

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ANALYSIS OF)	PROCEDURAL HISTORY;
QWEST CORPORATION'S COMPLIANCE)	ORDER REGARDING
WITH SECTION 271(c) OF THE)	CHECKLIST ITEMS 3, 7, 8, 9,
TELECOMMUNICATIONS ACT OF 1996)	10, AND 12
)	TC01-165

PROCEDURAL HISTORY

On October 25, 2001, Qwest Corporation ("Qwest") filed with the South Dakota Public Utilities Commission ("Commission") a Petition for Commission Recommendation that the Federal Communications Commission Grant Qwest Corporation Entry into the In-Region InterLATA Market Under Section 271 of the Telecommunications Act Of 1996. Specifically, Qwest requested that this Commission find that Qwest has met the competitive checklist and other requirements of 47 U.S.C. section 271, which prescribe the mechanism by which Qwest may be found eligible to provide in-region, interLATA services. Qwest requested that the Commission provide a favorable recommendation to the Federal Communications Commission (FCC). In support of its petition, Qwest submitted 25 affidavits, a revised Statement of Generally Available Terms ("SGAT"), and seven reports submitted in the Multi-state Proceeding.

On November 1, 2001, the Commission electronically transmitted notice of the filing and the intervention deadline of November 16, 2001, to interested individuals and entities. A Petition for Leave to Intervene was received from Black Hills FiberCom, L.L.C. ("Black Hills FiberCom" or "FiberCom") on November 7, 2001; a Petition to Intervene was received from Midcontinent Communications ("Midcontinent") on November 9, 2001; and a Petition for Leave to Intervene was received from AT&T Communications of the Midwest, Inc. ("AT&T") on November 15, 2001. At its November 27, 2001, meeting, the Commission granted the interventions. The Commission also requested that the parties submit proposed procedural schedules by December 7, 2001. The Commission received proposed procedural schedules from all of the parties.

At its December 12, 2001, meeting, the Commission set the following procedural schedule:

January 18, 2002 - Intervenors and Staff identify disputed issues (except for issues relating to the final OSS report which has not been issued yet);

February 7, 2002 - A prehearing conference will be held beginning at 2:30 p.m., in Room 468, State Capitol Building, Pierre, South Dakota;

March 18, 2002 - Staff and Intervenors' testimony is due;

April 2, 2002 - Qwest may file rebuttal testimony; and

April 22-26, 2002 - A hearing will be held beginning at 9:00 a.m. on April 22, 2002 and continuing through April 26, 2002, in Room 412, State Capitol Building, Pierre, South Dakota.

On March 5, 2002, Black Hills FiberCom filed a Motion for Order Denying Petition. On March 6, 2002, Qwest filed a Motion to Remove Document from Commission Record. On March 7, 2002,

Midcontinent filed a Motion for Definition of Track A Analysis. On March 11, 2002, Midcontinent submitted a Motion to Suspend Procedural Schedule or Supplement Prefiled Testimony. On March 13, 2002, AT&T filed a Joinder on Midcontinent Communications' Motion to Suspend Procedural Schedule and Request for Expedited Decision.

At its March 14, 2002, meeting, the Commission considered Midcontinent's Motion to Suspend Procedural Schedule or Supplement Prefiled Testimony and AT&T's Joinder on Midcontinent Communications' Motion to Suspend Procedural Schedule and Request for Expedited Decision. After listening to the arguments of the parties, the Commission voted to grant Midcontinent's Motion to Supplement Prefiled Testimony. Thus, if the Commission's decisions on Black Hills FiberCom's motion or Midcontinent's motion concerning Track A impact the prefiled testimony of any of the parties, the parties would have the opportunity to supplement their prefiled testimony prior to the hearing. The Commission also voted to deny AT&T's Motion to Suspend Procedural Schedule.

At its March 28, 2002, meeting, the Commission considered Qwest's Motion to Remove Document from Commission Record, Black Hills FiberCom's Motion for Order Denying Petition, and Midcontinent's Motion for Definition of Track A Analysis. The Commission also considered scheduling additional time for the hearing and how to schedule witnesses and/or issues for the hearing.

At the meeting, no one objected to Qwest's Motion to Remove Document from Commission Record. The Commission voted to grant the motion. The Commission then listened to arguments concerning Black Hills FiberCom's Motion for Order Denying Petition and Midcontinent's Motion for Definition of Track A Analysis. After considering the arguments of the parties, the Commission voted to grant Midcontinent's Motion. The Commission found that Qwest may not rely solely on its SGAT to prove compliance with the 14-point checklist but should also use interconnection agreements and any other evidence to demonstrate to the Commission that it is in compliance with the checklist items. In addition, based on its March 20, 2002, order, the Commission allowed supplemental testimony to be filed. Staff and Intervenors were given the opportunity to file supplemental testimony on or before April 10, 2002, and Qwest was allowed to file supplemental testimony on or before April 16, 2002. The Commission also scheduled additional time for the hearing. The Commission extended the time for the hearing through the morning of May 9, 2002.

