BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of	)	
	)	
The Investigation into Qwest	)	
Communications, Inc.'s Compliance with	)	Docket No. 97I-198T
§ 271(c) of the Telecommunications Act of	)	
1996.	)	

VOLUME VII

COMMISSION STAFF REPORT ON
QWEST'S COMPLIANCE WITH:

SECTION 272
PUBLIC INTEREST AND
TRACK A

FINAL REPORT
FEBRUARY 6, 2002

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I. INTRODUCTION

1. This is the seventh in a series of reports prepared by the Staff of the Colorado Public Utilities Commission (Staff) in Docket No. 97I-198T, which is the investigation into the compliance of Qwest Communication, Inc. (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST)[1], with the requirements of § 271 of the Telecommunications Act of 1996 (the Act)[2].

2. The Staff reports will be filed with the Colorado Public Utilities Commission (Commission) for consideration and are part of the factual record in this proceeding. The Commission directed Staff to conduct a series of technical workshops designed to provide open and full participation in the investigation by all interested parties. The technical workshops formed the basis of the lengthy, rigorous, and open collaborative process in Colorado that has been favored in the past by the Federal Communications Commission (FCC) in its approval of prior § 271 applications in New York and Texas. *Bell Atlantic New York Order* at ¶¶ 8 and 9 and *SBC Texas Order* at ¶ 11. The workshops served to identify and focus issues, to develop consensus resolution of issues where possible, and to frame clearly those issues that could not be resolved and reached impasse among participants. Impasse issues were addressed through the dispute resolution process agreed to by participants and ordered by the Commission for this investigation. The Commission resolved the impasse issues.

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[1] During the pendency of this proceeding, U S WEST and Qwest completed their merger. The names of Qwest and U S WEST are considered to be interchangeable in this report. For ease of reading, this report primarily will use Qwest in the text.

[2] Pub L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. 151, *et seq*.

3. Volume VII in the series of Staff reports addresses Workshop 7, which dealt with § 272, Pubic Interest, and Track A.

4. The Colorado Commission is participating in the regional test of Qwest's Operations Support Systems (OSS) being conducted by the Regional Oversight Committee (ROC).

5. A description of the process the Colorado Commission adopted for its investigation into Qwest's compliance with § 271 of the Act can be found in the BACKGROUND section of Volume I in this series of Staff reports.

6. The final Staff assessment of Qwest's compliance with the requirements of § 272, Public Interest, and Track A will be made upon the completion of the ROC OSS Test when those test results are incorporated into this Colorado proceeding. Staff will also consider in its compliance assessment any other evidence, including Colorado-specific commercial usage experience, that may be brought to the Commission's attention.

II. SECTION 272

1. FCC Requirements

7. Through a variety of accounting and non-accounting safeguards, § 272 attempts to prevent a Bell Operating Company (BOC) from discriminating against its competitors and in favor of its long-distance affiliate and to prevent a BOC from subsidizing its affiliate by recovering the affiliate's costs through Qwest's local and exchange access service customers.

8. Section 272 demands that Qwest treat its competitors in the same manner as it treats its § 272 affiliate. It provides a scheme, through the various safeguards, for the competition to evaluate whether a goal of this section -- to insure a level playing field for all competitors -- is fulfilled.

9. Section 272 contains eight statutory requirements designed to prohibit anti-competitive behavior, discrimination, and cost shifting between a BOC, like Qwest Corporation (formerly U S WEST Communications, Inc.), and its long distance affiliate. To satisfy its § 271 obligations, the FCC requires a BOC to demonstrate "that it will comply with the requirements of § 272."[3]

10. The specific provisions of § 272 include:

- Section 272(a), Separate Affiliate Requirement
- Section 272(b), Structural and Transactional Requirements
- Section 272(c), Nondiscrimination Safeguards
- Section 272(d), Biennial Audit Requirement
- Section 272(e), Fulfillment of Requests for Telephone Exchange Service
- Section 272(f), Sunset Provisions

[3] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to provide In-Region, interLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶ 403 ("*Bell Atlantic New York Order*").

- Section 272(g), Joint Marketing
- Section 272(h), Transition Provisions

11. Section 272(a) requires Qwest to provide in-region interLATA long distance services through a separate long distance affiliate.

12. Section 272(b) requires that Qwest and the § 272 Affiliate operate independently; maintain separate books, records, and accounts; have their own directors, officers, and employees; and conduct all transactions on an arm's length basis, with all such transactions reduced to writing and available for public inspection. Moreover, Qwest Communications Corporation (the § 272 affiliate of Qwest) cannot obtain credit that will provide recourse to the assets of Qwest.

13. Section 272(c) prohibits Qwest from discriminating between QCC and any other entity in the provision or procurement of goods, services, facilities, and information or in the establishment of standards.

14. Section 272(d) requires that, once it obtains § 271 authority, Qwest obtain and pay for a joint Federal/State audit every two years to determine whether the company has complied with the requirements of § 272 and the regulations promulgated under § 272. In particular, the audit will determine whether the company has complied with the separate accounting requirements of § 272(b).

15. Section 272(e) requires Qwest to fulfill requests from unaffiliated entities for telephone exchange service and exchange access within the same period, under the same terms and conditions, and at an amount that is no more than that for which it provides such services

to its 272 Affiliate, or imputes exchange access services to itself (if Qwest is using the access for the provision of its own services).

16. Section 272(f) contains sunset provisions, which state that the separate affiliate requirements on manufacturing and long distance will end three years after entry in a given state unless extended by FCC rule or order. In addition, § 272(f) preserves the existing authority of the FCC to prescribe safeguards consistent with the public interest, convenience, and necessity.

17. Section 272(g) permits Qwest to join in the marketing and sale of QCC's in-region interLATA service once QCC is authorized to provide in-region interLATA services under § 271(d). The joint marketing of services will be exempt from the nondiscrimination provisions of § 272(c). Section 272(g) also provides that the 272 Affiliate may not market or sell Qwest's telephone exchange services unless other similar entities are permitted to do the same.

18. Finally, § 272(h) gives Qwest one year to conform to the requirements of § 272 to the extent that it was already engaged in any interLATA long distance or interLATA information services in February 1996.

2. Qwest's Position

19. On June 4, 2001, Marie E. Schwartz filed an affidavit on behalf of Qwest demonstrating Qwest's compliance with § 272. *Exhibit 7-Qwest-3.* In this affidavit Ms. Schwartz described the steps Qwest has taken since the merger with US WEST to set up its long distance affiliate according to the requirements of § 272.

20. On June 30, 2000, U S WEST, Inc. merged with Qwest Communications International, Inc. Prior to the merger, U S WEST, Inc. planned to offer in-region interLATA services as a reseller, through U S WEST Long Distance, now named Qwest Long Distance. In August 2000, Qwest decided to reevaluate the appropriate entity to serve as its § 272 affiliate. This prompted notification to several state commissions asking that § 272 workshops be delayed. *Exhibit 7-Qwest-3* at page 7.

21. In January 2001, Qwest Communications International, Inc. decided to offer in-region interLATA services as a facilities-based provider, instead of as a reseller. Qwest Communications Corporation (QCC) fit this strategy because it had interLATA expertise and offered facilities-based functionality. Therefore, it was determined that Qwest would transition from Qwest Long Distance to QCC as the § 272 Affiliate. Prior to the merger, U S WEST filed testimony to demonstrate that U S WEST Long Distance, now Qwest Long Distance, was § 272 compliant. As a result of the new strategy, it was necessary to put processes in place to prepare QCC as the new § 272 affiliate. Hence, a transitional period commenced. Section 272(h) specifically allowed BOCs one year from the effective date of the Act to comply with the requirements of § 272. *Id.* at page 7.

22. The Qwest family of companies spent approximately four months transitioning QCC to be § 272 compliant so that it could serve as its new § 272 Affiliate. Transition activities commenced immediately after the decision was made to make QCC the new § 272 Affiliate. These activities included such things as realigning employees from Qwest and QCC to the Services Company which would be providing governance and administrative services to the family of Qwest companies, writing contractual arrangements between Qwest and QCC, evaluating transactions, reviewing pricing, ensuring posting, training

employees about QCC rules, and meeting all other requirements of § 272 as soon as possible. Qwest now has processes in place to meet all eight statutory requirements in § 272 for QCC, the 272 Affiliate. *Id.* at page 8.

23. Section 272(a) of the Act states that any interLATA long distance service that originates from a BOC customer in a state within its region shall be provided through an affiliate that is separate from the BOC (here, the BOC is Qwest). Qwest complies with the separate affiliate requirement of § 272(a). *Id.* at page 9.

24. Qwest Corporation is a BOC within the meaning of the Act. Therefore, Qwest will not provide in-region interLATA services originating within Qwest's 14 state region as long as the structural separation obligation of § 272 applies to this activity. In fact, QCC is already the fourth largest interLATA provider nationwide. Nonetheless, because of the merger with U S WEST, Qwest Communications International, Inc. was required to divest itself of all of its in-region interLATA business. *Id.* at page 9.

25. When Qwest receives § 271 approval from the FCC, interLATA long distance service originating from within Colorado will be offered exclusively through the 272 Affiliate. The 272 Affiliate , QCC , is a wholly owned subsidiary of Qwest Services Company(QSC) and is fully separate from Qwest. QSC is a wholly owned subsidiary of Qwest Communications International, Inc. Qwest owns no stock in the QCC; nor does the QCC own any stock of Qwest. *Id.* at pages 9-10.

26. Section 272(b) places five structural and transactional requirements on the interactions between Qwest and 272 Affiliate. These separate affiliate requirements are addressed in

further detail in CC Docket 96-149, the Non-Accounting Safeguards Orders[4], and CC Docket 96-150, the Accounting Safeguards Order.[5] Specifically, § 272(b) requires that the 272 Affiliate:

- Operate independently from Qwest;

- Maintain books, records, and accounts in the manner prescribed by the FCC that shall be separate from the books, records, and accounts maintained by Qwest;

- Have separate officers, directors, and employees from Qwest;

- Not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of Qwest; and

- Conduct all transactions with Qwest on an arm's length basis, with all such transactions reduced to writing and available for public inspection. *Exhibit 7-Qwest-3* at pages 10-11.

27. These five requirements formalize some of the well-known tenets of corporate law. They also provide the FCC with measurable indicators that Qwest and QCC operate independently. *Id.* at page 11.

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4 *See* In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-489 (rel. December 24, 1996).

5 In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, *Report and Order*, FCC 96-490 (rel. December 24, 1996).

28. Corporate law and the theory of corporations as separate independent entities can be traced far back in legal history. This theory of independence provides the presumption that corporations, as separate entities, are able to conduct business and enter into contracts and obligations, while limiting the liability of shareholders and owners. It is very difficult to overcome this presumption of the corporation as a separate entity. *Id.* at page 11.

29. In limited, very rare circumstances, courts have relied upon a doctrine known as "piercing the corporate veil" to look beyond the corporate form and hold a parent company responsible for the activities of its subsidiary. Qwest and QCC do not have a parent/subsidiary relationship; they are brother/sister corporations. While courts have been willing to impose the liabilities of one corporation upon another, they have been reluctant to do so except in instances where the entities have failed to follow any notion of the requisite corporate formalities. Only when the failure results in such a close relationship between the two companies that one is, in essence, the "alter ego" of the other have courts imposed the liabilities of one corporation upon the other. Otherwise, as a matter of law, two corporations, each with its own board of directors, are deemed to have an independent existence. Given these basic tenets, Qwest and the QCC are clearly two separate and distinct corporations. *Id.* at pages 11-12.

30. Section 272(b)(1) requires that Qwest and QCC operate independently. Qwest and QCC currently operate independently and in compliance with the requirements of the Non-Accounting Safeguards Orders. Qwest and QCC do not and will not jointly own telecommunications switching or transmission facilities, or the land or buildings where

those facilities are located, for so long as such a restriction applies under the rules. *Id.* at page 12.

31. There is no joint ownership of network facilities. In addition, no switching and transmission facilities have been transferred to QCC. Moreover, on a going-forward basis, Qwest began monitoring asset transfers on a quarterly basis beginning March 31, 2001, to ensure compliance with § 272(b)(1). *Id.* at pages 12-13.

32. Section 272(b)(1) includes the additional rules associated with the performance of operation, installation or maintenance (OI&M) functions. Neither Qwest nor any Qwest affiliate performs any OI&M functions on behalf of QCC's switching and transmission facilities. Similarly, QCC does not perform such functions associated with Qwest facilities. To ensure Qwest continues to meet this requirement, QSC conducted extensive training with approximately 50 network department leaders. *Id.* at page 13.

33. Qwest satisfies the § 272(b)(1) requirement for operational independence and will remain in compliance for as long as this requirement is in effect.

34. Section 272(b)(2) requires that Qwest maintain separate books, records, and accounts from QCC in the manner prescribed by the FCC. Qwest and QCC are separate legal entities, and the accounting records of the two entities are not commingled. *Id.* at pages 13-14.

35. Several safeguards are utilized to create system security, controls, and procedures that ensure Qwest and QCC's accounting records are separate. Qwest processes its financial transactions on systems designed to recognize the unique entity code assigned to Qwest.

It is simply not possible for one entity to enter transactions using an entity code belonging to another entity, such as QCC. Further, QCC currently uses a separate general ledger system to create its own set of books. *Id.* at page 14.

36. Qwest and QCC do not share a common Chart of Accounts.

37. Security measures require each employee of the Qwest family of companies to be assigned a unique User ID. Once a User ID is assigned, the employee submits a request form, signed by his or her supervisor, for approval by the system control group before access is granted to any specific financial systems. If the employee has a job that requires access to specific systems, the control group enables the employee's User ID to access the particular data sets or applications needed. System edits are entity-specific requiring that, when accessed, a system will post data only if the correct combination of User ID, entity code, and account and responsibility code is entered. Additional system edits are designed to provide meaningful controls based on the information and reporting needs of the entity; therefore, data fields that are valid and have meaning for one entity may not be valid for another entity. *Id.* at pages 14-15.

38. This combination of system security, controls, and procedures ensures separateness by requiring each company to have its own books, keep its own records, and have its own Chart of Accounts. At the same time, processing on common consolidating financial systems permits consolidated reporting at the Qwest Communications International, Inc.

level as required for Federal and State tax, as well as Securities and Exchange Commission (SEC) purposes and is an acceptable practice under § 272.[6] *Id.* at page 15.

39. Qwest follows Generally Accepted Accounting Principles (GAAP) and regulatory accounting rules as required by the FCC. Qwest's books, records, and accounts are maintained in accordance with the *Code of Federal Regulations*, Title 47, Part 32.27 and Part 64.901, Allocation of Costs. Annual reports are filed publicly via the FCC's Automatic Reporting and Management Information Systems (ARMIS) and are accompanied by the report of independent accountants, Arthur Andersen, L.L.P. (Arthur Andersen)[7] *Id.* at pages 15-16.

40. Qwest will continue to maintain books, records, and accounts that are separate from QCC and comply with Part 32, Part 64, and the Accounting Safeguards Order for so long as this requirement is in effect. *Id.* at page 16.

41. Section 272(b)(3) requires that Qwest and QCC have separate officers, directors, and employees. QCC's president is not an officer of Qwest, nor is any BOC officer or employee also an officer or employee of QCC. As long as this requirement of § 272 applies, no officer or director of Qwest will simultaneously be an officer or director of QCC *Id.* at page 16.

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[6] *See* General Standard Procedures For Biennial Audits Required Under Section 272 of the Communications Act of 1934, As Amended, As of December 16, 1998 (*Biennial Audit Procedures*) at Objective II, Procedure 1.

[7] In FCC Docket No. 99-253, Report and Order issued In The Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I, the FCC changed the requirement that large ILECs obtain an annual financial audit. Instead it gave carriers the option of choosing an attest examination or financial audit every two years covering the prior two-year period. The order was effective March 2, 2000; thus, the audit engagement for the year 2000 will be combined with 2001 and the report will be issued in 2002.

42. Qwest and QCC also have separate employees, paid from separate payrolls. Ms. Schwartz indicates that she has overseen the comparison of payroll registers of Qwest and QCC to ensure no employee appears on both payrolls. A comparison of Qwest and QCC officer lists, and a payroll comparison, satisfies the FCC's test for § 272(b)(3) compliance.[8] *Id.* at page 17.

43. When they move from one organization to another or from one company to another, employees at Qwest apply for jobs through a process that is similar to the external hiring process. In order for an employee to "transfer" from one affiliate to another, the employee's employment must be terminated and the employee re-hired. Employees are required to return assets such as pagers, cell phones, and so forth, and have them re-issued in accordance with the hiring company's practices. *Id.* at page 17.

44. Qwest employees who provide services to QCC do so under contract. These transactions under contract are conducted at "arm's length," reduced to writing, and available for public inspection consistent with § 272(b)(5). The Master Services Agreement (MSA) constitutes the general agreement for services provided by Qwest to QCC. The MSA requires Qwest to perform its obligations as an independent contractor and not as an agent or employee of QCC. The MSA is available on the Qwest Communications International, Inc. Internet Home Page at http://www.qwest.com/about/policy/docs/qcc.overview.html as required by the Accounting Safeguards Order. *Id.* at pages 17-18.

8 *Bell Atlantic New York Order* ¶ 409, *SBC Texas Order,* ¶ 401.

45. Again, Qwest and QCC currently satisfy the requirement to have separate officers, directors, and employees. Qwest and QCC will continue to do so for as long as required under § 272. *Id.* at page 18.

46. Section 272(b)(4) prohibits the 272 Affiliate from obtaining credit under any arrangement that would permit a creditor, upon default, to have recourse to BOC assets. Qwest Communications International, Inc. employs three mechanisms to comply with this requirement.

47. First, Qwest is capitalized separately from other Qwest affiliates.

48. Second, Qwest issues its own direct financial obligations (principally, commercial paper, notes, and bonds) to fund its operations. Qwest's commercial paper and long-term debt are rated separately from the other financial obligations of Qwest Communications International, Inc. by the rating agencies, further evidencing the separation between the funding of Qwest and that of the rest of Qwest Communications International, Inc.'s operations. Funding for all other Qwest entities, including QCC, is provided by financial obligations issued by Qwest Capital Funding, Inc. (QCFI), a separate subsidiary of Qwest Communications International, Inc., which guarantees the debt issued by QCFI. Neither the debt obligations issued by QCFI nor the guarantee by Qwest Communications International, Inc. provides creditors recourse to the assets of Qwest. *Id.* at pages 18-19.

49. Third, neither Qwest Communications International, Inc., nor Qwest has co-signed a contract or any other instrument that would allow QCC to obtain credit in a manner that grants the creditor recourse to Qwest's assets in the event of a default by QCC. Qwest will continue to satisfy this § 272 requirement for as long as it applies. *Id.* at page 19.

50. Section 272(b)(5) requires that all transactions between Qwest and QCC be conducted at arm's length, reduced to writing, and available for public inspection. The purpose for this requirement is to assist the FCC in determining that such transactions are conducted in compliance with FCC accounting rules and to make sure such services are available to third parties consistent with the non-discrimination requirements of § 272(c). *Id.* at page 19.

51. All services provided by Qwest to QCC are either tariffed services or services provided under separate contract. Tariffed services have always been a matter of public record. Contracted services between Qwest and QCC have been identified and priced according to FCC rules. These services were initially identified through the company's affiliate transaction processes. These processes were supplemented during the transition from Qwest Long Distance to QCC by engaging Arthur Andersen as loaned staff to meet § 271 procedural schedules. Arthur Andersen met with key personnel and conducted over 140 interviews to ensure that all transactions had been identified. *Id.* at page 20.

52. Processes have been established for QCC to acquire non-tariffed products, services, facilities, and information (collectively, services) under contract. Such transactions are documented in the form of MSAs and work orders. The MSA contains the general articles governing the way Qwest and QCC conduct business when Qwest provides services to QCC. Work orders are the mechanisms used to document the specific transactions provided under these contracts and contain detailed rates, terms, and conditions. *Id.* at page 20.

53. Similarly, the MSA contains the general articles governing the way in which QCC provides services to Qwest. Task orders are the mechanisms used to document the specific transactions provided under these contracts and contain detailed rates, terms, and conditions. Business unit affiliate managers are responsible for administration and billing of services contained in these work orders and task orders. All agreements are subject to FCC Part 32.27 Affiliate Transaction rules. *Id.* at pages 20-21.

54. Qwest has instituted an additional control to review transactions between Qwest and QCC known as the Compliance Oversight Team. This team is made up of regulatory accounting, legal, and public policy experts. The Compliance Oversight Team reviews these services to insure compliance with § 272(b)(5) and the nondiscrimination safeguards included in § 272(c). *Id.* at page 21.

55. Qwest will post its § 272 transactions on the Internet within 10 days of their being executed by both parties, in accordance with the rules of § 272(b)(5) and the Accounting Safeguards Order. Transactions between Qwest and Qwest Long Distance are located on the Qwest Communications International, Inc. Internet site on the Qwest Long Distance web page. *Id.* at page 21.

56. Transactions identified between Qwest and QCC ("QCC") from the merger date of June 30, 2000, to December 31, 2000, have been posted on the QCC web page. These transactions are categorized as "Phase I" transactions. These transactions consist of the MSA, Services Agreement (SA), work orders, and task orders. *Id.* at page 22.

57. New services identified after December 31, 2000, are referred to as "Phase II" transactions. Transactions processed as a result of the Arthur Andersen interviews are

also included in Phase II. All transactions processed to date are available for public inspection and posted on the Qwest Communications International, Inc. Internet site on the QCC web page. *Id.* at page 22.

58. It is important to note that Qwest has taken a conservative approach concerning transactions with QCC. While QCC was not designated a § 272 Affiliate until January 2001, Qwest has identified and posted any transactions identified with QCC back to the Qwest-U S WEST merger date on June 30, 2000. This is further evidence of Qwest's commitment to § 272 compliance. *Id.* at page 22.

59. Any inter-exchange carrier (IXC) will be able to view the transactions, to evaluate the rates, terms and conditions of the offering, and to decide whether it is interested in obtaining the same service from Qwest. In addition to contracts, the section labeled "tariff rated services" provides a description of the services that QCC purchases out of Qwest's tariffs. This section also contains a hot link to another Internet site where the tariffs themselves can be found. *Id.* at pages 22-23.

60. In addition, posted in the section labeled "terminated transactions" is a reference to prior year or expired transactions. This link refers to records Qwest keeps on file that contain detailed billing information between Qwest and its 272 Affiliate. This billing information is simply back-up detail calculating out the predetermined rates (disclosed on the website) with the basis for pricing, *e.g.*, hours, headcount, level of employee expertise providing the service, and so forth (also disclosed on the website.) The back up billing detail is compared to services listed in the Cost Allocation Manual (CAM) to ensure a complete record and is reconciled to the FCC's ARMIS report. Prior year transactions

are available for inspection at Qwest's principal place of business under confidential agreement. *Id.* at page 23.

61. Terminated contracts will remain listed in this section under the link labeled "Expired Agreements" for one year after the date of termination. All transactions will be accompanied by testimony of an officer stating that Qwest complies with the § 272(b)(5) requirement to post and make public all transactions between the 272 Affiliate and Qwest, as required in the Accounting Safeguards Order. *Id.* at pages 23-24.

62. To meet the "arm's length" requirement, QCC will place orders for tariffed services in the same manner as other interexchange carriers. An IXC Sales Executive Team account representative will process those orders in a nondiscriminatory manner. *Id.* at page 24.

63. Qwest will represent transactions on the Qwest Communications International, Inc. Internet site by posting agreements, work orders, and task orders within 10 days of their being executed by both parties. Collectively, these agreements will contain service descriptions, terms and conditions, and the rates used for billing transactions between Qwest and QCC for services performed. To date, Qwest Corporation and Qwest Communications Corporation have executed two agreements, 30 work orders, and nine task orders to document the arm's length relationship. All existing work orders and task orders are available for public inspection and posted on the Internet, as required, at the Qwest Communications International, Inc. Internet Home Page at http://www.qwest.com/about/policy/docs/qcc.overview.html. Past transactions, including tariffed services and asset transfers, are also posted on this web site. *Id.* at page 24.

64. Qwest has made § 272 transactions available for public inspection since the FCC's Accounting Safeguards Order, issued December 24, 1996. Upon issuance of FCC Order No. 96-150, Qwest captured transactions dating back to February 8, 1996, the date of the Telecommunications Act of 1996. Although some transactions have been removed from the web site because they were terminated or superceded by subsequent agreements, the transactions are still available for public inspection at Qwest's principal place of business. *Id.* at page 25.

65. In summary, Qwest and QCC have processes in place to satisfy the provisions of § 272(b). They operate independently in compliance with the Non-Accounting Safeguards Order, CC Docket 96-149; maintain separate books and records; have separate officers, directors, and employees; and obtain debt financing independently. Qwest also satisfies the FCC's requirements for affiliate transactions. Transactions between Qwest and QCC are tariffed and/or represented by contracts that are made publicly available and will be posted on the Internet. These transactions are accounted for in compliance with FCC rules as described in Part 32, § 32.27, and the Accounting Safeguards Order. *Id.* at pages 25-26.

66. Section 272(c) requires Qwest to treat QCC in the same manner it treats other interexchange carriers. Section 272(c)(1) prohibits Qwest from discriminating between QCC and any other IXC in the provision or procurement of goods, services, facilities, and information or in the establishment of standards. *Id.* at page 26.

67. Qwest is committed to providing its services to QCC on a nondiscriminatory basis. QCC is required to contact its IXC Sales Executive Team representative at Qwest to obtain

services available to every interexchange carrier. Standard offerings provided to QCC will be extended to unaffiliated interexchange carriers under the same terms and conditions and at the same rates. Non-standard services and services that have not previously been offered outside the corporate family undergo a review process before being offered to QCC on a nondiscriminatory basis. *Id.* at pages 26-27.

68. QCC does not currently have access to Qwest's Operation Support Systems (OSS). These systems are used to support local retail efforts (*e.g.*, ordering and pre-ordering interfaces, repair and maintenance, and so forth) related to local exchange services, and are available only to Competitive Local Exchange Carriers (CLECs). If QCC were to obtain CLEC status at some time in the future, Qwest would require it to access OSS interfaces in the same manner as other CLECs. This would be in keeping with Qwest's current practice, which requires QCC to access services through its IXC Sales Executive Team representative. *Id.* at page 27.

69. Each non-tariffed service available to QCC is reduced to writing in a stand-alone contract, or MSA and associated work order. With the exception of joint marketing services, which will not be subject to nondiscrimination, these services will be available to unaffiliated entities under the same terms and conditions and at the same rates. All future transactions between Qwest and QCC will also be reduced to writing and made available on the Internet. *Id.* at page 27.

70. Qwest purchases services from a shared service affiliate, the QSC, which provides services to the Qwest family of companies. These services satisfy the FCC's

requirements by being accounted for under the appropriate non-structural safeguards.[9] *Id.* at page 28.

