Exhibit

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TC01-165

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Investigation	)	Docket No.
into Qwest Corporation's	)	
Compliance with Section 271(c) of the	)	
Telecommunications Act of 1996	)	
	)	

Petition of Qwest Corporation for Commission Recommendation that the FCC Grant Entry into the In-Region InterLATA Market Under Section 271 of the Telecommunications Act of 1996

EXHIBIT
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In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996	)))))	Docket No.

Petition of Qwest Corporation for Commission Recommendation that the FCC Grant Entry into the In-Region InterLATA Market Under Section 271 of the Telecommunications Act of 1996

Pursuant to Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 (the 1996 Act or the Act), Qwest Corporation (Qwest) hereby seeks the recommendation of the Public Utilities Commission of South Dakota (Commission) to the Federal Communications Commission (FCC) that Qwest be granted authority to provide in-region interLATA services (including services treated as such under 47 U.S.C. § 271(j)) originating in the State of South Dakota. Specifically, Qwest requests that this Commission find, based upon the record presented, that Qwest has met the competitive checklist and other requirements of 47 U.S.C. § 271 (Section 271), which prescribe the mechanism by which Qwest may be found eligible to provide in-region interLATA services and rely upon that finding to provide a favorable recommendation to the FCC.

Introduction

Under the 1996 Act, Congress conditioned the Bell Operating Company (BOC) provision of in-region interLATA service on compliance with certain provisions of Section 271. Pursuant to that section, BOCs must apply to the FCC for authorization to provide interLATA services originating in any in-region state. Before making its determination, the FCC is required to consult with the relevant state commission in order to verify compliance with the requirements of Section 271. It is the purpose of this proceeding to provide this Commission with sufficient information to enable it to verify Qwest's compliance.

I. QWEST'S UNIQUE POSITION AMONG THE BOCS HAS HASTENED THE OPENING OF THE LOCAL MARKET IN SOUTH DAKOTA.

This submission represents the culmination of the efforts of Qwest and its predecessor BOC, U S WEST Communications, Inc. (U S WEST),[1] to respond to the market-opening directives embodied in the 1996 Act. The evidence presented in support of this Petition demonstrates that, consistent with the Act, Qwest's local exchange and exchange access markets are "irreversibly open to competition."[2] *See* Section III, *infra*.

A. The Merger of Qwest and U S WEST Created a Company Committed to Open Markets, Consumer Choice and Vigorous Competition.

The merger of Qwest and U S WEST brought together two families of companies whose complementary assets and skill sets have resulted in a stronger combined enterprise that is better positioned to serve the public's appetite for advanced telecommunications services in a highly competitive marketplace. Qwest and U S WEST shared a common vision: to enable consumers to take greater advantage of a wider array of services by offering better products at lower prices; to take on the other BOCs, as well as the major interexchange carriers, on their own turf; to expand connectivity to Qwest's high-capacity national network; to become a leading provider of broadband and other advanced services in the 14-state Qwest region and

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[1] Pursuant to the FCC's orders in *Qwest Communications International Inc. and U S WEST, Inc.*, CC Docket No. 99-272, QCI and U S WEST, Inc., the parent company of U S WEST, merged on June 30, 2000, with QCI as the surviving corporation. *See* Memorandum Opinion and Order, FCC 00-91 (released Mar. 10, 2000) (*Qwest-U S WEST Merger Order*); Memorandum Opinion and Order, FCC 00-231 (released June 26, 2000) (approving Qwest's divestiture plan). For convenience, both the pre- and post-merger BOC entities are generally referred to herein as "Qwest."

[2] *See 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*), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

across the country—in short, to become the preeminent competitor in the new era of integrated telecommunications services.

Qwest is meeting its competitive challenges head-on, from entrenched competitors and new entrants alike, both within and outside the 14-state Qwest region. But Qwest's vision cannot be realized fully as long as Qwest remains stuck on the sidelines of the burgeoning market for integrated telecommunications services in its own region. Grant of this Petition, and allowing Qwest to take its place on the field, will be a crucial step toward bringing the benefits of truly meaningful competition to the citizens of South Dakota.

II. The Merger Has Created Unique Incentives for Qwest To Open Its Local Markets to Competition.

Because the merger of Qwest and U S WEST brought together a competitive carrier and a BOC, it created powerful new incentives for the BOC to satisfy the requirements of Section 271. This was so precisely because the merger produced the only BOC with a tangible -- not just potential -- national presence.

* Alone among BOCs, Qwest owns an existing nationwide interLATA network.
* Alone among BOCs, Qwest has an established national marketing identity, customer base and product offerings.
* Alone among BOCs, Qwest has aggressively begun to execute its plan to establish a meaningful presence in local markets outside its 14-state territory, in direct competition with the other BOCS in their home regions.

There is only one obstacle to the benefits of competition to South Dakota consumers through bundled local, long-distance and Internet product offerings: Section 271.

Indeed, in order to complete the merger, Qwest had to take the difficult step of divesting all of its in-region interLATA services, including both retail and wholesale accounts. But Qwest did so with the determination to see the merged company then obtain interLATA relief at the earliest possible date in order to eliminate the enormous competitive disadvantage inherent in the resulting 14-state "doughnut hole" in its otherwise national interexchange products. Thus, even as it undertook the divestiture of its in-region long-distance business, Qwest resolved both to commit the enormous financial, technical and human resources that would be necessary to secure relief under Section 271 and to act in concert with state and federal regulatory authorities in order to complete the process as quickly as possible.

In analyzing the public interest benefits of the Qwest-U S WEST merger, the FCC recognized that Qwest would be uniquely situated among BOCs and that it therefore would have unique incentives to satisfy the requirements of Section 271:

> Qwest has strong business incentives to make full use of its long distance network and Internet backbone by providing service throughout the country to its clients that conduct business nationwide. In order to do so, however, Qwest would need the authorization of the Commission and states after it satisfies its section 271 obligations. Thus, in order to be more competitive in its out-of-region long distance service, and obtain maximum growth in its out-of-region business, Qwest will need to affirmatively pursue the legal ability to offer in-region long distance. We believe U S WEST's incentives to comply with section 271 *increase* after Qwest acquires it. As the merged entity seeks to obtain section 271 authority, entry into the markets by local competitors will follow and accelerate. Furthermore, we believe these improvements will result in increased competitive entry and therefore more choices and improved service quality for the end consumers.[3]

The FCC was absolutely right. Following consummation of the merger, Qwest has made Section 271 a top corporate priority.

C. Since the Completion of Its Merger with U S WEST, Qwest Has Redoubled Its Efforts To Satisfy the Requirements of Section 271 in South Dakota and Throughout Its 14-State Region.

Immediately following enactment of the 1996 Act, U S WEST began to take the multitude of steps necessary to redesign its legacy systems and operating procedures in order to be able to provide nondiscriminatory access to the systems and processes that allow competitive local exchange carriers (CLECs) to interconnect with its network, place orders for unbundled network elements or resale services, install service to their customers, maintain and

[3] *Qwest-U S WEST Merger Order* ¶¶ 57-59 (emphasis added).

repair network facilities and bill their customers. U S WEST built new network interfaces, developed processes, established wholesale service centers, and hired and trained personnel to support the preordering, ordering, provisioning, maintenance and repair and billing functions that new entrants would require in order to interconnect with the U S WEST network, collocate their facilities on U S WEST premises, secure unbundled network elements and resell U S WEST services -- in other words, to fulfill Congress' intent under the 1996 Act.

Upon completion of the Qwest-U S WEST merger, Qwest reemphasized that its transcendent priority would be the speedy completion of the Section 271 process throughout its entire 14-state region. Building on the solid foundation created by U S WEST and on the extraordinary collaborative effort of the Regional Oversight Committee (ROC), Qwest now has completed the transformation of a monopoly environment into a vibrantly competitive one.

Qwest has made a concerted effort to improve the quality of service it provides to its retail customers. Since July 1, 2000, Qwest has spent over $5.2 billion throughout the 14-state region, and $61.8 million in South Dakota, in new capital investment. This investment has enabled Qwest to meet growth, dramatically improve retail service quality, deploy new services, and take the steps that have allowed it to comply with Section 271. The results of this program have been immediate and dramatic:

- Total Local Network customer complaints in South Dakota at the end of August 2001 were 100 percent fewer than the number reported for the same period last year.
- For the same period, 98.7 percent of residential and small-business customer installation commitments in South Dakota were met on time -- the best August results in five years.
- At the end of August 2001, repair commitments in South Dakota were met 94.4 percent of the time, while repeat repairs decreased by 26.4 percent.
- For the same period, Qwest repaired 92.5 percent of all service outages in South Dakota in 24 hours or less--an improvement of 10.4 percent over August 2000, and the best results in August in six years.

This record of improvement in retail service quality, and Qwest's efforts to ensure continued improvement, are additional evidence of Qwest's commitment to create an open and competitive environment.

D. Grant of Qwest's Application Will Solidify and Enhance the Competitive and Public Interest Benefits Flowing from the Merger of Qwest and U S WEST.

Granting Qwest interLATA relief would bring the benefits of full competition to South Dakota. First of all, interLATA relief would stimulate continued competition in the local exchange market. In South Dakota, as in other states within the Qwest region, CLECs are competing with Qwest for new and existing customers. As described more fully in the Affidavit of David L. Teitzel, Attachment 21, CLECs in South Dakota:

- are providing service to over 27,000 residence and over 38,000 business access lines;
- have captured approximately 22 percent of the local exchange market;
- are using their own facilities (either exclusively or predominantly) to serve customers;
- are using a variety of innovative technologies and deployment strategies, including fixed wireless, cable, fiber, DSL, UNE and resale;
- are extending their services from urban areas into rural, outlying or smaller communities; and
- are active (on a facilities or a resale basis) in nearly every Qwest wire center in South Dakota.

As a result, customers now have the opportunity to choose among several competing providers of local exchange services, just as for many years they have had multiple options with respect to long-distance services.

Meanwhile, the possibility of Qwest's entry into the long distance market in South Dakota has been a catalyst for incumbent interexchange carriers (IXCs) to market their products more aggressively in selected local markets, particularly where they can bundle packages of local and long-distance products.

Simply stated, this Petition reflects that Qwest has fully and irreversibly opened the local telecommunications market in South Dakota to competition using each of the various methods contemplated by the 1996 Act--resale, network elements and facilities-based local services. Qwest is meeting its checklist obligations. Qwest is meeting the demand of consumers and businesses throughout its service territory in South Dakota for lower prices and better services, including advanced services.

Of course, Qwest is mindful that, as the FCC has emphasized, grant of its South Dakota application "is not the end of the story" and that the openness of the local market in South Dakota must continue to be sustained.[4] But Qwest's vision of a truly competitive local market environment, together with the inherent and unique incentives described above, the performance assurance mechanisms it has adopted in South Dakota and throughout its 14-state region and the FCC's enforcement authority, will ensure that Qwest will continue to perform at the high level demonstrated here and that the local market in South Dakota will remain open and vibrantly competitive now and in the future.

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[4] *See Bell Atlantic New York Order* ¶ 16.

II. QWEST IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A) (TRACK A).

To gain approval to provide in-region interLATA services, a BOC must first demonstrate that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B). Qwest will demonstrate its compliance with Track A. To qualify under Track A, a BOC must have signed, binding interconnection agreements with one or more competitive providers of telephone exchange service that are collectively providing service to residence and business subscribers.[5] The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."[6]

Accompanying this Petition is the Affidavit of David L. Teitzel, Attachment 21. Mr. Teitzel's Affidavit provides more evidence than is necessary to establish that Qwest satisfies Track A in South Dakota, where competitors are providing services to both residential and business subscribers, either exclusively or predominantly over their own facilities in combination with resale, consistent with the language and intent of Section 271. Track A is satisfied even if only one CLEC in a state is offering service over its own facilities; it need not be the case that other CLECs (or all CLECs) use their own facilities as well.[7] Furthermore,

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[5] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20679, ¶ 84 (1997) (*Ameritech Michigan Order*); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, CC Docket No. 01-138, FCC 01-269, 2001 FCC LEXIS 5009, Appendix C, ¶ 15 (rel. Sept. 19, 2001) (*Verizon Pennsylvania Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988, ¶ 223 (2001) ("*Verizon Massachusetts Order*").

[6] 47 U.S.C. § 271(c)(1)(A).

[7] *Ameritech Michigan Order*, at ¶ 104 (determining that because one CLEC was offering service exclusively over its own facilities, the BOCs' interconnection agreement with

the BOC need only show that CLECs are providing facilities-based service to business customers *or* residential customers, not both. As long as there is facilities-based competition for *one* class of customers, the FCC has held that Track A is satisfied if there is only resale-based competition for the other.[8] In fact, the facilitator in the Seven-State process correctly determined that:

> We must be careful not to confuse the issue of whether the door to the "room" where CLECs will compete is open with the issue of whether it is occupied by them. The Track A and B construct established by Congress clearly implies that the more precisely defined requirement of Section 271 can be met in an empty room, provided we are certain that the door has been unlocked.[9]

The facilitator has articulated the correct standard consistent with the FCC precedent. In South Dakota, however, the "room" is occupied by many active CLECs.

This Commission has approved 34 interconnection agreements between Qwest and CLECs in South Dakota, and 31 interconnection agreements are pending approval. All of

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that CLEC satisfied the statutory requirement and made it unnecessary to examine whether additional interconnection agreements with other CLECs also satisfied the requirement).

[8] The FCC has interpreted the relevant language of Track A requiring a showing of facilities-based competition as applying to the market as a whole, not to the residential and business segments independently. Hence, the FCC has held that the fourth prong of Track A is satisfied if an applicant demonstrates that CLECs are serving business customers via facilities-based competition and residential customers wholly by means of resale, or the reverse: "We note . . . that reading the statutory language to require that there must be facilities-based service to both classes of subscribers to meet Track A could produce anomalous results, and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language." *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 20599 ¶ 48 (1998) (*BellSouth Louisiana II Order*). The FCC has stated unequivocally that "if all other requirements of Section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale." *Id.*

[9] Attachment 32, p. 8: *See also Bell Atlantic New York Order*, ¶ 427 ("[T]he Act provides for long distance entry even when there is no facilities-based competition satisfying section 271(c)(1)(A) [Track A]" and 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.")

Qwest's South Dakota customers have access to local competitors that resell Qwest services. Additionally, nearly 70 percent of Qwest's business and residential customers have a facility-based option.

Qwest estimates that CLECs have captured approximately 22 percent of the access lines in Qwest's service territory. Notwithstanding that South Dakota is a less populous and less urban state than Texas, the current level of competition in South Dakota is more than 175 percent higher than the estimated CLEC market share of 8 percent for Texas when the Section 271 application for that state was filed with the FCC.[10]

A. Facilities-Based CLECs.

Facilities-based CLECs have been extremely active in South Dakota, and competition is spreading throughout Qwest's service area, with CLECs operating in almost every Qwest central office in South Dakota. In fact, facilities-based competitive alternatives are now available in many smaller communities such as Elk Point (pop. 1,714), Canton (pop. 3,110) and Sturgis (pop. 6,442).

Qwest does not have access to an exact accounting of facilities-based CLEC access lines. Likewise, unless provisioned by Qwest, Qwest does not have access to a detailed inventory of CLEC network arrangements. Only the CLECs themselves have access to such data. However, as detailed below, CLEC interconnection trunk usage, CLEC records in Qwest's E911 database, the quantity of ported telephone numbers and the quantity of CLEC-serviced telephone listings in the white pages directory assistance database provide four useful,

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[10] *Application by 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, ¶ 5 and n.7 (rel. June 30, 2000), (*SBC Texas Order*). It is also considerably higher than the percentage of CLEC market share in Kansas (9.0 percent to 12.6 percent) and Oklahoma (5.5 percent to 9.0 percent). *See In the Matter of Joint Application by SBC Communications, Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order ¶¶ 4-5, FCC 01-29 (released Jan. 22, 2001) (SBC *Kansas/Oklahoma Order*).

yet conservative, indicia of the number of CLEC full facility bypass access lines in South Dakota. CLEC collocation instances further serve to identify the number of lines potentially available to CLECs for future service. It is important to remember that while Qwest, like all other BOCs that have filed 271 applications, must estimate the number of CLEC full facilities bypass lines, Qwest can and does track and measure the other indicia of CLEC competition, including, but not limited to unbundled loops, ported numbers, interconnection (LIS) trunks, E911 listings, minutes of use exchanged and resale lines.

As summarized in the following table and discussed below, the evidence establishes that Qwest meets the requirements of Track A, even by the most conservative of the four data estimation methods of CLEC full-facilities bypass lines.

Data Indicators of Facilities-Based CLEC Service in Qwest's Service Area as of August 31, 2001

	Quantity
Data Source 1: Interconnection Trunks	7,049
Data Source 2: CLEC E911 Records	26,904[11]
Data Source 3: CLEC Ported Numbers	22,678
Data Source 4: CLEC White Pages Directory Listings Associated with Facilities-Based CLECs	27,468

In the last year alone (August 2000 through July 2001), the growth in each of the above competitive indicators has been astounding. Specifically, the number of interconnection trunks in service has grown 53 percent, the number of facilities-based E911 listings has grown nearly 185 percent, the volume of telephone numbers ported by facilities-based CLECs has grown by 258 percent, and the volume of facilities-based white pages directory listings has grown by 128 percent.

Each of the indicators is briefly discussed separately below.

11 As of September 31, 2001

1. Interconnection Trunks.

Interconnection trunks are used by facilities-based CLECs to connect their switching facilities to Qwest's wire center or tandem switch for the purpose of passing traffic between CLEC and Qwest customers. Interconnection trunk usage, therefore, provides a means of estimating the number of CLEC customer access lines. Interconnection trunks are used only for CLEC full-facilities bypass lines and for stand-alone unbundled loops. They are not used for UNE-P lines or resale lines. As of the end of August 2001, CLECs in South Dakota utilized 7,049 interconnection trunks.

While it is not possible to precisely determine how many CLEC access lines are serviced by these interconnection trunks, the telecommunications industry often uses line-to-trunk ratios to determine the number of trunks required for delivering traffic to and from a telecommunications network. For example, US LEC Corp., a switch-based CLEC providing local and long-distance services to businesses in several states, employs a ratio of 5 to 1 (lines to trunks) to estimate the number of lines in its own network.[12] In the United States Telecom Association's (USTA) UNE Fact Report, filed with the FCC during the UNE remand proceeding, USTA noted that, based on ILEC engineering experience, a single trunk can support up to approximately 10 facilities-based lines. However, because CLEC networks may not yet be engineered with such a high level of efficiency and because CLECs may target individual customers, such as Internet service providers (ISP), that require a high number of interconnection trunks, USTA found it conservative to assume that CLEC trunks are serving between 2.5 and 5 facilities-based lines per trunk.[13] Accordingly, using a conservative assumption of 2.75, which was the factor used by Southwestern Bell Company (SBC) in its successful Section 271 applications in Texas, Kansas and Oklahoma,[14] and after deducting the

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[12] US LEC Corp., Equivalent Access Lines. http://www.uslec.com/equiv.htm. (visited May 10, 2001).

[13] *See USTA UNE Fact Report* at III-14, attached to Comments of the United States Telecom Association, *Implementation of the Local Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (filed May 26, 1999).

[14] *See SBC Kansas/Oklahoma Order* ¶ 42 & n.96; Affidavit of John S. Habeeb, *Brief in Support of Application by Southwestern Bell for Provision of In-Region InterLATA Services in Texas, In re: Application by SBC Communications Inc., Southwestern Bell Telephone*

1,392 stand-alone UNE loops in service, the number of facilities-based CLEC full-facilities bypass lines served by the 7,049 interconnection trunks in South Dakota would be 17,993.[15] Thus, based on any reasonable estimate of access lines serviced by the 7,049 interconnection trunks currently utilized by CLECs in South Dakota, there is clearly a significant amount of facilities-based competition[16] present in South Dakota.

