

Decision No. C02-406

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS,
INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF
1996.

**COMMISSION DECISION REGARDING STATEMENT OF
GENERALLY AVAILABLE TERMS AND CONDITIONS,
CHANGE MANAGEMENT PROCESS IMPASSE ISSUE,
AND SGAT COMPLIANCE WITH § 271**

Mailed Date: April 11, 2002
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TABLE OF CONTENTS

I. BY THE COMMISSION.....	3
A. Background.....	3
II. Discussion.....	5
A. SGAT Language.....	5
1. SGAT Sections 7.3.4.3 and 7.3.4.4 and SGAT Exhibit Z...	5
2. SGAT Sections 2.3.1 and 12.0.....	5
3. SGAT Sections 9.2.2.8 and 9.2.2.2.1.1.....	5
4. SGAT Exhibit C (Maintenance and Repair Intervals For Unbundled Loops).....	7
5. SGAT section 9.3.6.4.1 and SGAT Exhibit A.....	8
6. SGAT Section 9.3.5.4.1.1.....	8
7. MTE Access Protocol.....	9
8. SGAT Section 2.2.....	10
9. SGAT Section 5.8.2.....	10
10. SGAT Section 5.4.6.....	10
11. SGAT Sections 11.34.1 to 11.37.....	11

12.	Access to Inter-Network Calling Name Assistance (ICNAM) Database.....	11
13.	SGAT Section 8.2.6.3.....	11
14.	SGAT Section 8.2.1.23.....	12
15.	SGAT Section 8.4.1.9.....	13
16.	Section 9.4 (Generally) Regarding Line Sharing.....	13
17.	SGAT Section 9.2.2.2.1.1.....	14
18.	SGAT Sections 9.2.2.16 and 9.23.1.7.....	14
19.	Mechanized Loop Testing (MLT).....	14
20.	SGAT Sections 9.20.2.1.2 and 9.20.2.1.3.....	15
21.	SGAT Section 7.3.4.4.....	15
22.	SGAT Section 7.3.6.2.....	15
23.	SGAT Sections 10.8.2.6 and 10.8.1.5.....	16
24.	SGAT Sections 7.1.2.1 and 7.3.2.1.1.....	16
25.	Review of Technical Publications and The Wholesale Product Catalogue (PCAT).....	17
26.	Definition of The Loop.....	18
27.	SGAT Exhibit C (Interval For Provisioning Loops That Require Conditioning).....	18
28.	SGAT Section 10.2.5.3.1.....	19
B.	Certification.....	20
C.	Comments and Arguments Beyond Scope of This Decision.....	21
D.	Future Filings.....	21
E.	Commission Decision Regarding SGAT Compliance With § 271.22	
F.	Change Management Process Impasse Issue.....	22
G.	AT&T Motion.....	27
III.	ORDER.....	27

I. BY THE COMMISSION

A. Background

1. On November 20, 2001, Qwest Corporation (Qwest) filed its comments demonstrating satisfaction of the requirements of § 271. On December 21, 2001, Qwest filed its Seventh Revised Statement of Generally Available Terms and Conditions (SGAT) in this docket. Qwest thereafter filed supplemental consensus language changes to that SGAT and an errata notice.¹ Qwest asserted that the SGAT, including the supplemental changes, complies with the requirements of § 271 of the federal Telecommunications Act of 1996 (the Act) insofar as those requirements are addressed in the SGAT.²

2. The other participants in this docket were given the opportunity to comment on, and to respond to, Qwest's filing and to request that the Commission review impasse issue

¹ Qwest supplemented the December 21 SGAT on January 7, February 6, February 26, and March 8, 2002. Qwest filed its errata notice on March 13, 2002. The Commission considered the December 21 SGAT as amended and supplemented by the subsequent filings.