71. In the normal course of business, when QCC identifies a need for goods, facilities, services, or information from Qwest, it submits a service request form to its IXC Sales Executive Team representative. The IXC account representative acts as the Single Point of Contact (SPOC) on behalf of Qwest. For service requests not covered by an existing tariff, MSA and related work order, or stand-alone contract, the SPOC submits the request to the FCC/Regulatory Compliance Manager (Compliance Manager) for review. The Compliance Manager then contacts QCC employee making the request and the affected BOC business unit to gather additional information. Once the service request is clarified, the Compliance Manager facilitates a meeting with the Compliance Oversight team. This Compliance Oversight team evaluates the request and assesses Qwest's nondiscrimination obligation concerning the requested service. The Compliance Oversight team provides an obligation assessment to the affected BOC business unit, which then decides whether it will provide the service to QCC on a nondiscriminatory basis or not provide it at all. This rigorous review process ensures that Qwest satisfies the requirement to provide services to QCC on a nondiscriminatory basis as required under § 272(c)(1). This process further ensures that all services provided to QCC are submitted such that a work order can be written and priced accordingly, fulfilling the requirement under § 272(b)(5). *Id.* at pages 28-29.

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[9] *SBC Texas Order*, ¶ 408, *SBC Kansas/Oklahoma Order*, ¶ 261.

72. Section 272(c)(2) requires Qwest to account for all transactions with QCC in accordance with accounting principles designated or approved by the FCC. Qwest satisfies this requirement for transactions with QCC. *Id.* at pages 28-29.

73. Qwest's books are kept in compliance with GAAP and regulatory accounting rules as required by the FCC. Affiliate transactions are recorded in compliance with Part 32, Uniform System of Accounts for Telecommunications Companies, and specifically the Affiliate Transactions rules of Part 32.27 as modified by the FCC in the Accounting Safeguards Order, and Part 64, Subpart 1, Allocation of Cost. *Id.* at page 29.

74. The FCC has promulgated affiliate transactions rules that were amended in the Accounting Safeguards Order. The rules apply the following valuation hierarchy to Qwest's transactions with QCC: 1) tariff rates apply to tariffed services; 2) for non-tariffed services, Prevailing Company Price (PCP) is presumed for services subject to the nondiscrimination rules of § 272 because rates must be made available to both QCC and third parties on similar terms; and 3) services that are neither tariffed nor offered at PCP are valued at fully distributed cost (FDC) or fair market value (FMV), whichever is higher for services provided to QCC by Qwest, and whichever is lower for services provided to Qwest by QCC. *Id.* at page 29.

75. Qwest files reports publicly via the FCC's ARMIS each year. The audit opinion of Qwest's auditor Arthur Andersen is filed with the ARMIS Report 43-03 (also known as the Joint Cost Report) and certifies that Qwest complies with GAAP and the FCC accounting rules. While this audit (known as the Joint Cost Audit) does not focus specifically on the relationship between Qwest and QCC, the sample base of affiliate

transactions includes a review of general administrative type services that are provided between the two companies. Therefore, the statement of compliance rendered by Arthur Andersen as part of that audit is general in nature and concludes, based on the sample, that Qwest complies with the affiliate transactions rules in all material respects. The FCC has considered historical results of the annual Joint Cost Audit in order to assess § 272 compliance in § 271 applications.[10] Neither the FCC's review of Qwest's accounting information nor the audits conducted by independent auditors have revealed discrepancies with Qwest's corporate accounting procedures for affiliate transactions in the past three years.[11] *Id.* at pages 30-31.

76. Additionally, Qwest files a Form 10K report with the Securities and Exchange Commission each year. The 10K report includes an auditor's opinion stating that Qwest's financial statements are prepared in compliance with GAAP. Qwest also files its CAM with the FCC annually. These filings and the Joint Cost audit provide assurance that Qwest accounts for all transactions in accordance with the accounting principles approved by the FCC. *Id.* at page 31.

77. In summary, Qwest has provided evidence that it is prepared to comply with § 272(c). QCC must obtain services like any other IXC. These services are documented, priced, and posted according to the requirements set out in § 272 (b)(5). Therefore, Qwest has sufficiently demonstrated that it has implemented the proper internal controls and processes to satisfy the requirements of § 272(c).[12] *Id.* at page 31.

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[10] *Bell Atlantic New York Order*, ¶ 411, *SBC Texas Order*, ¶ 406.
[11] *SBC Texas Order*, ¶ 406.
[12] *SBC Texas Order*, ¶ 410.

78. Section 272(d) requires that, once it receives 271 authority, Qwest must obtain and pay for a joint Federal/State audit every two years. An independent auditor must determine whether the company has complied with the requirements of § 272 and the regulations promulgated under § 272. In particular, the audit is designed to determine whether the company has complied with the separate accounting requirements of § 272(b). The FCC has chosen to fulfill the audit requirement by selecting a type of audit known in the accounting industry as an "agreed-upon-procedures" audit. A joint Federal/State biennial audit oversight team will determine the scope of each audit. The biennial audit is required in addition to the annual joint cost audit. *Id.* at page 32.

79. The first biennial audit will be conducted 12 months after Qwest receives its first § 271 approval. Qwest will engage an independent auditor to conduct the biennial audit according to the audit requirements agreed upon by the Federal/State biennial audit oversight team. Qwest will cooperate to the fullest extent possible in providing any data necessary to assist the auditor in accomplishing its objective. The results of these audits will be provided to the FCC and the Colorado Public Utilities Commission as required. *Id.* at page 32.

80. The auditor and Colorado Commission Staffs will have access to the financial accounts and records of Qwest and QCC, as necessary, to verify that all transactions conducted between Qwest and QCC are appropriate under the specific requirements of § 272. The FCC and Colorado Commission Staffs will have access to the working papers and supporting materials of the auditor who performs the audit with appropriate protection for proprietary information. *Id.* at page 33.

81. The biennial audit acts as an additional control to ensure Qwest complies with the requirements in § 272. The FCC has placed reliance on the existence of the biennial audit in consideration of § 271 applications.[13] *Id.* at page 33.

82. Section 272(e) contains four express requirements ensuring that Qwest treats QCC similarly to other IXCs with respect to special and switched access. *Id.* at page 33.

83. Specifically, § 272(e)(1) provides for nondiscriminatory provision of telephone exchange service and exchange access for unaffiliated entities.

84. Section 272(e)(2) prohibits Qwest from providing any facilities, services, or information concerning its provision of exchange access to QCC unless such facilities, services, or information are made available to other providers of interLATA services under the same terms and conditions.

85. Section 272(e)(3) requires Qwest to charge QCC, or impute to itself, rates for telephone exchange service and exchange access that are no less than the amount that would be charged to any unaffiliated interexchange carrier for such service.

86. Section 272(e)(4) allows Qwest to provide in-region interLATA or intraLATA facilities or service to QCC only if such services or facilities are made available to all carriers at the same rate and under the same terms and conditions. *Id.* at page 33-34.

87. Qwest does not and will not discriminate in favor of QCC in the provision of telephone exchange service or exchange access. Upon obtaining § 271 approval in Colorado, QCC will obtain such services from Qwest under the same tariffed terms and conditions as are

[13] *Bell Atlantic New York Order*, ¶ 412, *SBC Texas Order*, ¶ 406, *SBC Kansas/Oklahoma Order*, ¶260.

available to unaffiliated interexchange carriers. QCC will contact its Sales Executive Team representative for these tariffed services through the same procedures that are available to other interexchange carriers. The IXC representatives will process orders in a nondiscriminatory manner. Finally, when and if Qwest uses exchange access services for the provision of its own services, it will impute to itself the same amount it would charge an unaffiliated interexchange carrier. *Id.* at page 34-35.

88. Section 272(f)(1) provides sunset provisions for manufacturing and long distance. It requires that the provisions of § 272 (other than subsection (e)) shall cease to apply three years after the date that Qwest or QCC is authorized to provide in-region interLATA services, unless the FCC extends the period by rule or order. *Id.* at page 35.

89. Section 272(f)(2) provides sunset provisions for interLATA information services of Qwest four years after the enactment of the Act, unless the FCC extends the period by rule or order.

90. Section 272(f)(3) preserves the authority of the FCC to prescribe safeguards consistent with the public interest, convenience, and necessity under any other section of the Act.

91. Qwest will adhere to the requirements of § 272(c) through § 272(f) of the Act until those provisions have expired. *Id.* at page 35.

92. Section 272(g)(1) prohibits QCC from marketing or selling telephone exchange services of Qwest except under the same conditions as are available to other similarly situated entities. QCC will not market telephone exchange services unless Qwest permits other

entities offering the same or similar services to market and sell its telephone exchange services. *Id.* at page 36.

93. Section 272(g)(2) prohibits Qwest from marketing or selling in-region interLATA services provided by QCC within Colorado until QCC is authorized to provide in-region interLATA services in Colorado. However, Ms. Schwartz indicates that it is critical to recognize that, once Qwest obtains § 271 approval, Qwest and QCC may jointly market services without regard to the nondiscrimination provisions of § 272(c). *Id.* at page 36.

94. In compliance with the terms of the divestiture plan as approved by the FCC on June 26, 2000, Qwest does not currently market or sell in-region interLATA services and will not do so until QCC is authorized to provide such services under § 271. When permitted, Qwest and QCC will market and sell in-region interLATA services pursuant to arm's length agreements, reduced to writing, available for public inspection, and accounted for in accordance with the then effective rules required by the FCC. *Id.* at page 36.

95. Qwest understands the requirements of § 272(g) and will comply with these provisions.

96. Section 272(h) gave Qwest one year from the date of enactment of the Act to comply with the requirements of § 272. This transition period was provided in the event that Qwest, formerly U S WEST Communications, Inc., was engaged in interLATA information or interLATA long distance services, as well as manufacturing. Qwest has satisfied this section of the Act because U S WEST Communications, Inc. was not engaged in any of these activities in February 1996. Further, because of the Qwest-U S WEST merger, Qwest Communications International, Inc. divested itself of its in-region interLATA business. *Id.* at page 37.

3. Competitors' Positions

97. On June 25, 2001, Mr. Cory Skluzak filed an affidavit on behalf of AT&T regarding § 272. *Exhibit 7-ATT-15.* In this affidavit, Mr. Skluzak outlined several concerns that AT&T still holds concerning Qwest's compliance with many of the subsections of § 272.

98. Concerning § 272 (a), Mr. Skluzak stated that Qwest's affidavits state there is no stock ownership as between it (Qwest Communications Corporation) and Qwest Corporation and, therefore, "as both a legal and practical matter, the two companies are separate."[14] This statement is conclusory and puts form over substance. Qwest and QCC may look like two separate corporations on paper, but that is not enough to satisfy § 272(a). As discussed below, AT&T contends Qwest does not meet all of the requirements of § 272(b) and, by definition, is not a separate affiliate.[15] *Exhibit 7-ATT-15* at page10.

99. Further, as a functional matter, QCC is not operating separately, given the widespread policy of "employee sharing or borrowing" and the intermingling of management and, thus, is not a separate affiliate in substance. Qwest and QCC may assert that they have followed the proper form in creating a separate affiliate but a review of what is actually happening belies these assertions. *Id.* at page 11.

100. In its discussion regarding compliance with § 272(a), Qwest states that "it will not provide in-region interLATA services originating within Qwest 14 state region as long as the structural separation obligation of § 272 applies to this activity."[16] It should be noted that Qwest already has been providing such in-region interLATA services for a number

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[14] Brunsting Affidavit at 6. *7-Qwest-1*.

of years, and these activities were found by the FCC to have violated § 271.[17] *Id.* at page 11.

101. The FCC has interpreted § 272(b)(2) to require Qwest's § 272 Affiliate to maintain its books, records and accounts pursuant to Generally Accepted Accounting Principles and to maintain them separate from Qwest.[18] To determine compliance with this section the FCC has looked to such evidence as: different charts of accounts, use of separate accounting software maintained at a separate location, and a regular audit program for the affiliate that ensures GAAP compliance.[19] *Id.* at pages 11-12.

102. QCC asserts that its "books, records, and accounts are maintained in accordance with generally accepted accounting principles ("GAAP") and consolidated into Qwest Communications International Inc.'s financials."[20] AT&T disputes this assertion of GAAP compliance. *Id.* at page 12.

103. Based upon his initial and follow-up on-site reviews with Qwest, Mr. Skluzak states that Qwest LD and QCC have not demonstrated that they have been complying, or will comply, with this section for the following reasons:

a. Qwest LD, which will or has become part of QCC, is not accounting for activity as incurred nor is it accruing expenses from year to year. During the initial on-site review, which is discussed more fully below, numerous examples of transactions occurring in 1999 were found that were not expensed until the year 2000. One of the transactions was for $1,640,580 for work performed by Qwest Consumer Services for Qwest LD from

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15 *See* BellSouth Louisiana II Order, ¶ 323, where the FCC used this same process to find that BellSouth did not satisfy Section 272(a).

16 Affidavit of Marie Schwartz dated June 4, 2001 at 9. *7-Qwest-3*.

17 For example, *see AT&T Corp. v. U S WEST Communications, Inc.*, File No. E-97-28, *Memorandum Opinion and Order*, DA01-418 (rel. Feb. 16, 2001), for the most recent violation of Section 271.

18 *BellSouth Louisiana II Order*, ¶ 328.

19 *Id.*

20 Brunsting Affidavit at 9. *7-Qwest-1*.

January through December, 1999, yet this amount was not recognized as an expense until it was paid in January, 2000.[21] Qwest states that it "utilizes accrual accounting for its transactions between affiliates."[22] But Qwest LD is not using accrual accounting based on the selections that were tested and evidenced by the debit hitting an expense account, nor is it timely accounting for transactions between affiliates. Based on follow-up testing of Qwest LD, there continues to be problems with the failure to use accrual accounting, timeliness of billing and accounting for transactions and a corresponding failure to follow the concept of matching expenses with revenues.

b. The only transactions between Qwest and Qwest LD that are accounted for as "affiliate transactions" are those involving payments.[23] There is a concern that transactions not involving the exchange of money could occur and not be accounted for and reported.

c. Initially, there was no evidence presented in Qwest's testimony filed on August 7, 2000, that there was a different Chart of Accounts for the two entities. Qwest LD initially provided its Chart of Accounts but without Qwest's Chart, it was impossible to compare to see if they truly are different.

d. It appears that separate accounting software is not being utilized, nor is it being maintained at a separate location. According to testimony filed by QCC, its accounting and finance functions are performed by the Services Company, which is not Qwest.[24] However, QCC also states that "BOC employees provide payroll services".[25] Thus, confusion remains as to what entity, Qwest or the Services Company, is performing the payroll administration and processing functions. Further confusing the issue, as discussed below in further on-site testing, is the existence of work orders *and* task orders indicating that QCC is both paying for and receiving payment for finance services. The PUC is urged to inquire into this matter and clear up the contradictory testimony presented by Qwest and QCC. It still appears, that separate accounting software is not being utilized and maintained at a separate location.

e. Regarding the processing of financial transactions, Qwest states that under their systems "It is simply not possible for one entity to enter transactions

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21 Qwest's Section 272 affiliate website: http//www.uswest.com/about/policy/docs/ld_1999_transactions.html. Note that since the initial write-up of this statement, Qwest has removed from its Section 272 website the specific reference to this amount which was contained within a posted summary entitled "1999 Services Provided by U S WEST to U S WEST Long Distance". [Footnote in affidavit.]

22 Qwest Response to AT&T Multistate Data Request No. 56. [Footnote in affidavit.]

23 Qwest Response to AT&T Multistate Data Request No. 17. "The procedures for capturing affiliate transactions include downloading all payments to and payments from affiliates from the company's financial systems." [Footnote in affidavit.]

24 Brunsting Affidavit at 11. *7-Qwest-1*. [Footnote in affidavit.]

25 *Id*., at 14. [Footnote in affidavit.]

using an entity code belonging to another entity ….”[26] During the initial on-site review, discussed fully in the § 272(b)(5), a posting was noted to the 1999 transactions list that was a reversal. The description was “Billed in error USWC carrier should have been billed.” Because employees of Qwest are processing the financial transaction for both Qwest and Qwest LD, there still exists the element of human error and inputting an accounting transaction to the wrong entity. However, the question remains how the error previously identified could occur if it was an impossibility. Also, in a letter dated June 6, 2001 and sent to the Chief of the FCC’s Common Carrier Bureau, Qwest’s independent auditor, Arthur Andersen LLP, noted that through a manual process “Qwest’s billing systems erroneously” misbranded certain services.[27]

f. To determine compliance with this section, Qwest LD must be auditable. Under § 272(d), an audit of the § 272 Affiliate is not mandated until twelve months after § 271 approval. Given Qwest LD’s present and historical failure to fully account for and disclose its required transactions, it is suggested that an opening audit should be required to verify that all accounting safeguards are in place and operational prior to Qwest LD’s provision of long distance service. Qwest engaged Arthur Andersen to review and “supplement” procedures for affiliate transactions,[28] and audits for 10-K’s and ARMIS reports (which include QCC).[29] However, the “audit” of affiliate transactions is limited in scope to one line on the ARMIS reports and, as will be discussed below, Qwest’s ARMIS report submissions for affiliated transactions are of dubious value. Finally, as is discussed below, it appears that no audit has been performed on Qwest’s ARMIS reports for 2000 as it has opted to audit that year and 2001 sometime in 2002. *Id.* at pages 12-14.

104. Subsequent to his initial and follow-up reviews, Mr. Skluzak returned to Qwest to conduct a supplemental on-site review of QCC’s transactions. Based upon his supplemental review, AT&T continues to dispute Qwest’s and QCC’s assertions of compliance with this section. *Id.* at page 14.

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26 Schwartz Affidavit at 13 - 14. *7-Qwest-3*. [Footnote in affidavit.]

27 Letter from Arthur Anderson LLP to Dorothy Atwood (June 6, 2001) and filed with the FCC’s Common Carrier Bureau (discussing audit of Qwest’s required divestiture of its in-region interLATA services and pursuant to CC Docket No. 99-272). [Footnote in affidavit.]

28 Schwartz Affidavit at 19. *7-Qwest-3*. [Footnote in affidavit.]

29 Brunsting Affidavit at 10. *7-Qwest-1*. [Footnote in affidavit.]

105. At a minimum, Qwest and QCC are not utilizing GAAP required accrual accounting, or timely billing and accounting for their affiliated billable transactions. This is a continuing problem initially discovered during the review of Qwest LD's actual accounting documentation and also found on subsequent on-site reviews. Further, Qwest and QCC are not GAAP-compliant where they have completely failed to book billable transactions between them for a nine-month period beginning July 2000, until the latter half of April 2001. The PUC is urged to go beyond Qwest's and QCC's paper promises, regarding adherence to accrual accounting, and to examine the evidence uncovered during the three on-site reviews. *Id.* at page 14.

106. Qwest asserts, as additional evidence of compliance with § 272(b)(2), that "[a]nnual reports are filed publicly via the FCC's Automatic Reporting and Management Information Systems ("ARMIS") [which] are accompanied by the report of independent accountants, Arthur Andersen[.]"[30] This assertion appears to cast a veil of legitimacy, as the inferential logic is that Arthur Andersen has reviewed the ARMIS reports which proves GAAP compliance. However, as Ms. Schwartz explains in a footnote to her testimony, "… the audit engagement [regarding the annual ARMIS reports] for the year 2000 will be combined with 2001 and the report will be issued in 2002."[31] As the footnote to Ms. Schwartz's textual assertion appears to be contradictory, the Arthur Anderson report (or lack of report) can be given no probative value. It is noted that Qwest's ARMIS reports will not be audited for the initial one and one-half years since it acquired US WEST, until some time in the year 2002. *Id.* at pages 14-15.

[30] *Id.*, at 15.
[31] *Id.*, n. 8.

107. Mr. Skluzak states that he reviewed the ARMIS report for Qwest for the year 2000; the most recent report posted by the FCC.[32] For services purchased by Qwest from QCC, he did not see an amount or a line entry.[33] For services sold by Qwest to QCC, a total of $1,545,000 has been entered. These amounts do not reconcile to the total amounts that were discovered during the supplemental on-site testing. For affiliated transactions between Qwest and QCC, it appears that a single amount of services sold by Qwest to QCC is all that Arthur Anderson had the opportunity to review. Such would not afford an opportunity to review the transactions making up that total ARMIS amount.[34] *Id.* at page 15.

108. As Qwest has not filed any ARMIS report for 2001, no probative value can be given to Qwest's assertions regarding ARMIS reports and its new § 272 Affiliate.

109. QCC asserts, as further evidence of compliance with this section, that its financial results are consolidated with those of QCI's financial statements included in the SEC Form 10-K, which includes Arthur Andersen's unqualified opinion as to adherence to accounting principles.[35] AT&T disputes this assertion. Once again, given the complete failure to account for affiliated transactions between Qwest and QCC, the seeming legitimacy of an

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32 FCC's ARMIS website, Report 43-02, Table 12 "Analysis of Services Purchased from or Sold to Affiliates."

33 The absence of any information, or any dollar amount, should be of concern. One ramification is that with zero being reported, no reliance can be placed on Qwest's assertion that its ARMIS reports are audited. Another ramification is that Qwest failed to report affiliated transactions for 2000. Qwest should be questioned as to this situation and whether it has also failed to report Qwest LD's affiliated transactions correctly. [Footnote in affidavit.]

34 Qwest asserts that Arthur Andersen was engaged to supplement the internal affiliate transactions processes during the transition from Qwest Long Distance to QCC and that over 140 interviews were conducted "to ensure that all transactions had been identified." Schwartz Affidavit at 19 - 20. Given the extent of Arthur Andersen's involvement and the addition of supplemental procedures, how does Qwest explain the complete failure to book billable affiliated transactions with QCC spanning a nine-month period and straddling two financial years? [Footnote in affidavit.]

35 Brunsting Affidavit at 10. *7-Qwest-1*

Arthur Andersen "unqualified" opinion as to QCI should not be deemed probative of QCC's financial activities. *Id.* at page 16.

110. QCC states that QCI is subject to federal securities statutes.[36] Given that Form 10-Q (for the three months ended March 31, 2001) was recently filed by QCI, the PUC should question Qwest as to the complete omission to book affiliated transactions with QCC on that recent filing.[37] AT&T contends that QCC's affiliated transactions with Qwest could not have been correctly reported in the 10-K, 10-Q, or the ARMIS report, as no billable transactions for the period July 2000 through March 2001 were accounted for in that period. Thus, when QCC states that QCI's financial statements in the 10-K form include the "consolidated results of QCC," it must be underscored that this does not include affiliated transactions. *Id.* at page 16.

111. Section 272(b)(3) requires that QCC have "separate officers, directors, and employees from the [BOC] of which it is an affiliate." In prior orders, the FCC used as evidence of compliance the names of officers and directors submitted by Qwest and affiliates and whether separate payrolls and administrative operating systems are present.[38] In its *Ameritech Michigan Order,* the FCC found that that the intent of the separate officers and directors requirement is "that there be some form of independent management and control of the two entities".[39] In that order, the FCC was concerned about the fact that the presidents of both BOC (here, Qwest) and the separate 272 affiliate reported to the same officer of the parent corporation of both entities. *Id.* at pages 16-17.

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36 *Id.*

37 *See* *http://www.qwest.com/cgi-bin/ir/secFilings.cgi?script=irSECFilings*, for a listing of recent SEC documents filed by QCI.

38 *BellSouth Louisiana II Order*, ¶ 330, n. 1032.

39 *Ameritech Michigan Order*, ¶ 360.

112. An important indication of what "separate" means under this section can be found in the audit procedures of the biennial audit required pursuant to § 272(d). Certain audit procedures are used to test for separate officers, directors and employees and require the auditor to do the following:

> Obtain the functional organizational chart of each § 272 affiliate … and inspect it to determine whether any departments report either *functionally or administratively (directly or indirectly)* to an officer of Qwest.[40] *Id.* at page 17.

113. In addition, the *Biennial Audit Procedures* require an independent auditor to perform the following tests:

> Obtain a list of officers and employees who transferred from the BOC at any time to each § 272 affiliate, and … determine whether the company's internal controls … have been implemented. Also, interview these employees to determine whether they used any proprietary information (e.g., customer proprietary network information (CPNI), Network Planning Manuals, Plant Traffic Practices, Operation, Installation and Maintenance (OI&M) Practices) obtained while they were employees of the BOC or whether any of the above information is made available to them through friends and acquaintances still employed by the BOC.[41]
>
> Obtain a list of all employees of each § 272 affiliate since February 8, 1996, the date of the Act [and] … inspect company's files which indicate employee's employment history within the BOC family of companies and document whether they were employees of the BOC or any of its affiliates at any time. Also, document number of employees, number of times, and dates each employee transferred back and forth between the BOC or any other affiliate and the § 272 affiliate since February 8, 1996.[42] *Id.* at pages 17-18.

114. Based upon his initial and follow-up on-site reviews, Mr. Skluzak noted the following deficiencies of Qwest, Qwest LD and QCC with respect to this section:

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[40] *See* General Standard Procedures For Biennial Audits Required Under Section 272 of the Communications Act of 1934, As Amended, as of December 16, 1998. ("*Biennial Audit Procedures*") at Objective III, Procedure 3, at 24 (emphasis added). Also see, Schwartz Affidavit, Exhibit MES-8. *7 Qwest 3*.

[41] *See Biennial Audit Procedures*, Objective III, Procedure 5 at 25.

[42] *Id*. at Objective III, Procedure 6 at 25.

> In September 2000, Qwest LD's President, Ms. Kamelia J. Davidson, who was also Qwest LD's sole director, reported directly to an officer of Qwest Inc., Drake Tempest. Mr. Tempest was the Executive Vice President, General Counsel, Chief Administrative Officer and Secretary of Qwest, Inc. As both Qwest LD and Qwest are wholly-owned subsidiaries of Qwest Inc., there was a situation analogous to the one described above in the *Ameritech Michigan Order*. The FCC's concern in *Ameritech* was that the presidents of the BOC and the 272 Affiliate were reporting to the same officer of the *parent corporation*. In Brunsting's affidavit, Drake Tempest and Robin Szeliga are now the current directors of QCC and they are no longer a director or officer of Qwest.[43] However, Mr. Skluzak stated that he was unsure to whom Mr. Tempest reports to at Qwest Services Corp. Mr. Tempest is also Executive Vice President, General Counsel, Chief Administrative Officer and Secretary of QCC.[44] Mr. Tempest also holds the position of Executive Vice President, General Counsel and Chief Administrative Officer of Qwest Communications International, Inc., the parent of both Qwest and QCC. Similarly, Mr. Joseph Nacchio is Chairman, Chief Executive Officer and President of QCC and Chairman and Chief Executive Officer of Qwest Communications International, Inc. No information on the officers and directors of Qwest Service Corporation ("QSC") the apparent owner of Qwest and QCC was provided. QSC is owned by Qwest Communications International, Inc.[45]
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> The concern for true independence between Qwest and QCC is heightened, as Mr. Tempest is also the General Counsel of QCC and Qwest Communications International, Inc. As an attorney, it is foreseeable that Mr. Tempest may invoke the attorney-client privilege should a question arise as to issues regarding QCC or Qwest. *Id.* at pages 18-20.

