for the DS1 channels contained in the DS3 facility. CLECs need and deserve to employ DS3 facilities efficiently both from an economic and technical perspective.

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<sup>17</sup> 6/23/00 WA Tr. at pp. 617, ln. 23, 4/10/01 AZ Tr. at pp. 1597-1599.

<sup>18</sup> *Id.* at p. 617, lns. 24-25.

Because the FCC has not determined this issue and regardless of what any other state has done to date, Washington's decision in its 15<sup>th</sup> Supplemental Order is appropriate and fair and Arizona should follow suit.<sup>19</sup> In fact, Washington's well-reasoned decision should form the basis for the FCC's ultimate determination of this issue as well as Arizona's.

### CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Arizona ALJ consider the arguments herein and adjust Staff's Final Report accordingly.

Respectfully submitted this 30<sup>th</sup> day of October 2001.

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

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<sup>19</sup> Exhibit A attached hereto is Washington's 15<sup>th</sup> Supplemental Order.

Exhibit A

SERVICE DATE

AUG 17 2001

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into	)	
U S WEST COMMUNICATIONS, INC.'s <sup>1</sup>	)	DOCKET NO. UT-003022
Compliance With Section 271 of the Telecommunications Act of 1996	)	
_____	)	
In the Matter of	)	DOCKET NO. UT-003040
U S WEST COMMUNICATIONS, INC.'s	)	FIFTEENTH SUPPLEMENTAL ORDER
Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	)	COMMISSION ORDER <sup>2</sup> ADDRESSING WORKSHOP TWO ISSUES: CHECKLIST ITEMS NOS 1, 11, AND 14.

I. SYNOPSIS

In this Order, the Commission determines Qwest's compliance with certain provisions of section 271 of the Telecommunications Act of 1996. Included in this decision are issues relating to Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale).

II. BACKGROUND AND PROCEDURAL HISTORY

This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST), with the requirements of section 271 of the Telecommunications Act of 1996 (the Act),<sup>3</sup> and to

<sup>1</sup> Since the inception of this proceeding, U S WEST has merged and become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this order.

<sup>2</sup> This proceeding is designed, among other things, to produce a recommendation to the Federal Communications Commission (FCC) regarding Qwest's compliance with certain requirements of law. This order addresses some of those requirements. The process adopted for this proceeding contemplates that interim orders including this one will form the basis for a single final order, incorporating previous orders, updated as appropriate. The Commission will entertain motions for reconsideration of this order so that issues may be timely resolved.

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq.

RECEIVED AT&T Corp. Legal - Denver

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review and consider approval of Qwest's Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act.

- 3 In this proceeding, the Commission must determine whether Qwest has opened its local network to competition sufficiently that the Commission may recommend to the Federal Communications Commission (FCC) that Qwest be allowed to enter the interLATA toll market. The Commission allowed Qwest's SGAT to go into effect at its June 16, 2000, open meeting. The Commission has reviewed the SGAT provisions during the Section 271 workshops to determine whether the provisions comply with section 252(d) and section 251 of the Act, as well as requirements of Washington state law.
- 4 The Commission has also outlined a process and standards for evaluating Qwest's compliance with section 271. Qwest's compliance with the fourteen "Checklist Items" listed in section 271 has been addressed through a series of workshops. The first workshop addressed Checklist Items No. 3 (Poles, Ducts, and Rights of Way), 7 (911, E911, Directory Assistance, Operator Services), 8 (White Pages Directory Listings), 9 (Numbering Administration), 10 (Databases and Associated Signaling), 12 (Dialing Parity), and 13 (Reciprocal Compensation). The administrative law judge entered a Draft Initial Order on August 8, 2000, and a Revised Initial Order on August 31, 2000. A final Commission order resolving the disputed issues in Workshop I was entered on June 11, 2001.
- 5 The Commission convened the second workshop the week of November 6, 2000, to consider the issues related to Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale) and provisions of the SGAT addressing these issues. The Commission convened an additional workshop on collocation issues on November 28, 2000, and a follow-up workshop from January 3 through 5, 2001, to address unresolved issues from the November workshop sessions. Administrative Law Judge Ann E. Rendahl presided over the workshops.
- 6 During the workshop sessions, the parties resolved many issues and agreed upon corresponding SGAT language. However, certain issues remained in dispute. The parties filed briefs with the Commission on January 25, 2001, concerning disputed issues involving Checklist Items No. 1 (Interconnection), 11 (Number Portability), and 14 (Resale). The parties filed briefs on February 16, 2001, addressing disputed issues involving collocation issues. The administrative law judge entered an initial order finding non-compliance in the areas of Interconnection, Number Portability and Resale on February 23, 2001 (February 2001 Initial Order) and the Eleventh Supplemental Order Finding Noncompliance on Collocation Issues (March 2001 Initial Order) on March 30, 2001. The parties argued disputed issues to the Commission on May 16, 2001. This Order resolves the issues raised by the parties in briefs, comments, and oral argument to the Commission regarding matters in the two initial orders entered following the second Workshop.

### III. PARTIES AND REPRESENTATIVES

7 The following parties and their representatives participated in the second workshop: Qwest, by Lisa Anderl, attorney, Seattle, WA, and Robert E. Cattanach, attorney, Minneapolis MN; AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), by Rebecca B. DeCook, Dominic Sekich, Mitchell H. Menezes, and Letty S. D. Freisen, attorneys, Denver, CO; WorldCom, Inc. (WorldCom) by Ann E. Hopfenbeck, attorney, Denver, CO; Sprint Communications Company, LP by Eric S. Heath, attorney, Las Vegas, NV and Barbara Young, attorney, Hood River, OR; XO Washington, Inc. (XO), Electric Lightwave Inc., Advanced TelCom Group, Inc. (ATG), Focal Communications of Washington, Allegiance Telecom, and Excel Washington, Inc. by Gregory J. Kopta, attorney, Seattle, WA; McLeod USA Telecommunications Services, Inc. by Marianne Holifield, attorney, Seattle, WA; Rhythms Links Inc., by Douglas Hsaio, attorney, Englewood, CO; Covad Communications, Inc. (Covad), ICG Communications, Inc., MetroNet Services Corporation (MetroNet), MGC Communications, Inc., d/b/a Mpower Communications Corp., and Yipes Transmission, Inc. by Brooks E. Harlow, attorney, Seattle, WA; Eschelon Telecom of Washington, by Ellen Gavin, attorney, Seattle, WA; and Public Counsel by Simon ffitch and Robert Cromwell, Assistant Attorneys General.

### IV. DISCUSSION

8 The February 2001 and March 2001 initial orders addressing disputed issues from the second workshop stated findings and conclusions on all material facts inquired into during the course of the second workshop. The Commission restates and adopts the findings and conclusions entered in the two orders, with the modifications discussed below.

#### A. Pick and Choose

9 During the second workshop, the parties agreed to language in the SGAT implementing the "pick and choose" provision of the Act, section 252(i), under which carriers may choose to interconnect with an incumbent LEC under terms of another approved interconnection agreement. The language, set forth in Exhibits 236 and 327, is consistent with the principles and procedures set forth in the Commission's interpretive and policy statement concerning implementation of section 252(i).<sup>4</sup> We approve the SGAT language on pick and choose.