² The Regional Oversight Committee (ROC) operations support systems (OSS) test now underway also addresses Qwest's compliance with provisions contained in § 271 of the Act. This Commission will consider the adequacy of the ROC-OSS test, and issue a decision concerning the ROC-OSS test, at a later time.

decisions made by the hearing commissioner.³ Several participants⁴ filed written comments in which they both addressed the SGAT, as filed, and proposed new or additional language to address issues they raised. Qwest replied to the participants' comments.

3. In addition to providing comment and argument concerning the sufficiency of the SGAT, Qwest and the other participants presented arguments concerning an issue that arose in the Change Management Process (CMP) redesign process. This issue reached impasse in the CMP redesign, and the parties seek Commission resolution of the issue.

4. The Commission held a hearing on, and heard argument concerning, the SGAT and the CMP redesign impasse issue on February 26-28 and March 1, 2002. This hearing was transcribed to submit as part of the § 271 record to the Federal Communications Commission (FCC).

³ In this docket the hearing commissioner has issued numerous decisions on SGAT language-related issues that reached impasse. See Decisions No. R01-651-I and No. R01-768-I (first workshop); No. R01-848-I and No. R01-990-I (second workshop) No. R01-1015-I, No. R01-1094-I, and No. R01-1095-I (third workshop); No. R01-846-I and No. R01-990-I (fourth workshop); No. R01-1141-I and No. R01-1253-I fifth workshop); No. R01-1193-I and No. R01-1283-I (sixth workshop); and No. R02-318-I (seventh workshop). In addition, the hearing commissioner issued two decisions addressing Qwest's demonstration of compliance with the hearing commissioner's resolution of impasse issues. See Decisions No. R02-3-I and R02-115-I.

⁴ The Office of Consumer Counsel (OCC) and Covad Communications Company (Covad) filed comments. AT&T Communications of the Mountain States, Inc., TCG Colorado, and WorldCom, Inc. (Joint Commenters) filed joint comments.

5. The participants' positions and arguments are set out in detail in their filings and in the transcript of the hearing. They will not be repeated here.

II. DISCUSSION

A. SGAT Language.

1. SGAT Sections 7.3.4.3 and 7.3.4.4 and SGAT Exhibit Z.

These sections have been amended to include consensus language from the Montana proceeding. The Commission finds the amended language satisfactory. Qwest has not yet provided SGAT Exhibit Z for review. Qwest shall provide this Exhibit at the time it files its final SGAT for Commission consideration. See discussion below.

2. SGAT Sections 2.3.1 and 12.0.

In the February 26, 2002, filing, section 2.3.1 has been deleted. The Commission finds this appropriate. Section 12 contains consensus language that is satisfactory.

3. SGAT Sections 9.2.2.8 and 9.2.2.2.1.1.

a. These sections address competitive local exchange carrier (CLEC) access to Qwest databases and internal records as part of the preordering process. The Joint Commenters request that the Commission reverse the decision of the hearing commissioner, which allowed mediated access, and require direct CLEC access to Qwest's databases. The Joint

Commenters assert that this access is necessary to ensure parity in access to the data and to ensure parity in the accuracy of the underlying data. The Commission affirms the decision of the hearing commissioner.

b. The Federal Communications Commission (FCC) has determined that an incumbent local exchange carrier (ILEC), at a minimum, must provide a requesting CLEC with the same underlying information the ILEC has in its databases or other internal records. In short, in the context of the preordering process, Qwest must provide any underlying information in any of its databases or internal records that can be accessed by any Qwest personnel. The ROC-OSS test has addressed this very issue. The Master Test Plan provides for third-party evaluation of whether, in the context of the preordering process, Qwest furnishes to CLECs the underlying data available to Qwest personnel. CLECs were intimately involved in determining the scope of the Master Test Plan and the criteria or standards to be applied. Qwest satisfactorily completed this third-party test in January, 2002. Thus, whatever data are available to Qwest personnel are also available to a requesting CLEC's personnel.