115. Mr. Skluzak went on in his affidavit to provide other examples of where he found deficiencies relating to § 272 (b)(3); however, many of the examples given are proprietary and will not be revealed in this report. For more explanation please see the confidential portion of Mr. Slovak's June 25, 2001 affidavit, *7-ATT-15.* However, for summary purposes, Mr. Skluzak concludes that QCC states that, to meet its burden of proof, it need "only provide evidence that its officers, directors, and employees are

43 Brunsting Affidavit at 13. *7-Qwest-1*.
44 Brunsting Affidavit, Ex. JLB-6. *7-Qwest-1*.
45 Schwartz Affidavit, Ex. MES-1. *7-Qwest-3.*

separate from those of the BOC."[46] QCC's paper promises have been rebutted by the results obtained from the on-site reviews. *Id.* at page 24.

116. AT&T states that to satisfy the public disclosure requirements of § 272(b)(5), a BOC must disclose detailed information regarding the terms and conditions of each transaction between Qwest and QCC, including the rates for each transaction. QCC must provide, at a minimum: a detailed written description of the asset transferred or the service provided in the transaction, and post the transaction's terms and conditions on the § 272 Affiliate's Internet home page within 10 days of the transaction.[47] The description "should be *sufficiently detailed to allow us to evaluate compliance with our accounting rules*," and they must be made available for public inspection at Qwest's principal place of business and must include a statement certifying the truth and accuracy of such disclosures.[48] The FCC has stated:

> Failing to disclose fully the details of the transactions between the BOC and its Section 272 affiliate is contrary to Section 272(b)(5) because it impairs our ability to evaluate compliance with our accounting safeguards and deprives unaffiliated parties of the information necessary to take advantage of the same rates, terms, and conditions enjoyed by the BOC's Section 272 affiliate.[49] *Id.* at pages 24-25.

117. The FCC rejected BellSouth's assertion that only summaries of its affiliate transactions were required, finding that full disclosures must include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions.[50] *Id.* at page 25.

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46 Brunsting Affidavit at 16. *7-Qwest-1.*
47 *BellSouth Louisiana II Order,* ¶¶ 332 - 339.
48 *Id*. (emphasis added).
49 *Id.,* ¶ 335.
50 *Id.,* ¶ 337.

118. The FCC noted in its *Ameritech Michigan Order* that public disclosure requirements have been in effect since the passage of the 1996 Act on February 8, 1996, and that the requirement for posting of data on the Internet became effective with the implementation of the *Accounting Safeguards Order* on August 12, 1997.[51] In short, public disclosure has now been required for five years and posting has been required for almost four years. Qwest states that "there is no specific requirement that QCC meet § 272 obligations now; rather it must only demonstrate that it will comply with the requirements of § 272 …."[52] This statement is misleading by itself. Qwest has been under an obligation to disclose transactions since February 8, 1996, and to post the transactions with, U S WEST LD, Qwest LD, and now QCC, since August 12, 1997. As has been previously noted, Qwest arbitrarily chose to cease posting its affiliated transactions with Qwest LD on December 31, 2000, despite the imminent merger of Qwest LD into QCC. This decision has resulted in a further violation of Qwest's § 272 duties. In order to make a predictive judgment of the future behavior of a BOC under § 272, the FCC has stated it will "look to the past and present behavior of applicant as the best indicator of whether it will carry out the requested authorization in compliance with the requirements of § 272."[53] *Id.* at pages 25-26.

119. Qwest asserts that it posts and makes public all transactions between Qwest and Qwest LD, and now Qwest and QCC, to its web site to satisfy the FCC's public disclosure requirements.[54] AT&T disagrees with these paper promises and states that these

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[51] See *Ameritech Michigan Order*, ¶ 371 (emphasis added). Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. Dec. 24, 1996)("*Accounting Safeguards Order*").

[52] Brunsting Affidavit at 3. *7-Qwest-1*.

[53] *Ameritech Michigan Order,* ¶ 347 (emphasis added).

[54] See generally, Brunsting Affidavit at 18 - 19. *7-Qwest-1*. Also, Schwartz Affidavit at 21 - 25. *7-Qwest-3*.

assertions are untrue and were made with the full knowledge by Qwest and QCC that postings were not made in a timely manner during the so-called "transitional phase". *Id.* at page 26.

120. In addition, there continue to be long periods of time before a specific or "billable" transaction is paid by QCC. Also, these specific transaction amounts are being expensed as they are being paid rather than being accrued in a timely manner – even when two years are implicated. The problem of not timely recording transactions and accruing amounts, especially at year-end, does not appear to be isolated. In this follow-up, and in prior testing, Mr. Skluzak states that he found many examples of this and that it appears to be the unstated accounting policy. Because QCC is receiving very generous extended payment terms, it is receiving preferential, and thus discriminatory, treatment to the extent that such terms and conditions are not extended to other companies. Further, failure to post in a timely manner and accrue specific transactions casts doubt on the validity of the internal accounting system and the reporting results generated from such a system and hinders a proper examination of actual activity by interested parties and the FCC's investigation into compliance with its accounting procedures. *Id.* at pages 36-37.

121. The failure to account in a timely manner and accrue specific transactions casts doubt on the validity of the internal accounting system and the reporting results generated from such a system. This, in turn, hinders a proper examination of actual activity by interested parties and the FCC's investigation into compliance with its accounting procedures. *Id.* at page 47.

122. In addition, Qwest has adopted the approach of the former U S WEST in choosing to report documents it collectively calls "agreements" rather than individual transactions. This approach does not rise to a summary of the transaction, let alone a detailed description that would permit the FCC to determine if such transactions are nondiscriminatory.[55] Qwest correctly states that the public inspection requirement of § 272(b)(5) "is to assist the FCC in determining that such transactions are conducted in compliance with FCC accounting rules and to make sure such services are available to third parties…."[56] The FCC would be unable to determine compliance with its accounting rules if specifically accounted for transactions are not posted. Also, third parties could not avail themselves of services or goods if Qwest does not post them in a timely manner.

123. Full disclosure must include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions.[57] It is not sufficient to post an agreement with the terms and conditions on the website and leave it at that. Qwest has attempted to comply with the 10-day posting requirement on the separate affiliate website by posting master agreements within 10 days of their execution. Individual transactions, referred to Qwest as "[simple] back-up detail,"[58] can be viewed only upon special request. *Id.* at page 54.

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[55] The FCC has held that "our interpretation of Section 272 (c)(1) as a flat prohibition against discrimination will work in conjunction with the Section 272(b)(5) disclosure requirement to deter anticompetitive behavior." Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order, FCC 96-489 (rel. Dec. 24. 1996), ¶ 324 ("*Non-Accounting Safeguards Order*").

[56] Schwartz Affidavit at 19. *7-Qwest-3*.

[57] Also *see BellSouth Louisiana II Order*, ¶ 337. In that order, the FCC found that BellSouth failed to comply with its obligations where it disclosed only basic contractual terms of its agreements while withholding the actual transactional details.

[58] Schwartz Affidavit at 22. *7-Qwest-3*.

124. AT&T believes that a transaction is an event that captures a discrete accounting activity. Based on observations while conducting testing, Qwest LD and now QCC track billable activities which, in turn, can be traced to invoices. Either the billable activity or the invoice, if it only contains one activity, should be the transaction and should be publicly reported and disclosed. If Qwest would post this type of transaction as incurred, and not just when paid, within the required 10 days, then compliance with § 272(b)(5) could be properly determined. As it is now, failure to post actual transactional details means that Qwest fails to comply with § 272(b)(5). Further, this type of specific transaction posting would allow one to determine errors, departures from GAAP, and contravention of FCC safeguards, such as whether specific transactions are occurring in a discriminatory fashion. *Id.* at page 55.

125. The second requirement of § 272(b)(5) is that all transactions between Qwest and Qwest LD, and Qwest and QCC, must be negotiated at "arm's length" and must include the recording of a transaction's cost in accordance with a specified hierarchy of valuation methodologies.[59] *Id.* at page 55.

126. Given the results of the three on-site reviews conducted by AT&T, AT&T concludes that transactions do not comply with the "arm's length" requirement due to the many identified instances of intermingled management, "employee sharing," and failure timely to post offered services and goods. Regarding cost valuation requirements, AT&T believes that the high rates used for services act as a practical barrier to third parties' use of such services. *Id.* at pages 55-56.

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[59] *BellSouth Louisiana II Order*, ¶ 339.

127. Alternatively, because Qwest has failed to comply with the posting requirements of § 272(b)(5) and the FCC's accounting principles, it is difficult to determine if there is compliance with the "arm's length" requirement. *Id.* at page 56.

128. QCC's Service Agreement with Qwest, posted on its website, contains Article 10 ("Notices"), which directs that all written notices, demands or other communications are to be made to the other party's address. Listed for QCC and Qwest are the exact same address, same suite, and same organization. As both entities affirmatively state that all transactions will be conducted at arm's length and the two companies are to operate independently, it is curious to find such a close affinity. This arrangement belies Qwest's assertions of compliance with this section. *Id.* at page 56.

129. Whereas the requirements of § 272(b) apply to Qwest LD and QCC, § 272(c)(2) applies to Qwest and can be viewed as a companion to the § 272(b)(2) accounting requirements for QCC. *Id.* at page 56.

130. Section 272(c)(2) requires Qwest to account for all transactions with Qwest LD and QCC pursuant to accounting principles designated or approved by the FCC. AT&T was unable to review the supporting detail for receipts of money from Qwest to Qwest LD. These affiliate transactions, for 1999 alone, totaled almost $29 million. In follow-up testing, Mr. Skluzak was presented with detail of these amounts, which he attempted to trace to corresponding task orders. Payments from Qwest to Qwest LD, and now to QCC, should

be subjected to close scrutiny because of the potential for improper subsidization.[60] *Id.* at pages 56-57.

131. Based upon its initial and follow-up review, AT&T suggests that the following items be scrutinized in determining Qwest's compliance with this section:

> Because Qwest has failed to properly disclose specific, billable transactions between it and QCC/Qwest LD, a full evaluation of the compliance of affiliate transactions cannot be accomplished.[61]
>
> The only transactions between Qwest and QCC/Qwest LD that are accounted for as "affiliate transactions" are those involving payments.[62] There is a concern that transactions not involving the exchange of money may occur and not be accounted for and reported.
>
> Qwest focuses on the audit of its ARMIS Report, but admits that the auditor's compliance statement is "general in nature".[63] Also, the audit relates to the ARMIS data, which includes only summary information about transactions with Section 272 affiliates.[64] Thus, the audit that Qwest discusses is not an audit specifically of the Section 272 affiliate and its specific transactions and is not probative of compliance with Section 272. The FCC has stated that the accounting requirements of section 272 (c)(2) "pertain to the BOC's 'dealings' with its separate affiliate."[65] *Id.* at page 57.

132. Under § 272(c)(2), Qwest is required to account for all transactions with QCC pursuant to FCC accounting principles. Despite Qwest's "dealings" with QCC stretching back to July 2000, there was *no accounting booked until April of 2001* and thus, by definition,

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60 One reason that the FCC applied its existing affiliate transaction rules to transactions between BOCs and Section 272 affiliates was to detect and protect against flows of subsidies. See *Accounting Safeguards Order*, ¶ 176.
61 *BellSouth Louisiana II Order*, ¶ 340.
62 Qwest Response to AT&T Multistate Data Request No. 17. "The procedures for capturing affiliate transactions include downloading all payments to and payments from affiliates from the company's financial systems."
63 Schwartz Affidavit at 29. *7-Qwest-3*.
64 *Bell Atlantic New York Order*, ¶ 411, n. 1268. It appears that the FCC reviews the ARMIS data and CAMs to compare the total amount of affiliate transactions. In the footnote to this cite it appears that the FCC relies upon the independent auditor's reviews of ARMIS data. However, Qwest has opted not to have an audit engagement for the year 2000 in 2001. See Schwartz Affidavit, at 15, n. 8. *7-Qwest-3*. [Footnote in Skluzak affidavit.]
65 *Id.* ¶ 415.

Qwest has not met the requirements of this section which call for adherence to FCC accounting principles including GAAP. *Id.* at pages 57-58.

133. Qwest states that the filings of its 10K report and its Cost Allocation Manual, together with the annual audit, "provide assurance that the BOC accounts for all transactions in accordance with the accounting principles approved by the FCC."[66] Once again, "mere paper promises" does not equate to compliance. The FCC has stated that an audit of a BOC's CAM information and ARMIS data will not conclusively prove compliance with § 272(c)(2).[67] Further, as has been noted under the discussion for § 272(b)(2), Qwest's assertion cannot be true where no affiliated transactions between Qwest and QCC were accounted for during a nine-month period commencing in July 2000, and where Qwest's ARMIS data for QCC affiliated transactions are either underreported or not reported at all. The FCC has stated that the accounting requirements of § 272(c) pertain to Qwest's "dealings" with QCC. The auditor's opinion as to Qwest's 10K report does not specifically address dealings between Qwest and QCC. *Id.* at page 58.

134. Qwest's assertion that it "has sufficiently demonstrated that it has implemented the proper internal controls and processes to satisfy the requirements of § 272(c)"[68] is conclusory. If Qwest had proper internal controls, proper GAAP accounting would have been employed, and accounting of billable transactions would have been occurring in a timely manner. Such was not, and has not been, the case. Qwest has not demonstrated compliance with this section. *Id.* at page 58.

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[66] Schwartz Affidavit at 30. *7-Qwest-3*.
[67] *BellSouth Louisiana II Order,* ¶ 340.
[68] Schwartz Affidavit at 30. *7-Qwest-3*.

135. Qwest's asserts that "[n]either the FCC's review … nor the audits conducted by independent auditors have revealed discrepancies with [Qwest's] corporate accounting procedures for affiliate transactions in the past three years."[69] As a result of Mr. Skluzak's on-site reviews, he has presented discrepancies with Qwest's accounting for affiliated transactions with Qwest LD and QCC. Such discrepancies are recent, and they rebut the presumption of compliance that Qwest asserts. *Id.* at page 59.

136. Section 272(c)(1) establishes further requirements for Qwest. Under this section, a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its § 272 affiliate at the same rates, terms, and conditions. In other words, Qwest is required to treat unaffiliated entities as it treats QCC.[70] *Id.* at page 59.

137. A *prima facie* case of unlawful discrimination under this section is established if it can be shown that a BOC has not provided an unaffiliated entity with the same goods, services, facilities, and information that it provides to its § 272 Affiliate at the same rates, terms and conditions.[71] Neither can Qwest use a third affiliate to provide services to QCC to circumvent the requirements of this section. To do so would create a loophole around the separate affiliate requirement.[72] *Id.* at page 60.

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69 *Id.*, at 29-30.
70 *Non-Accounting Safeguards Order*, ¶ 202.
71 *Id.*, ¶ 212.
72 The FCC has stated that the affiliate transaction rules govern "chain transactions" where an unregulated affiliate stands between the BOC and the Section 272 affiliate in the provision of assets, information, or services. *Accounting Safeguards Order,* ¶¶ 183, 251; *Non-Accounting Safeguards Order*, ¶ 309; *Ameritech Michigan Order*, ¶ 373. Because Qwest and QCC are both subsidiaries of Qwest Services Corporation, the possibility exists that QSC is being used, or will be used, to circumvent the nondiscrimination provisions. [Footnote in Skluzak affidavit.]

138. Qwest provided copies of documents between a third affiliate known as U S WEST Advanced Technologies (AT) and other Qwest affiliates.[73] Among the agreement or project reports provided were several between AT and Qwest LD. AT&T believes that several of the services provided by AT for Qwest LD constitute discrimination in the provision of information and the development of new services. Failure to also offer such services and information to an unaffiliated entity constitutes noncompliance with this section. *Id.* at page 60.

139. To the extent that these services are offered to Qwest LD and not to other unaffiliated entities, Qwest is circumventing the non-discrimination safeguards by using AT and violating the provisions of § 272(c)(1). To illustrate, AT was used to develop cost savings for U S WEST LD as to a service that was uniquely provided by Qwest, U S WEST. This appears to be a circumvention of the prohibition against Qwest's transferring local exchange and exchange access facilities and capabilities to an affiliate.[74] *Id.* at page 62.

140. Section 272(e) provides for certain requirements in the provision of exchange service (*i.e.*, local service) and exchange access services (*i.e.*, switched access services). Subsection 272(e)(3) specifically mandates imputation for Qwest's own provisioning, and subsection 272(e)(4) mandates nondiscrimination in the provisioning of interLATA or intraLATA facilities or services to its 272 affiliate. *Id.* at page 63.

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[73] Response to AT&T Multistate Data Request No. 16, Confidential Attachment C, Books 1 & 2 (the "Montana Affiliate Interest Reports filed with the Montana Public Service Commission in 1999 and 2000 for transactions in 1998 and 1999, respectively").

[74] *Non-Accounting Safeguards Order*, ¶ 309.

141. Qwest states that it "does not and will not discriminate in favor of QCC in the provision of telephone exchange service or exchange access."[75] This mere summarization of the rule is more than what QCC has offered, which was nothing. Section 272(e) applies to both Qwest and the affiliate. Neither entity has demonstrated or provided evidence, beyond mere words, to allow the PUC to make a predictive judgment as to compliance with this section. *Id.* at page 64.

142. The mandate in 272(e)(3) is of heightened importance given the recent order issued by the Kansas Corporation Commission. On its own motion the Kansas Commission has recently opened a docket to investigate whether the rates and practices of Southwestern Bell Communications (SBC) and the 272 Affiliate (SBCS) in offering long distance services are unjust, unreasonably discriminatory, or unduly preferential.[76] AT&T states that the Colorado PUC should review and use this section as a safeguard against anti-competitive pricing that will result in price squeezes. *Id.* at page 64.

143. Conventional wisdom is that toll service will soon be bundled, below cost or free, with high-end data service. As a result, the PUC should assure itself, as Colorado did in the switched access imputation case, that Qwest and QCC will adhere to the provisions of § 272(e). The Colorado Commission should implement the suggestions offered by AT&T (listed below). Failure to do so may invite a "Kansas scenario": the Kansas Commission finds itself in an investigation docket one month after the FCC permitted SBCS to provide long distance service. *Id.* at page 66.

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[75] *Id.*, at 33.

[76] Order on Petitions to Intervene, Emergency Motion for Suspension of Specific Rate Tariffs, and Petition for Reconsideration or Modification, Docket Nos. O1-SBLC-693-TAR, O1-SBLC-323-TAR, and O1-SBLC-594-TAR.

144. The FCC has provided guidance in several of its past orders as to what evidence it will look at in determining compliance with § 272(e).[77] Based on a review of past FCC orders, Qwest's affidavit is lacking in the following respects:

> Qwest and QCC did not provide specific performance standards for measuring its requirements of § 272(e)(1).
>
> Qwest has yet to prove nondiscriminatory access to its OSS, and this may result in a finding that Qwest does not comply with § 272(e)(1).
>
> In previously filed testimony, Qwest had failed to make a showing that it will impute to itself rates for exchange service and exchange access. It has merely restated the requirements of § 272(e)(3). In its affidavit for Colorado, Qwest stated that "it will impute to itself the same amount it would charge an unaffiliated interexchange carrier."[78]
>
> There presently is no performance measure or measures for access. Qwest should be required to develop such a measure or measures, obtain approval of the measures, and demonstrate that it is prepared to collect and report this data.
>
> AT&T also believes, especially given the recent developments in Kansas and [this] Commission's ruling in Colorado, that a concrete statement should be made by Qwest that imputation will be implemented for all services, which includes interLATA and intraLATA long distance services, in order to fully comply with the non-discrimination requirements.[79]
>
> Qwest has made no affirmative assurance that it will maintain records tracking the quality of service to QCC for telephone exchange and exchange access services,[80] nor whether such will be posted to its website. *Id.* at pages 66-67.

145. By § 272(g) Qwest is allowed to market jointly with QCC, with certain restrictions. The restriction that this affidavit focuses on is contained in § 272(g)(3), which provides that the joint marketing and sale of services permitted under subsection 272 (g) shall not be

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77 See generally, *BellSouth Louisiana II Order*, *Bell Atlantic New York Order*.

78 Schwartz Affidavit at 33. *7-Qwest-3*.

79 BellSouth stated that if its Section 272 affiliate used exchange access for the provision of its own service, BST (the BOC) would impute to itself the same amount it would charge an unaffiliated interexchange carrier. *BellSouth Louisiana II Order*, ¶ 354.

considered to violate the nondiscrimination provisions of § 272(c). The FCC clarified this subsection in its *Non-Accounting Safeguards Order*:

> Some of the activities identified by the parties appear to fall clearly within the scope of § 272(g)(3) and hence would be excluded from the § 272(c) nondiscrimination requirements. For example, activities such as customer inquiries, sales functions, and ordering, appear to involve only the marketing and sale of a § 272 Affiliate's services, as permitted by § 272(g). Other activities identified by the parties, however, appear to be beyond the scope of § 272(g), because they may involve BOC participation in the planning, design, and development of a § 272 Affiliate's offerings. In AT&T's view, such activities are not covered by the § 272(g) exception to Qwest's nondiscrimination obligations.[81]
> *Id.* at page 67.

146. Qwest's affidavit specifically discussing § 272(g) fails to provide evidence of a program of compliance with § 272(g).[82] Qwest's "Section 272 Employee Training" does contain a brief mention of § 272(g) provisions: Section 272(g) "[p]rovides one clear exception to § 272(c) nondiscrimination requirements – Once § 271 authority is secured, QC may jointly market in-region, interLATA long distance services with QCC."[83] Thus, even the brief mention in the employee training is couched in terms of what Qwest can do free of the nondiscrimination safeguards. It does not advise employees that certain joint activities such as product design, planning and/or development services are still subject to the nondiscrimination safeguards contain in § 272(c). *Id.* at page 68.

147. Qwest's affidavit fails to state whether QCC intends to market information services and whether Qwest will also permit other information service providers to market and sell

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80 *Verizon 271 Order*, ¶ 230, n 746.
81 See *Non-Accounting Safeguards Order*, ¶ 296 *(emphasis added).*
82 *Bell Atlantic New York Order,* ¶ 419.
83 Schwartz Affidavit, Exhibit MES-10, p. 12. *7-Qwest-3*.

telephone exchange services. Such failure means that Qwest does not meet its burden of persuasion that it will comply with § 272(g)(1).[84] *Id.* at pages 68-69.

148. The PUC should require of Qwest a more thorough explanation of its marketing practices, based on the unrestricted joint marketing that has impacted the competitive landscape in New York and Texas[85] and on Qwest's (and the former U S WEST's) policy and their combined past history. Qwest should not be allowed to use the cloak of secrecy, especially regarding marketing scripts, provided by the *BellSouth South Carolina Order,* to shield how its joint marketing will impact the competitive landscape in its 14-state region. In addition, the FCC has stated that the determination of what BOC activities are not covered by § 272(g), and thus are subject to the nondiscrimination provisions of 272(c), "are fact specific and will need to be made on a case-by-case basis."[86] In order to make a factual determination, the PUC should order Qwest to come forth with greater detail of its joint marketing activities. *Id.* at page 69.

149. Mr. Skluzak concludes that the difficulty with preventing a BOC monopoly from using its power in the local exchange market to distort competition in the long distance market is not a reason for laxity in the enforcement of these provisions. Rather, a vigorously enforced § 272 can act as a trip-wire, alerting regulators and competitors to the presence of unseen and difficult to detect abuses, which can then be investigated. In the context of the present application, the § 272 requirements serve that function well. The failure of

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84 *BellSouth Louisiana II Order*, ¶ 356.

85 On its web-based "Public Policy" page, Qwest boasts of this and states: "The response to Verizon's and SBC's entry into the long-distance market is astounding. In six months, more than one million customers in New York have signed up with Verizon's long-distance service. SBC is signing up customers just as fast in Texas." Such statements and statistics underscore the incredible advantage the local monopoly BOC has once Section 271 approval is granted. [Footnote in Skluzak affidavit.]

86 *Non-Accounting Safeguards Order,* ¶ 296.

Qwest, Qwest LD, and now QCC to satisfy the obligations of disclosure provides ample warning that Qwest plans to give, even at this early stage, cursory attention to these obligations. *Id.* at pages 76-77.

150. Qwest has failed to meet its burden of establishing that it and its § 272 affiliates have complied and will comply with the requirements of § 272. Based on its failure to show compliance with § 272, Qwest's request for an affirmative recommendation from the PUC to the FCC for in-region interLATA relief should be denied. *Id.* at page 77.

4. Qwest's Response

151. On July 9, 2001, Ms. Marie E. Schwartz filed a Rebuttal Affidavit to respond to the AT&T § 272 comments. *Exhibit 7-Qwest-4.*

152. In response to AT&T's comments concerning § 272(b)(2) Ms. Schwartz states that QCC uses an accounting system and general ledger that is separate from Qwest. Each company basically uses the same system it used prior to the merger. The QCC ledger system is based in Virginia, while Qwest's is based in Colorado. In addition, the feeder systems for the two companies are separate. Therefore, QCC and Qwest use separate accounting software maintained in separate locations. And Qwest and QCC have separate Charts of Accounts as can be seen by comparing the Charts of Accounts provided by Qwest as Confidential Exhibit MES-2C[87] and by QCC as Ms. Judy Brunsting's Confidential Exhibit JLB-4C.[88] There is substantial evidence that Qwest

[87] Affidavit of Marie E. Schwartz dated June 4, 2001. Exhibit MES-2C. *7-Qwest-3*.
[88] Supplemental Affidavit of Judith L. Brunsting dated June 4, 2001 at Exhibit JLB-4C. *7-Qwest-1*.

maintains books, records and accounts that are separate from QCC. *Exhibit 7-Qwest-4* at pages 3-4.

153. Qwest follows GAAP, which requires accrual accounting, and uses accrual accounting to properly record expenses in the period incurred. The audit opinion of Qwest's external auditors Arthur Andersen confirms Qwest follows GAAP in all material respects. Qwest did accrue approximately $1.5 million of revenue as a receivable from QCC in the year 2000 for affiliate services which had been identified. As a result of the merger transition, no expenses were accrued as a payable to QCC because services being provided by QCC had not yet been identified. Although Qwest already had a policy to accrue known and measurable affiliate transactions at the end of the year to ensure they were reflected in the correct financial period, it has now strengthened that policy to require accruals each month for any 272 transactions over $25,000 not billed in the current month. *Id.* at page 4.