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<sup>4</sup> See *In re Implementation of Section 252(i) of the Telecommunications Act of 1996*, Interpretive and Policy Statement (First Revised), Docket No. UT-990355 (April 12, 2000).

**B. Checklist Item No. 1: Interconnection**

- 10 The Act requires Qwest to provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1). *See* 47 U.S.C. § 271(c)(2)(B)(i). In particular, Qwest must provide interconnection at any technically feasible point, equal in quality to what it provides to itself or any subsidiary, affiliate, or other party to which it provides interconnection, on rates, terms and conditions that are just, reasonable and nondiscriminatory.
- 11 Before we will approve Section 7 of the SGAT relating to interconnection, or find that Qwest has satisfied the requirements of Checklist Item No. 1 for interconnection issues, Qwest must modify the SGAT to reflect the changes ordered in the February 2001 Initial Order, with the modifications discussed below. However, until we review and evaluate the ROC OSS regional testing process, and Qwest's actual performance for this checklist item, we cannot verify whether Qwest has completely satisfied the requirements for interconnection.

**Issue WA-1-5: Entrance Facilities Used for Interconnection with UNEs**

- 12 The February 2001 Initial Order requires Qwest to modify SGAT section 7.1.2 to allow interconnection using entrance facilities at any technically feasible POI chosen by the competitive local exchange carrier (CLEC), including interconnection for access to unbundled network elements (UNEs). The order also held that if entrance facilities are used for both interconnection and exchange access, the CLEC must pay total element long run incremental cost (TELRIC) DS1 rates for the interconnection portion and private line DS1 rates for the exchange access portion.
- 13 Qwest objects to the recommendation that rates for entrance facilities should be subject to proportional sharing of cost based on type of use. Qwest looks to the Workshop 1 Revised Initial Order, which held that transport facilities (DS3s in particular) that were purchased for private line use and had unused capacity could be used for interconnection, at the private line rate. Qwest believes the February 2001 Initial Order allows the type of "ratcheting" (proportional pricing based on use) that the Revised Initial Order on Workshop 1 Issues specifically disallowed. Qwest asks the Commission to delete part of Paragraph 70 of the February 2001 Initial Order requiring use of the proportional DS1 rates.
- 14 The issue in dispute here is whether a CLEC using an entrance facility both for interconnection and for private line/special access service should pay the higher private line/special access rate for the entire facility or a proportional rate based on the relative use of the facility for the two purposes. The Commission has approved TELRIC rates for entrance facilities used for interconnection, and these rates are significantly lower than Qwest's tariffed rates for the same facility when used to provide private line or special access service.

- 15 This issue, while presented in the context of interconnection, is conceptually quite similar to the disputed issue in Workshop 1 regarding "ratcheting" of facilities used for interconnection. *See Revised Initial Order*, ¶ 231. We declined to modify the recommendation that CLECs should not be permitted to pay a proportional rate when a facility is used for interconnection and private line/special access. Under this determination, a CLEC would be allowed to use a single facility for both purposes, for example establishing DS-1 circuits for both purposes on a single DS-3, but it would have to pay the applicable tariff rate for that DS-3.
- 16 The February 2001 Initial Order took a different approach: The recommended decision permits a CLEC to pay TELRIC rates for the portion of a DS-3 entrance facility used for interconnection as long as it pays Qwest's private line DS-1 rate for the portion used for private lines. Qwest objects, contending that this approach is inconsistent with the requirement in Paragraph 231 of the Revised Initial Order that the CLEC pay the higher rate for the entire DS-3 facility.
- 17 We agree that there is an inconsistency between the recommendations from the two workshops. However, we also conclude that the recommended decision in the second workshop comes closer to establishing appropriate rates and economically efficient interconnection arrangements. There is a long history in the area of tariffed exchange access services of like services being priced at different levels, due to various jurisdictional issues between intrastate and interstate services.<sup>5</sup> In a situation where the legally valid rate differs depending on how the service or facility is being used, regulators must ensure that customers pay the higher rate when it is applicable but are not denied the ability to obtain the lower price for that portion that qualifies for the lower rate.
- 18 Qwest's proposal would deny a CLEC the TELRIC-based rates for interconnection authorized by the Commission in Docket No. UT-003013 unless the CLEC established separate (and less efficient) connections. In other words, Qwest would require a CLEC to choose between its right to interconnect at any technically feasible location and its right to obtain facilities at TELRIC rates. The record shows no technical impediment to the use of a single entrance facility for interconnection and private lines, and that proportional pricing of this facility is fair and reasonable.
- 19 This decision will require a modification of the recommended decision in the February 2001 Initial Order, which fell just short of requiring proportional pricing. In the situation where a CLEC uses a DS-3 for both interconnection and access, it should pay a proportionate rate based on the two applicable DS-3 rates. The same principle of proportional pricing should apply in any other circumstance where a service or facility has more than one applicable rate.

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<sup>5</sup> See, for example, Section 2.3.12 DETERMINATION OF INTRASTATE CHARGES FOR MIXED INTERSTATE AND INTRASTATE ACCESS SERVICE, Qwest Washington intrastate access tariff WN U-44.

20 The effect of this decision is to reverse, in part, the recommendation in Paragraph 231 of the Revised Initial Order on Workshop 1 issues. The primary decision on this issue in Workshop 1 was whether a CLEC should use a single facility for both interconnection and private line/special access, and it is unaffected by this order. However, Qwest must modify the SGAT language in section 7.3.1.1.2 to allow proportional pricing of facilities.

**Issue WA-1-7: Mid-Span Meet POI Unbundled Access**

21 The February 2001 Initial Order concluded that Qwest's proposed restriction on the use of mid-span arrangements to access UNEs violates its obligation to provide interconnection at any technically feasible point. It also found that WorldCom's proposed new SGAT language was not necessary because interconnection is available at any technically feasible point, as reflected in the Act and existing interconnection agreements.

22 In its comments, WorldCom expressed concern that Qwest will interpret the Commission's decision to leave WorldCom's proposed language out of the SGAT to mean that Qwest is not required to offer the methods of interconnection included in WorldCom's language.

23 Our decision that Qwest need not include WorldCom's proposed interconnection methods in the SGAT should not be construed to mean that we reject those methods. In order to meet the requirements of Checklist Item No. 1, Qwest must demonstrate that it makes interconnection available at any technically feasible point, using any technically feasible method, including those proposed by WorldCom or other carriers if they are found to be technically feasible.

**WA-I-8: Relationship of Qwest's SPOP Policy with the SGAT**

24 The parties raised concern that Qwest's Single Point of Presence, or "SPOP" document, which sets out guidelines for interconnection at Qwest tandems, is in conflict with, and more restrictive than, the SGAT and interconnection agreements. The Joint CLECs offered additional SGAT language relating to interconnection at Qwest's access tandems. The February 2001 Initial Order recommended that Qwest's performance in provisioning the SPOP product should be handled during discussions on Qwest's Performance Assurance Plan (PAP). The order recommended the addition of two provisions proposed by the Joint CLECs to ensure access to interconnection through the access tandem at reasonable cost.

25 In its comments, AT&T states that the terms and conditions governing interconnection through a single POI should be included in the SGAT, rather than being contained in a product offering document. AT&T asserts that including the SGAT language

proposed by Joint CLECs creates confusion about the right to obtain a single point of interconnection per LATA.

