

Decision No. C02-718

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 02M-260T

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IN THE MATTER OF THE COLORADO PUBLIC UTILITIES COMMISSION'S  
RECOMMENDATION TO THE FEDERAL COMMUNICATIONS COMMISSION  
REGARDING QWEST CORPORATION'S PROVISION OF IN-REGION, INTER-LATA  
SERVICES IN COLORADO.

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**COMMISSION DECISION REGARDING OSS, SECTION  
272, PUBLIC INTEREST, TRACK A, CHANGE  
MANAGEMENT PROCESS, AND DATA RECONCILIATION  
AND COMMISSION DECISION REGARDING THE  
COMMISSION'S RECOMMENDATION TO THE FEDERAL  
COMMUNICATIONS COMMISSION CONCERNING QWEST  
CORPORATION'S COMPLIANCE WITH SECTION 271**

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**I. INTRODUCTION**

A. This decision addresses the remaining criteria pertaining to the investigation into Qwest Corporation's (Qwest)

compliance with 47 U.S.C. § 271. The remaining criteria are: the fitness of Qwest's operations support systems (OSS), including data reconciliation; pricing of Qwest's wholesale offerings;<sup>1</sup> Qwest's Change Management Process (CMP); the "public interest" test of § 271(d)(3)(C) 271, Qwest's compliance with § 272 and the "Track A" of § 271(c)(1)(A).<sup>2</sup>

B. This decision also completes the Commission's assembly of Colorado's § 271 record for the Federal Communications Commission (FCC). With this decision, in conjunction with earlier Staff Workshop Reports, hearing commissioner decisions and *en banc* Commission decisions in this docket, this Commission verifies under § 271(d)(2)(B) that Qwest complies with the requirements of § 271. The Commission recommends to the FCC that Qwest be allowed to enter the in-region, inter-LATA market in Colorado.

## II. BACKGROUND

A. On April 29, 2002, Qwest filed its complete and final

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<sup>1</sup> The Commission set Qwest's wholesale prices in Docket No. 99A-577T. The Commission considers wholesale prices here for compliance with Commission Orders in 577T, and so that those prices, which were litigated in an adversarial Colorado Administrative Procedure Act proceeding, can be imported into this § 271 record.

<sup>2</sup> The Commission *en banc* considers the OSS, data reconciliation and CMP issues for the first time. The hearing commissioner already has made determinations about the public interest, § 272 and Track A. Unless noted otherwise here, the Commission endorses and relies upon the determinations from the Staff Report Volume VII and the hearing commissioner's resolution of impasse issues relating to the public interest, § 272 and Track A. See Docket No. 97I-198T, Decision Nos. R02-318-I, R02-516-I.

Statement of Generally Available Terms and Conditions (SGAT), including all exhibits. Qwest supplemented and amended this SGAT.<sup>3</sup> Qwest asserts the SGAT complies with § 271.

B. Qwest made numerous filings in support of its position that it complies with § 271. On November 11, 2001, Qwest filed Comments Demonstrating Satisfaction of the Requirements of Section 271.<sup>4</sup> On April 26, 2002, Qwest filed Comments Demonstrating Satisfaction with the FCC's Section 271 Change Management Evaluation Criteria.<sup>5</sup> On May 1, 2002, Qwest filed the Report on Data Reconciliation of Qwest's Performance Metrics, dated April 2002, prepared by Liberty Consulting Group (Liberty) for the Regional Oversight Committee (ROC) OSS test.<sup>6</sup> On May 29, 2002, Qwest filed the Regional Oversight Committee OSS Test Final Report, dated May 28, 2002. Qwest supplemented this filing on June 5, 2002. Qwest filed on May 9, 2002<sup>7</sup> its

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<sup>3</sup> See filings of May 24, and June 7 and 12, 2002. The Commission considered the April 29 SGAT, as amended and supplemented by the subsequent filings.

<sup>4</sup> Qwest supplemented these comments on February 21, April 9, April 26, May 15, and June 5, 2002.

<sup>5</sup> This filing, in turn, relied on reports about Qwest's Change Management Process, filed on February 15, as supplemented on February 21, and March 15, 2002. This filing also relied upon Qwest's Report Regarding Change Management Issues, filed February 8, 2002, and Qwest's Brief Regarding Change Management, filed April 8, 2002. See also Comments of Qwest Corporation filed May 15, 2002.

<sup>6</sup> Qwest supplemented this filing on June 5, 2002. State-specific reports on Liberty's data reconciliation activities, including those pertaining to Colorado data, are in this record.

<sup>7</sup> See also Comments of Qwest Corporation filed on May 15, 2002.

Analysis of Evaluation Criteria and Closed/Unresolved Observations and Exceptions in the ROC OSS Test to address the ROC OSS Test observations and exceptions which were closed other than satisfied.

C. Finally, Qwest submitted commercial experience data for the Commission's consideration. On May 23, 2002, Qwest filed Colorado Performance Data for May 2001 to April 2002 as Reported Under the ROC Performance Metrics.<sup>8</sup>

D. The other participants in this docket could comment on, and respond to, Qwest's filings. Several participants<sup>9</sup> filed written comments addressing the issues. Qwest replied to the participants' comments.

E. The Commission held two *en banc* workshops, one on May 7-9, 2002, and the other on June 10-12, 2002. At these workshops, the participants presented witnesses and oral argument concerning the ROC OSS test; the Change Management Process; the public interest; Qwest's compliance with § 272; Track A; Qwest's commercial performance in Colorado; and data reconciliation.

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<sup>8</sup> See also Comments of Qwest Corporation filed on May 15, 2002, and Qwest Supplemental Comments on Commercial Performance and Data Reconciliation filed on June 5, 2002.

<sup>9</sup> The Office of Consumer Counsel (OCC), Covad Communications Company (Covad), AT&T Communications of the Mountain States, Inc. (AT&T), and WorldCom, Inc. (WorldCom) filed written comments. In addition, the Commission received information provided by New Edge Network, Inc. d/b/a New Edge Networks; and Touch America, Inc.

F. KPMG Consulting (KPMG), Liberty Consulting, Hewlett-Packard Consulting (HPC), and Maxim Telecom Consulting Group (MTG)--the vendors who managed and conducted the ROC OSS test--made presentations to the Commission. Participants had the opportunity to question the vendors.

G. The participants' positions and arguments are set out in detail in their filings and in the transcripts of the Commission *en banc* workshops. They will not be repeated here.

### **III. PRICING ISSUES**

#### **A. Qwest's Motion to Amend SGAT in Compliance With Decision No. C02-636 and Request for Waiver of Response Time.**

1. On June 7, 2002, Qwest filed a motion to amend its SGAT in compliance with Decision No. C02-636. In its motion, Qwest states that changes were made to conform Exhibit A to the SGAT and Appendix A to that exhibit to the June 6, 2002, Commission decision on rehearing, reargument, and reconsideration in Docket No. 99A-577T. Qwest also corrected a pagination error in Exhibit C to the SGAT. Qwest requested that response time to the motion be waived. Qwest filed an Errata on June 12, 2002, to add two explanatory footnotes. The Errata more specifically describes application of the local switching rates represented at 9.11.1 and 9.11.2 of the Exhibit A, as well as corrects the first port and additional port rates in

accordance with Commission Decision No. C02-636, in Docket No. 99A-577T.

## 2. **Decision**

a. The Commission finds the rates filed by Qwest in Exhibit A to the SGAT and Appendix A to that exhibit comply with the Commission decisions in Docket No. 99A-577T. These rates have been found TELRIC-compliant by the Commission. Thus, the rates in Exhibit A to the SGAT comply with § 271.

b. Response time to this motion is waived.

## 3. **Discussion**

a. In its motion, Qwest represents that these specific changes were made to Exhibit A to the SGAT and Appendix A to Exhibit A:

- lowered the prices for local switching, tandem switching, and shared transport;
- corrected the rate for DS1 capable feeder;
- modified the rates for unbundled DS0 capable and higher capacity loops, in accordance with the Commission's decision on deaveraging; and,
- corrected miscellaneous language.

Qwest also corrected a pagination error in Exhibit C, the Service Interval Tables. The pagination error prevented the beginning portion of Section 2.0 of the Service Interval Table from displaying. Correction of the pagination error makes Section 2.0 to be complete.

b. The Errata filed by Qwest includes the following changes:



- At §§ 8.1.1, 8.2.1, and 8.3.1, a new footnote 10 has been added to clarify that quote preparation fees will be credited to the final space construction charge for the collocation job.
- At §§ 9.2.3.3, 9.2.3.4, 9.2.4.3, 9.2.4.4, 9.2.5.3, and 9.2.5.4, the installation option "Project Coordinated Installation" was added to the title of the rate element, consistent with § 9.2.2.9.7.3 of the SGAT. AT&T has raised concern that this new title is confusing. In response, Qwest has added footnote 11, to provide further clarification.
- At § 9.11 entitled Local Switching, the description of the "Analog Line Side Port With Features, First and Additional" product has been expanded to more clearly explain application of the rate in accordance with 47 CFR 51.319. In addition, the rates for Analog Line Side Port with Features, first port (shown at § 9.11.1) and for additional ports (shown at § 9.11.2) have been corrected in accordance with the ruling in Commission Decision No. C02-636, in Docket No. 99A-577T.

c. A review of Exhibit A to the SGAT including footnotes to it and also a review of Appendix A, which defines the rate groups for pricing, indicate that these documents are in substantial compliance with what the Commission ordered. There are some minor, textual errors that might be corrected in the future, but there is nothing in Exhibit A that would be so egregious as to make it unusable or not applicable. There are rates listed for certain elements that the Commission has not yet had a chance to review or rule upon in this Exhibit A, Appendix A. These rates will be addressed in Phase Two of Docket 99A-577T. The Commission has indicated that there will be a scheduling conference soon for Phase Two wherein the Commission will identify all rates that continue to be at issue,

what new rates will be required, and additional studies to be performed. These interim rates will be allowed to operate until the Commission finishes Phase Two.

#### **IV. PUBLIC INTEREST ISSUES**

A. A reasonable evaluation of the public interest component of a § 271 application begins with the specification of an appropriate overall criterion. That criterion may have several components. A crucial characteristic of public interest analysis is the ability of the criteria to be subjected to verification or refutation through comparison with a pertinent and reliable evidentiary record pertinent to that criterion. The public interest "test" must indeed be a test insofar as an empirical question may be addressed by reference to reliable data.

B. The criterion itself and evidence should bear directly on the issue of public interest. Public interest definitions abound; therefore, the Colorado Public Utilities Commission used a test that is similar, if not identical to, the standard articulated by the FCC in several § 271 orders. The Commission criterion is consistent with Colorado statutes and case law, also.

C. The Commission adopted a public interest standard grounded in sound economic theory and practice. The standard is

whether consumers will experience a noticeable, detectable, verifiable increase in economic well-being as a direct result and attributable consequence of Qwest entry into the inter-LATA market. The increase in economic well-being is equivocal to net aggregated benefit of consumers of the services at issue. Benefits may accrue either from local exchange market conditions or from inter-LATA market conditions, or some combination of the two. Concisely, consumer welfare, as the term is used by the Commission, is a situation where the beneficial gain to some consumers exceeds losses, if any, experienced by other consumers, aggregated over all consumers.<sup>10</sup>

D. The Commission test itself is static in nature, but the underlying concept, market structure, and institutional setting combine to form a durable, reliable, robust, and dynamic public interest test. The general standard is whether markets are open. It is a simple matter to examine a snapshot of entry barriers and market structure, conduct, and performance. However, the conditions depicted at any point in time can change. Thus, it is important to devise a scheme whereby it is not necessary continuously to monitor the conditions within a

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<sup>10</sup> The test or criterion employed by the Commission is similar to the economic welfare concept based generally on the Pareto criterion of welfare improvement. However, since Pareto improvement requires a gain to one party without loss to another, the Hicks-Kaldor criteria are more practical. It is the latter criteria which most closely resembles the test used by the Commission.

market if the barriers to the market are eliminated and, crucially, if there are economic and institutional measures to maintain the absence of barriers.<sup>11</sup> The institutional component of the Commission public interest test is the Colorado Performance Assurance Plan (CPAP). According to our theory, if entry barriers can be eliminated or effectively minimized at a low level, then the conditions within the market will create net benefits to consumers.<sup>12</sup>

E. The Commission's public interest evaluation is consistent with recent FCC public interest analysis. The FCC has provided increasingly clear guidance on public interest evaluation process and method in its recent orders on this

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<sup>11</sup> A market for any good or service changes over time, creating the opportunity for new entry barriers to obtain. Further, there is an incentive for producers to erect entry barriers, or, in the vernacular of the day, to backslide. For markets such as the ones at issue in this application, some institutional oversight may be welfare-enhancing and either reduce the incentive to backslide or directly forbid surrender to temptation of the forbidden fruit of entry barrier erection. The Commission has an anti-backsliding provision as a component of its public interest test.

<sup>12</sup> The Commission's consumer benefit test obviates most traditional structure, conduct, and performance analysis. Internal market conditions become secondary to, and in some ways, are determined by entry conditions. However, the Commission, in an abundance of caution, applies some traditional analysis of internal market conditions as a check of its conclusion regarding entry barrier status.

topic.<sup>13</sup> The Commission's public interest criteria of "improvement or maximization of consumer welfare" is the same standard applied by the Commission in recent merger applications pursuant to a statutory requirement which requires evaluation of "the public interest" effects of utility merger proposals. The merger standard applied in those instances is the same standard the Commission applied in this docket. The FCC's circumscription of a public interest test is clearly similar, if not identical, to the Commission's consideration a consumer welfare standard.

F. The Commission's public interest criterion is a composite of three essential questions, all of which serve to increase net consumer benefit. The component questions are:

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<sup>13</sup> The *Georgia/Louisiana order (GALA II)* is instructive on the current scope of the FCC's public interest test. In *GALA* the FCC discussed public interest in some detail. Generally, the FCC construes public interest ". . . [a]s an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist." The public interest, as denoted in *GALA II*, is expressed in two parts: One, ". . . [t]hat barriers to competitive entry in the local exchange markets have been removed and the local exchange markets . . . are open to competition . . . ." And, ". . . [t]hat BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition . . . ." Finally, the existence of a PAP for an applicant is construed as strong evidence that markets will remain open.

Likewise, the FCC stipulated certain conditions not relevant to its public interest evaluation. In *GALA II*, the FCC excluded some factors from consideration: CLEC (or BOC) market share; a weak or weakening economy; and CLEC financial condition. Citing a federal court decision regarding market share relevance to public interest evaluation, the FCC public interest test seems to be on firm ground. By logical extension, the Commission's standard, therefore, is equally robust.

1) Is the local market open? 2) Will the local market remain open? 3) Do any unusual circumstances, not contained in the first two questions, argue against Qwest entry into the interLATA market? In evaluation of public interest implications of § 271 applications, the FCC has indicated "[n]o one factor dispositive." The Commission adopts a similar approach. The evaluation of net benefits intrinsically is a balance of many factors, some which increase benefit, some which reduce it. It is not possible to eliminate tradeoffs among economic agents. Thus, the Commission properly focuses on the *net* gain to society as a result of inter-LATA market entry.

G. The Commission believes that net consumer benefits inure from the absence of entry barriers. Consequently, as required by statute and sound regulatory practice, the Commission has evaluated, as depicted in more detail, *infra*, the state of entry barriers in Colorado local exchange markets. The Commission believes that if entry barriers are absent or insubstantial, then consumer benefit necessarily follows since the absence of entry barriers causes the market and market participants to behave in a manner consistent with competitive outcomes. Under this view, BOC entry will benefit consumers directly and the competitive process generally; therefore, entry

will produce lower prices,<sup>14</sup> an occurrence that is in the public interest. Compliance with the checklist is a proxy for the absence of entry barriers.

H. A more detailed analysis of specific checklist points is provided below. Checklist and public interest evaluation becomes a matter of competent supporting evidence. While the evidence is less than perfect, the resulting analytic conclusions less than certain, error margins are sufficient for the Commission to state that entry barriers are absent. Even with a critical and pessimistic view of the evidence, it remains sufficient to meet Commission and FCC standards. Stated differently, interpretation of such data is never simple, but there is sufficient margin for error, especially in light of recent FCC orders.

(1) Residential Market Competition:  
Critics of entry posit a need for a market share analysis of the residential market. The FCC does not impose such a market share test. The criterion is not whether competition is present but whether the market is open. On this basis, this application can move forward. The FCC has articulated other reasons to de-

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<sup>14</sup> The Commission notes that Qwest already has advertised an inter-LATA toll plan with rates which compare favorably with some current rates. While the estimates of benefit associated with those prices are questionable, the introduction of new pricing points by a new provider likely will allow consumers to benefit through lower toll expenditures. To the extent that lower toll rates can be included in local exchange packages, then additional benefits accrue to those consumers.

emphasize market shares, especially in residential markets. These reasons include pricing of retail service relative to cost, relative lack of profitability in residential markets, and business strategies of Competitive Local Exchange Carriers (CLECs), which emphasize higher-profit business service.

I. The final discrete element of the public interest criterion is whether any unusual circumstances exist which are contrary to consumer welfare improvement. A more detailed analysis of this issue is provided below.<sup>15</sup> However, the Commission believes, the CPAP should be able to address and penalize, as necessary, improper conduct by Qwest. The financial incentives of the CPAP should mitigate some or all of the incentive, if any, for Qwest to misbehave. Indeed, the FCC,

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<sup>15</sup> Some of the issues can be summarized quickly. One issue is structural separation on a vertical basis, that is between retail and wholesale operation. Stated differently, a vertically integrated producer should be *dis*-integrated. Some parties have advocated vertical separation or, more generally, structural separation of the BOC generally, and Qwest in particular. This means, for example, that Qwest's wholesale products line UNE's and switched access would be offered by a separate company from the retail services consumed by end users. Such a proposal has some interest on other levels, but it is clear that the FCC never has required such separation for § 271 approval. Further, structural separation appears to defeat one basic purpose of the Act, that of improved BOC efficiencies. See Decision No. R02-318I for further discussion of structural separation.

A second issue is CLEC failures: The issue is raised as a evidence of anticompetitive conduct by Qwest. The FCC states that CLEC failure, in isolation, is not necessarily the product of improper conduct by the BOC. The FCC's rationale is that other factors, in combination or isolation, can explain CLEC failures. Such factors listed by the FCC include a weak economy and poor CLEC plans. These factors could apply to Colorado and Qwest, too. Thus, the FCC is not persuaded to delay or deny a § 271 application on the basis of CLEC failures. If the Commission acts in the same manner, it appears to be on firm ground with respect to previous FCC approvals.



through recent § 271 decisions, has stressed the importance of "CPAP"-type plans. The Commission's approach here is consistent with the FCC approach.

J. In summary, The FCC has simplified the public interest criterion. The evidence in the Colorado record is consistent with the requirements recently articulated in FCC § 271 approval orders, most recently the *GALA II* order. A favorable Commission recommendation to the FCC regarding public interest comfortably is within the parameters set by the FCC and the Commission record in this case. To the extent that any uncertainty exists regarding the propriety of this conclusion, the Commission's CPAP serves as a backstop to assure proper conduct by Qwest.

K. The essential notion of the public interest test is whether the local exchange markets are irretrievably open. This Commission, under the heading of public interest, has used a consumer welfare standard. The standard the Commission recommends to the FCC is whether there are a reasonable expectation and competent evidence to demonstrate that consumers will benefit from entry into the local market and into the inter-LATA markets. The notion behind the public interest test under the FCC's guidelines, the Act, and the Commission test is not necessarily the traditional industrial organization or regulatory analysis. That analysis requires vigorous competition in a traditional sense, specifically, a diminution

of incumbent market share, a large number of competitors with significant market share, and prices which approximate cost, and so on. Instead, the Commission's test is built upon the notion that, absent barriers to entry, the market will function as if it is competitive. Neither the Act nor the FCC has required more. In *GALA II*, the FCC has articulated a two-prong standard: One, an open local exchange market and the absence of entry barriers; second, entry will benefit consumers. In addition, although not required by the Act, the FCC looks to the existence of a performance assurance plan such as the CPAP.<sup>16</sup> The Commission verifies that these conditions exist in Colorado.

#### **COMMENTS**

##### **A. New Edge Network, Inc., Comments on the Provisioning of ISDN Digital Subscriber Line (IDSL) over Integrated Digital Loop Carrier (IDLC) or Integrated Pair Gain (IPG)**

1. On April 11, 2002, New Edge Network, Inc. (New Edge), sent a letter to Chairman Gifford claiming that Qwest's retail sales group is offering ISDN digital subscriber line, or IDSL, service over loops with integrated pair gain or integrated digital loop carrier. New Edge states that Qwest previously had

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<sup>16</sup> If there is slight imperfection or less than certain evidence, the FCC apparently places significant weight on the state PAP. The FCC's overall judgment as to whether consumer welfare will be served, that the markets are open and will remain open on a going-forward basis relies increasingly on the a PAP. The FCC envisions a PAP as, first, a useful, if not necessary, backstop in the current timeframe, and second, as a dynamic measure to assure future compliance. As such, it serves a multitude of public interest purposes.

advised CLECs that IDSL was not available over loops with IPG and that those orders would not be processed if submitted. As a result, New Edge has not placed orders with Qwest when the raw loop data tool, the preorder loop qualification tool, shows that IPG was present. New Edge claims this is a clear case of discrimination.

## 2. **Decision**

a. We require Qwest to place the language currently contained in SGAT § 9.2.2.1.2, analog unbundled loops, into SGAT § 9.2.2.3.2, digital capable loops. In addition, we require Qwest to amend the appropriate section of its PCAT by including attachment JML-8 to 5 Qwest 37, which is Qwest's engineering decision tree for determining the best methodology for provisioning unbundled loops. When that update is done, Qwest must send the appropriate change management notification to the CLECs.