4. SGAT Exhibit C (Maintenance and Repair Intervals For Unbundled Loops).

a. The Joint Commenters request that the Commission reverse the decision of the hearing commissioner, which permits a 24 hour interval, and require an 18-hour interval to restore service. The Joint Commenters assert that this change is necessary to ensure that they will meet their retail service obligations, as contained in the Commission's rules pertaining to retail service. The Commission affirms the decision of the hearing commissioner.

b. The ROC OSS test Performance Indicator Definition (PID) MR-3 (out of service) establishes a 24-hour interval, measured from the time the CLEC reports the trouble to the time the CLEC closes the trouble ticket, within which Qwest must restore service. Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-43-6.2, which governs carrier-to-carrier service, requires Qwest to restore service within 24 hours. On the retail side, Commission Rule 4 CCR 723-23-22.2 requires carriers to clear trouble within 24 hours. The start time for the repair is identical for Qwest and the CLECs. As a practical matter, a CLEC should determine that the problem has been fixed before it closes the trouble ticket with Qwest.

c. According to the Colorado performance results filed with this Commission, Qwest has been meeting the

MR-3 PID measure. In addition, the MR-3 PID is a Tier 1A measurement under the Colorado Performance Assurance Plan (CPAP). Thus, if a problem should develop, Qwest's poor performance will result in the highest level of payments to CLECs.

5. SGAT section 9.3.6.4.1 and SGAT Exhibit A.

a. This concerns Qwest's nonrecurring rate for conducting an inventory of CLEC facilities within a Multiple Tenant Environment (MTE). The Commission finds that no change is required. It appears that Qwest is performing a service that is required when a CLEC seeks access to a MTE. Specifically, it appears that Qwest must inventory CLEC facilities to determine availability and adequacy. Qwest should be able to charge for the service it performs when it inventories CLEC facilities at a specific location.

b. The October 29, 2001, version of SGAT Exhibit A shows a nonrecurring rate of \$287.96 and indicates that this rate will be trued-up in Phase II of Docket No. 99A-577T, the wholesale pricing docket. In that proceeding, CLECs can address whether the nonrecurring rate contained in SGAT Exhibit A is appropriate and can seek a true-up.

6. SGAT Section 9.3.5.4.1.1.

a. There is an inconsistency between SGAT section 9.3.5.4.1 and SGAT section 9.3.5.4.1.1, both of which

speak to the interval between CLEC submission of a MTE Ownership Request and CLEC access to a MTE. SGAT section 9.3.5.4.1.1 provides for a 20 day interval, and SGAT section 9.3.5.4.1 provides for a 10 day interval.

b. The Commission finds that SGAT section 9.3.5.4.1.1 should be changed to state that Qwest has 10 days within which to respond to a CLEC MTE Ownership Request and that, if Qwest fails to respond within that 10 day period, CLEC can access the on-premise wiring. This change makes the two SGAT sections consistent, clarifies Qwest's obligations, and eliminates what could be an opportunity for anti-competitive activity by Qwest.

7. MTE Access Protocol.

a. There are two issues concerning the MTE Access Protocol: first, was the hearing commissioner correct not to adopt a 1969 engineering standard that permitted wires to be capped off and left dangling in a MTE; and, second, is the language on page 7 of the MTE Access Protocol acceptable.

b. With respect to the first issue, the Commission affirms the hearing commissioner decision that the 1969 engineering standard does not provide sufficient protection of Qwest's network and personnel. The Commission agrees with the hearing commissioner that Qwest can take appropriate actions to protect its network.

c. Turning to the second issue, the Commission first notes that this section appears to be misnamed to the extent it lists activities Qwest may undertake when it receives a local service request (LSR). Second, Commission finds that the "CLEC Responsibilities" section does not clearly state that a CLEC can have access to an MTE immediately upon the CLEC's submission of an appropriate LSR. To clarify that a CLEC can have immediate access and that Qwest has a right to perform the three functions listed in the "CLEC Responsibilities" section, Qwest must add the following sentence after the three bullet points: "The Qwest activities outlined above do not have to take place before the CLEC obtains access to a Qwest owned terminal."