- 26 We clarify that the SGAT language is not meant to be and should not be the only choice under which interconnection at a single POI is available. The added SGAT language is intended to address the parties' concerns about interconnection at the access tandem.
- 27 Qwest argued that product-offering documents and other Qwest publications are not intended to conflict with the SGAT. The Commission finds that the terms and conditions contained in the SGAT should always be available. While CLECs are entitled to agree to other terms and conditions if they choose, they should not be required to sign product agreements or side contracts containing restrictions on offerings, as the only way to obtain products contained in the SGAT. Such conduct on Qwest's part should be brought to the Commission's attention by CLECs through the processes in place to address such conduct, i.e., expedited enforcement under WAC 480-09-530, a formal complaint, petition for expedited enforcement of section 252(I), and the *bona fide* request procedure as provided in interconnection agreements. It will also be reviewed during workshop discussions about Qwest's performance interconnection with the review of Qwest's post-entry performance and the ROC third party OSS testing process.

#### **WA-I-16: Direct-trunked transport mid-span meets**

- 28 AT&T and WorldCom objected to the February 2001 Initial Order's proposed imposition of a 50-mile limitation on direct-trunked transport where neither the CLEC nor Qwest has facilities. The order referred to the Arbitrator's Report and Decision in Docket UT-960310, which held that a distance limit on Qwest's obligation to build facilities to a meet point is reasonable. AT&T argues that a distance limit on meet-point arrangements violates the Act, which allows interconnection at any point in the LEC's network. During oral arguments, parties indicated that construction of a 50-mile trunk was not a likely situation in Washington.
- 29 We are not persuaded that the distance limit in Qwest's SGAT is unreasonable and should be eliminated or changed at this time, as construction of a 50-mile trunk does not appear likely to occur in Washington. If in the future it appears to become more of a concern in Washington, parties should present the issue to the Commission.

#### **WA-I-24: Forecasting Disputes, Deposits**

- 30 The February 2001 Initial Order recommended that deposits resulting from underutilization of previously forecast facilities should not be based on overforecasts or underutilization of trunk groups in other geographic areas, and required Qwest to

amend its SGAT accordingly. It required Qwest to amend the SGAT to guarantee the availability of trunks for which deposits are paid. It recommended that the parties address the *pro rata* formula for refundable deposits and submit an agreeable formula or brief the issue.

- 31 Qwest proposed SGAT amendments that would eliminate deposits when Qwest builds to the lower forecast, and limit deposits to situations where a CLEC has a history of 18 consecutive months of overforecasting. Qwest also proposed to eliminate language referring to "statewide" forecasts and utilization. It would add an interim *pro rata* formula to use while parties continue to address the issue. It would add a guarantee of availability for facilities on which deposits are paid. Qwest asks the Commission to amend the order and find Qwest's proposed revisions acceptable.
- 32 WorldCom argues that the proposed underutilization percentage of 50% is too high, since Qwest's own utilization percentage is 53%. WorldCom objects to the lack of SGAT language restricting the geographic area that can be used as a basis for calculating a deposit. WorldCom also protests Qwest's actual practices in calculating underutilization deposits, stating that Qwest refuses to allow updates to forecasts being used as the basis for deposit calculations.
- 33 Qwest's SGAT proposed revisions appear to result in more favorable deposit policies toward CLECs; however, they are not wholly consistent with the February 2001 Initial Order. Qwest must specify in its SGAT the geographic area being used to calculate the deposit. We decline to alter the underutilization percentage of 50%. Qwest should continue to negotiate a permanent *pro rata* formula with the CLECs and submit it for review at the earliest opportunity.<sup>6</sup>

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<sup>6</sup> In separate comments submitted on May 22, 2001, AT&T, WorldCom, and the Joint CLECs objected to Qwest's proposed SGAT language. AT&T and WorldCom objected to Qwest's failure to add language regarding the specific geographic area on which deposits calculations are based. AT&T and the Joint CLECs argued that Qwest's proposal to return part of a CLEC deposit if Qwest cannot make trunks available negates Qwest's guarantee to make trunks available if deposits on them have been paid. AT&T and the Joint CLECs both proposed that in cases where Qwest cannot make trunks available, 100% of the CLEC deposit should be refunded. The Joint CLECs state that they have not been involved in discussions regarding the *pro rata* formula, and assert that the Commission should not allow Qwest to rely on an interim proposal while failing to negotiate a final resolution consistent with the February Order. AT&T included a counter-proposal for SGAT Section 7.2.2.8.16 with its comments.

We are interested in the comments submitted, including proposed SGAT language, and may wish to consider them in relation to this issue. Parties are encouraged to respond to the comments for our consideration.

**WA-I-30: Ownership of Special Construction Facilities**

- 34 The February 2001 Initial Order recommended that CLEC payments toward the construction of interconnection facilities should not confer ownership rights to the CLECs.
- 35 AT&T argues that the decision is unfair; Qwest is transferring its own building costs to the CLECs. AT&T believes the issue should be dealt with in the cost docket, Docket No. UT-003013.
- 36 The recommended decision is consistent with Commission decisions regarding other forms of special construction. In this order, we do not address the pricing issues surrounding the treatment of CLEC payments toward construction and how payments are accounted for in the price of the services the CLECs receive. Consideration of those issues should take place in the cost docket or in another forum.

**WA-I-37/57/64: Interconnection at Access Tandems**

- 37 The February 2001 Initial Order recommended that Qwest change the SGAT definition of tandem switch, using AT&T's proposed language, to eliminate conditions on interconnection at the access tandem.
- 38 AT&T is concerned that the language in Paragraph 147 of the order<sup>7</sup> implies that low traffic volumes should affect whether interconnection at the local tandem is required. AT&T seeks clarification that CLECs should be able to select points of interconnection regardless of volumes.
- 39 The February 2001 Initial Order directed Qwest to modify its SGAT to "permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T, as follows:

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<sup>7</sup> The paragraph reads: "The Joint CLECs are persuasive in their argument that interconnection at the access tandem when traffic volumes are low would not impact capacity on Qwest's toll and local networks any more than when no local tandem serves a particular area. Most importantly, Qwest has admitted that interconnection at the access tandem is technically feasible and efficient. *Tr. at 1369*. Therefore, Qwest's must revise the SGAT to permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T. Qwest must not require interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connections to the local tandem. Qwest must do so regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem."

7.2.2.9.6. "The Parties shall terminate Exchange Service (EAS/Local) traffic on tandems or end office switches, at CLEC's option."

40 Qwest's SGAT Section 7.2.2.9.6 has been revised, but still limits where CLECs may interconnect, depending on traffic volumes. Qwest must remove these conditions. Qwest has also added language providing for interconnection to a Qwest end office or local tandem in the case of exhaust or forecast exhaust at the access tandem, at the same cost to the CLEC as interconnection to the access tandem. This provision is consistent with Paragraph 147 of the February 2001 Initial Order, and need not be altered.

**WA-I-43: EICT Collocation, Compensation for Interconnection Facilities**

41 The parties dispute whether Qwest may charge CLECs for the cost of the EICT (Expanded Interconnection Channel Termination) linking the CLEC's Point of Interconnection (POI) to Qwest's equipment in the same building. The February 2001 Initial Order recommended that Qwest be responsible for the cost of all facilities on its side of the POI. It also recommended that Qwest remove restrictions in the SGAT prohibiting the use of interconnection tie pairs for interconnection. The order required Qwest to remove the application of EICT rate elements from the SGAT.

42 The Joint CLECs believe the order should address facilities in addition to the EICT. They disagree with eliminating the EICT rate, but believe that the SGAT should require Qwest to compensate the CLECs for their facilities, and the CLECs to compensate Qwest for Qwest facilities, based on traffic exchange.

43 The February 2001 Initial Order found that Qwest and the CLECs should each be responsible for the cost of facilities on their own side of the point of interconnection. Qwest should therefore remove all rate elements from its SGAT representing such costs, in addition to the EICT rates.

44 In this proceeding, we are considering the terms and conditions under which Qwest provides services to CLECs. The Joint CLECs' proposal, which would include determination of rates the CLECs would charge Qwest, is not a proper subject for this proceeding and should be taken up through an arbitration, a tariff proceeding, or a docket addressing costs and pricing.

**WA-I-62/63: Charges for Individual Call Records and Transit Records**

45 Qwest developed terms and conditions in the SGAT for other carriers obtaining individual call and transit records from Qwest. The February 2001 Initial Order found the SGAT language reasonable, as the charges could be imposed either by the CLEC or Qwest for such records.

- 46 WorldCom objects to the charges, asserting there has been no cost analysis and that the cost of charging for the records may exceed the revenues derived. WorldCom believes the charges should be addressed in the cost docket.
- 47 The Commission declines to change the recommendation in the February 2001 Initial Order on this issue. Any questions surrounding the rates being charged by Qwest should be raised in a proceeding in which cost and pricing issues are being addressed.

**C. Checklist Item No. 1: Collocation**

- 48 In order to meet the requirements of Checklist Item No. 1 for collocation, Qwest must comply with the Act, FCC orders and rules, and Commission rules concerning collocation. Before we may approve Section 8 of the SGAT relating to collocation, or find Qwest to have satisfied the requirements of Checklist Item No. 1 for collocation, Qwest must modify the SGAT to reflect the changes ordered in the March 2001 Initial Order, with the modifications discussed below. However, until we review and evaluate the ROC OSS regional testing process, and Qwest's actual performance for the checklist item, we cannot verify whether Qwest has completely satisfied the requirements for collocation.

- 49 Paragraph 155(g) of the March 2001 Initial Order required Qwest to amend the SGAT to include standardized offerings for microwave collocation that conform to the tariffs Qwest must file in compliance with the Thirteenth Supplemental Order in Docket UT-003013. In our Twenty-First Supplemental Order in that docket, we required that Qwest's terms and conditions for microwave collocation be reviewed in this proceeding. The Commission understands that Qwest's terms and conditions for microwave collocation are under discussion in the fourth workshop in this proceeding.

**WA-1C-1: New Collocation Products**

- 50 The March 2001 Initial Order recommended that Qwest not be found to comply with collocation checklist requirements until it demonstrates that its actual applied policies and performance requirements conform to the SGAT.
- 51 Qwest argues that its collocation policies and procedures comport with the SGAT and that if there are slight differences, the SGAT controls. AT&T argues that Qwest's commitment to make new products immediately available is not enough assurance. The Commission must look to Qwest's actions to determine if it meets the checklist requirements. AT&T argues that Qwest's collocation policies set forth in Exhibits 328 through 330 were issued after the SGAT, which calls into question Qwest's commitment to have its documents conform to the SGAT.

52 The March 2001 Initial Order stated an appropriate standard for Qwest to meet. Nothing in the comments or arguments presented by the parties persuades us to change the conclusions reached in the March 2001 Initial Order.

**WA-1C-3/10/11/63: Shared Cageless Collocation**

53 The March 2001 Initial Order recommends that shared cageless collocation is not required, but that cageless collocation in smaller increments than a rack or bay should be explored in the fourth workshop concerning emerging services.

54 In addition to reiterating arguments offered in its brief, Covad argues that the recommendations in the March 2001 Initial Order may be based on a misinterpretation of Covad's position. Covad argues that this is a different issue from being able to collocate in increments smaller than a single bay, or virtual collocation. Covad's primary interest is in sharing an unused bay or rack through shared cageless collocation.

55 We believe that Covad's issue can be fully addressed in the fourth workshop, as agreed to by the parties. We are not opposed to allowing shared cageless collocation if the parties can agree on a method of provisioning it. We encourage the parties to do so. Any necessary changes to the collocation section of the SGAT may be made following the fourth workshop.

**WA-1C-5: Restrictions on Remote Virtual Collocation**

56 The March 2001 Initial Order requires Qwest to amend the SGAT to remove restrictions limiting remote collocation to physical collocation arrangements.

57 Qwest argues that virtual collocation is only required by the Act if physical collocation is not possible for technical or space reasons. Qwest has waived this right for collocations in remote premises and has allowed CLECs to install any equipment using physical collocation that they would be able to install using virtual collocation. Under such arrangements, CLECs may place equipment in the available space even if that space is not physically separated from Qwest's equipment. When physical collocation is unavailable, CLECS may request virtual collocation, in which Qwest bears the burden of installing and maintaining CLEC equipment. The real issue is whether Qwest or the CLEC is responsible for maintenance and installation of equipment.

58 The Act provides that the incumbent "may" provide, not that it "may only" provide, virtual collocation when physical space is not available. "The carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations." 47 U.S.C. § 251(c)(6). Further, FCC rules do not indicate that virtual

collocation is "only required" under certain conditions, as Qwest suggests "An incumbent LEC shall provide *physical collocation and virtual collocation* to requesting telecommunication carriers." 47 C.F.R. § 51.323(a) (emphasis added).

59 Qwest must revise its SGAT to allow CLECs to request both physical and virtual collocation without restrictions.

**WA-1C-31/44: Regeneration costs**

60 The CLECs object to an SGAT provision requiring that CLECs be charged for regeneration costs, that is, the costs of recreating digital signals at needed strength before they become too faint to transmit information. Based on the FCC's *Second Report and Order* in CC Docket 93-162, the March 2001 Initial Order found that Qwest must furnish any regeneration required in cross-connections between itself and CLECs.

61 Qwest argues that it incurs costs to provide regeneration and that it has a right to recoup its costs. Qwest also questions whether it is appropriate to rely on the FCC order, as it predates the Act and addresses interexchange access.

62 We acknowledge that Qwest may incur costs to furnish needed regeneration. We will allow Qwest to include non-CLEC-requested regeneration costs in its indirect costs spread equitably to all users of its facilities, including itself. We observe that the FCC found that regeneration should seldom, if ever, be necessary. Recovery as an indirect cost should result in Qwest being indifferent to whether CLEC or Qwest facilities are subject to regeneration.

**WA-1C-57: Order Volume Limitations**

63 The SGAT would apply set intervals between placement of the order and provisioning it on to the first five collocation orders placed by a CLEC in a given week. Intervals for orders beyond five would be individually negotiated, based at least in part on the number of orders received from other CLECs in that week. The March Initial Order concluded that the language was reasonable, based on an understanding that the parties had found it acceptable.

64 AT&T requests that the Commission revise this conclusion and contends that the SGAT language for orders beyond five per week is unreasonable. AT&T argues that the Commission's collocation rule, WAC 480-120-560, does not include an exemption for a high volume of orders and that the FCC has recognized the need for such an exemption only with respect to complex collocation applications.

65 We concur with AT&T's argument that SGAT section 8.4.1.9 is unreasonable. The language in that section would result in no provisioning deadline for an order if the

CLEC had already submitted five orders that week, even if all the orders were for very simple collocation facilities. Neither WAC 480-120-560, nor the federal rule, 47 CFR § 51.323, provides an exemption from the provisioning deadlines based on volume of orders. Qwest must remove section 8.4.1.9 from the SGAT.

**WA-1C-59/60a/61/62/64: Provisioning Intervals**

- 66 The March 2001 Initial order found that the parties had reached agreement on provisioning intervals. However, in comments filed with the Commission after the order was entered, the parties report that they remain at impasse on certain interval issues.
- 67 Qwest reports that disagreement remains as to shortened intervals even when no forecast is submitted. Qwest's initial brief cites FCC and Commission decisions affirming the need for forecasts.
- 68 AT&T agrees that there is a continued dispute over Qwest's proposed 120-day interval for collocations that have not been forecasted. AT&T argues that under Washington rules, the interval should be 45 days if the collocation was forecasted 90 days in advance, and 90 days (the FCC standard interval) if not forecasted 45 days in advance. AT&T asserts that the FCC's *Collocation Waiver Order*<sup>8</sup> does not apply in Washington state, as the order applies only in states that have not set their own intervals. AT&T suggests language changes that it believes would conform to Washington state rules.
- 69 The 120-day intervals in the current SGAT are within the 150 days allowable under the FCC's *Collocation Waiver Order*. At issue is the interpretation of the Commission's rule in WAC 480-120-560, and whether, in cases where no forecast is provided, the standard 90-day FCC interval or the 150-day maximum interval granted in the *Collocation Waiver Order* should apply.
- 70 We interpret WAC 480-120-560 to mean that, in situations where there is no forecast, the FCC rules in force for Qwest should apply. Currently, those rules allow Qwest up to 150 days in cases where there is no forecast. Until the waiver expires, Qwest must meet the FCC standard. Qwest must change the interval provisions in the SGAT when the waiver expires.

***Collocation Issues Not Addressed In the March Initial Order***

**1. Independent Obligation to Inventory Space**

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<sup>8</sup> *In re Deployment of Wireless Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, DA 00-2528, Memorandum Opinion and Order (Released November 7, 2000)*

- 71 The parties ask the Commission to determine whether Qwest must conduct an inventory of its premises and provide a complete list of premises that are full, or merely maintain and post a list of premises which have been found to be full. In addition, the parties dispute whether only *central offices* must be included in the posted list or whether a broader universe of *all premises* must be included.
- 72 AT&T refers to FCC rule, 47 C.F.R. § 51.321(h), and Commission rule, WAC 480-120-560(4)(d), which provide that the incumbent LEC must maintain a publicly available list of all premises or central offices that are full. Qwest contends that the requirement is limited to offices for which a CLEC has requested space and, in response, Qwest has checked to determine availability of space.
- 73 We conclude that both FCC and Commission rules limit the posting requirement to situations in which a CLEC has requested collocation space and Qwest has determined that the specific space is full. While the rules refer to "all" premises or central offices, those references are within requirements that are initiated not by an exhaustive inventory of premises but rather by a CLEC request for space at a specific location. We cannot read into those rules a requirement to conduct an exhaustive inventory as AT&T suggests. Qwest must, however, clarify the language in SGAT section 8.2.1.13 to make clear that all premises that have been found to be full will be listed.
- 74 The SGAT section, as written, requires Qwest to post information about all *premises*, and not just *central offices*, that are found to be full. This provision is consistent with the federal and state rules and should not be modified.

## 2. Recovery of Grooming Costs

- 75 The SGAT requires the CLECs to bear the cost of grooming circuits when vacating equipment. The Joint CLECs argue that Commission rule requires Qwest to remove inactive or underutilized equipment at Qwest's expense, and propose substitute language<sup>9</sup> for the SGAT to make it consistent with the Commission's arbitration decisions.<sup>10</sup> In arbitrations between Qwest and CLECs, the Commission has not

<sup>9</sup> Proposed language at SGAT section 8.2.1.14.1: "If Qwest seeks to recover from CLEC any costs Qwest incurs to groom circuits to vacate the equipment and CLEC disputes the level of, or CLEC's liability for, those costs, in whole or in part, Qwest must petition the Commission to require CLEC to pay those costs and must make a sufficient factual demonstration on a case-by-case basis. Qwest shall not refuse to undertake or otherwise delay grooming circuits to vacate the equipment pending the filing or Commission determination of such a petition." *Joint CLEC Comments on Initial Orders*, at 8.

<sup>10</sup> *In the Matter of MFS Communication Company, Inc., Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Interconnection Rates, Terms and Conditions with US WEST Communications, Inc., Docket No. UT-960323*, Commission Decision and Final Order Modifying Initial Order, In Part, and Affirming, In Part, p. 20 (September 11, 1998).

required CLECs to incur grooming costs, but instead has allowed Qwest to make a demonstration of the need for cost recovery on case-by-case basis.

76 The Joint CLECs' proposed SGAT language is consistent with the Commission's arbitration decisions. The proposed language should be adopted to make the SGAT consistent with the Commission's other decisions on this issue.

### **3. Restrictions on Quotes when Entrance Facilities Are Available**

77 The Joint CLECs argue that inconsistencies exist between SGAT sections 8.4.3.2 and 8.2.1.10. The parties have agreed to changes to section 8.2.1.10, which authorizes Qwest to deny a quote for physical collocation only due to lack of sufficient space. However, SGAT section 8.4.3.2 allows Qwest to deny a quote due to lack of physical space and lack of entrance facilities. The Joint CLECs argue that SGAT section 8.4.3.2 should be modified.

78 We agree that SGAT section 8.4.3.2 should be modified to eliminate Qwest's ability to deny a quote for physical collocation based on a lack of entrance facilities.

### **4. Failure to Include Agreed Upon Language Changes**

79 The Joint CLECs argue that Qwest has not included changes to the SGAT agreed upon by the parties, as detailed in pages 9 to 10 of the Joint CLECs' Comments.

80 Qwest must make conforming changes to the SGAT to reflect agreed upon changes to the SGAT.

### **D. Checklist Item No. 11: Number Portability**

81 Qwest must comply with the Act and FCC rules concerning number portability in order to meet the requirements of Checklist Item No. 11. Before we may approve Section 10.2 of the SGAT relating to number portability, or find Qwest to have met the requirements of Checklist Item No. 11 for number portability, Qwest must modify the SGAT to reflect the changes ordered in the February Initial Order, with the modifications discussed below. However, until we review and evaluate the ROC OSS regional testing process, and Qwest's actual performance for this checklist item, we cannot verify whether Qwest has have completely satisfied the requirements for number portability.

### **WA-11-1/5/6/11: Loop Provisioning Coordination; Cutovers and Porting**

82 AT&T and WorldCom have expressed concern that poor coordination of loop cutovers has resulted in disconnection of service for customers. The February 2001 Initial Order recommended that Qwest be required to wait until 11:59 p.m. of the day

following the scheduled port before disconnecting the porting customer's service. The order also concluded that Qwest was requiring CLECs always to use the Managed Cut process when provisioning their own loops and porting numbers. It recommended that Qwest allow CLECs' to use "coordinated cutover" processes as well as the Managed Cut procedure.

83 Qwest argues that it has modified the SGAT to include 24 additional hours before disconnecting a porting customer's service. It states that the process is automated and should only require manual intervention under special circumstances. Qwest also argues that its coordinated cut process should apply only when Qwest provisions a loop while porting a number.

84 CLECs should not be required to pay extra charges, i.e., use the Managed Cut procedure, to have the end-user transferred to the CLEC without losing service. The changes Qwest has made in the SGAT, notably the extension of the automatic trigger on disconnects, will provide improvement in cutovers necessary to allow CLECs to avoid paying for the expensive Managed Cut service to ensure minimal disruption in customer service during the port. However, Qwest must change the language in the SGAT to make it clear that CLECs are not required to use the Managed Cut procedure when provisioning their own loops.

85 The February 2001 Initial Order described industry standards of cooperation for cutovers as a "Coordinated Cut" and recommended that Qwest make this option available to CLECs.

86 The second workshop transcript describes the industry standard as described by Qwest:

Both parties understand that we have to work together to coordinate LNP activity, that if a party, whether that's a CLEC or it's Qwest, experiences problems porting numbers, that they need to make immediate notification to the other party, and that we will work cooperatively together to take action to delay the port or cancel the port, and that these are in accordance with the way the industry is operating.

*Tr. 2453-54.*

87 Qwest's comments indicate that it believes the February 2001 Initial Order referred to a specific service called "Coordinated Cutover," when in fact the order was describing general standards of cooperation used in the industry. The use of the term "coordinated cutover" in the order does not refer to Qwest's service labeled "Coordinated Cutover," but merely refers to the cooperative service Qwest states that it provides.

**E. Checklist Item No. 14: Resale**

88 Qwest must comply with the Act and FCC rules concerning resale in order to meet the requirements of Checklist Item No. 14. Before we may approve section 6 of the SGAT relating to resale, or find Qwest to have satisfied the requirements of Checklist Item No. 14 for resale, Qwest must modify the SGAT to reflect the changes ordered in the February 2001 Initial Order, with the modifications discussed below. However, until we review and evaluate the ROC OSS regional testing process, and Qwest's actual performance for this checklist item, we cannot verify whether Qwest has completely satisfied the requirements for resale.

**WA-14-4: Quality of Service Credits and Penalties**

89 The February 2001 Initial Order recommended that CLECs reselling Qwest services out of Qwest's tariff are obligated to pass through credits that may exist in the tariff to the CLECs' end users. The order also recommended that Qwest remove SGAT language stating that Qwest would make available or pay only one credit or penalty for any single quality-of-service incident.

90 Qwest asserts that resellers are not obligated to pay credits to end users when they resell out of Qwest's tariff. Qwest states that the CLEC's right to receive a credit should be limited to the credit at a wholesale discount. Qwest argues there is no legal justification for imposing more than one penalty or credit for the same service problem, and that doing so will provide CLECs a windfall.

91 Upon further review, we believe Qwest is correct that CLECs are not required to offer resold services with the same service guarantees offered in the Qwest tariff. This is reflected in various resellers' price lists. With this corrected understanding, any monetary credits arising out of Qwest's tariffs or price lists should be paid to resellers at the wholesale discount.

92 There is no legal restriction on imposing credits under Qwest's post-entry performance plan, or PAP, or under the post-merger Performance Assurance Plan or the Qwest tariff. The interface or coordination among Qwest's tariff, the post-merger Performance Assurance Plan, and the PAP should not be decided until the PAP is developed and approved.

**WA-14-7: Restrictions on Marketing During Misdirected Calls**

93 The CLECs have asked the Commission to impose SGAT language prohibiting Qwest from marketing its services to CLEC resale customers who call Qwest by mistake when trying to reach the CLEC. The February 2001 Initial Order recommended that the parties adopt the language in the Sprint-Qwest interconnection agreement, which contains the exact prohibition they were seeking.

- 94 The CLECs believe that relying on the pick-and-choose rules rather than putting the prohibition in the SGAT is unsatisfactory. They argue that their ability to use the prohibition language through pick-and-choose provisions will expire when the interconnection agreement expires and is therefore too uncertain.
- 95 Qwest argues the Commission should address the significant constitutional issue presented by the parties regarding Qwest's right to commercial free speech.
- 96 We observe that this issue also arises in connection with services other than resale, and that pick-and-choose options will not apply in those cases. Thus, we agree that this issue should be addressed on the merits. Qwest has agreed to advise the caller that Qwest is not the service provider, and will not disparage the competitor or its product. Qwest states that it will communicate only truthful, accurate, and nonmisleading information regarding its products. Nevertheless, given our substantial interest in promoting full and fair competition, and the fact that Qwest will be dealing with a captive audience, we will impose the following additional requirement: Qwest must either: (1) provide the caller with a number the caller can dial to obtain sales information, or (2) ask the caller whether the caller would like to hear sales information. Including this requirement in the SGAT will promote competition, will not restrict the CLECs' ability to obtain or retain new customers, and will not unreasonably restrict Qwest's right to market its services.

**WA-14-13: Centrex Per Location Pricing, Rebates on Centrex Service**

- 97 The February 2001 Initial Order recommends that Qwest's offering of Centrex Plus lines without per-location restrictions satisfied its obligation to provide resale without unreasonable restrictions. The order also recommended that Qwest be required to publish its standard pricing for Centrex Prime, either in the SGAT or in a tariff, and that Qwest must correct the manner in which it offers rebates so that they are available for resale.
- 98 MetroNet contends that the per-location pricing is an unreasonable restriction. Generally, MetroNet argues that it is inexplicable that the order finds that per-location pricing is unreasonable when applied to station lines but not when applied to features and bundled products. MetroNet believes that per-location pricing of any Centrex product restricts the ability of resellers to obtain volume discounts. Under the FCC's Local Competition Order, resale restrictions are presumed unreasonable unless the ILEC proves otherwise. In that Order, the FCC singled out restrictions on volume discounts as presumptively unreasonable, because they produce an anticompetitive result.<sup>11</sup>

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<sup>11</sup> *Local Competition Order*, at para. 953.

- 99 MetroNet contends that it appears that the Commission is somehow permitting per-location pricing to be applied to features because they are competitively classified, when the Act does not make this distinction with respect to section 271. MetroNet argues that there is not sufficient justification that the same terms and conditions be imposed on resellers and retail end users, as contained in Paragraph 275 of the February Order. MetroNet concludes with the contention that the record contains no justification, cost or technical, for applying per-location pricing to Centrex features.
- 100 MetroNet requests the Commission eliminate the option for Qwest to incorporate standard pricing for Centrex Prime in SGAT. MetroNet argues that Centrex Prime is in part a monopoly service and should be subject to same review as other monopoly services.
- 101 MetroNet asserts that Qwest should publish rebate programs and offer rebates on a per system basis—the February Initial Order would require Qwest to correct the way it offers rebates, but did not state specifics. MetroNet asserts that Qwest will continue to ignore compliance without more specific direction. MetroNet requests that the order require Qwest to publish any rebate program and that rebates should be offered system-wide, not on a per-location basis. Per-location rebates preclude resellers from using rebates, and this functions as a restriction on resale. ATG concurs in MetroNet's comments that per-location pricing thwarts the ability of resellers to aggregate customers at different locations to obtain volume discounts.
- 102 This Commission did not "approve" per-location pricing for Centrex features, as the matter was presented as a no-action item at a Commission open meeting. The language in Paragraph 275 of the February Initial Order should be modified to replace "approved" with "allowed" to more accurately reflect the process under which the price list became effective. The Commission cannot require Qwest to offer a preferred manner of pricing, in this case Centrex features not subject to per-location pricing, simply because that is what the CLEC wants to resell.
- 103 Qwest has not modified its SGAT or produced a tariff containing the standard pricing for Centrex Prime. Qwest must comply with this requirement, either in the SGAT or a tariff, within 10 days of service of this Order.
- 104 As stated in the February Initial Order, Qwest's rebate program for Centrex services appears to violate Washington state statute and rules. We direct Commission Staff to open a new docket to investigate Qwest's possible violation of law with respect to the rebates for Centrex services.

## V. FINDINGS OF FACT

- 105 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. § 153(4),

providing local exchange telecommunications service to the public for compensation within the state of Washington.

- 106 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, to verify the compliance of Qwest with the requirements of section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Act.
- 107 (3) Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.
- 108 (4) Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this section, the FCC is required to consult with the state commission of any state that is the subject of a BOC's application under section 271 in order to verify the compliance of the BOC with the requirements of section 271(c).
- 109 (5) Pursuant to 47 U.S.C. § 252(f)(2), BOCs must submit any statement of terms and conditions that the company offers within the state to the state commission for review and approval.
- 110 (6) On June 6, 2000, the Commission consolidated its review of Qwest's SGAT in Docket No. UT-003040 with its evaluation of Qwest's compliance with the requirements of section 271(c) in Docket No. UT-003022.
- 111 (7) During a workshop held on June 21-23 and July 6, 2000, Qwest and a number of CLECs submitted testimony and exhibits to allow the Commission to evaluate Qwest's compliance with the requirements of section 271(c), concerning Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale), as well as to review Qwest's SGAT.

#### INTERCONNECTION:

- 112 (8) Paragraph 70 of the February Initial Order is not consistent with Paragraph 231 of the Revised Initial Order on Workshop 1 Issues. It allows proportional pricing based upon use by permitting CLECs to pay TELRIC rates for the portion of a DS-3 entrance facility used for interconnection if the CLEC pays Qwest's private line DS-1 rate for the portion used for private lines.
- 113 (9) It is technically feasible to use a single entrance facility for interconnection and private lines.

- 114 (10) It is unlikely that construction of a meet point arrangement using over 50 miles of direct-trunked transport would occur in Washington.
- 115 (11) Although Qwest has revised its SGAT to include more favorable deposit policies toward CLECs, the SGAT is not consistent with recommendations made in the February Initial Order.
- 116 (12) SGAT section 7.2.2.9.6 limits where the CLEC may interconnect, depending on traffic volumes.
- 117 (13) SGAT language providing for interconnection to a Qwest end office or local tandem in the case of exhaust or forecast exhaust at the access tandem, at the same cost to the CLEC as interconnection to the access tandem, is consistent with Paragraph 147 of the February Initial Order.
- 118 (14) Qwest and the CLECs are each responsible for the cost of facilities on their own side of the point of interconnection.

**COLLOCATION:**

- 119 (15) Covad's interest in sharing an unused bay or rack through shared cageless collocation can be fully addressed in the fourth workshop, as agreed by the parties.
- 120 (16) Qwest may incur costs to furnish regeneration in cross-connections between itself and CLECs; however, regeneration should seldom, if ever, be necessary.
- 121 (17) SGAT section 8.4.3.2, which allows Qwest to deny quotes for physical collocation due to lack of physical space and lack of entrance facilities, is inconsistent with an agreement between Qwest and other parties to deny quotes for physical collocation only due to lack of sufficient space.
- 122 (18) Qwest has not modified its SGAT to include changes agreed upon by the parties, as detailed in pages 9 and 10 of the Joint CLECs' Comments.

**NUMBER PORTABILITY:**

- 123 (19) Qwest has agreed to modify its SGAT to allow 24 additional hours before disconnecting a porting customer's service. Extending the automatic trigger for disconnects should improve the cutover process sufficient to allow CLECs to avoid paying for Managed Cut service to ensure minimal disruption in customer service while porting numbers.

- 124 (20) The use of the term "coordinated cutover" in the February Order does not refer to Qwest's service labeled "Coordinated Cutover," but merely refers to the cooperative service Qwest states that it provides to CLECs when coordinating loop cutovers.

**RESALE:**

- 125 (21) Various resellers' price lists reflect that CLECs are not required to offer resold services under the same service guarantees offered in Qwest's tariff, i.e., the CLECs are not obligated to pass through credits to end-users.
- 126 (22) The February Initial Order recommended that Qwest modify its SGAT to include language in the Sprint-Qwest interconnection agreement prohibiting Qwest from marketing its services to CLEC resale customers who call Qwest by mistake when trying to reach the CLEC.
- 127 (23) Qwest has not modified its SGAT or produced a tariff containing the standard pricing for its Centrex Prime resale service offering.

**VI. CONCLUSIONS OF LAW**

- 128 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.

**INTERCONNECTION:**

- 129 (2) Proportional pricing of DS-3 entrance facilities when used for interconnection and private lines is fair and reasonable. Allowing a TELRIC rate for that portion of a DS-3 used for interconnection provides a more appropriate rate and economically efficient interconnection arrangement.
- 130 (3) Qwest need not include WorldCom's proposed interconnection methods in the SGAT; however, those methods may be appropriate means to obtain interconnection.
- 131 (4) The SGAT provision limiting Qwest's obligation to 50 miles for construction of meet point arrangements through direct-trunked transport is not unreasonable.
- 132 (5) Paragraphs 134 and 136 of the February Initial Order concerning ownership of special construction facilities are consistent with Commission decisions regarding other forms of special construction.

- 133 (6) The Joint CLECs' proposal for reciprocal compensation for interconnection facilities based on traffic exchange is not a proper subject for this proceeding and should be taken up through an arbitration, a tariff proceeding, or a docket addressing costs and pricing.
- 134 (7) Until Qwest modifies its SGAT provisions concerning interconnection as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(i), Checklist Item No. 1 concerning interconnection, and the Commission will not approve section 7 of Qwest's SGAT.

**COLLOCATION:**

- 135 (8) Qwest will not comply with the requirements of 47 U.S.C. § 271(c)(2)(B)(i) until it demonstrates that its actual applied policies and performance requirements for collocation conform to the SGAT.
- 136 (9) Section 251(c)(6) provides that ILECs "may" provide virtual collocation when physical space is not available. FCC rule, 47 C.F.R. § 51.323(a), does not limit the provision of virtual collocation to certain conditions.
- 137 (10) Recovery of regeneration costs as an indirect cost should result in Qwest being indifferent to whether CLEC or Qwest facilities are subject to regeneration.
- 138 (11) SGAT section 8.4.1.9 creates an unreasonable limitation on collocation orders. Neither WAC 480-120-560, nor FCC rule 47 CFR § 51.323, provide an exemption from the provisioning deadlines based on volume of orders.
- 139 (12) We interpret WAC 480-120-560 to mean that, in situations where the CLEC has not provided a forecast, the FCC rules in force for Qwest for provisioning collocation should apply. Current FCC rules allow Qwest up to 150 days to provision collocation in cases where there is no forecast.
- 140 (13) FCC and Commission rules do not require Qwest to conduct an exhaustive inventory, but to post a list of premises that Qwest has determined are full after a CLEC has requested certain collocation space and Qwest has determined that the specific space is full.
- 141 (14) The language for SGAT section 8.2.1.1.4.1 proposed by the Joint CLECs requiring Qwest to demonstrate the need for recovery of grooming costs on a case-by-case basis is consistent with the Commission's arbitration decisions.

- 142 (15) Until Qwest modifies its SGAT provisions concerning collocation as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(i), Checklist Item No. 1 concerning collocation, and the Commission will not approve section 8 of Qwest's SGAT.

**NUMBER PORTABILITY:**

- 143 (16) Until Qwest modifies its SGAT provisions concerning number portability as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures, Qwest's performance, and Qwest's PAP, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xi), Checklist Item No. 11 concerning number portability, and the Commission will not approve section 10.2 of Qwest's SGAT.

**RESALE:**

- 144 (17) A CLEC's right to receive monetary credits arising out of Qwest's tariffs or price lists is limited to receipt at the wholesale discount.
- 145 (18) Nothing precludes this Commission from imposing multiple credits under Qwest's Section 271 Performance Assurance Plan (PAP), its post-merger Performance Assurance Plan, or Qwest's tariff. The interface or coordination between Qwest's tariff, the post-merger Performance Assurance Plan, and the PAP will be determined during our evaluation of Qwest's PAP.
- 146 (19) Given that Qwest will be dealing with a captive audience, including certain limitations in the SGAT on Qwest's ability to market during misdirected calls will promote full and fair competition, will not restrict the CLECs' ability to obtain or retain new customers, and will not unreasonably restrict Qwest's right to market its services.
- 147 (20) Qwest's rebate program for Centrex services appears to violate Washington state statute and rules.
- 148 (21) Until Qwest modifies its SGAT provisions concerning resale as discussed above, and subject to Commission review and evaluation of the audited results of ROC OSS regional testing on performance measures and Qwest's performance, Qwest is not in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xiv), Checklist Item No. 14 concerning resale, and the Commission will not approve section 6 of Qwest's SGAT.

**VII. ORDER**

THE COMMISSION ORDERS That:

**INTERCONNECTION:**

- 149 (1) Paragraph 231 of the Revised Initial Order on Workshop One Issues is reversed, in part, to allow proportional pricing of facilities when used for both interconnection and private line/special access. Qwest must modify SGAT section 7.3.1.1.2 to allow proportional pricing when CLECs use a DS-3 for both interconnection and access. Further, Paragraph 70 of the February Initial Order must be modified to allow proportional pricing in any other circumstance where a service or facility has more than one applicable rate.
- 150 (2) Qwest must demonstrate that it makes interconnection available at any technically feasible point, using any technically feasible method, including those proposed by WorldCom or other carriers, if the methods are found to be technically feasible.
- 151 (3) The terms and conditions contained in the SGAT concerning a single POI must always be available. Qwest must not require CLECs to sign product agreements or side contracts containing restrictions on offerings as the only way to obtain products contained in the SGAT. The Commission will consider such conduct under the Commission's enforcement authority under WAC 480-09-530, a formal complaint, petition for expedited enforcement of Section 252(I), and the bona fide request procedure as provided in interconnection agreements. The Commission will also consider Qwest's conduct during evaluation of Qwest's performance and the ROC third party OSS testing process.
- 152 (4) Qwest must state in its SGAT the specific geographic area being used to calculate deposits when CLECs order interconnection trunks. Qwest should continue to negotiate with the CLECs a permanent pro-rata formula for calculating deposits and submit it to the Commission for review at the earliest opportunity.
- 153 (5) Pricing issues surrounding (a) the treatment of CLEC payments toward construction and (b) how payments are accounted for in the price of the services the CLECs receive must be considered in the cost docket or in another forum.
- 154 (6) Qwest must remove the conditions in SGAT Section 7.2.2.9.6 which limit, *depending on traffic volumes, where the CLEC may interconnect.*

- 155 (7) Qwest must remove all rate elements, not just EICT rates, from the SGAT representing the cost of facilities on Qwest's side of the point of interconnection.

**COLLOCATION:**

- 156 (8) Qwest must revise its SGAT to allow CLECs to request both physical and virtual collocation without restrictions.
- 157 (9) Qwest may include non-CLEC-requested regeneration costs in its indirect costs spread equitably to all users of its facilities, including itself.
- 158 (10) Qwest must remove section 8.4.1.9 from the SGAT to eliminate an exception from provisioning deadlines based on volume of orders.
- 159 (11) Until Qwest's waiver from the FCC's collocation provisioning intervals expires, Qwest must meet the FCC's allowance of 150 days for provisioning where the CLEC has provided no forecast. Qwest must change the interval provisions in the SGAT when the waiver expires to reflect the standard 90 day interval.
- 160 (12) Qwest must modify the language in SGAT section 8.2.1.13 to make clear that Qwest will list all premises that Qwest has determined to be full following a specific CLEC request.
- 161 (13) Qwest must modify its SGAT to include the Joint CLECs' proposed language for SGAT section 8.2.1.1.4.1 concerning recovery of grooming costs.
- 162 (14) Qwest must modify SGAT section 8.4.3.2 to remove Qwest's ability to deny a quote for physical collocation due to a lack of entrance facilities.
- 163 (15) Qwest must modify its SGAT to reflect agreed upon changes to the SGAT set forth on pages 9 and 10 of the Joint CLECs' Comments.

**NUMBER PORTABILITY:**

- 164 (16) Qwest must modify its SGAT to eliminate the requirement that CLECs use Qwest's Managed Cut procedure when provisioning their own loops.

**RESALE:**

- 165 (17) Qwest may apply the wholesale discount to any monetary credits paid to resellers arising out of Qwest tariffs or price lists.

- 166 (18) Qwest must modify its SGAT to include the following additional limitations on marketing during misdirected calls: Qwest must (1) provide the caller with a number they may dial to obtain sales information, or (2) ask the caller whether they would like to hear sales information.
- 167 (19) Within 10 days of service of this Order, Qwest must modify its SGAT or tariff to include its standard pricing for Centrex Prime.
- 168 (20) The language in Paragraph 275 of the February Initial Order should be modified to replace "approved" with "allowed" to more accurately reflect the process under which the price list for Centrex features became effective.
- 169 (21) Commission Staff is directed to open a new docket to investigate Qwest's possible violation of law with respect to offering rebates for Centrex services.
- 170 (22) The Commission retains jurisdiction to implement the terms of this Order.

DATED at Olympia, Washington and effective this 7<sup>th</sup> day of August, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

**NOTICE TO PARTIES:** This is an Interim Order, and, as such, is not subject to the post-Order review processes of the Administrative Procedure Act. The Commission will, however, entertain all requests for clarification or for revision of any substantial error of fact and law. Because the opportunity is afforded at this juncture, parties will be foreclosed from raising such matters on the issues resolved herein without a showing of good cause for failure to raise the matter at this time.

## CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Response in Opposition to Qwest's Comments Regarding Staff's Final Recommended Decision on Checklist Item 1, Interconnection and Collocation in Docket No. T-00000A-97-0238 were sent by overnight delivery on October 30, 2001 to:

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