154. To address AT&T's concerns regarding § 272(b)(3), Ms. Schwartz states that the FCC does not require Qwest to discuss reporting structures to prove compliance with § 272(b)(3). In fact, in the *Non-Accounting Safeguards Order*, the FCC states that "the § 272(b)(3) requirement that a BOC and a § 272 Affiliate have separate officers, directors and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its § 272 Affiliate."[89] *Id.* at page 5.

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[89] See In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. December 24, 1996) ¶178 (*Non-Accounting Safeguards Order*)

155. Further, in the *BellSouth Louisiana Order*, the FCC rejected AT&T's assertion that BellSouth failed to meet the "separate officers, directors, and employees" requirement because BellSouth did not adequately explain the reporting structure of its officers.[90] Thus, there is no such requirement. As the Corporate Officer exhibits for QCC and Qwest show, each company has separate officers and directors as the rules require.[91] *Id.* at page 5.

156. It is permissible for the officers in Qwest and QCC to report to the same officer in the parent company. According to the *Non-Accounting Safeguards Order*, the § 272(b)(3) requirements do not preclude the parent company of Qwest and the § 272 Affiliate from performing functions for both Qwest and the § 272 Affiliate. The FCC states:

> "Instead, we agree with the view that the § 272(b)(3) separate employees requirement extends only to the relationship between a BOC and its § 272 Affiliate."[92] *Id.* at pages 5-6.

157. Moreover, in the FCC's order on Ameritech's application for 271 authority in Michigan, the FCC declined to condemn a reporting relationship in which officers of both Qwest and its 272 affiliate reported to an officer of the parent; rather, the FCC simply stated that such a reporting relationship "underscores the importance of the separate directors requirements,"[93] so that the officers of Qwest and QCC report to separate boards. Thus, contrary to AT&T's affidavit that reporting to the same officer at the parent is a violation of the separate employees requirement, this is a permissible arrangement. Even if the

90 *Bell South-Louisiana Order*, ¶329.
91 Schwartz Affidavit, Exhibit MES-3 (*7-Qwest-3)* and Brunsting Affidavit, Exhibit JLB-69*7-Qwest-1)*.
92 *Non-Accounting Safeguards Order,* ¶182.
93 *Ameritech-Michigan Order*, ¶362.

officers of Qwest and QCC report to a common parent, as an officer of each corporation they have a fiduciary responsibility to the company that they represent. Therefore, the officers of QCC and Qwest must by law represent their own companies, even if they report to a common parent. Also, by virtue of being subsidiaries of the same corporation, Qwest and QCC will at some point report to a common officer, ultimately the CEO of the corporation. Therefore, common reporting cannot be completely eliminated for subsidiaries of the same corporation. *Id.* at pages 6-7.

158. Qwest and QCC have separate officers, directors, and employees, which satisfies the FCC's test for 272(b)(3). QCC's officers, directors and employees are not officers, directors or employees of Qwest. Additionally, Qwest officer, director or employee is also an officer, director or employee of QCC. *Id.* at page 7.

159. Qwest and QCC have separate employees, paid from separate payrolls. Employees on Qwest payroll that provide services to QCC are not considered shared employees. The FCC's shared employees test is that no employee is on both payrolls at the same time. By comparing payroll registers, Qwest has verified that no employees are on both payrolls and therefore no employees are shared. *Id.* at page 7.

160. To address § 272(b)(5) concerns, Ms. Schwartz indicates Qwest currently has the appropriate processes in place to meet the FCC requirements for identifying, accruing, billing, and posting transactions with QCC. These processes, including identification and training of employees who perform the affiliate transaction functions, regularly scheduled conference calls with those employees to discuss affiliate transaction issues, and monthly

reconciliation of the QCC affiliate billing. Qwest has expended considerable resources to ensure that its affiliate transactions are now § 272 compliant and will remain so. *Id.* at pages 9-10.

161. Qwest's Internet postings contain those same FCC-required components of information, *i.e.*, rates, terms, conditions, frequency, number and type of personnel, and level of expertise. Additional billing detail is not required to be posted. AT&T contends that "a failure to fully disclose the details of the transactions is against § 272(b)(5)…,"[94] but those contentions are not consistent with the FCC's recent orders[95]. Qwest has, however, made additional billing detail available to AT&T on a confidential basis through responses to data requests. Qwest also has a control in place each month to compare the actual invoices issued to the information posted to the web site. Any discrepancies are corrected the following month. Therefore, AT&T and others can be assured that the billing being issued to QCC does match what is publicly available on the web site. Also, this invoice reconciliation will be included in the Biennial Audit, which will further ensure that Qwest's web posting matches the billing being issued. With all of the controls in place, there is neither a requirement, nor a need, for Qwest to post the actual billing each month. *Id.* at pages 21-22.

162. The FCC does not require the separate "administration" of payrolls. While separate payroll registers provide evidence of separate books, records and accounts, the "administration" function is an allowable shared service function. In the *Non-Accounting Safeguards Order*, the FCC states:

94 Skluzak Affidavit, ¶73. *7-ATT-15*.
95 *Bell Atlantic-New York Order,* ¶413, *SBC-Texas Order,* ¶ 405.

> We also decline to impose a prohibition on the sharing of services other than operating, installation, and maintenance services, on policy grounds. We find that, if we were to prohibit the sharing of services, other than those restricted pursuant to § 272(b)(1), a BOC and a § 272 Affiliate would be unable to achieve the economies of scale and scope inherent in offering an array of services.[96] *Id.* at page 22.

163. As long as the "administration" transaction is provided on an "arms length" basis, reduced to writing and available for public inspection, posted to the Internet website, and offered on non-discriminatory terms and conditions, it meets the § 272 requirements. Qwest complies with these requirements. *Id.* at page 22.

164. In addressing § 272(c), nondiscrimination safeguards, Ms. Schwartz states that the FCC does consider a BOC's Cost Accounting Manual (CAM) filings and ARMIS reports when determining compliance with § 272(c)(2). The FCC has also considered historical results of the Joint Cost Audit in order to assess § 272 compliance in § 271 applications. In the *Bell Atlantic-New York Order*, the FCC states: "The Commission evaluates the sufficiency of a BOC's internet disclosures by referring to its ARMIS filings, its Cost Allocation Manuals, and the CAM audit workpapers."[97] In the *SBC-Texas* Order, the FCC states: "Our review of SWBT's ARMIS data, its CAM, its independent auditor's workpapers, and the Internet disclosures supports SWBT's showing of compliance with the affiliate transactions rules".[98] *Id.* at page 25.

165. A non-BOC affiliate that provides services to the 272 Affiliate company is not required to offer those services to third parties. Section 272 applies only to BOC and § 272 affiliates. Non-BOC affiliates may provide services to § 272 affiliates without offering similar

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96 *Non-Accounting Safeguards Order*, ¶179.
97 *Bell Atlantic New York Order,* ¶411.
98 *SBC-Texas Order,* ¶406.

services to third parties, so long as the transaction is not a “chaining” transaction involving Qwest. Therefore, the services Advanced Technologies (AT) provided to Qwest LD were not subject to the nondiscrimination requirements. AT was a sister company to Qwest and to Qwest LD and performed research and development related activities for all U S WEST companies. AT ceased operations in 2000 and its functions were discontinued or were merged into other entities. *Id.* at page 25.

166. For compliance with § 272(e), Ms. Schwartz cites to imputation of access rates. QWEST has made a showing that it will impute to itself rates for exchange and exchange access services**.** The imputation of access rates was specifically addressed in the response to data request AT&T Multi-State Set 10, Request 105 where Qwest stated, “when and if QC does use exchange access for the provision of its own services, QC will impute to itself the same amount it would charge an unaffiliated interexchange carrier.” Since imputation cannot occur until the sunset of § 272, which is several years into the future, and then only if Qwest decides to provision its own inter-LATA toll, this issue can be better dealt with at the time that imputation becomes a reality. *Id.* at page 27.

167. AT&T complains that Qwest’s assertion that it will comply with § 272(e)(3) and (4) is not sufficient because “mere words” will not allow the Commission to make a predictive judgment. But such “mere words” are exactly what the FCC has found will suffice in demonstrating future compliance with this section:

> BellSouth states that BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. BellSouth also states that where BST uses exchange access for the provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange

carrier. Therefore, BellSouth has adequately demonstrated that it will comply with the requirement of § 272(e)(3).[99] *Id.* at page 27.

168. Furthermore, Qwest does not agree that the Commission should impose additional requirements to ensure QCC does not engage in price squeezes. Indeed, the FCC itself specifically rejected the assertion that such additional requirements should be imposed, concluding that "further rules addressing predatory pricing by BOC § 272 affiliates are not necessary because adequate mechanisms are available to address this potential problem."[100] *Id.* at page 28.

169. Regarding § 272(g), the FCC has stated: "We do not require applicants to submit proposed marketing scripts as a precondition for § 271 approval, nor do we expect to review revised marketing scripts on an ongoing basis once § 271 authorization is granted. Applicants are free to tell us how they intend to joint market, although we do not require them to do so."[101] *Id.* at page 28.

170. Qwest has posted to the § 272 website a copy of all work orders describing the services provided by QC to QCC. When joint marketing services are provided, those services will also be posted to the Internet website. Qwest is not required to provide copies of actual marketing scripts used in the provision of joint marketing services. *Id.* at pages 28-29.

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[99] *BellSouth -Louisiana Order*, ¶354 (rel. October 13, 1998) (footnotes omitted); *see also id.* at ¶355 (finding that BellSouth will comply with Section 272(e)(4) because "BellSouth commits that, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates, terms, and conditions and will record any transactions between BST and BSLD in the manner prescribed in the *Accounting Safeguards Order*.").

[100] *Non-Accounting Safeguards Order*, ¶258.

[101] Application of BellSouth Corporation, et. al. Pursuant To Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997), ¶236 (*BellSouth-South Carolina Order*).

171. Qwest understands and complies with the nondiscrimination provision of product planning, design and development activities. Qwest has posted services to the Internet website that involve product development and product management. These can be found under the work order labeled "Interim Product Development." All of the services posted to the Internet website are available for third parties to purchase on a nondiscriminatory basis. *Id.* at page 29.

172. In conclusion, Ms. Schwartz, on behalf of Qwest, states that Qwest and QCC meet the test for separate officers regardless of the reporting structure. The transactions posted to the Internet website meet the FCC requirements regarding sufficiency, and Qwest is not required to post the "live" transactions. She states that she has addressed the transitional period that Qwest encountered, and how that period is not representative of ongoing processes. Also, she clarified that there is no FCC requirement regarding the movement of employees between Qwest and 272 Affiliate, no need to have separate payroll administration, and no prohibition regarding administrative services that Qwest and 272 Affiliate may purchase from each other. Qwest has stated it will impute access charges when required and that this confirmation meets the FCC's requirement. Lastly, she addressed the joint marketing issues raised by AT&T and have shown that Qwest has made product development services available by posting them to the Internet website if other parties wish to purchase those services. *Id.* at page 31.

173. By refuting each of the major issues raised by AT&T, Ms. Schwartz states that she has shown that statements that Qwest does not comply with the § 272 requirements are misleading, based on inaccurate data, or focused solely on the transitional period. Therefore, there is a reasonable and rational basis for the Commission to determine that

Qwest does have appropriate processes and controls in place to enable it to meet the § 272 compliance requirements. *Id.* at pages 31-32.

5. Principal Workshop Discussions and Resolutions

174. Workshop 7 technical discussions on § 272 occurred during one session held July 24 – 27, 2001.

175. A detailed summary of those discussions can be found in the Colorado Transcripts associated with that workshop and will not be repeated here. Suffice it to say, the discussions were protracted and exhaustive, and participants were given ample opportunity to flesh out their respective issues and to have them fully discussed.

176. During Workshop 7, participants discussed the issues raised in testimony or comments regarding Qwest's compliance with § 272. Except for the disputed issues that reached impasse, the remaining issues were resolved by consensus among the participants. This consensus was reached through the participants accepting Qwest's rationale and justification for its internal practices and procedures with regard to its§ 272 affiliate.

177. With the exception of the impasse issues identified below, there are no remaining disputes regarding Qwest's compliance with § 272 of the Act.

178. The remainder of this portion of the report will highlight those issues that could not be resolved during Workshop 7 and reached impasse. These issues were briefed by Qwest and AT&T on August 3, 2001, and reply briefs were filed by those two participants on August 22, 2001. The Commission will consider these issues in accordance with the dispute resolution process agreed to by the participants and ordered by the Commission.

Unlike the previous reports filed by the Staff of the Commission, there will not be a Volume VII A in this series of Staff reports. Rather this Volume VII will address the impasse issues concerning § 272 and present those to the Commission for decision. The Commission's decision will specify what the Commission believes Qwest must do to achieve compliance with the requirements of the Act and the FCC with regard to the impasse issues.

6. Impasse Issues/Staff Recommendations

179. As shown in Appendix A, there were 18 § 272 issues that remained at impasse (*i.e.*, unresolved) after the conclusion of Workshop 7. Much of the discussion on these issues was actually held at the Multistate proceeding. The participants agreed that those transcripts would be made part of the Colorado record. The transcripts were assigned exhibit numbers as follows:

7-Qwest-11 – June 7, 2001 § 272 Multistate transcript – public version

7-Qwest-12 – June 7, 2001 § 272 Multistate transcript – confidential version

7-Qwest-13 – June 8, 2001 § 272 Multistate transcript – public version

7-Qwest-14 – June 8, 2001 § 272 Multistate transcript – confidential version

Impasse Issue No 1: §272(a).

180. The evidence presented in the Workshop 7 fully supports a conclusion that, by virtue of the corporate structure and ownership under which it operates, QCC (the QCI entity currently proposed to provide in-region InterLATA service following anticipated §271

approval) is separate from Qwest Corporation (the entity providing local exchange service in Colorado).

Impasse Issues related to §272(b)(2):

Impasse Issue No. 2: Use of Generally Accepted Accounting Principles (GAAP).

181. The evidence presented at the Colorado Workshop 7 leads Staff to the same conclusions as those reached by the Multi-State Facilitator – namely:

- Qwest did not, outside the context of §272, find it sufficiently important to assure that transactions between QC and QCC were accrued on a timely basis, or paid promptly or subjected to interest penalties for untimely payment.
- Qwest did eventually undertake substantial efforts to bring its transactions, both past and current, into compliance with applicable accounting requirements.
- The very magnitude of that effort gives reason to merit validation that the efforts undertaken have had current effect and are likely to continue to prove sufficient to meet applicable requirements.
- The evident lack of attention to the kinds of transaction details that QC clearly would have paid had a third party (as opposed to an affiliate) been at the other end of the bargain buttresses the need for validation of the current and future effectiveness of the recent improvement efforts by Qwest.
- The fact that AT&T's testing disclosed some errors with respect to QLD also buttresses this need, although it should be emphasized that the AT&T findings that remain valid after consideration of the documents Qwest provided on the record would not alone produce sufficient concern to warrant special measures at this time.

182. As a consequence, the Multistate facilitator recommended that Qwest be required to arrange for independent (*i.e.*, third-party) testing, covering the period from April through August of 2001 to determine: (a) whether there have been adequate actions to assure the accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with QC/QCC transactions, (b) whether the relationship between QC as a vendor or supplier of goods and services and QCC has been managed in an arm's length manner, including, but not necessarily limited to a consideration of what would be expected under normal business standards for similar

contracts with an unaffiliated third party, and (c) whether there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide the level of accuracy, completeness, timeliness, and arm's length conduct found in examining the preceding two questions.

183. He further recommended that this examination should be conducted under the following requirements:

- Apply the testing and evaluation criteria deemed necessary by an independent party (qualified to perform such an examination) to provide a high degree of confidence that the answers it provides to these two questions can be relied upon by regulators;
- Consider in the development of test procedures the need for the completion of the examination and the filing with the seven participating commissions of the report described below no later than November 15, 2001;
- Produce a report and supporting work papers that present a factual basis upon which regulators can form their own, independent answers;
- The current independent auditor, whose personnel have substantially contributed to the creation of transaction detail whose adequacy will be examined, should not be considered for the performance of this examination;
- Apply a materiality standard that does not consider consolidated financial results, or even the overall financial results of QC. In determining what would constitute a material failing or exception in connection with the two questions to be answered, the examination will consider as the applicable universe not more than the total transactions between QC and QCC over the period to be covered. The reasons for this application of this materiality standard are described in the discussion of the immediately following issue.

184. The expressed expectation was that positive answers to the three established questions, under the type of examination identified herein, should be sufficient to reduce to an acceptable level the current uncertainty about whether entry into the in-region, InterLATA market will be accompanied by compliance with the requirements of § 272(b)(2). Such answers will do so by validating whether the major efforts that Qwest has recently undertaken to produce significant change in its prior practices have achieved the changes from past practice that are necessary to comply in the future with these requirements.

185. Qwest's brief[102] correctly noted that the "biennial audits" contemplated under § 272(d)(1) do not begin until after market entry under §271. Those audits serve a much broader purpose than the examination procedures contemplated here. Biennial audits, for example, will have to examine the much-expanded relationships between BOCs and their affiliates after those affiliates enter new markets. Qwest's brief also suggested that requiring it to undergo an audit here would impose an inordinate burden on it because the FCC has required no other BOC to undergo a § 272 audit before gaining § 271 relief.[103] The examination proposed here is not, however, a "§ 272 audit." Rather, this examination is intended to determine whether the substantial efforts that Qwest has only recently undertaken, which it presumably undertook because it recognized the need for them, are sufficient to provide, in light of its recent history, adequate assurances that it will begin (presuming that the FCC allows it) an era of in-region InterLATA service in compliance with § 272(b)(2) requirements.

186. On November 27, 2001, Qwest Corp. filed Notice with the Commission of the filing of the KPMG Report of the Independent Public Accounts, Attestation Examination with respect to the Report of Management on Compliance with Applicable Requirements of Section 272. This report and the accompanying documents are the same as those filed in the Multistate proceeding pursuant to the facilitator's recommendation. Qwest asserted that, except in 12 instances, the KPMG Report concluded that both the BOC and the 272 Affiliate complied in all material respects with the applicable FCC accounting rules.[104] Qwest further asserts that the BOC and 272 Affiliate have undertaken appropriate steps to

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102 Qwest 272 Brief at p. 30
103 Qwest 272 Reply Brief at p. 31.
104 Qwest Notice of Filing of KPMG Report at p. 2.

correct these errors and are reinforcing and supplementing training programs and other controls to assist them in their ongoing efforts to ensure compliance.[105]

187. On December 19, 2001, Qwest filed with the Commission a Supplemental KPMG Declaration of Philip J. Jacobsen from KPMG. Qwest asserts that the Jacobesen Declaration confirms that Qwest has corrected all discrepancies identified in the KPMG Report. Further Qwest asserts that the declaration confirms that Qwest has implemented the specific controls as identified by Qwest's affiants.

188. Absent a showing by reply comment to the KPMG Report, analysis, or further evidence based upon the auditor's work papers or by proper pleading regarding Qwest's follow-on steps to correct these errors, Staff recommends that the Commission find that Qwest, the BOC, meets the requirements of § 272(b)(2).

Impasse Issue No. 3: Qwest should be required to conduct an opening audit.

***See* recommendation regarding Impasse Issue No. 2 above.**

Impasse Issues related to §272(b)(3): Separate officers, directors, and employees.

Impasse Issue No.4: The officers of the 272 affiliate cannot report to officers of the parent company and the broader question of separate officers and directors of the BOC and the 272 affiliate.

189. The evidence of Workshop 7 supports a recommendation by Staff that the Commission find the corporate chain of command, as presented in evidence so far, does not violate any FCC requirement.

Impasse Issue No. 5: Movement of employees between the BOC and the 272 Affiliate.

[105] Qwest Notice of Filing of KPMG Report at p. 3.

190. Congress has not prohibited movement between affiliates; it requires instead independent operation and separate employees. AT&T's argument conflates the Congressional concern about operating independence and separation of employment. A "revolving door" policy could arguably compromise independent operation. However, transfers of fewer than 100 employees out of the thousands involved in the restructuring that Qwest did among QSC, QC, and QCC do not establish that Qwest is using transfers back and forth in a way intended to cause, or actually causing, a compromise of operational independence. With the current level of transition in the communications business, such levels can hardly be expected even to exceed the number of displaced Qwest personnel who find employment with CLECs, let alone be sufficient to raise immediate concerns about operational independence and the protection of information.

191. The steps that Qwest has taken to assure independent operation and protection of confidential information are adequate to establish a baseline mode of operations that gives current assurances that it will meet applicable requirements. The existence of such a baseline is all that is required for present purposes, given the monitoring and examination of employee transfers that will take place in the future, for example, as part of biennial auditing.

192. The record here supports a conclusion that Qwest maintains the required degree of employee separation and that transfers to date, given the mitigation measures adopted by Qwest and not challenged as to sufficiency by any other party, do not rise to a level that suggests a compromise of operational independence.

Impasse Issue No. 6: Separate payroll administration.

193. AT&T's essential complaint, in the case of both recruitment and payroll administration, is the provision of common services between the BOC and the 272 affiliate (*i.e.*, between QC and QCC). The FCC has, however, specifically rejected the notion that common services should be prohibited as a means of encouraging "independence" as AT&T would define it. To the contrary, the FCC has endorsed common services, outside the network-related areas where they are specifically prohibited, as a means of capturing economies of scale.[106] This rule is particularly sound, as it allows Qwest to do no more than to exploit the same kinds of economies that are available to other efficient competitors in the marketplace.

194. Hamstringing the BOCs is not the goa; assuring that they do not unduly advantage themselves is. The conduct limits, simultaneous employment restrictions, biennial auditing, and other requirements are sufficient to mitigate the potential for such discrimination. There is no evidence here of any need to go further and remove those natural economies that, in a competitive marketplace, inure to the benefit of customers. Were we to eliminate these two areas of common service, there would be no end to the debate, short of prohibiting any at all, about which services should be permitted and which should not.

Impasse Issue No. 7: The signing of an officer verification to the FCC by an employee of the BOC.

195. The effectiveness of the controls that Qwest has put in place that were the subject of the above recommended pre-audit will be determinative of future compliance by Qwest.

[106] Third Order on Reconsideration, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 14 FCC Rcd 16,299, ¶ 18 (1999).

Based upon the to-date positive Audit Report, Staff recommends that the Commission take no further action regarding this impasse issue.

Impasse Issue No. 8: The status of Mr. Augustine Cruciotti as a QCC employee and an officer of QCI simultaneously.

196. While this issue may have some import at certain point in time, it seems to have been one of oversight during the transition to the new 272 Affiliate. The effectiveness of the controls that Qwest has subsequently put in place that were the subject of the above recommended pre-audit will be determinative of future compliance by Qwest. Based upon the to-date positive Audit Report, Staff recommends that the Commission take no further action regarding this impasse issue.

Impasse Issue No. 9: 100 Percent Usage.

197. The assignment of a single BOC employee 100 percent of the time to 272 Affiliate business is troublesome. Such utilization might seem to compromise the intent of the requirement. Such employment should trigger questions during the biennial audit. However, there is no clear standard with respect to how much of a particular BOC employee's time would be considered inappropriate without an understanding of the material facts of the employee's duties. The current training, procedures, and policies deployed by Qwest appear to be a good faith effort to address this concern. Ultimately, experience gained through the monitoring Qwest's actual behavior and the biennial audit will give the final determination of how Qwest complies with § 272.

Impasse Issues related to §272(b)(5):

Impasse Issue No. 10: Transaction Posting Completeness;
Impasse Issue No. 11: Regular monthly billing of 272 affiliate; and

Impasse Issue No. 12: Posting of Billing detail.

198. The requirement for making transaction information available serves two purposes, which are distinct and which require distinct levels of information. The first purpose is to provide competitors with enough information to make an informed business decision, *i.e.*, whether to avail themselves of their right to take services on the same terms and conditions as are provided by the BOC to its 272 affiliate. Serving that purpose does not necessarily require the posting of the individual transaction detail that AT&T seeks. Depending upon what they contain, the master agreements and work orders issued under them may be sufficient. It is correct that the information posted needs to describe the terms and conditions under which services were actually provided, should they differ from what the master agreements or work orders provided. However, the monthly posting of what Qwest calls "reconciliation" and what AT&T calls "true up" data can serve this need. The examination recommended under the preceding *Books and Records* discussion will address the sufficiency of the master agreements, work orders, and reconciliation data to provide competitors with an adequate specification of terms and conditions to allow rational decisions about taking services.

199. The second purpose for making transaction data available is to assure that audits or other formal examinations of transactions can take place. There is no sound reason why a public posting of such data is necessary to accomplish this purpose. There are, to the contrary, substantial reasons for not making such information publicly available. The nature and level of services that are provided inside Qwest are competitively sensitive. A competitor may get access to any service that a BOC provides for a 272 affiliate. There should not be free access to the exact level and timing of services that a BOC is

providing. Therefore, requiring non-disclosure agreements and on-site examinations of such information constitute appropriate means for assuring that audit-related work can take place without allowing competitors to make competitive use of the information observed. In fact, if there are adequate means for regulatory review of such information, it may be argued that access to such information could logically be denied to competitors altogether.

Impasse Issue No. 13: §272(c)(1): Services provided by Advanced Technologies to Qwest Long Distance.

200. Since Advanced Technologies has been dissolved, new controls safeguards have been put in place, and the threat of the biennial audit exists, Staff recommends that the Commission resolve this issue by declaring it moot.

Impasse Issue No. 14: §272(c)(2): Adherence to FCC accounting principles.

201. This issue has already been dealt with in the discussion of Books and Records, relating to compliance with GAAP. The application of the 272(c)(2) standard does not add materially to the considerations already made there.

Impasse Issue No. 15: §272(e): Imputation and payment of switched access charges.

202. Staff understands that, until § 272 sunsets, QCC will pay Qwest Corp. tariffed access rates and that, after sunset, Qwest will impute access rates.[107] This Commission has a long history of the use of imputation of access rates for the setting of price floors for Qwest's intraLATA toll rates. It could be expected that these prior methods would be continued to be employed into the interLATA market as well. Staff recommends that any

[107] Qwest Brief at p. 32.

deviations by Qwest from the above-stated Staff understandings be dealt with at the time such imputation requirements are triggered.

Impasse Issue No. 16: §272(g): Examination of Qwest marketing Practices.

203. This Commission is not in the business of managing Qwest. This Commission duties are to supervise the management of Qwest. The prior review of Qwest's marketing scripts falls within the ambit of the management of Qwest and not within the ambit of the Commission. It is the Commission's duty to correct any abuse of that management discretion. Staff recommends that the Commission not require Qwest to seek any prior approval of marketing scripts.

Impasse Issue No. 17: §272(g): Providing product management services to a non-affiliate by Qwest.

204. While it would seem unlikely that a competitor of Qwest would seek to have Qwest manage its products, there is no such prohibition against QC managing QCC's products if all aspects of § 272 are adhered to by QC. Staff recommends that the Commission place no further requirements upon Qwest.

Impasse Issue No. 18: §272 General: Past violations of Qwest regarding §272.

205. The examples cited, while significant in their own right, are not predictive of future Qwest conduct that is relevant to the issue of meeting the separate subsidiary requirements of §272(a). A proper examination of the significance of AT&T's references to the three prior FCC findings requires us to separate the analysis of §272(a) requirements into two related, but distinct, parts:

- Does the service in question constitute in-region intraLATA service?
- Assuming it does, then, is it being provided through a separate affiliate?

206. AT&T has unarguably demonstrated that Qwest has failed in a significant number of prior cases to determine correctly what does and does not constitute in-region InterLATA services. In other words, Qwest has often enough answered the first question incorrectly. However, there is no reason to believe that Qwest's subsequent decision to provide the services directly was a consequence of its refusal to accept the obligation to use a separate subsidiary for in-region, InterLATA services. Quite to the contrary, it is self-evident that Qwest only failed to use a separate subsidiary in the mistaken belief that the services did not constitute in-region, InterLATA service.

207. The important question here is whether Qwest accepts the separate subsidiary obligation and stands ready to meet it; the preceding proposed conclusion demonstrates that it does. Qwest's violations in the three examples cited were entirely a function of failing to meet the requirements of § 271, which is what the FCC found. Extending that to a § 272 violation is at best peripheral to a predictive assessment of whether Qwest will accept the responsibility to provide in-region, InterLATA service through a separate subsidiary.

208. Qwest was held accountable in the past for failing to interpret correctly what constitutes in-region, InterLATA service; it should and undoubtedly will be so held in the future. There is, however, no reason to conclude here that such interpretations have had or will have anything material to do with the parallel issue of creation and maintenance of a separate subsidiary to provide in-region, InterLATA service.

209. Staff recommends that the Commission place no further requirements upon Qwest.

III. PUBLIC INTEREST AND TRACK A

1. FCC Requirements

210. To secure § 271 approval from the FCC and the Commission, Qwest must first establish that one of two standards of § 271, referred to as "Track A" or "Track B," has been satisfied. Track A is available when facilities-based competitors have entered local telecommunications markets in the state. Section 271(c)(1)(B) -- or Track B -- is available if competitors are not seeking to compete with Qwest in Colorado. The Track A threshold, set forth in § 271(c)(1)(A), requires that Qwest have entered into at least one interconnection agreement under which at least one facilities-based competitive local exchange carrier (CLEC) is providing local exchange service to both residential and business customers.[108] A facilities-based provider is one that predominantly uses its own facilities, including Qwest's UNEs or ancillary services, to provide local exchange service.[109] If no facilities-based CLEC has entered into an interconnection agreement with Qwest and no such CLEC is providing local service to residence and business customers, then Track B requirements apply.

211. Section 271(c)(1)(A) reads in its entirety:

> PRESENCE OF A FACILITIES-BASED COMPETITOR.--A Bell operating company (BOC)[110] meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under § 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in § 3(47)(A), but excluding exchange access) to residential and business

108 *SBC-Texas Order* at ¶59.
109 *SBC-Kansas/Oklahoma Order* at ¶¶ 40,41.
110 Within the context of Section 271 requirements, "BOC" guidelines apply to Qwest.

> subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

212. The FCC has clarified that, in the context of Track A compliance, it will evaluate and consider the existence of competitors' service to residential customers through resale.[111] In addition, the FCC said, "[I]f all other requirements of § 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale."[112]

213. The FCC provided further clarification of the Track A requirements in its review of the Ameritech-Michigan § 271 application when it divided the Track A requirement into four sub-parts.[113] In that application, the FCC found that Ameritech satisfied Track A. The FCC's four-part Track A analysis consists of the following:

- existence of one or more binding agreements that have been approved under § 252;
- provision of access and interconnection with unaffiliated competing providers of telephone exchange service;[114]
- provision by competitors of telephone exchange service to residential and business subscribers somewhere in the state; and

[111] *SBC-Kansas/Oklahoma Order*, n. 101.

[112] *SBC-Kansas/Oklahoma Order,* n. 101 (citing *BellSouth LA II*, ¶48); see also *BANY-Order* at ¶427.

[113] The FCC released its Memorandum Opinion and Order in CC Docket No. 97-137 (*Ameritech-Michigan Order*) on August 19, 1997. Although the FCC denied Ameritech's Section 271 application, it found that Ameritech had fully satisfied the Track A requirement.

[114] It is also significant that the FCC recognized that Congress prohibited it from requiring any specific level of geographic penetration by a competing provider and imposing a geographic scope requirement. In other words, the Act prohibits imposition of a market share loss test. *SBC-Texas Order* at ¶419; *BANY Order* at ¶427.

- offer by competing providers of telephone exchange service either exclusively or predominately over their own telephone exchange service facilities in combination with resale.[115]

214. In regards to the public interest, the Act provides that the FCC shall not approve a BOC's request to enter the interLATA market unless "the requested authorization is consistent with the public interest, convenience, and necessity."[116] This provision is commonly referred to as the "public interest" requirement. The public interest requirement may be satisfied only when Qwest has opened its local markets to competition and has provided adequate assurance that its local markets will remain open to competition if entry into the interLATA market is permitted.[117]

215. Further, the FCC has stated:

> Although the competitive checklist prescribes certain minimum access and interconnection requirements necessary to open the local exchange to competition, we believe that compliance with the checklist will not necessarily assure that all barriers to the local market have been eliminated, or that a BOC will continue to cooperate with new entrants after receiving in-region, interLATA authority. While BOC entry into the long distance market could have procompetitive effects, whether such benefits are sustainable will depend on whether [the] local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis.[118]

216. Like the FCC, the Department of Justice views the public interest standard as being broader than an evaluation of mere checklist compliance and a critical indicator as to whether interLATA authority should be granted:

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115 *Ameritech-Michigan Order* at ¶70.
116 47 USC § 271 (d)(3)(C).
117 *See*, *e.g.*, *Ameritech Michigan Order*, ¶¶ 399, 402.
118 *Id.*, ¶ 390.

> Congress supplemented the threshold requirement of § 271 . . . with the further requirement of pragmatic, real world assessments of the competitive circumstances by the Department of Justice and the Commission. Section 271 contemplates a substantial competitive analysis by the Department using any standards the Attorney General considers appropriate. The Commission, in turn, must find before approving an application that the "requested authorization is consistent with the public interest, convenience and necessity," and, in so doing, must "give substantial weight to the Attorney General's evaluation." The Commission's "public interest" inquiry and the Department's evaluation thus serve to complement the other statutory minimum requirements, but are not limited by them.
>
> The "public interest" standard . . . is well understood as giving the [FCC] the authority to consider a broad range of factors and the courts have repeatedly recognized that competition is an important aspect of the standard under federal communications law.[119]

2. Qwest's Position

217. Qwest presents information on the four parts of Track A as outlined above, in Mr. David L. Teitzel's Affidavit filed June 4, 2001. *Exhibit 7-Qwest-17.* He states that Qwest has entered into a large number of binding interconnection agreements. As of March 31, 2001, the Commission has approved, in accordance with § 252 of the Act, 64 Qwest wireline interconnection agreements.[120] The FCC concluded in the *Ameritech-Michigan Order* that agreements approved by a state commission are "binding" and define the obligations of each party.[121] Thus, these 64 Commission-approved interconnection agreements are binding on Qwest. *Exhibit 7-Qwest-17* at page 10.

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119 Evaluation of the Department of Justice, Federal Communications Commission, *In re Application of SBC Communications, Inc. et al. for the Provision of In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121 (filed May 16, 1997), pp. 38-39.

120 A "wireline" interconnection agreement generally refers to an agreement that covers facilities-based interconnection, purchase of UNEs and ancillary services, and resale of Qwest services. A "resale" interconnection agreement generally only provides for resale of Qwest services.

121 *Ameritech-Michigan Order* at ¶72.

218. In the Ameritech-Michigan proceeding, several parties argued that Ameritech's agreements did not satisfy Track A because not every checklist element was contained within each approved agreement. The FCC dismissed this argument and determined that Track A does not contain such a requirement.[122] Moreover, in addition to the Commission-approved interconnection agreements, Qwest has submitted a comprehensive Statement of Generally Available Terms (SGAT) in Colorado that contains terms, conditions, and prices applicable to the provision of all of the checklist items. Qwest relies on all of these documents as the basis for its § 271 application. Finally, the Colorado Commission has approved Qwest's Local Network Interconnection and Service Resale Tariff (Interconnection and Resale Tariff) and interconnection agreements with other CLECs that contain terms, conditions, and prices applicable to the provision of network interconnection, access to unbundled network elements, ancillary network services, and telecommunications services available for resale in Colorado. *Id.* at pages 10-11.

219. Qwest has met the first subpart requirement of Track A because it has entered into over 64 binding and approved interconnection agreements pursuant to § 252 of the Act in Colorado. Additionally, Qwest also relies on its SGAT filed in Colorado to establish compliance with the Track A requirements. Provisions in Qwest's SGAT are available to CLECs either as a complete agreement or pursuant to "pick and choose" provisions in § 272(I) of the Act. *Id.* at page 11.

220. Qwest fulfills the next part of the FCC's interpretation of Track A requirements because it provides access and interconnection with unaffiliated competing providers of telephone

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[122] *Ameritech-Michigan Order* at ¶72.

exchange service. Of its Commission-approved interconnection agreements, all 64 are with unaffiliated CLECs in the state of Colorado.[123] *Id.* at page 12.

221. The FCC determined that a CLEC qualifies as a "competing provider" so long as it provides service "somewhere in the state."[124] Furthermore, the FCC found that Track A does not impose minimum geographic scope requirements before CLECs are deemed competing providers. No set market share losses are required.[125] The FCC rejected arguments that the majority of customers in the state must have a choice of local service providers.[126] *Id.* at page 12.

222. Based upon the FCC's definition of a "competing provider," there are such competitors providing local exchange service in Colorado. Exhibit DLT-1C to *Exhibit 7-Qwest-17* lists the CLECs in Colorado that are actively providing service "somewhere in the state." In addition, Exhibit DLT-1C indicates the type of service the CLEC is purchasing from Qwest, including residential or business resale. *Id.* at pages 12-13.

223. Under Commission-approved interconnection agreements, Qwest offers and provides local interconnection trunks, unbundled loops, unbundled transport and switching, unbundled directory assistance services and operator services, 911 service, collocation, poles, ducts, conduits, right-of-way, number portability, and/or white page listings to facilities-based CLECs. There are a number of facilities-based competitors currently providing service in Colorado. Mr. Teitzel goes on in his affidavit to describe the business plans and Qwest's relationship with a number of facilities-based

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[123] Larger CLECs can have multiple interconnection agreements.
[124] *Ameritech-Michigan Order* at ¶76.
[125] *Ameritech-Michigan Order* at ¶77.
[126] *Ameritech-Michigan Order* at ¶77 and ¶78.

telecommunications providers in Colorado such as AT&T, Eschelon, WorldCom, XO, McLeod, and others. *Id.* at page 13.

224. Mr. Teitzel indicates that, because the above facilities-based and resale competitors are operating in Colorado and providing local service to business and residential customers, Qwest can demonstrate that the local market is open to competition. *Id.* at page 30.

225. While some competitors may assert that even more competition is required before Qwest is granted interLATA relief, the FCC found that Track A does not allow it to impose a geographic penetration test or a market share loss test.[127] These arguments must be summarily rejected for the same reasons the FCC rejected them in its *Ameritech-Michigan Order* and other FCC decisions. *Id.* at page 30.

226. There is substantial evidence available about the extent of CLEC operations in Colorado. As stated above, Qwest conservatively estimates that CLECs serve more than 377,000 residential and business access lines in Colorado as follows:

- Estimated Number of Residential Lines Served by CLECs – 90,000
- Estimated Percentage of CLEC Residential Lines Provided Over CLEC's Own Facilities/UNEs – 87%
- Estimated Percentage of CLEC Residential Lines Provided by Resale – 13%
- Estimated Number of Business Lines Served by CLECs – 286,000

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[127] *Ameritech-Michigan Order* at ¶76-¶77; *BANY Order* at ¶427; *SBC-Texas Order* at ¶419; *SBC-Kansas/Oklahoma Order*, n. 78; *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, (rel. April 16, 2001), at ¶235 (*Verizon-Massachusetts Order*).

- Estimated Percentage of CLEC Business Lines Provided Over CLEC's Own Facilities/UNEs – 81%

- Estimated Percentage of CLEC Business Lines Provided by Resale – 19% *Id.* at page 32.

227. These estimates are based on the information available to Qwest regarding competitive business activities in the state and are very conservative. These lines represent local exchange voice grade service only and do not include any data lines. *Id.* at page 32.

228. Based on conservative estimates, as of March 31, 2001, the CLECs have captured over 18% of the business access line market and over 7% of total access lines[128] in Colorado as follows:

- Qwest/CLEC Residence Access Lines – 1,964,092

- Qwest/CLEC Business Access Lines – 1,113,565

- Qwest/CLEC Total Access Lines – 3,077,657

- CLEC Access Lines – 377,046

- % CLEC Access Lines – 12.3%. *Id.* at page 34.

229. The third Track A requirement states that at least one CLEC must be providing local exchange service to residential customers and at least one providing service to business customers. CLECs are providing telephone exchange service to residential and business subscribers in Colorado. These CLECs often choose the largest, most concentrated markets in Colorado to offer local services to businesses and selected residential

[128] It is noteworthy that the Department of Justice issued a recommendation on May 25, 2001, proposing approval of the Verizon-Connecticut Section 271 application and found that CLEC share was "nearly 5 percent of Verizon's

customers over their own facilities or by using facilities purchased from Qwest.[129] These areas are the most profitable and least costly areas to serve and typically contain a high concentration of medium to large businesses. However, CLECs also target smaller communities in Colorado, such as Fort Collins and Greeley, when it is economically efficient for them to do so. *Id.* at pages 35-36.

230. Although some may argue that no single carrier is providing service to a substantial number of both business and residence subscribers, the Act does not require residential and business service to be provided by a single provider in order to comply with Track A prerequisites. The FCC has already rejected this objection and stated:

> In our view, this amendment gave the BOCs greater flexibility in complying with § 271(c)(1)(A), by eliminating the requirements that one carrier serve both residential and business customers, and allowing instead, multiple carriers to serve such subscribers.[130] *Id.* at page 36.

231. In its Ameritech-Michigan analysis, the FCC further noted that requiring a single CLEC to serve both residential and business customers is not necessary to further Congress's objectives.[131] In its recent *Verizon-Massachusetts Order*, the FCC reaffirmed its position concerning competition in the residential market and the openness of the local market when it stated:

> Given an affirmative showing that a market is open and the competitive checklist has been satisfied, low customer volumes in and of themselves do not undermine that showing. Factors beyond a BOC's control, such as

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total lines in service" with virtually no UNE-P in service. CC Docket 01-100, Evaluation of the United States Department of Justice, Page 2, May 25, 2001.

129 Facilities purchased from Qwest can be defined as including unbundled network elements or resale.

130 *Ameritech-Michigan Order* at ¶84.

131 *Id*.

individual competitive LEC entry strategies, might explain a low residential base.[132] *Id.* at pages 36-37.

232. Even though it is not a requirement to have a single CLEC providing service to a substantial number of both residential and business customers, CLECs such as AT&T, McLeod, and Sprint do in fact provide facilities-based telephone exchange service to both residential and business customers in Colorado. *Id.* at page 37.

233. The fourth element of the FCC's Track A analysis requires competing providers to offer telephone exchange service either exclusively or predominantly over their own telephone exchange service facilities in combination with resale. As explained above, many CLECs in Colorado are providing local exchange service primarily over their own facilities. In the Ameritech-Michigan analysis, the FCC clarified that UNEs purchased from a BOC, like Qwest in Colorado, constitute facilities-based competition over a CLEC's own telephone exchange service facilities for purposes of Track A.[133] *Id.* at page 37.

234. According to the FCC, interpreting "own telephone exchange service facilities" to include UNEs will further Congress's objective of opening the local exchange market to competition.[134] Congress sought to ensure that CLECs would be able to take advantage of any, or all three, of the entry strategies established by the Act: 1) resale; 2) unbundled network elements; and 3) construction of their own facilities, without disadvantaging one approach compared to another.[135] All three methods are currently employed by CLECs in Colorado. *Id.* at page 38.

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132 *Verizon-Massachusetts Order* at ¶235.
133 *Ameritech-Michigan Order* at ¶94.
134 *Ameritech-Michigan Order* at ¶99.
135 *Id.*

235. In its *Ameritech-Michigan Order*, the FCC determined that one or more CLECs offering service exclusively or predominantly over their own facilities satisfied this Track A sub-part requirement. The FCC went on to clarify that it need not determine if other, or all, CLECs also offer service exclusively or predominantly over their own facilities. In other words, once the sub-part was met for the first CLEC or combination of CLECs, the FCC determined there was no need to determine if the requirement held for each and every CLEC.[136] AT&T, WorldCom, Eschelon, and others provide telephone exchange service either exclusively or predominantly over their own facilities, in conjunction with unbundled network elements, in Colorado. *Id.* at page 38.

236. As of March 31, 2001, Qwest was providing the following unbundled network elements and other services to CLECs in Colorado:

- Total Number of Unbundled Loops in Service – 103,270
- Number of CLECs Utilizing Unbundled Loops – 24
- Total Number of Unbundled Interoffice Transport (UDIT) in Service – 137
- Number of CLECs Utilizing UDITs – 9
- Total Number of Unbundled Switch Ports in Service – 552

237. As shown by these data, CLECs in Colorado are actively utilizing unbundled loops and other unbundled network elements to provide service to customers. The FCC has ruled that use of unbundled network elements in providing retail services represents a form of facilities-based competition. *Id.* at page 39.

[136] *Ameritech-Michigan Order* at ¶104.

238. Mr. Teitzel concludes his discussion of Qwest's compliance with Track A by stating the preceding discussion has demonstrated that the four-part Track A requirements are satisfied in Colorado because: 1) Qwest has one or more binding agreements with CLECs which have been approved under § 252 of the Act; 2) Qwest provides access and interconnection with unaffiliated competing providers of telephone exchange service; 3) competitors provide telephone exchange service to residential and business subscribers in markets in Colorado; and 4) competing providers offer telephone exchange service either exclusively or predominantly over their own telephone services facilities (which includes UNEs) in combination with the resale of the telecommunications services of Qwest. *Id.* at pages 39-40.

239. Mr. Teitzel also discusses in his affidavit Qwest's compliance with the public interest test established by the FCC. Mr. Teitzel divides the FCC's public interest requirements into three parts:

- determination that the local markets are open to competition,
- identification of any unusual circumstances in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to the public interest, and
- assurance of future compliance by the BOC. *Id.* at page 40.

240. The first aspect of the FCC's public interest analysis evaluates whether the local markets are open to competition. Based on previous FCC rulings in other 271 applications, compliance with the competitive checklist, also known as the "14-point checklist," "is, itself, a strong indicator that long distance is consistent with the public interest."[137]

[137] *BANY Order* at ¶422; *SBC-Texas Order* at ¶416.

Complying with the competitive checklist requirements, which embody the critical elements of market entry under the Act, means that "barriers to competitive entry in the local market have been removed and [that] the local exchange market today is open to competition."[138] As the FCC points out, this approach reflects the Commission's many years of experience that have shown that consumer benefits flow from competitive telecommunications markets.[139] Each of the checklist items is being examined in separate workshop proceedings where a rigorous analysis of checklist compliance has been, or is being, conducted. Qwest will defer discussion of compliance with the competitive checklist items to their respective workshops. Based on the record created from all the checklist workshops, Qwest will demonstrate that it is in compliance in Colorado with the competitive checklist as outlined in the Act. This will provide clear evidence that the local markets are open to competition and that Qwest's entry into the interLATA long distance market is in the public interest. Based on the FCC's analysis, compliance with the competitive checklist means that the local market is open to competition. Therefore, Qwest complies with the first element of the FCC's analysis. *Id.* at pages 40-41.

241. The second part of the FCC's analysis examines any unusual circumstances surrounding competition in the local exchange and long distance markets that would make Qwest's entry into the long distance market contrary to public interest. The FCC has consistently held that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[140] In fact, in the context of its public interest analysis, the FCC

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[138] *BANY Order* at ¶426; *SBC-Texas Order* at ¶419.
[139] *BANY Order* at ¶422; *SBC-Texas Order* at ¶416.
[140] *BANY Order* at ¶428; *SBC-Texas Order* at ¶419.

has identified factors previously raised by CLECs that do not warrant denial of the public interest standard as follows: 1) the low percentage of total access lines served by CLECs; 2) the concentration of competition in densely populated urban areas; 3) minimal competition for residential service; 4) modest facilities-based investment; and 5) prices for local exchange service at maximum permissible levels under the price caps.[141] *Id.* at pages 43-44.

242. Rather than give consideration to such arguments from incumbent long distance providers, § 271 approval is conditioned "solely on whether the applicant has opened the door for local entry through full checklist compliance, not on whether competing LECs actually take advantage of the opportunity to enter the market."[142] Additionally, the FCC specifically declined to adopt a market share or similar test for a BOC's entry into the interLATA long distance market.[143] Qwest will demonstrate that the markets are open to competition through successful completion of the checklist workshops in Colorado. Moreover, the current level of competition in Colorado, as reviewed in earlier discussions, is ample evidence that the Colorado market is open to competition and that many CLECs and DLECs have successfully entered this market. *Id.* at page 44.

243. The third and final aspect of the FCC's public interest analysis is assurance of future compliance. The FCC has repeatedly explained that one factor it may consider, as part of its public interest analysis, is whether a BOC would continue to satisfy the requirements

141 *BANY Order* at ¶426; *SBC-Texas Order* at ¶419.
142 *BANY Order* at ¶427.
143 *BANY Order* at ¶427; *SBC-Texas Order* at ¶419; *Verizon-Massachusetts Order* at ¶235.

of § 271 after entering the long distance market.[144] The FCC has consistently looked at three factors to provide assurance of future compliance:

- acceptable Performance Assurance Plan (PAP),[145]
- the FCC's enforcement authority under § 271(d)(6),[146] and
- liability risk through antitrust and other private causes of action if the BOC performs in an unlawfully discriminatory manner.[147] *Id.* at page 45.

244. The theory behind backsliding is that, once it enters the in-region, interLATA long distance market, a BOC such as Qwest will have no incentive to provide parity of service to CLECs. The purpose of the PAP is to provide incentive for Qwest to ensure service quality is maintained and backsliding does not occur. Qwest's PAP for Colorado is being developed in a separate forum. *Id.* at page 46.

245. The FCC does not rely solely on the PAP for assurance of future compliance. The FCC has repeatedly held that "it is not necessary that a state monitoring and enforcement mechanism alone provide full protection against potential anti-competitive behavior by the incumbent."[148] *Id.* at page 46.

246. While the FCC has considered other factors for assurance of future compliance, it has determined that the most significant factor, other than the PAP, is the FCC's enforcement authority under § 271(d)(6).[149] The FCC notes that § 271(d)(6) already provides

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144 *BANY Order* at ¶429; *SBC-Texas Order* at ¶420.
145 *BANY Order* at ¶429-¶430; *SBC-Texas Order* at ¶420-¶421.
146 *BANY Order* at ¶429-30; *SBC-Texas Order* at ¶421.
147 *Id.*
148 *BANY Order* at ¶430 and ¶435; *SBC-Texas Order* at ¶421.
149 *Id.*

incentives for a BOC to ensure continuing compliance with its § 271 obligations.[150] If at any time after the FCC approves a § 271 application, the FCC determines that a BOC has ceased to meet any of the conditions required for such approval, § 271(d)(6) provides the FCC enforcement remedies including imposition of penalties, suspension or revocation of § 271 approval, and an expedited complaint process. Finally, the FCC notes that Qwest risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner.[151] These factors provide the Commission additional assurance of Qwest's future compliance. *Id.* at page 46-47.

3. Competitors' Positions

247. On June 25, 2001, Mary Jane Rasher filed an affidavit on behalf of AT&T concerning Qwest's compliance with the public interest aspects of § 271. *Exhibit 7-ATT-28.* Ms. Rasher states in her affidavit that Qwest's compliance with the 14-point checklist alone does not indicate that it has met the public interest. In connection with the public interest requirement, the FCC has ruled that checklist compliance alone is insufficient to establish that the local market is open to competition:

> In making our public interest assessment, we cannot conclude that compliance with the checklist alone is sufficient to open a BOC's local telecommunications markets to competition. If we were to adopt such a conclusion, BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist. Such an approach would effectively read the public interest requirement out of the statute, contrary to the plain language of the § 271, basic principles of statutory construction, and sound public policy…[T]he text of the statute clearly

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150 *Id.*
151 *Id.*

> establishes the public interest requirement as a separate, independent requirement for entry.[152] *Exhibit 7-ATT-28* at page 3.

248. While the FCC has found that "compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest,"[153] no such indication exists in the case of Qwest's local Colorado markets since the Commission has not found Qwest to be in compliance with the checklist obligations. In fact, no state in Qwest's local territory has found such compliance. In fact, testimony by CLECs in this and other state 271 proceedings in Qwest's local region, as well as initial orders in these dockets, suggest that Qwest does not currently comply with the competitive checklist. *Id.* at page 4.

249. Section 271 grants the FCC broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest.[154] As in the case of an FCC review, it is important for the state commission to identify and weigh all relevant factors in determining whether Qwest has satisfied the public interest requirement. After identifying and weighing *all* the relevant factors pertinent to Qwest, this Commission should conclude that it would be inconsistent with the public interest for Qwest to enter the Colorado interLATA market at this time. *Id.* at page 4.

250. The FCC has identified various factors that are illustrative, but not exhaustive, of the factors to be considered in determining whether a BOC has opened its local markets to

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152 *Ameritech Michigan Order*, ¶ 389; *BANY Order*, ¶ 423, "Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal cannons of statutory construction, requires an independent determination."

153 *BANY Order*, ¶ 422.

154 *Ameritech Michigan Order*, ¶ 383.

competition.[155] One such factor is whether all barriers to entry into the local telecommunications market have been eliminated.[156] A market is not open to competition when there exists a barrier to entering the market. *Id.* at page 4.

251. Ms. Rasher contends that Qwest's denying new entrants the means to compete via the ready availability of competitively-priced Unbundled Network Elements while also allowing carrier access charges to remain significantly above economic costs, has retarded, if not stopped altogether, the promise of choice for average consumers. *Id.* at page 5.

252. Specifically, the pricing of UNEs in excess of economic cost creates a barrier for CLECs to enter Qwest's local, residential market in Colorado. Mr. Teitzel states that Qwest has entered into interconnection agreements that provide for "cost-based pricing of access, interconnection, and unbundled network elements and for wholesale discounts to reflect avoided costs."[157] In fact, Qwest's pricing is far from cost-based and has been a primary factor in keeping its local, residential markets closed to competition. UNE rates are so high when comparing cost to retail rates that CLECs cannot compete with Qwest for residential customers using the UNE-Platform (UNE-P). Likewise, the non-recurring charge (NRC) for local residential service is significantly higher on a wholesale basis for Qwest's CLEC customers than it is on a retail basis for Qwest's residential customers.[158] The NRC for UNE-P is a barrier to market entry using that serving arrangement. *Id.* at pages 5-6.

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155 *Ameritech Michigan Order*, ¶ 398.
156 *Ameritech Michigan Order*, ¶¶ 390, 396: see also *BANY Order*, ¶ 426.
157 Teitzel Affidavit, p. 57, ls. 9-11. For clarification, carrier access charges are not included in the Interconnection Agreements nor are they "cost-based." *Exhibit 7-Qwest-17*.

253. Qwest's entry into the interLATA long distance market is also inconsistent with public interest due to the significant price advantage that Qwest would enjoy over competitors. Qwest's exorbitant intrastate access rates, priced significantly above cost, provide it with a source to subsidize its other products and services. *Id.* at page 8.

254. The FCC established an interstate access target rate for BOCs of 0.55¢ per access minute.[159] Although AT&T believes that Qwest's actual intrastate access cost for Colorado is lower than this interstate target rate, until Qwest's actual costs for intrastate access are determined, the interstate target rate is a proper surrogate for the cost of intrastate switched access. For toll calls that originate and terminate in Colorado (*i.e.*, a two-sided call a/k/a a conversation minute), using the interstate rate as a cost surrogate, it is conservative to estimate that Qwest's intrastate access charge is over 748% in excess of its costs. *Id.* at pages 8-9.

255. Specifically, were Qwest to enter into the interLATA long distance market, Qwest would be able to bundle its local service with a long distance offering. Competitors, not afforded the same monopoly subsidization contained in intrastate switched access rates, will be squeezed out of the local market. Additionally, unless a serious and substantial change in the competitive local services landscape were to emerge quickly and irreversibly, Qwest will soon dominate and ultimately monopolize the adjacent, currently highly-competitive, long distance market as well. Qwest's high access rates result in

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[158] *See Ameritech Michigan Order*, ¶ 395, "As we noted above, unreasonably high non-recurring charges could chill competition."

[159] In the Matter of Access Charge Reform, CC Docket No. 96-262, FCC No. 00-193, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, (rel. May 31, 2000), §61.3(ff), p. B-21.

substantial harm to consumers, to telecommunications competition, and to prospects for optimal investment in communications infrastructure. *Id.* at pages 10-11.

256. Whether a BOC has cooperated in opening its local market to competition is another factor the FCC takes into account in determining whether the local market is in fact open to competition. In the words of the FCC:

> Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.[160] *Id.* at page 12.

257. Thus, evidence that a BOC has engaged in either (1) disobeying federal or state telecommunications regulations or (2) a pattern of anti-competitive conduct, is sufficient to demonstrate that Qwest has not cooperated in opening its local market to competition. The evidence that Qwest has not cooperated in opening its local market to competition is particularly compelling because the evidence consists of *both* types of behavior. *Id.* at pages 12-13.

258. There is no question that Qwest (and the former U S WEST) has disobeyed federal telecommunications regulations. Indeed, without opening its local markets to competition and without even seeking FCC approval, Qwest entered the interLATA long distance market in violation of the statutory framework involved in this proceeding. The FCC ruled this year that:

> In sum, U S WEST's participation in the long distance market through its 1-800-4USWEST Service enables it to obtain significant competitive advantages. … The Service allows U S West to build goodwill with its local-service customers, depicting itself as a full-service provider prior to receiving § 271 approval. Indeed, the full-service, or one-stop shopping, advantages provided by the Service appear to have been U S WEST's primary objective in implementing the Service in the first place. [Footnote Omitted] As the Commission held in the *1-800-AMERITECH Order,* these competitive advantages could reduce U S WEST's incentive to open its local market to competition and, thus, run counter to Congress's intent in enacting § 271. [Footnote Omitted][161] *Id.* at page 13.

259. Similarly, in another proceeding, the FCC found that the former U S WEST's "provision of nonlocal directory assistance service to its in-region subscribers constitutes the provision of in-region, interLATA service as defined in § 271(a) of the Act."[162] So, once again, Qwest provided in-region, interLATA service without first demonstrating that its local markets were open to competition, without FCC approval, and in violation of § 271. *Id.* at page 13.

260. AT&T states that, due to Qwest's past and ongoing violations of § 271, coupled with its efforts to avoid compliance, this Commission should lack confidence that Qwest has truly opened its local markets in compliance with § 271. The Commission should also lack confidence that Qwest will comply with § 271 in the future.[163] *Id.* at page 15.

261. AT&T finds equally disturbing that fact that, on the eve of its 271 workshops, Qwest entered into settlements with several CLECs that had filed complaints with the

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[160] *Ameritech Michigan Order*, ¶ 397.

[161] In the Matter of AT&T Corporation v. U S WEST Communications, Inc., In the Matter of MCI Telecommunications Corporation, Inc. v. U S WEST Communications, Inc., Memorandum Opinion and Order, Adopted February 14, 2001 (rel. Feb. 16, 2001), DA 01-418, ¶ 19.

[162] *See Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, Memorandum Opinion and Order, FCC 99-133 (rel. Sept. 27, 1999), ¶¶ 2, 63.

Commission regarding Qwest's violations of interconnection agreements, broad anti-competitive behavior, and other issues. Although Qwest has refused to provide any information regarding the settlements despite data requests from AT&T, it is reasonable to conclude that Qwest's motivation in such settlements is to buy off the complainants so as to minimize the evidence of Qwest's anti-competitive behavior. *Id.* at pages 16-17. AT&T explained its concerns by stating first that confidential settlements of CLEC complaints against an ILEC can result in discrimination between and among CLECs. Secondly, such confidential settlements may fail to address, or may even mask, the systemic problem or problems which may have caused the complaint to be filed in the first place. 7/26/01 Transcript, pp. 133, 166.

262. While the FCC has generally identified various factors it considers probative in determining whether a BOC's local market is open to competition, the FCC encourages interested parties to identify other factors that the FCC might consider in the context of a specific application.[164] In considering whether Qwest's local market is open to competition, one factor that the FCC and this Commission should consider is that a number of new market entrants have filed for bankruptcy. That a large and ever-growing number of new market entrants have found it impossible to compete in Qwest's local market is strong evidence that Qwest's local market is not open to competition. Despite millions of dollars of investment, CLECs and Data Local Exchange Carriers (DLECs) have been kept at bay by Qwest's anti-competitive actions and thereby have been unable to make significant inroads into Qwest's local market. *Id.* at page 24.

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[163] *See Ameritech Michigan Order*, ¶ 399, "[W]e need to be confident that we can rely on the petitioning BOC to continue to comply with the requirements of section 271 after receiving authority to enter into the long distance market." It is difficult to have such confidence with Qwest, given its history of noncompliance with Section 271.

263. It could be argued that some of these CLECs' and DLECs' problems stem from poor management, under-financing, or other items. However, the point that cannot be ignored is the factor common to **all** of them: their dependence on Qwest for interconnection. *Id.* at page 26.

264. Another factor the FCC considers under the public interest requirement is whether Qwest has provided adequate assurance that its local markets will remain open to competition if the FCC grants 271 relief and allows Qwest to enter the interLATA market in its service region.[165] Mr. Teitzel's testimony indicates that Qwest will rely on a Performance Assurance Plan (PAP) to demonstrate such assurance.[166] However, until the Commission approves such a plan and it is implemented, it is impossible to find any assurance whatsoever that Qwest will be held accountable to insure future market openness. *Id.* at page 31.

265. Accordingly, this Commission should order that an effective, permanent, and mandatory PAP be approved and available for integration into the SGAT before any 271 relief is granted to Qwest. Until such a PAP is approved, however, and its details open to scrutiny, it is premature for the Commission to determine if the public interest would be served by Qwest's entry into the long distance market. *Id.* at page 34. It remains to be seen whether the PAP will prove to be an adequate incentive for Qwest to provide quality whole services, or if the PAP will simply become a cost of doing business for Qwest. It is also unknown whether Qwest can or will challenge the PAP in some forum, either before or after it is put into effect, or at such time as enforcement of the PAP is being

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[164] *Ameritech Michigan Order*, ¶ 398.
[165] *SBC Texas Order*), ¶ 420; *SBC Kansas/Oklahoma Order*, ¶ 269.

sought. Moreover, while it is important to have a PAP in place, it must be remembered that, like all enforcement mechanisms, a PAP is only employed after the damage has occurred. 7/26/01, Transcript, pp. 103, 104.

266. Qwest needs to understand that, unless and until it properly implements the requirements of this Commission for opening the local markets to competition, Qwest's 271 applications will not be endorsed. AT&T's declarations, submitted in the various 271 workshops, provide not only AT&T's criticisms of Qwest's shortcomings to date in meeting the requirements of the Act generally and the 271 checklist specifically, but also explain, to the extent that AT&T can, the steps that Qwest must take to correct those shortcomings. Other CLECs, with different experiences and different market entry plans, have also identified problems with Qwest's services and systems which will need to be addressed before any 271 applications should be considered in earnest. *Id.* at page 37.

267. Qwest's current stonewalling and anti-competitive actions are driven by its inherent conflict of interest. Qwest has two contradictory roles: (1) operator of the local telephone network that virtually all CLECs rely upon (in some form or fashion) to provide their local telephone service; and (2) the principal competitor of those same CLECs in the very same retail markets. The last five years have shown that, whatever incentive Qwest has to fulfill its legal obligations to open its network, it has a stronger incentive to preserve its local monopoly and prevent its retail competitors from succeeding in capturing local market share. Because it controls the facilities necessary for competitors to provide services, Qwest has both the ability and the willingness to discriminate in favor of its own retail services by charging competitors anti-competitive

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[166] Teitzel Affidavit, p. 44. *Exhibit 7-Qwest-17.*

rates for access to those facilities and providing those facilities in a discriminatory fashion.[167] As Qwest's counsel recently demonstrated in the Colorado Checklist Workshop 5, Qwest clearly views CLECs strictly as competitors, not as customers, on a par with its retail customers.[168] Any assumption that the prospect of obtaining long distance entry would somehow resolve the inherent conflicts underlying Qwest's roles and compel it to comply with the requirements of the Act has been shattered by Qwest's conduct over the course of the last five years. Qwest has continued to challenge virtually every important rule promulgated by the FCC to implement the requirements of the Act. And when its scorched earth litigation tactics have failed, Qwest has foreclosed competition by providing competitors with inadequate and discriminatory access to its network facilities. As presented by CLECs at length during the Checklist workshops, Qwest has engaged in a relentless campaign to resist the Act's requirements at every turn. As a result, CLEC penetration into the local markets is insignificant. This lack of competition imposes enormous costs on consumers, who have no alternative but to purchase local phone service from Qwest. *Id.* at pages 38-39.

268. It is now evident that current rules and regulations cannot overcome the inherent conflicts driving Qwest's actions. The key to widespread local competition -- in the entire state -- is making the existing network available to entrants on the same terms that Qwest uses it itself. If this is done -- and this is what the Act requires be done before Qwest is permitted to provide interLATA service -- then the result should be local competition on

[167] *See* In Re Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporation Holdings Commission Licenses and Lines, Memorandum Opinion and Order, CC Docket No. 98-141, FCC No. 99-279, (rel. October 8, 1999) (*Ameritech-SBC Merger Order*); *see also* Burns, *et al.*, Market Analyses of Public Utilities: The Now and Future Role of State Commissions, (National Regulatory Research Institute July, 1999 (describing how incumbent monopolists can use control of bottleneck facilities to give "preferential treatment [to] affiliates or discriminate against affiliates' competitors").

a scale comparable with today's long distance competition. It is clear that Qwest will not do so without clear regulatory mandates. The Commission must take action to eliminate Qwest's conflict of interest by establishing a corporate structure that would separate Qwest's retail and wholesale activities into two separate subsidiaries. Specifically, Qwest must be ordered to establish a retail company with independent management that would interact with the wholesale company on the same arm's length, non-discriminatory basis it would with any other competitor. *Id.* at page 39.

269. Structural separation "is a pragmatic and moderate attempt to enable dominant producers or suppliers whose participation in a given market raises special problems to participate, while reducing the risks that their customers or competitors will be disadvantaged by such participation."[169] In particular, structural separation of the wholesale and retail arms of Qwest would reduce both its ability and incentive to engage in price and non-price discrimination strategies discussed above short of requiring Qwest to divest its ownership of the network. Currently, Qwest has incentive to charge competitors the highest rates it can for UNEs because, no matter what it charges others, it pays only the actual economic cost of using its network.[170] However, if Qwest were structurally separate, the retail arm would have to pay the same price for UNEs as CLECs. Because structural separation includes the mandate that the retail arm of Qwest would not be permitted to sell services below its costs,[171] Qwest would now, for the first time, have at least some incentive to

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[168] *See* Exhibit MJR-7 (Colorado Workshop 5, partial transcript), p. 247, lines 1-5.

[169] *Computer II* ¶ 205.

[170] *See Bell Atlantic-GTE Merger Order* ¶ 166, ("[T]he incumbent LEC may profit from imposing high loop charges, or access charges, on both its affiliates and its competitors, because the charges to its affiliates constitute only an internal transfer.")

[171] This imputation would not impede universal service support. The retail arm would not be allowed to price service below cost, but the "price" would include any support the retail arm receives from a universal service fund or, until such time as an appropriate universal service fund is established, from whatever other mechanisms the

moderate its UNE rates so that its retail arm could effectively compete. *Id.* at pages 45-46.

270. Likewise, structural separation would help prevent non-price discrimination by Qwest by decreasing Qwest's incentives to engage in such discrimination and by making it easier to detect such discrimination should Qwest attempt it. As currently constituted, Qwest has the incentive to deny CLECs equal, nondiscriminatory access to the technical provisioning it gives itself.[172] Under this proposal, however, the retail affiliate would not own any network facilities but could only provide services by negotiating at arm's length an interconnection agreement with the wholesale affiliate. To the extent that the retail arm negotiates beneficial terms, Qwest would be required to give those very same terms to CLECs.[173] By forcing the retail and wholesale units to deal at arm's lengths, structural separation would assist regulators in detecting discrimination by making it easier to benchmark the way in which the wholesale unit provisions UNEs. *Id.* at page 46.

271. Ms. Rasher concludes that Qwest has not complied with the directive of the Act to fully open its local market to competition. Rather it has seized every opportunity to forestall the advent of competition, thus preventing consumers from reaping the benefits envisioned by Congress. Furthermore, Qwest has previously violated and continues to violate § 271 of the Act. The Commission should not reward Qwest's antics by recommending its entry into the long distance market. Public interest would not be served by Qwest's entry into the interLATA long distance market in Colorado. To the

Commission has in place to support affordable basic service in high cost areas. To comply with the 1996 Act, of course, such support must be nondiscriminatory. *See* 47 U.S.C. § 254.

172 *See Bell Atlantic-GTE Merger Order* ¶¶ 201-05.

173 *See* 47 U.S.C. §§ 251(c)(2)(C), (d), (i).

contrary, such premature entry would defy Congress's intent and result in a remonopolization of the telecommunications market by Qwest. In order to instill competition, so desperately lacking in the Colorado local market, the Commission should order Qwest to separate structurally its operations into wholesale and retail lines. Accordingly, until that happens and certainly until the Commission has found that Qwest satisfies each requirement of the competitive checklist, the Commission should recommend to the FCC that Qwest's § 271 application is not consistent with the public interest requirement of the statute. *Id.* at page 49.

272. On June 25, 2001, William Levis filed comments regarding the public interest concerns of WorldCom. *Exhibit 7-WCOM-31.* Mr. Levis opines that the states are uniquely positioned to consider public interest issues because this is where the proverbial rubber meets the road. This Commission has not merely observed from afar the implementation of the Act's market-opening provisions, but actively has been involved actively at every step of the process. From reviewing negotiated interconnection agreements, to arbitrating complex policy issues on which the CLEC and Qwest could not reach agreement, establishing prices for unbundled network elements, and resolving disputes over interpretations of language in interconnection agreements, the Commission regularly has grappled with difficult issues of importance to the consumers of Colorado. Such extensive "on-the-job training" establishes this Commission as the most qualified body to consider issues of the public interest as they impact Colorado users of telecommunications services. *Exhibit 7-WCOM-31* at pages 13-14.

273. Perhaps even more important, in recent comments before an American Bar Association antitrust enforcement panel, the Chair of the FCC signaled that he will not be as

aggressive in enforcing the public interest standard, which is part of the FCC's review of ILECs' § 271 applications before that agency.[174] This Commission must therefore satisfy itself that Qwest's entry into the long distance market serves the public interest in this state. Contrary to the recommendations of Qwest witness Teitzel that this Commission should limit its deliberations to those elements considered in the FCC's public interest reviews, Mr. Levis urges the Commission to consider any and all evidence it deems pertinent to its public interest findings.[175] He states that there are a number of reasons why the risk to the public interest is immeasurably greater if Qwest is permitted into the long distance market earlier rather than later. *Id.* at pages 14-15.

274. Because Qwest continues to possess market power,[176] and for the reasons he discusses, there is significant risk that Qwest could exercise its market power in such a way as to re-monopolize certain telecommunications markets. The significant barriers to entry in the consumer market should be of particular concern to the Commission. As the FCC noted:

> BOC entry into the long distance market would be anticompetitive unless the BOCs' market power in the local market was first demonstrably eroded by eliminating barriers to local competition.[177] *Id.* at page 17.

275. The public interest requires that the Commission look at Qwest's prior actions and make every effort to anticipate the impact of those actions in the future. The FCC described this notion in the following manner:

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[174] Wall Street Journal, May 1, 2001, "*Politics & Policy: Powell Quickly Marks Agency as His Own*" by Yochi J. Dreazen.

[175] Affidavit of David L. Teitzel, at 40. *Exhibit 7-Qwest-17.*

[176] The source of Qwest's market power is its control over a ubiquitous telecommunications network throughout its operating territory. As noted in the FCC's *Local Competition Order*, "[a]n incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking, and loops to serve its customers." (FCC Order 96-325 in CC Docket 96-98, released August 8, 1996, at ¶ 10).

[177] *Ameritech Michigan Order*, at 18.

> While BOC entry into the long distance market could have procompetitive effects, whether such benefits are sustainable will depend on whether the BOC's local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis. [178] *Id.* at page 18.

276. This passage underscores the fact that there is a forward-looking aspect of the public interest review.

277. There are several facts indicating that the prospects for a vibrant competitive marketplace for a variety of telecommunications services in Colorado are shaky, at best. *Id.* at page 19.

278. First, the Commission need look only to the speed with which Verizon and SBC have captured long distance market share in New York and Texas. In less than one year, both Bell Companies were able to vault from the position of new entrant to that of second-largest carrier in their respective states.[179] One must remember that it took 10 years following the implementation of "equal access"[180] for MCI to achieve a 20% share of the long distance market. The fact that the Verizon and SBC Bell Companies were able to capture long distance market share so quickly reveals a critical difference between the long distance and the local markets for telecommunications services; namely, that it is far easier for a provider of ubiquitous local services to garner long distance market share

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178 *Id.*, at 390.

179 *See*, *e.g.*, Telecommunications Reports Daily, April 17, 2001, quoting Maura Breen, president of Verizon Long Distance, on the fact that Verizon captured 20% of the New York long distance market within 12 months. *See also*, SBC press release dated April 23, 2001, noting that it had won 2.2 million long distance customers in Texas, Oklahoma, and Kansas in less than one year; www.sbc.com/news_center/.

180 "Equal access" is a term describing the network interconnections non-AT&T long distance companies were finally able to obtain as a condition of the consent decree settling the government's 1974 anti-trust case against the Bell System. The term means network interconnection equal in quality to the interconnections the Bell Companies had historically provided to AT&T. Equal access was implemented on a phased basis beginning in 1984 and was largely completed by 1986.

than for a provider of long distance services to capture local market share. The reason for this is easy to see. Qwest almost instantly can change a customer's long distance provider using electronic processes triggered with a few keystrokes on a computer terminal. On the other hand, converting a customer's local service from one carrier to another requires numerous steps by both carriers, which steps must be coordinated and which, because the ILECs have not implemented electronic means of handling such processes, require significantly more than a few seconds to execute. *Id.* at pages 19-20.

279. Second, the Commission can open the business section of the newspaper on any given day and read about yet another CLEC that has declared bankruptcy or is otherwise in dire financial straits. A recent report on the status of local competition by the Association for Local Telecommunications Services (ALTS)[181] described the CLECs' dismal financial picture. Of the 36 publicly traded CLECs tracked for the report, three-fourths of the CLECs (27) saw their market capitalization drop by more than 70% in the year ending February 2001. Equally stunning is the fact that only ***one*** of the CLECs actually experienced a ***positive*** 52-week change in its market capitalization. Quite simply, it is ludicrous to portray the CLEC industry as comprising significant competitive challenges to Qwest's monopoly in the provision of local services in the broad consumer market over the long term. According to its most recent ARMIS report to the FCC, Qwest's Colorado revenues for 2000 totaled $2.2 Billion.[182] The enormous revenue stream Qwest obtains from consumers captured as part of its historic monopoly provides it with a huge advantage over its would-be competitors, most of whom are reeling under massive debt

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[181] *The State of Local Competition 2001*, ALTS report issued February 2001, at 22.
[182] *See* ARMIS 43-01 report, Table 1: Cost and Revenue table.

loads. Closely related to the problems facing the CLECs is the decline in the financial standing of the major long-distance companies. Concerns over shrinkage in the traditional voice long distance business has caused the shares of AT&T, Sprint, and WorldCom to drop significantly. Indeed, all three companies have lost between 55% and 69% of their market capitalization over the past year. The financial picture for the Bell Companies is quite rosy by comparison. Even though the overall stock market anxiety has impacted their share prices, the reduction is nowhere as pronounced as the CLECs and IXCs. *Id.* at pages 20-22.

280. Third, there is a tremendous difference in the situation facing a new entrant in the Colorado local telecommunications market and the situation Qwest historically experienced. By virtue of its government-protected monopoly, Qwest entered the market free from any competitive threat. Perhaps even more important is that Qwest was assured the recovery of its costs and a return on its invested capital. Qwest's situation can be likened to that of an army occupying a town that has been vacated by the enemy, whereas a CLEC faces what could charitably be described as "fierce opposition" by an entrenched enemy who has no incentive or intention of giving up even a single building -- much less the entire town. As the Commission gazes into its crystal ball and seeks to anticipate the future of telecommunications competition in Colorado, it should take into account this sharp disparity between the circumstances of the new market entrants and Qwest as the established local service provider. *Id.* at pages 22-23.

281. Fourth, the evidence is clear that the Commission should not look to other Bell Companies as a likely source of broad-based competition for Qwest. Rather than competing with each other, the Bell Companies have merely acted to consolidate their

geographic monopolies. Bell Atlantic acquired the New York/New England Bell Company known as NYNEX, and then swallowed up GTE to become Verizon. Southwestern Bell acquired Pacific Bell and Nevada Bell to become SBC, and then gobbled up Ameritech -- the Bell Company serving the mid-west. Given this, the Commission should take careful note that the ILECs expressly have chosen not to compete in each others' territory. They have focused their attention on their own territories where they have the ability to exploit their market power.[183] *Id.* at pages 23-24.

282. Fifth, the Commission should take note of the regulatory tools at its disposal to check competitive abuses and/or exercise of market power in the Colorado consumer market for telecommunications. So-called pricing flexibility plans have had the result of effectively deregulating Qwest before any competitive alternatives in the market could act as a check on its market power. Thus, consumers face the prospect of having neither regulatory protection from, nor competitive alternatives to, the monopoly provider of local telecommunications services. *Id.* at page 24.

283. Mr. Levis then addressed WorldCom's concerns regarding Qwest's pricing of Unbundled Network Elements. The significance of the pricing of network elements was explained by the FCC in its *Local Competition Order*,[184] as follows:

> the removal of statutory and regulatory barriers to entry into the local exchange and exchange access markets, while a necessary precondition to competition, is not sufficient to ensure that competition will supplant monopolies. An incumbent LEC's existing infrastructure enables it to

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183 *See*, "*Sitting Pretty: How Baby Bells May Conquer Their World*," New York Times, April 22, 2001, by Seth Schiesel. "Some experts had thought that the Bells would invade one another's territories. That did not happen because the Bells knew better than anyone that profits rested on network ownership, and they do not own significant networks in the other companies' territories."

184 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order in CC Docket No. 96-98, FCC Order No. 96-325, released August 8, 1996.

> serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking and loops to serve its customers. […] Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.[185]
>
> Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. <u>The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in the NPRM, the local competition provisions of the Act require that these economies be shared with entrants</u>. We believe they should be shared in such a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency <u>in the form of cost-based prices</u>.[186]
> *Id.* at pages 26-27.

284. Thus, a significant barrier to entry into the local telecommunications market would exist absent the CLECs' legal and practical ability to lease components of the incumbents' networks at prices based on forward-looking economic costs. The lease option places the CLEC at the mercy of its main competitor both for the price it must pay to utilize the facilities and for the terms and conditions under which it has access to and can utilize the leased facilities. Without question, Qwest has no incentive to price such facilities in a manner that would permit the CLEC to pose a real competitive threat to Qwest, particularly because Qwest knows full well that construction of a duplicative network is not a viable alternative to the CLEC. Qwest and its sister Bell Companies have attacked

[185] *Id.*, at § 10.
[186] *Id.*, at § 11 (emphasis added).

the notion of reasonable, nondiscriminatory, cost-based pricing of the components of its network in every possible venue.[187] *Id.* at page 27.

285. This Commission represents the judge and jury as to whether Qwest will be permitted to require its would-be competitors to pay unreasonable prices for components of its network necessary to provide competitive alternatives to Qwest's local services in Colorado, or conversely, whether the rates Qwest charges for the use of those components will stimulate broad-based entry and provide true competitive alternatives to the state's consumers. *Id.* at page 34.

286. In a related topic, Mr. Levis cites examples of Qwest's continuing to act in a "monopolistic" way in the local telecommunications market. Some examples include a Qwest which:

- ignores critical planning information provided by CLECs that Qwest itself has demanded that CLECs furnish;
- unreasonably discriminates against other carriers by giving preference to its retail operations;
- dictates new processes and procedures to its carrier customers rather than consulting with them; and
- fails to recognize terms and conditions in existing interconnection agreements.

Id. at page 40.

287. Even though many of the examples cited by Mr. Levis were ultimately resolved, the fact that Qwest took such positions required WorldCom and other CLECs to expend management and regulatory resources to achieve resolution. Such behavior by Qwest has

[187] As the above discussion demonstrates, Qwest has also attacked other pro-competitive decisions by this Commission, including CLECs' legal right to compete for local telecommunications services.

the effect of raising the CLECs' costs of entry -- contrary to Congressional intent to lower legal and economic barriers to entry in passing the Act. Furthermore, Qwest's behavior indicates the difficulty of anticipating each and every possible way Qwest might act to thwart competitors' efforts to enter its local markets. *Id.* at page 40.

288. For Qwest to demonstrate to this Commission that its market is open, it must do so on the basis of more than mere promises that future behavior will be different than in the past. Indeed, the Commission should require strict proof by Qwest that it has fulfilled any and all such promises. *Id.* at page 51.

289. Similar to AT&T, WorldCom advocates the need for a structural separation between Qwest's wholesale and retail operations. Such an approach would 1) ensure that Qwest's retail operation has no artificial competitive advantage over other CLECs seeking to compete in the Colorado local telecommunications market and 2) rapidly eliminate the need for regulation of Qwest's retail operation. *Id.* at page 76.

290. Absent a structural separation, in addition to the critical issue of pricing for unbundled network elements, the Commission must also ensure that 1) the terms and conditions for CLECs' access to UNEs and UNE combinations permit economically viable access to those elements; 2) operational support systems (OSSs) are available to CLECs that are fully functional, stress-tested, and integratable; and 3) there exist self-executing and behavior-modifying remedies for violations of the competitive "rules of engagement" established by this Commission.[188] *Id.* at page 77.

[188] Obviously these tools do not replace the need to ensure Qwest's compliance with the "checklist items" required by the Act.

291. PacWest also filed comments on public interest on June 25, 2001 under the signature of Mr. John Sumpter. *Exhibit 7-PacWest-30.* Mr. Sumpter raises one significant point for the Commission to consider in its evaluation of whether Qwest's entry into the long distance market: the public interest. This one point is based on the nation's and Colorado's experience following the 1984 divestiture of the Bell System.

> It is not in the public interest to allow a carrier into the long distance market <u>if</u> that carrier maintains significant market power in the local market, all other things being equal. *Exhibit 7-PacWest-30* at pages 5-6.

292. Mr. Sumpter believes that it will be impossible for a party to this proceeding to support the counter proposition -- that it is in the public interest to allow a carrier into the long distance market if that carrier possesses significant market power in the local market. *Id.* at page 6.

293. This principle is based on the results of the 1984 divestiture of the Bell System. In that instance, the telecommunications market experienced a decade of long distance competition (in the 1970s, prior to divestiture) where one participant, the Bell System, controlled the local monopoly and also competed in the long distance market. Competitive entrants (MCI, Sprint) were unable to gain a significant foothold in the long distance market, so long as they were competing against a carrier that held a local monopoly. Over that decade, the competitive entrants gained only a few percent of market share. The Bell System ignored the new competitors in the market place but fought them in the regulatory and legal arena. However, once the Bell System implemented structural separation through divestiture, the previously dominant long distance carrier started to lose 5% market share *per year* over the next decade. *Id.* at pages 6-7.

294. More recently, the behavior of the RBOC monopolies confirms this analysis. Since the passage of the Act in 1996, the RBOCs have had ample opportunity to enter the long distance market in *out of region* states. For example, SBC could have chosen to compete in California as an IXC or CLEC. Instead, SBC purchased the monopoly incumbent, Pacific Telesis, rather than compete as all other competitive IXCs and CLECs must. RBOCs have demonstrated a propensity to merge, rather than compete with each other. In each case, the merger avoids the opportunity to enter a state as an IXC or CLEC and *forecloses* the opportunity to compete in the long distance market until after § 271 authority is obtained. Even Qwest preferred to buy the local monopoly (U S WEST) and give up any existing long distance authority in Colorado and other states in U S WEST's region. And in the few cases where the RBOCs have attempted to provide LD service out-of-region, they have been notably ineffective. Mr. Sumpter knows of no such long distance entry by an RBOC where it has achieved out-of-region success of any significance. *Id.* at page 7.

295. However, in the few states where the FCC found that the 14-point checklist was satisfied, the RBOC was able to gain significant market share in the long distance market, almost overnight. By their investment decisions and by their market behavior, the RBOCs have demonstrated that ownership of the local monopoly gives the owner a significant advantage over all other competitors. *Id.* at page 7.

296. The principle is directly applicable to the current situation in Colorado. Simply put, if Qwest retains significant local market power it is likely that it will harm the current vigorous competition existing in the long distance market. Thus, to assess the public interest impacts of Qwest's long distance entry, the Commission needs to assess the

market power of Qwest in the local market. Assessing market power is a task in which the Commission and its staff have ample experience. In the 1980s, specifically in Dockets No. C-6645, A-39020, and C–1766, the Commission assessed market power in various markets. *Id.* at page 8.

297. The factors necessary to such a determination are similar to the process used by this Commission to manage successfully the transition to competition in the long distance market. In the Colorado cases cited above, parties provided evidence used by the Commission to assess various aspects of the presence of market power. *Id.* at page 8.

298. Market power is described most simply by the ability of a competitor to raise prices above competitive levels for a non-transitory period of time, and not have that price increase defeated by customers leaving for the services of an alternate competitor. Thus, the most direct measures of market power go to the ability of competitors either to expand their existing supply of service or to enter the market with a new supply of service. Market power is defeated by low barriers to entry and expansion. In fact, the importance of the 14-point checklist is that it is an attempt to eliminate the most visible barriers to local entry. *Id.* at page 9.

299. While in past proceedings the Commission has determined the proper measures to use, it would be useful to review the general types of measures available for this purpose. These include:

- Market Share over time (including share based on revenue and units sold)
- Market share over time based on service provided over facilities owned or controlled by each competitor

- The share of facility capacity controlled by the dominant vendor (in the local market, the most useful measure is likely to be capacity share of local distribution plant)
- The ability of competitors to enter the market and earn profits
- The ability of investment to exit the market intact
- Relative price changes over time
- Service innovation and implementation over time. *Id.* at pages 9-10.

300. When Qwest files its § 271 application with the FCC, the Commission should file comments with the FCC concerning the evidence and analysis regarding the public interest. Additionally, the Commission should design and implement remedies to address the potential harm caused by Qwest's market power. *Id.* at pages 10-11.

301. If Qwest does not possess market power, then it should be allowed into the long distance market on the same terms as all other IXCs.

302. Also, on June 25, 2001, ASCENT filed comment concerning Qwest's compliance with the public interest requirements established by the FCC. *Exhibit 7-ASCENT-29.* ASCENT maintains that Qwest has not met its burden for demonstrating compliance with the public interest standard for in-region interLATA market entryand has not met its broader market opening obligations under § 271 of the Telecommunications Act of 1996. *Exhibit 7-ASCENT-29* at page 1.

303. Qwest's testimony in support of its compliance with § 271's public interest standard continues a disturbing trend of relying on future promises rather than demonstrated and current market conditions. As might be expected, Qwest focuses its attention on the

purported benefits of its entry into an already competitive interexchange market. Yet despite Qwest's claims that future benefits are sure to occur if it is allowed to enter the long distance market in Colorado, the reality remains that competitors continue to make only negligible inroads into a limited number of local markets in the state and continue to struggle at every turn. In the absence of evidence demonstrating both Qwest's sustained performance in meeting market-opening obligations, and a robust and thriving competitive local market, this Commission cannot accurately assess Qwest's compliance on the basis of the speculative assurances and promises of future benefits that Qwest makes and relies on to demonstrate that the public interest will be served by its long distance entry. Until a record of sustained compliance by Qwest has been compiled and evaluated, it cannot be found that the public interest standard of § 271 has been met. *Id.* at pages 3-4.

304. Despite the express language of the FCC's *Ameritech-Michigan Order*, Qwest's prefiled testimony repeatedly suggests that Qwest's application should be deemed as meeting the public interest criterion because, Qwest asserts, at the conclusion of all the Docket No. 97I-198T workshops, Qwest will be found to have met the competitive checklist. *See, e.g., Teitzel Affidavit,* at page 40. Qwest's reasoning is not only circular but is contrary to the clear statements of the *Ameritech-Michigan Order*. A showing of checklist compliance alone is insufficient to demonstrate that long distance entry is in the public interest. In addition, as demonstrated by ASCENT in previous comments submitted in this docket, Qwest's purported showing of checklist compliance continues to rely *almost exclusively* on the *future* availability of interconnection, network elements, and services as promised in Qwest's SGAT, rather than on actual factual evidence demonstrating that

it now complies with the statutory conditions for entry. *See Comments of the Association of Communications Enterprises on Checklist Items 2, 5, and* 6, filed January 15, 2001, in Docket 97I-198T. *Id.* at pages 7-8.

305. In ASCENT's view, premature long distance entry undoubtedly will result in Qwest capturing long distance market share, as Qwest asserts, but it also undoubtedly will eliminate Qwest's incentives to open, and keep open, the local market. Qwest turns the public interest argument on its head by asking this Commission to believe that the entry of an entity that will leverage its local market dominance to compete in an effectively competitive interexchange market will somehow benefit consumers in both markets. The irony of this argument should not escape the Commission. *Id.* at page 10.

306. In addition, ASCENT states that Qwest must be required to demonstrate that it complies with the obligation to provide advanced services on a resale basis, both currently and on a going-forward basis. As this Commission is well aware, the demand for advanced services such as DSL is rapidly growing. CLECs are attempting to incorporate advanced services into their own service offerings throughout the country. The availability of a viable DSL-resale offering would more easily allow CLECs to bundle this offering with their own voice services and even perhaps with their own ISP provider. Quite simply, the availability of such a resale DSL offering will allow more CLECs to complete a "bundled" package of voice, Internet access, and DSL; and the lack of availability of a resale DSL offering will enable Qwest to perpetuate its dominance in a burgeoning advanced services market. The January 2001 decision of the U.S. Court of Appeals for the D.C. Circuit has made clear that "Congress did not treat advanced services differently from other telecommunications services" with respect to the resale obligations of §

251(c)(4) of the Telecommunications Act. *Association of Communications Enterprises v.* FCC, 235 F.3d 662, 663 (D.C.Cir. 2001). This *ASCENT* decision affirms the necessity of a significant potential market-entry mechanism that must be shown to be available and sustainable before a determination can be made that the local market is irreversibly open to competition and, therefore, that the public interest would be served by a grant of § 271 authority to Qwest. Qwest's testimony for this workshop clearly makes no such showing. *Id.* at page 15.

307. Qwest's conclusion that it has met the public interest standard is at least grossly premature. The three main conditions for competition -- OSS, a Performance Assurance Plan, and cost-based pricing for unbundled network elements and interconnection -- are not even in place yet, much less functioning smoothly over a sustained period of time. *Id.* at page 15.

308. OSS testing procedures have not been completed by the Qwest Regional Oversight Committee (ROC), and final test and audit results have not been released. Additionally, even once released, the audit and test results for Colorado must be reviewed on the record in this docket. Further, even a successful OSS test, without a subsequent demonstration of actual commercial experience of CLECs in using such systems under each of the three modes of competitive entry contemplated under the Act, is not enough for the Commission to be able to make a finding that Qwest's OSS systems will function adequately on a day-to-day basis and that CLECS are treated at parity, under competitive conditions and at commercial volumes over a sustained period of time. In this regard, the FCC's § 271 decisions have emphasized that competitors must have access to *all* processes, including interface and legacy systems, to accomplish *all* phases of a

transaction: pre-order, order, provisioning, repair and maintenance, and billing; and that in order to meet the requirements of the Act, such systems must be operationally ready and sufficiently available to meet the likely demand in volume and in a manner that does not discriminate against or place competitors at a disadvantage. *Id.* at pages 15-16.

309. A Performance Assurance Plan that can detect discrimination and that contains penalties that can effectively elicit desired behavior also is not yet in place in Colorado. Although a plan is being developed, it has not yet been endorsed by the Commission or implemented by Qwest. It is well-established that a critical component of a § 271 public interest analysis is a demonstration that the ongoing performance of Qwest in supplying OSS, interconnection, resale, and UNEs must be subject to monitoring and enforcement. As with Qwest's OSS systems, even if the Commission's PAP proceeding was completed, a PAP plan is not enough to demonstrate that irreversible market opening conditions exist. To the contrary, ASCENT submits that a fully-developed PAP must be in place for at least 3-4 months and that Qwest must be shown to be in statistical compliance with the plan, before this Commission can find that the public interest supports a grant of Qwest's § 271 application. *Id.* at pages 16-17.

310. This Commission has not yet adopted final cost-based prices for all interconnection, UNEs, and ancillary services covered under Qwest's SGAT. Hearings on the rates and cost support for some of the new UNEs and other services in the SGAT currently are scheduled to begin in August, 2001. The date for a final decision by the Commission on such rates clearly is not known and cannot be predicted with any certainty. Moreover, it is not known when hearings will be scheduled for rates and cost support for other new services that are not being addressed in the August hearings. Clearly, under the express

statutory language of §§ 251 and 271 of the Telecommunications Act, the existence of final and cost-priced UNE pricing is a critical component in any finding of § 271 compliance. Again, until such final prices exist in Colorado, the conditions for effective and sustainable local competition likewise do not exist. *Id.* at page 17.

311. ASCENT concludes that Qwest's interpretation of its public interest obligations entirely misses the mark. Availability connotes merely *potential*, while provision *actualizes* that potential. The fact that competitors may be able to obtain UNEs, or collocations, or resold services, even if hypothetically under an ideal interconnection agreement, SGAT, or tariff, is not enough. Availability alone does not guarantee, for example, that UNEs will be provisioned correctly, provisioned on a timely basis, or properly billed, especially over a sustained period of time and at commercial volumes. Similarly, Qwest's data as to the number of UNEs that are being provided, or customers that are being served by CLECs, do not demonstrate that the UNEs were provisioned correctly, or on a timely basis, or billed properly. Further, availability does not demonstrate that Qwest meets its obligations for the provision of advanced services. It is for these reasons that independent third party OSS testing, performance measurements, and actual performance over a sustained period of time are absolutely critical determinants of whether any regional Bell operating company has met the Act's prerequisites for in-region interLATA market entry, including the public interest standard. *Id.* at page 19.

312. The Office of Consumer Counsel (OCC) filed a bullet list of comments in this workshop proceeding. *Exhibit 7-OCC-32.* These comments, and the oral comments during the workshop, mostly regarded the presence of a performance assurance plan that would provide incentives to Qwest to treat CLEC non-discriminatorily, the existence of barriers

to competition, and the absence of a fully competitive market. As support for this position, the OCC cites the FCC's December 31, 2000, report on competition which indicates that CLECs in Colorado only serve 9% or end-users lines. *Exhibit 32* at page 1.

313. Mr. Ken Reif, Director of the OCC, stated during the workshop that "it's our (OCC's) position that it is impossible to determine at this point in the 271 process whether or not the granting of the application is in the public interest."[189] Mr. Reif went on to say that the OCC's primary concern is that § 271 approval not be granted until it has been well established that the local market is irreversibly open to competition. In order to make that finding, Mr. Reif stated that a market share test or competition test must be done; but, since the FCC has rejected that idea, the OSS test, Performance Assurance Plan, and appropriate wholesale pricing are the tools available.[190] "The proof of the pudding is in the eating," meaning no matter how good the recipe is, you won't really know how it works until you actually eat the pudding.[191] The OCC stated that it is its position that the Commission at this point cannot make a determination on public interest because the OSS test, the Colorado Performance Assurance Plan, and pricing have not been completed.

4. Qwest's Response

314. On July 9, 2001, David L. Teitzel filed a rebuttal affidavit addressing the competitors concerns with public interest and Track A. *Exhibit 7-Qwest-18.* In addressing specifically ASCENT's concerns, Mr. Teitzel states compliance with the Track A

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189 *CO Transcript June 25, 2001* at page 192.
190 *Id.* at page 193.
191 *Id.* at page 195.

competitive checklist has been a major focus of numerous workshops held in Colorado over the past year. Extensive documentation addressing checklist compliance has been presented and reviewed in the workshops. The FCC's four-part Track A requirements are:

- Existence of one or more binding agreements which have been approved under § 252,
- Provision of access and interconnection with unaffiliated competing providers of telephone exchange service,
- Provision by competitors of telephone exchange service to residential and business subscribers somewhere in the state, and
- Offer by competing providers of telephone exchange service either exclusively or predominantly over their own telephone exchange service facilities in combination with resale. *Exhibit 7-Qwest-18* at page 2.

315. Mr. Teitzel indicates that he provided comprehensive evidence that each of these requirements is met in Colorado in his original affidavit, *Exhibit 7-Qwest-17*. This evidence shows compliance with the Track A requirements.

316. This body of evidence, coupled with evidence provided in previous workshops, is fully available to the Commission for review in determining whether Qwest has met the checklist requirements. To the extent a commission finds that checklist requirements have been met, that factor should be considered in determining whether Qwest's § 271 application is in the public interest. In reviewing § 271 applications of other Bell Operating Companies, the FCC has found that compliance with the 14 point checklist "is,

itself, a strong indicator that long distance is consistent with the public interest."[192] *Id.* at page 3.

317. Mr. Teitzel recommends that the Commission consider evidence of checklist compliance from previous workshops as well as the evidence he presented regarding the presence of local exchange competition, which is now present in Colorado in the form of resale, UNE-based competition, and competition via CLEC-owned facilities, as it determines whether Qwest's application satisfies the Track A and public interest requirements. As cited above, the FCC has clearly said that checklist compliance is a strong indicator that a § 271 application is in the public interest. Accordingly, ASCENT's complaint on this point should be dismissed. *Id.* at page 4.

318. ASCENT alleges that Qwest has failed to provide nondiscriminatory access to service elements such as resale, UNEs, advanced services, interconnection, and OSS, which, in ASCENT's opinion, should preclude a finding by the Commission that Qwest's application is in the public interest. Qwest disagrees. The access that Qwest provides CLECs to each of these items has been extensively addressed in previous workshops. The Commission should consider the evidence presented in those workshops in assessing the merits of ASCENT's claims. To the extent the Commission finds that Qwest is providing full and open access to these elements, ASCENT's claims should be dismissed as being irrelevant to compliance with Track A or public interest considerations in this proceeding. *Id.* at pages 5-6.

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[192] *BANY Order* at ¶422, *SBC-Texas Order* at ¶416.

319. ASCENT argues that Qwest's pricing in Colorado for UNEs and interconnection is not cost-based. This claim is incorrect. First, the Commission, not Qwest, has established prices for these elements based on Total Element Long Run Incremental (TELRIC) costs through cost docket proceedings, with full input from interested parties. ASCENT's argument is plainly not founded on fact. Second, the FCC has found in its *SBC-Oklahoma Order* that UNE pricing issues are beyond the scope of its evaluation of § 271 compliance so long as UNE prices are TELRIC-based, and stated:

> Parties also assert that the Oklahoma promotional UNE rates are so high that no competitive LEC could afford to use the UNE platform to offer local residential service on a statewide basis. Such an argument is irrelevant. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market.[193] *Id.* at page 6.

320. To the extent the Commission has found Qwest's UNE and interconnection prices to be cost-based, Qwest has met this § 271 requirement. Consequently, ASCENT's argument on this point should be dismissed. *Id.* at page 7.

321. In addressing AT&T's concerns, Mr. Teitzel states that, in Ms. Rasher's first complaint, at page 2, *Exhibit 7-ATT-28*, she alleges Qwest has not opened its local markets to competition and has provided no assurances that local markets, once opened, will remain so. This complaint has been the subject of extensive discussion in workshops conducted thus far, which have addressed Qwest's compliance with the competitive checklist. The evidence presented in the previous workshopsand the evidence in Mr. Teitzel's affidavit show that Qwest's local markets are open to competition and that competition is present. It is Qwest's expectation that the Commission will consider all evidence before it in this proceeding, including checklist compliance, evidence of competitive presence in this and

other dockets, assurance of future compliance with § 271 requirements, and precedent from FCC decisions regarding § 271 applications in other states in determining whether Qwest's Colorado application is in the public interest. *Id.* at page 8.

322. Additionally, the details of the PAP will be addressed in a separate proceeding but should be considered by the Commission when making a determination regarding the public interest benefits of Qwest's § 271 application. The FCC has found that its ongoing enforcement authority under § 271(d)(6) and the risk of liability from anti-trust or other private causes of action provide additional assurances of future compliance. Consequently, Ms. Rasher's complaints should be dismissed. *Id.* at pages 8-9.

323. Next, beginning at page 8, *Exhibit 7-ATT-28*, Ms. Rasher argues that Qwest's intrastate switched access prices must be reduced to cost as a precondition to Qwest's reentry into the interLATA market.[194] This issue is completely beyond the scope of Track A and Public Interest guidelines. Intrastate switched access charges have not been ordered to be priced at cost in other states in which a BOC has been granted interLATA relief. This simply is not a precondition to approval of § 271 applications and has nothing to do with whether the local market is open to competition. Ms. Rasher's complaint should be dismissed as extraneous to this proceeding. *Id.* at pages 12-13.

324. Beginning at page 34 of *Exhibit 7-ATT-28*, Ms. Rasher argues that Qwest will somehow "remonopolize" the market if interLATA relief is granted. If Qwest is to "remonopolize" the market, it would need to do so through non-compliance with § 271 checklist

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[193] CC Docket No. 000-217, January 22, 2001, ¶92.

[194] Ms. Rasher inaccurately cites Qwest's current average intrastate Switched Access rates. The correct rates, based on total intrastate Switched Access call volumes, are $0.038 for originating Switched Access, $0.0464 for terminating Switched Access and $0.0772 for a two-sided call.

requirements and in violation of the PAP. In this event, not only would Qwest invite severe financial penalties, it would trigger intervention by the FCC, resulting in likely revocation of Qwest's interLATA privilege. Consequently, Ms. Rasher's argument should be summarily dismissed. *Id.* at pages 17-18.

325. In Ms. Rasher's final argument, beginning at page 38 of *Exhibit 7-ATT-28*, she suggests that local markets in Colorado cannot be truly opened without structurally separating Qwest into distinct wholesale and retail entities. Ms. Rasher devotes over 10 pages of her affidavit to this argument, which echoes the arguments sponsored by AT&T in other states. Again, her argument runs well beyond the scope of this proceeding and is geared to cloud the Commission's consideration of the evidence presented in this proceeding. It is important to note that state commissions have recommended approval to the FCC, and the FCC has granted such approval, for SBC and Verizon to enter the interLATA markets in New York, Texas, Oklahoma, Kansas, and Massachusetts. In none of these states has the incumbent been required to separate structurally into distinct wholesale and retail entities as a precondition to entry into the interLATA market. In fact, no ILEC has been required to undergo the structural separation that AT&T is seeking. Protections provided by § 271 requirements, PAP mechanisms, and § 272 Affiliate guidelines have been determined to be sufficient to ensure BOCs will continue to compete fairly as they are granted authority to enter the interLATA market. *Id.* at pages 18-19.

326. Mr. Teitzel then addressed concerns raised by Mr. William Levis for WorldCom. In addition to concerns similar to those of AT&T's already addressed, at pages 9 and 10 of his affidavit *Exhibit 7-WCOM-31*, Mr. Levis makes the twin allegations that Qwest can currently control the market price for services and that it can inappropriately exercise

control of its "local bottleneck facilities." In Colorado, the Commission continues to retain authority over Qwest's prices for wholesale services and in fact, has established Qwest's current Unbundled Network Element prices after vigorous cost docket review. Qwest certainly does not have "the ability to control price for those services" as stated by Mr. Levis. *Id.* at page 25.

327. Qwest's local markets are fully open. Qwest is obligated, under terms of the Act, to provide full and non-discriminatory access to its network via resale, interconnection, and sale of unbundled network elements. In addition, Qwest has supplied extensive evidence in previous Colorado workshops demonstrating Qwest's compliance with § 271 checklist requirements. *Id.* at pages 27-28.

328. Nothing in the Act or in FCC rules interpreting the Act suggests that competition should be facilitated "even though Qwest's private business interest may be diminished" as suggested by Mr. Levis. As stated on page 4 of Mr. Teitzel's affidavit (*Exhibit 7-Qwest-17)*, Senator Pressler views the intent of the Act to "…get everybody into everybody else's business and let in new entrants." This is properly done through leveling the playing field for all competitors, not diminishing the business interests of one specific competitor. Mr. Levis's arguments should be dismissed. *Id.* at page 28.

329. To conclude Qwest's response, Mr. Teitzel states that the evidence presented through his affidavit in this proceedingand the evidence presented in other workshops are sufficient to support a finding by the Commission that Qwest's reentry into the interLATA long distance market is appropriate. Mr. Teitzel discussed why Qwest's Performance Assurance Plan, coupled with the functional separation requirements of § 272 and

continued oversight by the FCC of Qwest's compliance with § 271 requirements, will ensure that Qwest's local markets will remain fully open after Qwest is granted reentry into the interLATA markets. In approving SBC and Verizon § 271 applications in Massachusetts, New York, Texas, Kansas, and Oklahoma, the FCC specifically rejected "geographic penetration" or "market share loss" in considering whether Track A requirements are met. Finally, Mr. Teitzel discussed why the forced structural separation of Qwest's retail business away from its network and wholesale businesses is unnecessary as a precondition to Qwest's reentry into the interLATA market. This precondition has not been ordered by the FCC in approving § 271 petitions to date and is an issue extraneous to the Commission's consideration around Qwest's compliance with Track A and Public Interest requirements in this proceeding. Finally, many of the issues raised in the affidavits of the witnesses addressed in the rebuttal affidavit are well beyond the scope of Track A and Public Interest considerations and have been debated at length in previous § 271 workshops. These issues should be considered in their appropriate contexts. *Id.* at pages 28-29.

330. Mr. Teitzel urges the Commission to dismiss the suggestions offered by parties addressed in his rebuttal affidavit contesting Qwest's Track A and Public Interest position and requests that the Commission issue a recommendation to the FCC for approval of Qwest's § 271 petition on the strength of the full body of evidence presented in this proceeding. *Id.* at page 31.

5. Principal Workshop Discussions and Resolutions

331. Workshop 7 technical discussions on Public Interest and Track A occurred during one working session held July 24 – 27, 2001.

332. A detailed summary of those discussions can be found in the Colorado transcripts associated with that workshop and will not be repeated here. Suffice it to say, the discussions were protracted and exhaustive, and participants were given ample opportunity to flesh out their respective issues and to have them fully discussed.

333. During Workshop 7, participants discussed the issues raised in testimony or comments regarding Qwest's compliance with Public Interest requirements and Track A. Except for the disputed issues that reached impasse, the remaining issues were resolved by consensus among the participants. This consensus was most often reached through Qwest's agreement to alter internal policies to the satisfaction of the participants, based upon the merit of the issues raised. In other cases, the participants accepted Qwest's rationale and justification for not agreeing to proposed modifications.

334. An issues list was not used for the Public Interest/Track A part of this workshop. The issues the participants raised both in written and oral comments go to Qwest's overall compliance with § 271 and are not bound to an individual checklist item. Many participants raised issues about the Colorado Performance Assurance Plan . The details of these issues will be dealt with in the proceeding established for that purpose, Docket No. 01I-041T.

6. Impasse Issues/Staff Recommendations

Track A

335. There were no clearly defined impasse issues resulting from Workshop No. 7 for the Track A requirements. However, throughout the workshop, as outlined above, many participants expressed concerns, orally and written, about Qwest's meeting the Track A and Public Interest requirements. The Act has given clear direction as to what is required for a BOC to be able to file under Track A. The following recommendations by Staff follow that direction.

(1) Existence of binding, approved Interconnection Agreements.

336. Qwest has met the portion of the § 271(c)(1)(A) requirement that requires it to have signed one or more binding agreements that have been approved under § 252.

(2) Access and Interconnections to unaffiliated competing providers of local telephone exchange service.

337. The § 271(c)(1)(A) requirement that Qwest provide access and interconnection to unaffiliated competing providers of telephone exchange service imposes neither geographic range, order volume number, nor market penetration requirements. Qwest's unrebutted evidence addressing unbundled loop leases demonstrates that it meets the requirement that it be providing access and interconnection to unaffiliated competing providers of telephone exchange service.

(3) Existence of unaffiliated competing providers of local telephone exchange service to residential and business customers.

338. The conclusion an analyst might reach regarding the existence of healthy and commercially viable unaffiliated competing providers of residential and business service

in Colorado is dependent upon the moment in time when such analysis is made. The conclusion that such competitors existed at the time evidence was presented at this Workshop was held is well supported. However, even a casual reading of the front pages of the *Denver Post* or the *Rocky Mountain News* since the workshop would leave an analyst to conclude that there is little likelihood that the extent of residential competition in Colorado even remotely approaches that which Qwest claimed. Even discounting the numbers, there appears to be at least one unaffiliated competing provider currently serving residential customers in the Denver-Boulder area of Colorado.

339. However, the headline on December 20, 2001, announcing the sale of AT&T Broadband Phone to Comcast places even this carrier's future in doubt.

340. Any conclusion regarding this requirement must be made regarding a specific moment in time. Therefore, the record developed during the workshop supports a conclusion that the Track A requirement that service is provided to residential and business customers is established for the fall of 2001.

(4) Existence of unaffiliated competing providers offering service exclusively over their own facilities or predominantly over their own facilities.

341. The conclusion reached regarding the preceding requirement applies equally to this finding.

Public Interest

342. In analyzing the Public Interest requirement of the Act, it is clear that the establishment and implementation of a Performance Assurance Plan plays a large role in a BOC's satisfying this requirement. The FCC has expressed in its orders on § 271 compliance that one of the most compelling assurances in the Public Interest analysis for future

compliance and proof that markets are "irreversibly open" is the existence of a Performance Assurance Plan. The FCC has stated that "the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its § 271 obligations and that its entry would be consistent with the public interest."[195] At the current time, although the hearing commissioner established in Decision No. R01-1142-I a PAP which he indicated "Qwest must adopt before I will recommend to this Commission that it certify § 271 compliance,"[196] Qwest has chosen not to adopt the Colorado PAP (CPAP).

343. On November 30, 2001, Qwest filed a Response of Qwest Corporation to Decision on Motions for Modifications and Clarification of the Colorado Performance Assurance Plan in Docket No. 01I-041T. In this Response, Qwest indicates that there are two issues that it "is not in a position to subject itself to [given] the substantial financial risks imposed by the terms of the CPAP."[197] In addition, there are two other issues Qwest raised in its Response that "cannot be accepted by Qwest."[198]

344. Staff will not go into the merits of these issues at this time. However, based on the fact that Qwest has not agreed to adopt the CPAP, Staff must recommend that the hearing commissioner find that Qwest has not met its burden regarding Public Interest, until such time as Qwest adopts into the SGAT the CPAP as contained in the Attachment to R01-1142-I or another CPAP approved by the Commission.

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195 *BANY Order* at ¶ 429.
196 Decision No. *R01-1142-I* at page 7.
197 *Qwest's Response* at page 2.
198 *Id.* at page 3.

345. The FCC has also indicated that it "may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application."[199] At stated in the Competitors' Position section above, many CLECs and OCC raised concerns with Qwest's past performance with respect to discriminatory treatment of CLECs. The examples of discriminatory treatment given by AT&T, WCOM, and other participants either took place two or more years ago, or were not applicable to Colorado. The exception to this is the claim of discriminatory treatment due to UNE pricing and access pricing; however, this argument is better resolved in Docket No. 99A-577T, the costing and pricing SGAT docket, and in the newly-opened Docket No. 01I-494T, the Intercarrier Compensation docket.

346. While Staff is sympathetic to the CLECs' plight over the past few years since the passage of the 1996 Act, Staff believes there is evidence that Qwest's treatment of CLECs has improved in the recent past. However, Staff leaves open the possibility of the ROC OSS test results demonstrating non-compliance with the public interest.

347. As stated previously in this report, the final Staff assessment of Qwest's compliance with the requirements of Public Interest will be considered fully on the completion of the ROC OSS Test when those test results are incorporated into this Colorado proceeding. Staff will also consider in its compliance assessment any other evidence, including Colorado-specific commercial usage experience, that may be brought to the Commission's attention. The fact that the ROC OSS test is not complete and those results have not been incorporated into our record, and because the Second Technical Conference concerning

[199] *BANY Order* at ¶ 423.

commercial usage information and data reconciliation has not been held, coupled with the lack of a CPAP attached to Qwest's SGAT, necessitates a deferral of Staff's recommendation on Public Interest compliance.

348. Upon the completion of the Colorado record, including a final report from the ROC OSS test, decision on and incorporation of a CPAP into the SGAT, and inclusion of any other pertinent commercial usage information, Staff will make a recommendation to the Commission on whether Qwest has met the Public Interest criteria.

APPENDIX A

Qwest's Colorado Application To Provide In-Region, InterLATA Service (Section 271 of the Telecommunications Act of 1996) Colorado PUC Docket No. 97I-198T

COLORADO IMPASSE ISSUES LOG (COIL)

Workshop 7 (§ 272, Public Interest and Track A)

No.	§ 272	Description of Issue	Status
1	§272 (a)	AT&T claims that Qwest violates other provisions of § 272 and therefore those violations prevent a finding that Qwest's 272 affiliate is in fact an Affiliate. "272(a) is more like a transitive thing. If you meet 272(b) than by transition property you meet 272(a). The converse is also true." *7 Qwest 11,* at page 176. Qwest states that QCC is a legal entity that meets the FCC's test. Concerns with other provisions should be addressed separately.	Impasse
2	§272(b)(2)	AT&T claims that Qwest has not in the past and does not now follow GAAP accrual accounting. These include the proper handling of revenues and expenses and revenue-matching. Also making sure that revenues are properly recorded. *7 Qwest 11,* at page 178. Qwest states that both QC and QCC do use GAAP accrual accounting and accruals are normally done. Discrepancies that were found with regard to 272 were by no means considered material with regard to the GAAP financial statements that are prepared. *7 Qwest 11*, at page 180.	Impasse

3	§272(b)(2)	AT&T states that Qwest should be required to conduct and opening audit prior to obtaining 271 approval even though 272(d) states that this obligation begins 1 year after approval. There are special conditions such as Qwest's not using GAAP accounting and failure to timely record transactions that warrant an audit pre-approval. *Exhibit 7 Qwest 11*, at page 202. Qwest states that neither the FCC nor the Act require BOCs to perform an audit prior to 271 approval. In fact AT&T and WorldCom argued at the FCC for the audit to take place one year after approval. *7 Qwest 11,* at page 203.	Impasse
4	§272(b)(3)	AT&T believes that Qwest has deficiencies with its compliance with this section that AT&T believes requires separation of officers. AT&T believes that officers of the 272 affiliate cannot report to officers of the parent company and broader question of the separate officers and directors fro the BOC and the 272 affiliate. *7 Qwest 11*, at page 246-247. Qwest states that the FCC requirement is only that officers and directors cannot be in QC and QCC at the same time and that the FCC does not have reporting structure requirements. In the Bell South Louisiana decision at para. 329-330 the FCC specifically found this argument was inappropriate. *7 Qwest 11*, at page 243-244.	Impasse
5	§272(b)(3)	AT&T has concerns regarding the movement of employees between the BOC and the 272 Affiliate. Qwest claims that there are no rules regarding employee moves and that appropriate controls are in place.	Impasse
6	§272(b)(3)	AT&T claims that Qwest has not in the past and does not now have separate payroll administration as required by this section. Qwest states that it has verified that the payrolls are in fact separate, but that the FCC does not prohibit shared payroll administration. "The BOC provides payroll services for the Qwest family of companies and bills and prices accordingly." *7 Qwest 11,* at page 190. Qwest is willing to provide these same payroll services to IXCs. *7 Qwest 1,* at page 26.	Impasse

7	§272(b)(3)	AT&T has concerns that Ms. Robin Szeliga was an officer of the BOC when she signed an officer verification before the FCC. Qwest agrees that Ms. Szeliga was not a BOC officer and has provided a new officer certification signed by a BOC officer. During the transition period last year, right after the merger, from July 21 of 2000 to January 1 of 2001 Robin Szeliga held a positioning both entities, but they were not yet a 272 affiliate. After that transition Ms. Szeliga was not affiliated with either entity. *7 Qwest 11*, at page 250.	Impasse
8	§272(b)(3)	AT&T has concerns that Mr. Augustine Cruciotti is a QCC employee and an officer of QCI. Qwest states that Mr. Cruciotti is not an officer/director/employee of both QC and QCC.	Impasse
9	§272(b)(3)	AT&T claims that when QC employees are dedicated to QCC work, those employees are not separate and therefore violate the shared employee test. This issue goes not to the payroll arrangement, but rather the amount of time and knowledge an employee has with the affiliate and BOC. *7 Qwest 11*, at page 285. AT&T also believes that the affiliate rates used to charge for services are too high. Qwest counters that the FCC test for shared employees is defined as being on both payrolls at the same time and QC/QCC have no shared employees. Further, Qwest states that the rates used to bill are reasonable for the level of employee providing service. All Qwest employees are required to sign a code of conduct annually which contains regulations on affiliate contact and transactions. *7 Qwest 11*, at page 283.	Impasse
10	§272(b)(5)	AT&T is concerned that Qwest is not posting sufficient information regarding its affiliate transactions on the web site and that the posting is not timely (within 10 days). Qwest states that it believes its postings contain the FCC required components and that billing detail is not required to be posted. Further, Qwest states that the postings are completed in a timely manner with an average of 4.7 days. *7 Qwest 13*, at page 37.	Impasse

11	§272(b)(5)	AT&T believes that QCC was and still is receiving favorable time periods before receiving and paying bills from QC. AT&T didn't find any invoices in its audit that comply with the monthly billing procedures in the services agreement. *7 Qwest 13,* at page 139. Qwest notes that there were some delays in billing during the transition period, but that regular monthly billing is now occurring. *7 Qwest 13*, at page 139-140.	Impasse
12	§272(b)(5)	AT&T claims that Qwest is not reporting all transactions by not posting billing detail on the Qwest web site and that there may be non-cash transactions. "What Qwest calls a transaction and what AT&T views as a transaction differs." *7 Qwest 13*, at page 47-48. Qwest states that it has posted all information required by the FCC and billing detail is not required. Qwest posts sufficient enough information so that a third party can make a determination as to whether or not they would like to purchase the service and so the FCC can monitor compliance with the rules. *7 Qwest 13*, at page 51.	Impasse
13	§272(c)(1)	AT&T states that services that Advanced Technologies provided to Qwest Long Distance should have been made available to other carriers. The Ameritech Michigan order states that a BOC cannot circumvent its 272 requirements by transferring its local exchange access facilities and capabilities to an affiliate. *7 Qwest 13,* at page 155. Qwest believes that the non-discrimination requirement only applies to the BOC and not to BOC affiliates. It was a services development subsidiary created to provide those services internally within the family of companies. *7 Qwest 13,* at page 156.	Impasse
14	§272(c)(2)	AT&T believes that Qwest does not meet the adherence to FCC accounting principles required by this section. Qwest believes that the issue regarding transactions should be resolved with §272(b)(5).	Impasse
15	§272(e)	AT&T is concerned that QC will not impute access charges when it receives 271 approval. In addition, AT&T is concerned that if it does impute, how that imputation will occur. This should both tariffed and long-run incremental costs. *7Qwest 13,* at page 160. Qwest has stated that it will impute access charges as required after 272 sunsets. Until 272 sunsets QCC will pay tariffed access rates like other IXCs. *7 Qwest 13,* at page 157-158.	Impasse

16	§272(g)	AT&T believes that the Commission should mandate Qwest provide a more thorough explanation of its marketing practices due to its past history e.g. Buyers Advantage. *7 Qwest 13,* at page 166. Qwest states that there is no FCC requirement or ability to review marketing scripts and to require this would be putting a burden on Qwest that is not on other BOCs. *7 Qwest 13,* at page 166. There are three parts to this issue: 1) can the Commission order Qwest to provide marketing scripts; 2) should the Commission order these; and 3), if so, how should the review occur?	Impasse
17	§272(g)	AT&T believes that Qwest most likely cannot show that it would provide product management services to a non-affiliate. The "paper-promise" of Qwest is not sufficient. *7 Qwest 13,* at page 168. Qwest states that it has posted a work order which included Product Management and therefore this service is available to non-affiliates.	Impasse
18	§272 general	AT&T raises concerns regarding past violations of Qwest regarding §272. It is appropriate to look at past history regarding 271 as an indicator of whether they will be compliant in the future. *7 Qwest 13,* at page 172. Qwest states that a past occurrence, now corrected, does not preclude it from obtaining §272 approval. There were certain legitimate disagreements in the past on how 271 requirements should be interpreted. *7 Qwest 13,* at page 169.	Impasse

APPENDIX B

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LIST OF INTERVENORS

	Intervenor	Abbreviation
1.	AT&T Communications of the Mountain States	AT&T
2.	Colorado Office of Consumer Counsel	OCC
3.	COVAD Communications Company	COVAD
4.	MCI WorldCom, Inc.	WorldCom
5.	New Edge	New Edge
6.	PacWest Telecomm, Inc.	PacWest
6.	XO Colorado	XO
7.	Yipes/Yipes Transmission, Inc.	Yipes

APPENDIX C

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LIST OF ORDER AND DECISION REFERENCES

Order or Decision	Abbreviation
Telecommunications Act of 1996, Pub. L, No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et. seq.	*(The Act)*
In the Matter of SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to § 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, (rel. June 30, 2000)	(*SBC Texas Order*)
In the Matter of Application of Bell Atlantic New York for Authorization Under § 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (rel. Dec. 22, 1999).	(*Bell Atlantic New York Order*)
In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298 (rel. Aug. 19, 1997).	(*Ameritech Michigan Order*)
In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc., for Provision of In-Region, Inter-LATA Service in Louisiana, Memorandum Opinion and Order, CC Docket No. 98-121, 13 FCC Rcd 20599.	*(Second BellSouth Louisiana Order)*
In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, rel. Aug. 8, 1996).	*(Local Competition First Report and Order)*
In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, 11 FCC Rcd at 19446-47 (rel. Aug. 8, 1996).	(*Local Competition Second Report and Order*)

Order or Decision	Abbreviation
In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Order on Reconsideration, CC Docket No. 96-98, CC Docket No. 95-185, FCC 99-266, (rel. Oct. 26, 1999).	(*Order on Re-consideration)*
In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999).	(*UNE Remand Order*)
In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, CC Docket No. 96-98, FCC 99-370, (rel. Nov. 24, 1999)	*(Supplemental Order)*
In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, FCC 99-38, 14 F.C.C.R. 3689 (1999).	*(ISP Order)*
In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, CC Docket No. 98-147.	*(First Advanced Services Order)*
FCC Report and Order, Administration of the North American Numbering Plan, CC Docket 92-237, released July 13, 1995.	*(NANP Order)*
Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998), *vacated in part, Fulf Power Company v. FCC,* 208 F.3d 1263 (11th Cir. 2000)	*(Pole Attachment Tele-communications Rate Order)*
Competitive Telecommunications Ass'n v. FCC, 177 F.3d 1068 (8th Cir. 1997)	*(8th Circuit)*
Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997)	*(Iowa Utils v. FCC)*
U S WEST Communications, Inc. v. Robert J. Hix, et al., Civil Action No. 97-D-152, Findings of Fact & Conclusions of Law in Connection with Dark Fiber Issue Heard At Hearing on Dec. 21, 1998, dated April 14, 2000.	*(U S WEST v. Hix, et al.)*

Order or Decision	**Abbreviation**
U S WEST Communications, Inc. v. Robert J. Hix et al., Civil Action No. 97-D-152, Order Granting MCI Relief on Count Nine of Its Complaint in Case NO. 97-D-2047, dated April 23, 2000.	*(U S WEST v. Hix, et al.)*
In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance With § 271(C) of the Telecommunications Act of 1996. Docket No. 97I-198T, Decision No. C99-1328 (mailed Dec. 7, 1999).	*(Order on Notice)*
In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance With § 271(C) of the Telecommunications Act of 1996. Docket No. 97I-198T, Decision No. C00-420 (mailed April 25, 2000).	*(First Procedural Order)*
In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance With § 271(C) of the Telecommunications Act of 1996. Docket No. 97I-198T, Decision No. R00-612-I (mailed June 5, 2000).	*(Second Procedural Order)*
In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration Pursuant to U.S. Code Sec. 252(B) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with U S WEST Communications, Inc., Docket No. 00B-011T, Decision No. C00-479 (mailed May 5, 2000)	*(Sprint Arbitration)*
Public Utilities Commission of the State of Colorado; "Rules Prescribing the Provision of Emergency 9-1-1 Services for Emergency Telecommunications Service Providers, Basic Local Exchange Carriers;" 4 CCR 723-29.	*(9-1-1 Rules)*
National Emergency Number Association Standards; NENA-03-001	*(NENA Standards)*
Mountain States Tel. & Tel. Co. v. PUC of Colorado, 576 P. 2d 544, 547 (Colo. 1978)	
City of Montrose v. PUC of Colorado, 629 P. 2d 619, 622 (Colo. 1981).	

APPENDIX D

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LIST OF EXHIBITS

Exhibit	Exhibits Identified at July 24-27, 2001 Workshop
7-Qwest-1	Brunsting Supplemental Affidavit June 4, 2001
7-Qwest-2	Brunsting Rebuttal Affidavit July 9, 2001
7-Qwest-3	Schwartz Affidavit June 4, 2001
7-Qwest-4	Schwartz Rebuttal Affidavit July 9, 2001
7-Qwest-5	"Conducting Business – 272"
7-Qwest-6	Qwest Corporations 10-K (Auditor's Opinion)
7-Qwest-7	Qwest LD Internet Posting Record
7-Qwest-8	Qwest Communications Corp. Internet Posting Record
7-Qwest-9	Qwest LD 272 Affiliate Transactions
7-Qwest-10	Qwest Communications Corp. 272 Affiliate Transactions
7-Qwest-11	Multistate 272 transcript June 7, 2001 public version
7-Qwest-12	Multistate 272 transcript June 7, 2001 confidential version
7-Qwest-13	Multistate 272 transcript June 8, 2001 public version
7-Qwest-14	Multistate 272 transcript June 8, 2001 confidential version
7-ATT-15	Skluzak Affidavit June 25, 2001
7-Staff-16	Nielsen and Trogonoski Comments on 272 June 25, 2001
7-Qwest-17	Teitzel Affidavit June 4, 2001
7-Qwest-18	Teitzel Rebuttal Affidavit July 9, 2001
7-Qwest-19	McDaniel Supplemental Affidavit June 4, 2001
7-Qwest-20	McDaniel Rebuttal Affidavit July 9, 2001
7-Qwest-21	DLT-1C updated to June 4, 2001 (confidential)
7-Qwest-22	Discovery Response from AT&T (confidential)
7-Qwest-23	Discovery Response from McLeodUSA (confidential)
7-Qwest-24	Discovery Response from XO (confidential)
7-Qwest-25	Discovery Response from PacWest (confidential)

Exhibit	Exhibits Identified at July 24-27, 2001 Workshop
7-Qwest-26	Errata Discovery Response from WorldCom (confidential)
7-Qwest-27	Discovery Response from Sprint (confidential)
7-ATT-28	Rasher Affidavit June 25, 2001
7-ASCENT-29	ASCENT Comments June 25, 2001
7-PacWest-30	Sumpter Testimony June 25, 2001
7-WCOM-31	Levis Testimony June 25, 2001
7-OCC-32	OCC Bullet Points June 26, 2001
7-Public-33	Public Comments signed by Swinehart June 27, 2001
7-Qwest-34	News from TRAC (5-8-01) "Savings Mount for New York Customers"
7-Qwest-35	FCC News Release and Study of FCC Local Phone Competition (5-21-01)
7-Qwest-36	Non-confidential summary of data responses
7-Qwest-37	Confidential data response summary
7-Qwest-38	Breakdown of Qwest's Colorado Access Line Chart
7-Qwest-39	Qwest information on its own CLEC activities
7-Staff-40	Economic Report on "Contestability" vs. Competition
7-Qwest-41	Peter Huber Case Study "Telecommunications Competition in CT"
7-Qwest-42	Hausman Article "Effect of BOC Entry into InterLATA in NY and TX"
7-Qwest-43	FCC-CCB Statistics of LD Telecommunications Industry (1-24-01)
7-Staff-44	Denver Post Advertisement
7-Qwest-45	National DA FCC order – FCC 99-133
7-ATT-46	Pennsylvania's Code of Conduct
7-WCOM-47	Report from FCC on Trends as of 2000

APPENDIX E

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LIST OF ACRONYMS

Acronym	Meaning
ADSL	Asymmetric Digital Subscriber Loop
AIN	Advanced Intelligent Network
ALI	Automatic Location Identification
ALI/DBMS	Automatic Location Identification/Database Management System
AMSC	Account Maintenance Support Center
ASR	Access Service Request
ATIS	Alliance for Telecommunications Industry Solutions
ATM	Asynchronous Transfer Mode
BFR	Bona Fide Request
CCSACS	Common Channel Signaling Access Capability Service
CEMR	Customer Electronic Maintenance and Repair
CFA	Connecting Facility Arrangement
CICMP	Co-Provider Industry Change Management Process
CLLI	Common Language Location Indicator
CNUM	Customer Number
COIL	Colorado Issues List
COT/NT	Central Office Technician/Network or Field Technician
CPAP	Colorado Performance Assurance Plan
CPE	Customer Premises Equipment
CR	Change Request

Acronym	Meaning
CRBSAB	Customer Repair Center Answering Bureau
DD	Due Date
DID	Direct Inward Dialing
DLC	Digital Loop Carrier
DLR	Design Layout Report
DSLAM	Digital Subscriber Line Access Multiplexer
DTT	Direct Trunk Transport
EAS	Extended Area Service
EB-TA	Electronic Bonding – Trouble Administration
EDI	Electronic Data Interexchange
EF	Entrance Facility
ETC	Eligible Telecommunications Carrier
FDP	Fiber Distribution Panel
FDT	Frame Due Time
FOC	Firm Order Confirmation
FOT	Fiber Optic Terminal
GUI	Graphics User Interface
HFPL	High Frequency Portion of the Loop
HVAC	Heating, Ventilation, and Air-conditioning
ICB	Individual Case Basis
ICDF	Interconnection Distribution Frame
IDLC	Integrated Digital Loop Carrier
IDSL	Integrated Digital Subscriber Line
IMA	Interconnection Mediated Access
INA	Integrated Network Access
INP	Interim Number Portability

Acronym	Meaning
IOF	Interoffice Facilities
IPG	Integrated Pair Gain
IRRG	Interconnection and Resale Resource Guide
ISDN	Integrated Services Digital Network
ISIG	Interconnection Service Interval Guide
ITP	Interconnection Tie Pairs
LATA	Local Access and Transport Area
LCA	Local Calling Area
LERG	Local Exchange Routing Guide
LFACS	Loop Facilities Administration and Customer Service System
LIS	Local Interconnection Service
LMOS	Loop Maintenance Operations System
LNP	Local Number Portability
LOA	Letter of Authorization
LPC	Loop Provisioning Center
LSA	Line Side Attribute, also known as the 10-digit unconditional trigger
LSMS	Local Service Management System
LSPLIT	Line Splitting
LRN	Location Routing Number
LSR	Local Service Request
MDF	Main Distributing Frame
MLT	Mechanized Loop Test
MSA	Metropolitan Statistical Area
MTE	Multiple Tenant Element
NANC	North American Numbering Plan Administrator
NANPA	North American Numbering Plan Administrator

Acronym	**Meaning**
NC/NCI	Network Channel/Network Channel Interface Codes
NEBS	Network Equipment Building System
NENA	National Emergency Number Association
NID	Network Interface Device
NIMC	Network Installation and Maintenance Committee
NIRC	Network Reliability and Interoperability Council
NPAC	Number Portability Administration Center
OBF	Ordering and Billing Forum
OSS	Operations Support System
PAP	Performance Assurance Plan
PCAT	Product Catalog (New IRRG Nomenclature)
PIC	Primary Interexchange Carrier
PID	Performance Indicator Definitions
PLU	Percent Local Usage
POA	Proof of Authorization
POI	Point of Interconnection (or Interface)
POLR	Provider of Last Resort
QCCC	Quality Coordinated Control Center
QPF	Quote Preparation Fee
RCHC	Repair Call Handing Center
ROC	Regional Oversight Committee
RSU	Remote Switching Unit
SGAT	Statement of General Terms and Conditions
SMC	Spectrum Management Classes
SMS	Service Management Systems
SOA	Service Order Administration

Acronym	Meaning
SOP	Service Order Processor
SPID	Service Provider Identification
SPOT	Single Point of Termination
SRP	Special Request Process
STP	Signaling Transfer Points
TAG	Common Language Technical Advisory Group
TELRIC	Total Element Long Run Incremental Costs
TGSR	Trunk Groups Servicing Request
UDIT	Unbundled Dedicated Interoffice Transport
UDLC	Universal Digital Loop Carrier
UNE	Unbundled Network Element
UNE-P	UNE-Platform
WAFA	Workforce Administration Facilities Assignment
xDSL	Digital Subscriber Line of Unspecified Bandwidth