## 3. **Discussion**

a. New Edge asserts in its April 11, 2002, letter that Qwest has consistently advised New Edge that IDSL could not be provisioned on loops where IPG was present. If Qwest's pre-qualification tool reflected IPG, New Edge chose not to enter an order that subsequently would be rejected by Qwest. New Edge states that it has cancelled more than 100 customer orders in Colorado based on this representation from Qwest.

b. New Edge maintains that the entire discussion in the Colorado § 271 workshops regarding loops with IPG involved analog voice loops. There was no discussion about unbundling xDSL capable loops where IPG was present. New Edge claims that Qwest admitted that it also does not recall digital loops coming up in the discussions of IPG.

c. In the Change Management Process (CMP), Qwest was questioned regarding the processes in place to ensure that its retail group would not have access to products or services that the CLECs do not. According to New Edge, Qwest claimed that this is not an issue and that this sort of discrimination could not, and would not, happen. New Edge demurs, asserting that this is a clear case of discrimination and that these actions by Qwest fly in the face of the cooperative intent behind the workshops and the Change Management Process. Qwest, New Edge claims, has violated the provision in the Act that orders nondiscriminatory access to UNEs. In addition, New Edge claims Qwest has misrepresented itself in change management and the 271 hearings.

d. Qwest submitted a response to New Edge's claims in Robert Hubbard's affidavit attached to Qwest's Change Management comments filed on April 26, 2002, and also in a letter to Chairman Gifford dated May 28, 2002. Mr. Hubbard's affidavit states that the provisioning of ISDN where IDLC is

present requires the use of an Integrated Network Access (INA) di-group solution. The Engineering decision tree for the unbundling of these loops was presented as an exhibit and modified in the Colorado workshops as 5 Qwest 37.

e. Mr. Hubbard recounts meetings that Qwest held with Covad Communications beginning in February of 2000 about the INA solution and the provisioning of held orders.

f. Qwest states that it began provisioning ISDN loops for CLECs where IPG is present in early 1999. Qwest has continuously provisioned such loops for CLECs through the present time. Based on Qwest's records, in March 2002, there were over 3200 ISDN or xDSL-I capable loops in service in Colorado. Of these loops, 716 were served using the INA solution. These 716 loops are provisioned to six CLECs, including Covad and New Edge. As of March 2002, Qwest states that there were only 22 IDSL loops in service for Qwest's retail customers in Colorado. This total of 22 lines includes those with and without the INA technology.

g. Qwest emphasizes that the § 271 workshop discussions included the difficulties associated with unbundling a loop that is served with IDLC, engineering solutions for unbundling, installation intervals, and Qwest's commitment to look for ways to provisions these loops. Qwest, in Mr. Hubbard's affidavit, then states that although much of the

discussion related to general IDLC issues, whenever a specific loop type was discussed, it was the analog loop. However, the IDLC unbundling solutions presented during the workshops apply to all loop types.

h. Mr. Hubbard asserts that, during the April 4, 2002, CMP redesign meeting, Ms. Jean Liston committed to add information to the unbundled loop PCAT and the Loop Qualification CLEC job aide. Mr. Hubbard states that this activity is already done and is posted on the wholesale web site. Mr. Hubbard lists the technical publications that are consistent with the SGAT. The only exception is technical publication 77391, UNE Switching, issue E. This technical publication currently is being updated to incorporate suggestions offered by AT&T on access to the Unbundled Switch.

i. In the May 28, 2002, letter, Qwest reiterates much of what Mr. Hubbard professed in his affidavit. In addition, Qwest states it has provisioned at least 12 ISDN loops with IPG for New Edge in Colorado beginning in October 2000 and continuing into January 2002. Qwest also explains that in a compliance filing, dated November 30, 2001, Qwest demonstrated its IDLC unbundling performance improvements and the Commission closed the issue. Qwest expressed regret that New Edge was apparently not aware of the technical solutions that Qwest has employed to provision ISDN loops over IPG for

CLECs. However, Qwest asserts that no discrimination has occurred.

j. The Commission has reviewed the Workshop 5 transcripts about unbundled loops. During those discussions, it was never stated that the 11-step engineering decision tree or the INA solution was applicable to digital capable loops. The discussions involved alternative approaches to unbundling analog loops when IDLC was present. Changes to the SGAT that resulted from these discussions were made to § 9.2.2.2.1 pertaining to analog loops. No changes were made to § 9.2.2.3.2 regarding digital capable loops. The language added to § 9.2.2.2.1 is as follows:

If Qwest uses integrated digital loop carrier (IDLC) systems to provide the local loop, Qwest will first attempt, to the extent possible, to make alternate arrangements such as line and station transfers (LST) to permit Qwest to obtain a continuous copper unbundled loop. If an LST is not available, Qwest may also seek alternatives such as integrated network access, INA, pair pinning, or placement of a central office terminal to permit CLECs to obtain an unbundled loop. If no such facilities are available, Qwest will make every feasible effort to unbundle the IDLC in order to provide the unbundled loop for CLEC.

k. Qwest has asserted that this process of analyzing alternative solutions for loop unbundling is the same process for analog and digital loops. Therefore, this language should be added to the digital capable loop section, § 9.2.2.3.2, too.

l. The CMP redesign group also discussed this issue. In the CMP redesign meeting, Qwest represented that it was in the process of making changes to the PCAT more clearly to reflect this unbundling process for IDLC. Qwest offered that it would notify CLECs once this task was done. On April 10, 2002, Qwest sent out the CMP notice with its changes to the PCAT and the CLEC Job Aide.

m. This notification was titled "Geographic Deaveraging for Loop Products." Qwest's changes for this unbundling issue were hidden amongst many other pages of changes in four different PCAT documents. The only change that was made regarding this issue was the addition of a table in the CLEC job aide that lists Pair Gain devices that are compatible with ISDN and xDSL-I loops. Qwest failed to mention the 11-step process or the INA solution.

n. Therefore, we order Qwest to make another update to the appropriate section of its PCAT to add the engineering decision tree found as attachment JML-8 to workshop exhibit 5 Qwest 37, with an explanation that this is the process Qwest uses for the provisioning of both analog and digital loops. This update should go through the normal CMP notification process at the appropriate level.



**B. Mile High Telecom Partners, LLP, Comments on Whether Qwest Has Complied with the Requirements of Section 271(C) of the Telecommunications Act of 1996**

1. On May 16, 2002, Mile High Telecom Partners, LLP (Mile High), filed comments in Docket No. 02M-260T. Mile High states that it has no standing to intervene and no desire to otherwise actively participate at hearing. Mile High wants only to submit its comments to the Commission in this proceeding.

**2. Decision**

a. Because this is a pending proceeding before an Administrative Law Judge at this Commission, and the potential exists that the full Commission will have to rule on exceptions, we decline to discuss or analyze the merits of this complaint.

**3. Discussion**

a. Mile High states that it filed a Verified Complaint for Declaratory Judgment and Injunctive Relief against Qwest on May 13, 2002. The complaint, Docket No. 02F-275T, alleges that Qwest has participated in anticompetitive practices intended and designed to block competition in the local exchange market. Mile High states that Qwest has provided wholesale bills replete with errors, improperly solicited Mile High's customers in violation of the Commission's confidentiality rules, and demanded that Mile High pay unreasonable deposits as

a condition to Qwest's continued provision of Mile High's new local service requests.

b. Based on these comments, we do not believe that there is a need to delay our decision on whether to recommend approval of Qwest's application for inter-LATA certification with the FCC. The FCC stated in the recent *GALA II* order that it refused to address issues in a § 271 proceeding that relate to open issues before it in another proceeding. We take the same position here.

**C. Unfiled Agreements Between Qwest and Certain CLECs and Their Effect on the Public Interest Evaluation**

1. AT&T first brought the issue of unfiled agreements to the Colorado § 271 record during the Commission's *en banc* workshop on Public Interest held May 7-9, 2002. During this workshop, AT&T presented oral argument on this issue and offered five of these agreements as exhibits to that workshop. AT&T stated that these agreements represent Qwest's "broad, intentional plan to discriminate between carriers, giving preferential treatment to some CLECs to the detriment of others." In its complaint filed with the Minnesota Commission, the Minnesota Department of Commerce (DOC) alleged that by making these terms and conditions contained in these agreements available only to the party CLEC, Qwest has violated §§ 251(b) and 252(c) of the Act. Further, the DOC alleged that Qwest's

violation of these statutory provisions were knowing and intentional.

## 2. **Decision**

a. Neither AT&T nor any other CLEC made a connection between these agreements and the consumer welfare standard contained within the public interest standard. Even if that argument had been made, there is no remedy in the § 271 process. This issue will continue to be examined by Colorado Commission Staff in a separate process, but there is no reason to delay our decision on whether to recommend approval of Qwest's application for inter-LATA certification with the FCC.<sup>17</sup>

## 3. **Discussion**

a. During the *en banc* Commission workshop, AT&T outlined its major concerns with the unfiled agreements AT&T presented 5 agreements as exhibits. The first major concern is that the agreements, specifically Exhibit 2 with Eschelon, contain provisions that represent off-tariff, off-interconnection agreement discounts that are not available to any other carrier. In addition, AT&T asserts that the most disturbing part of the agreement with Eschelon is the statement that Eschelon "agrees not to oppose Qwest's effort regarding § 271 approval or to file complaints before any regulatory body

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<sup>17</sup> We take up the issue of the unfilled agreements impact on the ROC OSS test, *infra*.

concerning issues arising out of the parties' interconnection agreements." AT&T states that this takes a major critic of Qwest's § 271 application out of play in all 14 states.

b. AT&T's opinion is that this Commission should refuse to recommend § 271 approval until such time as further proceedings can take place to rectify the situation.

c. On May 13, 2002, AT&T filed a Motion to Reopen Proceedings on this unfiled agreement issue. AT&T states that this Commission should reopen the record in these § 271 proceedings to allow admission of additional evidence relating to certain unfiled agreements between Qwest and some new entrants. AT&T states that the agreements that were filed in the Minnesota complaint are not on record here in Colorado, but they should be considered in these proceedings. AT&T asks this Commission to reopen the § 271 proceeding so that the Commission may take further evidence and decide whether and to what extent these agreements may have hindered or otherwise affected the Commission's decision-making on various checklist items and the public interest determination.

d. On May 16, 2002, Eschelon Telecom of Colorado, Inc. (Eschelon), filed comments in the form of a letter addressed to Mr. Bruce Smith, Director of the Commission. Eschelon states that it agrees with AT&T's assessment that the agreements should have been filed by Qwest with the various

state commissions. Eschelon states that the Commission may want to reopen proceedings to consider these matters.

e. Qwest filed its opposition to this AT&T motion on May 28, 2002. Qwest's response asserts that AT&T's argument regarding these agreements, Qwest's response to that argument and five of the agreements at issue are already in the Colorado record from the Public Interest *en banc* workshop held May 7 through 9, 2002. Qwest also states that it has filed a Petition for Declaratory Ruling before the FCC, which the FCC has accepted for review and comment. The Petition seeks clarification on the applicability of the 90-day pre-approval process of § 252(a) the Act. Once definitive guidance is given by the FCC, Qwest commits to applying that threshold standard to all its agreements.

f. In the meantime, Qwest has committed voluntarily to provide copies of all contracts, agreements, and letters of understanding with competitive local exchange carriers that create forward-looking obligations to meet the requirements of § 252(a). Qwest has committed to work with state commissions and their staffs to solicit guidance on the treatment of agreements that may be in a "gray" area of this standard. Finally, Qwest reports that it has begun forming a committee of senior managers for various parts of its wholesale business to review all agreements involving Qwest's in-region

wholesale activities and ensure that Qwest complies with its current commitments and any ruling from the FCC.

g. The Commission denied AT&T's Motion to Reopen Proceedings with Decision No. C02-649 adopted May 29, 2002. In this denial, the Commission stated:

AT&T has had ample opportunity to present these facts into our § 271 record, and in fact has entered five of the agreements at issue as well as approximately a day of oral argument by AT&T attorney Mr. Gary Witt and rebuttal oral argument by Qwest attorney Mr. Todd Lundy. In addition, Commission Staff and its counsel have been conducting their own informal investigation of similar agreements executed in Colorado. This is an ongoing investigation that will run its own course separate and apart from the § 271 proceedings.

The merits of the agreements and arguments already in the record will be discussed and a decision will be reached on their treatment during the Commission's final deliberations meeting in the 02M-260T docket.

h. This Commission must strike a balance in this proceeding between Qwest's interests and the competitive benefits to the Colorado consumers from Qwest's entry into the long distance market. There might be an explanation for these agreements, and there might not. There might be a violation of law with these agreements, and there might not. We do not discount that this could be a serious issue, but this decision is better made in a proceeding separate from this § 271 proceeding. The only remedy ever offered for this proceeding was delay, and we believe delay will only harm the consumers of Colorado. Further, the legal tie-in between the alleged unfiled

agreements and § 271 is tenuous, at best. Absent a remedy in the § 271 process -- and we have been given none -- we find no profit in delay.

i. As to AT&T's concern that Eschelon was not allowed to participate in the Colorado 271 proceedings and this might have some how harmed our record, we find that Eschelon entered into that arrangement as a business decision that it thought would benefit Eschelon. While it has not participated in the § 271 workshops or hearings at the commission, Eschelon has fully and candidly participated in the CMP redesign process. Eschelon has provided input in that process that has resulted in a better CMP product. The § 271 workshops were long and arduous proceedings with topics dissected to a minute level. It is difficult for this Commission to believe that those discussions, compromises, and impasse decisions would have been any different with Eschelon's participation. A number of CLECs chose not to participate in this process for a variety of reasons. That certain voices came to the fore in this process - AT&T's and WorldCom's, for instance - is an unfortunate consequence of the resource intensive and costly nature of this § 271 proceeding. That this Commission lost smaller, niche CLEC voices, like Eschelon's through the process is unfortunate, but that is the design of § 271.

**D. Changeability of the Colorado Performance Assurance Plan**

1. The Office of Consumer Counsel's (OCC) Comments on Public Interest, filed May 3, 2002, stated that the CPAP provisions are rigorous in all respects, except the unambiguous ability of the Commission to make changes to the Plan.

**2. Decision**

a. A series of extensive meetings and compromises resulted in the approved CPAP. We will not modify the CPAP Changeability sections.

**3. Discussion**

a. The OCC pats the Commission on the head for devising a CPAP to guard against Qwest's incentive to backslide. The OCC faults one aspect of the CPAP, however; namely, the Commission's unambiguous ability to make changes to the CPAP, particularly at the three-year review. The OCC continues to believe the CPAP should have explicitly granted the Commission broad authority to make changes to the Plan, regardless of Qwest's acquiescence to such modifications. The OCC directs the Commission to both state and federal law as sources for authority unilaterally to modify the CPAP.

b. Qwest did not separately respond to the OCC's concern in this docket. However, in the CPAP proceeding,



Docket No. 01I-041T, Qwest repeatedly referenced the CPAP as "voluntary" and held fast to its belief that the Commission did not have the authority unilaterally to make changes. In its Response to Decision on Motions for Modification, filed November 30, 2001, Qwest asserts the FCC has never held that a PAP should allow changes to be made to the basic architecture of the plans by issuing a blank check to the state commissions. Qwest asked the Commission to remand this and three other issues to Professor Phil Weiser for re-negotiation.

c. In the Commission decision on the remand issues, Decision No. C02-339, we decided to approve Professor Weiser's recommendation on changeability. This included off-the-table items for the six-month reviews, the 10 percent financial collar, and the ability for judicial review of Commission ordered changes. While this compromise might not be perfect, it comes after many hours of work, give and take, and we will not make changes at this point.

**E. Residential Competition in the Colorado Local Exchange Market**

1. The OCC also raises its concern with the level of competition in the residential local telephone market. The OCC states that the level of competition should be relevant to the public interest analysis made by this Commission. CLECs' share

of the local residential and small business market is only 5.4 percent according to the FCC's June 30, 2001, report on competition.

## 2. **Decision**

a. The FCC has declined to include a market share test for § 271 approval. As the *Bell Atlantic New York Order* states:

Moreover, pursuant to section 271(c)(2)(B), the Act provides for long distance entry even where there is no facilities-based competition satisfying section 271(c)(1)(A). This underscores Congress' desire to condition approval 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.

b. Needless to say, we agree with the FCC.

## **F. Price Squeeze and Caps on Retail Prices**

1. In its original public interest brief filed on August 22, 2001, AT&T argued that a relevant part of the public interest standard is whether, under Unbundled Network Element (UNE) rates, competitive entry is viable. According to AT&T, the fact that local entry is unprofitable at prevailing UNE rates is, on its face, precisely the sort of "relevant factor" that "would frustrate the congressional intent that markets be open" before inter-LATA entry is approved, *citing, Bell Atlantic New York 271 Order*, ¶ 423.

## 2. Decision

a. We affirm the hearing commissioner's Decision, R02-318-I. To hold up the § 271 approval because of a distorted retail rate structure would be inequitable to Qwest and delay competition's benefits to Colorado consumers. We also discussed the price squeeze issue in Docket No. 99A-577T and reaffirm our Decision there.

## 3. Discussion

a. AT&T asserts that a relevant factor of the public interest analysis is whether, under prevailing UNE rates, competitive entry is economically viable. This remains true whether or not a state commission has made a finding that UNE rates comply with TELRIC because the FCC has made it clear that it is prepared to find that a wide range of rates can satisfy TELRIC. AT&T provided an analysis that it alleges to demonstrate a barrier to competitive entry. In this analysis, AT&T compares UNE-P prices with the 1FR retail price concluding that UNE-P pricing stands as an insurmountable barrier to such entry. (It shows the monthly recurring UNE-P price to be \$29.52 with features and the 1FR prices to be \$14.92.) Moreover, AT&T states, the FCC has made it clear that one important aspect of any public interest analysis is the question of whether and to what extent all statutory paths to competition are open. In this case, according to AT&T, the record demonstrates that the

UNE path to residential competition is blocked as a result of the pricing disparity.

b. AT&T concludes by stating the record in this proceeding demonstrates unequivocally that even a perfectly efficient CLEC could not profitably compete to provide local residential service in Colorado. This analysis confirms not only that unduly high UNE rates are helping keep CLEC customer-volumes low, but that the local residential market will remain closed to competition at least until such time as those rates are substantially reduced.

c. Qwest responded to AT&T price squeeze argument on April 26, 2002. In this response, Qwest cites to the FCC's recent *Verizon Vermont Order*, released on April 17, 2002, and to the hearing commissioner's Decision, R02-318-I, on Staff Report Volume VII. Qwest states the FCC has affirmed that a reasonable UNE price squeeze argument must account for a number of factors ignored by AT&T's UNE price squeeze claim. An argument must include the existence of other methods of market entry and the possibility that states might have contributed to an alleged price squeeze by capping retail rates at an extremely low level.

d. Qwest asks the Commission to affirm the hearing commissioner's decision that Qwest should not be held

accountable, nor should its application to the FCC be held up, for the low retail price cap in Colorado.

e. In the *Verizon Vermont Order*, the FCC states:

We conclude that AT&T and WorldCom have not established the existence of a price squeeze because they have not shown that the "UNE pricing at issue dooms competitors to failure." ¶ 66.

f. We agree with this statement and the findings of the hearing commissioner. We have dealt with the price squeeze argument both in Volume VII and also in Docket No. 99A-577T.

**G. AT&T's Claim that Qwest Violated Its Interconnection Agreement (ICA) and Failed to Provide Adequate Systems Testing**

1. On March 6, 2002, AT&T filed an Offer of Supplemental Authority Regarding Public Interest. In this filing, AT&T claims that Qwest violated its interconnection by failing to provide adequate systems testing.

**2. Decision**

a. We affirm the hearing commissioner's Decision, R02-318-I, in which he found that, as to this testing dispute AT&T has failed to demonstrate any pattern of anticompetitive behavior in Colorado that is foreseeable to take place in the future or that implicates welfare enhancement.

This dispute does not rise to the level that would require this Commission to find that Qwest's § 271 application is contrary to public interest.

### 3. Discussion

a. In AT&T's offer of supplemental authority, it asserts that throughout the § 271 proceedings AT&T has presented a great deal of information concerning Qwest's anticompetitive behavior. AT&T has demonstrated that Qwest has engaged in a variety of strategies, and used numerous ploys, to frustrate its competitors. The latest of these violations is a failure to provide adequate systems testing in accordance with the terms and conditions of its ICA. AT&T filed a complaint on this issue with the Minnesota Commission.

b. The Minnesota Administrative Law Judge found, on that issue, that Qwest failed to act in good faith and committed knowing, intentional, and material violations of its obligations to act in good faith under the ICA and under § 251(c)(1) of the Act. The recommended decision also states that Qwest's violations were continuous and ongoing and are indicative of a continuing pattern of conduct.

c. AT&T states that these findings not only demonstrate an ongoing pattern of anticompetitive behavior, they also show a willingness and ability on Qwest's part to prevaricate at the highest levels of the company, and thereby to

subvert the ability of a regulatory body to determine the true facts at hand.

d. AT&T asks this Commission to enter a finding that a grant of Qwest's § 271 application is not in the public interest and to require additional and appropriate safeguards to prevent this anticompetitive behavior from occurring in the future.

e. Qwest responded to this offer of supplemental authority on April 9, 2002. In its response, Qwest states the information AT&T supplied to this Commission from Minnesota was only an interim recommended decision by an ALJ and not a final commission decision. In addition, Qwest represents that the hearing commissioner in Colorado has already ruled on this issue in his decision on Staff's Volume VII report, Decision No. 02R-318-I. The hearing commissioner specifically cited AT&T's offer of supplemental authority and the Minnesota ALJ's order and declared that they, as well as the broader Minnesota systems testing dispute, failed to demonstrate a pattern of anticompetitive behavior in Colorado. Indeed, the hearing commissioner went on to say that AT&T's efforts to drag in other states' disputes merely "highlights the heightened expectations that parties have in a public interest inquiry to sling as much as they can on the wall to see what will stick." See Decision No. R02-318-I at p. 44.

f. Qwest continues, saying that on April 1, 2002, the Staff of the Minnesota Commission rejected the ALJ's findings and recommended a Commission ruling that Qwest did not act in bad faith and that a penalty should not be considered.

g. In the Multistate proceeding, Qwest represents, the facilitator found that the systems testing AT&T had proposed in Minnesota was unnecessary and refused to require Qwest to include SGAT language requiring such testing in all of Qwest's states. The facilitator rejected AT&T's argument when it tried to raise it in the public interest inquiry. The facilitator found that the Minnesota dispute: (1) did "not provide substantial evidence of a predictive, patterned refusal or inability of Qwest to comply with its wholesale service obligations" and (2) did not constitute "the kind of unique circumstances that the FCC believes it takes to support a finding that Qwest's entry into the in-region, inter-LATA market would contravene the public interest."

h. We agree with the hearing commissioner's decision on this issue, as well as the Multistate facilitator's recommendation. AT&T has not demonstrated that this issue from another state's proceeding is applicable to the public interest in Colorado. Should a similar instance arise in the future in Colorado, it will be adequately addressed by either the CPAP or by a traditional complaint proceeding. The § 271 process and



more specifically, the public interest analysis, is not a catch-all inquiry.

i. As the FCC stated in the *SWBT Texas Order*:

Congress designed section 271 to give the BOCs an important incentive to open their local markets to competition, and that incentive presupposes a realistic hope of attaining section 271 authorization. That hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freightening their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor. Indeed, if that were the required approach, the BOCs would face enormous uncertainty about the steps they need to take to win section 271 authorization, and they would therefore lose much of their incentive to cooperate in opening their local markets to competition in the first place. That result would disserve the public interest in greater competition both local and long-distance markets, and it would defeat the congressional intent underlying this statutory scheme. ¶ 26.

#### **H. Touch America's Indefeasible Rights of Use (IRU) Complaint**

1. On June 4, 2002, Touch America filed a Petition to Intervene and Motion to Reopen Issues. Touch America requests that this Commission reopen the § 271 proceedings and stay any recommendation to the FCC. Touch America states that in a complaint pending before the FCC that it has demonstrated that Qwest is violating the provisions of §§ 271 and 272 through the selling of lit fiber IRUs from the § 272 affiliate to the BOC.

## 2. **Decision**

a. We grant Touch America's petition to intervene because of the remarkably permissive intervention standards we have set in this docket. We do not rule on the merits of the Touch America complaint. This motion is dilatory, and there is no explanation for its late arrival into this process. Further, there is barely an attempt to explain its relevance to this proceeding. The incentive for participants to leverage collateral disputes into this process is great, but it should not be indulged. To the contrary, such regulatory gaming should be condemned. Touch America makes no attempt to tie its complaint to a § 271 remedy and offers no explanation for its delay in interposing its objections. The complaint can proceed apace in the appropriate forum, but will not be countenanced here.

## V. **SGAT ISSUES**

### A. **Interim Prices Contained in Exhibit A to the SGAT**

1. In AT&T's response to Qwest's April 29, 2002, motion seeking approval of its SGAT, AT&T claims that Qwest has added approximately 230 new rates to its Exhibit A that are neither just and reasonable nor consistent with this Commission's § 271 orders.

2. **Decision**

a. As stated previously, we find the rates filed by Qwest in Exhibit A to the SGAT and Appendix A to that exhibit to comply with the Commission decisions in Docket No. 99A-577T and to be acceptable for verifying to the FCC Qwest's § 271 compliance.

3. **Discussion**

a. AT&T states that Qwest's filing of an SGAT with 230 new rates flies in the face of the orders of this Commission, but it also creates an Exhibit A that this Commission cannot possibly approve under law, even on an interim basis.

b. AT&T provides Attachment A to its response that indicates all the new rate proposals that Qwest has unilaterally added to its SGAT. AT&T states that it requested during the § 271 workshops and the cost case that Qwest, instead of using ICB pricing for certain collocation and other services, price such services at rates similar to or derived from known rate elements of similarly approved products and services. At that point, Qwest refused, and this Commission upheld that refusal. In this new SGAT filing, Qwest chooses to supply these hundreds of new rates on an interim basis without the consideration of just and reasonable.

c. AT&T continues by stating that the incumbent must show that it has fully implemented the competitive checklist, including a demonstration that these 230 new rates are compliant. Therefore, AT&T submits, there exists no record upon which this Commission can determine whether Qwest meets the pricing requirements of the checklist.

d. In the May 7-9, 2002, Commission workshop record, Qwest explains the methodology used to derivate the new rates. Qwest, through the testimony of Paul McDaniel and Kris Ciccolo, responded that the new rates fall into one of two categories; either: (1) Qwest borrowed a rate from a similar product or service; or, (2) Qwest took the cost studies for the product or service and applied the Commission adjustments as ordered in Phase One of Docket No. 99A-577T.

e. Qwest stated that all of these new rates represent products or services that have low or no volumes. In addition, Qwest stated that these rates will be adjudicated in Phase Two of 99A-577T and the CLECs can make their arguments then.

f. Qwest's approach to these interim rates is reasonable. These rates are TELRIC-compliant within the bounds of TELRIC reasonableness identified by the FCC. The rates are derived from or analogous to rates fully litigated and set as TELRIC by this Commission. All parties in the 577T docket knew

that there would be a Phase Two that would include rates for new products and services not in Phase One. If Qwest's interim rates are found in Phase Two to be grossly over-recovering, then we will deal with the subject of a true-up mechanism.

**B. §§ 7.3.1.1.3.1 and 7.3.2.2.1, Internet Service Provider Traffic**

1. In its May 6, 2002, Response to Qwest's Motion seeking approval of its SGAT, AT&T states that Qwest has modified a sentence in these two sections that now clearly states that ISP-bound traffic is interstate in nature. AT&T asserts that this sentence should either remain as it was or that Qwest should cite to specific paragraphs in the FCC ISP Order that support its conclusion.

**2. Decision**

a. Neither this Commission's, nor Qwest's nor AT&T's opinion of the inter- or intra-state nature of ISP-bound traffic matters much. The D.C. Circuit has for the second time remanded to the FCC for reconsideration the agency's finding that ISP-bound traffic is interstate in nature. *WorldCom, Inc. v. Federal Communications Commission*, 288 F.3d 429 (D.C. Cir. 2002). The D.C. Circuit did not vacate the FCC's finding that ISP-bound traffic is interstate, instead it then took the remarkable step of directing the FCC to § 251(b)(5) as the possible location on which to hang its interstate conclusion.

*Id.* at 434. This gives us some confidence that the FCC will be able finally to conclude that ISP-bound traffic is interstate. Regardless of the final outcome, the FCC's final determination - and the courts' ultimate blessing of that conclusion - will be determinative of the jurisdictional status of ISP-bound traffic. Because Qwest's categorization of ISP-bound traffic coincides with this Commission's view of its status, the language is acceptable.

### 3. Discussion

a. AT&T states that Qwest has made a change in §§ 7.3.1.1.3.1 and 7.3.2.2.1 by deleting and adding the following phrase:

~~By agreeing to this interim solution, Qwest does not waive its position that Internet Related Traffic or ISP-bound traffic delivered to Enhanced Service Providers is interstate in nature.~~

b. The FCC ISP Order became effective on June 14, 2001, and AT&T asserts that Qwest has made a number of SGAT filings since that time, but has waited almost a year before making this proposed change. AT&T asks this Commission to require Qwest to provide legal argument to support its interpretation of the FCC ISP Order as concluding that ISP traffic is interstate in nature or, at a minimum, Qwest should be required to cite specific paragraphs in this order that support its conclusions. AT&T would then be in a position to

respond to these arguments and the Commission would be in a position to make a decision.

c. Qwest responded to this concern during the *en banc* public interest workshop. At this workshop, Qwest stated that the internet bound traffic is jurisdictionally interstate and thus not subject to § 251(b)(5). Qwest cited *Declaratory Ruling on InterCarrier Compensation NPRM; Order on Remand*, CC Docket No. 99-68, 14 FCC Record 3689 at ¶¶ 21, 52 (April 27, 2001). Qwest also notes that the language it added to the SGAT is consistent with this Commission's findings in the Sprint, ICG, and Level 3 arbitrations.

d. As stated above, the FCC has made the determination that ISP-bound traffic is interstate in nature. The rationale has not held up in the D.C. Circuit, but the conclusion remains in place. We rely on our own independent decisions as well, in supporting Qwest's change to §§ 7.3.1.1.3.1 and 7.3.2.2.1. We remain confident that—consistent with our Sprint, Level 3, and ICG arbitration decisions—"bill and keep" will become the prevalent way of dealing with ISP-bound traffic, be it through FCC interstate jurisdiction or our own intrastate jurisdiction.

**C. § 12.2.6, Change Management Process**

1. AT&T states in its response to Qwest's Motion seeking approval of its SGAT, that § 12.2.6 of the April 29, 2002, SGAT does not contain language that has been agreed-to by Qwest and the CLECs in the CMP redesign group.

**2. Decision**

a. We order Qwest to update § 12.2.6 to include the language recently agreed to by Qwest and the CLECs in the CMP redesign group. This language includes a provision for modification of Exhibit G without the need for interconnection agreement amendments.

**3. Discussion**

a. AT&T asserts that § 12.2.6 contains certain language agreed to by Qwest and the CLECs in the CMP redesign group. However, AT&T offers that Qwest has agreed to draft additional language for this section that explains that the CMP document (Exhibit G), as modified, will be incorporated as part of the SGAT without the need for executing and filing amendments, as long as the modifications are made pursuant to the process for change set forth in the CMP document. AT&T states that this language has not yet been drafted and circulated among the CLECs for review.



b. Qwest stresses the language in § 12.2.6 in the April 29, 2002, version of the SGAT, is § 271 compliant and does not need to be changed for this commission to recommend approval of a § 271 application. Qwest acknowledges that the language is being re-worked in the CMP redesign group and that consensus language can be added at some later date. Qwest does not think the language needs to be included in the § 271 SGAT filing.

c. Between our public interest workshop and our decision meeting on June 13, 2002, the CMP redesign group has, in fact, reached consensus on additional language for this section. Because consensus has been reached, we order Qwest to include the agreed to language before filing with the FCC. The agreed to language to be added is:

Notwithstanding any other provision in this Agreement, the CMP document attached as Exhibit G will be modified pursuant to the terms of Exhibit G, or the procedures of the redesign process, and incorporated as part of the SGAT without requiring the execution or filing of any amendment to this Agreement.

**D. § 9.2.2.8, Access to Loop Information**

1. AT&T's response to Qwest's motion seeking approval of its SGAT also claims that Qwest's revision to § 9.2.2.8, regarding access to a new manual look-up for loop information, is inconsistent with FCC orders and is ambiguous and that Qwest has not proven that this proposal is at parity

with the access to loop information available to any Qwest employee.

## 2. **Decision**

a. We require Qwest to change the language in § 9.2.2.8 using parts of the AT&T proposed language, and also to change the process so that the results from the manual look-up are given directly to the requesting CLEC, instead of only updating the LFACS database.

b. Section 9.2.2.8 should read as follows:

If the Loop make-up information for a particular facility is not contained in the Loop qualification tools, if the Loop qualification tools return unclear or incomplete information, or if the CLEC questions the accuracy of the information in the Loop qualification tools, then CLEC may request that Qwest perform a manual look-up of the company's records, back office systems and databases where loop information resides. Qwest will provide the CLEC the loop information identified during the manual look-up within forty-eight (48) hours of Qwest's receipt of the CLEC's request for manual look-up. After completion of the investigation, Qwest will load the information into the LFACS database. In the event the manual look-up will take longer than forty-eight (48) hours, Qwest will notify CLEC within forty-eight (48) hours of the expected date upon which Qwest can provide the manual loop make up information.

## 3. **Discussion**

a. AT&T asserts that Qwest's new language regarding its manual look-up process for loop qualification information is not adequately described. AT&T states that this entire process is undefined and needs to be clarified to ensure parity of access to loop information. In addition, AT&T states

that Qwest's proposes to update its tool and the CLEC can review the additional loop data there, rather than supplying the back-office information directly to the CLEC. This proposal, according to AT&T, will delay the CLEC's access to this important information and give Qwest the opportunity to filter what is provided to the CLEC. AT&T claims that Verizon and SBC give CLECs the opportunity to receive information directly.

b. Further, AT&T complains that a standard interval should be set for the manual review of Qwest's back-office records. This interval should be set at 48 hours without the "unless it takes longer than 48 hours" language. Also, AT&T states that the loop qualification tool should not have the "IMA" reference. This may somehow limit the scope of this section of the SGAT. AT&T proposed language that makes the revisions outlined in its response.

c. Qwest responded orally to AT&T's assertions at the public interest workshop. Qwest stated that this language was "voluntary and CLEC-friendly" that was added because of CLECs' concerns about the adequacy of the Qwest loop qualification tools. Qwest stated that this process allows CLECs to request a manual look-up of loop make-up information in the unlikely event that information is not contained in the tools that Qwest currently offers, or if the information is returned as unclear. The manual review is uploaded to the

database within 48 hours. Qwest states that it is certainly amenable to reviewing AT&T's proposed language, but Qwest believes that its language captures Qwest's legal commitment and change is not necessary for § 271 compliance.

d. Qwest stated on the record that it was willing to work with AT&T on the language in § 9.2.2.8 and that it was not opposed to making some changes. We find that AT&T's proposed language reads more clearly than Qwest's language. We agree with AT&T on the deletion of the "IMA" loop qualification tool reference and on the necessity for CLECs to receive the loop-up information directly. We do not agree with AT&T on the need for a "standard interval" of 48 hours. We see no need to place such a requirement on Qwest without the opportunity for a longer time period when necessary, in the absence of: (1) more information about the manual look-up process and the time required by Qwest to perform the look-up, and (2) any defined measurement of the start and stop time for the 48 hours. We will require Qwest to include the sentence that begins: "In the event the look-up will take longer than 48 hours, . . . "

**E. Section 9.2.2.8, Audit of Qwest's Back-Office Systems**

1. AT&T states that the Washington Commission has ordered and the Arizona Administrative Law Judge has recommended that Qwest be required to allow CLECs to audit Qwest's back-

office records, systems, and databases in order to ensure that CLECs are obtaining the same access to loop information as any Qwest employee. To the extent Qwest is porting Washington-ordered SGAT language to Colorado, it should be required to bring all of it into the Colorado SGAT including this audit language.

**2. Decision**

a. We affirm our previous finding from Decision No. C02-406. AT&T has not offered any new information that would cause us to change our original ruling. Qwest is not required to added language to § 9.2.2.8 to allow a CLEC to audit its back-office systems or databases.

**3. Discussion**

a. The majority of AT&T's comments in its response regarding this issue deal with concerns it has with the Qwest proposed language before the Washington Commission. Because we do not agree that this provision needs to be added, we need not address AT&T's language concerns.

**VI. SECTION 272 ISSUES**

**A. § 272(b)(3) The section 272 affiliate "shall have separate officers, directors and employees."**

1. AT&T originally presented this issue in its August 3, 2001, § 272 brief and then again during the *en banc* Commission workshop on Public Interest May 7-9, 2002. AT&T

originally claimed that Qwest did not meet the requirements of this section because it allowed the transfer of employees from the BOC to the long distance affiliate. AT&T stated that "this wide-spread employee sharing subverts the purpose of section 272(b)(3)." In the Commission workshop, AT&T posed a slightly different concern. AT&T maintains that employees of the BOC should not be allowed to be hired by the affiliate, and vice-versa.

## 2. **Decision**

a. We will not place further restrictions on Qwest regarding the issue of the termination and hiring of its employees from the BOC to the affiliate or from the affiliate to the BOC.

## 3. **Discussion**

a. In its original brief on § 272 requirements, AT&T asserts there is a revolving-door atmosphere with employees going back-and-forth between the BOC and § 272 affiliates. There is widespread employee sharing, and many Qwest employees spend 100 percent of their time working for the § 272 affiliate.

b. In Decision No. R02-318-I, the hearing commissioner concluded:

". . . there is currently no payroll overlap, and appropriate safeguards are in place to establish independent operation between affiliates, including:

- Requiring the return of § 272 affiliate assets by an employee leaving the § 272 affiliate.
- Requiring employees leaving the § 272 affiliate to account for documents in their possession.
- Requiring employees leaving the § 272 affiliate to acknowledge that they will not disclose the affiliate's information.
- Non-disclosure agreements for employees who take positions in another Qwest entity.
- Training to ensure compliance with § 272.
- Annual employee review of Qwest's Code of Conduct.
- Providing for physical separation of the offices of QC and QCC. P.14.

c. Qwest mooted this concern by eliminating the sharing of employees. Qwest no longer allows the loaning of employees from the BOC to the affiliate or from the affiliate to the BOC.

d. In the public interest workshop on May 9, 2002, AT&T raised concerns with Qwest's new policy. AT&T stated that Qwest no longer loaning employees in the BOC to the § 272 affiliate is a "step in the right direction, but it's still not far enough." AT&T stated that the protections Qwest has in place to make sure that a former employee of one affiliate does not have access to the documents that he or she formerly had are insufficient. Even assuming that they are, AT&T still takes issue with a lack of restriction on people doing the same job or similar job that uses confidential knowledge that they already have for one affiliate or the other. There are no restrictions on the types of jobs that employees can handle transferring back

and forth between the two companies, and that is a source of major concern for AT&T.

e. In Qwest's oral response at the workshop, it stated that as the hearing commissioner and the Staff Volume VII report pointed out that there is no restriction on the transfer of employees. There is nothing in § 272(b)(3) or any FCC requirement that prohibits the transfer of employees from the BOC to the § 272 affiliate.

f. Qwest nonetheless indicated that it has put safeguards in place, ones not required by the FCC, to ease the CLECs' concerns. Specifically, an employee would have to be terminated and rehired to move from one entity to the other and would have to execute a confidentiality agreement that expressly precludes the use of the former employer's confidential information with the subsequent employer.

g. We agree with the hearing commissioner's findings, and, as it follows, we agree with Qwest that there are appropriate safeguards in place to limit the exchange of confidential information from the transfer of employees. To date, the FCC has made no mention in any of the § 271 orders of restrictions on the hiring of employees between the affiliate and BOC. Qwest makes valid points about the ability of AT&T, or any long distance provider, to hire former BOC employees. Qwest seems to have put the appropriate safeguards in place that



should prevent the sharing of confidential information. Therefore, we change nothing based on AT&T's concern.

**B. § 272 (e)(1) Fulfillment of Requests for Telephone Exchange Service**

1. 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). AT&T claimed at the *en banc* workshop May 7-9, 200, that Qwest should be required to report its special access provisioning at a level disaggregated enough to allow the comparison of performance the § 272 affiliate receives with the performance the Interexchange Carriers (IXCs) receive.

**2. Decision**

a. The information this Commission will receive for the special access reporting contained in the CPAP, coupled with the reporting Qwest will be publishing on a public web site after receiving § 271 approval, is sufficient for our needs. We do not require any further special access reporting specific to Colorado.

### 3. Discussion

a. AT&T's concern is that without special access performance reported on a disaggregated level, all we have is a representation from Qwest that it will not discriminate in favor of the affiliate. AT&T stated that, if there is no distinction or disaggregation in the reporting between the services provided to affiliates and services provided to non-affiliates, then Qwest can use that data to mask any discrimination that it is engaging in and undermine performance reporting and CPAP measures.

b. Qwest responded to AT&T's Motion to Modify Decision No. R02-318-I, on March 27, 2002. In its response, Qwest stated AT&T has never challenged Qwest's showing of compliance with § 272(e)(1) -- or any other aspect of § 272(e) -- in any of its prior pleadings. Qwest asserts that it has addressed the issue of its compliance with § 272(e) and has provided evidence that it stands ready to comply with all of the requirements of this subsection. Qwest has committed in its testimony that "[t]he BOC does not and will not discriminate in favor of the 272 Affiliate in the provision of telephone exchange service or exchange access." The record also includes substantial evidence that Qwest has controls in place that will assure such compliance with § 272(e)(1).

c. AT&T insists that Qwest must now disclose data on the time it takes to provide these § 272(e)(1) services to its § 272 affiliate, to permit a comparison with provisioning intervals for unaffiliated carriers. However, Qwest states, the BOC will have no data to compare provisioning intervals between affiliated and unaffiliated providers of in-region inter-LATA services until QCC, the affiliate, begins providing such services.

d. The FCC has made it clear that § 272(e)(1) "applies only when a BOC has an operational section 272 affiliate,"<sup>18</sup> and has proposed only that BOCs commit that they "will maintain" the required information "upon receiving permission to provide inter-LATA services pursuant to section 271." After Qwest receives § 271 approval, the FCC will have ample opportunity to verify its compliance with § 272(e)(1). Qwest's compliance record will be reviewed thoroughly as part of the biennial audit.

e. In Decision No. R02-516-I, the hearing commissioner found that AT&T should have raised this issue in its original brief or in the context of the CPAP. He states on page 5,

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<sup>18</sup> *Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, FCC 01-339 (released Nov. 19 2001), at ¶ 10.

As a matter of procedure, which by now should be obvious to AT&T (footnote deleted), and because this issue has been more appropriately considered within the context of the PAP, I decline to reach the merits of AT&T's motion and Qwest's reply brief.

f. We agree with the representation of Qwest on this issue. We have already ordered special access reporting in the CPAP where special access circuits are used in lieu of UNEs. In reaching that decision, this Commission weighed the jurisdictional argument and determined Qwest's performance for special access circuits used by CLECs in the provisioning of local service, should be reported. We did not go so far as to include special access used by IXCs in Qwest's reporting.

g. It is our understanding of § 272(e)(1) that the FCC does require performance given to the affiliate by the BOC to be measured and reported after § 271 approval. Qwest has represented that it will post these reports to a public web site. This reporting for the FCC, coupled with our CPAP special access reporting, is sufficient for our monitoring purposes. If in the future, we determine Qwest is failing to provide non-discriminatory access to special access circuits, we will review our position within the appropriate CPAP review.

## **VII. TRACK A**

A. The Act specifies conditions a BOC must satisfy in order to gain entry into the inter-LATA market, known

generically as Track A and Track B. See 47 U.S.C. §§ 271(c)(1)(A), (c)(1)(B). It is necessary to meet either Track A or B, but not both. Qwest applies under, and meets the requirements of, Track A.

B. Under Track A, there are four basic criteria:

1. The presence of binding interconnection agreements between the BOC and competitors;

2. Access to BOC services by competitors and interconnection with competitors by the BOC;

3. The presence of competitors in both the business and in residential markets; and

4. Competitors are present and offering services exclusively or predominantly over their own facilities.

C. Track A compliance requires little creative or interpretive analysis. One, Qwest has entered into or currently has in effect approximately 60 binding interconnection agreements. Two, access of competitors to the BOC and interconnection between the BOC and competitors references the physical facility connections, interoperability, and traffic exchange between the incumbent and competitors. The necessary connection and traffic exchange is supported by competent evidence. Further, the FCC imposes no requirements on the amount of traffic exchanged, only that the exchange mechanisms are fully operational and some traffic does flow. In Qwest's

case, the connection exists and local traffic flows between carriers. Three, competitors are present in both the residential and the business market, using one of the three entry strategies or envisioned by the Act. Four, as discussed under the public interest test, the FCC does not impose a market share threshold, *per se*. The FCC states that any level of actual competition need only exceed some "*de minimis*" level in those markets. There is no numerical value attached to the *de minimis* measure. Finally, the Qwest numbers on this topic meet or exceed the levels presented in other 271 applications that have been granted. Even if one were to take a pessimistic view of the calculations performed by Qwest, the method and results comport well with successful applicants.

#### VIII. ROC OSS TEST ISSUES

A. The Act and FCC orders implementing the Act require Qwest to provide just, reasonable, and nondiscriminatory access to its operations support systems and to provide the documentation and support necessary for CLECs to access and use these systems and to demonstrate that Qwest's systems are operationally ready. OSS issues permeate the 14-point competitive checklist of § 271.

B. The ROC OSS test was designed to determine if Qwest's OSS meets the requirements. The ROC OSS test evaluated

711 criteria. KPMG concluded that Qwest "satisfied" 645 of the criteria. Eleven of the criteria were found by KPMG to be "not satisfied."<sup>19</sup> KPMG was "unable to determine"<sup>20</sup> if 25<sup>21</sup> of the criteria were met. Another 27 criteria were identified for test purposes as "diagnostic." KPMG did not endeavor to make findings, but did report testing information on the diagnostic criteria. Where the test itself has not resulted in a satisfactory finding for a test criterion, this Commission has made a determination on the criterion.

#### **A. Jeopardy Notice Issues Related to Test Criterion**

1. KPMG found two test criteria, 12-9-4 and 12-9-5, relating to jeopardy notices "not satisfied" and two test criteria, 12-9-1 and 12-9-2, "unable to determine" relating to jeopardy notices for the ROC OSS test section 12, Evaluation of POP Functionality and Performance Versus Parity Standards and Benchmarks.

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<sup>19</sup> KPMG defined "Not Satisfied" as KPMG's analysis demonstrated that the evaluation criterion was not satisfied through existing business operations components (e.g., procedure, system, or document). A criterion was not satisfied by failing to meet a quantitative, qualitative, parity, or existence parameter established for purposes of the test. (see Final Report issued on May 28, 2002)

<sup>20</sup> KPMG defined "Unable to Determine" as KPMG's evaluation and analysis were not able to fully determine that a criterion was satisfied or not satisfied. There were several possible causes for an Unable to Determine results including: activities that took place inside a system and were, therefore, not visible to the tester; event-driven activities for which no event trigger occurred during the testing period; and activities that are planned to occur in the future, such as planned system or process changes.

<sup>21</sup> KPMG issued an errata on June 11, 2002 (see Exhibit 10, in June 10-12, 2002, workshop record) changing the result for Test Criterion 14-1-43 to "diagnostic." The Final Report issued on May 28, 2002 had listed the result for Test Criterion 14-1-43 as "unable to determine."

a. KPMG was unable to determine for test criterion 12-9-1 whether Qwest provides jeopardy notices in advance of the due date for resale products and services. According to KPMG's final report, Qwest did not issue any jeopardy notices for resale products and services in response to test bed transactions or commercial observations.

b. KPMG was unable to determine for test criterion 12-9-2 whether Qwest provides jeopardy notices in advance of the due date for UNE-P products. Similar to resale, KPMG reported that Qwest did not issue any jeopardy notices for UNE-P products and services in response to test bed transactions or commercial observations.

c. Test criterion 12-9-4 was not satisfied on whether Qwest systems or representatives provide timely jeopardy notices for resale products and services. During testing, KPMG identified eight missed resale orders for which no jeopardy notice was received by the P-CLEC. The dual statistical test for the PO-9 PID resulted in a "no decision" for this Performance Indicator Definition (PID). In accordance with, the Master Test Plan (MTP) guidelines, KPMG submitted this issue to the attention of the Technical Advisory Group (TAG), whose discussion resulted in an impasse. Subsequently, the ROC OSS test Steering Committee determined that Qwest should receive a failure for this PID.



d. Test criterion 12-9-5 was not satisfied on whether Qwest systems or representatives provide timely jeopardy notices for UNE-P. During testing, KPMG identified 11 missed UNE-P Orders for which no jeopardy notices were received by the P-CLEC. The dual statistical test for the PO-9 PID resulted in a "no decision" for this PID. In accordance with the MTP guidelines, KPMG submitted this issue to the attention of the TAG, whose discussion resulted in an impasse. Subsequently, the Steering Committee determined that Qwest should receive a failure for this PID.

## 2. **Decision**

a. We find that the "not satisfied" and "unable to determine" results for these test criteria regarding jeopardy notices do not impact CLECs' ability to use Qwest's OSS.

## 3. **Discussion**

a. Qwest notes that the fact that jeopardy notices did not have to be issued for resale and UNE-P products and services should be viewed as positive because it suggests that Qwest was able to provision these products and services without delay. Qwest provides its Colorado commercial performance results for PO-8A, PO-8D, PO-9A, and PO-9D as evidence of meeting test criteria 12-9-1, 12-9-2, 12-9-4, and 12-9-5, respectively. The performance results indicate that

Qwest met the parity requirements for PO-8D, PO-9A, PO-9D<sup>22</sup> for several months. For PO-8A, Qwest did not meet the parity requirements until March 2002.<sup>23</sup> According to Qwest, substantial resources have been invested in improving performance in this area.

b. Qwest does not agree with the Steering Committee's determination that it failed the statistical test for PO-9A (test criterion 12-9-4) and PO-9D (test criterion 12-9-5). Qwest contends that the test results were inconclusive. Qwest argues that commercial performance results demonstrate that Qwest issues jeopardy notices for resale products and services on a nondiscriminatory, timely basis. Qwest further argues that its results for installation commitments met for non-design services for OP-3 demonstrates that Qwest's performance relating to jeopardy notices is not impeding the ability of CLECs to compete in Colorado.

c. AT&T asserts that Qwest's commercial data for Colorado demonstrates that Qwest discriminates against CLECs because Qwest never provided CLECs with as much advance notice of a due date miss as it did for similarly-situated retail customers. AT&T argues that even when Qwest's performance is

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<sup>22</sup> Qwest did not meet the parity requirement for PO-9D for April 2002 for Colorado.

<sup>23</sup> Qwest also met the parity requirement for PO-8A for April 2002 for Colorado.

not statistically significant, it is materially significant. AT&T asserts that the test results and commercial performance results are evidence that Qwest has failed to meet its obligations for checklist item 2.

d. WorldCom and Covad contend that jeopardy notices fulfill a key role in the completion of CLEC requests. Absence of a jeopardy notice indicates to a CLEC that the order will be completed as scheduled. If an order is not completed as scheduled and a jeopardy notice is not provided, according to WorldCom and Covad, the CLEC does not know that its resale or UNE-P customer's service was not activated as scheduled.

e. As KPMG notes during the ROC OSS test, no jeopardy notices were issued for resale and UNE-P product transactions and commercial observations. Also, very few jeopardy notices were not timely issued for resale and UNE-P products and services. The Commission has found that jeopardy notices are important to a CLECs ability to compete when it included measures for jeopardy notices in the CPAP.<sup>24</sup> In the absence of satisfied test criterion, the Commission looks to commercial performance. Qwest performance results indicate that the parity requirements for jeopardy notice measures for resale and UNE-P have been met for most of the last 12 months. Given

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<sup>24</sup> PO-8A and PO-9A for non-designed services and PO-8D and PO-9D for UNE-P (POTS) are included as Tier 1B measures in the CPAP.

the preeminence of commercial performance data, Qwest's systems remain compliant despite the KPMG jeopardy notice exception.

**B. Human Error Issues Related to Test Criterion**

1. KPMG was unable to determine whether Qwest met two test criteria, 12-11-4 and 12.8-2, for the ROC OSS test section 12, Evaluation of POP Functionality and Performance Versus Parity Standards and Benchmarks and one test criterion, 14-1-44, for the ROC OSS test section 14, Provisioning Evaluation relating to human error issues during the testing.

a. KPMG was unable to determine for test criterion 12-11-4 whether Qwest-produced measures of ordering and provisioning (OP) performance results for HPC transactions are consistent with KPMG-produced HPC measures. This correlates to closed/unresolved Observation 3110: "During the course of retesting Exception 3120, Qwest identified human error as the root cause for discrepancies identified with the calculation of provision intervals for PID OP-4." Due to human error issues identified in Exception 3120 and Observation 3110 regarding manual processing of data intended for use in PID reporting, KPMG identified a need for additional retesting. On a focus call held May 24, 2002, Qwest elected not to conduct any additional retesting. Without further retesting specifically designed to assess the impact of human error on the accuracy and

completeness of Qwest's PID reporting, KPMG was unable to conclude that Qwest satisfied this evaluation criterion.

b. KPMG was unable to determine for test criterion 12.8-2 whether procedures for processing electronically submitted non-flow-through orders are defined, documented, and followed. During retesting of Exception 3120, KPMG formally identified issues regarding orders that dropped for manual handling. Qwest elected not to conduct further retesting of this issue. Thus, KPMG was unable to assign a result for this evaluation criterion

c. KPMG was unable to determine for test criterion 14-1-44 whether Qwest-produced measures of ordering and provisioning (OP) performance results for HPC transactions are consistent with KPMG-produced HPC measures. At the conclusion of the retest associated with Exception 3120, KPMG formally identified an issue regarding human errors on three of 26 non-flow-through orders. KPMG subsequently reviewed all P-CLEC non-flow-through orders issued since February 1, 2002. This analysis revealed that of 109 total non-flow-through orders, 60 had problems with the system algorithm, which was the basis for the Exception 3120 retest. Of the remaining 49 non-flow-through orders, Qwest experienced a human error on seven. Without further retesting specifically designed to assess the impact of human error on the accuracy and completeness of

Qwest's PID reporting, KPMG is unable to conclude that Qwest satisfied this evaluation criterion. On a focus call held May 24, 2002, Qwest elected not to conduct any additional retesting.

**2. Decision**

a. The Commission shall require Qwest to develop and submit for inclusion in the CPAP a performance measure for Manual Service Order Accuracy to address human error issues that were revealed during testing.

**3. Discussion**

a. Qwest contends that the number of human errors is within a reasonable tolerance level. The majority of CLEC orders are processed on a flow-through basis, and the percentage of orders handled in flow-through has increased over time. According to Qwest, some percentage of orders will always require manual handling, and manual handling will always present the possibility of human error. Qwest has completed an internal audit of orders submitted in April and March for Resale/UNE-P and Loop products. Qwest's internal audit results for manual order accuracy are:

	<u>March</u>	<u>April</u>
Resale/UNE-P	95.7%	98.8%
Loop	98.5%	100%

Qwest contends it has made a significant effort, however, to reduce the incidence of human error in manual order processing.

In August 2002, Qwest states it will implement an IMA 10.1 enhancement that adds a system verification to ensure that the service order numbers and due dates on the FOC are pre-populated from the LSR, thereby substantially reducing manual processing errors in this area. Qwest states it also will offer CLECs a Pending Service Order Notice (PSON) shortly after the FOC. The PSON allows CLECs to validate that Qwest's order accurately and completely reflects what was ordered on the LSR.

b. In response to KPMG's April 30, 2002, "Qwest Manual Order Entry PID Adequacy Study," Qwest has agreed to develop and present a proposal using the long-term PID administration process for a new performance measure addressing manual processing order accuracy. Qwest states that it expects this will address concerns regarding the accuracy of manually handled orders.

c. AT&T asserts the OSS test has demonstrated that Qwest has serious problems in its manual handling of CLEC orders. AT&T is concerned because Qwest personnel manually handle nearly 12,000 orders for Colorado CLECs in a month. According to AT&T, KPMG found that Qwest personnel did not know how to properly treat CLEC orders and that there were excessive amounts of human errors being made by Qwest personnel as they processed CLEC orders. The errors affected Qwest's performance results because orders were excluded that should not have been

and orders were included that should not have been from the results calculation. AT&T contends that errors in the application date and time directly impact the OP-3 Commitments Met, OP-4 Installation Interval, and OP-6 Delayed Days PIDs.

d. According to AT&T, KPMG noticed that Qwest responded to observations and exceptions by attributing the problem to human error. Qwest responded that additional training of the personnel would remedy the problem. KPMG issued Observation 3086 to capture this concern. AT&T argues that KPMG used the wrong approach in deciding to close Observation 3086. In verifying that Qwest's improvements reduced the rate of human error to acceptable levels, AT&T claims that the obvious path would have been additional transactions designed to be manually handled and additional calls to Qwest's help desk. Instead, KPMG reviewed Qwest documentation, interviewed Qwest employees and observed Qwest employees at the order processing centers and CLEC help desk.

e. AT&T contends that Observation 3110 showed that the rate of human errors made by Qwest order processing personnel had not been reduced to acceptable levels. In total, KPMG examined 76 pseudo-CLEC orders that were manually handled by Qwest personnel as part of the Exception 3120 retest and historical data and found 12 instances of human error (15.8 percent). AT&T argues that 15.8 percent of the manually handled



P-CLEC orders that had human errors constitutes ample and sufficient evidence to show that Qwest had not remedied the human errors from Observation 3086. According to AT&T, KPMG's comparative analysis identified several problems that required Qwest to recalculate previously submitted performance data. AT&T asserts that the rate of human error introduced into orders processed by Qwest representatives remains a substantial problem. AT&T argues that until Qwest has demonstrated to the satisfaction of KPMG that its performance measurement results for manually processed orders are accurate and reliable, this Commission should not rely upon Qwest's reported performance results for performance measurements OP-3, OP-4, and OP-6. AT&T further asserts that Qwest's human error is significant enough to find the ROC OSS test results fatally flawed and advocates that additional testing be conducted.

f. The parties agree that perfection should not be expected. Human error is inevitable when manual processes are used. The parties disagree on how much human error is reasonable and whether additional testing should be conducted to ensure that the level of human error associated with Qwest's OSS does not interfere with competition.

g. The Commission finds that the human error uncovered does not suggest that the test results are fatally flawed. However, we acknowledge the need to address this

concern. KPMG's test revealed human error throughout the testing period and in retests. We acknowledge Qwest's offer to work through the long-term PID administration process to develop a PID for manual service order accuracy as a step towards addressing the issue. This offer does not go far enough to ensure that a timely and proper incentive will minimize human error levels on a going-forward basis.

h. Qwest shall work with interested parties to complete development of a PID for manual service order accuracy. This PID shall be added to the CPAP at the first six-month review.

i. The PID can be developed through a functioning long-term PID administration process. The lack of such a process does not extend Qwest's time to complete development of a PID for manual service order accuracy. If parties cannot reach agreement on a PID, then Qwest shall file its proposed PID with the Commission. The Commission will then seek comment on Qwest's proposal and make a decision before completion of the first six-month review of the CPAP.

j. If parties reach agreement on a PID for manual service order accuracy before the first six-month review of the CPAP, then Qwest shall file the PID for Commission approval pursuant to § 18.9 of the CPAP.

k. The standard for the PID initially shall be diagnostic. At the second six-month review of the CPAP, a benchmark will be established and the PID for manual service order accuracy will be added as a Tier 1B measure to the CPAP, unless parties agree that Qwest's performance does not warrant the addition of such a PID to the CPAP.

**C. Issues With Unbundled Dark Fiber and Enhanced Extended Loop Test Criterion**

1. KPMG found the test criterion, 14-1-10, for unbundled dark fiber (UDF), and the test criterion, 14-1-14, for enhanced extended loop (EEL), "not satisfied" for the ROC OSS test section 14, Provisioning Evaluation.

a. KPMG determined that test criterion 14-1-10 was not satisfied. The criterion focuses on whether Qwest provisions UDF by adhering to documented method and procedure tasks. This correlates to closed/inconclusive Exception 3010: "Qwest did not populate Dark Fiber installation test results in Work Force Administration (WFA) logs as mandated by the Unbundled Dark Fiber Customer Communication Technician-Implementer (CCT-I) Job Aid (Unbundled Dark Fiber Methods and Procedures, Designed Services DS 98-001-H)." In the absence of a documented Qwest standard or PID for accuracy of provisioning, KPMG applied a benchmark of 95 percent. During initial testing, KPMG observed 115 tasks (23 Unbundled Dark Fiber circuits). Of

these, Qwest provisioned 0 (0 percent) tasks in accordance with Qwest documented methods and procedures. As a result, KPMG issued Exception 3010. During retesting, KPMG reviewed 50 tasks (10 Unbundled Dark Fiber circuits). Of these, Qwest provisioned 32 (64 percent) in accord with Qwest documented methods and procedures. As discussed during a ROC TAG conference call, testing was subsequently suspended because of low commercial volume.

b. Test criterion 14-1-14 was not satisfied on whether Qwest provisions EEL circuits by adhering to documented method and procedure tasks. This correlates to closed/inconclusive Exception 3104: "Qwest personnel did not adhere to DS1 Enhanced Extended Loop (EEL) circuit provisioning methods and procedures." In the absence of a documented Qwest standard or PID for accuracy of provisioning, KPMG applied a benchmark of 95 percent. During initial testing, KPMG observed 79 tasks (11 EELs). Of these, Qwest provisioned 69 (87.3 percent) tasks in accordance with Qwest documented methods and procedures. As a result, KPMG issued Exception 3104. During retesting, KPMG observed 15 tasks (two EELS). Of these, Qwest provisioned nine (60 percent) in accordance with Qwest documented methods and procedures. As discussed during a ROC TAG conference call, testing was subsequently suspended because of low commercial volume.

2. **Decision**

a. We find that the "not satisfied" results for these test criteria regarding UDF and EELs do not impact CLECs' ability to use Qwest's OSS.

3. **Discussion**

a. Qwest contends that UDF orders are not prevalent in the commercial setting so it is difficult to prove through commercial data that Qwest provisions them in accordance with documented methods and procedures. In Colorado, Qwest's commercial performance for PIDs OP-3D and OP-3E for UDF shows that there have been no dark fiber observations since September 2001. In Qwest's 14-state region, there have been no dark fiber observations since November 2001. According to Qwest, the FCC previously has held that, in the absence of adequate commercial data, a showing that the BOC is "capable" of meeting § 271's criteria can be sufficient. Qwest contends it has repeatedly shown that it follows documented methods and procedures in other contexts. Qwest argues that this establishes that there is no question that Qwest is capable of following the methods and procedures unique to UDF.

b. Qwest asserts it has repeatedly shown that it is capable of following documented methods and procedures in other contexts. Qwest argues that the Commission should find that Qwest complies with § 271 because of the requirement placed

on it by Docket No. 01I-041T for EELs to be considered for addition to the CPAP at the first six-month review.

c. AT&T contends that although there is no commercial data for Qwest to rely upon to demonstrate it can provide unbundled dark fiber to CLECs, the ROC OSS test was designed to determine if Qwest had the capability of providing dark fiber to CLECs. In addition, AT&T contends that the evidence in the record demonstrates that Qwest technicians do not follow Qwest's documented methods and procedures for provisioning UDF circuits. AT&T further contends that Qwest's latest filings provide no evidence to contradict KPMG's findings that Qwest technicians were not following Qwest's documented methods and procedures. AT&T asserts that KPMG's results demonstrate that Qwest is not capable of providing UDF to CLECs. AT&T argues that Qwest has not met the requirements of checklist item 4 and checklist item 5 because Qwest has not demonstrated that it is capable of providing UDF for unbundled loops or interoffice transport. AT&T also argues that Qwest has not met the requirements of Checklist Item No. 2 based on KPMG's "not satisfied" finding for test criterion 14-1-14 and based on Qwest's commercial performance which indicates that Qwest missed the OP-3D PID standard of 90 percent for EEL installation commitments met in the last four months of reported data.

d. The parties to the ROC OSS test agreed that fieldwork would not be required to be completed if it would impact Qwest's service to real customers. This Commission finds that it was not reasonable to expect Qwest to provision UDF or EELs for test purposes only. As Qwest points out, the Commission already has required EELs to be considered for addition to the CPAP at the first six-month review. Furthermore, the non-existent commercial volumes of orders for UDF and EELs betray these products' insignificance to CLECs operating in Colorado. CLECs that do not order these products cannot, by definition, be impaired by Qwest's OSS systems.

**D. Issues With Parity Not Met for Non-dispatch Orders Related to Test Criterion**

1. KPMG found two test criteria, 14-1-34 and 14-1-36, "not satisfied" relating to parity requirements for non-dispatch orders for Business POTS and UNE-P services for test ROC OSS test section 14, Provisioning Evaluation.

a. Test criterion 14-1-34 was not satisfied on whether Qwest meets the parity performance requirements PID OP-4C—Installation Interval Met for Business POTS. This correlates to closed/unresolved Exception 3086: "Qwest did not install non-dispatch orders for the P-CLEC within a time period that is in parity with Qwest's retail operations, as measured by the PID OP-4C." KPMG performed a Dual Test on the initial test

results, as required in Appendix G of the MTP, and determined that Qwest failed to meet the standard in the Eastern and Western regions. Exception 3086 was issued. Upon retesting, Qwest continued to fail in the Eastern region. Exception 3086 is closed/unresolved per Qwest's request. Based on the completion of the PID audit by Liberty Consulting and the retest results of Exception 3120, KPMG concluded that Qwest did not satisfy this evaluation criterion.

b. Test criterion 14-1-36 was not satisfied on whether Qwest meets the parity performance requirements PID OP-4C-Installation Interval Met for UNE-P services. This test criterion also correlates to "closed/unresolved" Exception 3086. KPMG performed Dual Test on the initial test results, as required in Appendix G of the MTP, and determined that Qwest failed to meet the standard in all three regions. Exception 3086 was issued. Upon retesting, Qwest failed in all three regions. Exception 3086 is closed/unresolved per Qwest's request. Based on the completion of the PID audit by Liberty Consulting and the retest results of Exception 3120, KPMG concluded that Qwest did not satisfy this evaluation criterion.

## 2. **Decision**

a. The Commission finds that the "not satisfied" results for these test criteria regarding parity not



met for non-dispatch orders for business POTS and UNE-P services do not impact CLECs' ability to use Qwest's OSS.

### 3. Discussion

a. For Business POTS (test criterion 14-1-34), Qwest points out that it met this standard and passed the test in its Central and Western Regions, although KPMG found that Qwest did not satisfy this standard in the Eastern Region. Qwest notes that Colorado is located in Qwest's Central, not Eastern, region. Qwest argues that performance issues in connection with criterion 14-1-34 (non-dispatch Business POTS) therefore do not apply here. Qwest provided commercial performance in Colorado. That data shows that Qwest has met the required parity standard for OP-4C. For Business POTS, Qwest has satisfied the OP-4C parity standard in each of the last five months. For UNE-P POTS, Qwest satisfied the OP-4C parity standard in each of the past five months. Qwest argues that commercial performance under OP-4C demonstrates that CLECs have a meaningful opportunity to compete in Colorado.

b. AT&T contends that the test findings confirm that Qwest discriminates. AT&T argues that the test results conclude that Qwest has failed to demonstrate compliance with checklist item 2 for provisioning UNE-P services and checklist item 14 for provisioning business resale services.

c. WorldCom and Covad contend that the Qwest's failure to prove its ability to deliver Business POTS and UNE-P within the same installation intervals as it provides itself (parity) is a very serious concern for CLECs. UNE-P is one of the primary methods used by CLECs to compete in the local residential market. WorldCom and Covad argue if this test finding is not addressed and resolved, local competition will surely suffer.

d. Because Qwest did not meet the parity requirements for provisioning non-dispatched business POTS and UNE-P during the test, the Commission relies on Qwest's commercial performance to determine that Qwest's OSS is adequate. The commercial performance data established this. We further note that the Commission has included in the CPAP measures for provisioning of business POTS and UNE-P. Should Qwest fall short on these measures, CLECs will be compensated and Qwest will be penalized for subpar performance.

**E. Insufficient Data Issues Related to Test Criterion**

1. KPMG was unable to determine whether Qwest met three test criteria, 14-1-37, 14-1-38, and 14-1-39, relating to insufficient data obtained during the testing for the ROC OSS test section 14, Provisioning Evaluation.

a. KPMG was unable to determine for test criteria 14-1-37, 14-1-38, and 14-1-39 whether Qwest meets the

parity requirements for PID OP-6A-Delayed Days for Business POTS, Residential POTS, and UNE-P POTS respectively. In the Eastern and Western regions, Qwest did not delay any P-CLEC orders for business POTS. In the Central region, for the three business POTS orders delayed, Qwest took an average of 1 day to complete the orders as compared to 9.4 days for retail completion for Business POTS. KPMG performed a Dual Test, as required in Appendix G of the MTP, and determined that Qwest achieved a passing result in the Central region. Based on the completion of the PID audit by Liberty Consulting and the retest results of Exception 3120, KPMG concluded that Qwest satisfied this evaluation criterion for the Central region. Due to a lack of data for the Western and Eastern regions, the overall result for this test criterion is "unable to determine." Qwest did not delay during the test any P-CLEC orders for Residential POTS and UNE-P POTS. Consequently, KPMG was unable to determine a result for test criteria 14-1-38 and 14-1-39.

## 2. **Decision**

a. We find that the "unable to determine" results for these criteria regarding parity performance requirements for delayed days on business POTS, residential POTS, and UNE-P POTS do not impact CLECs' ability to use Qwest's OSS.

### 3. Discussion

a. Qwest asserts that its commercial performance suggests that the criteria results pertaining to OP-6A should not prevent this Commission from finding that Qwest meets the required § 271 criteria.

b. The FCC has indicated that actual commercial experience provides the best evidence and that testing provides the second-best evidence. Therefore, we conclude that in the situation where commercial experience is contradicted or unsubstantiated by test evidence, the commercial experience must be given the weight. We note that Qwest has met the parity standard for May 2001 through April 2002 for delayed days for business POTS, residential POTS, and UNE-P POTS for Colorado. The existence of measures in the CPAP with associated penalties for failure to meet the performance standards gives the Commission comfort on a going-forward basis that the market will remain open to competition. The CPAP includes measures for provisioning of business POTS, residential POTS, and UNE-P POTS.

#### **F. Issues With Maintenance and Repair Benchmark Not Met for CEMR Peak Volume Test Criterion**

1. KPMG found test criteria, 16-3-5, "not satisfied" for the benchmark requirement for peak volume testing for ROC OSS test section 16, CEMR Functional and Performance Evaluation.

a. Test criterion 16-3-5 was not satisfied on whether "modify a trouble report" transactions are processed within the guidelines established by the ROC TAG. This correlates to closed/unresolved Exception 3107: "Qwest did not process ND EDIT transactions that were submitted to the Customer Maintenance & Repair (CEMR) system in the time frame defined by the benchmark." The ROC TAG-established benchmarks for processing Non-Designed (ND) Modify (Edit) transactions is 0:00:24 seconds. The peak day test results for ND EDIT transactions was 0:00:27 seconds. Based on the ND EDIT test result deficiency, KPMG issued Exception 3107. In response, Qwest conducted three internally administered tests to replicate the KPMG-administered test. KPMG stated that such a test executed by Qwest was inconsistent with the methodology set forth and agreed upon by the ROC TAG, and that there are no provisions for its consideration. Qwest requested that KPMG close Exception 3107 as "closed/unresolved."

## 2. **Decision**

a. The Commission finds that the "not satisfied" result for this criterion regarding benchmark not met for CEMR peak volume testing does not impact CLECs' ability to use Qwest's OSS.

### 3. Discussion

a. The capacity test for CEMR evaluated Qwest's response times at normal volume, peak volume and stress volume. According to Qwest, it successfully met all of the benchmarks for the 13 CEMR functionalities KPMG tested during the normal volume test, and met all of the benchmarks for 12 of the 13 functionalities KPMG tested during the peak volume test. During that test, Qwest processed ND EDIT transactions in 27 seconds, three seconds longer than the 24-second test standard.

b. Qwest independently set up and conducted three separate tests of ND EDIT transactions to trouble-shoot its CEMR response times. Each of these tests involved an even higher volume of transactions than those required by the Master Test Plan, and testing was conducted during the business day when other transactions were being processed. According to Qwest, it successfully met the 24-second test benchmark during each of these tests, posting average transaction response times of 18.9, 18.1, and 22.4 seconds. Qwest argues that the "not satisfied" status of evaluation criterion 16-3-5 and the closed/unresolved status of E3107 present, at best, an anomaly that need not be considered in assessing Qwest's capabilities in connection with CEMR.

c. According to AT&T, the modify trouble report is a critical component of the CEMR interface because it was

significant enough that Qwest agreed to the testing of the modify trouble report function in the CEMR interface and agreed to the 24-second benchmark. AT&T urges the Commission to dismiss Qwest's "home grown" ND EDIT transaction data for the same reasons as KPMG did: the ROC TAG agreed to a third-party test and there are no provisions in the MTP for consideration of Qwest-administered tests.

d. During the June *en banc* Commission workshop, Qwest's Ms. Notarianni testified that Qwest's attempts to trouble-shoot its CEMR did not reveal the cause for not meeting the 24-second benchmark during KPMG's testing. Ms. Notarianni stated that because of this, Qwest did not attempt to improve its systems or agree to have them retested.<sup>25</sup> The Commission notes that none of the CLECs indicated that this particular "not satisfied" test criterion was a fatal flaw in terms of accepting the overall test results.

**G. Issues With Inaccurate and Missing Close-out Codes Relating to Test Criterion**

1. KPMG found test criteria, 18-6-1 and 18-6-3, "not satisfied" relating to close-out codes for ROC OSS test section 18, End-to-End Trouble Report Processing.

a. Test criterion 18-6-1 was not satisfied on whether close-out codes for out-of-service and service-affecting

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<sup>25</sup> June 12, 2002, transcript, pages 59 and 60.

wholesale UNE-P, resale, and Centrex 21 troubles indicated in Qwest's systems, and that may or may not require the dispatch of a technician, are consistent with the troubles placed on the line. This correlates to closed/unresolved Exception 3055: "Qwest's OSSLOG Trouble History contained inaccurate closeout codes for repairs completed to Plain Old Telephone Service (POTS) Resale and UNE-P services." In the absence of a PID-defined standard, KPMG assigned a benchmark of 95 percent of close-out codes correctly applied. Of 201 troubles submitted, 177 (88 percent ) were correctly coded. As a result of this deficiency, KPMG issued Exception 3055. KPMG's subsequent retest results indicated that, of 122 resale close-out codes reviewed, 108 (88.5 percent) were accurately coded. KPMG determined that the difference between Qwest's performance, and the performance standard used by KPMG, was statistically significant (p-value of .0032). Therefore, KPMG determined that Qwest's performance was unsatisfactory. Qwest asked that no additional testing be conducted, and requested that Exception 3055 be closed/unresolved.

b. Test criterion 18-6-3 was not satisfied on whether close-out codes for out-of-service and service-affecting wholesale DS1 and higher bit rate troubles indicated in Qwest's systems are consistent with the troubles placed on the line that may or may not require the dispatch of a technician.



This correlates to closed/inconclusive Exception 3053: "Qwest's OSSLOG Trouble History was missing the close-out codes for repairs completed to DS1 services." In the absence of a PID-defined standard, KPMG assigned a benchmark of 95 percent of close-out codes correctly applied. Of 10 troubles submitted, 9 (90 %) were correctly coded. As a result of this deficiency, KPMG issued Exception 3053. KPMG found that the difference between the performance result and the standard (p-value of .4013) is not statistically significant. However, KPMG determined that the sample size was insufficient to make a definitive conclusion that the criterion was or was not satisfied. KPMG extended Qwest the opportunity to increase the sample size by conducting additional testing. Qwest chose not to conduct additional testing. Therefore, KPMG closed Exception 3053 as inconclusive.

## 2. **Decision**

a. The Commission finds that the "not satisfied" results for these test criteria regarding inaccurate and missing trouble codes do not impact CLECs' ability to use Qwest's OSS.

## 3. **Discussion**

a. The TAG did not develop a PID for close-out code accuracy. As a result, Qwest cannot provide commercial performance results to compare with test results. According to

Qwest, its performance during the retest would have satisfied a CLEC's needs. Close-out codes are used by Qwest to analyze the network, identify trends, and troubleshoot and repair potential problem areas. Close-out codes consist of four digits. The first two digits identify whether the trouble was a Qwest-issue or CLEC-issue, and, if a Qwest-issue, the internal Qwest department or equipment category that experienced the trouble. Qwest contends that the second two digits identify more specifically the group or equipment component within the broader category that experienced the trouble. These second two digits have virtually no effect on CLECs, as they do not affect Qwest's service to CLECs, Qwest's regulatory or financial reporting, or Qwest's commercial performance.

b. Trouble tickets also contain a narrative field. The narrative field is used by the Qwest technician, screener or dispatcher to further describe the found trouble, often with greater specificity than close-out codes can accommodate. In practice, the narrative field is always completed so the trouble experienced is clearly described for future analysis or reference. During the test, Qwest did not use accurate close-out codes for trouble reports on 14 HPC accounts. But five of the inaccurate close-out codes Qwest used were inaccurate only with respect to the second two digits, and all but six of the 14 contained accurate information in their

narrative fields. Qwest asserts that if KPMG had recognized the primacy of accurate narrative fields in closing out trouble tickets (rather than relying solely on coding number), KPMG would have found that, as a practical matter, 116 of the 122 HPC accounts (95.08 percent) satisfied real CLECs' needs. Qwest contends that the retest did demonstrate that Qwest cleared the circuit faults and restored quality service in a timely manner, which is indisputably the most important and potentially CLEC-impacting consideration. Qwest has since implemented additional training of its technicians to ensure that they code and close out all trouble tickets correctly. Qwest also has implemented a weekly internal audit of trouble tickets to ensure that, among other things, they contain the correct coding. These audits indicate that this additional training has improved Qwest's close-out code accuracy; performance has been at 95 percent or above for each of the past nine weeks and this standard has only been missed one time since February 1, 2002. Qwest argues that the circumstances of evaluation criterion 18-6-1 and Exception 3055 -- and the action Qwest has taken in response -- suggest that the results of criterion 18-6-1 do not prevent CLECs from a meaningful opportunity to compete in the market for local service.

c. Disposition and Cause (D/C) codes are necessary to determine who caused the trouble to occur (i.e. the

CLEC, the customer, Qwest or some other party) and the cause of the trouble. AT&T states that, while Qwest recognized the problem and asserted that it had implemented a solution, Qwest chose to have Exception 3055 closed as unresolved rather than subject itself to the rigor of a KPMG retest. AT&T contends that the Commission should be suspicious of Qwest's internally produced data given that Qwest had the opportunity for KPMG to conduct an independent retest and declined to pursue the option that would have produced more trustworthy results.

d. The Commission notes that none of the CLECs indicated that these particular "not satisfied" test criteria were fatal flaws in terms of accepting the overall test results. In fact, the Commission did not receive any written comments from CLECs on test criterion 18-6-3. The results from this test do not reveal a material impediment to CLECs using Qwest's OSS systems.

#### **H. Issues With Troubles Not Successfully Repaired Relating to Test Criterion**

1. KPMG found test criterion 18-7-1 "not satisfied" relating to troubles not successfully repaired for ROC OSS test section 18, End-to-End Trouble Report Processing.

a. Test criterion 18-7-1 was not satisfied on whether out-of-service and service-affecting wholesale UNE-P, resale, and Centrex 21 troubles that may or may not require the

dispatch of a technician are successfully repaired. This correlates to closed/inconclusive Exception 3058: "KPMG has identified concerns that Qwest did not successfully repair all of the POTS Resale, UNE-P and UNE-L circuits submitted for repair." In the absence of a PID-defined standard, KPMG assigned a benchmark of 95 percent of correct repairs. Of 259 troubles submitted, 239 (92 percent) were successfully repaired. KPMG found that the difference between the performance result and the standard (p-value of .0372) is statistically significant. As a result of this deficiency, KPMG issued Exception 3058. Qwest and KPMG disagreed on both the performance standard used by KPMG to evaluate Qwest's performance, and over whether the troubles cited in this Exception were correctly resolved. Qwest asked that no additional testing be conducted. KPMG subsequently closed Exception 3058 as closed/unresolved.

## 2. **Decision**

a. The Commission finds that the not satisfied results for this test criterion regarding troubles not successfully repaired do not impact CLECs' ability to use Qwest's OSS.

## 3. **Discussion**

a. According to Qwest, KPMG claims to have assigned a 95 percent benchmark to evaluation criterion 18-7-1

because no "PID-defined standard" was available. Qwest asserts that using PID MR-7, which was the product of collaboration between Qwest and CLECs, would have yielded meaningful results. MR-7 evaluates "the accuracy of repair actions, focusing on the number of repeat trouble reports received for the same trouble within a specified period (30 calendar days)." Qwest contends that MR-7 precisely measures the component that KPMG purported to measure because a repeat trouble report is an accurate barometer of the success of the first repair effort. KPMG should have used MR-7 because, in the past, the FCC has held that, in light of its analogous retail components, "a parity standard is a more appropriate measure of maintenance and repair response time than [an] absolute benchmark." Qwest further contends that if KPMG had relied upon MR-7 to assess Qwest's performance, KPMG would have found that Qwest handily met the appropriate standard for assessing the success of its repairs.

b. In Colorado, Qwest met the MR-7 parity standard for resold Business POTS in each of the past four months. During the same period, Qwest recorded a slight disparity in one month for resold Residential POTS in the category of orders requiring dispatches. As for UNE-P, Qwest achieved parity in each of the past four months for orders requiring the dispatch of a technician. For non-dispatch UNE-P orders during the same period, Qwest achieved parity only in

March. According to Qwest, the FCC has in previous Section 271 orders overlooked earlier performance discrepancies when the BOC's most recent performance has been satisfactory. This is the case with Qwest's UNE-P performance under MR-7 for non-dispatch orders. Qwest recorded a single disparity in January for analog loops, but that was the only disparity recorded for analog loops under MR-7 in the past twelve months. Qwest argues that its performance under MR-7 for resold Residential and Business POTS, UNE-P, and analog loops is generally excellent and is consistent with that of other BOCs that have received Section 271 approval.

c. AT&T asserts successful repair of troubles by Qwest that are found in CLEC services is a critical element in the satisfaction of a CLEC's customers. AT&T argues that a failure by Qwest to repair the service on the first attempt will necessitate a second visit to the customer and will likely reduce the level of customer satisfaction with the CLEC.

d. WorldCom and Covad contend that CLECs are dependent upon Qwest's Maintenance and Repair (M&R) procedures for ensuring that troubles with their UNE and resale customers will be successfully resolved. Therefore, they contend that this is a deficiency which must be rectified.

e. The Commission notes that none of the CLECs indicated that these particular "not satisfied" test criteria were fatal flaws in terms of accepting the overall test results.

**I. Issues With No Events to Observe for Test Criterion**

1. KPMG was unable to determine whether Qwest met two test criteria, 19.6-1-17 and 19.6.1.19, for the ROC OSS test section 19.6, Daily Usage Feed Returns, Production and Distribution Processes Evaluation; one test criterion, 22-1-10, for the ROC OSS test section 22, CLEC Network Provisioning-Network Design Request, Collocation, and Interconnection Trunks Review; one test criterion, 24.3-9, for ROC OSS test section 24.3, Account Establishment and Management Review; and one test criterion, 24.10-3-4, for ROC OSS test section 24.10, ISC/Billing and Collection Center Support Review because there were no events to observe.

a. KPMG was unable to determine for test criterion 19.6-1-17 whether DUF is corrected and returned according to a defined schedule. In interviews with Qwest personnel, and through documentation reviews, KPMG was able to verify the existence of the process. However, since this process is performed only when events require such action to be taken, and KPMG observed none of those such events, KPMG was unable to observe and to determine whether the process is sufficiently robust, or whether Qwest adheres to the process.

b. KPMG was unable to determine for test criterion 19.6-1-19 whether CLECs can readily obtain status on



DUF return requests. In interviews with Qwest personnel, and through documentation reviews, KPMG was able to verify the existence of the process. However, since this process is performed only when events require such action to be taken, and KPMG observed none of those such events, KPMG was unable to observe and to determine whether the process is sufficiently robust, or whether Qwest adheres to the process.

c. KPMG was unable to determine for test criterion 22-1-10 whether defined processes for NDR implementations are adhered to. KPMG's interviews with Qwest NDR personnel, and documentation reviews revealed that Qwest did not process any commercial NDR orders during the execution of this test. Thus, KPMG cannot determine whether or not Qwest adheres to the process, using traditional operational analysis techniques. KPMG is unable to determine whether Qwest's processes satisfy this evaluation criterion.

d. KPMG was unable to determine for test criterion 24.3-9 whether customer calls are returned per documented/stated intervals. On April 5, 2002, Qwest published expected interval guidelines for Account Team communication on its Wholesale Web site. However, due to the test schedule for the OSS Evaluation, and Qwest's recent establishment of several communication response time guidelines, KPMG was not able to observe Qwest's adherence to the documented process for Service

Management response time intervals. KPMG was also not able to monitor any P-CLEC feedback to the Account Team based on the recently publicized communication intervals.

e. KPMG was unable to determine for test criterion 24.10-3-4 whether training of representatives is defined, documented, and followed. Qwest's training curriculum for representatives exists and is documented. KPMG was able to verify the existence of Qwest's process. Since this process is performed only when events require such action, and KPMG observed none of those such events, KPMG was unable to observe and determine whether or not Qwest adheres to the process.

## 2. **Decision**

a. The Commission finds that the "unable to determine" results for these test criteria do not impact CLECs' ability to use Qwest's OSS.

## 3. **Discussion**

a. According to Qwest, its CCUR system is designed to receive/return DUF records, analyze and determine correct billing numbers, and re-deliver DUF records within three days to the correct CLEC. In addition, CCUR generates a confirmation report indicating receipt of returned usage, which provides CLECs with details such as whether the item is accepted, rejected, or dropped by CCUR. Qwest asserts that KPMG verified the existence of these processes; however, KPMG

could not evaluate the use of CCUR because during the test no CLECs subscribed to this automated process. Qwest notes that HPC, in its role as P-CLEC, confirmed that CLECs are capable of using CCUR to return usage records to Qwest.

b. According to Qwest, CLECs have an alternate to address incorrect usage sent on the DUF. Qwest provides Service Delivery Coordinator (SDC) personnel, each assigned to specific CLECs, to handle and direct CLEC billing-related requests or concerns. KPMG verified the existence of this process and found that Qwest "satisfied" the test criterion (19.6-1-18). Qwest argues that the "unable to determine" status of test criteria 19.6-1-17 and 19.6-1-19 do not prevent this Commission from finding that Qwest has in place an adequate process for adjusting usage, and thus complies with § 271.

c. Qwest has not had to process any NDRs in the course of the test. KPMG's findings comport with Qwest's real-world experience. Because the process typically is used only by new entrants, Qwest has not completed any NDRs in the past year. Of the two potential orders Qwest has received, one was submitted by an unqualified CLEC and the other by a CLEC for which negotiations are currently underway. Qwest argues that the status of test criterion 22-1-10 should not stand in the way of a finding of § 271 compliance.

d. Qwest has established a comprehensive feedback mechanism for CLECs to meet with the Service Management teams. Through this comprehensive feedback mechanism, Qwest documents meeting minutes and action items, and tracks and reports any issues that may arise. KPMG noted in the *Draft Final Report* that Qwest had updated its process for Account Team members regularly to obtain feedback from CLECs about their ability timely to respond to customer calls. Further, KPMG noted that Qwest had updated its Service Management Issues database that tracks the status of issues for CLEC customers and also published revised intervals on its Wholesale Website. Qwest argues that, in light of these developments, KPMG's designation of test criterion 24.3-9 as "unable to determine" should not preclude a finding by this Commission that Qwest has met the requirements of § 271.

e. According to Qwest, KPMG concluded that it was "unable to determine" whether Qwest follows its training procedures because, as representatives are trained only as needed, no such training processes took place during the test.

f. The Commission acknowledges that there was no activity for KPMG to observe during the testing period. We note that CLECs did not file any written comments on any of these test criteria. Therefore, we conclude that these test criteria are of lesser importance to CLECs.

**J. Issues With Bill Production Related to Test Criterion**

1. KPMG was unable to determine whether Qwest met four test criteria, 20.7-1-3, 20.7-1-4, 20.7-1-5, and 20.7-1-9, for the ROC OSS test section 20.7, Bill Production and Distribution Process Evaluation.

a. KPMG was unable to determine for test criterion 20.7-1-3 whether cycle balancing procedures exist to identify and resolve out-of-balance conditions. Procedures for cycle balancing are defined in Qwest documents. KPMG's interviews with Qwest IABS Billing Process, IABS Software Development, and CRIS Billing Applications Operations personnel revealed that Qwest's activities associated with this criterion are embedded in automated systems, rather than in manual processes. Thus, it is impractical for KPMG to determine whether or not the process is sufficiently robust, or whether Qwest adheres to the process, using traditional operational analysis techniques. Accordingly, KPMG is not able to conclusively validate Qwest's adherence to its defined cycle balancing processes. Therefore, KPMG must assign an "unable to determine" result for this criterion.

b. KPMG was unable to determine for test criterion 20.7-1-4 whether process includes reasonability checks to identify errors not susceptible to pre-determined balancing procedures. The process used for bill validation is documented.

In interviews with Qwest personnel, and through documentation reviews, KPMG was able to verify the existence of the process. However, since this process is performed only when events require such action to be taken, and KPMG observed none of those such events, KPMG was unable to observe and determine whether the process is sufficiently robust, or whether Qwest adheres to the process. During final retesting of bill accuracy, KPMG did receive correct bills. However, KPMG is not able to determine whether these bills are correct because of the bill creation process, or because of adherence to Qwest's defined post-production quality assurance processes. Therefore, KPMG must assign an "unable to determine" result for Qwest's adherence to its post-production quality assurance process.

c. KPMG was unable to determine for test criterion 20.7-1-5 whether process includes procedures to ensure that payments and adjustments are applied. Procedures exist to ensure that payments and adjustments are applied. KPMG's interviews with Qwest CRIS Billing Applications Operations personnel, and documentation reviews revealed that Qwest's activities associated with this criterion are embedded in automated systems, rather than in manual processes. Thus, it is impractical for KPMG to determine whether the process is sufficiently robust, or whether or not Qwest adheres to the process, using traditional operational analysis techniques.

KPMG is, therefore, unable to determine whether Qwest's automated processes satisfy this evaluation criterion. Further, no KPMG transactions test was designed to make payments or generate claims for which adjustments would have been generated. As a result, KPMG was not able to evaluate transaction test outputs to determine the effectiveness of Qwest's payment and adjustment application processes.

d. KPMG was unable to determine for test criterion 20.7-1-9 whether process includes procedures to ensure that bill retention requirements are operationally satisfied. Bill details are retained for a period of six years. Summary bill information is retained for 15 years. As the duration of this evaluation did not meet or exceed the bill retention timeframe requirements specified by Qwest, KPMG was not able to evaluate Qwest's compliance with the documented retention process.

## 2. **Decision**

a. The Commission finds that the "unable to determine" results for these test criteria do not impact CLECs' ability to use Qwest's OSS.

## 3. **Discussion**

a. Qwest contends that KPMG's finding is by no means a negative finding; rather, it is simply an acknowledgment that KPMG could go no further with its evaluation of this

criterion. Qwest asserts that for what KPMG was able to evaluate—including voluminous supporting documentation—it was found to be satisfactory.

b. Qwest contends that KPMG did determine that Qwest's bills are accurate. For the past seven months, Qwest Colorado commercial performance consistently has met or exceeded parity with respect to accurate Wholesale bills, PID BI-3A. Qwest argues that the "unable to determine" for test criterion 20.7-1-4 does not prevent this Commission from finding that Qwest complies with Section 271.

c. Qwest asserts that KPMG's comprehensive approach in evaluating Qwest's bill production and distribution processes provides this Commission with ample evidence that these processes are in place and can function properly. In the course of its evaluation, KPMG interviewed Qwest subject matter experts; reviewed both internal and external Qwest documentation; and examined Qwest's processes, operational methods and procedures, organizational charts and supporting documentation. Qwest contends that nothing suggests that KPMG's findings found Qwest's processes lacking. Qwest argues that evidence exists to support a finding that Qwest is capable of properly applying payments and adjustments to its bills.

d. Qwest contends that it is impossible to prove in a two-year test that a company retains billing



information for six or 15 years. Local competition under the Act only became possible six years ago. Qwest represents that it possesses bills issued to CLECs that established service as far back as 1996 and 1997. Qwest argues that it is only logical that the "unable to determine" status of evaluation criteria 20.7-1-9 should not affect a finding of § 271 compliance.

e. During the testing period, there was nothing for KPMG to conclude related to these test criteria. We note that CLECs did not file any written comments on any of these test criteria. Therefore, we conclude that these test criteria are of lesser importance to CLECs.

#### **K. Diagnostic Test Criterion**

1. Eleven test criteria were classified "diagnostic" for ROC OSS test section 12, Evaluation of POP Functionality and Performance Versus Parity Standards and Benchmarks; ten test criteria were classified "diagnostic" for test section 13, Order Flow-through Evaluation; three test criteria were classified "diagnostic" for test section 14.1, Provisioning Evaluation; two test criteria were classified "diagnostic" for test section 15, POP Volume Performance Test; and one test criterion was classified "diagnostic" for test section 16, CEMR Functional and Performance Evaluation.

a. KPMG only reported information but did not report a specific result for the 27 total test criteria that were classified as diagnostic. Some of these test criteria measured results for specific PID submeasures (*i.e.*, PO-4A, PO-4B, and PO-4C). At the commencement of testing, if the standard

for the PID submeasure was not established, it was "diagnostic." Therefore, these test criteria were treated as diagnostic for the test period, even though standards were agreed to and set for some of the PID submeasures (*i.e.*, PO-2B) prior to the end of the test period.

## 2. **Decision**

a. The Commission takes no action regarding the test criteria classified as diagnostic, and acknowledges that specific results were not reported for these measures.

## 3. **Discussion**

a. WorldCom and Covad assert that the level of flow-through available to CLEC orders directly impacts the efficiency and effectiveness of how orders are handled. They further assert that adequate flow-through levels are even more critical as order volumes increase.

b. All of the test criteria, except one for test 13, Order Flow-through Evaluation, were classified as diagnostic. The Commission draws no conclusion from the information reported for these test criteria. The CPAP includes order flow-through measures (PO-2A and PO-2B) with specific benchmarks in Tier 2. If these measures are not met, then Qwest shall pay into the Special Fund.

c. No comments were received on any of the other diagnostic test criteria. The Commission also draws no

conclusion from the information reported for these other test criteria. Regarding the diagnostic test criteria, the Commission finds that the ROC OSS test met the intent in that information was reported for each of the diagnostic test criteria.

**L. Issues With Satisfied Findings for Test Criterion**

1. The Commission solicited comments from the parties regarding any disagreement with a finding of "satisfied" for a test criterion<sup>26</sup>.

a. AT&T asserts that test criteria 19.6-1-1 (whether DUF production and distribution procedures are clearly defined); 19.6-1-4 (whether DUF balancing and reconciliation procedures are clearly defined); 19.6-1-5 (whether DUF routing and guiding is controlled by defined and documented processes; and 19.6-1-6 (whether DUF routing and guiding contains functionality to adequately address pending and completed service order activity) warranted a finding of "not satisfied" instead of the actual finding of "satisfied".

**2. Decision**

a. The Commission requires no further retesting or other action for test criteria 19.6.1-1, 19.6.1-4, 19.6.1-5, and 19.6.1-6.

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<sup>26</sup> see Decision No. C02-546, paragraph I.C.8.a(4).

### 3. Discussion

a. AT&T contends that the test has not established that Qwest has a mechanism in place to detect problems with the completeness and accuracy of its DUF production and distribution processes. In support of its position, AT&T argues that KPMG inappropriately concluded that Qwest satisfied these test criteria, and that Qwest's repeated failure of the DUF retest demonstrates serious problems with Qwest's DUF production and distribution processes.

b. The Commission accepts KPMG's professional judgment in finding these test criteria "satisfied." All parties agreed to military style (test until it passes) testing for the ROC OSS test. DUF testing was conducted six times before KPMG concluded that Qwest passed.

#### M. CLEC Participation Issues

1. KPMG disclosed information identifying specific test sections that contain conclusions that were based, in whole or in part, on representations, information, or data obtained from or provided by CLECs which had unfiled, "secret" agreements with Qwest<sup>27</sup>.

a. The CLECs advocate that the Commission delay making a finding on the ROC OSS test until an investigation can

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<sup>27</sup> See Exhibit 5, KPMG Consulting's CLEC Participation Summary and Evaluation.

be completed to determine what, if any, impact the non-disclosed agreements had on the ROC OSS test results.

**2. Decision**

a. The Commission requires no determination of the impact, if any, of the non-disclosed agreements between CLECs and Qwest on the ROC OSS test results.

**3. Discussion**

a. The CLECs contend that they cannot individually determine if the unfiled agreements caused Qwest to discriminate between CLECs because each CLEC only has access to its own Qwest reported performance data and does not have access to Qwest reported performance data for other individual CLECs.

b. The Commission notes that CLECs do have access to aggregate CLEC data. In fact, such data is public information. A CLEC can determine how its own data compares to the aggregate CLEC data. If a CLEC had done the comparison and concluded that the comparison suggests there is different treatment by Qwest, then the CLEC should have -- and surely would have -- presented that information in this proceeding to the Commission. No CLEC has presented this type of comparison information to the Commission. Therefore, the Commission concludes that the CLECs have not brought forward any information that suggests the unfiled agreements corrupted the

test data. The impact on the integrity of the test was negligible, at worst.

**N. Data Reconciliation**

1. Liberty Consulting, upon completing data reconciliation that compared CLEC-collected data to Qwest-collected data, concluded that Qwest's performance reporting accurately and reliably reports Qwest's actual performance.

- a. Liberty Consulting performed data reconciliation and issued separate reports for Arizona, Colorado, Nebraska, Washington, Oregon, Minnesota, and Utah.

2. **Decision**

- a. The Commission agrees with Liberty Consulting's conclusion that Qwest accurately and reliably reports actual performance data and results.

3. **Discussion**

- a. Colorado held proceedings regarding data reconciliation on February 5, 2002 and continued on February 14, 2002. In addition, the Commission allowed parties to address data reconciliation on June 12, 2002 during its final *en banc* proceeding. During its proceedings the Commission did not receive any evidence that would lead us not to believe the conclusions made by Liberty Consulting.

**O. Overall Commission Finding on the ROC OSS Test**

**1. Decision**

a. The Commission finds, through the ROC OSS test and commercial performance data, that Qwest has demonstrated that its operation support systems are operationally ready, except for the potential for human error. Taking into consideration the requirement placed on Qwest to develop and include in the CPAP a performance measure for Manual Service Order Accuracy, the Commission concludes that the ROC OSS test is sufficient for demonstrating Qwest's compliance with § 271.

**2. Discussion**

a. During the *en banc* workshop, parties were given the opportunity to indicate if anything was missing from the ROC OSS test. No party stated to this Commission that the ROC OSS test was missing anything or was deficient in any manner.

**IX. CHANGE MANAGEMENT PLAN (CMP) ISSUES**

1. In evaluating RBOC change management plans under Checklist Item 2 of § 271, the FCC has relied on the following factors: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in

the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the RBOC makes available for the purpose of building an electronic gateway. The FCC has also examined two additional factors: whether an RBOC has demonstrated a "pattern of compliance" with its own change management plan and whether it has provided adequate technical assistance to CLECs in using the RBOC's OSS.

2. In July 2001, Qwest and CLEC representatives began meeting in a collaborative effort to redesign its change management procedures. CLEC and Qwest representatives, together with the Colorado Commission Staff, have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. Only one item was brought to this Commission on impasse.

3. The CLEC/Qwest redesign team agreed to begin with OBF Issue 2233, version a1 v1, as a starting point for negotiating the redesigned CMP. To date, virtually all the OBF document has been discussed and base-lined, as reflected in Exhibit G to the SGAT. The only discussion that has not been completed by the redesign group is the voting process for the



CMP. The face-to-face redesign meetings have ended, and only *ad hoc* conference calls remain.

4. Once the redesign team reached agreement, Qwest implemented the agreement as soon as practicable. During the redesign meetings, Qwest and CLECs agreed to a process for Qwest's implementation of redesign agreements that included Qwest's presentation of the agreements to the broader CLEC world at the monthly CMP meeting prior to implementation. From the time that process was agreed to, Qwest first presented agreements reached through the redesign effort to the CLECs at the monthly meetings before implementing them. The redesign team agreed that, upon completion of the redesign process, the parties would have the opportunity to revisit any part of the redesigned plan in light of the whole. The FCC has recognized that the change management process is evolutionary, by definition:

We do not expect any change management plan to remain static. Rather, a key component of an effective change management process is the existence of a forum in which both competing carriers and the BOC can work collaboratively to improve the method by which changes to the BOC's OSS are implemented.<sup>28</sup>

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<sup>28</sup> *Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, Memorandum and Opinion Order, FCC 00-238 (rel. June 30, 2000) ("*Texas 271 Order*"), at ¶ 117.

5. In the ROC OSS test, Test 23 focused on Change Management. The Change Management Test evaluated Qwest's change management process used by CLECs engaged in the Qwest-CLEC business relationship. The test tried to determine the adequacy and completeness of procedures for developing, publicizing, evaluating, and implementing changes to Qwest's Wholesale OSS interfaces and business processes. The test also focused on the tracking mechanisms of proposed changes and adherence to established change management intervals.<sup>29</sup> KPMG referenced 48 test criteria for Test 23. Of these 48, KPMG found 7 to be "unable to determine."

6. Closely related to Test 23 and the CMP is Test 24.6. Test 24.6 evaluated Qwest's OSS Interface development. This test evaluated Qwest's documentation, specifications, and support provided to CLECs in developing, providing, and maintaining OSS interfaces for pre-ordering, ordering, maintenance and repair, and billing. This test also included an assessment of Qwest's capacity management and growth planning processes. KPMG identified 30 test criteria for Test 24.6. Of these 30, KPMG found two to be "not satisfied."

7. We address each of the "unable to determine" and

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<sup>29</sup> KPMG OSS Evaluation Final Report Version 2.0, April 28, 2002.

"not satisfied" criteria individually.

**A. Test Criterion 23-1-7: Tracking of Information (Systems)**

1. KPMG found this criterion, 23-1-7, "unable to determine." This criterion relates to the evaluation of whether the procedures and systems are in place to track information such as descriptions of proposed changes, key notification dates, and changes status. This criterion correlates with Exception 3110.

- a. KPMG was unable to validate the procedures and systems for tracking release documentation requirements.

- b. Qwest uses a Microsoft Access database to track Qwest- and CLEC-initiated Systems Change Requests (CRs). The interactive status report generated from this database is available on the CMP Web site, and is included in the monthly CMP distribution package.

- c. The draft CMP document specifies that Qwest will provide CLECs with a list of changes scheduled for implementation in an upcoming software release. Qwest provides CLECs with release documentation requirements in accordance with the intervals in the draft CMP document. If Qwest determines that it will not be able to implement a CR as scheduled, Qwest will discuss options at the next monthly CMP meeting. KPMG was not able to verify Qwest's compliance with the complete notification processes.

d. During testing, KPMG identified that Qwest lacked proper tools to track notifications, and to ensure that information was distributed to CLECs in accordance with the intervals specified in the draft CMP document. KPMG issued Exception 3110.

e. Qwest subsequently provided KPMG with documents describing Qwest's internal procedures that individual software release teams use to comply with CMP requirements. However, Qwest confirmed that change management staff did not have a centralized mechanism to track and ensure that documentation release intervals for all upcoming software releases were followed. Although the documentation provided sufficient evidence that tracking procedures exist, the information was not sufficient for KPMG to determine that Qwest adheres to the documented process.

f. KPMG closed Exception 3110 as inconclusive.

## 2. **Decision**

a. PO-16 in the CPAP, covers the timeliness of the initial release notifications and subsequent release notifications. This PID has a 100 percent standard and carries a \$200 per day penalty for the initial notification due date missed and a \$50 per day penalty for subsequent notification due date missed. Qwest has demonstrated that it has met these release timelines for two of the last six months (with another

two with no notifications sent in those months). The milestones and notification timeframes are clearly spelled out (as agreed to by the redesign team) in the CMP documents.

b. Because this measurement is contained in our CPAP and because the redesign team has recently more clearly identified the release notification intervals, we find that the "unable to determine" result for this test criterion do not impact the CLECs ability to receive release notifications in a timely manner, and for those release milestones to be tracked internally as well as on Qwest's CMP web site.

### 3. Discussion

a. Qwest states that it has an overall 98 percent compliance rate on its CMP obligations. More to the point, Qwest has adhered to 100 percent of the OSS interface release documentation interval notification milestones it has reached thus far. Qwest's record of compliance, coupled with its success in adhering to the very notification intervals that are the subject of the Exception 3110, demonstrated that Qwest's tracking and verification procedures are adequate.

b. Ms. Schultz, Qwest's Director of CMP, further stated that Qwest does have an internal tracking procedure for these notifications. There is a project manager responsible for meeting each of these milestones. She communicates with various Qwest organizations to ensure the

timely "mailing" of initial and subsequent release notifications.

c. Qwest states that its record of compliance, coupled with its success in adhering to the very notification intervals that are the subject of Exception 3110, demonstrate that Qwest's tracking and verification procedures are adequate.

d. The Joint CLECs (AT&T, WorldCom and Covad) state in their April 8, 2002 filing on Change Management that Exception 3111 was opened on January 30, 2002, after Observation 3067 was converted to an exception, and stated that Qwest Systems CMP lacks guidelines for prioritizing and implementing CLEC-initiated systems CRs and that criteria are not defined for developing the scope of an OSS Interface Release Package. Because KPMG closed this exception as inconclusive, the Joint CLEC assert this clearly reveals a problem with Qwest's current CMP and neither this Commission nor the FCC can find other than that Qwest fails to adhere to its CMP process and that the process is, as yet, not adequate to meet the FCC's five criteria required for approval.

e. In addition, WorldCom and Covad filed comments on the OSS test report, including CMP, on June 5, 2002. In their comments, the CLECs state that it is premature to accept Qwest's CMP as compliant until such time as KPMG and

Liberty, through PO-16, have sufficiently observed actual, present compliance.

f. As stated above, we find that the presence of PO-16 in the CPAP, as well as the more clearly defined milestones relating to a software release in Exhibit G to the SGAT, are sufficient. It is our opinion that KPMG's finding of "unable to determine" would have been changed to satisfied if KPMG had been given another month or two of testing. The CMP is an ever-changing process. Especially in the last three months, great strides have been made in reaching a plan that benefits both Qwest and the CLECs and their business relationships. The ROC OSS test had to conclude at some point. Unfortunately, the timing was such that the CMP had not been fully agreed-to. Since the conclusion of the test, we have had the opportunity to gather additional performance measurements and first-hand knowledge of the redesign process. These sets of information lead us to our conclusion stated above.

**B. Test Criterion 23-1-8: Prioritization and Severity Coding (Systems)**

1. KPMG found this criterion, 23-1-8, "unable to determine." This criterion relates to whether criteria are defined for the prioritization system and for severity coding. This criterion correlates to Exception 3111.

a. KPMG stated in its test evaluation that the Systems CMP requires both Qwest and CLECs to participate in the

prioritization process. A prioritization vote is necessary when the available capacity of an OSS interface or test environment release is unable to accommodate all outstanding CRs. Qwest and CLECs jointly rank the priority of Qwest- and CLEC-originated CRs for that particular software release by using a quantitative evaluation method.

b. Regulatory and industry guideline changes are not subject to the prioritization process. The Special Change Request Process allows Qwest or CLECs to financially sponsor a CR and bypass the prioritization process. This also falls out of the prioritization process.

c. The prioritization process for IMA 10.0 was the first time that Qwest had submitted Qwest-originated CRs to CMP. Due to delays in the deployment schedule, Qwest conducted the prioritization process vote for IMA 10.0 twice, first in August 2001, and again in October 2001.

d. The second IMA 10.0 prioritization process included five Qwest-originated PID/PAP-related CRs. Qwest classified these CRs as regulatory changes and bypassed the CR ranking vote. CLECs subsequently disputed this classification, objected to the preferential treatment of these Qwest-initiated CRs, and requested that Qwest reallocate resources to implement other prioritized CRs. Qwest proceeded to schedule the



implementation of four of these CRs in IMA 10.0 over CLEC objections.

e. The prioritization for IMA 10.0 was also the first time that the process included the concept of CR packaging options. After the initial prioritization vote had taken place, Qwest IT personnel performed detailed analysis of some of the prioritized CRs, and recommended that certain CRs be implemented together so that Qwest IT would realize cost savings from identified system and functional dependencies.

f. Qwest subsequently informed CLECs of the recommended CR packaging options, and conducted another vote to decide which CR packaging options should be included in the upcoming software release.

g. KPMG recognizes that the prioritization for IMA 10.0, and IMA 11.0, took place when Qwest and CLECs were at impasse over the definition of regulatory change. Qwest conducted CR ranking for IMA 11.0 in February 2002, and included two PID/PAP-related CRs as regulatory changes over CLEC objections. This Commission decided on March 13, 2002 that regulatory changes should exclude PID/PAP-related changes.

h. Due to the test schedule, KPMG was not able to observe the prioritization of a major software release in accordance with the documented process as it existed after the Commission decision on the impasse issue.

i. During testing, KPMG identified that Qwest Systems CMP lacked guidelines for prioritizing CLEC-initiated system CRs, and criteria for developing the scope of an OSS Interface Release Package. KPMG issued Exception 3111.

j. Qwest subsequently updated the draft CMP document to state that Qwest provides CLECs with LOE and release capacity information, in terms of person hours, during the prioritization process. In addition, Qwest developed internal Methods and Procedures (M&Ps) for the prioritization process.

k. KPMG reviewed relevant process documentation, and verified information reflecting Qwest-CLEC discussions in the CMP Redesign work sessions to-date. KPMG observed that Qwest and CLECs had not finalized discussions about the prioritization process before prioritization for IMA Release 10.0 occurred. KPMG was not able to evaluate adherence to the process during this test, and closed Exception 3111 as inconclusive.

l. During testing, HPC formally identified that Qwest did not publish the defects and implementation dates identified during the Interoperability or Certification testing portion of the EDI implementation process, and that Qwest assigned severity rankings to the issues without input from CLECs. In response, Qwest extended production support functions

to include the 30-day testing window prior to the EDI implementation process. This issue was subsequently closed.

## 2. **Decision**

a. Qwest and the CLECs have jointly prioritized two IMA releases, with the third prioritization to take place in mid-July. The only process difference in these prioritizations was the resolution of the PID/PAP Change request impasse issue. This Commission ordered that these changes not be considered regulatory changes, but rather, beginning with IMA release 12.0, be prioritized with the other CRs. We do not see this limited difference to the process as a reason to hold Qwest to a further demonstration of compliance.

## 3. **Discussion**

a. Qwest has stated in its comments on its Change Management Process that the fact that PID/PAP CRs were treated as regulatory CRs for releases 10.0 and 11.0 did not affect KPMG's ability to evaluate Qwest's adherence to the prioritization process. The resolution of this issue did not change the prioritization process itself, but simply determined which path an individual CR will take through the process.

b. Qwest asserts that KPMG believed that Qwest did not comply with the CMP processes because Regulatory Changes were not prioritized for IMA Release 10.0, that Qwest did not provide CLECs with total capacity information prior to the

prioritization votes on IMA 10.0, and that Qwest did not participate in the prioritization process for IMA 10.0. Qwest addressed all three of these issues in its responses to this Exception.

c. First, there were Regulatory CRs in both the IMA 10.0 and 11.0 Releases subject to the prioritization process as defined for Regulatory CRs, which included "above the line" treatment -- meaning that Regulatory CRs appeared at the top of the list of CRs to which resources are assigned. In addition, both the IMA 10.0 and 11.0 Releases included ordinary normal CRs that were subjected to the prioritization process as ranked CRs -- meaning that those CRs were ranked below the Regulatory CRs. Thus, KPMG had ample opportunity to review the prioritization process for both types of CRs.

d. The fact that Qwest and the CLECs were at impasse over whether PID/PAP related CRs should be treated as Regulatory CRs or as normal CRs during the prioritization process for the IMA 10.0 and 11.0 Release did not affect KPMG's ability to evaluate Qwest's adherence to the prioritization process. The resolution of this issue did not change the prioritization process itself, but simply determined which path ("above the line" or ranked) an individual CR will take through the process. KPMG has already observed both paths.

e. Second, Qwest provided the CLECs with the total capacity of the IMA 11.0 Release before the packaging. Thus, KPMG was able to observe Qwest's adherence to the process in that respect.

f. Third, Qwest demonstrated that it participated in the prioritization process for IMA 10.0.

g. Qwest asserts these observations demonstrated Qwest's compliance with the process.

h. The Joint CLECs state that Exception 3111 remains closed as "inconclusive." Qwest challenges KPMG's closing of this Exception by stating "the issues KPMG raised did not prevent KPMG from observing Qwest's adherence to the various aspects of the prioritization and packaging process." The Joint CLECs and KPMG disagree with Qwest's assertion. According to the Joint CLECs, other than asserting the opposite of KPMG's belief, Qwest has offered nothing new in its subsequent filing.

i. Therefore, the Joint CLECs state that it is premature for this Commission to approve Qwest's CMP at this time. The Joint CLECs request that the Commission order Qwest to finish the job by allowing KPMG to conclude its testing or retesting before attempting to judge Qwest's redesigned CMP.

j. We agree with Qwest's assertions on this issue. KPMG did observe the prioritization and packaging of two software releases. Because the impasse issue concerning the

treatment of PID/PAP changes had not been resolved, is not enough of a reason to conclude that Qwest did not adhere to the agreed-to process. It was this Commission's decision not to mandate a re-prioritization of release 11.0 including the two "regulatory" CRs in the ranking. Qwest should not be penalized for following through on this Commission's order.

k. The inclusion of PID/PAP CRs in the regular prioritization and packaging processes does not change the fundamental structure of those processes. We find that Qwest has adequately adhered to the CMP prioritization process.

**C. Test Criterion 23-1-9: Compliance with Notification Intervals (Systems)**

1. KPMG found this criterion, 23-1-9, "unable to determine." This criterion relates to whether Qwest complies with notification intervals and documentation release requirements. This criterion correlates to Exception 3110.

a. During the course of this evaluation, KPMG was not able to verify Qwest's adherence to Systems CMP software release notification intervals and documentation release requirements.

b. The draft CMP document defines software release documentation intervals for the introduction of, as well as changes to, OSS interfaces. For example, for changes to an existing EDI interface, Qwest provides CLECs with draft

technical specifications at least 73 calendar days in advance of scheduled implementation, and final technical specifications at least 45 calendar days in advance. For changes to an existing GUI interface, Qwest provides CLECs with draft release notes at least 28 calendar days in advance, and final release notes and user guide at least 21 calendar days before the scheduled deployment.

c. Qwest uses both e-mail and the Wholesale Web site to distribute notifications and documentation release requirements. KPMG monitored CLEC Notifications during the testing period. Due to test schedule, KPMG was not able to observe Qwest's adherence to the current process of the documentation release requirements for a major software release.

d. During testing, KPMG formally identified that System Event Notifications were improperly formatted for distribution to CLECs. As a result, CLECs were unable to obtain information from these notifications. Qwest subsequently implemented a new process at Wholesale Help Desk (WSHD) to ensure that all notifications include attachments in the Microsoft Word format.

e. In addition, KPMG formally identified that System Event Notifications contained discrepancies related to:

- 1) Notification date inaccuracies;
- 2) Inaccurate time-stamps; and

3) Lateness in distribution.

f. Qwest subsequently conducted internal training to ensure that Qwest staff follows the notification intervals set forth in the draft CMP document.

g. Due to the test schedule, KPMG was not able to evaluate Qwest's adherence to the steps that Qwest took to address the above issues, and the subsequent outputs.

h. Further testing activities determined that Qwest did not distribute the mail-out notifications in a timely manner, and did not follow the 48-hour interval for planned outages. KPMG issued Exception 3110.

i. As a result, Qwest implemented a log-in system to ensure that the Notifications Department promptly logs and distributes notifications. KPMG's retesting confirmed that the changes were implemented.

j. KPMG considers the issue specifically relevant to this evaluation criterion resolved, and closed Exception 3110 as inconclusive due to issues identified in 23-7.

k. During testing, HPC formally identified an issue that Qwest provided CLECs with inadequate advance notice regarding changes to its IP addresses for Street Address Guide (SAG) and Feature Availability Matrix (FAM) files. Qwest subsequently updated process documentation to specify that Qwest



would notify CLECs of changes in connectivity requirements at least five days in advance.

l. In addition, HPC formally identified that Qwest did not address the inaccurate and incomplete information in IMA disclosure documents in a timely manner. Qwest implemented changes to the subsequent release documentation.

m. In addition, HPC formally identified in Exception 2003 that Qwest did not follow its established release notification schedule when implementing IMA releases, and did not provide complete and accurate information in its release notifications to prepare CLECs for certification and implementation of new releases. Qwest subsequently indicated that it would follow the intervals specified in the draft CMP document. Exception 2003 is closed.

## 2. **Decision**

a. Our decision on this criterion follows the rationale of criterion 23-1-7. The existence of PO-16 and the recent efforts that have been made by the redesign group are sufficient to find that Qwest had performed adequately in the CLEC notification process.

## 3. **Discussion**

a. The discussions by the parties on this criterion and exception are the same as those found under criterion 23-1-7. (The parties divided their comments by

exception rather than by test criterion; therefore, the discussion and positions may encompass several test criteria.)

**D. Test Criterion 23-2-2: The Change Management Process Is in Place and Documented (Product and Process)**

1. KPMG found this criterion, 23-2-2, "unable to determine." This criterion relates to whether Qwest has a change management process in place and if that process is documented. This criterion does not correlate to an exception.

a. KPMG found that, due to continuing Qwest-CLEC negotiations in CMP Redesign, the Product/Process CMP is not fully implemented or documented. At the conclusion of the Qwest OSS Evaluation, KPMG observed that Qwest and CLECs continued discussion about relevant issues in CMP Redesign, including:

- The process for postponing or stopping a Qwest-initiated Product/Process change; and
- The Exception Process.

b. Qwest will finalize the draft CMP document after it has reached agreement with CLECs on the remaining issues.

c. In KPMG's professional opinion, the draft CMP document does not include all of the essential components that constitute a well-formed and complete Product and Process CMP. Although Qwest and CLECs have made significant progress in CMP redesign, the parties have not completed discussions about

Product and Process CMP, and have not documented all activities within CMP. For example, redesign discussions continue for the definition of a CR Postponement Request and the Exception process. The CMP Redesign Process is scheduled to continue through June 2002.

## 2. **Decision**

a. As we have stated before, it is our opinion that KPMG's finding of "unable to determine" would have been changed to "satisfied" if KPMG had been given another month or two of testing. The CMP is an ever-changing process, but especially in the last three months, great strides have been made in reaching a plan that benefits both Qwest and the CLECs and their business relationships. Since the conclusion of the test, the redesign group has agreed to language for both the CR Postponement and the Exception Processes. It is our understanding that the only area of discussion left for the redesign group is regarding the language for the CMP voting process. This discussion is scheduled to take place in the next couple weeks, with the final CMP documents set to be presented for approval to the larger CMP community in mid-July. Therefore, we find that Qwest does have a Change Management Process in place and documented.

b. The April 29, 2002, version of the SGAT, however, contains an out-dated Exhibit G. Before filing with

the FCC, Qwest should replace that exhibit with the most current version of the CMP documents that contains the agree-to language for CR Postponement, the Exception process, and any other consensus language reached since the last filing.

### 3. Discussion

a. Qwest stated in its Comments Demonstrating Satisfaction of the FCC's Section 271 Change Management Evaluation Criteria, filed April 26, 2002, that the governing process for change management is contained in a single document -- the Wholesale CMP document. As discussed in the prior filings, Qwest states that this document contains the agreements reached through extensive collaborative negotiations between the CLEC community and Qwest. Through the redesign process, CLECs have had substantial input into the organization and clarification of change management related materials on the web site.

b. The joint CLEC-Qwest redesign team agreed that the agreements reached through the redesign effort would remain in draft form, subject only to a final review of the document as a whole and changes necessary to ensure that the document reflects a cohesive and integrated whole. However, the fact that a final review will occur in no way detracts from the fact that CLECs and Qwest reached agreement regarding the processes and Qwest has implemented those agreements. Indeed,

Qwest has conducted its wholesale business pursuant to the Wholesale CMP for several months. Moreover, the result of the redesign process is a CMP that goes well beyond what has been done by any other BOC in successful applications for 271 authority.

c. In the redesign process, Qwest and the CLECs identified, discussed, and resolved the most important issues relating to processes to be documented in Qwest's CMP. The redesign team reached agreement in principle regarding all 12 of the more important category "1" issues and on eight of the 10 less significant category "0" issues. The CLECs have described these agreements as vague, high level agreements that will be memorialized at a later time. Contrary to this characterization, detailed proposals have been developed for all of the agreements, except a single issue. This single issue relates to provisions for the exception process, upon which the redesign team has agreed in principle. The team agreed that this issue would not be a controversial issue.

d. Further, the only two issues on which the team did not reach agreement in principle do not relate to language that will be incorporated into the CMP document. Covad Issue #3 relates to how Qwest identifies retail changes that may impact CLECs. The redesign team has discussed this issue at length and reviewed Qwest's documented processes. Indeed, the

Joint CLECs admit in their brief that they believe that Qwest has implemented "adequate processes to ensure timely and adequate notification to wholesale customers of retail changes that impact them as well as to ensure parity between Qwest's retail and wholesale customers." The only other issue, raised by WorldCom, relates to how Qwest will prove that it has implemented the changes it has agreed to make. Neither of these issues has any impact on the sufficiency of Qwest's CMP document.

e. In its Draft Final Report, KPMG listed "unable to determine" as the result for its evaluation of whether Qwest's change management process is in place and documented, stating that the Wholesale CMP does not include all elements KPMG believes are essential. The bottom line is that the CLECs enjoy substantial benefits from Qwest's implementation of the redesigned CMP. The fact that minor changes may be made to the CMP through the final review process by the redesign team does not affect Qwest's compliance with the implemented process.

f. The Joint CLECs conclude in their comments, filed May 3, 2002, that in its zeal to rush to the FCC, Qwest would like this Commission to brush aside the final steps necessary to finishing the task of producing a single document with the real core provisions of Qwest's CMP. They state that this is astounding since it is likely that the task of finishing

the language and placing it in the CMP document will be concluded no later than sometime in June 2002. Considering the FCC is not particularly interested in draft, the CLECs assert, it is hard to imagine how one could conclude that Qwest meets the FCC criteria based upon such a draft.

g. The Joint CLECs state that this Commission should simply demand that Qwest finish the job and then submit the CMP documents for review.

h. Again, because of the time lapse between the comments and the Commission's decision meeting on CMP, it is our opinion that the CLECs' concerns have been addressed. The time requested by the CLECs for Qwest to "finish the job" has passed, and we find that Qwest has indeed "finished the job" for § 271 purposes. We realize that the CMP document is dynamic in its very nature. Modifications likely will be made for some time to come. However, the CMP document that currently is located on Qwest's CMP web site contains all the necessary core elements for us to find that the Change Management Process is in place and documented.

**E. Test Criteria 23-2-7, 23-2-8, and 23-2-9: Tracking notification intervals and prioritization of Qwest Initiated Product and Process Changes (Product and Process)**

1. This group of product and process criteria was found by KPMG to be "unable to determine." These criteria relate to whether Qwest has fully implemented Product and Process CMP including the

tracking of information such as descriptions of proposed changes, key notification dates, and changes' status. In addition, test criterion 23-2-8, specifically, relates to the categorization and prioritization of Qwest initiated Product and Process change requests. These criteria correlate to Exception 3094.

a. KPMG found that Qwest had not fully implemented Product/Process CMP at the conclusion of the Qwest OSS Evaluation. KPMG was unable to confirm that Qwest has procedures and systems to track all proposed Product/Process changes.

b. Qwest uses a Microsoft Access database to track CLEC-initiated Product/Process CRs and Qwest-initiated Level 4 changes. The interactive status report generated from this database is available on the CMP web site, and included in the monthly CMP distribution package.

c. Qwest uses a web-based Customer Notification Letter Archive (CNLA), available at the following web site: <http://www.qwest.com/wholesale/notices/cnla/>, for CLECs to search and retrieve past notification. Although this mechanism provides external reporting for Qwest notifications, it does not serve as an internal tracking system for proposed Product/Process changes.

d. In addition, KPMG states the Product/Process CMP defines the criteria for categorizing Qwest-initiated



changes on the basis of perceived impact to CLEC business operations. Qwest had not fully implemented Product/Process CMP at the conclusion of the Qwest OSS Evaluation. KPMG, therefore, was unable to observe the complete implementation of this process.

e. The draft CMP document describes the initiation, evaluation, and notification of Qwest and CLEC-initiated Product/Process CRs. The document defines five categories of Qwest-initiated Product/Process changes (levels 0-4), with each higher level representing increasing impact to CLEC business operations. At the conclusion of the Qwest OSS Evaluation, Qwest had just begun to categorize all of its Product/Process changes in accordance with the documented process. KPMG, therefore, was unable to observe sufficient evidence to verify that the process had been fully implemented.

f. The Product/Process CMP employs a different process flow to accommodate changes that either Qwest or a CLEC requests be implemented on an expedited basis. The Exception Process remains subject to ongoing Qwest-CLEC negotiation in CMP Redesign.

g. During testing, KPMG observed that Qwest implemented a desired process change over CLEC objections. KPMG issued Exception 3094. In response to Exception 3094, Qwest

indicated that Qwest and CLECs disagreed about the process governing Qwest-initiated Product/Process changes.

h. In April 2002, Qwest and CLECs agreed to the process for Qwest-initiated Product/Process changes. During retesting, Qwest clarified that not all Qwest-initiated changes issued via CMP notifications in April and May 2002 could be implemented under the new process. Due to a limited sample size and representation of only two categories of Qwest initiated P/P changes during the retest period, KPMG was unable to verify that the process had been fully implemented, and closed Exception 3094 unresolved.

i. Finally, because Qwest had not fully implemented the Product/Process CMP, KPMG was unable to observe adherence to notification intervals and documentation release requirements for Qwest-initiated changes.

j. The draft CMP document defines five categories of Qwest-initiated changes (levels 0-4), with each higher level representing increasing impact to CLEC business operations. The document also specifies the comment and implementation intervals for each of the five categories. However, KPMG was not able to validate compliance with the documented process.

1. **Decision**

a. As part of the CPAP decision on remand issues, Decision No. C02-399, the Commission ordered Qwest to file the Qwest initiated Product and Process change request process with this Commission for inclusion in the CPAP. Qwest has done this. At the June 27, 2002, Commissioners' Weekly Meeting, Staff will present proposed penalties associated with the five levels of changes contained in this process. Once this proposal has been reviewed by the Commission, it will be sent out for comment. In relatively short order, these Qwest initiated Product and Process changes and their associated time lines and milestones, will be part of the CPAP. This should prove to be an additional incentive, beyond working in good faith, for Qwest to meet the related due dates and for the Commission to analyze any unlikely pattern of poor performance.

2. **Discussion**

a. Qwest maintains that it is not necessary for it to have product and process in its CMP to meet the FCC requirements for CMP. Product and Process does not affect the Commission's evaluation of CMP for 271 purposes.

b. However, Qwest asserts, the initial confusion surrounding this process that gave rise to this Exception 3094 has been eliminated by the detailed agreement reached through the redesigned process. Because the new

procedure applies to all Qwest initiated changes, there should be no future confusion relating to the appropriate process that applies to a particular change.

c. The Joint CLECs commented on Exception 3094 by stating that it was opened on December 12, 2001 and stated that Qwest did not adhere to its established change management process for notifying CLECs about a proposed change. It allowed input from all interested parties. On April 4, 2002, KPMG recommended that this exception be closed unresolved and stated:

KPMG Consulting recognizes that Qwest and CLECs have yet to agree on key components of a comprehensive Product/Process CMP. Qwest implemented an *ad hoc* process to manage Qwest-initiated Product/Process changes as of April 1, 2002. Although CLECs and Qwest have reached an "agreement in principle" for this interim process, it is KPMG Consulting's understanding that the referenced process remains subject to further development, modifications, and negotiations in CMP Redesign. KPMG Consulting is not able to conduct a thorough evaluation until the prescribed process is formalized, the Redesign sessions are complete, and the process is fully implemented and confirmed. However, the current schedule is for Redesign meetings to continue until June, 2002.

d. Qwest has requested that KPMG conduct no further testing. Since the *ad hoc* process is not final and third-party testing is concluding, KPMG was unable to conduct retesting to ensure that a complete and functioning Product/Process CMP was in place.

e. In short, the Joint CLECs conclude this exception reveals a problem with Qwest's current CMP. The Joint

CLECs maintain that this Commission and the FCC must find Qwest fails to adhere to its CMP process and that the process is, as yet, not adequate to meet the FCC's five criteria required for approval.

f. Although we do not agree with Qwest's assertion that its CMP is complete without Product and Process CMP, the passage of time has allowed the CMP redesign group to complete a Qwest Initiated Product and Process change request process. This process was implemented the beginning of April, with minor modifications occurring mid-April. All Qwest Product and Process notifications mail-out to CLECs as of mid-May are categorized in the levels defined in CMP section 5.4. This is the same process that will shortly become part of our CPAP. This is sufficient for § 271 purposes.

**F. Test Criterion 24.6-1-8: Functional Test Environment**

1. KPMG found this criterion, 24.6-1-8, "not satisfied." This criterion relates to whether Qwest has a functional test environment available to customers for all supported interfaces. This criterion correlates to Exceptions 3077 and 3095.

a. KPMG found in its evaluation of Qwest's test environment that a functional test environment is not made available to customers for all supported interfaces.

b. Before August 2001, Qwest supported only its Interoperability (Interop) test environment for CLECs testing an EDI interface. KPMG identified Interop deficiencies in Exception 3029:

- Interop requires CLECs to use valid production data in their test cases;
- Responses to the test cases are generated manually as opposed to generating production system-like responses; and
- Interop has no flow-through capability as does the Production Environment.

c. Qwest responded that it was devoting its testing resources to developing the Stand Alone Test Environment (SATE), and that no further enhancements would be made to Interop. Qwest revised the *EDI Implementation Guidelines for IMA*, so that it now provides more detailed information on the pros and cons of using Interop vs. SATE, or a combination of both, environments. Exception 3029 is closed.

d. In August 2001, Qwest introduced SATE as a result of a CR submitted through Qwest's CMP by a CLEC. SATE is separate from Qwest's production systems.

e. KPMG reviewed SATE documentation and identified that SATE transaction responses are manually generated, and that the environment does not support flow-through transactions. As a result, KPMG issued Exception 3077.

f. In its response, Qwest requested that KPMG close Exception 3077 without waiting for SATE enhancements to be implemented, and subsequent retest verification activities to be completed. Exception 3077 is closed/unresolved.

g. KPMG formally identified that Qwest did not supply CLECs with sample EDI transactions for the various types of test cases available.

h. Qwest released the *Populated X12 Mapping Examples - IMA EDI 9.0 Release* document through the CMP Release Notification process. KPMG verified that CLECs were supplied with sample EDI transactions, and the issue was resolved.

i. KPMG identified problems related to adding functionality to SATE in Exception 3095. The issues raised included the process for adding new IMA products for testing as well as adding existing products not currently supported in SATE.

j. In its response, Qwest requested that KPMG close Exception 3095 without waiting for SATE enhancements to be implemented, and subsequent retest verification activities to be completed. Exception 3095 was closed/unresolved.

k. The P-CLEC's testing for the Qwest OSS Evaluation was limited to Interop. During its Interop testing experience, the P-CLEC identified certain issues with the Interoperability Testing environment, including:

- Adequate resources were not available for reviewing and clarifying test scenario templates; and
- Discrepancies between actual and expected responses.

These issues were subsequently resolved.

1. Qwest does not require carrier-to-carrier testing for IMA GUI.

2. **Decision**

a. We require Qwest to include PO-19, as currently found in Exhibit B to the SGAT, in the CPAP with an associated penalty of \$50,000 for the 95 percent benchmark miss. For the Colorado Commission to sign-off on SATE, this current definition must be added before Qwest's files with the FCC. At such time as the Long-term PID Administration team either agrees on a newly defined PO-19a and b, or if through that process impasse is reached, Qwest shall file the new definition with this Commission. At that time, the penalty amount will be reassessed based on the level of disaggregation of PO-19a and the new PO-19b.

b. The language to be placed in the CPAP prior to the FCC filing, is as follows:

PO-19 Stand Alone Test Environment (SATE) Accuracy

Failure to meet the 95 percent standard to accurately provide production-like tests to CLECs for testing both new releases and between releases in the SATE environment shall result in a \$50,000 payment by Qwest to the Special Fund.



### 3. Discussion

a. Qwest states that the issues raised by KPMG about "real world testing scenarios" should be largely addressed by Qwest's planned implementation of flow-through capability in SATE. This should be fully implemented throughout Qwest's region by mid-May.

b. With this flow through, SATE clearly will provide the same key functions as the production environment.

c. Qwest built SATE to support every resale product and UNE offering for which CLECs had built IMA-EDI interfaces. Certain other products therefore were not automatically included in SATE.

d. Through the CMP, Qwest has allowed CLECs to prioritize products that they want in the next SATE release. CLECs only choose to include two new products for implementation in SATE 11.0 release. In addition, both Qwest and CLECs are free to submit CRs to add other products or capabilities to SATE.

e. Qwest asserts commercial data also demonstrate that SATE is adequate to permit CLECs to test EDI interfaces and achieve production status.

f. The Joint CLECs, through the affidavit of Tim Connolly, AT&T, contend that SATE is significantly deficient when compared to the test environment that Verizon developed to

gain § 271 approval. Mr. Connolly states that Qwest implemented an enhancement to SATE because of its limitations regarding mirroring of post-order production transactions (e.g., FOCs, order rejections, and order completions). The Virtual Interconnect Center Knowledge Indicator (VICKI) was implemented around the end of January 2002. VICKI still fails in key areas.

g. According to Mr. Connolly, SATE also fails because Qwest does not freeze both the test and implementation versions such that changes cannot be made to one without making the same changes to the other. Therefore, the test releases may differ from the release that Qwest implements.

h. The CLECs contend that SATE is a work in progress, but not yet ready to pass the FCC's criteria.

i. Qwest has made great strides in the adequacy of its SATE in the past year. Before the release of SATE, CLECs' only option for testing was the Interop environment. As stated in KPMG's evaluation, Interop is limited in flow-through capability as well as the need for manual intervention. With the addition to SATE of the VICKI and the flow-through capability in mid-May, Qwest has addressed many of KPMG's concerns enumerated in Exception 3077.

j. This is the closest call in our § 271 record. The SATE the Qwest has recently developed appears compliant, but there is not sufficient evidence conclusively to

determine whether it is or not. The addition of PO-19 into the CPAP bootstraps our record to illustrate Qwest's commitment to devise a functional SATE. PO-19 and the attendant penalty for failing to meet the benchmark, illustrate a commitment to the FCC's criteria that Qwest have a Stand Alone Test Environment that mirrors production. The FCC, with the further passage of time, should have more of a record on which to base its ultimate record on the presence of an adequate SATE. We are comfortable with this recommendation also because of our staff's intimate knowledge of CMP and its remarkable development over these past months. Because the SATE would be the *only* § 271 issue to our minds that might portend delay, we are comfortable with the addition of PO-19 to the CPAP as a bridge to Qwest having a compliant SATE.

**G. Test Criterion 24.6-2-9: MEDIACC EB-TA**

1. KPMG found this criterion, 24.6-2-9, "not satisfied." This criterion relates to whether carrier-to-carrier test environments are available and segregated from Qwest's production and development environments. This criterion correlates to Exception 3109.

- a. KPMG has found in its evaluation that Qwest's carrier-to-carrier testing environment used by CLECs to develop their MEDIACC EB-TA (Mediated Access System for

Electronic Bonding Trouble Administration) interface is not segregated from the MEDIACC EB-TA production environment.

b. The carrier-to-carrier test environment offered by Qwest is comprised of the MEDIACC, WFA, and LMOS systems. Test scenarios submitted for MEDIACC EB-TA testing are first processed by the MEDIACC portion of the test environment. Depending on the circuit type, either designed or non-designed services, scenarios are then processed by the WFA or LMOS system.

c. The MEDIACC portion of the test environment is run on a separate server to which the CLEC must establish a secure connection to conduct carrier-to-carrier testing. In addition, Qwest uses a separate server for WFA to process designed service test scenarios during the end-to-end testing phase with CLECs. The end-to-end testing phase is described in the *System Test Plan for Electronic bonded Trouble Administration* document.

d. Non-designed service test scenarios, however, are processed by the LMOS production mainframe. Qwest uses a system flag to prevent test scenarios from being dispatched during the non-designed service testing phase. Non-designed circuits submitted through the LMOS production system are monitored by a Qwest assigned Tester so that test orders are

not dispatched, thus preventing potential adverse impact on Qwest operations and customers.

e. KPMG raised this issue in Exception 3109, which describes the limitations and potential impacts of testing non-designed services in the LMOS production mainframe during the end-to-end testing phase. KPMG also identified that Qwest's documentation for the architecture of the EBTA test environment was inadequate.

f. KPMG investigated the commercial experience of commercial CLECs to assess the impact of the production component on their testing efforts. KPMG found that, due to the necessary manual intervention of the Qwest Tester, two non-designed services test trouble reports submitted by a CLEC passed through to the Qwest Production Screeners. In its response, Qwest advised that, as no immediate changes were planned for its M&R test environment, KPMG should close Exception 3109 as closed/unresolved.

g. CLECs are not required to develop an interface to CEMR; therefore, CEMR does not require a carrier-to-carrier testing environment.

## 2. **Decision**

a. We don't believe anything needs to be done for the resolution of this criterion. The CLECs did not address

it in their written comments and it was not a major topic of discussion at the *en banc* workshop on the ROC OSS test.

b. We agree with Qwest that there currently seems to be no problem with the LMOS used for testing, being the same LMOS that is used for actual production. The issue cited by KPMG in its findings seems to be an isolated issue that was actually stopped in the Qwest Production Screeners and caused no customer or CLEC harm.

### 3. Discussion

a. Qwest states that the FCC has never required that BOCs provide CLECs with an electronic interface for M&R activities for 271 approval. Therefore, the Commission need not consider this Exception for 271 evaluation.

b. Nevertheless, according to Qwest, the interface, based on ANSI standards, was developed for IXC trouble tickets in 1996 and began supporting CLECs in 1997. To date, four CLECs have successfully built and tested to Qwest's EB-TA interface. With the exception of this sole criterion, KPMG found Qwest's EB-TA to be satisfactory.

c. In KPMG's view, the test environment for all components of the testing process should be physically separate from the production environment, with access provided to a duplicate of the LMOS production database (used for non-design services).

d. In Qwest's experience, the fact that EB-TA testing uses the LMOS production applications is not detrimental or limiting. In Qwest's view, it is advantageous to the CLEC, because it permits the full functionality of EB-TA to be tested.

e. As stated above, the CLECs did not comment on this issue, except to the extent that besides WorldCom who uses both CEMR and EB-TA, it seems no CLECs on record are using the EB-TA interface to process maintenance and repair orders. AT&T stated that it phones in trouble reports and doesn't go through an electronic interface. WorldCom did state that an application-to-application interface such as EB-TA means MCI/WorldCom application to Qwest application over EB for trouble tickets, or over EDI for LSRs, provides that flexibility for the CLECs' systems and processes to be much more integrated and seamless. However, WorldCom did not present any problems with commercial experience to the Commission.

f. Based on the limited CLEC comments and the isolated incident referenced in the KPMG report, we find that Qwest need not make any change to its MEDIACC EB-TA for § 271 compliance.

## **H. Overall Commission Finding on CMP**

### **1. Decision**

a. The Commission finds that Qwest has a compliant Change Management Process for § 271 approval. Based

on our evaluation of the above ROC OSS test criteria that were found to be "unable to determine" or "not satisfied" by KPMG, and our analysis of the FCC's change management criteria, Qwest has met the requirements of a CMP: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the RBOC makes available for the purpose of building an electronic gateway.

b. In addition, we find Qwest has demonstrated a "pattern of compliance" with its own change management plan and it has provided adequate technical assistance to CLECs in using the RBOC's OSS.

**X. COMMISSION DECISION ON SECTION 271 COMPLIANCE**

a. On November 30, 1999, U S WEST Communications, Inc. (now Qwest Corporation) filed in Colorado its Notice of Intent to File with the FCC Pursuant to § 271 of the Telecommunications Act of 1996. This filing prompted activity on many fronts and in many arenas. The Commission's



decision in this docket is the culmination of these myriad efforts.

b. The Qwest Regional Oversight Committee convened a region-wide collaborative operational support system test done by KPMG, Hewlett-Packard, and Liberty Consulting. In Docket No. 97I-198T this Commission hosted an extensive series of collaborative workshops to finalize a Statement of Generally Available Terms and Conditions.<sup>30</sup> In Docket No. 01I-041T, this Commission engaged Special Master Professor Phil Weiser to draft a Performance Assurance Plan and, after extensive proceedings, adopted the Colorado Performance Assurance Plan.<sup>31</sup> The Colorado Commission completed a wholesale pricing proceeding, Docket No. 99A-577T. Qwest convened, and Colorado Commission staff actively participated in, a Change Management collaborative.

c. In all, this has been an enormous undertaking. We now find ourselves at a point where Qwest believes it has met the criteria of 47 U.S.C. § 271 and is ready to file an application at the Federal Communications

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<sup>30</sup> The Commission relies upon, and adopts, the recommendations made by the hearing commissioner and the findings of compliance contained in the decisions of the hearing commissioner in Docket No. 97I-198T. The Commission also adopts and relies upon the staff reports in Docket No. 97I-198T.

<sup>31</sup> The Commission relies upon, and adopts to the extent necessary and as consistent with prior Commission decisions, the recommendations of Professor Weiser and of the hearing commissioner in Docket No. 01I-041T.

Commission.<sup>32</sup> It therefore becomes this Commission's job to decide what its recommendation will be under 47 U.S.C. § 271(d)(2)(B).

d. The crucial paragraph as to the FCC's analysis that now appears, we believe, in every § 271 application is paragraph 46 of the *Bell Atlantic New York Order*:<sup>33</sup>

Finally, we note that a determination of whether the statutory standard is met is ultimately a judgment we must make based on our expertise in promoting competition in local markets and in telecommunications regulation generally. We have not established, nor do we believe it appropriate to establish, specific objective criteria for what constitutes "substantially the same time and manner" or a "meaningful opportunity to compete." We look at each application on a case-by-case basis and consider the totality of the circumstances, including the origin and quality of the information before us, to determine whether the nondiscrimination requirements of the Act are met. Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances.

e. The standards applied by the FCC then are extraordinarily broad. The contours of when a Regional Bell Operating Company passes, and when it fails, a checklist item are indistinct and sometimes appear to change from application

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<sup>32</sup> Qwest filed its § 271 application with the Federal Communications Commission on June 13, 2002.

<sup>33</sup> *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*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (*Bell Atlantic New York Order*).

to application. In all, it makes for a quite frustrating task for state commissions to say whether and when Qwest has done enough to earn a passing grade.

f. Criticism of "totality of the circumstances" test is well known. Totality of circumstance analyses admits for very little law and a great deal of guessing about the preference of the ultimate tribunal - here the FCC. Indeed, in the public interest orders pertaining to Staff Report Volume VII, the hearing commissioner more than once noted that a standard in which everything is relevant and nothing is dispositive and in which no relative weight of the factors is known beforehand makes principled decisionmaking quite difficult. We agree. Nonetheless, it is our task to make that judgment using the guidance provided.

g. The difficulty of this task is exacerbated by the enormity of this record. The complexity of the § 271 process makes it nearly impossible to comprehend its various aspects, much less to weigh the relative weights and importance of the various aspects. OSS is important. Pricing is important. Performance assurance is important. CMP is important. Suffice it to say our record has treated all these and other issues as important. We have fleshed out a record and made decisions reflecting what we understand to be the FCC's requirements.

h. It is, ultimately, the task of the Colorado Commission to use our best effort in evaluating the record and in making a prediction at what the FCC would do with the record we have assembled for it. In doing so, the Commission has looked at all the proceedings that we have had to investigate whether Qwest complies with the 14-point checklist and other requirements. We have compiled a comprehensive SGAT through six Commission Staff reports, 12 hearing commissioner orders, and one Commission decision. We have participated exhaustively in the ROC OSS test. Following a fully-litigated costing and pricing proceeding, we have determined new Total Element Long-Run Incremental Cost-compliant rates. We have considered the public interest-related factors and devised the rigorous and substantial Colorado Performance Assurance Plan, approved by the Commission and accepted by Qwest. We have done the analysis of Qwest's compliance with Track A and § 272.

i. On the amassed record and based on this work, and provided Qwest makes the filings and provides the assurances discussed in this decision, this Commission will recommend that the FCC grant the Qwest application for provision of in-region, inter-LATA services in Colorado.

j. We will make a positive recommendation because we find that Qwest has met the statutory criteria. We further support Qwest's application on the basis of the

diminishing returns the consumers will see from prolonging this process. Advocacy that makes the best the enemy of the good; that regards the OSS test as an end in itself; and obscures consumers' interests behind would-be competitors' interests should not be indulged.

k. We finally return to the fact that long distance entry will be in the public interest. We cannot quantify, or even identify, exactly the consumer welfare benefits to be had from Qwest long distance entry. Nonetheless, we are convinced, and agree with the hearing commissioner's conclusion in the public interest order, that there are uncontrovertible consumer welfare gains to be had from Qwest's long distance entry. There is no longer adequate reason to delay these benefits to Colorado consumers.

l. Furthermore, we believe that Competitive Local Exchange Carriers which are genuinely interested in competing will be better protected from, and compensated for, discriminatory behavior by Qwest under the Colorado Performance Assurance Plan. That Plan, which attempts to award a measure of compensatory damage for CLECs when Qwest breaches its contractual obligations to them, will become effective upon FCC approval of Qwest's § 271 application.

m. Thus, the Colorado Commission finds that the 14-point checklist has been met; the public interest test has

been met; the separate affiliate requirement of § 272 is met; and Track A of § 271 is met. In sum, this Commission will recommend to the FCC that Qwest's application under § 271 of the Telecommunications Act of 1996 be approved.

**XI. A GENTLE REMINDER**

a. This docket is not adjudicatory, but rather is a special master/rulemaking hybrid. See *Procedural Order*, Decision No. R00-612-I at pages 11-15. The ultimate authority over Qwest's application lies with the FCC, not this Commission. This Order does not have the traditional effect of compelling Qwest to undertake the ordered action. Rather, this order is hortatory. If Qwest provides the assurances and makes the changes to the SGAT, including the CPAP, recommended by this decision, then the Commission will recommend to the FCC that it grant Qwest's § 271 application.

b. Upon Qwest's filing of appropriate modifications to the SGAT, including exhibits, and requested assurances, the Commission will find, through a subsequent order, that Qwest has complied with the statutory requirements, and that the Commission recommends FCC approval of Qwest's § 271 application.

c. Because this is neither a final order of the Commission nor a proceeding under the Commission's organic

statute or the Colorado Administrative Procedure Act, see C.R.S. §§ 40-2-101, *et seq.*, and §§ 24-4-101, *et seq.*, participants in this docket do not have a right to file exceptions to this order or to ask for rehearing, reargument, or reconsideration. Likewise, this decision will not ripen into, or otherwise become, a final decision of the Commission subject to judicial review under the Commission's organic statute or Colorado law.

d. Participants will be afforded an opportunity to argue their respective positions concerning Qwest's compliance with the requirements of § 271 before the Federal Communications Commission. Any party to the FCC proceeding who is dissatisfied with the FCC's decision regarding Qwest's § 271 application can take appropriate action to seek judicial review of that decision.

## **XII. ORDER**

### **A. The Commission Orders That:**

1. If Qwest Communications files with the Commission the amended SGAT language, the amended exhibits (including the Colorado Performance Assurance Plan), and the assurances as set forth in the foregoing discussion, the Colorado Commission will recommend to the Federal Communications Commission that it grant Qwest's § 271 application for Colorado.

2. If it wishes the Commission to make a favorable recommendation to the Federal Communications Commission, Qwest shall make a compliance filing with the Commission as set forth in the discussion, above. The compliance filing must be made forthwith, but in no event later than Friday, June 28, 2002.

3. Upon receipt of the compliance filing, the Commission will determine whether the compliance filing is sufficient and, if it is sufficient, will make an unqualified recommendation of approval to the Federal Communications Commission.

4. Touch America's Petition to Intervene is granted.

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

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
June 13, 2002.**



( S E A L )



ATTEST: A TRUE COPY

A handwritten signature in cursive script, reading "Bruce N. Smith".

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Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

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JIM DYER

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Commissioners

COMMISSIONER POLLY PAGE  
ABSENT.