2. E911 Database Listings.

Facilities-based CLECs that utilize their own switches for providing service to their end users are responsible for directly inputting telephone numbers for those customers into the E911 database. Facilities-based carriers are identified in the E911 database by an ID Code that is unique to each CLEC. Among other things, this ID Code allows the emergency services organization to contact the serving CLEC for emergency services such as line interrupt and call trace. CLECs utilizing their own switches also obtain specific NXX codes assigned solely for their use. Using the CLEC's assigned NXX code (which is specific to the CLEC's switch) and Company ID Code, the E911 database identifies which CLECs are providing local service from their switches.

E911 customer records associated with CLECs are associated only with customers served by the CLEC via CLEC-owned loop facilities or stand-alone UNE loops purchased from Qwest, and are reported directly by the CLEC to the E911 database administrator. These records are not estimates; they are actual records of access lines in service as self-reported by

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Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-4 (Jan. 10, 2000), App. A, Vol. A-1 as Tab 1, at ¶¶ 23-24 ("Habeeb Affidavit"). *See also* Attachment 31, p.79 (facilitator, in dismissing CLECs' challenge to this LIS trunk estimating methodology (2.75 X LIS trunks), states "that the FCC has taken it seriously.")

[15] At the other end of the range suggested by USTA–and consistent with US LEC Corp.'s estimation method–using an assumption of a 5 to 1 line-to-trunk ratio, the estimated number of facilities-based CLEC lines in South Dakota would be 33,853. Because UNE-Platform (UNE-P) traffic need not be transported between a CLEC and a Qwest switch, any estimation based on interconnection trunk usage is necessarily conservative because it does not account for access lines that a CLEC provisions using UNE-P arrangements.

[16] The FCC has been very clear that facilities-based competition includes UNEs leased by Qwest to CLECs. Ameritech-Michigan Order, at ¶¶ 94 – 101.

the CLECs. The CLEC E911 database records, included as part of Mr. Teitzel's Affidavit, Attachment 21, contain no listings associated with independent telephone companies, wireless carriers, resellers, or CLECs utilizing UNE-P service to serve end users. The E911 CLEC records data presented in that affidavit represent only customer data associated with facilities-based, wireline CLECs currently operating in South Dakota.

Based on E911 information, as of September 30, 2001, facilities-based CLECs provided service to customers using at least 26,904 distinct telephone numbers in South Dakota, of which 15,589 are associated with CLEC facilities-based residential local exchange service. However, because E911 listings only represent those customer lines from which outbound calls can be made, business customers such as call centers, reservationists, telemarketing centers and Internet providers will have few of their lines represented in the E911 database. Accordingly, it is very likely the number of lines reflected in the E911 database is a conservative indicator of the actual number of local subscriber lines.[17]

3. Ported Numbers.

The two data indicators described above (interconnection trunks and E911 records) were used by SBC in its successful 271 applications for Texas, Kansas, and Oklahoma.[18] In addition, Qwest presents an additional, conservative estimation method based on ported numbers. The facilitator in the Seven-State process determined that Qwest's ported number methodology was logical and conservative.[19]

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[17] Additionally, as with the discussion of interconnection trunks, above, E911 listings do not include CLEC service provided though UNE-P arrangements or resale lines, since these lines continue to be served off of a Qwest switch.

[18] *See SBC Kansas/Oklahoma Order*, ¶ 42 and n.96; Habeeb Affidavit, ¶¶ 23-24; Attachment 21, Affidavit of David L. Teitzel, Exhibit DLT-13 (Joint Affidavit of J. Gary Smith and Mark Johnson for SBC).

[19] The facilitator held that "Qwest's explanation of the relationship [between ported telephone numbers and the number of CLEC bypass access lines] was logical." The facilitator also acknowledged that Qwest's ported number methodology was conservative, "producing results that [are] substantially less than what it could have claimed." *See* General Terms and Conditions, Section 272 & Track A Report, Attachment 31, at 79.

Ported numbers are existing Qwest telephone numbers that customers often elect to retain when leaving Qwest for a competitor. It is important to note that ported numbers are only used by a CLEC to serve customers from the CLEC's central office switch via CLEC-owned loop facilities or via stand-alone UNE loops purchased from Qwest. In other words, ported numbers are only used by CLECs to provide facilities-based local exchange service to their customers, and the use of ported numbers is therefore another reasonable means of estimating the quantity of facilities-based business CLEC loops in service. Numbers are not ported to CLECs serving customers via UNE-P or resale. The ported number estimation methodology conservatively assumes that a ratio exists of two ported numbers for each CLEC loop (both CLEC-owned and Qwest-provided stand-alone unbundled loops) in service,[20] and followed a simple process for deriving the approximate number of business CLEC-owned loops in service, as follows:

- The total number of ported numbers in service in South Dakota as of August 31, 2001, was divided by two, consistent with the assumption that two ported numbers exist per physical loop in service. This calculation is as follows: 22,678[21] / 2 = 11,339.

- The number of stand-alone unbundled loops in service in South Dakota[22] (a number that Qwest tracks and measures) was then deducted from the number derived in Step 1. The residual number represents ported numbers associated only with CLEC-owned loops. This calculation is as follows: 11,339 - 1,392[23] = 9,947.

[20] A ratio of one ported number per physical loop in service will never exist due to reasons such as Custom Ringing applications (which have two telephone numbers associated with each access line), disconnect of the CLEC customer's access line while the number remains ported to the CLEC, etc. This means of estimating CLEC access lines served via CLEC-owned facilities is clearly conservative, since it assumes that each CLEC access line in service was formerly a Qwest access line with an associated telephone number ported from Qwest to the CLEC. In fact, customers often disconnect Qwest service and subscribe to service of a CLEC without porting the preexisting Qwest telephone number, or are new customers who were never Qwest customers of record before subscribing to a CLEC's service, in which instance no telephone number exists to port from Qwest to the CLEC. The ported number method does not account for these access lines at all.

[21] *See* Attachment 21, Affidavit of David L. Teitzel, Confidential Exhibit DLT-9.

[22] *See Id.*, Confidential Exhibit DLT-17.

[23] *Id.*

This approach yields another conservative view of the total number of CLEC-owned loops currently in service, in addition to estimates developed using methods used by SBC and Verizon in Section 271 applications they have presented.[24] This estimating process does not take into account CLEC customers served by non-ported telephone numbers and likely underestimates the actual number of CLEC access lines in service.

4. White Pages Listings.

Telephone numbers belonging to facilities-based CLEC customers can be readily identified in the Qwest White Pages listings database. Specifically, any white pages listing order placed by a CLEC that uses its own switches is entered directly into Qwest's Listing Services System.[25] As of August 31, 2001, there were 27,468 white pages listings for facilities-based CLEC customers in South Dakota.[26] Of these, 5,251 were business listings and 22,217 were residential.

As with the other data sources used by Qwest to estimate the volume of facilities-based CLEC service in South Dakota, the number of white pages listings is an extremely conservative indicia. This is especially true for business listings, where it is often the case that a business with several access lines and a multitude of assigned telephone numbers will list only certain key telephone numbers in the white pages database.

Regardless of whether estimates of facilities-based competition are based on interconnection trunk usage, E911 records, ported numbers or white pages listings, the conclusion is inescapable – significant facilities-based CLEC competition exists for both

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[24] *See* Attachment 21, Exhibit DLT-13 (in the joint affidavit of J. Gary Smith and Mark Johnson filed in October 2000, with the FCC in support of Southwestern Bell's Section 271 application in Kansas and Oklahoma, CLEC access line estimates were developed on the assumption that a ratio of 2.75:1 exists for CLEC access lines per local interconnection trunk in service.); *see also Id.*, Exhibit DLT-8 (showing number of local interconnection trunks in service).

[25] By contrast, any listings request from a reseller CLEC or from a CLEC using UNE-P (as well an order from Qwest itself) is released as a service order into Qwest's service order processor (SOP). Orders received from facilities-based CLECs are not processed by the SOP.

[26] See Attachment 21, Confidential Exhibit DLT-10C.

residential and business service in South Dakota. Competing providers have established themselves as a significant and growing presence in the South Dakota local telephone service market and South Dakota consumers are currently enjoying a real choice of local service providers.

5. Collocation.

Qwest also provides collocation to several facilities-based CLECs. As of August 31, 2001, Qwest had collocation arrangements with seven CLECs in South Dakota. These carriers use collocation as one means of obtaining interconnection and access to UNEs. The existence of collocated CLECs--and the locations selected by those carriers for their collocation--provide a strong indicator of the existence of, and the potential for, facilities-based competition.

Not every collocation facility is used for voice telephone service, some are used for providing data services, private line services or services for other companies. Nevertheless, each collocation represents an advance in the development of a facilities-based CLEC's competitive network. The following table represents the number of collocations by CLECs in Qwest's South Dakota service area.

Collocations Through August 2001

	Complete
Physical	14
Virtual	1

Additionally, CLECs have chosen to collocate in South Dakota wire centers that serve a large portion of the business and residential lines provided by Qwest. Thus, through collocation, facilities-based CLECs have positioned themselves to compete directly for a significant number of the customers, both business and residential, currently served by Qwest.

Total Lines versus Lines in Collocation Wire Centers in Qwest South Dakota Service Area as of August 31, 2001

	All Wire Centers	Collocation Wire Centers	Percent of Total
Number of Wire Centers	42	5	12%
Access Lines			
Business	74,683	39,366	52.7%
Residence	157,024	77,672	49.5%
Total	**231,707**	**117,038**	**50.5%**

B. Resale Providers.

In addition to facilities-based CLECs, numerous resale providers offer service in Qwest's South Dakota service territory. These resellers have attracted many residential and business customers. As of August 2001, South Dakota resellers provided services to a total of 16,801 lines, of which 11,153 were business and 5,648 were residential.

III. QWEST'S COMPLIANCE WITH THE 14-POINT CHECKLIST ESTABLISHES THAT IT HAS OPENED ITS LOCAL MARKETS TO COMPETITION.

Qwest provides access to all 14 of the competitive checklist items enumerated in Section 271(c)(2)(B) of the Act pursuant to negotiated, Commission-approved interconnection and resale agreements with CLECs in South Dakota. Qwest's Statement of Generally Available Terms (SGAT)[27] obligates Qwest to provide the checklist items to CLECs on an ongoing basis. The SGAT is Qwest's standard wholesale contract offer, which provides competitors with the rates, terms and conditions to which Qwest commits to adhere in the

[27] On November 22, 2000 Qwest filed its SGAT with the Commission. By order dated January 26, 2001, the Commission allowed the SGAT to go into effect, subject to future approval or disapproval by the Commission. Accompanying this Petition as Attachment 26 is a revised version of the SGAT, which reflects the consensus reached with CLECs in Section 271 proceedings in other jurisdictions on numerous provisions and with minor exceptions, the recommendations of the facilitator in the Seven-State Process.

provisioning of checklist items. Upon request to Qwest, CLECs may incorporate terms from the SGAT into their negotiated agreements. *See* 47 U.S.C. § 252(i).

A. Qwest Will Meet Its Burden of Demonstrating Compliance with the Competitive Checklist.

In its proceeding before the FCC, Qwest will have the burden of showing by a preponderance of the evidence that it has implemented the competitive checklist items.[28] Specifically, the evidence must demonstrate that Qwest "is offering interconnection and access to network elements on a nondiscriminatory basis." *Bell Atlantic New York Order*, at ¶ 44.

For functions with a retail analogue to functions Qwest provides to itself, Qwest must provide CLECs "access that is equal to (*i.e.*, substantially the same as) the level of access that [Qwest] provides itself, its customers, or its retail affiliates, in terms of quality, accuracy, and timeliness." *Id.* For functions with no retail analogue, Qwest must offer an efficient carrier a meaningful opportunity to compete. *Id.*

In ruling on prior Section 271 applications, the FCC has concluded that the applicant must make a prima facie showing that it meets the requirements of each checklist item. To satisfy that burden, Qwest must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to the SGAT in combination with state-approved interconnection agreements that set forth prices and other terms for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality. *Bell Atlantic New York Order* ¶ 52. Opponents have the burden of rebutting a prima facie case with affirmative evidence showing that Qwest failed to provide the checklist items. *Id.* ¶ 49. Isolated incidents of noncompliance do not suffice. *Id.* ¶ 50. With regard to the impasse issues, the Commission should keep in mind that the only issue in this docket is whether Qwest is complying with the Act, as it has been interpreted by the FCC to this point. The FCC has

[28] *See Bell Atlantic New York Order*, ¶ 44 and 48 ("[W]e reiterate that the BOC needs only to prove each element by 'a preponderance of the evidence,' which generally means 'the

indicated that interpretative issues that have not been resolved by the FCC or this Commission should not be resolved in or delay the resolution of a 271 proceeding.[29]

The FCC accords substantial deference to a state's determination, after a rigorous examination of the evidence, that a BOC has satisfied the checklist. That is particularly true when the state, the BOC and CLECs developed specific performance measures for the checklist items in a collaborative process. *Bell Atlantic New York Order* ¶¶ 54, 56. Through the ROC workshop process, this Commission and 12 other state commissions developed extensive measurements to evaluate Qwest's performance in providing, maintaining and repairing the checklist items. The performance measures are formally documented in Performance Indicator Definitions ("PIDs"). The PIDs include a definition of the measure, the formula used to calculate the measure and any exclusions.[30]

To the extent there is no statistically significant difference between a BOC's provision of service to CLECs and its own retail service, the commission "need not look any further." *Id.* ¶ 58. Similarly, when there is no difference between the BOC's service to CLECs and the competitive performance benchmark, the commission's "analysis is done." *Id.* Even if there are deviations from certain performance benchmarks, the commission may conclude that the deviations do not warrant a finding of noncompliance. The differences may be "slight, or occur in isolated months, and thus suggest only an insignificant competitive impact." *SBC*

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greater weight of the evidence, evidence which is more convincing than the evidence which is offered in opposition to it.'").

[29] A 271 docket should not involve interpretive disputes:

> Despite the comprehensiveness of our local competition rules, there will inevitably be, in any Section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors that our rules have not yet addressed and that do not involve *per se* violations of self-executing requirements of the Act. The Section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a Section 271 application.

SBC Kansas/Oklahoma Order, ¶ 19. "We observed in the SWBT Texas Order that carriers should expect to be affected by future resolutions of disputed issues, and that such concern is insufficient to warrant denial of a Section 271 application." *Id.* ¶ 222.

[30] The PIDs are exhibits to the Affidavit of Michael G. Williams, Attachment 23.

Kansas/Oklahoma Order ¶ 32. Moreover, a steady improvement in performance over time indicates that problems are being resolved. *Bell Atlantic New York Order* ¶ 59.

The evidentiary record presented will provide this Commission with the firm basis to conclude that Qwest has met the performance measures for each of the checklist items.

B. Qwest Satisfies All Requirements of the Competitive Checklist in South Dakota.

The 14-point competitive checklist is found is Section 271(c)(2)(B), subparagraphs i through xiv. Although Qwest has entered into a number of interconnection agreements that offer evidence of its compliance with these requirements, for purposes of this proceeding, Qwest relies primarily upon its SGAT to demonstrate its concrete legal obligation to provide each of these checklist items.

In the *Bell Atlantic New York Order*, the FCC set out the legal and evidentiary standards to determine an applicant's compliance with the competitive checklist.[31] The standards place the burden upon the BOC to demonstrate that it has "fully implemented the competitive checklist in subsection (c)(2)(B). In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis." *Id.* ¶ 44. Qwest must meet that burden by a preponderance of the evidence.[32] Once Qwest has made a prima facie case, it falls upon the intervenors to "produce evidence and arguments to show that the application does not satisfy the requirements of section 271, or risk a ruling in the BOC's favor."[33]

Accompanying this Petition are the sworn affidavits of 12 Qwest witnesses, demonstrating the compliance of the SGAT language with the legal requirements of each of the 14 checklist items. The following is provided to assist this Commission in analyzing each checklist provision:

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[31] *See Bell Atlantic New York Order* ¶¶ 43-60.
[32] *Id.* ¶ 48.
[33] *Id.* ¶ 49.

1. **Checklist Item 1: Interconnection.**

Qwest provides CLECs with interconnection (1) "at any technically feasible point" within its network, (2) "that is at least equal in quality" to the connections Qwest provides to itself, and (3) "on rates, terms and conditions that are just, reasonable and nondiscriminatory." *See* 47 U.S.C. §§ 271(c)(2)(B)(i), 251(c)(1). Qwest has entered into 34 approved interconnection agreements with CLECs in South Dakota, and 31 interconnection agreements are pending approval. Qwest offers interconnection to all competitors pursuant to its SGAT.

The Affidavits of Thomas R. Freeberg (Interconnection), Attachment 2, and Margaret A. Bumgarner (Collocation), Attachment 3, describe Qwest's compliance with Checklist Item 1.

a) **Interconnection Trunks.**

As of August 27, 2001, CLECs had more than 7,000 interconnection trunks in service in South Dakota. In August 2001, Qwest exchanged more than 53 million minutes of local calls with CLECs over the local interconnection trunks. The volume of local traffic exchanged with CLECs continues to grow. During the past 12 months, the number of interconnection trunks in service in South Dakota grew by 53 percent.

Qwest has made available several arrangements to accomplish interconnection of networks, including (1) a Qwest-provided facility; (2) physical or virtual collocation associated with a CLEC-provided facility; (3) mid-span meet point of interface ("POI") facilities; (4) and other technically feasible methods of interconnection including, among other things, single point local interconnection at Access or toll tandem switches.

Qwest provides for exchange of many types of traffic at the six feasible points of interconnection identified by the FCC: the line-side of a local switch, the trunk-side of a local switch, the trunk interconnection points for a tandem switch, central office cross-connection points, signal transfer points, and points of access to unbundled network elements. To ensure nondiscrimination, Qwest provisions interconnection trunks with the same equipment, interfaces, technical criteria, and service standards as Qwest's "retail" trunks between pairs of its own switches. Retail trunks may also carry the calls of a CLEC's subscriber.

Qwest is measuring its performance against the PIDS developed in collaborative workshops before the Regional Oversight Committee ("ROC") and the Arizona Corporation Commission. The performance data during the past six months show that Qwest is meeting CLECs' demand for interconnection at the required level of quality. In March-August 2001, Qwest met 100 percent of its installation commitments to CLECs for interconnection trunks. The average installation intervals for wholesale trunks were longer than the intervals for Qwest's retail trunks,[34] but this was the result of specific CLEC requests for intervals longer than the standard. Blockage on local interconnection trunks was 0 percent in every month except one and was, on average, far below the performance benchmark of 1 percent. The trouble report rate was non-discriminatory: 0.07 percent for both wholesale and retail trunks in August. Qwest cleared 78 percent of CLEC trouble reports within four hours. This too represents a non-discriminatory record.

CLECs in South Dakota have, and will continue to have, access to the fundamental prerequisite of local exchange competition – the ability to readily send their retail customers' local calls to, and receive local calls from, retail customers of the incumbent carrier. As a result, the Commission should find that Qwest has satisfied the requirements of Checklist Item 1 for interconnection.

b) Collocation.

Qwest offers collocation as one means of obtaining interconnection and access to network elements on an unbundled basis. As of August 31, 2001, Qwest had collocation arrangements with seven CLECs in South Dakota. Qwest was providing 14 units of physical collocation and one unit of virtual collocation in five central office buildings. These central offices represent 50.5 percent of Qwest's retail access lines within South Dakota.

[34] Per ROC Performance Measurement definitions, Qwest's "retail trunks" are, in this case, those trunks that Qwest has arranged between itself and an Interexchange Carrier.

Additionally, two of these central office buildings (38.6 percent of the access lines) currently house three or more collocators' equipment.

All forms of collocation are available to CLECs throughout South Dakota. Physical collocation is available at all Qwest central office buildings where space permits. Qwest makes available caged, shared cage, cageless, InterConnection Distribution Frame (IDCF), remote and common-area-splitter collocation, all at the CLEC's option. Consistent with 47 C.F.R. § 51.323(c), Qwest allows CLECs to collocate any equipment that is necessary for interconnection or access to UNEs, regardless of whether the equipment also performs a switching function, provides enhanced services capabilities or offers other functions.

Qwest offers collocation on a first-come, first-served basis. If space limitations prevent physical collocation, Qwest will make available adjacent-structure collocation. Qwest makes space available in existing adjacent structures to the extent technically feasible. If no existing adjacent structure space is available, Qwest permits CLECs to construct or otherwise procure such an adjacent structure, on property owned or controlled by Qwest, subject only to reasonable design, safety, and maintenance requirements. If space later becomes available in the Qwest premises, a CLEC may, at its option, relocate its equipment to that interior space.

Qwest also provides for virtual collocation, in which Qwest installs and maintains equipment on behalf of a CLEC. Qwest provides virtual collocation within the same intervals as physical collocation, and installs and maintains the equipment and services at the same level of quality, as it applies to the performance of similar functions for comparable Qwest equipment.

Qwest allows CLEC personnel access to collocated equipment and to common areas (*e.g.*, bathrooms, drinking fountains) twenty-four hours a day, seven days a week. Qwest takes reasonable measures to ensure that CLEC equipment is afforded physical security equal to the security provided for Qwest's own equipment.

As the collocation performance results for South Dakota demonstrate, Qwest has met or exceeded the benchmark on the collocation performance measures. In South Dakota, Qwest met its commitments for providing feasibility studies 100 percent of the time, and Qwest has exceeded the benchmark for the feasibility study interval for collocation. On a regional basis. Qwest has demonstated outstanding performance for collocation. Qwest has a concrete and specific legal obligation to provide collocation under terms and conditions that are just, reasonable and nondiscriminatory to CLECs in South Dakota. Qwest has developed procedures and processes to provision collocation in accordance with the FCC's rules and policies and the performance data show that Qwest has met or exceeded the benchmark on all collocation performance measures in South Dakota.

For these reasons, the South Dakota Commission should find that Qwest satisfies the requirements of Checklist Item 1 for collocation.

2. **Checklist Item 2: Access to Network Elements.**

The affidavits of four witnesses are presented to demonstrate that Qwest has complied with Checklist Item 2 relating to access to network elements. The Affidavit of Karen A. Stewart, Attachment 5, demonstrates that Qwest has complied with the requirements relating to access to unbundled network elements (UNEs), including the Enhanced Extended Loop (EEL) UNE combination. The Affidavit of Lori A. Simpson, Attachment 4, demonstrates that Qwest has complied with the requirements relating to provision of the unbundled network element--platform (UNE-P) combination. The Affidavit of Lynn M. V. Notarianni, Attachment 6, demonstrates that Qwest has complied with the requirements relating to CLEC access to Operations Support Systems (OSS). Finally, the Affidavit of Karen A. Stewart, Attachment 7, demonstrates that Qwest has complied with the requirements relating to Emerging Services.

Qwest combines UNEs for CLECs or provides such UNEs in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services. Qwest does not impose limitations, restrictions or requirements on requests for the use of UNEs that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner desired by the requesting telecommunications carrier.

a) Access to Unbundled Network Elements

Ms. Stewart's Affidavit, Attachment 5, demonstrates that Qwest has satisfied the requirements of the 1996 Act relating to access to unbundled network elements ("UNEs").

1) Access to UNEs

Qwest provides nondiscriminatory access to UNEs at any technically feasible point to any requesting telecommunications carrier for the provision of a telecommunications service, in accordance with the Telecommunications Act of 1996, federal rules, and South Dakota law and regulations. Qwest has a concrete and specific legal obligation to provide these unbundled network elements through its interconnection agreements with CLECs and its South Dakota SGAT. Qwest provides CLECs with access to all the features, functions, and capabilities of the network elements in a manner that allows CLECs to provide any telecommunications service that the network element is capable of providing. Qwest does not impose limitations, restrictions or requirements on requests for the use of UNEs that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner desired by the requesting telecommunications carrier, other than those expressly permitted under existing FCC rules.

2) Combining of UNEs

Qwest also combines UNEs for CLECs or provides such UNEs in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services. Qwest does not impose limitations, restrictions or requirements on requests for the use of UNEs that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner desired by the requesting telecommunications carrier.

When ordered in combination, UNEs that are currently combined and ordered together will not be physically disconnected or separated in any fashion except for technical feasibility reasons or if requested by the ordering CLEC. Furthermore, Qwest provides UNEs at rates, and on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of its South Dakota SGAT and its interconnection agreements. Qwest also provides nondiscriminatory access to UNEs at rates that are nondiscriminatory and based on the cost of providing the UNE.

3) UNE Combinations

Two standard UNE combinations are available: the Enhanced Extended Loop ("EEL") and the unbundled network elements – platform ("UNE-P"). Ms. Stewart's Affidavit, Attachment 5, addresses EEL. Ms. Simpson's Affidavit, Attachment 4, addresses UNE-P combinations.

As described in the Affidavit of Ms. Stewart, Qwest provides the EEL UNE combination. The EEL is a combination of loop and dedicated interoffice transport and may also include multiplexing or concentration capabilities. It enables CLECs to access unbundled loops for end users without having to collocate in the central office in which those loops terminate. Qwest provisions the EEL to CLECs when they self-certify to Qwest that the EEL will be used to provide a significant amount of local exchange traffic to a particular end user and identify which one of the three local use options it is certifying under. Qwest does not audit a CLEC's self-certification before it installs or converts an existing service to an EEL. Qwest has a concrete and specific legal obligation to provide EELs through its SGAT in South Dakota.

Several performance measurements are used to measure Qwest performance relating to EELs. Although CLECs have only recently begun ordering EELs in Qwest's region, Qwest has demonstrated in other states within Qwest's region that it is provisioning EELs in a non-discriminatory manner in quantities that competitors may reasonably demand. Qwest has not yet provisioned any EELs in South Dakota.

Ms. Simpson's Affidavit, Attachment 4, demonstrates that Qwest has satisfied the requirements of the 1996 Act relating to access to UNE-P combinations. UNE-P combinations include a loop, a switch port, switch use, shared transport use, and optional vertical switch features. There are a variety of UNE-P combinations available in the SGAT. UNE-P POTS is basically a combination of UNEs that replicates a 1FR/1FB and is comprised of the following unbundled network elements: Analog - 2 wire voice grade Loop, Analog Line Side Port and Shared Transport. All the vertical switch features that are technically feasible for POTS are available with UNE-P-POTS. As of August 31, 2001, Qwest provides 16,411 UNE-P combinations to five CLECs in South Dakota.

Qwest measures its performance for providing UNE-P-POTS combination services to CLECs. Several performance indicators measure Qwest's performance in providing UNE-P combinations. Qwest's performance results indicate that Qwest provides high quality UNE-P combination services to South Dakota CLECs. For example, Qwest met 100 percent of its UNE-P-POTS installation commitments to South Dakota CLECs from July 2000, through August 2001, results which surpass Qwest's performance for its retail end users during the same time period.[35] During this same period, the average installation interval was faster for CLECs than for Qwest retail, with the exception of a single month. During that month, a single CLEC order required three days for installation while the average number of days for Qwest retail installation was just over two days. Given the CLEC sample size of a single order, this result cannot be considered dispositive. In only one month during the entire year for which results are provided was there any delay for installation for CLECs due to facility and non-facility reasons, and the performance for CLECs was better than for Qwest retail. Finally, installation quality of UNE-P combinations for CLECs in South Dakota was excellent – Qwest completed 100 percent of installations without a CLEC filing a trouble report within 30 of installation during four of the past 12 months. For those few months where a CLEC made a trouble report, Qwest met 100 percent of its commitments. Overall, Qwest provided better quality for UNE-P installation for CLECs than for comparable Qwest retail services during 11 of the past 12 months.

During the period from July 2000 through August 2001, the overall trouble rate for CLEC UNE-P-POTS was zero, which was lower than the trouble rate for comparable retail services, with the exception of a single month. When troubles occur, Qwest resolves them efficiently. In each case where trouble was reported on UNE-P-POTS combinations in South Dakota during the past year, Qwest cleared the trouble more quickly for CLECs than for comparable Qwest retail services.

The performance results show that Qwest has successfully and promptly installed and repaired these UNE-P services for CLECs. Given the overwhelmingly positive performance

[35] *See* Attachment 23, Affidavit of Michael G. Williams, Exhibit MGW-PERF-3 (UNE-P performance results for South Dakota).

results for UNE-P service in South Dakota, the Commission should find that Qwest satisfies this aspect of Checklist Item 2.

b) Operations Support Systems (OSS)

The Affidavit of Lynn M.V. Notarianni, Attachment 6, describes Qwest's compliance with the OSS requirements of Checklist Item 2.

One of the requirements for Qwest to comply with Section 271 is the requirement that it provide nondiscriminatory access to OSS functions.[36] The FCC uses the term OSS to refer to a variety of systems, databases, and personnel used by a Bell Operating Company (BOC) to provide services to customers. As described by the FCC, nondiscriminatory access to OSS means a BOC must provide access that sufficiently supports each of the three modes of competitive entry into local exchange markets: 1) competition based upon complete facilities bypass, 2) competition using UNEs, and 3) resale.

There are two separate standards, one that applies to OSS functions analogous to functions provided by the BOC to itself, its customers, or its affiliates and one that applies where there is no retail analogue. As to the former, the BOC is required to offer CLECs access that is equivalent to the service it provides itself in terms of quality, accuracy, and timeliness. The second standard—where there is no retail analogue—is whether the BOC is providing access sufficient to allow an efficient competitor a meaningful opportunity to compete. The FCC takes a two-step approach to determine if these standards are met. First, the FCC determines whether the BOC has deployed the necessary systems, databases, and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting the CLECs to understand how to implement and use the OSS functions. Second, the FCC determines if the deployed OSS functions are operationally ready. Here, the FCC looks at performance measures and other evidence of commercial readiness to determine whether the BOC's OCC is handling current demand and whether it will be able to handle reasonably foreseeable future volumes. Absent sufficient and reliable commercial usage data for assessing the operational readiness, the FCC considers the results of carrier-to-carrier testing, independent third party tests, and internal testing.

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[36] *Verizon Pennsylvania Order*, ¶ 12.

Qwest has deployed systems, databases and personnel to provide nondiscriminatory access to OSS functions. Qwest also helps CLECs implement and use all of the OSS functions available to them. Qwest had developed electronic interfaces to its OSS and has significantly enhanced its internal systems in order to facilitate CLEC access to OSS functions. Qwest has also deployed extensive processes, personnel, and service centers to support the business relationships between Qwest and CLECs. Ms. Notarianni's Affidavit outlines in detail the specific actions taken by Qwest, including the deployment of several types of interfaces between Qwest and CLECs, the creation and deployment of Interconnect Service Centers to provide CLECs with support for pre-ordering, ordering, provisioning and billing support, the implementation of a variety of training for CLECs to assure that both Qwest and CLEC personnel fully understand the tools available to interact effectively, and the creation of a forum entitled Change Management Process (CMP) that will assist Qwest and CLECs to manages ongoing changes.

The second part of the FCC's two-step method of evaluating OSS is to examine operational readiness. The primary evidence is actual commercial usage of the OSS systems put in place by the .BOC. Ms. Notarianni's Affidavit provides evidence of the actual commercial usage of Qwest OSS. Likewise, the Affidavit of Michael G. Williams, Attachment 23, provides additional evidence of the commercial usage of existing Qwest OSS.

In addition to commercial readiness data, the FCC has relied upon the results of independent third party tests of OSS. The ROC third party OSS test (ROC Third Party Test) is a principal source of evidence of the operational readiness of Qwest OSS. The ROC Third Party Test is a primary and credible source of evidence for evaluating Qwest's OSS. It examines all aspects of Qwest's OSS responsibilities—from deploying systems, databases and personnel to demonstrating that Qwest adequately assists CLEC personnel to ultimately showing that Qwest's OSS are operationally ready. Ms. Notarianni's Affidavit describes in detail the exhaustive collaborative work leading to the ROC Third Party Test, including the validation of the performance indicator definitions (PIDs) through an extensive performance audit, and the actual testing process. CLECs have had significant and broad input into every aspect and at every stage of the planning, design and execution of the ROC Third Party Test. Coupled with the military-style testing philosophy, this collaboration has produced a comprehensive and rigorous OSS test. In the end, the results of the test will provide this Commission with a valid basis upon which to determine that Qwest provides nondiscriminatory access to its OSS. The ROC Third Party Test is ongoing, with the final report currently due early next year.

As evidenced by the level of commercial usage and by the ROC Third Party Test, Qwest meets the requirements established in section 271. Qwest provides nondiscriminatory access to its OSS in a manner that supports each of the three modes of competitive entry into local exchange markets—competition based upon complete facilities bypass, competition using UNEs, and competition through resale. Qwest has deployed the necessary systems, databases, and personnel and is adequately assisting CLECs to implement and use the functions available to them. As a practical matter, the OSS functions deployed by Qwest are operationally ready.

c) **Emerging Services**

The Affidavit of Karen A. Stewart, Attachment 7, demonstrates that Qwest has complied with the requirements of the 1996 Act as it relates to Emerging Services (line sharing, subloop unbundling, access to dark fiber, and limited access to unbundled packet switching).

Qwest's emerging service obligations are the result of the FCC's Third Interconnection Order in CC Docket No. 96-98,[37] also known as the UNE Remand Order, and the Line Sharing Order in CC Docket Nos. 98-147 and 96-98.[38] The Line Sharing Order, as its name

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[37] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third interconnection Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696, (rel. Nov. 5, 1999) (*UNE Remand Order*).

[38] *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 Fourth Report and Order in CC

implies, added a requirement for line sharing. The UNE Remand Order added requirements for subloop unbundling, access to dark fiber, and limited access to unbundled packet switching.

1) Line Sharing.

Qwest offers non-discriminatory access to the high-frequency portion of the local loop ("HFPL"), commonly called line sharing, in accordance with the FCC's rules. The FCC defines HFPL as "the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions."[39] In the Line Sharing Reconsideration Order, the FCC clarified that the requirement to provide access to the HFPL applies to the entire loop, even where the incumbent LEC has "deployed fiber in the loop, *e.g.*, where the loop is served by a remote terminal."[40] This requirement means that the incumbent LEC must make access to line sharing available at a remote terminal, as well as at a central office.

Consistent with the FCC's rules, Qwest offers requesting carriers unbundled access to the high frequency portion of those loops on which Qwest provides the voice service to end users.[41] Line sharing is available from Qwest in South Dakota under Qwest's SGAT and pursuant to interconnection agreements with numerous CLECs.

Docket No. 96-98, CC Docket Nos. 98-147 and 96-98, FCC 99-355, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) (*Line Sharing Order*).

[39] *See* 47 C.F.R. § 51.319(h)(1).

[40] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147, FCC 01-26, 16 FCC Rcd 2101, ¶ 10 (rel. Jan. 19, 2001) (*Line Sharing Reconsideration Order*); *See also* 47 C.F.R. § 51.319(h)(6).

2) Subloops.

In the UNE Remand Order, the FCC identified the subloop as a new unbundled network element that must be unbundled in both the loop plant and interoffice facilities.[42] The FCC has defined the subloop element as any portion of the loop that it is technically feasible to access at terminals in the ILEC's outside plant, including inside wire.[43] An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, network interface device, minimum point of entry, single point of interconnection, main distribution frame, remote terminal, feeder distribution interface ("FDI"), or serving area interface ("SAI").

Qwest provides CLECs with unbundled access to subloops in South Dakota under nondiscriminatory terms and conditions outlined in its SGAT.

3) Dark Fiber.

In the UNE Remand Order, the Commission identified dark fiber as a new unbundled network element that must be unbundled in both the loop plant and interoffice facilities.[44] Unbundled dark fiber is a deployed, unlit fiber optic cable or strands of cable that connects two points within the Qwest network. The FCC required the unbundling of dark fiber both in the loop plant and interoffice facilities. Qwest provides unbundled dark fiber of substantially the same quality as the fiber facilities that Qwest uses to provide service to its own end user customers and within a reasonable time frame. Qwest has a legal obligation to provide dark fiber to CLECs in South Dakota under terms outlined in its SGAT. Qwest's dark fiber offerings include both interoffice and loop dark fiber, in accordance with Commission requirements.

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[41] This criteria only defines line sharing; it does not prohibit line splitting, which is described below. *See* SGAT § 9.4.1.

[42] *UNE Remand Order*, ¶ 205.

[43] *See* 47 C.F.R. § 51.319(a)(2).

[44] *UNE Remand Order*, ¶ 326.

4) Packet Switching.

The FCC does not require ILECs, such as Qwest, to unbundle packet switching, except in extremely limited circumstances.[45] The relevant FCC rule only requires access to unbundled switching where four conditions are all satisfied. Those criteria are outlined in Ms. Stewart's Affidavit, Attachment 7, at 36-37. Qwest has committed to provide unbundled packet switching when all of the FCC's four criteria are met. Further, Qwest has legally obligated itself to provide unbundled packet switching under those circumstances in its South Dakota SGAT.

Qwest stands ready to provide CLECs access to these elements in quantities that CLECs may reasonably be expected to order. Qwest also has processes in place to make access to each of these elements available to CLECs upon request and has developed performance measurements so CLECs and the Commission can assess how well Qwest is making access to UNEs available. Qwest's processes and procedures for provisioning these elements are being completely evaluated during the ROC Third Party Test.

Qwest stands ready to provide access to these elements in a non-discriminatory manner to CLECs in quantities that competitors may reasonably demand.

As of August 31, 2001, Qwest did not have any South Dakota demand for line sharing, subloops, unbundled dark fiber or unbundled packet switching.

3. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights-of-Way.

The Affidavit of Thomas R. Freeberg, Attachment 8, describes Qwest's compliance with Checklist Item 3.

Qwest provides nondiscriminatory access to the poles, ducts, conduits and rights-of-way that it owns or controls at just and reasonable rates. *See* 47 U.S.C. §§ 271(c)(2)(B)(iii), 224(f)(1). Qwest makes all of its poles, ducts, conduits and rights-of-way available to competitors in South Dakota. As of August 1, 2001, the most recent date for which data is

[45] *UNE Remand Order*, ¶ 306.

available, third parties (which includes non-CLEC entities) had attached to 7,396 poles in South Dakota, and no CLEC was occupying Qwest duct space. In the past 12 months, Qwest has received no complaints in South Dakota, formal or informal, regarding an incident associated with access to poles, ducts or rights-of-way. Qwest denies access only in case of insufficient capacity, or due to safety, reliability and generally applicable engineering purposes.

Qwest has a specific and concrete legal obligation to provide CLECs access to Qwest's poles, ducts, conduits, and rights-of-way. Obligations are stated in Qwest's SGAT, individually negotiated interconnection agreements, and in free-standing agreements for those CLECs that seek access to poles, ducts, conduits, and rights-of-way, but not other Section 271 checklist items.

Qwest grants access to its poles, ducts, conduits, and rights-of-way on a nondiscriminatory basis. Access includes, to the fullest extent legally permissible, access to Qwest rights-of-way, including rights-of-way in multiple tenant environments. Qwest also provides access to records for prospective attachers to formulate strategies and to process applications/requests for access in a timely manner and on a nondiscriminatory basis. Space is allocated in a nondiscriminatory manner and Qwest does not reserve space for itself.

In the Seven-State Process, the facilitator recommended several SGAT amendments.[46] Qwest agreed to incorporate all of those recommendations in the SGATs of the seven states. Qwest's South Dakota SGAT includes the SGAT changes recommended by the facilitator relating to this checklist item.

Qwest completes make-ready and modification work for competitors in the same manner that it completes such work for itself and its affiliates. Qwest charges nondiscriminatory attachment/occupancy rates consistent with the FCC's formulas, and provides at least 60 days notice of rate changes and facilities modifications. Qwest allocates

[46] Attachment 27 at 16-31.

modification and make-ready cost on a "cost-causer pays" basis. Qwest charges for make-ready and modification work based on the actual cost of the work.

For these reasons, Qwest provides competitive carriers with access to poles, ducts, conduits, and rights-of-way in accordance with the requirements of Checklist Item 3.

4. Checklist Item 4: Unbundled Local Loops.

Qwest provides CLECs with access to unbundled loops and network interface devices (NIDs) in a timely and nondiscriminatory manner in South Dakota. *See* 47 U.S.C. § 271(c)(2)(B)(iv). The Affidavit of Jean M. Liston, Attachment 9, describes Qwest's compliance with Checklist Item 4.

a) Loops.

Qwest offers unbundled loops, including analog/voice grade loops, high capacity loops, Digital Subscriber Line (xDSL) loops, and loop conditioning, to CLECs in South Dakota. As of August 31, 2001, Qwest had provided six CLECs with 1,392 unbundled loops in South Dakota. Specifically, Qwest was providing 1,351 voice grade/analog loops, 26 xDSL capable loops and 15 high-capacity loops in South Dakota. Throughout its 14-state territory Qwest had 264,802 unbundled loops in service as of the end of August 2001. Of this total, 206,655 are voice grade/analog loops and 58,147 are digital capable loops.

Qwest allows CLECs to select from the complete range of types of unbundled loops: (1) voice grade/analog loops, (2) high-capacity loops, and (3) xDSL capable loops. The Basic 2-Wire/4-Wire Analog Loop is available as a two-wire or four-wire voice grade, point-to-point configuration suitable for local-exchange-type services.

Qwest offers four types of high-capacity loops: (1) DS-1 capable loops, (2) DS-3 capable loops (3) OCn loops, and (4) dark fiber loops. The DS-1 capable loop transports bi-directional DS-1 signals with a nominal transmission rate of 1.544 Mbps and will meet the design requirements specified in standard industry technical publications. The DS-3 capable loop transports bi-directional DS-3 signals with a nominal transmission rate of 44.736 Mbps that meets the design requirements specified in standard industry technical publications. For DS-1 or DS-3 Capable Loop, Qwest provides the necessary electronics at both ends including any intermediate repeaters. Qwest will provide access to even higher capacity loops known as OCn loops, which include OC3, OC12, OC48, and OC192 loops. To date, no CLEC in the 14-state region has requested a loop at any capacity higher than DS3. Dark fiber is addressed in the Affidavit of Karen A. Stewart, Attachment 7.

Qwest offers four categories of loops that can be classified as xDSL capable loops: (1) conditioned (or "nonloaded") 2-wire and 4-wire loops, (2) Basic Rate ISDN (BRI) capable loops, (3) asymmetrical digital subscriber line (ADSL) compatible loops, and (4) xDSL-I capable loops.

Qwest provides extension technology if needed for BRI capable loops and xDSL-I capable loops. Prices are contract-specific. Extension technology takes into account, for example, additional regenerator placement, central office powering and midspan repeaters (if required), as well as BRITE cards in order to provision the Basic Rate ISDN Capable or xDSL-I Capable loops.

Qwest has adopted a variety of loop qualification tools to assist CLECs to determine if a particular loop facility is capable of supporting DSL service. Those tools include the Raw Loop Data tool, which includes underlying loop make up information for loop facilities, the wire center Raw Loop Data tool, which provides loop make up information on a wire center level, the ADSL Qualification tool, the MegaBit Qualification tool, POTS to Unbundled Loop Conversion tool, and ISDN Qualification tool.

CLECs order unbundled loops and other UNEs by completing a Local Service Request (LSR) and the submitting it over Qwest's electronic or manual interface. The CLECs may calculate a due date based on the minimum number of days provided in Exhibit C to the SGAT or the Standard Interval Guide (SIG) as Qwest's standard installation interval for the specified loop type. If the CLEC chooses, it can specify a later due date. Exhibit C of the SGAT specifies the installation intervals, and Qwest has summarized the loop intervals in the following table. All installation intervals are expressed in business days.

Loop Type	1-8 loops	9-16 loops	17-24 loops	25+ loops
Analog/Voice Grade and xDSL Capable (except loops that need conditioning)	5 days	6 days	7 days	ICB
Quick Loop	3 days	3 days	3 days	ICB
Quick Loop with LNP	3 days	4 days	4 days	ICB
DS-3 Capable	7 days (1-3 loops)	ICB (4 + loops)	ICB (4 + loops)	ICB (4 + loops)
DS-1 Capable	9 days	9 days	9 days	ICB
xDSL Capable Loops that need conditioning	15 days	ICB	ICB	ICB
Fiber/Ocn/Other High Capacity	ICB	ICB	ICB	ICB

Qwest is committed to providing unbundled loops within the required intervals and has established processes discussed in this affidavit to ensure successful provisioning. There are seven principal PIDs for unbundled loops.[47] Qwest is equally committed to maintaining and reparing unbundled loops in parity with maintenance and repair provided to Qwest retail customers. To assure this, there are seven principal maintenance and repair PIDs by which Qwest performance with be measured.[48] Qwest performance in both provisioning and maintenance and repair has been excellent.

[47] Attachment 23, Affidavit of Michael G. Williams, Exhibit MGW-PERF-4 (OP-3 - Installation Commitments Met, OP-4 - Installation Interval, OP-5 – New Service Installation Quality, OP-6 – Delay Days, OP-7 – Coordinated "Hot Cut" Intervals, OP-13 – Coordinated Cuts On Time, OP-15 – Interval for Pending Orders Delayed Past Due Date).

[48] *Id.* (MR-3 – Out of Service Cleared within 24 Hours; MR-4 – All Troubles Cleared within 48 Hours; MR-5 – All Troubles Cleared within 4 Hours; MR-6 – Mean Time to Restore; MR-7 – Repair Repeat Report Rate; MR-8 – Trouble Rate; MR-9 – Repair Appointment Met).

b) **NIDs.**

Qwest provides access to Network Interface Devices (NIDs) as part of its unbundled loop offerings and subloop offerings. Qwest allows competitors to connect their own loop facilities to on-premises wiring through Qwest's NID or at any other technically feasible point. Qwest permits CLECs to interconnect at either the protector field or the customer side of the NID, space permitting. Qwest offers three types of NIDs. A Simple NID is typically found in single family residences or small businesses. A Smart NID provides special testing capabilities from the far end. Finally, the MTE NID is associated with Multi-Tenant environments. If space is unavailable on Qwest's NID, the CLEC may install its own NID or ask Qwest to install a stand-alone NID.

Qwest makes NIDs available at an acceptable level of quality. In South Dakota, Qwest has provisioned 1,392 NIDs in conjunction with unbundled loops. At this time, no South Dakota CLEC has requested access to a stand-alone NID. However, Qwest stands ready to meet any requests that are made.

c) **Line Splitting and Loop Splitting.**

Qwest complies with FCC requirements regarding access to the high frequency portion of the unbundled loop, otherwise commonly known as line sharing.[49] Qwest was the first ILEC in the country to offer this service. In addition, Qwest complies with FCC requirements regarding access to line splitting. These offerings are currently available to CLECs under Qwest's SGAT as well as under individually negotiated interconnection agreements.

Qwest offers five types of "splitting" arrangements. The following chart identifies the various types of splitting arrangements.

Type Splitting	Voice/Low End	Data/High End

[49] Line sharing is considered in the discussion of Emerging Services, Affidavit of Karen A. Stewart, Attachment 7.

Resale [50]	Qwest Resale Voice	Qwest Resale DSL
Line Sharing	Qwest Voice	CLEC DSL
Line Splitting	CLEC UNE-P Voice	CLEC DSL or Qwest DSL
Loop Splitting	CLEC Unbundled Loop	CLEC DSL
EEL Splitting	CLEC EEL	CLEC DSL

Line splitting occurs when CLECs provide an end user both the voice and data service utilizing an unbundled network element platform ("UNE-P") for voice service.[51] This can be contrasted to "line sharing," which occurs when the ILEC provides the voice service and a CLEC provides the data service.[52] Line splitting permits CLECs to offer advanced data services simultaneously with an existing UNE-P by using the frequency range above the voice band on the copper loop. Qwest made line splitting available to CLECs on July 1, 2001; however, to date, no CLEC in the 14-state Qwest region has ordered line splitting.

By contrast, loop splitting is an arrangement in which Qwest plays a minor role. Loop splitting is an arrangement where a CLEC leases an unbundled loop from Qwest and, by itself or in partnership with a data LEC, provides both voice and data service on the same loop. Qwest made loop splitting available to CLECs on August 3, 2001; to date, no CLEC has ordered loop splitting. To Qwest's knowledge, no other ILEC offers loop splitting.

Although no FCC order requires Qwest to provide EEL splitting, Qwest provides CLECs EEL splitting via the Special Request Process. EEL splitting enables a CLEC to provide both voice and data over a copper EEL facility. To Qwest's knowledge, no other ILEC offers this service. To date, no CLEC has requested EEL Splitting.

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[50] Resale is addressed in the Affidavit of Lori A. Simpson on Checklist Item 14, Attachment 20.

[51] *SBC Texas Order*, ¶ 330.

[52] *SBC Texas Order*, ¶ 324.

Qwest provides CLECs with nondiscriminatory access to unbundled loops, including NIDs and line splitting, in compliance with Sections 251 and 271 of the 1996 Act and the FCC's requirements thereunder. The Commission should find that Qwest satisfies Checklist Item 4 in South Dakota.

5. Checklist Item 5: Unbundled Local Transport.

The Affidavit of Karen Stewart, Attachment 10, describes Qwest's compliance with Checklist Item 5.

Qwest provides access to unbundled local transport in a nondiscriminatory manner. The only limitations Qwest imposes are those authorized by the FCC and this Commission. In its SGAT, Qwest has undertaken a concrete and specific legal obligation to provide CLECs with access to unbundled transport in substantially the same time and manner as Qwest provides those network elements to itself, and in a manner that offers CLECs a meaningful opportunity to compete.[53] Qwest has already installed unbundled local transport facilities for CLECs in South Dakota.

Qwest has completed 271 workshops for local transport in the states of Arizona, Colorado, Nebraska, Oregon, and Washington, and in the Seven-State process. These processes spanned more than one year and involved detailed and rigorous negotiations in which the parties reached consensus on all possible issues related to unbundled transport. The revised South Dakota SGAT, Attachment 26, has been updated to incorporate changes to the SGAT agreed to in these other 271 unbundled transport workshops.

a) Dedicated Transport.

Qwest is offering dedicated unbundled transport under rates terms and conditions that are in compliance with the Act and the FCC's rules. As of August 31, 2001, Qwest had provided three unbundled dedicated transport facilities for two CLECs in South Dakota. Qwest's dedicated transport offerings provide CLECs with a single transmission path between Qwest end offices, serving wire centers, or tandem switches in the same LATA and state; they also include a bandwidth-specific transmission path between the Qwest serving wire center and the CLEC's wire center or an interexchange carrier's point of presence located within the same Qwest serving wire center area.[54] Qwest offers dedicated transport in DS0 through OC-192 bandwidths, as well as such higher capacities that evolve over time.[55]

b) **Shared Transport.**

Qwest provides shared transport transmission facilities between end office switches, between end office and tandem switches, and between tandem switches in its network, as required by the FCC.[56] Qwest provides shared transport in a way that enables the traffic of a CLEC to be carried on the same transport facilities that Qwest uses for its own traffic.[57] Qwest permits CLECs to use shared transport as an unbundled element to carry originating access traffic from, and terminating to, customers to whom the CLECs provide local exchange service.[58]

c) **Access to Digital Cross-Connect Facilities.**

FCC rules require that an ILEC permit, to the extent technically feasible, a requesting CLEC to obtain the functionality provided by the ILEC's digital cross-connect systems in the same manner that the ILEC provides such functionality to interexchange carriers.[59] To comply with this requirement, Qwest offers CLECs a capability called Unbundled Customer Controlled Rearrangement Element ("UCCRE").[60] UCCRE gives CLECs access to Qwest's digital cross-connect system and provides the means by which a CLEC can control the configuration of unbundled network elements or ancillary services on a near real-time basis. UCCRE is available in Qwest wire centers that contain a digital cross-connect system that is

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[53] SGAT § 9.1.2.
[54] SGAT § 9.6.1.1.
[55] SGAT § 9.6.1.1.
[56] SGAT § 9.8.2.3.
[57] SGAT § 9.8.2.3(a).
[58] SGAT § 9.8.2.3(d).
[59] 47 C.F.R. § 51.319(d)(2)(iv).
[60] SGAT § 9.9.

UCCRE compatible.[61] Qwest has received no requests for UCCRE in South Dakota, but the Bench Test discussed below also tested and confirmed Qwest's ability to provide UCCRE upon request.

d) **Unbundled Transport Provisioning and Maintenance.**

Prior to receiving commercial volumes for transport, Qwest conducted a "Bench Test," which demonstrated that Qwest could, upon request, provision and maintain unbundled transport in a timely and nondiscriminatory manner.

Under the Bench Test, the provisioning of unbundled transport, as well as the repair, maintenance, and billing related to the transport element, were tested. In the test, actual "CLEC" unbundled network element orders were successfully placed and fulfilled. A local service request or access service request was completed and sent to the Service Delivery Coordinator, and orders were then sent through the entire provisioning process, using all of the appropriate OSS. Unbundled transport was successfully provisioned, and billing was established.

The Bench Test also included the transmission of "test calls" over the unbundled elements that were provisioned. The test calls generated local minutes of use that were captured by AMA equipment, allowing a summary bill to be created. After provisioning was completed, trouble reports were processed to test and validate Qwest processes and procedures for the repair and maintenance of these services.

More recently, Qwest has demonstrated its ability to provide shared transport through its success in provisioning UNE-P, a standard UNE combination that includes shared transport and unbundled switching. See the Affidavit of Ms. Lori Simpson for detailed information regarding Qwest's provisioning of UNE-P in South Dakota.

For these reasons, Qwest satisfies the requirements of Checklist Item 5.

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[61] SGAT § 9.9.1.

6. Checklist Item 6: Unbundled Local Switching.

The Affidavit of Lori Simpson, Attachment 11, describes Qwest's compliance with Checklist Item 6.

Qwest provides CLECs unbundled local switching in compliance with the requirements of both Section 271(c)(2)(B)(vi) and Section 271(b)(3) of the 1996 Act regarding unbundled switching. Qwest provides CLECs with unbundled switching pursuant to Qwest's SGAT and Qwest's Commission-approved interconnection agreements with CLECs.

As of August 31, 2001, Qwest had provided 16,411 unbundled local switching elements in South Dakota, all of which were provided as part of platforms. Qwest met 100 percent of its UNE-P-POTS installation commitments to South Dakota CLECs from July 2000 through August 2001, a result that surpasses Qwest's performance for its own retail end users for the same period.

Qwest provides local circuit switching unbundled from transport, local loops and other services. All the features, functions, and capabilities of Qwest's switches are available to CLECs that obtain unbundled local switching. Unbundled local circuit switching, available as a line-side or a trunk-side port, consists of access to all of the vertical switch features available to Qwest's retail end user customers and local switch usage. In addition, Qwest is prepared to provide CLECs with access to vertical switch features either (1) currently resident, or (2) not currently loaded in its switches, but technically feasible, that Qwest does not offer to its retail end user customers.[62] As part of its unbundled local circuit switching offering, Qwest provides CLECs with details of local originating minutes of use for use of the switch and for use of shared transport, and provides billing details necessary to bill interexchange carriers for interexchange access to the CLECs' end users. Qwest also provides access to unbundled local tandem switching facilities. Unbundled local tandem switching consists of access to tandem trunk ports and local tandem use.

[62] Qwest provides the latter even though the FCC has expressly held that this is not required. *See* SGAT §§ 9.11.2.1 and 9.11.4.4. *See Also BellSouth Louisiana II Order* ¶ 218.

Qwest, therefore, provides unbundled switching in compliance with the 1996 Act and the FCC's rules. For these reasons, the Commission should find that Qwest has satisfied all of the requirements of Checklist Item 6.

7. Checklist Item 7: Access to 911, E911, Directory Assistance and Operator Call Completion Services.

The Affidavits of Margaret S. Bumgarner (911 and E911 Access) and Lori A. Simpson (Operator Services and Directory Assistance), Attachments 12 and 13, demonstrate Qwest's compliance with Checklist Item 7.

a) 911 and E911.

Qwest satisfies the requirements of Section 271(c)(2)(B)(vii) of the 1996 Act and the FCC's rules as they relate to the provision of access to 911 and Enhanced 911 ("E911") services. Qwest provides competitors with nondiscriminatory access to 911 and E911 services, databases, and interconnection.

Qwest has concrete and specific legal obligations to provide access to 911 and E911 services pursuant to its SGAT and its Commission-approved interconnection agreements. Qwest's SGAT ensures that Qwest provides 911 and E911 functions to CLECs at parity and with the same level of accuracy, reliability, and functionality as that available to Qwest. From an end user perspective, the 911 and E911 services that CLECs provide, through access to Qwest's 911/E911 services, functions, and facilities, are indistinguishable from the 911/E911 services that Qwest provides to its own end user customers.

Qwest uses a third party, Intrado Inc. (Intrado), to manage the E911 database for Qwest. Qwest's SGAT and Qwest's contract with Intrado both provide that Intrado administer and manage database entries for CLECs with the same accuracy and reliability as that provided for Qwest. Qwest provides database updates for reseller CLECs and CLECs using unbundled local switching in the same manner and using the same process that Qwest uses to provide updates for its own retail end users. Facilities-based CLECs with their own switches make direct arrangements with Intrado for providing database updates. Qwest's SGAT establishes that Qwest, through Intrado, will provide CLECs with nondiscriminatory error correction for database records.

Qwest's SGAT also establishes that Qwest provides facilities-based CLECs with nondiscriminatory access to 911/E911 interconnection. For those few areas with Basic 911 service, Qwest provides facilities-based CLECs with dedicated trunks from the CLEC's switch to the appropriate Public Service Answering Point ("PSAP"), or a CLEC can self-provision its 911 trunks. For E911 service, Qwest will provide facilities-based CLECs with dedicated trunks from the CLEC's switch, or the CLEC can self-provision its E911 trunks, to Qwest's control office (selective router). Qwest also provides trunk terminations at the selective router and provides switching and transmission of calls through the selective router to the appropriate PSAP that are the same as those used by Qwest to provide E911 services for its own retail customers, reseller CLECs, and CLECs using Qwest's unbundled local switching. The routing of a 911/E911 call from a CLEC-owned switch is the same as the routing of such calls from a Qwest end office. In short, therefore, CLECs have access to 911/E911 interconnection at parity with Qwest.

Qwest has several performance measures for 911/E911 services that measure various aspects of 911/E911 trunk installation and repair, as well as a measure for the average time required to update the E911 database. For 911 and E911 services, the performance data show that Qwest provides 911/E911 services and interconnection to competitors on a nondiscriminatory basis. There were some short delays reported on E911 trunk orders for a CLEC in South Dakota in January 2001, for non-facility reasons. These were Qwest project orders that did not impact service for the CLEC or its customers. These orders were for trunk rearrangements associated with a project deploying a new E911 tandem in Rapid City, and the delays experienced were for the installation of the new switch. There have been no 911/E911 installation delays for CLEC initiated orders, and there have been no trouble reports on CLEC 911/E911 trunks in South Dakota in the past twelve months. The performance results for 911/E911 service provided to CLECs in South Dakota show that Qwest provides access to 911/E911 service at parity or better than the service Qwest experiences on its own 911/E911 facilities.

During workshops on this checklist item, Qwest agreed to several modifications to its SGAT to accommodate CLECs' competitive concerns. All of these modifications have been included in the version of the South Dakota SGAT attached as Attachment 26. In the final report on this topic, the facilitator stated that: ". . . Qwest has supported a finding that this checklist requirement has been met, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item."[63]

For these reasons, Qwest satisfies the requirement of Checklist Item 7(I) that it provide nondiscriminatory access to 911 and E911 services.

b) **Directory Assistance and Operator Services.**

Qwest provides CLECs with nondiscriminatory access to Qwest's operator and directory assistance services in compliance with the requirements of both Section 271(c)(2)(B)(vii) (Checklist Item 7) and Section 251(b)(3) of the 1996 Act regarding operator services and directory assistance.[64] Qwest provides CLECs with access to Qwest's operator services and directory assistance services, as well as to Qwest's directory assistance databases, pursuant to its SGAT and Qwest's commission-approved interconnection agreements.

Qwest offers CLECs access to the same operator services and directory assistance services that Qwest provides to its retail end user customers. All callers, regardless of the caller's or called party's local service provider, can access Qwest's directory assistance by dialing "411," "1+411," or "1+NPA+555-1212," for example, and can access operator services by dialing "0" or "0" plus a telephone number. The design of Qwest's processes for providing operator services and directory assistance services ensures that all calls are handled in the same manner regardless of whether they are originated by CLEC end users or by Qwest end users. Qwest handles all operator and directory assistance calls on a first-come, first-served basis. Qwest also provides branding for CLECs that purchase these services from

[63] Attachment 27 at 5.
[64] *See* 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III); 251(b)(3).

Qwest. Qwest makes Qwest personnel available to CLECs to assist them in accessing Qwest's operator and directory assistance services.

As 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.

Qwest measures its performance in providing directory assistance and operator services to CLECs and Qwest retail end users. Qwest's performance indicators for operator services and directory assistance, measure the average time required for Qwest's operator and directory assistance personnel to answer calls. In August 31, 2001, Qwest's operator services answered calls in an average of 9.03 seconds and Qwest's directory assistance services answered calls in an average of 7.65 seconds.

Qwest also provides CLECs that elect to provide directory assistance or operator services themselves or through a third party nondiscriminatory access to Qwest's directory assistance database on a real-time, "read only" or "per dip" basis. A CLEC also can purchase access in bulk to Qwest's directory assistance database to create its own directory assistance database.

For these reasons, Qwest satisfies the requirements of Checklist Item 7 as it relates to access to operator services and directory assistance services.

8. Checklist Item 8: White Pages Listings.

Qwest provides CLECs with nondiscriminatory access to white pages directory listings in compliance with Section 251 of the 1996 Act, Section 271 of the 1996 Act, and the FCC's rules. Qwest provides access to white pages directory listings pursuant to its South Dakota SGAT and pursuant to its commission-approved interconnection agreements. The Affidavit of Lori A. Simpson, Attachment 14, describes Qwest's compliance with Checklist Item 8.

Qwest provides CLECs with white pages directory listings that are nondiscriminatory in appearance and integration. White pages directory listings for both Qwest retail end users' and

CLEC end users' listings appear in white pages directories published on Qwest's behalf in the same font, size, and typeface, and without any separate classifications or distinguishing characteristics. In addition, Qwest offers CLECs exactly the same white pages listings options that Qwest provides to its own retail end users.

Qwest also provides white pages listings to CLECs with the same accuracy and reliability that Qwest provides for its own retail end user customers. Qwest processes CLEC end user listings using the same or similar personnel, systems, databases, methods, and procedures used by Qwest for its own end user listings. Qwest and CLEC end user listings are commingled in Qwest's listings database and submitted to Qwest's official directory publisher, Qwest Dex, for inclusion in white pages directories. Qwest's processes for submission of listings to its directory publishers make no distinction between listings of CLEC end user customers and Qwest retail end user customers. In addition, Qwest gives CLECs the ability to review their end user listings for accuracy using verification proofs, a process that does not exist for Qwest retail listings.

Qwest measures its performance in providing listings for CLECs and Qwest retail end users. Qwest's performance data provide data concerning the speed and accuracy with which Qwest updates its listings databases for itself and CLECs. In the month of August, Qwest completed electronically processed updates to its white pages directory listings database in an average of 0.10 seconds, and completed 92.33 percent of those updates without error.

Qwest 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. In addition, Qwest provides white pages listings to CLECs that wish to publish their own directories.

For these reasons, the Commission should find that Qwest has satisfied the requirements of Checklist Item 8.

START

OF

RETAKE

9. Checklist Item 9: Numbering Administration.

The Affidavit of Margaret S. Bumgarner, Attachment 15, describes Qwest's compliance with Checklist Item 9.

Qwest complies with Checklist Item 9 by adhering to both the industry guidelines and the FCC's rules regarding numbering administration. Qwest ceased performing any North American Numbering Plan ("NANP") numbering administration or assignment functions on September 1, 1998, when the FCC transferred those functions to Lockheed Martin, and subsequently to NeuStar, as the North American Numbering Plan Administrator ("NANPA"). Both before and after the transfer of the numbering administration functions to the NANPA, however, Qwest complied and continues to comply with all industry guidelines and FCC rules applicable to carriers with respect to numbering administration. Qwest's SGAT and Commission-approved interconnection agreements establish that Qwest has concrete legal obligations to comply with industry guidelines and FCC rules regarding numbering administration, including those sections requiring the accurate reporting of data to the NANPA.

Qwest has devoted resources and implemented processes to ensure that it completes the programming of its switches necessary to recognize new NXX codes and accurately route calls to telephone numbers in those NXX codes prior to the NXX code activation dates. Qwest also has implemented performance measures to ensure timely and accurate NXX code activations. In 2001, Qwest has met 100 percent of its commitments for activation of NXX codes in South Dakota.

Qwest complies with the industry guidelines and FCC rules in reporting numbering data to the NANPA. Qwest also provides the national Local Exchange Routing Guide ("LERG") with accurate and complete information regarding routing information, rating information, and effective dates for NXX codes assigned to Qwest.

During the workshop process, Qwest agreed to modifications to its SGAT relating to Checklist Item 9 to accommodate CLECs' competitive concerns. All of these modifications

END

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have been included in the South Dakota SGAT accompanying this Petition as Attachment 26. In the Multi-State Paper Workshop Report, the workshop facilitator states that for Checklist Item 9: ". . . Qwest has supported a finding that this checklist requirement has been met, subject to the completion and commission consideration of the results of any OSS testing that may related to the item."[65]

For these reasons, Qwest satisfies the requirements of Checklist Item 9.

10. Checklist Item 10: Databases and Associated Signaling.

The Affidavit of Margaret Bumgarner, Attachment 16, describes Qwest's compliance with Checklist Item 10.

Qwest provides nondiscriminatory access to its call-related databases and the associated signaling necessary for call routing and completion in compliance with Section 271(c)(2)(B)(x) of the 1996 Act and the FCC's rules. Qwest has concrete and specific legal obligations to provide CLECs with such access pursuant to its SGAT and Commission-approved interconnection agreements. Qwest provides access to the call-related databases and associated signaling on rates, terms, and conditions that are just, reasonable and non-discriminatory.

Consistent with the FCC's rules, Qwest provides CLECs with unbundled, nondiscriminatory access to its signaling network, including signaling links and signaling transfer points ("STPs"), and to Qwest's call-related databases and service management systems ("SMS"). 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. As of August 31,

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65 Attachment 27.

2001, no facilities-based CLEC in South Dakota was purchasing unbundled access to Qwest's signaling network.

Qwest provides CLECs with unbundled access to the STPs linked to Qwest's call-related databases. Qwest's call-related databases include the Line Information database ("LIDB"), InterNetwork Calling Name ("ICNAM") database, Toll Free Calling ("8XX") database, Local Number Portability ("LNP") database, Enhanced ("E911") database, and Advanced Intelligent Network ("AIN") databases. If any additional databases are determined to be necessary for call routing and completion, Qwest will make such databases and associated signaling available to requesting carriers. As of August 31, 2001, there was one facilities-based CLEC purchasing unbundled access to the 8XX database, the LIDB, the ICNAM, and the LNP database. There were no CLECs using Qwest's AIN.

In addition to providing access to its call-related databases, Qwest provides CLECs with access to Qwest's SMS to create, modify, or update information in the call-related databases, and to Qwest's service creation environment in order to design, create, test, and deploy AIN-based services.

Qwest has two performance measures for access to the call-related databases, LIDB and E911. The PIDs, DB-1A and DB-1B, "Time to Update Databases," measure, respectively, the time required to complete database updates for E911 (DB-1A) and for the LIDB (DB-1B). These are "parity by design" measures with no benchmark objective established because all updates for CLECs are commingled with Qwest's updates. The measure is an aggregate average time for Qwest and CLEC updates. Thus, the updates are performed in a nondiscriminatory manner (i.e., "parity by design").

During the workshop process, Qwest agreed to several modifications to its SGAT to accommodate CLECs' competitive concerns. All of these consensus modifications have been included in the South Dakota SGAT, which accompanies this Petition as Attachment 26. In the Multi-State Paper Workshop Final Report the facilitator states that the "issues have been resolved in a manner that is consistent with the public interest and with the requirement that Qwest comply with Checklist Item 10."[66]

For these reasons, the South Dakota Commission should find that Qwest has satisfied the requirements of Checklist Item 10.

11. Checklist Item 11: Number Portability.

The Affidavit of Margaret S. Bumgarner, Attachment 17, describes Qwest's compliance with Checklist Item 11.

Qwest satisfies the requirements of Section 271(c)(2)(B)(xi) of the 1996 Act and the FCC's number portability regulations. Specifically, Qwest has complied with the FCC's (a) long term number portability ("LNP") implementation schedule; (b) performance criteria; (c) technical, operational, architectural, and administrative requirements; and (d) cost recovery rules for number portability. Number portability is available to CLECs in South Dakota under Qwest's SGAT and Qwest's Commission-approved interconnection agreements.

As of October 2000, Qwest had deployed long-term number portability throughout the state of South Dakota, making LNP available to 100 percent of Qwest's access lines in the state. Qwest accomplished this deployment in full compliance with the FCC's rules and deployment schedule.

Qwest has also complied with the FCC's LNP performance criteria through its deployment of LNP utilizing the Location Routing Number ("LRN") method in conformance with industry guidelines. The FCC has recognized the LRN method as consistent with the FCC's LNP performance criteria.

In addition, Qwest has complied with the FCC's technical, operational, architectural, and administrative requirements by (a) integrating National Portability Administration Center ("NPAC") Service Management System ("SMS") Provisioning Process Flows into its number

[66] Attachment 26 at 51-52.

porting functions and operational support systems ("OSS"); (b) implementing number portability in compliance with the NPAC SMS Functional Requirements Specification ("FRS") and Interoperable Interface Specification ("IIS"); (c) developing processes to port reserved numbers in compliance with North American Numbering Council ("NANC") policies; (d) complying with the NANC's change management process; (e) designing Qwest's network to perform database queries as the N-1 carrier; and (f) integrating a process for the "snapback" of disconnected ported numbers to the service provider listed in the national Local Exchange Routing Guide ("LERG").

Finally, Qwest has complied with the FCC's cost recovery rules for number portability by establishing monthly number portability charges and number portability query charges in its FCC Tariff No. 1. The FCC found the number portability charges in this tariff to be reasonable and lawful in an order released July 16, 1999.

As of August 31, 2001, Qwest had ported 22,678 telephone numbers in South Dakota and 2,061,038 telephone numbers region-wide using the same systems and processes.

Qwest's performance data for number portability demonstrate that Qwest is performing well above the 95 percent performance benchmark for the number portability performance measures. For number portability, PIDs OP-8B, "LNP Timeliness with Loop Coordination," and OP-8C, "LNP Timeliness Without Loop Coordination," measure the percentage of LSA triggers, also referred to as unconditional 10-digit or Line Side Attribute ("LSA") triggers, that Qwest translates ("sets") in the switch prior to the scheduled start time for unbundled loop cutovers requiring coordination and for LNP orders not requiring loop coordination, respectively. When the LSA trigger is set prior to the start time for a cutover, the CLEC controls the activation of number portability without the need for any involvement by, or coordination with, Qwest.

Recently, three additional measures for number portability have been agreed to in the ROC performance workshop: 1) OP-17 "Timeliness of Disconnects associated with LNP orders" measures the quality of Qwest completing telephone number porting without performing the associated disconnects before the scheduled time and date; 2) MR-11 "LNP

Trouble Reports Cleared within 24 Hours" measures the timeliness of clearing LNP trouble reports; and, 3) MR-12 "LNP Trouble Reports – Mean Time to Restore" measures how long it takes to clear LNP trouble reports. Qwest is currently developing the procedures for producing these new performance measures.

During the Seven-State Process, Qwest agreed to several modifications to its SGAT to accommodate CLECs' competitive concerns. All of these modifications have been included in the South Dakota SGAT, attached as Attachment 26. In the Seven-State process Workshop One Report, the facilitator stated there is one issue at impasse for Checklist Item 11 that requires an SGAT language change and Qwest should not be deemed to be in compliance with this checklist item before it makes the changes necessary to deal with this issue. The facilitator went on to state, ". . . upon making the changes, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to this item."[67] Qwest has made the change recommended by the facilitator and it is included in the South Dakota SGAT. Qwest has also made significant mechanized changes since the Multi-State Report was released that provide improvements to the porting processes beyond those the facilitator deemed necessary for Qwest to do to satisfy the requirements of Checklist Item 11.

Qwest thus provides number portability in South Dakota in compliance with both the 1996 Act and FCC rules. For these reasons, the South Dakota Commission should find that Qwest satisfies the requirements of Section 271(c)(2)(B)(xi) for number portability.

12. Checklist Item 12: Local Dialing Parity.

The Affidavit of Margaret S. Bumgarner, Attachment 18, describes Qwest's compliance with Checklist Item 12.

Qwest satisfies the requirements of Sections 271(c)(2)(B)(xii) and 251(b)(3) of the 1996 Act regarding dialing parity. Specifically, Qwest provides dialing parity to competitive providers of telephone exchange service and telephone toll service. Qwest does not discriminate against CLECs with respect to the number of digits dialed, post-dialing delays, or quality of service. Qwest has concrete and specific legal obligations to provide dialing parity pursuant to its SGAT and its Commission-approved interconnection agreements.

Customers of competing carriers dial the same number of digits that Qwest's customers dial to complete any given type of call. Specifically, both CLEC and Qwest customers dial the same number of digits without any access codes for local and toll telephone calls and to access operator and directory assistance services.

Qwest also provides CLECs with the same quality of service that Qwest provides to its own end users with no additional post-dialing delays. This is so, first, because Qwest does not impose any requirement or technical constraint that would cause CLEC customers to experience longer post-dialing delays or inferior quality of service. Second, the design of Qwest's systems and processes ensures the equal treatment of all end user calls. The processing of calls in Qwest central offices is the same for both CLEC and Qwest customers. Qwest's network does not distinguish between calls from CLEC end users and calls from Qwest end users.

In the Multi-State Paper Workshop Final Report the workshop facilitator states that "there are no unresolved issues concerning this checklist item."[68]

For these reasons, Qwest provides dialing parity in compliance with the 1996 Act and the FCC's rules. The FCC and the ROC have determined that performance measures are not necessary for this checklist item. Accordingly, the South Dakota Commission should find that Qwest satisfies the requirements of Checklist Item 12.

13. **Checklist Item 13: Reciprocal Compensation.**

The Affidavit of Thomas R. Freeburg, Attachment 19, describes Qwest's compliance with Checklist Item 13.

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[67] Attachment 28, Workshop One Report, at 12.

[68] Attachment 27 at 8.

Qwest complies with the FCC reciprocal compensation requirements in South Dakota. Qwest's SGAT provides for Qwest and interconnecting local carriers to pay one another symmetrical rates for the transport and termination of local telecommunications traffic. No competitive carrier in South Dakota has made a forward-looking cost showing with regard to its own network costs to justify higher transport and termination rates.

For transport, interconnecting local carriers may choose either Qwest's Direct Trunked Transport, Tandem Switched Transport, or a combination of the two. Each option provides transmission of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch or equivalent facility. For Direct Trunked Transport, when Qwest fulfills a CLEC request for two-way trunk groups used for transport of interconnected traffic, Qwest's cost recovery emulates one-way trunking. A "relative use factor" reduces Direct Trunked Transport charges by reflecting only the proportion of traffic that flows to Qwest from the CLEC over the trunk.

Qwest also provides Tandem Switched Transport to enable interconnecting carriers to complete local calls to and from every Qwest end office connected to a Qwest tandem by establishing just one new trunk group. Qwest's approach to single point of interconnection ("POI") per LATA interconnection is very similar to that offered by Verizon and SBC in the states where those ILECs demonstrated checklist satisfaction.

Tandem Switched Transport is a per-minute charge to recover the cost of tandem switching, and to recover the cost of transport from the Qwest tandem office to the Qwest end office, since trunks between these offices are used in "common" with other services. A per-minute, mileage-sensitive rate also applies to transport from Qwest host switching offices to Qwest remote switching offices in a host-remote switching cluster.

Call Termination charges help recover the cost of switching of local telecommunications traffic at the terminating carrier's end office switch (or equivalent facility) for delivery to the called party's premises. Qwest has charged, and has paid, a per-minute rate for the use of the end office terminating switch. Internet-bound traffic, which is not local traffic subject to reciprocal compensation, is subject, going-forward, to unique inter-carrier compensation rules.

In addition to the above, Qwest offers transit service that allows CLECs to interconnect indirectly with other local carriers using Qwest's tandem, thus avoiding the CLEC's investment in facilities otherwise necessary to exchange local calls with non-Qwest local carriers. The Transit Traffic rate element includes tandem switching and transport charges and applies to all usage between CLECs that transit Qwest's tandem switch.[69] The originating carrier is responsible for paying the appropriate rates to two carriers: Qwest and the terminating CLEC. Qwest and the terminating carrier often exchange traffic records to enable the terminating carrier to collect reciprocal compensation from the originating carrier.

Finally, Qwest properly records, bills, and pays for reciprocal compensation via systems that ensure reciprocal compensation is handled properly.

Qwest has fulfilled its obligation to bill and pay reciprocal compensation to CLECs and other interconnecting carriers. These amounts, based on traffic exchanged with six operating CLECs, reflect the following typical tally of minutes of traffic exchanged between Qwest and CLECs during August, 2001 in South Dakota:

	Qwest Originated	CLEC Originated	Total
Local traffic			
End Office	37,388,833	11,757,859	
Tandem	983,680	217,250	
Total	38,372,513	11,985,110	
Transit traffic	1,638,765	1,047,455	
End Office total	38,490,885	12,323,928	
Tandem total	1,520,393	708,636	
Total	40,011,278	13,032,564	**53,043,842**

The parties have billed and paid each other for the transport and termination of this traffic when the interconnection agreement called for payment. Disputes, when they have arisen, have typically been associated with a CLEC's classification of Internet-bound traffic as local when Qwest classified it as toll or a CLEC's classification of all traffic on a trunk group as toll when, by Qwest's records, some portion was local. Disputes such as these between wholesale carriers are not uncommon industry-wide.

Qwest has developed detailed processes that support reciprocal compensation billing and payments to CLECs. Qwest's performance with respect to reciprocal compensation is measured, and can be evaluated, using two key PIDs developed collaboratively by Qwest and CLECs in the ROC process.[70] First, the PID labeled BI-3 evaluates the accuracy with which Qwest bills CLECs, focusing on the percentage of billed revenue adjusted due to errors. BI-3 measures the billed revenue minus amounts adjusted off bills due to errors, as a percentage of total billed revenue. Specifically, BI-3B makes the measurement for reciprocal compensation minutes of use, but excludes billing adjustments resulting from CLEC-caused errors.

The PID labeled BI-4B measures the completeness with which Qwest bills non-recurring and recurring charges for UNEs and resale associated with completed service orders, as well as the completeness with which Qwest bills the revenue for local minutes of use associated with local interconnection for purposes of reciprocal compensation. Specifically, BI-4B measures the percentage of revenue associated with local minutes of use appearing on the correct bill.

Qwest's average February-July 2001 performance for billing accuracy was 99 percent. This is well above the 95 percent benchmark established by the ROC. The average February-July 2001 performance for billing completeness was 77 percent. While this measure falls short of the benchmark, it is the result of mis-routed traffic from one party. So that calls were not blocked, Qwest has compensated for the mis-routing. At the same time, Qwest has advised the party of the need to correct the routing and that the billing problem was created by the mis-routing. Unfortunately, Qwest was not certain that the ROC would allow that this circumstance could be excluded from collection of this performance data for this performance

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[69] Transit traffic may also flow between a CLEC and wireless local carrier or between a CLEC and a non-Qwest independent ILEC.

[70] The Affidavit of Michael G. Williams Attachment 23, contains a complete description of Qwest's PIDs and their development in ROC proceedings. The PIDs are Exhibit MGW-PERF-6 to Mr. Williams' Affidavit.

measure. The party has since agreed to correct the mis-routing. When the BI-4B results are recalculated to exclude this effect, each month shows a 99 or 100 percent rating.

Qwest is providing reciprocal compensation in compliance with the negotiated PIDs developed by the ROC. Accordingly, Qwest satisfies the reciprocal compensation requirements of Checklist Item 13 in South Dakota.

14. **Checklist Item 14: Resale.**

The Affidavit of Lori A. Simpson, Attachment 20, demonstrates that Qwest has complied with checklist item number 14 concerning resale.

Qwest provides its retail telecommunications products and services to CLECs for resale to end users on terms and conditions that are reasonable and nondiscriminatory. Qwest's South Dakota SGAT and its Commission-approved resale agreements demonstrate that Qwest has undertaken a legally binding obligation to offer for resale by CLECs telecommunications services that are equal in quality to, and provided in substantially the same time and manner as, the telecommunications services that Qwest provides to itself and its retail end users. The only limitations Qwest places on the resale of its products and services by CLECs are those permitted by the South Dakota Public Utilities Commission and the FCC.

As of August 31, 2001, Qwest provides 13,987 resold local access lines to eight South Dakota reseller CLECs. Of these, 8,650 are business lines, 5,282 are residence lines, and 55 are Centrex lines. As of the same date, Qwest provides 687 resold private lines, including 613 analog, 35 DS0 and 39 DS1 lines to reseller CLECs.

The performance indicators for resale measure Qwest's performance for twelve products ranging from residential lines to high speed services such as DS3s. Qwest's resale performance measures demonstrate that Qwest provides telecommunications services for resale in a timely manner, consistently delivering them to requesting CLECs within the intervals they request. Resale performance measures also show that Qwest provisions, and maintains and repairs resold telecommunications services in a manner that is in parity with the provisioning, and maintenance and repair of the equivalent services Qwest provides to retail end users.

In sum, Qwest's compliance with the FCC's requirements for resale, its legal obligations to provide services for resale by CLECs, and its resale performance for CLECs in South Dakota demonstrate its commitment to satisfying the requirements of Checklist Item 14.

IV. QWEST WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272.

The Affidavits of Judith L. Brunsting, Attachment 24, and Marie E. Schwartz, Attachment 25, describe Qwest's compliance with the Section 272 compliance provisions of the 1996 Act.

To receive Section 271 interLATA relief, Qwest (the BOC)[71] must demonstrate that "the requested authorization will be carried out in accordance with the requirements of Section 272."[72] Section 272 defines the separate structure and business relationship that the BOC must establish with its affiliate that will be providing interLATA services following FCC approval. The BOC's separate affiliate that will be providing interLATA services following FCC approval is Qwest Communications Corporation ("QCC" or "272 Affiliate").

While these structural and transactional separation requirements are extensive, they do not mandate that a BOC and its 272 affiliate be wholly unrelated. The 272 Affiliate is, of course, an "affiliate," defined in the Communications Act of 1934 ("the Act") to include an entity "under common ownership or control with" another entity.[73] The FCC has rejected the argument that Section 272 requires "fully separate operations."[74]

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[71] To facilitate ease of discussion, Qwest Corporation (i.e., the in-region local exchange service provider) will be referred to as "the BOC" in this portion of the Petition discussing Section 272.

[72] 47 U.S.C. § 271(d)(3)(B).

[73] 47 U.S.C. § 153(1).

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

It is important to distinguish the difference between satisfying Section 271 and the requirements of Section 272. Section 271 sets forth the requirements which must be satisfied before the BOC can enter the in-region, interLATA market. Section 272 defines how the BOC or any affiliate of the BOC must operate when offering such interLATA services, once the BOC receives Section 271 authority. Thus, there is no specific requirement for the 272 Affiliate to meet Section 272 obligations now; it must only demonstrate that it will comply with the requirements of Section 272.[75] The 272 Affiliate must present evidence that it is prepared to operate under the terms of Section 272 once the BOC is granted authorization to provide in-region, interLATA services in the state of South Dakota. In essence, the Commission must make a "predictive judgment" about whether the 272 Affiliate will comply with Section 272. The FCC has recognized this distinction in its Section 271 decisions.[76] The 272 Affiliate is prepared to adhere to the requirements of Section 272 for as long as the requirements of Section 272 are in place.

A. Qwest Will Comply with the Requirements of Section 272(a).

Section 272(a) requires the BOC to provide in-region, interLATA long distance services through a separate long distance affiliate. The BOC will offer such long distance services, upon section 271 approval, through its long distance affiliate, Qwest Communications Corporation ("the 272 Affiliate"). Therefore, the 272 Affiliate complies with Section 272(a).

B. Qwest Will Comply with the Structural and Transaction Requirements of Section 272(b).

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

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[75] *Bell Atlantic New York Order*, ¶ 403; *SBC Texas Order*, ¶ 394.

[76] *BellSouth Louisiana II Order*, ¶321 ("requires a predictive judgment regarding the future behavior of the BOC."); *See Also Bell Atlantic New York Order*, ¶ 402; *SBC Texas Order*, ¶ 395.

that will provide recourse to the assets of the BOC. The 272 Affiliate will satisfy these requirements of the Act.

The evidence presented establishes compliance with the requirements of Section 272(b):

272(b)(1): Not only is there no joint ownership of network facilities, but no switching and transmission facilities have been transferred from the BOC to the 272 Affiliate. Likewise, the 272 Affiliate has not engaged and will not engage in any operation, installation, or maintenance ("OI&M") services with respect to facilities owned by the BOC. Neither the BOC nor any other Qwest affiliate performs any OI&M functions associated with the 272 Affiliate's switching and transmission facilities. Similarly, the 272 Affiliate does not perform such functions associated with the BOC facilities. To ensure Qwest continues to meet this requirement, the Services Company conducted extensive one-on-one training with approximately fifty network department leaders.

272(b)(2): The 272 Affiliate maintains separate books, records, and accounts from the BOC and in accordance with Generally Accepted Accounting Principles ("GAAP").

272(b)(3): Section 272(b)(3) "simply dictates that the same person may not *simultaneously* serve as an officer, director, or employee of both a BOC and its Section 272 affiliate."[77] The 272 Affiliate has separate officers, directors, and employees. None of these officers, directors, or employees simultaneously serve as an officer, director, or employee of the BOC and the 272 Affiliate.

272(b)(4): The 272 Affiliate will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of the BOC.

272(b)(5): Section 272(b)(5) requires that the 272 Affiliate make its transactions with the BOC "available for public inspection."[78] The 272 Affiliate will conduct all transactions with the BOC on an arm's-length basis, in accordance with applicable accounting rules, and will reduce all transactions to writing and make them available for public inspection..

[77] First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* 11 FCC Rcd 21905 ¶ 178 (1996) ("*Non-Accounting Safeguards Order*") (emphasis added).

[78] 47 U.S.C. § 272(b)(5).

C. Qwest Will Comply with the Nondiscrimination Safeguards of Section 272(c).

Section 272(c) requires the BOC to account for transactions with its 272 affiliate in accordance with FCC-approved accounting principles and prohibits the BOC from discriminating in favor of its section 272 affiliate in the provision of goods, services and information, or in the establishment of standards.[79] The BOC is committed to providing its services to all of its interexchange carrier (IXC) customers, including the 272 Affiliate, on a nondiscriminatory manner.

D. Qwest Will Comply with the Audit Requirements of Section 272(d).

Section 272(d) requires an audit of the BOC's compliance with section 272 by an independent auditor every two years following receipt of interLATA authorization. The BOC will obtain and pay for an independent auditor to conduct a joint federal/state audit every two years in accordance with Section 272(d) and the FCC's rules. The first such audit must be conducted 12 months after initial relief. The BOC will comply with this provision. Moreover, the BOC will cooperate to the fullest extent possible in providing any data necessary to assist the auditor in accomplishing its objective, including providing the auditor with access to the books and accounts necessary to conduct the audit.

E. Qwest Will Fulfill All Requests in Accordance with Section 272(e).

Section 272(e) imposes certain non-discrimination and accounting requirements on the BOC concerning telephone exchange and exchange access.[80] The BOC will not discriminate in favor of the 272 Affiliate with respect to requests for exchange and exchange-access services. Upon obtaining Section 271 approval, the 272 Affiliate will obtain such services from the BOC under the same tariffed terms and conditions as are available to unaffiliated IXCs.

[79] 47 U.S.C. § 272(c).
[80] 47 U.S.C. § 272(e).

F. Qwest and Its Affiliates Will Comply with the Joint-Marketing Provisions of Section 272(g).

Section 272(g) requires that a 272 affiliate "may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service" to do so as well.[81] The 272 Affiliate will not market or sell local exchange service provided by the BOC except to the extent that the BOC permits other entities offering the same or similar service to do the same. Neither the BOC nor the 272 Affiliate will market or sell interLATA service originating in South Dakota unless and until the BOC has received authorization from the FCC to provide such service in South Dakota.

G. The BOC and the 272 Affiliate Will Meet All Requirements Under Section 272.

The Affidavits of Ms. Brunsting and Ms. Schwartz demonstrate that the BOC and the 272 Affiliate have done all that can be required at this point and are committed to compliance with all provisions of Section 272 after in-region interLATA relief is granted.

V. THE COMMISSION SHOULD GIVE THE FINDINGS AND CONCLUSIONS OF THE FACILITATOR IN THE SEVEN-STATE PROCESS SUBSTANTIAL WEIGHT IN DETERMINING THAT QWEST HAS SATISFIED THE REQUIREMENTS OF SECTIONS 271 AND 272.

The 1996 Act provides that in order to be eligible to provide in-region interLATA telecommunications services, a BOC must demonstrate to the FCC that it has opened its markets to competition.

A. The Seven-State Process.

For Qwest, that record has been extensively and exhaustively developed through a unique, rigorous and highly iterative process created by the public utility commissions in seven of the smaller Qwest states which are similarly situated with South Dakota (Idaho, Iowa,

[81] 47 U.S.C. § 272(g).

Montana, New Mexico, North Dakota, Utah and Wyoming).[82] Through this process, now known as the "Seven-State Process," the commissions in the seven participating states have carefully analyzed all of the checklist items, except for Operational Support Systems (OSS) (which is being analyzed in the 13 state ROC OSS third-party test in which South Dakota is participating), as well as the public interest, Track A, and 47 U.S.C. § 272 (Section 272) requirements.

Because the Seven-State Process has been so definitive and exhaustive in examining and resolving checklist and other issues on a common basis (and the issues will, for the most part, be identical in South Dakota), this Commission should place great reliance on the record and findings of the Seven-State Process as it fulfills its role under Section 271. The Seven-State Process rigorously addressed the issues and provided fundamental due process to all parties. It is being conducted by an independent and highly competent expert in telecommunications and is based on an exhaustive record. Qwest's competitors, who are motivated to ensure that the process is both fair and comprehensive, have fully participated at every stage of the process. Accordingly, in considering the issues before it, this Commission should rely on the decisions from the Seven-State Process.

B. The Development of the Seven-State Process.

In the first quarter of 2000, Qwest's predecessor in interest, U S WEST, filed initial applications in most of the states in its region seeking findings by the individual commissions that it was in compliance with the various requirements of Section 271 and a recommendation from each commission that the FCC allow it to reenter the interLATA market in that state. Shortly thereafter, the staffs and commissions in several of the smaller Qwest states began discussions that ultimately led to the creation of the Seven-State Process. When Qwest became aware of this collaborative effort, it agreed that it was a practical and creative way to address common issues. Therefore, on May 4, 2000, Qwest made a filing encouraging several state commissions to consider a multistate process to jointly review Qwest's compliance with the

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[82] Single state stand-alone processes are nearing completion in Arizona, Colorado, Washington, Oregon and Nebraska.

requirements of the 1996 Act, including Track A issues, various aspects of the 14-point competitive checklist, separate subsidiary (Section 272) issues and public interest considerations. The utility commissions of Iowa, Idaho, Montana, North Dakota and Utah joined together (with Wyoming joining in September 2000 and New Mexico thereafter) in a multistate collaborative proceeding and issued procedural orders to govern the conduct of joint workshops.

The underlying reason for the creation of the process was the recognition that a collaborative process, particularly for smaller states that lacked the regulatory resources of larger states, would preserve regulatory resources and simplify the workshop process for Qwest, commission staffs and participating competitors. At the same time such a process would be both rigorous and comprehensive in addressing the critical issues that each state commission must address in making its recommendation to the FCC. The fundamental premise of the Seven-State Process is that, while there are some issues unique to each state, the vast majority of the issues relating to the checklist compliance and other issues are common among the states and could efficiently be addressed in common workshops, where all interested parties could address and resolve issues critical to them.

John Antonuk of the Liberty Consulting Group, an expert in telecommunications with broad experience, was appointed by the seven state commissions to serve as facilitator of the process. His role is to develop the record as to each issue under consideration, conduct the workshop process (which includes all interested parties, including staff members of each participating commission) and to issue decisions for consideration of each state on the specific issues. With the assistance and cooperation of Qwest, competitors of Qwest, commission staffs and other interested parties, a series of workshops was designed to allow full and rigorous examination of all issues relevant to each checklist item. Common filing dates were established so that a full and complete record would be developed in each state, but the ultimate examination of the evidence proffered in those filings came together in the workshop process overseen by Mr. Antonuk. The joint workshops thus provided a common forum for all participants in the seven states involved to present, for individual consideration by the seven commissions, all issues related to Qwest's Section 271 compliance, with the exception of the operation of its OSS, and the development and accuracy of Performance Indicator Definitions (PIDs). OSS and PIDs issues are being fully addressed by the ROC process in which South Dakota is already participating.

Mr. Antonuk was charged with issuing recommendations to the state commissions based on agreements of the parties, as well as the extensive written and oral testimony submitted in the workshops held throughout the seven-state region. The facilitator has now issued seven reports[52] that address and, for the seven states, recommend resolution of the issues that are now before this Commission.[53] It is Qwest's understanding that, while this Commission and staff were not formal participants in the seven-state workshops, members of the South Dakota staff have monitored and informally participated in many of the workshop activities.

C. The Seven-State Process Is Nearly Complete, and the Workshops and Facilitator Decisions Have Been Comprehensive and Rigorous.

The Seven-State Process has worked extremely well. As described in more detail below, all parties have had ample opportunity to develop relevant issues. As the process unfolded, large amounts of evidence were presented to and considered by Mr. Antonuk, who then issued comprehensive reports for consideration by the participating state commissions. Each of the individual workshops was the subject of extensive written and oral testimony as well as other input from all parties. Qwest's competitors and participating commission staffs had every opportunity to participate and address issues of interest to them. The facilitator's recommended resolutions summarized the content of the discussion, analyzed the arguments and comprehensively addressed the issues. Following is a brief summary of the status of five separate workshops in which the facilitator has issued recommended reports. In addition, Qwest has attached the recommended decision regarding Qwest's Performance Assurance Plan (QPAP), which the facilitator issued earlier this week.

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[52] Testimony from the multistate proceeding may be accessed at http://www.libertyconsultinggroup.com/six.htm. The final reports are attached in chronological order as Attachments 27-33.

Regarding Checklist Item 7, there was only one disputed issue presented to the facilitator: WCom's request for global access to Qwest's InterNetwork Calling Name Database ("ICNAM").[28] The facilitator held that WCom did not support its request for global access to the ICNAM database and that the evidence Qwest submitted supported a finding that it has complied with this checklist item, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.

With respect to Checklist Item 8, the facilitator held that, subject to two qualifications, requiring a change to SGAT language and a completion of planned modifications to Qwest's DRA-CS1 interface for processing facilities-based CLEC listings, Qwest can be deemed to have met its burden of proof, subject also to the completion and commission consideration of the results of any other OSS testing that may relate to the item. Qwest completed the upgrade to DRA-CS3 in April 2001.

The facilitator concluded that Qwest had supported a finding that the Checklist Item 9 requirement has been met, subject to satisfactory performance in any OSS testing that may relate to the item.

Likewise, with respect to Checklist Items 10 and 12, the facilitator identified no outstanding issues regarding Qwest's compliance with those items. There are no performance measures for checklist item 12.

2. Workshop Addressing Checklist Items 1, 11, 13 and 14.

The first workshop with live testimony addressed issues associated with Checklist Items 1 (Interconnection and Collocation), 11 (Local Number Portability), 13 (Reciprocal Compensation) and 14 (Resale). On July 31, 2000, Qwest filed the written testimony of Thomas R. Freeberg, Lori A. Simpson and Margaret S. Bumgarner. On September 5, 2000, the following intervenors filed testimony: WCOM; McLeodUSA; AT&T Communications of the Mountain States, Inc.; Electric Lightwave, Inc. (ELI); NEXTLINK Utah, Inc.; Jato

[28] Because the ICNAM database is a call-related database, Qwest addressed this issue in the context of its testimony and briefing on Checklist Item 10.

Communications, Inc., Wyoming Consumer Advocate Staff (WCAS); Sprint Communications Company L.P., Net Wright LLC (Net Wright); OPCOM Inc.; Visionary Communications; Wyoming.com, and Contact Communications. Qwest filed rebuttal testimony on September 15, 2000. Net Wright filed rebuttal on that same date. On September 29, 2000, WCOM filed rebuttal testimony. In New Mexico, e.spire filed testimony on December 6, 2000. Qwest responded on January 3, 2001. Following the submission of the extensive written briefing, the facilitator held several days of workshops in Salt Lake City, Utah and Denver, Colorado between October 2000 and March 2001. These sessions gave the facilitator and the parties an opportunity to question and rebut submitted testimony.

Many of the issues related to these checklist items were resolved prior to the conclusion of the workshops. The remaining issues were the subject of a 143-page final report issued by the facilitator on May 15, 2001.[22]

Before filing briefs, the parties raised and resolved a total of 40 issues related to the interconnection aspects of Checklist Item 1, leaving twelve unresolved issues. Of the twelve unresolved issues, the facilitator held that eight required changes to language in Qwest's SGAT, three required no change and one issue was resolved in the "reciprocal compensation" section of the Workshop One report. Qwest requested the state commissions modify slightly the facilitator's resolution and recommended language changes for two of unresolved issues: (1) the facilitator's requirement to eliminate the 50 mile limitation on Direct Trunk Transport and (2) the facilitator's requirement that Qwest eliminate the 512 ccs (centum call seconds) rule which would require CLECs interconnecting at Qwest's access tandem to purchase direct trunking when a certain traffic threshold was reached.

Qwest agreed to make all other language changes recommended by the facilitator. Upon resolution by commissions of the issues noted above and upon making the other suggested changes to its SGAT, the facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to the interconnection aspects of Checklist Item 1.

For the Collocation portion of Checklist Item 1, the parties were able to resolve 54 issues before briefs were filed. Fifteen issues remained to be resolved under the Collocation topic. Of these fifteen issues, seven required SGAT language changes, and five required no change. Qwest accepted the facilitator's recommendations on all but one issue – collocation intervals. On that issue, Qwest requested that the state commissions reverse the facilitator's recommendation and adopt Qwest's proposed intervals, both for installation and for the number of orders CLECs can submit per week. The facilitator recommended other avenues for the resolution of the remaining two issues. Upon commission resolution of those two issues, and incorporation of suggested changes to Qwest's SGAT, the facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item.

For Checklist Item 11, Local Number Portability, the parties resolved a total of eleven issues prior to the briefs, leaving only one issue at impasse. This issue required a change to SGAT language. Qwest agreed to modify its SGAT language to make clear that it will retain the customer information associated with number porting until 11:59 the day following the change. Upon making this change, the facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to this item.

For Reciprocal Compensation, Checklist Item 13, all but five issues were resolved outside of the workshop. These five issues were subject to recommendations in the Workshop One Report. Of the five unresolved issues, the facilitator found one, reciprocal compensation for Internet Service Provider traffic, to be an inappropriate issue to consider in the context of a Section 271 application because this traffic is interstate in nature. The facilitator found two other issues, host-remote transport compensation and the definition of exchange service, required language changes. Qwest agreed to make the facilitator's recommended changes. On the final issue, commingling of InterLATA and Local Traffic on the same trunk group, the facilitator concluded Qwest's language was acceptable and should be adopted. Upon making

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[70] A copy of this report is provided as Attachment 28.

the proposed changes, the facilitator recommended that Qwest be deemed to have met its burden of proof, subject to completion and commission consideration of the results of any OSS testing that may relate to this item.

With respect to Checklist Item 14, Resale, a total of 29 issues were resolved before the parties filed briefs, leaving only three issues to be addressed in the Workshop One report. Qwest accepted the facilitator's recommendations for each of the three issues – indemnification, marketing to misdirected calls and application of termination liability assessments to resellers. Qwest made the recommended changes to its SGAT to comply with the facilitator's report and should be deemed to have met its burden of proof, subject to completion and commission consideration of the results of any OSS testing that may relate to this item.

3 The Emerging Services Workshop.

The second workshop was held in Idaho in January 2001, and addressed the issues of line sharing, subloop unbundling, packet switching, and dark fiber (collectively known as "emerging services"). Because of the nature of these services, it was viewed advisable to deal with them in a separate workshop. On November 20, 2000, Qwest filed the testimony of Karen A. Stewart. On or about December 20, 2000 the following intervenors filed testimony: the Wyoming Consumer Advocate Staff; AT&T Communications of the Mountain States, Inc., AT&T Communications of the Midwest, Inc. and TCG affiliates (AT&T); the Information Services Division, Department of Administration, State of Montana; Rhythms Links Inc. and New Edge Networks (Joint Commenters); and the New Mexico Advocacy Staff. Qwest filed Rebuttal Testimony on January 5, 2001, an Open Issues Matrix On January 8, 2001, and a Supplemental Affidavit on January 9, 2001. AT&T filed a Statement Regarding Dark Spectrum on February 20, 2001. The facilitator and commissions held live workshop proceedings on January 16 through 19, 2001, and February 26 through March 1, 2001. The parties filed their briefs on outstanding disputed issues on or about April 30, 2001.

The facilitator issued a 57 page final report with respect to Emerging Services on June 11, 2001.[illegible] With respect to line sharing, the facilitator held that no SGAT changes were necessary for Qwest to be in compliance. The facilitator suggested that Qwest modify its position that it is not required to continue providing Qwest DSL in a line sharing scenario. Qwest responded by agreeing to enable CLECs to provide Qwest's DSL service when the CLEC provides the end user with voice service via a UNE-P arrangement. Qwest already permits CLECs to provide Qwest's DSL service to their end users when the CLEC resells Qwest's voice service.

With respect to subloop unbundling, the facilitator suggested several changes to SGAT language, and Qwest has modified its SGATs to implement the facilitator's recommendations. Upon making these changes, the facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to satisfactory performance in any OSS testing that may relate to the item.

With respect to packet switching, the facilitator addressed five issues. Again, Qwest agreed to follow the facilitator's recommendations. Upon making any necessary SGAT changes, the facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to satisfactory performance in any OSS testing that may relate to the item.

Similarly, with respect to dark fiber, the facilitator identified four issues, two of which required a change to SGAT language. As with the other emerging services issues, Qwest agreed to implement the facilitator's recommendations. The facilitator concluded that Qwest can be deemed to have met its burden of proof, subject to satisfactory performance in the ROC OSS test.

4. The UNE Workshop, Checklist Items: 2, 4, 5 and 6.

The third workshop was held in Denver in March 2001. It addressed four checklist items: 2 (UNE Platform, UNE Combinations/EEL), 4 (Unbundled Loops), 5 (Unbundled Transport) and 6 (Unbundled Switching). Qwest filed the testimony of Karen A. Stewart, Lori A. Simpson and Jean M. Liston on January 19, 2001. On or about February 23, 2001, the

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[illegible] See http://www.libertyconsultinggroup.com/Session 6/ES Report/Emerging Services Final Report - 1.doc.

following parties filed testimony or comments: AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc. (AT&T) and AT&T's subsidiaries and affiliates operating in these states; XO of Utah; ELI; and The Association of Communications Enterprises. The New Mexico Public Regulation Commission Advocacy Staff filed testimony on December 20, 2000. Qwest filed the rebuttal testimony of Ms. Simpson and Ms. Stewart on March 9, 2001. AT&T filed verified comments on loops, line splitting and Network Interface Devices (NIDs) on March 26, 2001. Rhythms Links filed the affidavit of Valerie Kendrick regarding loops on March 23, 2001. On the same date, XO of Utah filed the additional response testimony of David LaFrance. Qwest filed the rebuttal testimony of Ms. Liston on April 18, 2001. The facilitator and commissions held live workshop proceedings during the week of March 26, 2001 for Checklist Items 2, 5, and 6, and during the week of April 30, 2001 for Checklist Item 4. Briefs were filed on or about May 31, 2001 on checklist items 2, 5, and 6 and on June 4, 2001 on Checklist Item 4 by the following parties: Qwest, AT&T, ELI/XO, Rhythms and the WCAS. Qwest and AT&T filed supplemental briefs on June 18, 2001.

On August 20, 2001, the facilitator issued a 96-page final report on this workshop.[89] With respect to Checklist Item 2 (UNEs Generally, UNE-P and other combinations, and EEL), 22 general UNE issues were raised with one being deferred to a later workshop, three resolved in earlier workshop reports, fifteen resolved in this workshop, and only three remaining disputed issues on which the facilitator ruled. The first issue related to the CLEC position that Qwest should have an unlimited duty to construct new unbundled network elements (UNEs) for CLECs on demand. The facilitator correctly rejected that position, and no SGAT change was required. As to the other two issues, the facilitator found in Qwest's favor and proposed two SGAT changes that Qwest agreed to make. With respect to UNE-P and other combinations, all eighteen issues were resolved in the workshop and no issues were presented to the facilitator for a recommended decision. With respect to EELs, eight issues were presented, with three being resolved in the workshop and five issues being presented to the facilitator for

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[89] A copy of this report is provided as Attachment 30.

determination. On three of those issues, no SGAT changes were recommended by the facilitator. The facilitator recommended SGAT changes on two issues and Qwest agreed to implement the changes.

With respect to Checklist Item 4, addressing unbundled loops, NIDs and line splitting, the parties resolved 45 loop, NID and line splitting issues in the workshop, the facilitator determined that two line splitting issues had been decided in earlier workshops, and two additional loop issues were deferred to later workshops. Fourteen loop, NID and line splitting issues were the subject of proposed resolutions in the facilitator's report. For several of these issues, the facilitator proposed new SGAT language that would, if adopted, bring Qwest into compliance in his recommendation. On the remaining issues, the facilitator either concluded that the CLEC proposal was not well-founded, that existing SGAT language already addressed the issue adequately or that existing ROC standards were adequate. Qwest agreed to implement all of the facilitator's recommended SGAT language, and in its comments on the facilitator's report, presented its conforming SGAT language.

With respect to Checklist Item 5 (Unbundled Transport), nine total issues arose in the workshop. Three were resolved during the workshop, two were resolved in earlier workshops, and four were decided by the facilitator in this workshop report. One of these issues was resolved in Qwest's favor based on the resolution of the construction of UNEs issue referenced in Checklist Item 2 above. Another was deferred to the cost docket, as Qwest recommended. One required no SGAT change based on related earlier SGAT modifications to remove LIS Trunks from the definition of finished services. The last issue was resolved by an agreement that Qwest had already made in other jurisdictions.

As to Checklist Item 6 (Unbundled Switching), eleven issues arose in the workshops. Seven were resolved in the workshop and four issues were presented to the facilitator for a recommended decision. Three of these issues were resolved in Qwest's favor with no further action required by Qwest. The parties reached consensus on the last issue after the conclusion of the workshops and the issue was closed.

5 Group Five Workshop: General Terms and Conditions,[90] Section 272 Requirements, Public Interest and Track A Requirement.

Originally, General Terms and Conditions, Section 272, and Track A were included as part of other subject groupings. They were separated into a separate workshop because of the unexpected number of issues that required the facilitator's resolution. A separate workshop was held in Denver in early June 2001; the workshop was completed after another four-day session in late June 2001. Following testimony and briefing on the group five issues, the facilitator issued an 86-page final report on September 21, 2001 that addressed General Terms and Conditions, Section 272, and Track A.[91]

The facilitator recommended Qwest be found to meet each of the separate affiliate requirements established by Section 272.[92] Despite acknowledging this finding of current compliance and acknowledging Qwest's extensive efforts and controls in place regarding compliance with Section 272, the facilitator believed it was appropriate to "validat[e]" the effectiveness of these recent measures by recommending a process of independent third-party testing of its controls over accounting and billing for transactions between Qwest and QCC.[93] Qwest is complying with the facilitator's recommendation and the report from the third-party testing is due on November 15, 2001.

With respect to Track A, the facilitator determined that the evidence demonstrated that Qwest met all of the requirements of Track A in Iowa, Montana, North Dakota, Utah and Wyoming. The facilitator concluded that the record, as it pertained to the states of Idaho and New Mexico, was insufficient to conclude that facilities-based competitors were offering service to residential customers. The facilitator determined that the necessary showing only required Qwest to establish that "any residential service is being provided ."[94] As discussed briefly in the Track A section of this Petition, Qwest firmly believes the FCC has clearly

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[90] The phrase "General Terms and Conditions" refers to language contained in Qwest's proposed SGAT that is intended for incorporation into interconnection agreements based on that document. However, operation of satisfactory general terms and conditions is not a separate requirement of Section 271.

[91] A copy of this report is provided as Attachment 31.

[92] Attachment 31, p. 7.

[93] *Id.*, p. 54.

articulated that no facilities-based residential competition is required by Track A and that the undisputed evidence presented in the multi-state workshops establishes compliance with Track A in these two states. However, Qwest has supplemented the record in Idaho and New Mexico on that point and that isolated issue is now pending before those two state commissions. In South Dakota, the evidence of the existence of facilities-based competition for residential and business customers is beyond reasonable dispute.

The facilitator also issued a recommended decision on October 22, 2001, that addressed the Public Interest issue.[95] With respect to Public Interest, the facilitator determined that Qwest's entry into the interLATA long distance markets in each of the seven states would be consistent with the public interest if Qwest agreed to implement the recommended changes to the QPAP which the facilitator outlined in a separate report that came out earlier this week. The facilitator's recommended decision rejected intervenor arguments including reduction of UNE prices prior to section 271 approval, structural separation, allegations of prior Qwest improper conduct, and CLEC failures.

6. QPAP Workshops

The facilitator's detailed report on the QPAP came out only a few days ago, and this Petition will not attempt to address that report in detail. Qwest simply refers the Commission to that report, which is attached.[96]

D. This Commission Should Rely Heavily on the Results of the Seven-State Process in Fulfilling Its Duty To Make a Recommendation to the FCC.

The duty of this Commission under the 1996 Act is to assure itself that Qwest is in compliance with the various requirements of Sections 271 and 272. Its role is to make a recommendation to the FCC, once it has reasonably satisfied itself that Qwest has done what is required. In fulfilling this duty, this Commission need not reinvent the wheel on all of the

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[94] *Id.*, p. 80.
[95] A copy of this report is provided as Attachment 32.
[96] A copy of this report is provided as Attachment 33.

issues, but can and should rely heavily on substantial work that has been completed in the Seven-State Process. This Commission can rely upon the Seven-State Process because it has been rigorous in addressing the issues, has provided fundamental due process to all parties, has been conducted by an independent and highly competent expert in telecommunications and is based on an exhaustive record. Additionally, the Seven-State Process is comprised of states that are in many respects similarly situated to South Dakota. Qwest's competitors, who have a great interest in assuring the process is both fair and comprehensive, have fully participated at every stage of the Seven-State Process. The Seven-State Process and the decisions that have followed from it meet every test of reliability and should be given great weight by the South Dakota Commission.

This South Dakota filing comes after workshops have already been completed in twelve other states. Through the long collaborative process in seven states, and in the other states, Qwest believes that consensus has already been reached on virtually all possible issues. The benefits of those consensus changes have been incorporated into the attached affidavits and SGAT. Therefore, Qwest does not believe that there is any legitimate purpose to be served by conducting additional collaborative workshops in South Dakota.

VI. GRANT OF QWEST'S APPLICATION WILL SERVE THE PUBLIC INTEREST AND WILL PROMOTE COMPETITION IN BOTH THE LOCAL EXCHANGE AND INTEREXCHANGE MARKETS.

The FCC is required under Section 271 to determine whether interLATA entry "is consistent with the public interest, convenience, and necessity."[97] Qwest's provision of interLATA services in South Dakota satisfies this requirement. It follows that this Commission should support Qwest's application for relief under Section 271 because it would serve the public interest.

In FCC orders granting 271 relief outline the following three-step analysis for the Public interest requirement:

[97] 47 U.S.C. § 271(d)(3)(C).

- determination that the local markets are open to competition,[98]

- assurance of future compliance by the BOC,[99] and

- identification of any unusual circumstances in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to the public interest.[100]

First, Qwest's evidence establishes that the local markets are open to competition. In evaluating previously filed Section 271 applications, the FCC has emphasized that "compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest."[101] Complying with the competitive checklist requirements, which embody the critical elements of market entry under the Act, means that "barriers to competitive entry in the local market have been removed and [that] the local exchange market today is open to competition."[102] As the FCC points out, this approach reflects its many years of experience that has shown that consumer benefits flow from competitive telecommunications markets.[103] As demonstrated here, Qwest has satisfied the checklist in South Dakota. Additionally, the Teitzel and Toll Affidavits, Attachments 21 and 1, respectively, outline extensive evidence of competition in South Dakota which further evidences that the local markets are open to competition. The local market in South Dakota is open and local competition is thriving. And, as reflected in the experience of the post-relief BOCs in New York, Texas, Kansas, Oklahoma and Massachusetts, Qwest's entry into the long distance market in South Dakota will further promote local competition.

Second, Qwest's evidence provides adequate assurance that the local markets will remain open after Qwest receives FCC approval to provide in-region interLATA services.

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[98] *Bell Atlantic New York Order*, ¶ 427; *SBC Texas Order*, ¶ 416. *See also SBC Kansas/Oklahoma Order*, ¶ 268.

[99] *Bell Atlantic New York Order*, ¶ 422-¶ 423; *SBC Texas Order*, ¶ 416-¶ 417.

[100] *Bell Atlantic New York Order*, ¶ 423; *Verizon Massachusetts Order*, ¶ 233.

[101] *SBC Texas Order* ¶ 416.

[102] *Bell Atlantic New York Order*, ¶ 426; *SBC Texas Order*, ¶ 419.

[103] *Bell Atlantic New York Order*, ¶ 422; *SBC Texas Order*, ¶ 416.

Qwest's performance assurance plan (QPAP) and Section 271(d)(6) provide adequate assurance that the local markets will remain open.

Third, the FCC has explained that it "may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest."[104] The FCC has never found that such "unusual" circumstances exist that would dictate denial of a Section 271 application. The FCC has specifically identified several factors that CLECs have advanced that emphatically do *not* count as "unusual circumstances." These include: (1) the low percentage of total access lines served by CLECs, (2) the concentration of competition in densely populated urban areas, (3) minimal competition for residential service, (4) modest facilities-based investment, and (5) prices for local exchange service at maximum permissible levels under the price caps.[105] If the BOC has complied with the competitive checklist, it should not be punished if "[f]actors beyond [its] control, such as individual competitive LEC entry strategies," result in low CLEC customer volumes.[106] In particular, the FCC has rejected the suggestion that a low level of residential competition might justify a public interest denial of a Section 271 application no less than *five* times in the last two years.[107] Qwest asserts that no such "unusual" circumstances exist in the South Dakota market. On the contrary, Qwest's entry will enhance long distance competition. In each of the states where BOCs have secured relief under Section 271, the evidence is clear that BOC entry into long distance leads to lower prices and increased demand for long distance service.

A. Determination That Local Markets Are Open to Competition.

As addressed above, Qwest's compliance with the competitive checklist is itself a strong indicator that the local market is open. However, the robust competition in South Dakota is further evidence that the local markets are open to competition.

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[104] *SBC Texas Order* at ¶ 423.

[105] *Bell Atlantic New York Order* at ¶ 427.

[106] *Verizon Massachusetts Order* at ¶ 235; *SBC Kansas/Oklahoma Order* at ¶ 268; *Verizon Pennsylvania Order* at ¶ 126.

[107] *See Verizon Pennsylvania Order* at ¶ 126; *Verizon Massachusetts Order* at ¶ 235; *SBC Kansas/Oklahoma Order* at ¶ 268; *SBC Texas Order* at ¶ 419; *Bell Atlantic New York Order* at ¶ 426.

1. Competition has come to South Dakota.

Local markets in South Dakota are open and thriving. South Dakotans are benefiting from extensive competition from all types of competitors using all three entry modalities provided under the Act. Moreover, as post-entry developments in New York, Texas, Kansas, Oklahoma and Massachusetts make clear, Qwest's entry into the long-distance market will prompt still further *local* competition by stimulating the local-market activities of the established IXCs.

The fact that facilities-based competition is well-established in South Dakota is especially significant. The FCC has observed that "[t]he construction of new local exchange networks" benefits consumers because facilities-based carriers "can exercise greater control over their networks, thereby promoting the availability of new products that differentiate their services in terms of price and quality."[108]

2. The experience of post-grant states demonstrates that competition in South Dakota will only intensify following grant of Qwest's Petition.

Actual market experience in New York, where Verizon (formerly Bell Atlantic) has been permitted to provide interLATA long-distance service, demonstrates that competitive pressures result in increased consumer benefits. For example, as a result of Verizon's entry into the interLATA long-distance business a little more than a year ago, local and long-distance prices have declined significantly. In fact, recent surveys by the Telecommunications Research & Action Center (TRAC) – an independent consumer group that, among other things, compiles information about long distance rates – concluded that New Yorkers will save hundreds of millions of dollars annually on long-distance and local telephone service as a result of Verizon's entry into the interLATA market in New York. In September 2000, TRAC estimated the savings to consumers from additional competition in long-distance and local markets in New York to be somewhere between $112 million and $217 million. A May 2001 update of TRAC's estimates concludes that New York consumers are poised to reap a savings

[108] *UNE Remand Order* at ¶ 110.

of up to $700 million annually, savings TRAC attributes directly to additional competition stimulated by Verizon's entry into the interLATA long-distance market in that state.

The May 2001 study concludes that residential customers will save up to $284 million annually after switching long-distance companies and up to $416 million annually after switching local telephone companies. The study also concludes that the consumer electing to change long-distance service saved up to $13.94 per month and up to $12.83 per month by changing local service. Overall, the study predicts that competition in the long-distance and local markets will bring between $84 to $324 of savings annually for each New York telephone customer. The study also revealed that roughly 3 million New Yorkers now subscribe to carriers other than Verizon for local service and that about 1.7 million have switched to Verizon for long-distance service.

Based on New York TRAC observations, it is reasonable to predict that Qwest's reentry into the interLATA market will bring increased competitive intensity to the local and long-distance markets in South Dakota, resulting in savings for South Dakota consumers. Additionally, Dr. Jerry Hausman of MIT has independently developed a study, based on his assessment of competition in New York and Texas, that suggests South Dakota customers can save as much as $16.6 million a year when Qwest enters the interLATA market. Using Dr. Hausman's formula to calculate customer savings, Qwest calculates that the average South Dakota residential customer will save at least $88 per year in local and long-distance charges, while the average small business customer will save more than $46 per year.

In addition to these studies, the FCC recently issued its latest data on local telephone competition.[109] Not surprisingly, the states with Section 271 approval show the greatest competitive activity. Findings of note include:

- CLECs have captured 20 percent of the market in the state of New York. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year - an increase of over 130 percent from the time the FCC granted

[109] "Local Telephone Competition: Status as of December 31, 2000," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, May 2001 (www.fcc.gov/ccb/stats).

Bell Atlantic New York's Section 271 application in December 1999 to December 2000.[110]

- CLECs have captured 12 percent of the market in Texas, gaining over 500,000 end-user lines in the six months since the FCC granted SBC-Texas' Section 271 application – an increase of over 60 percent in customer lines since June 2000.[111]

The evolving South Dakota market, and the dynamic telecommunications marketplace in post-grant states, dramatize the benefits to the public that will result from permitting Qwest to provide in-region interLATA telecommunications services in South Dakota.

B. Local Markets in South Dakota Will Remain Open After Qwest Obtains Section 271 Approval.

In the earlier sections of this Petition, Qwest has described the host of things that Qwest has done and is doing that will demonstrate to the satisfaction of the South Dakota Commission and to the FCC that it has taken all the necessary steps to open its markets to competition and has met all of the requirements of section 271 to re-enter the in-region inter-LATA market.

Once it has been determined that Qwest has met the requirements to re-enter the interLATA market, the next issue that must be addressed relates to assurances of future compliance. The Affidavit of Mark Reynolds, Attachment 22, addresses the Qwest Performance Assurance Plan (QPAP), which will be briefly discussed below. An additional assurance of future compliance is the FCC's continuing enforcement authority under Section 271(d)(6), including imposition of penalties, suspension or revocation of Section 271 approval, and expedited complaint process.

1. The Qwest Performance Assurance Plan (QPAP) will assure that Qwest meets appropriate levels of performance after the FCC approves its Application for South Dakota.

The Affidavit of Mr. Reynolds demonstrates that the QPAP is a comprehensive self-executing performance measurement and enforcement mechanism offered as assurance that

[110] http://www.fcc.gov/Daily_Releases/Daily_Digest/2001/dd010521.html, visited May 23, 2001.

Qwest will continue to comply with its Section 271 obligations. The QPAP was modeled on the key structure elements of the SWBC-Texas plan approved by the FCC. It has been further enhanced through a collaborative process with CLECs operating in Qwest's region and eleven of the fourteen Qwest in-region states, including South Dakota.[112]

With its genesis in the FCC approved SWBC—Texas plan and with the ROC enhancements, the QPAP is robust and exceeds the FCC's expectations. To guide the analysis of a performance assurance plan, the FCC has identified five key characteristics of an acceptable plan:

1. Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards.

2. Clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance.

3. A reasonable structure that is designed to detect and sanction poor performance when it occurs.

4. A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.

5. Reasonable assurances that the reported data are accurate.[113]

Mr. Reynolds' Affidavit addresses in detail how each of the FCC's "five key characteristics" are embodied in the QPAP.

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[111] *Id.*

[112] The participating states included South Dakota, Idaho, Iowa, Nebraska, New Mexico, North Dakota, Montana, Oregon, Utah, Washington, and Wyoming. Two states, Arizona and Colorado, have initiated separate proceedings to consider Qwest's performance assurance plan.

[113] *See Bell Atlantic New York Order* ¶ 433.

a) **The potential Liability to Qwest under QPAP provides meaningful and significant incentive to meet the performance standards.**

A central feature of the QPAP is the potential for significant financial liability to Qwest if it fails to provide conforming performance. The potential financial liability in the QPAP thus creates a powerful incentive for Qwest to continue to perform after its application is approved by the FCC. In approving Bell Atlantic's New York application and SWBC applications in Texas, Oklahoma, and Kansas, the FCC determined that placing at risk 36 percent of the BOC's net return for the state was sufficient financial incentive. The FCC determined that this calculation represented a reasonable approximation of the profits derived from the provision of local exchange services.

Consistent with the states where 271 relief has been granted, in South Dakota, the QPAP places $15 million annually at risk—this amount also represents 36 percent of Qwest's 1999 South Dakota net return based upon ARMIS data.

The financial risk at this level is significant and, based on prior decisions of the FCC, is sufficient to meet the first prong of the criteria described above.

b) **The measures and standards of QPAP are clearly articulated and pre-determined. They encompass a broad range of carrier-to-carrier performance.**

The central elements of QPAP are the Performance Indicator Definitions (PIDs), which have been developed through many months of collaboration among Qwest, CLECs and state commission staff members involved in the ROC OSS collaborative process. These agreed-to measures (which are explained at length in the Affidavit of Mr. Williams) are a sub-set of the same measures that are being used to determine whether Qwest qualifies for 271 relief in the first instance; thus, they are the logical set of measures for assessing post-approval compliance.

There are two types of measurement standards. Where a wholesale service has a retail analogue, the measurement compares Qwest's service to its retail customers to the service provided to CLECs. Where there is no comparable retail service, a fixed benchmark is established. The standards were all established through the ROC OSS collaborative.

The QPAP contains a built-in review mechanism that provides for a review of the measurements every six months, during which interested parties may consider changes, additions and deletions to the performance measurements.[114]

The performance measures provide a comprehensive view of Qwest's performance. The performance measurements are categorized into seven functional areas:

1. Electronic Gateway Availability
2. Pre-Order/Orders
3. Ordering and Provisioning
4. Maintenance and Repair
5. Billing
6. Network Performance
7. Collocation

Each functional category may include sub-measurements that focus on sub-processes, different wholesale services, and several potential geographic possibilities.

c) The structure of the QPAP is designed to detect poor performance and to sanction it if it occurs.

While Qwest initially adopted the same payment structure for poor performance that was in the SWBT-Texas plan, substantial enhancements to that structure were later made as the result of the ROC workshops. The result is a plan that is clearly more than adequate to assure performance.

The QPAP statistical methodologies were adopted from the Texas plan and ensure a fair comparison of CLEC and Qwest performance data for measurements that use the parity

[114] The six month review process is described in Section 16 of the QPAP.

standard. At the request of CLECs in the ROC PEPP collaborative, Qwest agreed to replace the K table used in the Texas plan with a table of critical values.

There are several key elements of the payment structure in QPAP. The first of these is the distinction between Tier 1 and Tier 2 payments. As with the SWBT-Texas plan, Tier 1 payments are made to CLECs. Tier 2 operates at the aggregate CLEC level and provides for financial payments to the state. The level of financial compensation in Tier 1 and Tier 2 also depends on whether the specific PID has been weighted high, medium, or low.

In the event Qwest fails to meet either a benchmark or a parity standard, the QPAP contains clear methodologies to determine the level of Tier 1 and Tier 2 payments.

The payment tables in the plan are drawn directly from the Texas PAP. For example, payments for Tier 1 performance failures to conform range from $800 (high), to $600 (medium), to $400 (low) applied at the six-month level for each CLEC service unit that fails to meet performance standards. Furthermore, the additional $500 (high), $300 (medium), and $200 (low) per occurrence payments for Tier 2 measurements, along with the specified per measurement Tier 2 payments create a powerful financial incentive for Qwest to meet performance standards.

Qwest also modified the provision providing for the duration of escalating payments by including a "step down" function. This requires escalated payments to move to the beginning levels only after Qwest demonstrates consecutive months of conforming service, rather than reverting base levels after one month of conforming service.

Another significant change from the Texas plan that Qwest acceded to was the removal of payment caps relating to specific measurements. After input from CLECs, Qwest agreed to remove all caps, with the exception for the measurements relating to billing performance.

Finally, the payments for non-compliance with certain dates relating to collocation were changed to reflect a policy of escalating "per late day" payments, providing for higher payments for collocation performance.

d) **The self-executing mechanism in the QPAP minimize the potential for litigation and appeal.**

For both Tier 1 and Tier 2 payments, the QPAP is self-executing whenever Qwest fails to meet the performance standards set forth therein. Payments are made in the form of bill credits, and the CLECs have no burden to either prove or quantify any economic harm resulting from Qwest's failure to meet the performance standards. Likewise, Tier 2 payments will be automatic, and will be sent either to a state fund administered by the South Dakota Commission or to the South Dakota Treasury.[115]

The QPAP provides for limited circumstances under which Qwest is relieved from making Tier 1 and Tier 2 payments; however, Qwest has the burden of justifying such relief.

e) **The QPAP will assure that the reported data are accurate.**

The QPAP has built into it procedures for comprehensive data validation and auditing, including utilizing an independent auditor to perform a risk-based audit of the performance measurements. By the time the QPAP takes effect in South Dakota, the performance measurements will have undergone two comprehensive audits by two different auditors. Other facets of the plan are root cause analysis provisions, automatic investigation of consecutive Tier 2 and aggregate Tier 1 misses to determine countermeasures, and audits of the financial system that produces payments.

The QPAP is based on the Texas plan, which has been demonstrated to be a powerful tool to measure and assure compliance. The key statistical methodologies, the payment structure, and the payment tables were all taken from the FCC approved Texas plan, and modified through the ROC collaborative process to accommodate CLECs in Qwest's region. As outline above, the QPAP clearly satisfies the five key criteria established by the FCC for a post-entry performance plan. The South Dakota Commission can therefore provide a recommendation that the Qwest's South Dakota application is in the public's interest.

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[115] The calculation of the payments are governed by sections 8.0 and 9.0 of the QPAP.

C. The Performance Indicator Definitions (PIDs) Adopted by the ROC are a Comprehensive Set of Measurements that Accurately Measure Qwest's Performance. The Current Level of Performance Results Demonstrates that Qwest is Providing Every Element of the Checklist at an Acceptable Level of Quality.

The Affidavit of Mark S. Reynolds describes at length the QPAP and the integral role that Performance Indicator Definitions (PIDs) have in making QPAP a robust method of measuring and assuring Qwest's performance. The Affidavit of Michael G. Williams, Attachment 23, demonstrates that the PIDs are far more than theoretical measurements. In fact, they are in place and have been used to measure Qwest's performance for months.

1. Overview

In a series of prior 271 orders, the FCC has carefully identified the various burdens that Qwest must meet to re-enter the in-region interLATA market. Among these requirements is Qwest's burden to demonstrate that it has a "concrete legal obligation" to provide the elements of each checklist item.[116] The SGAT satisfies that requirement. Next, Qwest has the duty of showing that it is either furnishing or is able to furnish each item "in quantities that competitors may reasonably demand and at an acceptable level of quality."[117] To meet that requirement, Qwest tracks and reports its wholesale and retail performance through the use of PIDs.

The PIDs are the result of a collaborative process which has had wide CLEC participation. The current PIDs are the most comprehensive body of measurements developed to date and represent literally thousands of hours of effort. As such, they represent reliable objective evidence of Qwest's performance in providing wholesale services in a nondiscriminatory manner or in a manner that allows an efficient competitor a meaningful opportunity to compete.

The ROC PIDs address eleven of the fourteen checklist items (no PIDs were deemed necessary for three of the checklist items). The ROC adopted 54 specific PIDs covering these checklist items. They are comprehensive in nature. The PIDs are grouped into categories,

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[116] *Verizon Pennsylvania Order*, App. C ¶ 5.
[117] *Id.*

such as Ordering and Provisioning (OP) and Maintenance and Repair (MR). The PIDs include disaggregations for performance in high density ("Zone 1" or "within MSA") and low density ("Zone 2 or "outside MSA") areas. The PIDs also include disaggregations for installation and repair of different products, and differentiate between services that require the dispatch of a technician and those that do not. As a result, the 54 PIDs yield more than 800 different monthly measurements of performance for different products in distinct service areas. When multiplied by the number of occurrences reported, Qwest is recording millions of data points every month.

Performance reports are generated each month for each state and for the 14-state region. Each report covers the prior 12 months for the PIDs and their subcategories. While a broad range of items are measured, the bulk of the PIDs focus on installation and repair, the most critical issues to CLECs.

Qwest's reports are made in graphical form that allows the reader to determine easily whether Qwest is meeting a benchmark or whether parity exists between wholesale and retail services. If the standard for the particular PID is parity between wholesale and retail, the graph depicting the data shows two lines, one for wholesale performance and one for comparable retail performance. For benchmark standards, the benchmark is shown as a dotted line across the graph. Thus, the Commission will know at a glance whether wholesale performance meets or exceeds the performance standard in a given month.

In most cases, the reports give a clear picture of performance, particularly when the PID has a benchmark standard. But simple visual observation cannot tell the whole story when it comes to parity measurements—when retail performance looks better than wholesale, the Commission must look further. The standard, of course, for a parity measure is whether Qwest is providing wholesale and retail services in "substantially the same time and manner." In the ROC workshops, the participants agreed to some statistical methods that will be used to determine whether the "substantially the same" standard is being met. The fundamental purpose is to determine whether variations between retail and wholesale, even though different, are statistically significant. If the difference between retail and wholesale performance is not statistically significant, Qwest has met the parity performance standard.

To assure the ongoing validity of the performance measurement process, the ROC hired The Liberty Consulting Group (Liberty) to audit Qwest's performance results. As to each PID, Liberty did the following:

- Examined Qwest's data collection systems to ensure that Qwest was accurately capturing, calculating, and reporting performance results.
- Conducted an end-to-end analysis of sample data sets to verify that the data collection systems worked as designed.
- Independently calculated performance results to corroborate Qwest's results.

On September 25, 2001, in its final report, Liberty concluded that "the audited performance measures accurately and reliably report actual Qwest performance."[118] Thus, based on a reliable independent analysis, the PIDs are both accurate and reliable. As such, they should be relied upon by the South Dakota Commission.

This leaves only the final question of whether Qwest's performance is adequate to satisfy each checklist item.

2. In the 14-state Region and in South Dakota, Wholesale Volumes are Increasing Dramatically.

Mr. Williams' Affidavit contains data from both the 14-state region and from South Dakota that demonstrate that demand by CLECs for wholesale services has increased dramatically in the past year. Between August 31, 2000 and August 31, 2001, the following increases in wholesale demand occurred region-wide:

- The number of interconnection agreements with CLECs increased from 1,024 to 1,208.

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118 *See* Attachment 23, Affidavit of Michael G. Williams, Exhibit MGW-PERF-2 (Final Report on the Audit of Qwest's Performance Measures ("Liberty Report") at 2-3).

* CLECs have more than 867,436 interconnection trunks in service today, up 43 percent from one year ago.

* The number of collocations grew from 2,631 to 3,318, a 26 percent increase.

* Unbundled loops in service more than doubled, from 121,954 to more than 264,802. A year ago, 45 CLECs had unbundled loops in service; as of August 31, 2001 there are 64 CLECs.

* The number of UNE-P facilities in service grew from 613 to 460,473 due to the introduction of UNE-P Star services.

* Line sharing was virtually nonexistent a year ago. As of August 31, there are 858 collocation augments in place specifically designed to support line sharing, from which CLECs had placed 7,827 line shared loops in service.

* Directory assistance trunks in service grew from 225 to 549.

* White pages listings for CLEC customers nearly doubled, from 529,554 to 998,338.

* Cumulative numbers ported increased from 1,125,885 to 2,061,038, an 83 percent increase.

* The number of active resellers increased from 102 to 123.

* More than 7.29 billion minutes of calls were exchanged between Qwest and CLEC customers in June 2001, up from 5.49 billion minutes in June 2000.

The growth in CLEC activity in South Dakota has been comparable over the past twelve months:

* Interconnection trunks increased 53% from 4,619 to 7,049.

* The number of CLECs with unbundled loops in service increased from 1 to 6, and the number of unbundled loops in service more than doubled, from 585 loops in August 2000 to 1,392 in August 2001.

* White page listings for CLECs increased 67 percent from 27,649 to 46,299.

* The total of numbers ported increased from 6,328 to 22,678, an increase of over 300 percent in one year's time.

- Twice as many resellers provide service in South Dakota today than one year ago.

- Lastly, minutes of calls exchanged increased 40 percent from 44.6 million minutes in August 2000 to 62.7 million minutes at the end of August 2001

Two things should be obvious from this information: the level of CLEC activity is increasing in dramatic fashion, and the PIDs provide a means of measuring important aspects of this increasing wholesale activity.

3. Qwest's Wholesale Performance in South Dakota Meets 271 Objectives.

As noted above, the raw numbers have increased dramatically. But, as Mr. Williams points out, Qwest's performance in provisioning and maintaining these services "has been outstanding." The performance results demonstrate the Qwest is meeting its duty to provide parity between wholesale and retail services and is providing efficient South Dakota CLECs "with a meaningful opportunity to compete." In his Affidavit and Exhibits, Mr. Williams provides comprehensive information as to the specific measurements. A few specific examples are instructive of the high level of Qwest performance.[119] In some instances, there is not enough volume from South Dakota to be statistically significant. In those cases, Mr. Williams presents regional data.

Interconnection. Based on regional data, Qwest met 90 percent of installation commitments for interconnection trunks, compared to 91 percent for Feature Group D, the retail alternative. Over the recent reporting period, Qwest improved the rate of clearing trouble reports on interconnection trunks within four hours,—from 76 percent in May to 88 percent in August. Its wholesale performance was in parity with retail. Blockage on CLEC trunks was well below the on percent ROC benchmark.

Collocation. No collocation activity has occurred in South Dakota under the new collocation intervals. However, on a regional basis, Qwest has met the 90, 120, and 150-day installation benchmarks for collocation. In August, Qwest met the 10 day benchmark for

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[119] The data presented by Mr. Williams regarding South Dakota and regional performance focuses on the recent four month period from May through August 2001.

feasibility studies, averaging 8.85 days. The Average over the past four months was 10.24 days, very close to the benchmark.

UNE-P. On a regional basis, Qwest met 98.12 percent of its UNE-P (the unbundled network platform) installation commitments—the average installation interval was about two days. These results are in parity with retail performance in all months but June. When out of service trouble reports were received on UNE-P, Qwest resolved 94-95 percent of them within 24 hours. The mean time for restoration of wholesale service was better than analogous retail performance.

Loops. Over 90 percent of the CLEC loops provided by Qwest are either analog or 2-wire non-loaded loops. In the past four months, Qwest generally has met the ROC performance standards for such loops. Regionally, Qwest provisioned over 97 percent of all analog loops on time (the benchmark is 90 percent). The average intervals were only slightly above the six day benchmark (6.4 in zone 1 and 6.1 in zone 2). For 2-wire loaded loops, over 95 percent were provisioned on time. The intervals were approximately five days. In the past three months, 98 percent of analog loop coordinated cutovers were handled on time (the benchmark is 95 percent). The overall trouble report rate on unbundled analog loops has been extremely low—at or below 1.6 percent.

Resale. The vast majority of resale orders are provisioned without the need to dispatch a technician. In South Dakota, Qwest has met over 99 percent of CLEC residential resale installation commitments, over 98 percent of business commitments, nearly 95 percent of Centrex commitments, and 100 percent of Centrex 21 commitments. With respect to maintenance and repair in South Dakota, there was not a single significant disparity between Qwest's retail and wholesale performance.

While the foregoing are among the most important measurements, the monthly reports contain discrete data on innumerable other measurable items.

4. Summary

The foregoing, along with the far more detailed information contained in Mr. Williams' Affidavit and Exhibits, and the even more detailed monthly PIDs reports, establish conclusively that Qwest is meeting requirements of Section 271. All of the specific PIDs, as well as the underlying systems that gather and report the data, have been audited. Therefore, the South Dakota Commission may confidently rely on the QPAP, the PIDs, and Qwest's performance reports. The high quality of Qwest's performance data, and the activity reported, show that competition is robust in the local exchange market. CLECs not only have a meaningful opportunity to compete where and when they choose, they are taking advantage of that opportunity. Qwest's ongoing reporting of performance data will help ensure that the local exchange market remains open to competition.

Prayer for Relief

Qwest requests this Commission to recommend to the FCC that Qwest be granted authority to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) originating in the State of South Dakota. Specifically Qwest requests that this Commission find, based upon the record presented herein, that Qwest has met the competitive checklist and other requirements of Section 271, and that it provide a favorable recommendation to the FCC.

Dated this 25th day of October, 2001.

RESPECTFULLY SUBMITTED,

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