8. SGAT Section 2.2.

The consensus language contained in the March 8, 2002, filing is satisfactory. The Commission will not adopt the language change suggested by AT&T because it is contrary to Decision No. R01-1283.

9. SGAT Section 5.8.2.

The consensus language contained in the March 8, 2002, filing is satisfactory.

10. SGAT Section 5.4.6.

The consensus language contained in the March 8, 2002, filing is satisfactory.

11. SGAT Sections 11.34.1 to 11.37.

The March 8, 2002, filing deleted a duplicative page. The filing is satisfactory.

12. Access to Inter-Network Calling Name Assistance (ICNAM) Database.

In his decision on the impasse issues arising from the first workshop, the hearing commissioner determined that Qwest could provide CLEC access to the ICNAM database on a "per dip" basis. See Decisions No. R01-651-I and No. R01-768-I. WorldCom asks this Commission to reverse that decision and to allow CLECs to have bulk access to the ICNAM database. As the hearing commissioner found, the FCC decisions on this topic speak in terms of "per dip" access. In addition, WorldCom has not presented any new information that the Commission finds compelling. Accordingly, the Commission affirms the decision of the hearing commissioner.

13. SGAT Section 8.2.6.3.

a. The Commission finds that this section is satisfactory as written. The hearing commissioner required Qwest to amend SGAT sections 8.1.1.8, 8.2.7, and 8.4.6 to remove the word "physically", and also to amend any other SGAT section that restricted, or implied restrictions on, remote collocation to physical arrangements only. See Decision No. R01-848-I.

b. SGAT section 8.2.6.3 contains a reference to "physical", which the Commission finds appropriate. This section concerns adjacent collocation. If the word "physical" were removed, Qwest would be required to offer virtual collocation in adjacent structures. This would impose on Qwest an obligation to build facilities (*i.e.*, adjacent structures) for CLECs. Both the FCC and the hearing commissioner have found that there is no requirement to build unbundled network elements (UNEs) for CLECs. In the absence of a build requirement imposed by the FCC, this Commission declines to impose such a requirement on Qwest.

14. SGAT Section 8.2.1.23.

a. This section addresses when Qwest can charge for regeneration. As now worded, this section does not clearly state that Qwest must consider applicable American National Standards Institute (ANSI) standards for cable distance limitations. The Commission finds that Qwest must amend this section as follows: "... Qwest shall consider all information provided by CLEC in the Application form, including but not limited to, distance limitations of the facilities CLEC intends to use for the connection *and shall consider any applicable ANSI standards for cable distance limitations.*" This addition makes it clear that Qwest must use the ANSI cable distance limitations standard, which is an objective standard set by a third party.

This language will avoid confusion about the standard to be used.

b. The Commission finds that further amendment is not warranted. SGAT section 8.2.1.23 provides that Qwest shall use "the most efficient route and cable racking for the connection between CLEC's equipment in its collected spaces to the collocated equipment of another CLEC located in the same Qwest Premises; or to CLEC's own non-contiguous Collocation space." To the extent a CLEC believes that Qwest has not met this requirement and that ANSI standards have not been applied, or have been applied incorrectly, the CLEC can dispute the bill and, through resolution of that dispute, obtain a review.

15. SGAT Section 8.4.1.9.

The Commission directs Qwest to amend this SGAT section. In Decision No. R01-848-I, the hearing commissioner found that Qwest must accept all collocation applications filed and that the intervals may vary based on the volume of applications received. To make SGAT section 8.4.1.9 consistent with that decision and to eliminate confusion, Qwest must amend the relevant sentence to read: "Qwest shall accept more than five (5) Applications from CLEC per week per state."

16. Section 9.4 (Generally) Regarding Line Sharing.

a. The Commission finds that no changes are necessary. The hearing commissioner determined that Qwest must

offer line sharing wherever it is technically feasible and that the burden is on Qwest to establish that the requested access is not technically feasible. See Decision No. R01-1015-I. This decision is consistent with the FCC's requirements. SGAT section 9.4.1.1 accurately reflects that decision.

b. The Commission notes that the CLECs have an option available to them. They can use the *bona fide* request process to obtain a determination from Qwest about the technical feasibility of line sharing over fiber.

17. SGAT Section 9.2.2.2.1.1.

The language contains the consensus language and is acceptable.

18. SGAT Sections 9.2.2.16 and 9.23.1.7.

The language filed by Qwest on March 13, 2002, is consensus language and is satisfactory.

19. Mechanized Loop Testing (MLT).

In Decision No. R01-1141, the hearing commissioner determined that Qwest need not provide pre-order MLT. Covad requests this Commission to reverse the hearing commissioner and to require pre-order MLT. Covad asserts that MLT is necessary because it provides assurance that the loop delivered has data continuity and can support xDSL services. Covad has presented no new evidence in support of its request. In addition, the FCC has given no indication that pre-order MLT

is required. Finally, Qwest does not provide pre-order MLT for its own retail services. The Commission affirms the decision of the hearing commissioner.

20. SGAT Sections 9.20.2.1.2 and 9.20.2.1.3.

a. In Decision No. R01-1015-I, the hearing commissioner determined that Qwest need not provide unbundled access to its packet switched network. Covad requests that the Commission reverse the hearing commissioner's decision, order a new UNE not required by the FCC, and require Qwest to provide unbundled access to its packet switched network. The Commission affirms the hearing commissioner.

b. Covad has presented no new evidence in support of its request. In addition, as Covad acknowledges, the FCC has not required unbundled access to an ILEC's packet switched network. In this instance, the Commission will not create a UNE. The SGAT sections are satisfactory as written.

21. SGAT Section 7.3.4.4.

On March 11, 2002, AT&T proposed consensus language which Qwest accepted in its March 13, 2002, filing. The proposed language is satisfactory.

22. SGAT Section 7.3.6.2.

On March 11, 2002, AT&T proposed consensus language which Qwest accepted in its March 13, 2002, filing. The proposed language is satisfactory.

23. SGAT Sections 10.8.2.6 and 10.8.1.5.

These SGAT sections address CLEC access to Qwest's right of way (ROW) agreements with third-party private landowners. Of particular interest to CLECs is access to Multiple Tenant Environment ROW agreements which are now in effect and which are not recorded (*i.e.*, not available through public records). The Commission finds that, to effectuate the Act, it is not necessary to interfere in the existing bilateral ROW agreements between Qwest and the third party landowners who are not regulated. CLECs do not need access to Qwest's ROW agreements before they approach the landowners. The Commission further finds that it is not prudent to put these access rights in SGAT provisions. Thus, no change to these SGAT sections is necessary.

24. SGAT Sections 7.1.2.1 and 7.3.2.1.1.

a. In Decision No. R01-848, the hearing commissioner determined that Qwest need not extend its network to accommodate a CLEC's requested point of interconnection (POI). Therefore, Qwest may require the entrance facility method of interconnection to connect Qwest's serving wire center with the CLEC's switch or POI. One result of this decision is that Qwest may charge CLECs for the loop and transport between Qwest's serving wire center and the CLEC's switch or POI. AT&T asks the Commission to reverse this decision of the hearing

commissioner. The Commission finds that the present SGAT language is satisfactory.

b. The basic issue is cost causation. If the CLEC determines, as it can, the location of its POI, the CLEC should bear the financial consequences that flow from that siting decision. The hearing commissioner's decision recognized this fact. AT&T presented no new information. No change is required.

25. Review of Technical Publications and The Wholesale Product Catalogue (PCAT).

CLECs asserted that, before the Commission approves the SGAT, there must be a review of the technical publications and the PCAT to be sure that the underlying documentation is consistent with the SGAT. The Commission does not agree. First, there is a SGAT provision which states that the SGAT governs and prevails over all other documentation. Second, to the extent this is a concern, the Change Management Process is addressing it. The Commission is aware that, as documents are changed, they are distributed to the CMP participants and to the § 271 workshop participants. Through this process the documents, among other things, are reviewed for consistency with the SGAT. Thus, the Commission finds that it is not necessary to decide this issue at this time, and that

there is no need for language in the SGAT, because this issue is being addressed in CMP.

26. Definition of The Loop.

CLECs assert that the loop should include the splitter as part of the features and functions of the loop in those instances in which the splitter is already present in Qwest's network. The Commission will not order Qwest to include the splitter in the definition of the loop. First, the splitter is not necessary to provide basic local exchange service; it is necessary only to provide advanced services, such as xDSL. Second, the splitter is not included in the rate for the loop approved by the Commission in Docket No. 99A-577T, the wholesale costing proceeding. There is a separate rate element for the splitter. Third, the FCC is now investigating whether the splitter is or is not part of the loop. Should the FCC determine that the definition of the loop must include the splitter, Qwest can change the SGAT language, and the appropriate rate elements in SGAT Exhibit A, at that time.

27. SGAT Exhibit C (Interval For Provisioning Loops That Require Conditioning).

There is a Performance Indicator Definition for the interval within which Qwest must provision a loop that requires conditioning. See PID OP-3. Under this PID, the interval for provisioning such loops is 15 business days. Covad

asked this Commission to shorten this interval because Qwest consistently provisions these loops in six or fewer days. The Commission will not change the provisioning interval. The provisioning interval contained in the PID was developed in a collaborative process which included CLECs, among others. In addition, shortening the provisioning interval would create a perverse incentive to Qwest: To avoid having the interval "tightened" (*i.e.*, shortened), Qwest would reduce its level of performance whenever it was provisioning a service in less time than permitted under a PID interval.

28. SGAT Section 10.2.5.3.1.

a. This section pertains to local number portability (LNP) and the preconditions for Qwest's disconnection of an end user's service. As written, this section states that "Qwest agrees to try to ensure that the End User's service is not disconnected" until specified events occur. (Emphasis added.) The Commission finds that this language is unsatisfactory. End users are directly and adversely affected when a complete disconnection occurs due to a LNP failure. CLECs are correct when they state that end users whose telephone service is disconnected when they switch carriers are likely to blame the new carrier (*i.e.*, the CLEC) for the disconnection. Thus, it is imperative that the SGAT establish a clear liability rule rather than the best efforts

obligation it now contains. There is simply too great an opportunity for an anti-competitive effect and impact in the absence of a firm liability rule.

b. The Commission finds that SGAT section 10.2.5.3.1 as now worded is unsatisfactory. To make this section satisfactory, Qwest must delete the phrase "to try" from the language quoted above.

B. Certification.

The Joint Commenters requested that the Commission require Qwest to file an affidavit certifying that it has included all consensus language in the SGAT and that it will correct any omission or error immediately upon its discovery. On March 1, 2002, counsel for Qwest, Mr. Charles Steese, stated:

. . . to the extent that we have agreed to consensus language and we have some mistake, would we correct it? Absolutely. To the extent there is consensus language from another state, that is a little more complex because there's times that an individual state - it's rare - has some unique requirement that might force that. To the extent that it's consensus language that we agreed to bring to other states, would we bring it? Absolutely.

The Commission accepts this representation and promise in lieu of the requested affidavit. The Commission expects Qwest to comply with its counsel's statement in all particulars. In addition, the Commission expects Qwest to make all corrections necessary to clarify the SGAT language -- without, of course,

modifying the substance -- and to remove conflicts in SGAT language as they are discovered.

C. Comments and Arguments Beyond Scope of This Decision.

The participants made a number of arguments addressing issues not yet ripe for Commission decision. These include: the state of competition in Colorado's local exchange telecommunications market, the public interest, the Change Management Process in general, the effect of Qwest's entry into the interLATA market on the local exchange and long-distance markets, the Colorado Performance Assurance Plan, the Stand Alone Test Environment, and the ROC-OSS test. The Commission will hold at least one additional hearing, and at least two additional decision meetings, to address these and other issues as they pertain to the Commission's recommendation to the FCC concerning Qwest's entry into the interLATA market. The Commission will issue additional decisions which address these remaining areas.

D. Future Filings.

To this date Qwest has not filed a complete SGAT with this Commission. We have received and reviewed the language of the SGAT itself, but we have not seen all exhibits to the SGAT. In addition, as discussed above, we understand that Qwest will make changes to the SGAT language as review of the SGAT continues. To provide this Commission and interested persons

the opportunity to review the final SGAT, including all exhibits, Qwest must file with this Commission the SGAT as it will be filed with Qwest's § 271 application to the FCC. The Commission will issue a further procedural order in this docket. That order will set the date for Qwest's filing of its complete SGAT, including all exhibits. The SGAT filed in compliance with that Commission order will be final for § 271 review purposes in Colorado; and absent further order of the Commission, Qwest will not be able to make changes to the language or the exhibits after that filing.

E. Commission Decision Regarding SGAT Compliance With § 271.

The Commission preliminarily finds that, if Qwest makes the language changes discussed in this decision, the SGAT will meet the requirements of § 271 of the Act. The Commission will reserve final judgment concerning the SGAT until it reviews the yet-to-be-filed final version, including all exhibits.

F. Change Management Process Impasse Issue

1. In addition to the SGAT language, the parties addressed the only issue that had reached impasse, at the time of the filings, in the Change Management Process redesign process: the definition of Regulatory Change Request to be used in the prioritization process for change requests. The

Commission finds that the definition proposed by Qwest should not be adopted.

2. In the CMP any carrier, including Qwest, which desires a change to an interface, or other change which requires software development, must present a Change Request (CR) through the CMP. After Qwest provides specified information concerning all CRs submitted for consideration, the CMP participants "rank" each CR for inclusion in the next software release. This process is necessary because there are limited resources available for the development of each software release. In the event there are insufficient resources to accommodate all CRs in a given release, this ranking process determines which CRs are included and which are not.

3. The CMP redesign process participants have determined that a Regulatory Change Request, a special type of CR, will not be subjected to the ranking process. In view of the importance of the Regulatory Change Request, it will be included automatically in the software release. The CMP participants agreed on this definition of Regulatory Change Request:

A Regulatory Change is Mandated by regulatory or legal entity, such as the FCC, a state commission/authority, or state and federal courts. Regulatory Changes are not voluntary, but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either a CLEC or Qwest may initiate the change request.

4. Qwest proposed to expand the definition of Regulatory Change Request to include a change to a Performance Indicator Definition included in a Performance Assurance Plan if the change is necessary to improve Qwest's performance under the PID. This would reduce Qwest's potential liability under the PAP. The CLEC CMP redesign process participants objected to this expanded definition. The matter reached impasse, and was brought to the Commission for resolution. The Commission finds that the Qwest proposal should not be adopted. Our decision prevents CLEC-originated CRs from being disadvantaged in the prioritization process and puts CRs submitted by Qwest on an equal footing with CRs submitted by CLECs.

5. First, there is a potential for harm to the CLECs if the Qwest definition is adopted. Qwest could consume an unlimited percentage (up to 100%) of a release by identifying its CRs as Regulatory Change Requests. In that event, implementation of CLEC-originated CRs could get delayed to a later software release even if those CRs, were they implemented, could gain efficiencies for the CLECs and cost them less money than the Qwest-originated Regulatory Change Requests. There is also the potential for confusion because, as we understand it, the persons most knowledgeable about the PIDs are not the participants in the CMP. Yet, the CMP participants would be the

individuals considering the PID-based Regulatory Change Requests, if Qwest's proposed definition were adopted.

6. Second, Qwest has alternative methods available to get its PID-based CRs included in a software release. Qwest can present these CRs for ranking in the normal course of the CMP software development procedure. In that process, it is most likely that CMP CLEC participants will place the PID-related CRs high in the ranking because such CRs are changes that directly affect the CLECs' business. The CLECs participated in the development of the PIDs; and the PIDs were developed precisely because they measure activities deemed most important by the CLECs. In addition, Qwest can request dispute resolution either under the CMP or the CPAP, if the CLECs consistently do not prioritize the PID-related CRs high enough to include them for packaging in a release. Further, if a PID-related CR is of sufficient importance, Qwest can use the Special Change Request Process (SCRCP) to assure that it is included in a release. Under the SCRCP, any carrier, including Qwest, can pay additional monies not already included in the resource allocation for a release to include its CR. This guarantees the CR will be in the release but requires that the carrier "foot the bill" for including the CR.

7. Third and finally, the definition of a Regulatory Change Request is clear that such a change must be mandated by a

regulatory entity or a court. Changes to PAP-related PIDs, which are the focus of Qwest's proposed definition, do not fit this definition. Qwest has repeatedly and consistently maintained that its entering into a PAP is a voluntary undertaking. See Docket No. 01I-041T. The contrary position argued here (*i.e.*, that the PAP mandated) is not availing.

8. Resolution of the impasse issue does not end the inquiry. The Commission understands that software Release 11.0 is due to be released in June, 2002, and contains two PID-related CRs included because they were Regulatory Change Requests under Qwest's proposed definition. These two PID-related CRs are for upgrades to the systems flow-through to meet the requirements of PO-2A and PO-2B, which have dates-certain by which Qwest must increase the amount of flow-through in its ordering systems. See Commission-approved Colorado PAP, Attachment A. CLECs and Qwest have already prioritized (*i.e.*, ranked) the CRs submitted for inclusion in Release 11.0. It appears that CLECs were content, for the most part, to permit these PID-related CRs to be treated as Regulatory Change Requests because, as one would expect, CLECs benefit from increased flow-through capability. Given the timing of the impasse issue reaching the Commission and the fact that development of Release 11.0 is well underway, we see no reason to require Qwest to redo the prioritization for that release.

In the future, however, Qwest must submit PID-related CRs for ranking as Qwest-originated CRs according to the CMP prioritization process.

G. AT&T Motion

On March 8, 2002, AT&T filed a Renewed Motion to Strike Qwest's Exhibit 16 and Its Attorney's Oral Argument Associated Therewith or in the Alternative to Bind Qwest to its Attorney's Representations and Request for Waiver of Response Time, admitted into the record during the Commission's hearing. We deny the motion. The exhibit is merely demonstrative; it is not substantive evidence. We based our decision on the evidentiary record. To the extent there may be inconsistency between the record and the exhibit, the Commission relied on the evidentiary record.

III. ORDER

A. The Commission Orders That:

1. The Commission it will make a favorable recommendation to the Federal Communications Commission concerning the compliance with § 271 of the Act of Qwest's Statement of Generally Available Terms and Conditions *provided* that Qwest makes the language changes specified in this decision. The Commission will make a final determination concerning the Statement of Generally Available Terms and

Conditions when it has the complete and final SGAT, including all exhibits, before it.

2. The definition of Regulatory Change Request proposed by Qwest for use in the Change Management Process is not adopted and shall not be implemented.

3. Release 11.0 may include the systems upgrades necessary to meet the flow-through requirements of PO-2A and PO-2B.

4. AT&T's Renewed Motion to Strike Qwest's Exhibit 16 and Its Attorney's Oral Argument Associated Therewith or, in the Alternative to Bind Qwest to Its Attorney's Representations and Request for Waiver of Response Time is denied. Response time is waived.

5. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DECISION MEETING
March 13, 2002**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners