

Staff's position does not appear unreasonable at first glance. However, Staff's proposal does not address a number of issues that are raised by its proposal but are not raised by AT&T's Motion.

First is the matter of scheduling. The schedule for making any determination, whether in the section 271 proceeding or a separate proceeding, must provide the CLECs the opportunity to raise the final determination in the public interest phase of the proceeding. So, from a scheduling standpoint, it does not matter what proceeding the determination is made in. What is imperative is that the determination be made in time to raise it in the public interest phase. Therefore, Staff's proposal, from a scheduling standpoint, has no benefits over AT&T's Motion.

Second, unless Qwest waives its claims of trade secrets or confidentiality, Staff's proposal may make it more difficult to use the record, evidence, findings and conclusions from a separate proceeding in the section 271 proceeding. Normally, the protective agreement or order in a proceeding restricts the use of protected information to the specific proceeding and does not permit use of the protected information in other proceedings. In other words, CLECs would be prohibited from using the contents of the agreements in arguments in the section 271 proceeding unless the protective order or agreement permits such use. It is unlikely Qwest would agree to such use. Therefore, AT&T would be forced to convince the Administrative Law Judge ("ALJ") that it and all the other parties should be permitted to refer to provisions of the protected documents, or portions thereof, in the section 271 proceeding. This is not assured either. Therefore, unless the order creating the separate proceeding makes it clear that AT&T can refer to provisions of protected documents, or portions thereof, in the section 271 proceeding,

AT&T and the CLECs are disadvantaged by Staff's proposal. AT&T would be restricted in the public interest phase of the section 271 proceeding to referring only to the public portions of the documents and the ultimate determination of whether the agreements should have been filed with the Commission. AT&T would not be able to explain to the Commission how specific portions of the agreements discriminated against the CLECs. This disadvantages the CLECs unnecessarily.

Third, determinations of compliance with the Act have been a fundamental part of the section 271 proceeding. Staff, in its Reports, repeatedly has made determinations regarding whether Qwest is in compliance with the competitive checklist in section 271 (c)(2)(B). The ALJ and the Commission also are making legal determinations. Reviewing whether Qwest should have filed agreements with CLECs under section 252 is not any different.

The terms and conditions of Qwest's Statement of Generally Available Terms and Conditions ("SGAT") have been extensively reviewed in this proceeding. Qwest's compliance with SGAT has also been the subject of this proceeding. The SGAT states that Qwest will not discriminate in the provision of interconnection and unbundled network elements. SGAT §§ 7.1.1.1 & 9.1.2, respectively. Arguably, based on AT&T's review of the Minnesota agreements, Qwest is discriminating in the provision of interconnection and unbundled network elements. A review of the agreements in the section 271 proceeding would confirm whether, in fact, Qwest has discriminated against CLECs in violation of the SGAT. Such violations also would impact any determination of Qwest's compliance with checklist items 1 and 2.

Checklist item 1 requires Qwest to provide interconnection in accordance with sections 251(c)(2) and 252(d)(1). Checklist item 2 requires Qwest to provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). In addition, sections 251(c)(2) and (3) require the nondiscriminatory provision of interconnection and network elements in accordance with the requirements of section 251 and 252. Therefore, the failure to file the agreements and to provide nondiscriminatory access to the terms of these agreements arguably is a violation of checklist items 1 and 2. This definitely is a section 271 issue and subject to the scope of this proceeding.

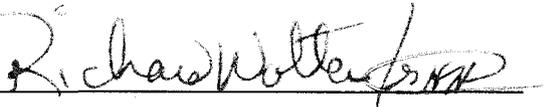
Accordingly, AT&T augments its Motion and argues that the failure to file the secret agreements also is a violation of checklist items 1 and 2;¹ and, for these additional reasons, AT&T renews its Motion that the agreements be filed and reviewed in the section 271 proceeding, not in a separate proceeding as proposed by Staff.

To conclude, for the foregoing reasons, AT&T must oppose Staff's proposal and request that AT&T's Motion be granted.

¹ AT&T, at this time, will not move to reopen the record on checklist items 1 and 2. AT&T will wait for the review of the agreements to be completed and a determination made whether Qwest should have filed the agreements with the Commission pursuant to section 252.

Dated this 4th day of March, 2002.

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I hereby certify that the original and 10 copies of **AT&T's Reply to Staff's Response to AT&T's Motion to Require Qwest to Supplement the Record**, Docket No. T-00000A-97-0238, were sent by overnight delivery on April 4, 2002 to:

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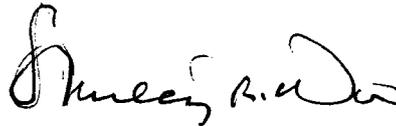
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