The hearing was held as scheduled, beginning on April 22, 2002 and ending on April 30, 2002. At the conclusion of the hearing, the Commission set a post-hearing schedule. The Commission required Qwest to submit an initial brief, an updated SGAT, an updated Qwest Performance Assurance Plan ("QPAP"), a redlined SGAT and QPAP, and a chart showing where contested and uncontested items from the reports in the Multi-state Proceeding had been included or not included in the SGAT and QPAP. From the date those documents were filed, the Intervenors and Staff were given 30 days to file reply briefs. Qwest was allowed to file a rebuttal brief 15 days after the filing of reply briefs.

On May 14, 2002, the Commission received from AT&T a Motion to Reopen Proceedings. On May 24, 2002, the Commission received Qwest Corporation's Opposition to AT&T's Motion to Reopen Proceedings. On May 30, 2002, the Commission received AT&T's Reply to Qwest Corporation's Opposition to AT&T's Motion to Reopen Proceedings. On June 4, 2002, the Commission received Touch America Inc.'s Petition to Intervene and Motion to Reopen Issues. On June 11, 2002, the Commission received Qwest's Opposition to Touch America's Petition to Intervene and Motion to Reopen Issues.

At its June 13, 2002, meeting, the Commission considered AT&T's and Touch America's motions. After listening to the arguments by the parties, the Commission voted to deny AT&T's Motion to Reopen Proceedings because the Commission had already left the record open at the end of the hearing. In addition, the Commission had previously requested, among other things, that Qwest file copies of any written agreements with competitive local exchange companies that had not been filed with the Commission. See Hearing Transcript for April 30, 2002, at 6-7. The Commission pointed out that this was the very type of information that AT&T was requesting be placed into the record.¹ The Commission denied Touch America's Petition to Intervene due to its untimeliness. The Commission noted that the deadline for intervention in this proceeding was November 16, 2001, the hearing was held in April, the parties were currently briefing the issues, and the issues raised by Touch America were not issues that had just arisen. Since the Commission did not grant Touch America's Petition to Intervene, Touch America's Motion to Reopen Issues was moot.

The Commission participated in the Regional Oversight Committee ("ROC") collaborative section 271 performance measures proceeding. The ROC Operational Support Systems ("OSS") test final report was issued on May 28, 2002. At its May 30, 2002, meeting, the Commission listened to comments from the parties on how to proceed with consideration of the ROC OSS test. By order dated June 19, 2002, the Commission set the following procedural schedule to consider the ROC OSS test:

July 3, 2002 - Parties may file comments on the ROC OSS test. These comments are optional. A party may present testimony at the hearing without filing comments;

July 11, 2002 - A hearing will be held beginning at 8:30 a.m. on July 11, 2002, in Room 412, State Capitol Building, Pierre, South Dakota. The ROC OSS vendors will present testimony on the ROC OSS test. The following vendors will be giving presentations: MTG - Denise Anderson and Marie Bakunas; KPMG - Mike Weeks and Joe Dellatorre; and HP - Geoff May, Liz Gragert, and Don Petry. All parties will be allowed an opportunity for cross-examination. Following that testimony, all parties will be allowed the opportunity to present additional testimony, which will also be subject to cross-examination. The Commission is scheduling only one day for this hearing. If necessary, the hearing may extend into the evening hours;

July 22, 2002 - Qwest may file a post-hearing brief concerning issues related to the ROC OSS test;

August 5, 2002 - Staff and Intervenors may file a post-hearing brief concerning issues related to the ROC OSS test; and

August 12, 2002 - Qwest may file a rebuttal brief.

On June 25, 2002, the Commission received Qwest's Motion to Amend the Scheduling Order for Review of the ROC OSS Test. Qwest stated that it did not anticipate a need to file a post-hearing brief and requested that Staff and Intervenors file a post-hearing brief on or before July 22, 2002,

¹ Qwest responded to the Commission's request for information on June 13, 2002. Since Qwest's response had just been filed, the Commission extended the briefing schedule for Intervenors and Staff until July 1, 2002.

and Qwest file a rebuttal brief on or before July 29, 2002. No parties objected to the motion to amend and the Commission amended the procedural schedule accordingly.

Prior to the hearing, comments were submitted by Commission Staff, Qwest, and AT&T. The hearing on the ROC OSS test was held as scheduled on July 11, 2002. Testimony on the ROC OSS test was given by the consultants involved in the ROC OSS test. Denise Anderson and Marie Bakunas testified on behalf of Maxim Telecom Consulting Group (MTG), which acted as the Project Manager. Michael Weeks and Joe Dellatorre testified on behalf of KPMG Consulting. KPMG Consulting prepared the test plan and the final report evaluating the results of the test. Don Petry and Geoff May testified on behalf of Hewlett-Packard which generated test transactions through the creation of a pseudo-CLEC. None of the parties submitted briefs following the hearing.

At its September 5, 2002, meeting, the Commission considered checklist items 3, 7, 8, 9, 10, and 12. The Commission found that, subject to its findings regarding the OSS results, Qwest is in substantial compliance with checklist items 7, 8, 9, 10, and 12. In order for the Commission to find that Qwest is in substantial compliance with checklist item 3, Qwest shall delete the language regarding the potential waiver by this Commission of the 45-day rule. In addition, Qwest shall incorporate the negotiated language from Utah regarding revisions to Section 10.8.2.27 and Exhibit D to the SGAT which address a CLEC's access to Qwest's rights-of-way agreements. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes.

QWEST'S FILING

Qwest's filing was highly dependent on what it refers to as the "Multi-state Proceeding." The Multi-state Proceeding involved the states of Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. John Antonuk, of the Liberty Consulting Group, was appointed as facilitator of the Multi-state Proceeding ("Multi-state Facilitator"). In the Multi-state proceeding, six of the checklist items were considered pursuant to a "paper" proceeding wherein the parties were able to bring up issues in written testimony and then submit briefs. The other checklist items, as well as Track A, section 272, general terms and conditions, public interest, and the QPAP, were considered pursuant to multiple, joint workshops, during which Qwest and the intervening parties filed testimony, rebuttal testimony, comments, replies, and briefs. The parties also continued to negotiate items throughout this time period and many issues were resolved through negotiations.

For the remaining unresolved issues, the Facilitator developed a record on the issues relevant to each checklist item and issued seven reports. The reports are as follows:

- 1) Report on Checklist Items 3 (access to poles, ducts, conduits, and rights-of-way); 7 (911/E911, directory assistance, operator services); 8 (directory listings); 9 (number administration); 10 (call-related databases and signaling); and 12 (local dialing parity) (dated March 19, 2001) (commonly referred to as the "Paper Workshop Issues") ;
- 2) Report on Checklist Items 1 (interconnection and collocation); 11 (local number portability); 13 (reciprocal compensation); and 14 (resale) (dated May 15, 2001);
- 3) Report on Emerging Services (line sharing, subloop unbundling, packet switching, and dark fiber) (dated June 11, 2001);

- 4) Report on Checklist Items 2 (unbundled network elements); 4 (access to unbundled loops); 5 (access to unbundled local transport); and 6 (access to unbundled local switching) (dated August 20, 2001);
- 5) Report on General Terms and Conditions; Section 272; and Track A (dated September 21, 2001);
- 6) Public Interest Report (dated October 22, 2001); and
- 7) Report on Qwest's Performance Assurance Plan (dated October 22, 2001).

These reports, which contained recommended resolutions on disputed issues, were then considered individually by the participating state commissions.

In this proceeding, Qwest submitted the seven Liberty Reports.² In addition to the Liberty Reports, Qwest submitted 25 direct affidavits and 24 rebuttal affidavits.³ The Commission notes that most of the parties' filings and grouping of issues were patterned after the Multi-state Proceeding. However, the Commission points out that, unlike the Multi-state Proceeding, none of the issues in this docket were handled through a "paper" proceeding.⁴ Instead, all of the parties were given the opportunity to provide testimony and cross-examine witnesses. Moreover, an issue decided in the Multi-state Proceeding or agreed to by the parties in that proceeding did not preclude any party in this proceeding from bringing up the issue.

FINDINGS REGARDING CHECKLIST ITEMS 3, 7, 8, 9, 10, and 12

CHECKLIST ITEM 3

Section 271(c)(2)(B)(iii) provides that Qwest must provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224." Pursuant to FCC rule:

(a) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

² Qwest Exhibits 22-28. The Commission points out that it had previously declined to participate in the Multi-state Proceeding. The main reason for declining to participate was the Commission's concern that small, South Dakota competitive local exchange companies would be unable to participate in a process that took place in other states and required significant time commitments

³ The Commission points out that Qwest's position on some issues at the hearing were different from those stated in Qwest's prefiled affidavits. Moreover, Qwest continued to change its position on some issues in its post-hearing briefs.

⁴ Thus, any reference by the parties to issues concerning the "paper workshop" only refers to the grouping of certain checklist items in the Multi-state Proceeding.

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

47 C.F.R. § 1.1403(a) and (b).

According to Qwest, it "provides CLECs with access to Qwest's poles, ducts, conduits, and rights-of-way at just and reasonable rates, and under the same terms and conditions that Qwest provides access to itself and its affiliates." Qwest Exhibit 16 at 9. Qwest stated that it takes several steps to provide nondiscriminatory access by "(i) providing access to records; (ii) maintaining a consistent application process; (iii) assisting prospective attachers through the application process and/or in planning attachments; (iv) allocating space to competitors and itself alike on a nondiscriminatory first-come, first-served basis; and (v) promptly responding to requests for access." *Id.* Qwest further stated that as of August 1, 2001, "third parties had attached to 7396 poles in [South Dakota], but no CLEC was occupying Qwest duct space." *Id.* at 5-6. With respect to fees for attachment and occupancy, Qwest asserted that the fees are calculated in accordance with section 224 and the applicable FCC orders. *Id.* at 21. Qwest's current pole attachment fee for attachers that provide telecommunications services in South Dakota "is currently \$3.07 per foot, per pole, per year. Qwest's conduit occupancy fee is \$.28 per foot, per year." *Id.*

Disputed Issues Regarding Checklist Item 3

1. CLEC Access to Rights-of-Way Agreements

AT&T's Position

AT&T's first issue concerned a CLEC's access to Qwest's rights-of-way agreements. AT&T stated that Qwest's proposed process for obtaining access to an unrecorded agreement requires a CLEC "to go through the unnecessary and burdensome effort of gaining 1) the landowner's consent to such access before access to the agreements will be afforded, and 2) the landowner's agreement to provide notice and opportunity to cure before it will afford CLECs access to ROW agreements." Response Brief of AT&T Regarding Paper Workshop Issues at 2. AT&T stated that it had engaged in further negotiations with Qwest as part of the 271 proceedings in Utah and had agreed on revisions that AT&T would accept in this proceeding. *Id.* at 4. AT&T stated that "[f]or purposes of resolving this issue in this proceeding, AT&T would accept the revisions to section 10.8 and Exhibit D to the SGAT that were filed in Utah." *Id.* (attached Exhibit 3).

Qwest's Position

In its post-hearing reply brief, Qwest stated it would agree to adopt the Utah Commission's approach and incorporate that language in its South Dakota SGAT if this Commission decided to adopt the Utah Commission's approach. Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 20.

Commission's Finding

Having reviewed the language adopted in Utah, the Commission finds that the negotiated revisions are reasonable. The Commission finds that the negotiated language clarifies a number of issues and allows CLECs greater access to all rights-of-way agreements. Thus, the Commission directs Qwest to incorporate that language into its SGAT.

2. Waiver of 45-Day Rule

Qwest's Position

This issue concerns an FCC rule that requires Qwest to grant a request for access to its poles, ducts, conduits, or rights-of-way within 45 days of the request or deny it in writing by the 45th day. 47 C.F.R. § 1.1403(b). Qwest asked that it be allowed to request a waiver of the 45-day response time from the Commission. Qwest Corporation's Opening Post-Hearing Brief on Paper Workshop Issues at 8-11. In the Multi-state Proceeding, the Facilitator had proposed the following language on this issue:

In the event that Qwest believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable to this SGAT.

Qwest Exhibit 22 at 28.⁵

AT&T's Position

AT&T argued that the FCC rule contains no exceptions and does not authorize state commissions to alter this requirement. Response Brief of AT&T Regarding Paper Workshop Issues at 6. AT&T stated that Qwest must seek a waiver of an FCC rule from the FCC, not from a state commission. *Id.*

Commission's Finding

Qwest has not pointed to any legal authority that allows this Commission to waive this FCC rule. Thus, the Commission rejects the language as proposed by Qwest that would have allowed Qwest to seek a waiver of the 45-day rule from this Commission.

⁵ The Commission points out that the actual language used by Qwest in its SGAT is as follows:

In the event that Qwest believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable under the interconnection agreement, if any, between Qwest and CLEC.

Qwest Exhibit 81 (SGAT Exhibit D, section 2.2)

Commission's Finding for Checklist Item 3

The Commission finds that in order for this Commission to find that Qwest is in substantial compliance with Checklist Item 3, Qwest shall delete the language regarding the potential waiver of the 45-day rule and Qwest shall incorporate the negotiated language from Utah regarding revisions to section 10.8.2.27 and Exhibit D to the SGAT.

CHECKLIST ITEM 7(I)

Section 271(c)(2)(B)(vii)(I) requires Qwest to provide nondiscriminatory access to 911 and E911 services. The FCC requires a Bell Operating Company ("BOC") to provide competitors access to a BOC's 911 and E911 services in the same manner that a BOC obtains the access. *Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and 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*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, 15 FCC Rcd 18354, ¶ 343 (rel. June 30, 2000).

According to Qwest, the 911 and E911 services that CLECs provide to their end user customers, through access to Qwest's services, database, and facilities are at parity with the 911 and E911 services that Qwest provides to its own end user customers. Qwest Exhibit 32 at 9. Qwest explained Basic 911 and Enhanced 911 as follows:

Basic 911 service routes all emergency calls made through a given central office ("CO") to a single PSAP [Public Service Answering Point which is operated by the government agency responsible for public safety]. Enhanced 911 service incorporates the Automatic Number Identification ("ANI") feature to forward the end user's telephone number to the PSAP. The E911 service uses the ANI information to retrieve the end user's name and street address from the Automatic Location Identification ("ALI") database and then forwards it to the PSAP. The ALI database is managed for Qwest by a third party, Intrado Inc. (formerly SCC Communications Corp.). Intrado provides E911 database management services for Qwest and other local exchange carriers.

Id. at 7 (footnote omitted.) Qwest further stated that its contract with Intrado requires Intrado to provide ALI database management services to all CLECs in a competitively neutral manner and at parity with the services it provides to Qwest. *Id.* at 10. Facilities-based CLECs that have their own switching facilities must provide Intrado with their customers' names and addresses and updates to their customers' records. *Id.* at 17-18.

Qwest claimed that "[a]s of August 31, 2001, Qwest had provided thirteen facilities-based CLECs in South Dakota with access to E911 service with 24,992 customer line records in the E911 database. Qwest also was providing access to 911/E911 service for eight reseller CLECs and five CLECs using Qwest's unbundled switching in South Dakota." *Id.* at 6. Qwest explained that it does not charge a CLEC to update the E911 database, but Intrado may assess charges for updates to the ALI database and for other services. *Id.* at 21. Qwest recovers its costs by billing the end user customer, remitting it to the responsible government agency, and billing the agency for Qwest's costs. *Id.*

Disputed Issues Regarding Checklist Item 7(I)

1. Private Switch/Automatic Location Identification

AT&T's Position

AT&T questioned the ability of a CLEC to request Private Switch/Automatic Location Identification (PS/ALI) service. Hearing Transcript for April 29, 2002, at 133-34. This service allows the PSAP to determine the extension or floor when a 911 call has been made in an office building which has a private branch exchange. *Id.*

Qwest's Position

Qwest responded that it has added language to the SGAT which documents its commitment to provide CLECs with PS/ALI service. Qwest Corporation's Opening Post-Hearing Brief on Paper Workshop Issues at 18. Qwest also noted that it has provisioned PS/ALI in other states but that no CLEC in South Dakota has requested the service. Qwest Exhibit 33 at 7.

Commission's Finding

The Commission has reviewed Qwest's revised SGAT and find that it has added this language. Qwest Exhibit 81 (section 10.3.9). The Commission finds that this issue has been resolved.

2. Unlocking of Database Records

AT&T's Position

AT&T expressed its concern about delays in the unlocking of E911 database records when a consumer becomes a CLEC customer. Hearing Transcript for April 29, 2002, at 135. AT&T asserted that when the number is ported, Qwest sometimes fails to unlock the 911 database which prevents AT&T from changing the address or other information. *Id.*

Qwest's Position

Qwest responded that the National Emergency Number Association and the Local Number Portability Administration-Working Group developed a new standard to address this problem and Qwest reached an agreement on January 29, 2002, with Intrado to implement the new process. Qwest Exhibit 33 at 9-10. Qwest stated that under the new process, if the database update is unsuccessful due to a locked record, Intrado will access the Local Number Portability database to verify that the new service provider has made the port activation. *Id.* at 10. If the port was activated, Intrado will unlock the record and update the database. *Id.* Qwest further claimed that since Intrado implemented this new process on February 25, 2002, Intrado has cleared 100% of the valid migrate orders each day. *Id.* at 15.

Commission's Finding

It would appear that the new process has alleviated AT&T's concern on this issue. The Commission finds that no additional action by Qwest is required to address this issue.

3. Disconnection of 911 Trunks

AT&T's Position

The third issue raised by AT&T was the accidental disconnection of CLEC 911 trunks by Qwest. Hearing Transcript for April 29, 2002, at 135. AT&T requested that "Qwest reinforce its rules and its procedures for protecting CLEC 911 trunks so that there is no accidental disconnection as we have seen in the past." *Id.*

Qwest's Position

Qwest claimed that there was only an isolated incident in Minneapolis, Minnesota and that AT&T was never without working trunk groups to access the PSAP. *Id.* at 18-21.

Commission's Finding

The Commission finds that the incident raised by AT&T was an isolated incident. The Commission finds insufficient evidence to support a finding that any additional processes or procedures are needed in order to prevent accidental disconnection of CLEC 911 trunks.

Commission's Finding for Checklist Item 7(I)

Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEMS 7(II) and 7(III)

Section 271(c)(2)(B)(vii)(II) requires Qwest to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers[.]" Section 271(c)(2)(B)(vii)(III) requires Qwest to provide nondiscriminatory access to "operator call completion services." The FCC has found that a BOC must be in compliance with the regulations implementing section 251(b)(3) which imposes on local exchange carriers "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

The FCC has defined nondiscriminatory access as the ability of "the customers of all telecommunications service providers [to] be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of the requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested." Second Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dkt. No. 96-98, 11 FCC Rcd 13932, ¶ 114 (1996). ~~Qwest "must permit telephone service customers to connect to the operator services offered by that customer's chosen local service provider by dialing '0,' or '0' plus the desired telephone number, regardless of the identity of the customer's local telephone service provider." 47 C.F.R. § 51.217(c)(2). With respect to directory assistance services, Qwest:~~

shall permit competing providers to have access to its directory assistance services, including directory assistance databases, so that any customer of a competing

provider can obtain directory listings, except as provided in paragraph (c)(3)(iv) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested. A LEC must supply access to directory assistance in the manner specified by the competing provider, including transfer of the LECs' directory assistance databases in readily accessible magnetic tape, electronic or other convenient format, as provided in paragraph (c)(3)(iii) of this section. Updates to the directory assistance database shall be made in the same format as the initial transfer (unless the requesting LEC requests otherwise), and shall be performed in a timely manner, taking no longer than those made to the providing LEC's own database. A LEC shall accept the listings of those customers served by competing providers for inclusion in its directory assistance/operator services databases.

47 C.F.R. § 51.217(c)(3)(i).

Qwest stated that a "CLEC may (a) purchase and resell Qwest's operator services and/or directory assistance services; (b) provide operator services and/or directory assistance services itself; or (c) provide operator services and/or directory assistance services using a third party's facilities and personnel. Access configurations for these different methods of providing access to operator services and directory assistance services differ for reseller CLECs, CLECs that purchase UNE-P combinations or stand-alone unbundled switching, and CLECs that use their own switching facilities." Qwest Exhibit 49 at 8. Qwest asserted that it provides the same directory assistance and operator services to CLEC end user customers that Qwest provides to its retail end user customers and uses the same methods, practices, and standards in providing those services. *Id.* at 11. Calls are handled on a first-come, first-served basis. *Id.* at 14.

With respect to branding, Qwest stated that CLECs that purchase operator services or directory assistance services from Qwest may brand end users' calls with Qwest's brand, or, where technically feasible, with the CLEC's name or a generic brand message. *Id.* at 7-18. If a reseller or facilities-based CLEC purchases UNE-P or combinations or unbundled switching, Qwest offers specific and generic branding using customized routing. *Id.* at 18. Qwest claimed that no reseller or facilities-based CLEC had requested this type of customized or generic branding in South Dakota. *Id.* Qwest also has implemented Originating Line Number Screening technology in order to provide specific or generic branding without the need for customized routing and dedicated trunks and transport. *Id.*

Qwest claimed that "[a]s of August 31, 2001, Qwest had provided directory assistance and operator services to eight reseller CLECs in South Dakota. As of the same date, Qwest provides 67 operator service trunks to two facilities-based CLECs in South Dakota." *Id.* at 2. With respect to pricing, Qwest stated that it provides directory assistance and operator services to facilities-based CLECs at market-based rates and to reseller CLECs at wholesale discount rates that have been set or approved by the Commission. *Id.* at 24.

Qwest is prohibited from providing "access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address. The LEC shall ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers." 47 C.F.R. § 51.217(c)(3)(iv). Qwest claimed that "Qwest's operators have access to exactly the same information regarding nonpublished listings that CLECs receive through Qwest's Directory Assistance List service and Directory Assistance Database Service." Qwest Exhibit 49 at 23.

Disputed Issues Regarding Checklist Items 7(II) and 7(III)

1. Branding

FiberCom's Position

At the hearing, Black Hills FiberCom stated that although the customized branding service was listed in Qwest's catalog, it was not available in South Dakota until after a switch was upgraded. Hearing Transcript for April 29, 2002, at 78.⁶

Qwest's Position

Qwest stated that CLEC-specific branding was not available until September of 2001, but Qwest now provides the service to Black Hills FiberCom and it is working properly. Qwest Exhibit 50 at 5-7.

Commission's Finding

The FCC rule on branding provides as follows:

(d) Branding of operator services and directory assistance services. The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

47 C.F.R. § 51.217(d).

Black Hills FiberCom did not bring up this issue in its post-hearing brief so the Commission assumes that FiberCom is now being provided the branding services it requested. However, the Commission notes that FiberCom's point in bringing up this issue was Qwest's inability to provide this service in South Dakota until September, despite the service being listed in its catalog prior to that time. The Commission may consider this issue in another portion of its findings in this proceeding.

Commission's Finding for Checklist Items 7(II) and 7(III)

Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with these checklist items.

⁶ In its prefiled testimony, Black Hills FiberCom stated that it had requested branding of directory assistance that was continually delayed. However, Black Hills FiberCom did not put this witness's testimony into the record at the hearing.

CHECKLIST ITEM 8

Section 271(c)(2)(B)(viii) requires Qwest to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service." The FCC rule states that "[a] local exchange carrier (LEC) that provides operator services, directory assistance services or directory listings to its customers, or provides telephone numbers, shall permit competing providers of telephone exchange service or telephone toll service to have nondiscriminatory access to that service or feature, with no unreasonable dialing delays." 47 C.F.R. § 51.217(b). The FCC further requires the following:

(ii) Access to directory listings. A LEC that compiles directory listings shall share directory listings with competing providers in the manner specified by the competing provider, including readily accessible tape or electronic formats, as provided in paragraph (c)(3)(iii) of this section. Such data shall be provided in a timely fashion.

(iii) Format. A LEC shall provide access to its directory assistance services, including directory assistance databases, and to its directory listings in any format the competing provider specifies, if the LEC's internal systems can accommodate that format.

(A) If a LEC's internal systems do not permit it to provide directory assistance or directory listings in the format specified by the competing provider, the LEC shall:

(1) Within thirty days of receiving the request, inform the competing provider that the requested format cannot be accommodated and tell the requesting provider which formats can be accommodated; and

(2) Provide the requested directory assistance or directory listings in the format the competing provider chooses from among the available formats.

(B) [Reserved]

(iv) Unlisted numbers. A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address. The LEC shall ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers.

47 C.F.R. § 51.217(c)(3)(ii)-(iv).

Qwest stated that it provides the same types of white pages directory listings to CLECs that Qwest provides to its own retail end users. Qwest Exhibit 51 at 6. Qwest explained that these listings include primary, premium, and privacy listings and that the "[w]hite pages listings for CLEC end users are integrated alphabetically with Qwest retail end user listings and are indistinguishable from Qwest's listings." *Id.* at 7-8. Qwest further claimed that it uses "the same or similar methods and procedures and the same databases and systems for processing Qwest retail end user listings and CLEC end user listings." *Id.* at 8. In addition, Qwest provides CLECs with monthly "verification proofs" which show all listings to be published that have been changed or added during the prior month. *Id.* at 14-15. Qwest also maintained that it "provides for the delivery of directories to CLEC end user customers on the same terms and conditions as directories are delivered to Qwest's end user customers." *Id.* at 16. In addition, Qwest provides white pages to CLECs that publish their own directories. *Id.* at 17. The listings are provided in electronic format or by another medium that the parties agree upon. *Id.*

According to Qwest, as of August 31, 2001, Qwest had included 46,299 listings for South Dakota reseller and facilities-based CLECs in Qwest's listings databases. *Id.* at 3. With respect to prices, Qwest does not charge for primary listings in its white pages for each main user telephone

number. *Id.* at 17. For premium and privacy listing, Qwest charges CLECs Qwest's retail price less the wholesale discounts approved by the Commission. *Id.*

Disputed Issues Regarding Checklist Item 8

1. Directory Listings Errors

Midcontinent's Position

Midcontinent stated that it had numerous problems with directory listings for resold customers. Midcontinent Exhibit 38 at 4. Midcontinent asserted that it had experienced 80 separate problems in January and February of 2002. *Id.* Some of the types of problems were the listing of residential customers in the business sections, misspellings, the listing of numbers that were not supposed to be listed, and the listing of addresses that were not supposed to be included. *Id.* at 5. Midcontinent further stated that it has "had more contact with our sales representatives perhaps in the past six months than we have in the previous couple of years. We've scheduled regular monthly meetings with our service representative to work out specific problems and issues." Hearing Transcript for April 29, 2002, at 17. Midcontinent went on to state that "[t]here is concern, however, that once the checklist has been deemed complete, the level of cooperation may diminish." *Id.* at 18.

In its post-hearing brief, Midcontinent stated that "the issue here is not whether [problems] occurred and were eventually corrected, but whether Qwest's zeal for eliminating problems in the future will continue past its receipt of 271 interLATA long distance authority." Midcontinent's Post Hearing Brief at 8-9.

Qwest's Position

In Qwest's post-hearing brief, it stated that the listing errors identified by Midcontinent accounted for less than one percent of Midcontinent's total number of listings. Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 31. Qwest confirmed that it is now meeting monthly with Midcontinent representatives to discuss directory listings, as well as other issues. Qwest Exhibit 52 at 4. Qwest has also "agreed to audit 10% of Midcontinent's service orders as they appear in Qwest's service order processor compared to the local service requests (LSRs) submitted to Qwest by Midcontinent. If an error is found, it is corrected, and more importantly, Qwest's personnel are trained on correct procedures." *Id.*

Commission's Finding

The Commission recognizes that even a relatively small number of errors in listings can impact a small CLEC's relationship with its customers. However, as pointed out by Qwest, the FCC has found that:

Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome the BOC's *prima facie* case. Moreover, a BOC may overcome such anecdotal evidence by, for example, providing objective performance data that demonstrates that it satisfies the statutory nondiscrimination requirement.

Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in New York, 15 FCC Rcd 75 (1999), ¶ 50, *aff'd sub nom AT&T Corp. v. FCC*, 220 F.3d 607 (D.C.Cir. 2000).

The Commission notes that there are two PIDs for directory listings: 1) DB-1C-1, Time to Update Database, which measures the average amount of time it takes to update the listings database; and 2) DB-2C-1, Percentage of Accurate Database Updates, which measures the percentage of directory listings database updates completed without errors in the reporting period. Qwest Exhibit 71, (attached as Exhibit MGW-PERF-6 at 79-81). According to the test results, Qwest is providing accurate database updates to itself and CLECs in the range of 92.76% to 94.04%. Qwest Exhibit 86, S.D. Perf. Results at 163. The Commission finds that the evidence does not demonstrate that Qwest is providing discriminatory access. However, the Commission also notes that it shares Midcontinent's concern that Qwest's attention to Midcontinent's problems may wane if Qwest is granted section 271 approval. The Commission may address this concern in other portions of its findings in this proceeding.

Commission's Finding for Checklist Item 8

Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEM 9

Section 271 (c)(2)(B)(ix) provides that until telecommunications numbering administration guidelines, plan, or rules are established, Qwest must provide nondiscriminatory access to telephone numbers for assignment to a competing carrier's telephone exchange service customers. Once numbering administration guidelines, plan, or rules are established, Qwest must comply with them.

Qwest explained that

In order to provide local exchange telephone service within the public switched telephone network, facilities-based carriers must have a NXX code(s) assigned to their switch for the provision of telephone numbers to their subscribers. Numbering administration had traditionally been the responsibility of Bellcore and the predominant local telephone company in each region. The 1996 Act, however, directed the FCC to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."

Qwest Exhibit 34 at 4. The FCC first designated Lockheed Martin IMS as the new code administrator; later that responsibility was transferred to Neustar. *Id.* at 5-6.

Qwest further stated that it:

has processes in place to ensure that all NXX codes and routing information are programmed into Qwest's switches in a nondiscriminatory and timely manner to meet the NXX code activation dates published in the LERG [Local Exchange Routing Guide]. Specifically, Qwest has established processes to track new NXX code due dates, verify that facilities and routing information is provided by CLECs, and ensure accurate and timely activation of NXXs. Qwest provides documentation for CLECs regarding the industry's numbering administration and assignment processes and

Qwest's methods and procedures for NXX code activation and repair processes on Qwest's website.

Id. at 8.

Commission's Finding for Checklist Item 9

None of the parties raised any disputed issues regarding this checklist item. Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEM 10

Section 271(c)(2)(B)(x) provides that Qwest must provide to competing carriers "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." The FCC has determined that an incumbent local exchange company ("LEC") must provide unbundled access to call related databases, signaling systems, and service management systems as network elements. 47 C.F.R. § 51.319(e). The FCC requires incumbent LECs to provide unbundled access to the Line Information Database, the Toll Free Calling Database, the Local Number Portability Database, the Advanced Intelligent Network Databases, the Calling Name Database, the 911 Database, and the E911 Database. 47 C.F.R. § 51.319(e)(2)(i). With respect to its signaling system, Qwest must provide nondiscriminatory access to its signaling network which includes signaling links and signaling transfer points. 47 C.F.R. § 51.319(e)(1).

Qwest stated that:

CLECs can gain access to Qwest's call-related databases and associated signaling in the same manner and using the same facilities, equipment, and procedures as Qwest uses to provide such access to itself. Qwest's signaling network and call-related databases automatically handle all call routing and database queries in the same manner, regardless of whether a query originates on a CLEC network or on Qwest's network. Qwest's signaling network commingles all call routing messages and database queries, and Qwest's call-related databases process all queries on a first-come, first-served basis.

Qwest Exhibit 36 at 2. Qwest further claimed that it provides CLECs access to the signaling transfer points linked to Qwest's call-related databases and to Qwest's service management systems. *Id.* at 2-3.

Qwest stated that as of August 31, 2001, no facilities-based CLEC in South Dakota was purchasing unbundled access to Qwest's signaling network. Qwest Exhibit 36 at 6. With respect to call-related databases, Qwest asserted that as of August 31, 2001, there was one facilities-based CLEC purchasing unbundled access to the 8XX database, the Line Information Database, the InterNetwork Calling Name Database and the Local Number Portability Database. *Id.* at 11. No CLECs were using Qwest's Advanced Intelligent Network databases. *Id.*

Commission's Finding for Checklist Item 10

None of the parties had any disputed issues regarding this checklist item. Subject to the Commission's findings regarding OSS, the Commission finds Qwest is in substantial compliance with this checklist item.

CHECKLIST ITEM 12

Section 271(c)(2)(B)(xii) states that Qwest must provide to competing carriers "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Dialing parity is defined as the ability of a person that is not an affiliate of a local exchange carrier "to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access codes, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. § 153(15). The FCC requires local exchange carriers to "permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider." 47 C.F.R. § 51.207. Dialing parity must be provided with no unreasonable dialing delays. 47 C.F.R. § 51.205; 47 U.S.C. § 251(b)(3).

Qwest stated that "CLEC and Qwest customers dial the same number of digits without any access codes, and can use the same dialing patterns, to place calls to a Qwest customer, a CLEC customer, directory assistance, or operator services." Qwest Exhibit 40 at 6. In addition, Qwest asserted that there are not any requirements or technical constraints that cause CLEC customers to experience inferior quality service or longer post-dialing delays and that the processing of callers in Qwest's central offices is the same for the customers of CLECs and Qwest. *Id.* at 7.

Commission's Finding for Checklist Item 12

None of the parties had any disputed issues regarding this checklist item. The Commission finds Qwest is in substantial compliance with this checklist item.

Verification of Compliance With This Order

As stated above, in order for the Commission to find that Qwest is in substantial compliance with checklist item 3, Qwest shall delete the language regarding the potential waiver of the 45-day rule and Qwest shall incorporate the negotiated language from Utah regarding revisions to Section 10.8.2.27 and Exhibit D to the SGAT. Qwest shall make a compliance filing with these revisions, including a redlined version of the changes.

It is therefore

ORDERED, that Qwest shall make a compliance filing as described above; and it is

FURTHER ORDERED, that the parties shall have ten days following Qwest's filing of its compliance filing to submit written objections concerning the revisions; and it is

FURTHER ORDERED, that the Commission finds Qwest in substantial compliance with the checklist items as listed above, subject to the Commission's review of the OSS results and subject to Qwest making the revisions as ordered above.

Dated at Pierre, South Dakota, this 19th day of September, 2002.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delvino Kalbo

Date: 9/19/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner