

QSI

contract

issues list

10/25/01 - Filed and Docketed;  
11/01/01 - Weekly Filings;  
11/07/01 - Petition for Leave to Intervene (Black Hills FiberCom);  
11/09/01 - Petition to Intervene (Midcontinent Communications);  
11/15/01 - AT&T's Petition for Leave to Intervene;  
11/28/01 - Notice of Filing Report of Independent Auditor;  
12/03/01 - Qwest's September 2001 Performance Data for South Dakota as Reported under the ROC Created Performance Metrics;  
12/05/01 - Order Granting Intervention;  
12/07/01 - Qwest's Report on the Status of Change Management Process Redesign;  
12/07/01 - Qwest's Proposed Procedural Schedule;  
12/07/01 - AT&T's Proposed Procedural Schedule;  
12/07/01 - Midcontinent's Proposed Procedural Schedule;  
12/07/01 - Joinder in AT&T's Proposed Procedural Schedule (Black Hills FiberCom);  
12/12/01 - Qwest's Response to Procedural Schedule Comments of AT&T and Black Hills FiberCom;  
12/12/01 - Motion for Admission of Non-Resident Attorney (John L. Munn);  
12/12/01 - Order Admitting Non-Resident Attorney (John L. Munn);  
12/18/01 - Order for and Notice of Procedural Schedule and Hearing;  
12/21/01 - Qwest Submission of Supplemental KPMG Declaration;  
01/07/02 - Qwest's October 2001 Performance Data as Reported under the ROC Created Performance Metrics;  
01/17/02 - Contract between QSI Consulting and SDPUC;  
01/18/02 - Section 271 Issues List (Staff);  
01/18/02 - Midcontinent's Comments to Docket TC01-165;  
01/18/02 - AT&T's List of Disputed Issues;  
01/18/02 - Statement of Issues (Black Hills FiberCom)  
02/07/02 - Response to Staff Data Request;  
02/20/02 - Transcript of Prehearing Conference held 2/7/02;  
03/05/02 - Black Hills' Motion for Order Denying Petition;  
03/05/02 - Brief in Support of Black Hills' Motion for Order Denying Petition;  
03/06/02 - Notice of Filing Motion to Remove Document from Commission Record;  
03/06/02 - Motion to Remove Document from Commission Record;  
03/07/02 - Motion for Definition of Track A Analysis;  
03/07/02 - Brief in Support of Motion for Definition of Track A Analysis;  
03/11/02 - Motion to Suspend Procedural Schedule or Supplement Prefiled Testimony;  
03/13/02 - AT&T's Joinder on Midcontinent's Motion to Suspend Procedural Schedule and Request for Expedited Decision;  
03/13/02 - Qwest's Performance Data;  
03/18/02 - Direct Testimony of Mark L. Stacy;  
03/18/02 - Direct Testimony of Marlon Griffing, Ph.D.;  
03/18/02 - Prefiled Testimony of W. Tom Simmons;  
03/19/02 - Direct Testimony of Kyle D. White;  
03/19/02 - Direct Testimony of Ronald Schaible;  
03/19/02 - Direct Testimony of Michelle Merchen;  
03/19/02 - Direct Testimony of Jheri Turner;  
03/19/02 - Affidavit of Michael Hydock;  
03/19/02 - Four Affidavits of Kenneth L. Wilson;  
03/19/02 - Four AT&T Verified Comments;  
03/19/02 - John Finnegan's Verified Comments;  
03/19/02 - AT&T's Comments;  
03/19/02 - Verification of Kenneth L. Wilson;  
03/19/02 - Certificate of Service;  
03/20/02 - Order Granting Motion and Denying Motion;  
03/22/02 - Brief in Response to the Motions filed by Black Hills FiberCom

CONTRACT BETWEEN  
QSI CONSULTING  
AND  
THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

This Contract is entered into this 3<sup>rd</sup> day of January, 2002, between the South Dakota Public Utilities Commission (Commission) and QSI Consulting, PCB 301, 901 Missouri Blvd, Jefferson City, Missouri, 65109-1759, Michael Starkey, President. The terms and conditions are as follows:

1. Scope of Services: Contractor agrees to provide consulting services to the Staff of the Commission Staff in the following Commission Docket: TC01-165 - In the Matter of the Analysis of Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996.

Contractor agrees to assist Staff in the preparation and presentation of testimony on behalf of Staff in the above-referenced docket including: at hearings before the Commission, and in the preparation of motions and briefs before the Commission. Contractor, through its witness or witnesses, shall be responsible for: review of Qwest's testimony, review of intervenor's testimony, and other matters necessary to complete the analysis, preparation, filing, and presentation of testimony, cross-examination, and exhibits.

Contractor shall also be prepared to respond at hearings and during briefing to intervenors' submissions, if any, which address the issues which are the responsibility of the Contractor. Contractor shall be responsible for the preparation, filing, and presentation of testimony and exhibits as directed by Staff, preparation of post-hearing reports or briefs, and other issues delegated to Contractor by Commission Staff. Contractor shall provide general assistance on the filing when requested to do so by Commission Staff.

The scope and tasks to be performed shall be consistent with Contractor's proposal dated December 14, 2001, to Commission Staff. Contractor agrees to coordinate its filing with Staff and as directed by Staff, shall consult Staff on requests for Qwest data and other submissions or requests to intervenors. Contractor agrees to complete all tasks and filings within time frames as determined by Commission Staff.

It is understood and agreed that the role of Commission Staff,

and in turn the role of the Contractor, shall be to advocate the public interest as Commission Staff views that public interest.

2 Maximum Reimbursement: The Commission agrees to reimburse the Contractor for satisfactory completion of Contractor's services in an amount not to exceed Thirty-Five thousand one hundred ten dollars (\$35,110.00). Services shall be paid for on the basis of time actually spent working on the case and for actual out-of-pocket costs at rates consistent with Contractor's proposal to Commission Staff dated December 14, 2001, which is incorporated by reference into this document.

If the Contractor desires to increase the maximum reimbursement under this paragraph, Contractor must notify the South Dakota Public Utilities Commission Executive Director in writing not less than thirty (30) days before monthly billings reach the maximum reimbursement. The Commission reserves the right to deny any request for an increase and may hold the Contractor to the maximum reimbursement in the original contract or amendment.

3 Reimbursement: The Commission agrees to reimburse the Contractor upon satisfactory progress toward completion of the tasks outlined in Paragraph 1 of this Contract. Payment up to the amount specified in the Maximum Reimbursement paragraph herein shall be made in monthly installments and shall be based on the monthly financial report as described herein. A copy of the Contractor's hourly fee schedule is appended to this Contract as Exhibit A, which is hereby incorporated herein and will remain effective throughout the term of this Contract.

A monthly financial report shall be submitted by the Contractor which shall include the nature of the work performed, the hours worked by and charges for Contractor's out-of-pocket expenses. Receipts for such expenses shall be available to the Commission upon request. This information is for the express purpose of internal auditing by the Commission. When requesting payment, the time period or phase of service covered will be indicated on the face of the voucher.

The Contractor may receive progress payments not more frequently than monthly. Progress payments shall be based on services rendered and no payment may be made in advance of services rendered. It is agreed that the Commission shall withhold ten percent of each progress payment until the satisfactory completion of the contract. Invoices for services rendered shall be sent to

The South Dakota Public Utilities Commission, Finance Officer, State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501, within ten (10) days of the calendar month billed.

Payment to the Contractor shall be made to QSI Consulting, ATTN: Michael Starkey, President, PMB 301, 901 Missouri Blvd., Jefferson City, MO 65101-1759.

4. Consideration: The consideration to be paid the Contractor as provided herein shall be in compensation for all Contractor's services incurred in the performance hereof.

5. Change in Scope of Services: If the scope of services under this Contract is modified to require additional work not herein contemplated and such modification is approved by the parties herein prior to performance and a written amendment to this Contract is drawn identifying the approved changes, an authorization of additional funds will be made by the Commission and the maximum amount will be appropriately increased.

6. Indemnity: The Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Contract.

7. Independent Contractor: The Contractor and the agents of the Contractor in performance of this Contract shall act in an independent capacity and not as officers, employees or agents of the Commission.

8. Contract Not Assignable: This Contract is not assignable by the Contractor, either in whole or in part, without the written consent of the Commission.

9. Alteration and Oral Agreements: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein may be binding on any of the parties hereto.

10. Interpretation of Inconsistencies: In the interpretation of

This Contract, any inconsistencies between the terms hereof and the amendments shall be resolved in favor of the terms hereof.

11. Subcontracts: Contractor shall submit any subcontracts which he proposes to enter into to the Commission for its prior written approval before the Contractor enters into the same. No work may be subcontracted without the prior approval of the Commission. Upon the termination of any subcontract, the Commission shall be notified immediately.

12. Retention of Contractor's Records: The Contractor shall retain all records relating to direct expenses reimbursed to the Contractor hereunder and to hours of employment on this Contract by any employee of Contractor for which the Commission is billed. Such records shall be maintained for a period of three years after termination of this Contract and shall be available for inspection at any reasonable time by personnel authorized therefor by the State of South Dakota.

13. Relationship of Commission Staff and Contractor: Commission staff will be permitted to work side-by-side with Contractor's staff to the extent and under conditions that may be directed by the Executive Director of the Commission.

14. Contractor Responsible for Performance of Services: Contractor will not be permitted to utilize Commission personnel for the performance of services which are the responsibility of Contractor, unless such utilization is previously agreed to in writing by the Executive Director and any appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing coordinating or monitoring functions.

15. Disclosure and Confidentiality: The Contractor will not disclose data or disseminate the contents of any final or preliminary report or testimony, in any form, in regard to this Contract without express written consent of the Commission. Permission to disclose information on one occasion shall not authorize Contractor to further disclose such information or disseminate the same on any other occasion.

If requested by the Commission, the Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by the Commission and shall supply the Commission with evidence thereof.

Each subcontract shall contain provisions similar to the foregoing, related to the confidentiality of data and non-disclosure of the same.

14. Data is Property of the Commission: Data developed for this Contract shall become the property of the Commission. It shall not be disclosed without the permission of the Executive Director. Each final report submitted shall also become the property of the Commission and shall not be disclosed except in such manner and time as the Executive Director may direct.

17. Amendment: The timing for the performance of the tasks and items contained herein, the total contract price, the date for completion of the Contract, as well as, all other terms not specifically accepted may only be altered by formal written amendment of this Contract.

18. Waiver: No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce, at any time any of the provisions of the Contract shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Contract or any part thereof, or the right of the Commission to hereinafter enforce each and every such provision.

19. Time is Critical: Time is of the essence in this Contract. In the event Contractor shall fail to perform the agreements on its part to be performed at the time fixed for performance of such respective agreements by the terms of this Contract or by any extension, the Commission may, at its election, terminate the Contract. Such termination shall be in addition to and not in lieu of any other legal remedies provided by this Contract or by law.

20. Breach of Contract: In the event of any breach of this Contract, the Commission may, without any prejudice to any of its other legal remedies, terminate this Contract in accordance with the provisions of the Termination paragraph of this Contract.

21. Duration of Contract: Unless otherwise specifically provided by the terms of this Contract or by amendment thereof, the duration of this Contract shall be one year from the contract date.

22. Termination: The Commission may terminate this Contract, should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided, upon five days written notice to the Contractor. In such event, the Commission shall pay the Contractor only the reasonable value of the services theretofore rendered by the Contractor as may be agreed upon by the parties or determined by a court of law. In the event of such termination, the Commission may proceed with the work in any manner deemed proper by the Commission. The Commission's cost of securing substituted performance shall be deducted from any sum due the Contractor under this Contract, with the balance, if any, to be paid the Contractor upon demand.

23. Payments Include All Taxes: Payments to be made to the Contractor, as specified herein, shall include all taxes of any description, federal, state and municipal assessed against the Contractor by reason of this Contract.

24. Workers' Compensation Insurance: The Contractor hereby warrants that it carries workers' compensation insurance for all of its employees who will be engaged in the performance of this Contract and agrees to furnish to the Commission satisfactory evidence thereof at any time the Commission may request.

25. South Dakota Law Controlling: It is expressly understood and agreed that this Contract shall be governed by the laws of the State of South Dakota, both as to interpretation and performance. Otherwise, as specified herein, no document or communications passing between the parties hereto shall be deemed a part of this Contract.

APPROVED AS TO FORM:



Kelly D. Frazier, Special Assistant Attorney General

DATE 4/17/02



COMMISSION:

Debra K. Eofson 1-7-02

Debra K. Eofson,

DATE

Executive Director who, pursuant to SDCL 49-1-8.2 has been authorized to sign this contract on behalf of the South Dakota Public Utilities Commission.

CONTRACTOR:

By: Michael Stankewicz  
OSI Consulting Michael Stankewicz

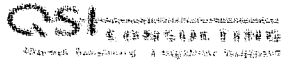
1/3/02  
DATE

Its President, OSI  
(Title)

# CONTINUATION

# ~~[REDACTED]~~ |

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**Cost Proposal in Response to Request of Debra Elofson - Executive Director, South Dakota PUC**  
**QSI Proposed Detailed Work Plan for Section 271**

	PROJECT MANAGER			TEAM			Total Estimated Work-Hours Per Functional Work Step Area
	TEA	TEA	TEA	TEA	TEA	TEA	
Quoted Hourly Rate	\$ 110	\$ 110	\$ 110	\$ 110	\$ 110	\$ 110	
<b>REVIEW AND PREPARATION</b>							
1 Review intervenor testimony	10		10			5	25
2 Review Qwest testimony	20		20			5	45
3 Prepare cross-examination questions and testimony for hearing	20		20			5	45
<b>HEARING</b>							
4 Attend hearing in Pierre - present testimony, assist Staff attorney in cross-examination.	25		25			8	58
<b>POST-HEARING</b>							
5 Prepare post-hearing report or brief.	20		20			5	45
<b>PROJECT TOTAL HOURS</b>	<b>95</b>		<b>95</b>			<b>28</b>	<b>218</b>
<b>TOTAL PERSONNEL EXPENSES</b>	<b>\$ 14,250</b>		<b>\$ 14,250</b>			<b>\$ 4,200</b>	<b>\$ 32,700</b>
<b>TOTAL TRAVEL EXPENSES</b>	<b>\$ 880</b>		<b>\$ 880</b>			<b>\$ 650</b>	<b>\$ 2,410</b>
<b>PROJECT TOTALS</b>	<b>\$ 15,130</b>		<b>\$ 15,130</b>			<b>\$ 4,850</b>	<b>\$ 35,110</b>

\* If the South Dakota PUC elects to hold hearings on the OSS test report, and requires assistance from QSI in that matter, these estimates would likely increase somewhat.

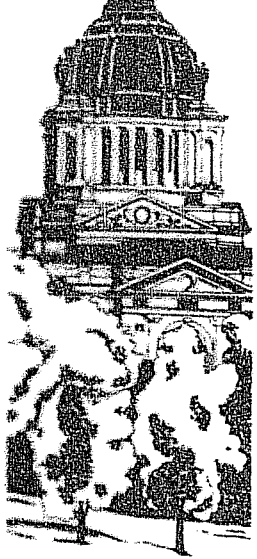
# CONTINUATION

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South Dakota  
Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet Website  
[www.state.sd.us/puc/](http://www.state.sd.us/puc/)

♦  
Jim Burg  
Chairman  
Pam Nelson  
Vice-Chairman

Debra Elofson  
Executive Director

Harlan Best  
Martin C. Bettmann  
Sue Cichos  
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Charlene Lund  
Gregory A. Rislov  
Keith Senger  
Rosalyn Ailts Wiest  
♦

January 18, 2002

Debra Elofson  
Executive Director  
Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

RE: In the Matter of the Analysis of Qwest Corporation's Compliance with  
Section 271(c) of the Telecommunications Act of 1996  
TC01-165

Dear Ms. Elofson:

Pursuant to the Commission's Order for and Notice of Procedural Schedule and Hearing dated December 18, 2001, Commission Staff submits for filing its Section 271 Issues List. It should be noted that the "Synopsis of Issue" column is not to be considered the entire rendition of Staff's dispute with the issue but merely an abstract of its dispute.

If you have any questions, please do not hesitate to contact me

Sincerely,

Karen E. Cremer  
Staff Attorney

cc: Interested Parties

Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS OF ) SECTION 271 ISSUES LIST  
QWEST CORPORATION'S COMPLIANCE )  
WITH SECTION 271(c) OF THE ) TC01-163  
TELECOMMUNICATIONS ACT OF 1996 )

Dated at Pierre, South Dakota, this 18th day of January, 2002



Karen E. Cremer  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Liberty Issue #	Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
1	1	27	Access to Poles, Ducts, Conduits and Rights of Way	3	Access to Landowner Agreements	CLECs should be given an option of their own to obviate the need for prior landowner consent to secure access to the agreements
2	1	27	Access to Poles, Ducts, Conduits and Rights of Way	3	Curing CLEC Breaches	The obligation for CLECs to secure such protections from landowners should be eliminated
3	1	27	Access to Poles, Ducts, Conduits and Rights of Way	3	Large-Request Response Times	Qwest should not have different cases where can be removed of the all-day charges governing orders for such items as pole access, but should be able to secure relief on a case-by-case basis
4	1	27	White Pages Directory Listings	8	Adding the Term Contractor to Section 10.4.2.26:	Qwest should contract with a non-affiliate to publish directories, that contractor should have the same obligations as Qwest or its affiliates with respect to customer guide pages
5	1	27	White Pages Directory Listings	8	Parity of treatment for CLEC listings	Qwest must demonstrate it has incorporated changes that it agreed to make in response to findings from the RUC Performance Measure audit, which found that there are differences in treatment of CLEC and Qwest usage updates. The RUC O&S Test includes two Performance Measures (O&S-1 and O&S-2) that address parity between CLEC and Qwest customers in the areas of listing accuracy and reliability. If Qwest passes these tests on the test, it will have demonstrated compliance
6	2	28	Common Issues	1,11,13 14	1) Lack of Available Facilities	Collocation delays due to lack of Qwest facilities, particularly DC power
7	2	28	Common Issues	1,11,13 14	2) The Need for A "Real World" Test of Qwest's Performance	AT&T Agreement should not be granted without a period where real world results prove up Qwest's performance
8	2	28	Interconnection	1	1) Indemnification For Failure to Meet Performance Standards	Indemnification of CLECs if Qwest fails to provide interconnection as stated in 271.11 to the CLEC as described in that section
9	2	28	Interconnection	1	2) Entrance Facilities as Interconnection Points	Whether or not CLECs can use a portion of facilities they use for interstate traffic for interconnection as described in the 1995 Act
10	2	28	Interconnection	1	3) EICT Charges for Interconnection Through Collocation	Whether Qwest can charge for EICT or in other words the Interconnection Fee Pay (IFP) rate element
11	2	28	Interconnection	1	4) Mid-Span Meet POs	Whether Mid-Span Meet POs can be used by the CLEC to access LIRs
12	2	28	Interconnection	1	5) Routing of Qwest One-Way Trunks	CLEC control over routing of Qwest traffic from Qwest's One-Way Trunk when AT&T has a One-Way Trunk

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
13	2	28	Interconnection	1	6) Direct Trunked Transport in Excess of 50 Miles in Length	Whether to construct facilities at the mid-point span if Direct Trunked Transport is greater than 50 miles in length.
14	2	28	Interconnection	1	7) Multi-Frequency Trunking	Whether CLECs can request MF trunking only where there are Qwest switches without SS7 capability but also where it cannot be provided over multiple routes.
15	2	28	Interconnection	1	8) Obligation to Build to Forecast Levels	Whether Qwest can build to the lower forecast pending resolutions of disagreements between a Qwest and CLEC forecast.
16	2	28	Interconnection	1	9) Interconnection at Qwest Access Tandem Switches	7 2 2 0 6- Whether CLECs can interconnect at access tandem switches, and if so, under what circumstances. 7 1 1. Also whether a CLEC can interconnect between Qwest local and access tandems or Qwest access tandems.
17	2	28	Interconnection	1	10) Inclusion of IP Telephony as Switched Access in the SGAT	Whether references to Internet Protocol (IP) Telephony as switched access traffic has been removed from SGAT.
18	2	28	Interconnection	1	11) Charges for Providing Billing Records	Whether to allow Qwest to charge CLECs for providing billing records.
19	2	28	Interconnection	1	12) Combining Traffic Types on the Same Trunk Group	Whether Qwest's restriction that EAS/Local traffic should not be combined with Switched Access exclusive of Jantly Provided Switched Access in 7 2 2 0 3 2 is valid.
20	2	28	Collocation	1	1) "Product" Approach to Collocation	Whether or not Qwest has placed unreasonable terms, conditions, or limits on the availability of collocation. CLECs must use BFR process for new products.
21	2	28	Collocation	1	2) Adjacent Collocation Availability	Whether the adjacent collocation option should not be limited to situations where space has been exhausted.
22	2	28	Collocation	1	3) Precluding Virtual Collocation at Remote and Adjacent Premises	Whether virtual collocation should be allowed at remote and adjacent premises, not just physical collocation.
23	2	28	Collocation	1	4) Cross Connections at Multi-Tenant Environments	Identification of reasonable limits and protections on CLEC access to Qwest equipment located at multi-tenant locations.
24	2	28	Collocation	1	5) Listing of Space-Exhausted Facilities	What Qwest is required to list on its website regards to which of its "premises" are full as required by FCC Rule 51.321(h).
25	2	28	Collocation	1	6) ICB Pricing for Adjacent and Remote Collocation	Whether Adjacent and Remote collocation should be done on an ICB basis.
26	2	28	Collocation	1	7) Conversion of Collocation Type - Payment of Costs	Whether ICB pricing for collocation-type conversions should be eliminated and whether payment for the elimination of SPOT frames should be eliminated.
27	2	28	Collocation	1	8) Recovery of Qwest Training Costs	Whether Section 6 2 2 7, which allows Qwest to recover the costs of training its employees for installing, maintaining, and repairing virtually collocated equipment, should be stricken.



Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
28	2	28	Collocation	1	9) Removal of Equipment Causing Safety Hazards	Whether Qwest's conditions in Section 8 2 3 10 for the removal or correction of non-compliant equipment problems after Qwest inspections of physical collocation are appropriate
29	2	28	Collocation	1	10) Channel Regeneration Charges	Whether channel regeneration charges are legitimate, and if so, under what circumstances
30	2	28	Collocation	1	11) Qwest Training Costs for Virtually Collocated Equipment	Whether the costs for training Qwest personnel for CLEC virtually collocated equipment should not be reduced or shared on a pro-rata basis for the number of same type units for each CLEC involved
31	2	28	Collocation	1	12) Requiring SGAT Execution Before Collocation May Be Ordered	Whether the requirements of 8 4 1 1 will preclude a CLEC from simultaneously establishing collocation arrangements if it has paid collocation-related charges. 8 4 1 1 requests a CLEC to provide Qwest with an Implementation Schedule first
32	2	28	Collocation	1	13) Forfeiture of Collocation Space Reservation Fees	Whether Section 8 4 1 7 4 requiring the forfeiture of nonrecurring collocation space reservation fees should be eliminated
33	2	28	Collocation	1	14) Collocation Intervals (General Objection Testimony)	Whether a variety of collocation intervals in the SGAT are appropriate
34	2	28	Collocation	1	15) Maximum Order Numbers	Whether Qwest must adhere to the 3-order maximum for obtaining the provided intervals in 8 4 3 3 for ordering capped and uncapped physical collocation
35	2	28	Local Number Portability	11	1) Number Porting	Qwest's ability and willingness to port numbers
36	2	28	Local Number Portability	11	1) Coordinating LNP and Loop Cutovers	Ability of Qwest to do a loop cutover and port customer number when the CLEC provides its own loop, and whether Qwest must provide a coordinated and not just managed cut
37	2	28	Reciprocal Compensation	13	1) Excluding ISP Traffic from Reciprocal Compensation	Whether reciprocal compensation should be paid to carriers for ISP traffic
38	2	28	Reciprocal Compensation	13	2) Qwest's Host-Remote Transport Charge	Whether reciprocal compensation is due to Qwest from a CLEC for traffic between a Qwest host switch and Qwest remote office, and if so, if reciprocal compensation is due to traffic between nodes on a CLEC SONET ring
39	2	28	Reciprocal Compensation	13	3) Commingling of InterLATA and Local Traffic on the Same Trunk Groups	Some parties said that certain spare special access circuits are being used for interconnection service, and therefore the Telecommunications Act requires that these circuits be priced at TELRIC prices
40	3	29	Line Sharing	2	1) Ownership of and Access to Splitters	Whether Qwest has the obligation to own splitters and make them available to CLECs on a line-at-a-time basis, and whether they should own and maintain them at the option of CLECs

## South Dakota PUC - Section 271 Issues List

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
41	3	29	Line Sharing	2	2) Tying Qwest Data Service and Voice Service	Whether Qwest's policy of discontinuing megabit service to customers who choose voice service from AT&T is against the public interest standard
42	3	29	Line Sharing	2	3) Line Sharing Over Fiber Loops	CLECs contend that line sharing over fiber loops is feasible in some situations. Qwest argues that line sharing is only feasible on copper loops
43	3	29	Line Sharing	2	4) Provisioning Interval	Whether the 5-day interval for Qwest provisioning line sharing to the CLEC is or is not appropriate because 1) provisioning should be determinative with Qwest's delivery of DSL or 2) it allows CLECs to provision DSL to its customers in the 10 day period if Qwest delivers to its own customers
44	3	29	Subloop Unbundling	2	1) Subloop Access at MTE Terminals	Whether the MTD is a demarcation point and thus collocation relevant to CLEC accessing MTE terminal, or if MTD is not demarcation point and collocation standards not relevant to CLEC accessing MTE terminal. Or, whether practical standards should be developed for new scenarios for accessing subloop elements
45	3	29	Subloop Unbundling	2	2) Requiring LSR's for Access to Premise Wiring at MTEs	AT&T argued that the requirement to submit LSRs to gain access to such subloops unacceptably discriminates against CLECs
46	3	29	Subloop Unbundling	2	3) CLEC Facility Inventories	Whether Qwest's current obligation of having to inventory CLEC cable and gas termination at MTEs in Section 9 3 3 5 is adequate or whether Qwest should instead be required to at its own expense mark its owned or controlled on-premises wire and related facilities. Also, whether it is appropriate for Qwest to charge CLECs for inventorying facilities under 9 3 3 4 1
47	3	29	Subloop Unbundling	2	4) Determining Ownership of Inside Wire	Whether Qwest should pay for determining ownership of MTE on premises wire, and how long it should take to determine MTE on premises wire ownership
48	3	29	Subloop Unbundling	2	5) Intervals	Whether, if AT&T's previous arguments concerning FCP Process are not accepted, the longest interval for determining ownership and inventorying be no greater than 15 days
49	3	29	Subloop Unbundling	2	6) Requirement for Qwest Performed Jumpering at MTEs	Limitations on subloop jumpering for CLEC to Qwest terminals
50	3	29	Subloop Unbundling	2	7) Expanding Explicitly Available Subloop Elements	Whether the SCLAT properly addresses the scope and depth of types of subloop unbundling that has been defined by the FCP
51	3	29	Packet Switching	2	1) Availability of Spare Copper Loops	Whether the CLEC should be able to 1) collocate their DSLAMs in the same place as Qwest and 2) gain access to Qwest's packet switching as a LSC

# South Dakota PUC - Section 271 Issues List



Issue #	Library Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
52	3	29	Packet Switching	2	2) Denial of DSLAM Collocation	Whether SGAT Section 9 20 2 1 3 should be expanded to include language that would allow CLEC to determine if it would be economical to place a DSLAM in Qwest's premises
53	3	29	Packet Switching	2	3) ICB Pricing	Whether specific prices should be provided for the provisioning of unbundled packet switching
54	3	29	Packet Switching	2	4) Unbundling Conditions as a Prerequisite to Ordering	Whether there should be 1) simultaneous processing of DSLAM collocation and packet switching UNE requests and 2) an interval of 10 days or less for Qwest to reject DSLAM collocation requests
55	3	29	Packet Switching	2	5) Line Card "Plug and Play"	Whether CLECs may place their line cards into Qwest's DSLAM
56	3	29	Dark Fiber	4 or 5	1) Affiliate Obligations to Provide Access to Dark Fiber	Does the Act obligate Qwest to make the entire region dark fiber of affiliates, specifically Qwest Communications International, Inc. ("QCI"), available to CLECs?
57	3	29	Dark Fiber	4 or 5	2) Access to Dark Fiber in Joint Build Arrangements	Are CLECs allowed to lease dark fiber that exists in "joint build arrangements" with third parties (e.g., other local, adjoining telephone companies), under which Qwest can use the other party's conduit, induct, or fiber to transport telecommunications traffic?
58	3	29	Dark Fiber	4 or 5	3) Applying a Local Exchange Usage Requirement to Dark Fiber	Does the same local usage test that the FCC issued with regard to Enhanced Extended Links ("EELs") apply to dark fiber?
59	3	29	Dark Fiber	4 or 5	4) Consistency With Technical Publications	Whether the SGAT has to be consistent with other Qwest Technical Publications and what governs when publications are different. Deferred to General Terms and Conditions
60	4	30	Access to Unbundled Network Elements	2	1) Construction of New UNEs	Whether Qwest has the obligation to build UNEs and UNE combinations for CLECs on the same basis as it would for its own customers and whether these UNEs should be priced at TELRIC rates or for the actual cost of construction
61	4	30	Access to Unbundled Network Elements	2	3) Commingling UNEs and Tariffed Services on the Same Facilities	Whether restrictions should be placed on the commingling of UNEs and Tariffed services on the same facilities
62	4	30	Access to Unbundled Network Elements	2	3) OSS Testing	Whether current SGAT language is adequate to address large scale entry by CLECs
63	4	30	Access to Unbundled Loops	4	1) Standard Loop Provisioning Intervals	Whether the ROC and SGAT approved standard intervals for the installation of a variety of unbundled loops is too long and should be replaced with different intervals

Liberty Issue #	Exhibit Report #	Checklist #	Item	Number/ Sub Issue	Issue	Synopsis of Issue
64	4	30	Access to Unbundled Loops	4	3) Reciprocity of Trouble Isolation Charges	Whether Qwest should pay CLECs for isolating the source of network troubles when the source of the problem is on Qwest's side of the network as is reciprocally required by CLECs in 9 2 5 2 & 3, and whether CLEC should be charged if customer wiring or equipment identified as the source of the problem, and whether language should be added to 9 2 5 allowing CLEC access to the NID and CLECs ability to challenge Qwest's double recovery of trouble isolation costs
65	4	30	Access to Unbundled Loops	4	4) Delays in the Roll-Out of ADSL and ISDN Capable Loops	Whether wholesale ADSL and ISDN wholesale products should be made available to CLECs as they are available to Qwest retail customers
66	4	30	Access to Unbundled Loops	4	5) Cooperative Testing Problems	Whether Qwest was delivering cooperative testing on loop installations properly
67	4	30	Access to Unbundled Loops	4	6) Spectrum Compatibility	Concerns the issue of interference when signals from multiple carriers are carried through a common cable. Deals with the responsibility of each carrier to not impede the signals of other carriers when providing a signal of their own
68	4	30	Access to Unbundled Loops	4	7) Conditioning Charge Refund	Whether a CLEC should be refunded line conditioning charges from Qwest if the CLEC loses the customer within a year of service
69	4	30	Access to Unbundled Loops	4	8) Pre-Ordering Mechanized Loop Testing	Whether CLECs should be allowed to perform mechanized loop testing to gather information about loop length and conditioning
70	4	30	Access to Unbundled Loops	4	9) Access to LFACs and Other Loop Information Databases	Whether CLECs should have access to LFACs or other databases to determine the type and extent of facilities available in Qwest's system
71	4	30	Line Splitting	4	1) Limiting Line Sharing to UNE-P	Whether it is appropriate that the SCAT limit line sharing to cases where CLECs gain access to Qwest loops through the use of UNE-P or if it should be expanded to other configurations
72	4	30	Line Splitting	4	2) Liability for Actions By an Agent	Whether one party (CLEC) should be responsible as the "Customer of Record" for line splits
73	4	30	NID	4	1) "NID" Definition and Access to Terminals Where Qwest Owns Facilities in the Direction of the End User	Definition of the NID
74	4	30	NID	4	2) Protector Connections	Whether Qwest must remove its loop connections to the NID when the CLECs are restricted from NID access in cases where space is available
75	4	30	NID	4	3) CLEC Use of Qwest's NID Protector Without Payment	Whether CLEC should pay for Qwest's protector when it has its own protector to connect to its own or Qwest's NID

## South Dakota PUC - Section 271 Issues List

Issue #	Library Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
76	4	30	Access to Unbundled Local Transport	5	1) SONET Add/Drop Multiplexing	Whether SONET add/drop multiplexing would be a CLEC transport option
77	4	30	Access to Unbundled Local Transport	5	2) UDIT/EUDIT Distinction	Whether UDIT and EUDIT should be treated similarly for transport purposes and how they should be costed
78	4	30	Access to Unbundled Local Transport	5	3) Commingling UNEs and Interconnection Trunks	Whether the definition of "finished services" with LIS Trunks included precludes CLECs from connecting UNEs to trunks used for interconnection
79	4	30	Access to Unbundled Local Transport	5	4) Applying Local Use Restrictions to Unbundled Transport	Whether 9 6 2 4 should prohibit the use of interoffice transport as a substitute for special or switched access services
80	4	30	EELs	5	1) Limiting Local Use Requirements to Existing Special Access Circuits	Whether the FCC has limited use certification requirements to existing special access circuits and whether SGAT section 9 23 3 7 2 12 2 and 9 23 3 7 1 extends these requirements to UNE combinations to be acquired by CLECs
81	4	30	EELs	5	2) Allowing Commingling Where Qwest Refuses to Construct UNEs.	Whether Qwest should be able to refuse commingling UNEs and tariffed services in certain cases where Qwest refuses to construct UNEs
82	4	30	EELs	5	3) Waiver of Termination Liability Assessments for EELs	Whether CLECs should have to pay termination charges for early termination charges when transforming private line purchases into EELs
83	4	30	EELs	5	4) Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs	Whether Qwest should have to build UNEs for transport or allow the connecting of tariff or finished services to UNEs under 9 1 5 and 9 23 1 2 2
84	4	30	EELs	5	5) Counting ISP Traffic Toward Local Use Requirements	Whether ISP should be counted toward local usage requirements
85	4	30	Access to Unbundled Local Switching	6	1) Access to AIN-Provided Features	Whether Qwest need make available access to Qwest's own AIN features to CLECs
86	4	30	Access to Unbundled Local Switching	6	2) Exemption from Providing Access to Switching in Large Metropolitan Areas	Whether 9 11 2 5 improperly limits the availability of unbundled switching in the 50 top MSAs to end users with 4 or more access lines within a wire center
87	4	30	Access to Unbundled Local Switching	6	3) Basis for Line Counts in Applying the Four-Line Exclusion	Whether the three-line maximum per customer should be applied on a per-customer or per-location basis in previous issue
88	4	30	Access to Unbundled Local Switching	6	4) Providing Switch Interfaces at the GR-303 and TR-008 Level	Whether Qwest should provide interfaces at the GR-303 and TR-008 Level
89	5	31	General Terms and Conditions		1) Landowner Consent to Agreement Disclosure Issue	Whether Qwest needs landowner approval for the release of landowner agreements to CLECs

## South Dakota PUC - Section 271 Issues List

Issue #	Exhibit #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
90	5	31	General Terms and Conditions		1) Comparability of Terms for New Products or Services	Whether a section 1.7.2 should be added requiring Qwest to offer new products and services at the same rates terms and conditions as existing products and services when these products and services are comparable.
91	5	31	General Terms and Conditions		2) Limiting Durations on Picked and Chosen Provisions	Whether a CLEC may use a provision of an agreement between Qwest and another CLEC for the life of the borrowing CLECs contract.
92	5	31	General Terms and Conditions		3) Applying "Legitimately Related" Terms Under Pick and Choose	Whether Qwest has abused the "legitimately related" provision of the SGAT by requiring adherence to other peripheral SGAT requirements
93	5	31	General Terms and Conditions		4) Successive Opting Into Other Agreements	Whether a CLECs are allowed to enter into successive agreements with other CLECs originating from a Qwest agreement.
94	5	31	General Terms and Conditions		5) Conflicts Between the SGAT and Other Documents	Whether there are provisions in the SGAT that adequately spell out when SGAT provisions prevail over provisions in other documents related to the SGAT.
95	5	31	General Terms and Conditions		6) Implementing Changes in Legal Requirements	How a change in law should create changes within the SGAT.
96	5	31	General Terms and Conditions		7) Second-Party Liability Limitations	Whether the scope of Qwest's liability in section 5.8 is too narrow to protect CLECs
97	5	31	General Terms and Conditions		8) Third-Party Indemnification	Whether sections 5.8, 5.9 and PAP provisions are integrated enough to properly protect CLECs from anti-competitive behavior, and whether section 5.9.1.2 improperly limits Qwest's responsibility for damages CLEC must pay to its end users.
98	5	31	General Terms and Conditions		9) Responsibility for Retail Service Quality Assessments Against CLECs	Whether a provision should be included in the SGAT which would transfer state commission levied sanctions against the retail provider to the wholesale provider if violation of service standard is due to poor provisioning of service by the wholesale provider.
99	5	31	General Terms and Conditions		10) Intellectual Property	Whether Qwest's current SGAT language for section 5.10 are close enough to AT&T's changes.
100	5	31	General Terms and Conditions		11) Continuing SGAT Validity After the Sale of Exchanges	Whether provisions to SGAT section 5.12.2 should be added to allow protection of CLEC and CLEC customers in the event Qwest should sell its exchanges
101	5	31	General Terms and Conditions		12) Misuse of Competitive Information	Whether Qwest's marketing and sales personnel have access to confidential CLEC information
102	5	31	General Terms and Conditions		13) Access of Qwest Personnel to Forecast Data	What Qwest personnel and what form of access Qwest should be allowed to have concerning CLEC forecast data.
103	5	31	General Terms and Conditions		14) Change Management Process	Whether Qwest meets with FCC criteria for its CICMP for the purposes of the SGAT
104	5	31	General Terms and Conditions		15) Bona Fide Request Process	Some parties argue that Qwest's bona fide request (BFR) process in Section 17 of the SGAT is not non-discriminatory

South Dakota PUC - Section 271 Issues List

Exhibit #	Exhibit Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
0000	000	01	General Terms and Conditions		16) Scope of Audit Provisions	Whether to expand the audit procedures in the SGAT to other aspects of performance under the SGAT
0000	000	01	General Terms and Conditions		17) Scope of Special Request Process	Whether SRP process should be expanded to offerings in SGAT besides UNE combinations
0000	000	01	General Terms and Conditions		18) Parity of Individual Case Basis Process with Qwest Retail Operations	Whether ICB offering to CLECs should be evaluated in parity with Qwest's offering to its retail customers
0000	000	01	Section 272 Separate Affiliate Requirements	Separate Affiliate Requirements	1) Separation of Ownership	The requirement that Qwest and affiliates have separate ownership
0000	000	01	Section 272 Separate Affiliate Requirements		2) Prior Conduct	That in-region interLATA services be provided through a separate affiliate
0000	000	01	Section 272 Separate Affiliate Requirements	Books and Records		That the 272 affiliate "shall maintain books records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate"
0000	000	01	Section 272 Separate Affiliate Requirements		1) Generality Accepted Accounting Principles	Whether QCC follows GAAP
0000	000	01	Section 272 Separate Affiliate Requirements		2) Materiality	Whether Qwest will follow the FCC's GAAP Materiality Principle
0000	000	01	Section 272 Separate Affiliate Requirements		3) Documentation	Some parties accused Qwest of having insufficient documentation of work and task orders and other transactions
0000	000	01	Section 272 Separate Affiliate Requirements		4) Internal Controls	Some parties said that Qwest has not performed accrual and billing in a timely manner as evidence that Qwest does not have adequate controls over its Books and Records
0000	000	01	Section 272 Separate Affiliate Requirements		5) Separate Charts of Accounts	Some parties said that slowness in providing this data by Qwest demonstrates lack of diligence
0000	000	01	Section 272 Separate Affiliate Requirements		6) Separate Accounting Software	There is some question as to whether there is separation, since codes appear to work for either affiliate
0000	000	01	Section 272 Separate Affiliate Requirements	Separate Officers, Directors, and Employees	1) Routine Employee Transfers	Whether the 272 affiliate has separate officers, directors, and employees from the Bell operating company of which it is an affiliate"
0000	000	01	Section 272 Separate Affiliate Requirements		2) 100 Percent Usage	Whether Qwest's shared usage of employees is in line with 272(b)(3) requirements

## South Dakota PUC - Section 271 Issues List

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
119	5	31	Section 272 Separate Affiliate Requirements		3) Award Program Participation	Whether a Qwest award program that included both QC and QCC personnel constituted a conflict of interest between the two companies.
120	5	31	Section 272 Separate Affiliate Requirements		4) Comparing Payroll Registers	Whether Qwest adequately separates payroll between QC and 272 affiliate.
121	5	31	Section 272 Separate Affiliate Requirements		5) Separate Payroll Administration	Whether the lack of separate payroll administration for QC and QCC violates the requirements of section 272(b)(1).
122	5	31	Section 272 Separate Affiliate Requirements		6) Officer Overlap	Independence of 272 affiliate employees, officers, and directors
123	5	31	Section 272 Separate Affiliate Requirements	Transaction Posting Complete-ness		FCC says the standard for BOC transactions to be "reduced to writing and available for public inspection" is "The description of the asset or service and the terms and conditions of the transactions should be sufficiently detailed to allow the FCC to evaluate any compliance with our accounting rules".
124	5	31	Section 272 Separate Affiliate Requirements		1) Posting Billing Detail	What detail and how billing amounts need to be posted under 272 requirements.
125	5	31	Section 272 Separate Affiliate Requirements		2) Initiation of the Posting of QCC Transactions	Whether Qwest violated 272 requirements by not posting for affiliates between January 1, 2001 onward.
126	5	31	Section 272 Separate Affiliate Requirements		3) Indefinite Service Completion Dates	Whether the FCC has a requirement that transaction postings provide either the length of time or estimated completion date of any project and if Qwest has violated this standard.
127	5	31	Section 272 Separate Affiliate Requirements		4) Verification	Requires that transaction information available for public inspection be accompanied by a certification declaring that "An officer of the BOC has examined the submission and that to the best of the officer's knowledge all statements of fact contained in the submission are true and the submission is an accurate statement of the affairs of the BOC for the relevant period".
128	5	31	Section 272 Separate Affiliate Requirements	Non-Discrimination		When a BOC is dealing with a 272 affiliate "May not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards".
129	5	31	Section 272 Separate Affiliate Requirements	Compliance With FCC Accounting Principles		A BOC, when dealing with a 272 affiliate, "account for all transactions in accordance with accounting principles designated or approved by the Commission.



Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
120	5	31	Track A Requirements	Existence of Binding, Approved Interconnection Agreements		Whether Qwest has entered into binding, approved interconnection agreements in South Dakota.
121	5	31	Track A Requirements	Provision of Access and Interconnection to Competitors		Whether Qwest is providing access and interconnection in South Dakota.
122	5	31	Track A Requirements	Existence of Competing Residential and Business Service Suppliers		Whether actual residential and business competition exists under agreements between Qwest and CLECs.
133	5	31	Track A Requirements		1) Market Share of Competing Providers	Whether the market share of competitors in a state is a factor in the satisfaction of the Track A requirement.
134	5	31	Track A Requirements		2) Estimates of Bypass Lines	Whether Qwest's estimation of the number of bypass lines served by residential and business customers is acceptable.
135	5	31	Track A Requirements		3) Number of CLECs Serving End Users	Whether Qwest's qualitative showing of the amount of residential and business competition in South Dakota is sufficient.
136	5	31	Track A Requirements	Existence of Facilities-Based Competitors		Whether competing telephone exchange service is being provided 1) exclusively over CLEC telephone facilities or 2) predominantly over such facilities in combination with the resale of the telecommunications services of another carrier. CLEC "own" facilities include UNEs leased from an incumbent provider.
137	QPAP	33	Public Interest	Meaningful and Significant Incentive - Total Payment Liability	1) The 36 percent of Net Revenue Standard	The QPAP filed by Qwest in the multi-state 271 proceeding included a yearly cap on payments of 36% of ARMIS net intrastate revenues. This cap has been described as a "hard" cap. Various parties to the multi-state proceeding have criticized this hard cap, as potentially not providing appropriate incentive for Qwest to comply with the terms and conditions of the SGAT.
138	QPAP	33	Public Interest		2) Procedural Caps	CLECs support a "procedural" rather than a "hard" cap - citing that such a cap makes it more difficult for Qwest to calculate whether is more economical to continue to bear the cost of non-compliance, rather than to bring performance up to standard.
139	QPAP	33	Public Interest		3) Qwest's Marginal Cost of Compliance	Whether the best method to examine the propriety of a firm payment cap would be to compare Qwest's marginal cost of complying with the performance standards against the payments to which it would be exposed for complying.
140	QPAP	33	Public Interest		4) Continuing Propriety of a Cap Based on 1999 Net Revenues	Qwest argued for basing the cap on 1999 net revenues, while other parties suggested the cap should fluctuate based on actual net revenues going forward.

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
141	QPAP	33	Public Interest		5) Likely Payments in Low Volume States	Whether the small amount of CLEC business in low volume states would make it unlikely that Qwest could reach the cap limit
142	QPAP	33	Public Interest		6) Deductibility of Payments	CLECs wanted the QPAP to specify Qwest payments could not be deducted for income tax purposes
143	QPAP	33	Public Interest	Meaningful and Significant Incentive - Magnitude of QPAP Payout Levels		Total economic exposure addresses only part of the broader issue of the sufficiency of payments under the QPAP to provide a meaningful and significant incentive to Qwest. Equally material is the question of what level event-specific payments apply. A total exposure of even much more than 36 percent of net intrastate revenues might not deter substandard performance
144	QPAP	33	Public Interest	Meaningful and Significant Incentive - Compensation for CLEC Damages	1) Relevance of Compensation as a QPAP Goal	The issue is regarding the relevance of the goal of compensating CLECs for damages incurred as a result of non-compliant Qwest wholesale performance. CLEC parties said that the point of a performance assurance plan is to create incentives to detect and sanction poor wholesale performance, not to compensate CLECs for harm
145	QPAP	33	Public Interest		2) Evidence of Harm to CLECs	Would QPAP payments be sufficient to compensate CLECs for the actual harm suffered as a result of Qwest non-compliance
146	QPAP	33	Public Interest		3) Preclusion of Other CLEC Remedies	CLECs argued they should not be precluded from seeking certain other remedies if the adopted the QPAP
147	QPAP	33	Public Interest		4) Indemnity for CLEC Payments Under State Service Quality Standards	CLECs want the QPAP to provide for their indemnification if Qwest performance means they have to pay fines under state quality of service rules.
148	QPAP	33	Public Interest		5) Offset Provision (Section 13.7)	Qwest wants any award to CLECs by courts or other bodies that duplicates QPAP payments to be offset by the QPAP payment. There are three issues 1. Qwest's ability to unilaterally decide whether or not an offset is allowed, 2. the ambiguity of the term analogous performance, 3. QPAP method of dealing with injury to persons of physical property.
149	QPAP	33	Public Interest		6) Exclusions (Section 13.3)	This issue deals with force majeure, bad faith and other exclusions. These are essentially a list of circumstances that would excuse Qwest from having to make payments under the QPAP
150	QPAP	33	Public Interest		7) SGAT Limitation of Liability to Total Amounts Charged to CLECs	Should it be made clear that SGAT and QPAP payments are mutually exclusive?

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Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue*
151	QPAP	33	Public Interest	Meaningful and Significant Incentive - Incentive to Perform	1) Tier 2 Payment Use	Qwest wanted Tier 2 payments limited to use in the Qwest serving territory, while other parties did not
152	QPAP	33	Public Interest		2) Three-Month Trigger for Tier 2 Payments	Qwest wanted the trigger for Tier 2 payments to be three months of noncompliant performance. Other parties argued for immediate payments with one month of noncompliant performance, exactly like Tier 1 payments work
153	QPAP	33	Public Interest		3) Limiting Escalation to 6 Months	Qwest wants the escalation of Tier 1 payments to cease after six months of noncompliant performance. Other parties want Tier 1 payments to escalate without limit. The Report recommends keeping the escalation limit at six months
154	QPAP	33	Public Interest		4) Splitting Tier 2 Payments between CLECs and the States	CLECs argue that they should receive some of the Tier 2 payments even though data for specific CLECs is not available to allocate the payments.
155	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Measure Selection Process		Do substantial grounds existed for including additional measures?
156	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Adding Measures to the Payment Structure	1) Requiring Payments for Canceled Orders	CLECs wanted to add this indicator to the performance measurements
157	QPAP	33	Public Interest		2) Requiring Payments for "Diagnostic" UNEs	Qwest has agreed to add performance measures to the payment structure as standards are developed for them
158	QPAP	33	Public Interest		3) Cooperative Testing	Some parties wanted cooperative testing added to the QPAP as a performance measurement. Qwest did not
159	QPAP	33	Public Interest		4) Adding PO-15 D to Address Due Date Changes	Some parties wanted this indicator added to the QPAP as a performance measurement.
160	QPAP	33	Public Interest		5) Including PO-1C Preorder Inquiry Timeouts in Tier 2	Some parties wanted this indicator added to the QPAP as a performance measurement.
161	QPAP	33	Public Interest		6) Adding Change Management Measures,	Some parties wanted this indicator added to the QPAP as a performance measurement
162	QPAP	33	Public Interest		7) Adding a Software Release Quality Measure	Some parties wanted this indicator added to the QPAP as a performance measurement.
163	QPAP	33	Public Interest		8) Adding a Test Bed Measurement	Some parties wanted this indicator added to the QPAP as a performance measurement

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Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
164	QPAP	33	Public Interest		9) Adding a Missing-Status-Notice Measure	Some parties wanted this indicator added to the QPAP as a performance measurement
165	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Aggregating the PO-1 A and PO-1B Performance Measures		Fourteen sub measurements for these performance measurements were combined the PEPP. Qwest says two seven-part measures were created, AT&T says seven two-part measures were created
166	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Measure Weighting	1) Changing Measure Weights	Tier 1 payments vary with the weight accorded a performance measurement. CLECs wanted to increase some weights without reducing others, Qwest agreed with increases but wanted compensating decreases in other measurement weights
167	QPAP	33	Public Interest		2) Eliminating the Low Weighting	The QPAP has Low, Medium and High weights. CLECs wanted all low measurement moved to Medium
168	QPAP	33	Public Interest		3) LIS Trunks Weighting	CLECs want LIS Trunks given a special high weighting given how much they affect CLEC lines
169	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Collocation		Some parties wanted collocation noncompliance treated differently than other performance measurements given its sweeping effect on CLEC capabilities
170	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Including Special Access Circuits		CLECs want to include special access circuits as a performance measurement
171	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Proper Measure of UNE Intervals		Some parties said the SGAT Exhibit C should be the source of QPAP standards, not the Performance Indicator Definitions used in the ROC OSS Test
172	QPAP	33	Public Interest	Clearly Articulated and Pre-Determined Measures - Low Volume CLECs		Some CLECs said that small companies are under compensated by the QPAP. They also argued the rounding at small volumes allows Qwest too much leeway in meeting performance measurements
173	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - 6 Month Plan Review Limitations		The QPAP provides for review every six months of its contents, with certain limits. Qwest had wanted final approval of any changes. Many parties felt that this encroached upon state commission authority

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
174	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Monthly Payment Caps		CLECs want monthly caps removed
175	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Sticky Duration		Parties argued that Tier 1 payments should remain at the level to which they escalated before Qwest achieved noncompliant performance. The rationale is it took that level of payment to get Qwest to comply, therefore the step-down de-escalation provided for in the QPAP gets away from the level of payment that was necessary to bring about compliance.
176	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Low Volume Critical Values		The critical value for parity measures was reduced for low volumes for certain performance measurements in the PEPP, thereby making it more likely Qwest will have to make payments.
177	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Applying the 1.04 Critical Value to 4-Wire Loops		CLECs wanted the value applied to 4-wire loops for low volumes.
178	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Measures Related to Low Volume, Developing Markets		CLECs want to increase the payments provided for in the QPAP for low-volume markets and increase the minimum payments provided for.
179	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Minimum Payments		WorldCom commented that small order counts would not produce significant payments by Qwest. WorldCom therefore recommended a \$2,500 per occurrence minimum payment, with escalation.
180	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - 100% Caps for Interval Payments		CLECs wanted a form of severity built into payments for interval measures, Qwest did not.

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
181	QPAP	33	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Assigning severity Levels to Percent Measures		A plan was proposed for including severity of miss for percent measurements
182	QPAP	33	Public Interest	Self Executing Mechanism - Dispute Resolution		Qwest's brief added a dispute resolution provision specifically applicable to the QPAP. It would allow the general SGAT dispute resolutions to apply, but only in the event of disputes arising under QPAP Sections 13.3, 13.3.1, 13.7, 13.9, 15.1, 15.2, and 15.9.
183	QPAP	33	Public Interest	Self Executing Mechanism - Payment of Interest		The QPAP did not provide for interest on late PAP payments. Qwest agreed that interest at the one-year Treasury rate would be appropriate on late payments, provided that the same rate would apply to overpayments and to underpayments.
184	QPAP	33	Public Interest	Self Executing Mechanism - Escrowed Payments		Covad argued that Qwest should either have to pay pending dispute resolution or to make payments to an interest-bearing escrow account. Having agreed to pay interest, Qwest objected to being required to place funds in escrow pending dispute resolution.
185	QPAP	33	Public Interest	Self Executing Mechanism - Effective Dates	1) Initial Effective Date	Some parties asked that the QPAP become effective when a state public service commission issues its consultative report. The goal of this recommendation is to prevent backsliding while the FCC considers a Qwest 271 application. Some parties also argued for making the QPAP effective essentially immediately.
186	QPAP	33	Public Interest		2) "Memory" at initial Effective Date	AT&T said that when the QPAP becomes effective it should effectively calculate performance for as many prior months as are necessary to provide that escalated, rather than baseline, payments apply from the first month.
187	QPAP	33	Public Interest		3) PAP Effectiveness if Qwest Exits InterLATA Market	Some parties argued to continue the QPAP payment obligations should Qwest exit the interLATA market.
188	QPAP	33	Public Interest	Self Executing Mechanism - QPAP Inclusion in the SGAT and Interconnection Agreements		WorldCom said that Qwest failed to address the question of how the QPAP should be made a part of the SGAT, which requires commission consideration of the issue.
189	QPAP	33	Public Interest	Self Executing Mechanism - Form of Payments to CLECs		The QPAP provides for QPAP payments to be made by bill credit, rather than by cash or check. CLECs want cash payments.

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
190	QPAP	33	Public Interest	Assurances Of the Reported Data's Accuracy - Audit Program		Qwest said that it modeled the QPAP audit provisions after the Texas plan, and that it included the concept of risk-based auditing, as proposed in the report by The Liberty Consulting Group (Liberty) recommending the adoption of an ongoing monitoring program
191	QPAP	33	Public Interest	Assurances Of the Reported Data's Accuracy - PUC Access to CLEC Raw Data		QPAP Section 14.2 authorizes Qwest, upon Commission request, to provide CLEC raw data to that commission. Qwest said it would be inefficient for commissions to follow the CLEC approach, which would be to ask the CLECs directly for the information
192	QPAP	33	Public Interest	Assurances Of the Reported Data's Accuracy - Providing CLECs Their Raw Data		AT&T recommended a deadline of two weeks from a CLEC's request for Qwest to provide a CLEC with its specific data relevant for QPAP measurement and payment purposes. AT&T said that the lack of an explicit deadline could leave Qwest free to provide the data well after CLECs need it
193	QPAP	33	Public Interest	Assurances Of the Reported Data's Accuracy - Late Reports		WorldCom proposed a payment schedule that Qwest disputes
194	QPAP	33	Public Interest	Other Issues - Prohibiting QPAP Payment Recovery in Rates		AT&T argued that there should be specific language precluding QPAP recovery in rates
195	QPAP	33	Public Interest	Other Issues - No Admissions Clause		Some parties argued that measurements under the PID and payments based on them should be admissible as evidence in other proceedings
196	QPAP	33	Public Interest	Other Issues - Qwest Responses to FCC-Initiated Changes		Qwest cited three proposed QPAP changes that Qwest said came from informal FCC input, and that Qwest noted were not objected to or commented upon at the hearings on the QPAP. These should be considered
197	QPAP	33	Public Interest	Other Issues - Specification of State Commission Powers		Section 12.3 provides that a state commission may recommend to the FCC that Qwest be prohibited from offering in-region interLATA services to new customers in the event that the annual cap is reached
198	Public Interest	32	Public Interest		UNE Prices	Several CLECs argued that monthly and non-recurring UNE prices were too high to permit CLECs to enter the local exchange market in a profitable way. AT&T's evidence to support this conclusion was that 1FR rates were lower than UNE prices
199	Public Interest	32	Public Interest		Intrastate Access Charges	Even where Qwest's affiliate pays the same access charges, or they are somehow imputed, concern can arise from access charges that exceed costs

Issue #	Liberty Report #	Exhibit #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue
200	Public Interest	32	Public Interest		Post-Entry Assurance Plan	A sound plan is necessary for assuring that local markets would remain open should Qwest receive 271 approval. The QPAP, which is Qwest's means for providing that assurance, is addressed thoroughly in a companion report (QPAP Report)
201	Public Interest	32	Public Interest		Lack of Competition	The thrust of the arguments made on this issue was that competition has not reached a level that is sufficient to meet the public interest.
202	Public Interest	32	Public Interest		Prior Qwest Conduct	Some parties argued that Qwest's history of non-compliance with the section 272 separate affiliate requirements and with its obligations to serve CLECs under sections 251 and 252 compels a conclusion that the public interest would not be served by granting 271 authority now.
203	Public Interest	32	Public Interest		Structural Separation	Several CLECs offered structural separation as a means for mitigating the effects of Qwest's actions to favor affiliates.
204	Public Interest	32	Public Interest		Sustained Checklist Compliance	Some parties argued that Qwest should have to show checklist compliance for a sustained period before the public interest would be served by granting it 271 approval.
205	Public Interest	32	Public Interest		Inducing Competition	If all 271 pre-conditions associated with entry are met, does it promote the public interest? Does the evidence presented demonstrate that such 271 approval tends to further induce local market entry by CLECs.



CERTIFICATE OF SERVICE

I hereby certify that copies of Section 271 Issues List were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 18th day of January, 2002.

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Pierre, South Dakota 57501

RECEIVED

JAN 18 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: **MIDCONTINENT TELECOMMUNICATIONS; QWEST CORPORATION 271  
COMPLIANCE**

Docket TC01-165  
Our file: 0053

Dear Debra:

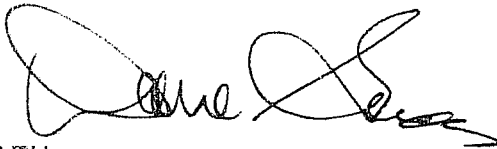
Enclosed are original and ten copies of Midcontinent's Statement of Issues in this docket. Please file the enclosure.

With a copy of this letter, I am sending copies of the enclosure to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:



DAG:mw

Enclosures

cc/enc: Service List  
Tom Simmons  
Mary Lohnes

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

RECEIVED

IN THE MATTER OF THE ANALYSIS OF ) TC01-165  
QWEST CORPORATION'S COMPLIANCE )  
WITH SECTION 271(c) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 )

JAN 18 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

MIDCONTINENT COMMUNICATIONS COMMENTS TO DOCKET TC01-165

Checklist Item 1: Interconnection.

*1996 Telecom Act 271 InterLATA Service Competitive Checklist (1)  
Interconnection in accordance with the requirements of sections  
251(b)(2) and 252(d)(1)*

Midcontinent Communications was approved for resold service interconnection on November 18, 1997, and facilities based interconnection on May 5, 1999. Sioux Falls Cable Television was approved as a Local Exchange Company on April 4, 1999. All interconnection agreements and certifications were combined under the name Midcontinent Communications on September 19, 2000.

Midcontinent placed trunking orders for interconnection in November 1999 which were completed near the end of December 1999. Midcontinent's primary interconnection was set up via cageless collocation at the Qwest North Dakota Avenue location in Sioux Falls.

Midcontinent incurred no major problems in establishing the interconnection or collocation at this site.

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

1996 Telecom Act InterLATA Competitive Checklist (2)  
Nondiscriminatory access to network elements in accordance with the  
requirements of sections 251©(3) and 252(d)(1)

Midcontinent Communications placed its first UNE order in March 2000. Initial problems were encountered in converting customers from either Qwest or from Midcontinent resold customers. In both cases a coordinated effort was necessary on the part of both Qwest and Midcontinent. Initially, the coordination was cumbersome and occasionally unfairly inconvenienced the customer. In recent months, coordination has improved to the point that more often than not, the customer does not experience significant service interruption.

Access to specific elements may involve an amendment to the interconnection agreement which sometimes takes an unusually long time to set up. Delays generally occur in the contracts department of Qwest, which seems to be overloaded.

Midcontinent has not had the need to combine elements until most recently. Midcontinent currently has an amendment to its Interconnection Agreement pending to provide UNE-P. There was a substantial delay in receiving the agreement. Once received, it was turned around quickly. Set up, however, was again delayed due to the requirement of completion of a questionnaire that demanded answers to questions well beyond the scope of the product. The questionnaire read like an initial questionnaire for a company just starting a relationship with Qwest.

Midcontinent also has an amendment pending for inclusion of S-POP circuits. We have not yet, however, set up the product or placed orders for any circuits.

b) **Operations Support Systems (OSS)**

The vast majority of problems encountered by Midcontinent have occurred in the general category of Operations Support Systems. We understand OSS as the wide variety of systems, databases and procedures necessary to communicate completely and accurately with Qwest. Midcontinent Uses some of Qwest's OSS automated systems such as IMA GUI for basic ordering, and EMI records for usage billing.

We understand that these issues will be taken up separately as part of the ROC Third Party Test review. Midcontinent reserves comment for that more appropriate time.

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

*1996 Telecom Act InterLATA Services Competitive Checklist (3) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224*

Midcontinent does use access to poles, ducts, conduits and rights-of-way, but generally as a part of its cable TV operation, which is contracted separately. Midcontinent has not had the need to date to use such facilities for competitive services.

**Checklist Item 4: Unbundled Local Loops.**

*1996 Telecom Act InterLATA Service Competitive Checklist (4) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.*

Midcontinent uses unbundled local loops primarily for commercial telephone customers in Sioux Falls. Comments made above under "Checklist Item 2" generally involve these UNE Loops. The

loops ordered are generally voice grade/analog, basic 2 wire loops used for point-to-point local exchange services.

**Checklist Item 5: Unbundled Local Transport.**

*1996 Telecom Act InterLATA Services Competitive Checklist (5) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services*

Midcontinent uses unbundled Local Transport in the form of both point-to-point DS-1 and collo DS-1 circuits. We have limited experience with other types of transport.

**Checklist Item 6: Unbundled Local Switching.**

*1996 Telecom Act InterLATA Service Competitive Checklist (6) Local switching unbundled from transport, local loop transmission, or other services.*

Midcontinent has no current experience with unbundled Local Switching. Once the currently pending UNE-P agreement is complete and the service is set up, Midcontinent intends to use this element as a part of the platform.

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

*1996 Telecom Act InterLATA Services Competitive Checklist (7) Nondiscriminatory access to (I) 911 or E911 Services; (II) directory assistance services to allow the other carrier's customers to obtain telephone number; and (III) operator call completion services.*

Midcontinent uses access to 911, E911, directory assistance and operator services from Qwest. We can confirm the service is available and reliable.

**Checklist Item 8: White Pages Listings.**

*1996 Telecom Act InterLATA Services Competitive Checklist (8)  
White pages directory listings for customers of the other carrier's  
telephone exchange service*

As part of the facilities based service, Midcontinent uses Qwest white pages listings. Listings orders are running at approximately 30% error ratio, with the majority in the single line resold category. Errors made in the transfer of information during a service provider move have resulted in customers losing a listing in the published directory. This may be an OSS issue which will be discussed at a later date.

**Checklist Item 9: Numbering Administration.**

*1996 Telecom Act InterLATA Services Competitive Checklist (9)  
Until the date by which telecommunications numbering administration  
guidelines, plan or rules are established, nondiscriminatory access  
to telephone numbers for assignment to the other carrier's  
telephone exchange service customers. After that date, compliance  
with such guidelines, plan, or rules.*

Midcontinent has no issues regarding numbering administration since this is accomplished by a group other than Qwest.

**Checklist Item 10: Databases and Associated Signaling.**

*1996 Telecom Act InterLATA Service Competitive Checklist (10)  
Nondiscriminatory access to databases and associated signaling  
necessary for call routing and completion.*

Midcontinent has no issues with this section.

**Checklist Item 11: Number Portability.**

1996 Telecom Act InterLATA Service Competitive Checklist (11)  
Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

Standard number portability has not been a problem for Midcontinent. The only portability issue may be beyond the scope of this requirement. Midcontinent still has a problem with numbers homed to a remote wire center. Customers expect that they can change providers only to find that their number is tied to a remote wire center where Midcontinent cannot purchase UNE local loops. Qwest has not yet been able to suggest a solution.

**Checklist Item 12: Local Dialing Parity.**

1996 Telecom Act InterLATA Services Competitive Checklist (12)  
Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)

Midcontinent has no issues with this section

**Checklist Item 13: Reciprocal Compensation.**

1996 Telecom Act InterLATA Services Competitive Checklist (13)  
Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)

Midcontinent has no known issues with this section.



**Checklist Item 14: Resale.**

1996 Telecom Act InterLATA Services Competitive Checklist (14)  
Telecommunications services are available for resale in accordance  
with the requirements of sections 251©(4) and 252(d)(3)

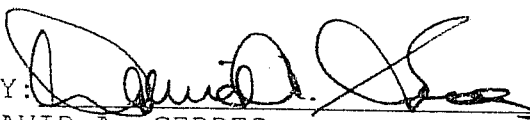
Generally, Qwest's performance in this area has been good.  
Exceptions include two major issues:

A plan to allow extended calling in the Rapid City and  
Northern Hills area has been difficult to set up. Billing is  
unreliable and confusing. This package requires that intraLATA  
toll access be provided only by Qwest, resold by Midcontinent. We  
believe, however, that Qwest has the level of difficulty  
establishing this product as we do.

A major billing issue occurred when Qwest changed the  
wholesale rates for Midcontinent resold services. The result has  
cost Midcontinent hundreds of overtime hours to correct monthly  
bills, which have not been corrected three months after initial  
identification.

Dated this 18<sup>th</sup> day of January, 2002.

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 18<sup>th</sup> day of January, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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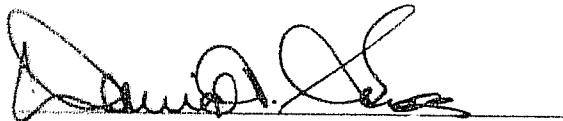
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January 18, 2002

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JAN 22 2002

*Via Facsimile*

SOUTH DAKOTA PUBLIC  
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FAX Received JAN 18 2002

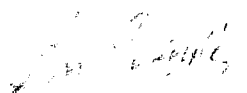
Re: In the Matter of the Analysis into Qwest Corporation's Compliance with  
Section 271(c) of the Telecommunications Act of 1996. TC01-165

Dear Ms. Elofson:

Enclosed is a facsimile copy of AT&T Communications of the Midwest, Inc.'s List of Disputed Issues in this matter. The original and ten copies will be sent by overnight delivery.

Please call me if there are any questions.

Sincerely,

  
Steven H. Weigler

SHW/jb

Enclosures

cc: Service List

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS INTO QWEST )  
CORPORATION'S COMPLIANCE WITH SECTION )  
271(C) OF THE TELECOMMUNICATIONS ACT OF )  
1996

Docket No. TC01-165

AT&T COMMUNICATIONS OF THE MIDWEST INC.'S  
LIST OF DISPUTED ISSUES

Pursuant to the Order for and Notice of Procedural Schedule and Hearing adopted by the South Dakota Public Utilities Commission, AT&T submits the following list of disputed issues in this proceeding. While AT&T believes this list is accurate, it reserves the right to add or delete issues from this list.

**Checklist Item No. 1**

**Interconnection:**

1. Entrance facilities at any technically feasible point of interconnection ("POI")
2. Mid-Span Meet POI
3. Qwest's SPOP policy
4. Direct-trunked transport mid-span meets (50-mile limit)
5. Forecasting disputes, deposits
6. Ownership of special construction facilities
7. Interconnection at access tandems
8. EICT collocation, compensation for interconnection facilities
9. MF signaling on Qwest switches lacking SS7
10. Treatment of underutilized trunk groups
11. Definition of tandem office switches
12. Combining interLATA and local traffic on the same trunk group
13. Indemnification for failure to meet performance standards
14. Inclusion of IP telephony as switched access in the SGAT
15. Routing of Qwest One-Way Trunks
16. Using interconnection trunks to access to UNEs
17. Qwest's products process
18. Termination at end office

**Collocation:**

1. Collocation products
2. Shared cageless collocation
3. Restrictions on remote virtual collocation
4. Channel regeneration costs
5. Order volume limitations

6. Provisioning intervals
7. Listing of exhausted collocation premises/Inventory
8. Recovery of grooming costs
9. Restrictions on quotes when entrance facilities are available
10. Failure to include agreed upon language
11. Cross connections at multi-tenant environments
12. Adjacent collocation availability
13. ICB pricing for adjacent and remote collocation
14. Space reservation policy
15. Incorporation of internal documents
16. Space reservation fee
17. Conversion costs
18. Removal of safety hazards
19. Training costs for virtual collocation
20. Pre-SGAT execution costs
21. Access to collocation space
22. Forecasts

### **Checklist Item No. 2**

#### **Unbundled Network Elements:**

1. Qwest obligation to comply with wholesale and retail service quality requirements
2. Validity of regeneration charge for UNEs
3. Obligation to build
4. Finished service definition
5. Applicability of unbundling obligations to affiliate
6. Forecasting
7. Commingling of UNEs and tariffed services
8. OSS Testing Environment
9. Calculation of Lines for Zone 1 exception
10. Do Qwest's Operation Support Systems support competitive entry, and allow CLECs to be treated at parity and in a non-discriminatory manner with how Qwest treats its retail customers for purposes of pre-ordering, ordering, maintenance/repair and billing functions? This must be determined by looking both at Qwest's commercial performance in the state with respect to CLECs operating in South Dakota and, where little or no commercial performance exists, by looking at the ROC OSS test results once that test is completed and a final report issued.

#### **UNE Platform:**

1. SGAT prohibition against direct connection of UNE combination to finished service
2. Applicability of local use restriction to combination of loop/ multiplexing/ interconnection tie pairs
3. Waiver of local use restriction where Qwest refuses to build UNEs
4. Contact by Qwest where CLEC misdirected calls
5. Local use certification requirement

### **Enhanced Extended Link (EEL):**

1. Connection of EELs to tariffed services
2. Applicability of termination liability to conversions from special access to EELs
3. CLEC's ability to maintain existing private line or special access circuits where those circuits meet the local use restriction and qualify as EELs
4. Waiver of the local use restriction on connecting EELs to tariffed service where Qwest refuses to build to meet CLEC demand
5. Grooming charge
6. Application of ISP traffic for local use restriction
7. Limiting local use requirements to special access circuits
8. Waiver of local use restriction of private lines purchased in lieu of EELS

### **Checklist Item No. 3**

#### **Rights of Way:**

1. CLEC access to Qwest ROW agreements
2. Time to respond to requests
3. Reciprocal access

### **Checklist Item No. 4**

#### **Loop:**

1. Obligation to build
2. Refund of conditioning charges when Qwest fails to perform
3. Access to Qwest databases that contain loop information, including LFACs
4. Pre-order MLT
5. Installation hours definition
6. Address validation
7. Loop intervals
8. Redesignation of interoffice facilities where loop facilities are at exhaust
9. Held order policy

### **Line Splitting:**

1. Must Qwest offer retail DSL service on a stand-alone basis when a CLEC provides voice service over UNE-P?
2. Access to Qwest splitters on a line-at-a-time, or shelf-at-a-time basis
3. Availability of line splitting on all types of loops
4. Line splitting on non-copper loops

### **Network Interface Device (NID):**

1. Availability of NID on a stand-alone basis
2. Whether CLEC can cap-off Qwest's connections from protectors when the CLECs access the protector?

**Subloop:**

1. Access to subloop elements at MTE terminals
2. LSRs required to order subloops
3. Inventory and non-recurring charges
4. Ownership of inside wire – interval
5. Intervals
6. Access at technically feasible points

**Line Sharing:**

1. Must Qwest offer retail DSL service on a stand-alone basis when a CLC provides voice service over UNE-P?
2. Access to Qwest splitters on a line-at-a-time, or shelf-at-a-time basis
3. Line splitting on all types of loops
4. CLEC access to MDF
5. Line sharing provisioning interval
6. Line sharing on fiber
7. Availability of data continuity test
8. Access Line Limitation

**Checklist Item No. 5****Transport:**

1. Validity of regeneration charge for dedicated transport at collocation
2. Adding electronics to EUDIT
3. Validity of distinction between UDIT (Unbundled Dedicated Interoffice Transport) and EUDIT (Extended Unbundled Dedicated Interoffice Transport)
4. Applicability of local use restriction to EUDIT
5. Prohibition against use of EUDIT to carry internet traffic
6. Forecasting
7. SONET add/drop multiplexing
8. Affiliate access
9. Commingling of UNE and interconnection facilities

**Dark Fiber:**

1. Access to fiber in meet point arrangements
2. Application of the local usage restriction
3. Affiliate access

**Checklist Item No. 6****Switching:**

1. Unbundled access to Advanced Intelligence Network (“AIN”) features



2. Access to unbundled switching in wire centers in density zone 1 if all forms of EEL access are not available
3. Calculation of lines for determination of the zone 1 exception – customer location on wire center basis
4. Unbundled access to switch interfaces
5. Validity of win-back activity when CLEC customer mistakenly calls Qwest's business or repair offices
6. Density Zone 1 exemption

**Packet Switching:**

1. Unbundling of packet switching
2. Number of spare loops required
3. Line cards in DSLAM
4. Availability of spare copper loops
5. Denial of DSLAM Collocation
6. Delay in access to packet switching
7. ICB pricing

**Checklist Item No. 7**

**911/E911, Directory Assistance and Operator Services:**

1. Is Qwest unlocking access to 911 databases?

**Checklist Item No. 8**

**Directory Listings**

1. Is Qwest processing CLEC listings in the same manner as it processes its own listings?

**Checklist Item No. 9**

**Numbering Administration**

No disputed issues.

**Checklist Item No. 10**

**Databases and Signaling**

1. CNAM

**Checklist Item No. 11**

**Number Portability**

1. Cutovers and porting
2. Loop provisioning coordination

## **Checklist Item No. 12**

### **Dialing Parity**

No disputed issues.

## **Checklist Item No. 13**

### **Reciprocal Compensation**

1. ISP-bound traffic
2. Definition of tandem switch and treatment of CLEC switches
3. Host-remote transport charge
4. Commingling of interLATA and local traffic on the same trunk groups; ratcheting

## **Checklist Item No. 14**

### **Resale**

1. Quality of service credits and penalties/ Indemnification of CLECs
2. Restrictions on marketing during misdirected calls
3. Centrex per location pricing rebates on Centrex Service
4. Inaccurate billing of resellers
5. Special contract termination charges
6. Electronic interface for Centrex resale
7. Pricing
8. PIC Change

### **SGAT General Terms & Conditions**

1. Comparability of terms for new products or services
2. Limiting durations on picked and chosen provisions
3. Applying "legitimately related" terms under pick and choose
4. Successive opting into other agreements
5. Conflicts between the SGAT and other documents
6. Implementing changes in legal requirements
7. Second-party liability limitations
8. Third-party indemnification
9. Responsibility for retail service quality assessments against CLECs
10. Continuing SGAT validity after the sale of exchanges
11. Misuse of competitive information
12. Access of Qwest personnel to forecast data
13. Change management process
14. Bona fide request process
15. Scope of audit provisions
16. Scope of special request process
17. Parity of individual case basis process with Qwest retail operations
18. OSS cost recovery
19. Notification of CLEC disconnection

20. SGAT definitions

§ 272

**Separate Affiliate Requirements:**

1. Separation of Ownership
2. Prior conduct

**Books and Records:**

1. Generally Accepted Accounting Principles (GAAP) adherence by both Qwest Corp. and the 272 affiliates
2. Materiality
3. Documentation
4. Internal Controls

**Separate Officers, Directors and Employees:**

1. Employee Transfers
2. 100 Percent Usage and the "4-month" rule
3. Award Program Participation
4. Separate Payroll Administration

**Transaction Posting Completeness:**

1. Posting Billing Detail
2. Posting within 10-days
3. Initiation of the Posting of QCC Transactions when QCC becomes a 272 affiliate
4. Verifications signed by Officer

**Non-Discrimination:**

1. Whether Qwest fails or failed to make timely payments
2. Whether Qwest has committed not to discriminate in establishing interconnection or interoperability standards
3. Whether Qwest has stated that it would not discriminate in the processing of PIC orders
4. Whether Qwest has stated that it would comply with the FCC's prohibition against the use of its Official Services Network to provide InterLATA services
5. Whether employee transfers between the BOC and the 272 affiliate create a concern that there will be an improper flow of confidential information between the two entities
6. Whether Qwest has proved that it will provide nondiscriminatory access to its OSS
7. Whether Qwest is providing nondiscriminatory access services to its 272 affiliate

**Compliance With FCC Accounting Principles:**

1. Whether Qwest accounts for all transaction in accordance with accounting principles designated or approved by the Commission

### **Track A Requirements**

1. Existence of binding, approved interconnection agreements
2. Provision of access and interconnection to competitors
3. Existence of facilities-based competitors

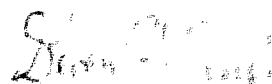
### **Existence of Competing Residential and Business Service Suppliers:**

1. Market share of competing providers
2. Estimates of Bypass Lines
3. Number of CLECs serving end users

### **Public Interest**

1. UNE prices
2. Intrastate access charges
3. Post-entry assurance plan including sub-issues related to the plan
4. Lack of competition
5. Prior Qwest conduct violating the pre-271 approval limits on in-region interLATA service and Qwest's obligations to provide wholesale services to CLECs
6. Structural separation
7. Sustained checklist compliance
8. Inducing competition

Respectfully submitted on January 18, 2002.



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Attorneys for AT&T COMMUNICATIONS  
OF THE MIDWEST, INC.

## CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of January 2002, a facsimile copy and the original and 10 copies by overnight delivery of AT&T's Disputed Issues List in Docket No. TC01-165, were sent to:

Debra Elofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

and a true and correct copy was placed in the U.S. Mail on January 18, 2002 addressed to:

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January 18, 2002

(e-mail gbernard@mtna.com)

VIA FAX AND USMAIL

FAX Received JAN 18 2002

Ms. Debra Elofson  
Executive Director  
Public Utilities Commission  
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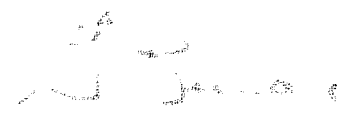
RE: Black Hills FiberCom  
US West 271 Application  
TC01-165  
Our File No. BH-1231

Dear Ms. Elofson:

Please find enclosed Black Hills FiberCom, L.P.'s Statement of Issues relative to the docket. The original and ten copies of this issue statement have also been mailed to the Commission today.

Please call if you have any questions.

Sincerely,



Gregory J. Bernard

GJB:so

Enclosure

cc: Kyle White  
Ron Schaible  
Steve Helmers  
Tom Welk

Ms. Debra Elofson  
January 18, 2002  
Page 2

Colleen Sevold  
Harlan Best  
David Gerdes  
Karen Cremer  
Steve H. Weigler

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

FAX Received JAN 18 2002

IN THE MATTER OF THE ANALYSIS INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996	DOCKET NO. TC01-155  STATEMENT OF ISSUES
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Pursuant to the Commission's Scheduling Order, Black Hills FiberCom, L.L.C., submits this list of issues it intends to raise and contest at the Commission's hearing on Qwest's compliance with Section 271(c) of the Telecommunications Act of 1996

1) **"TRACK A" PROCEEDINGS:** As a general matter, FiberCom objects to the manner in which Qwest seeks to prove that it meets the fourteen point competitive checklist in South Dakota. Qwest is seeking interLATA relief pursuant to §271(c)(1)(A), commonly referred to as "Track A." To qualify under Track A, a BOC must have signed binding interconnection agreements with one or more competitive exchange service providers that are providing service to residential and business customers. Section 271(c)(1)(A). Moreover, in order to receive InterLATA relief, the state approved interconnection agreements under which Qwest is providing access and interconnection must meet the requirements of the fourteen point competitive checklist. In other words, if Qwest is intending to proceed under Track A, it must establish that it has entered into binding interconnection agreements with one or more CLBCs and that such agreements meet the fourteen point checklist. Once a BOC establishes that it has entered into such binding interconnection agreements, it is precluded from proceeding under "Track B" to prove that it is entitled to InterLATA relief. *SBC Oklahoma Order* at para. 27-30; *Ameritech Michigan Order* at footnote 130; *SBC Communications, Inc v FCC*, 138 F.3d 410



(D.C. Circ. 1998). Under Track B, a BOC seeks to prove its entitlement to Interconnect by showing that no competitive provider has requested interconnection in the state, that it has a state approved SGAT in effect in the state, and that the SGAT meets the requirements of the fourteen point competitive checklist. Section 271(c)(1)(B). In this case, Qwest proposes to be proceeding under Track A but bases substantially all of its fourteen point checklist proof on an analysis of its approved SGAT. Qwest states in its application that "the South Dakota Utilities Commission has approved 34 interconnection agreements between Qwest and CLEC's in South Dakota, and 31 interconnection agreements are pending approval." See Affidavit of Thomas Freeberg (Attachment 1) at p. 1, lines 19-21. Qwest further states, however,

Although Qwest has entered into a number of interconnection agreements that offer evidence of its compliance with [the fourteen point competitive checklist], for purposes of this proceeding, Qwest relies primarily on its SGAT to demonstrate its concrete legal obligation to provide each of these checklist items

See Qwest Petition at Section IIB (p. 21).

In reality, Qwest relies on its SGAT nearly *exclusively* to demonstrate its compliance with the checklist. Qwest makes no showing that it complies with the checklist items through its 14 state approved interconnection agreements. Instead, Qwest suggests that it is entitled to relief on the basis that it is offering interconnection and access to its network on a nondiscriminatory basis through its SGAT. *Id.* Qwest is improperly using a Track B analysis to prove its entitlement in a Track A proceeding.

Pursuant to the Track A analysis, Qwest must show that it is "providing" checklist items on a nondiscriminatory basis. Section 271(c)(2)(A)(i). "[T]he mere fact that a BOC has offered to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance." *Ameritech Michigan Order* at para. 110. "A statement of

generally available terms and conditions on its face is merely a general offer to make access and interconnection available. . . ." *Id.* at para. 114. Instead, a BOC is "providing" a checklist item "if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and practical matter." *Id.* at para. 110. To be "providing" a checklist item, a BOC must have "a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Id.* (Emphasis added.) The BOC must also demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality. *Id.* "With regard to each checklist item, the Commission must first determine whether the items of the interconnection agreement establishing the BOCs' obligation to provide a particular checklist item comply with the Act. In the case of checklist items that have not been furnished, the Commission must make a predictive judgment to determine whether a petitioning BOC could actually furnish the requested checklist item upon demand." *Id.* at para. 113.

It is clear that if Qwest wishes to pursue InterLATA relief through Track A, it must demonstrate that it has entered into binding interconnection agreements in South Dakota, that pursuant to those interconnection agreements it is actually obligated to provide all checklist items in compliance with the Act and that pursuant to those interconnection agreements, it is actually providing, or stands ready and able to provide, all checklist items in South Dakota. Because Qwest has not identified those interconnection agreements through which it claims to be meeting all requirements of the fourteen point checklist, and because it has not shown its actual compliance with the checklist through those interconnection agreements, it has not met its prima

facie burden of proof. Until Qwest points to binding agreements which actually meet the fourteen point checklist, there is no way for the Commission to know if Qwest is actually providing the checklist items or whether it is instead offering to provide the items if the CLECs would only renegotiate their interconnection agreements to include provisions of the SGAT.

2) **UNBUNDLED LOCAL LOOPS (CHECKLIST ITEM NO. 4):** Section 271(e)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled, from local switching or other services." Qwest recognizes this obligation and states "pursuant to Section 9.2 of its SGAT, Qwest has a concrete and specific legal obligation to provide CLECs with access to unbundled loops capable of transmitting analogue voice service, digital subscriber line service (xDSL), and high capacity services." See Affidavit of Jean M. Liston (Attachment 9), p. 5, lines 8-10. Qwest also suggests that because it "offers" all required categories of unbundled loops in its SGAT, it has met this checklist item. *Id.* at p. 6, lines 5-9. At least with respect to FiberCom, however, there is a big distinction between offering unbundled loops in an SGAT and actually providing them pursuant to an interconnection agreement.

FiberCom entered into its interconnection agreement with Qwest in September, 1998. In 2001 the agreement was amended to extend its terms to September, 2004. FiberCom's agreement with Qwest provides for the provisioning by Qwest of DS1 capable loops at the prices, terms and conditions set forth therein. To date, FiberCom has been unable to successfully order a DS1 capable loop from Qwest, as Qwest has refused to provision such services. FiberCom has only been able to order and receive analog unbundled loops. Despite that the parties existing interconnection agreement facilitates the provision of DS1 capable loops, Qwest refuses to

provide them until FiberCom executes an addendum to the agreement essentially raising the cost to FiberCom of obtaining such loops.

Under the existing agreement, DS1 capable loops would provide a cost-effective method of providing service to a multi-line (5-24 trunks) business customer. If Qwest were currently provisioning these loops, FiberCom could provide services to customers in the local exchange area without having to build new facilities to serve the customer. Without this service, FiberCom is simply unable to provide cost-effective service to certain customers.

Although FiberCom currently has obtained DS1 service from Qwest, it is only able to do so by ordering the loops as a Special Access Channel Termination. The price for this service is \$125 per Channel Termination as compared to the \$39.34 cost of an unbundled DS1 loop under the agreement. This Special Access Channel Termination as a service has identical service specifications as compared to the DS1 capable loop, and it is a similar service that any retail customer may purchase. Qwest has indicated that only by amending the interconnection agreement to reflect, among other things, the pricing for unbundled DS1 loops in the SGAT, can FiberCom obtain such loops. The cost of such loops under the SGAT is double the price under the interconnection agreement.

As Qwest currently operates under its interconnection agreement with FiberCom, the agreement does not meet the requirements of checklist item number 4.

3) **USAGE INFORMATION FOR BILLING FOR RECIPROCAL COMPENSATION (CHECKLIST ITEM NUMBER 6):** Checklist Item Number 6 provides that the access and interconnection provided by Qwest must include, "Local switching unbundled from transport, local loop transmission, or other services." Section 271(c)(2)(B)(vi). The FCC

has interpreted this provision to mean that Qwest has an obligation to provide eight (8) separate "features, functions, and capabilities of the unbundled local switch" before this checklist item is met. *BellSouth Louisiana Order* (CC Doc. No. 98-121) at para. 211-234. The FCC itemization of features, functions and capabilities includes the provision of "usage information necessary for billing for reciprocal compensation." *Id.* at para. 232. This item requires that Qwest provide FiberCom with information necessary to bill for reciprocal compensation, or alternatively, that it have in place other arrangements such as a surrogate. *Id.* "Without this information or other arrangements, competing carriers purchasing unbundled local switching would not be able to bill and collect reciprocal compensation." *Id.*

FiberCom believes that Qwest's data systems are not properly configured, or do not have the necessary stability, to allow for the timely and efficient processing of payments for reciprocal compensation. After an extended dispute and resulting settlement regarding Qwest's obligation to pay for intrastate switched access services, FiberCom finds that it is still unable to receive complete and timely payment for those tariffed services. Currently, FiberCom's actual switch records show a number of terminating minutes approximately three times greater than those recorded by Qwest's system, despite that their respective databases have previously been verified for consistency. By its own admission nearly two months ago, Qwest agreed that its records in this regard are inaccurate. Because of Qwest's inability to accurately assemble usage information necessary for billing, Qwest's reciprocal compensation payments to FiberCom have been in arrears for nearly three months with no discernable plan for resolution in place.

FiberCom is also in dispute with Qwest regarding the payment of reciprocal compensation for Qwest traffic delivered to Internet Service Providers (ISPs) on FiberCom's network. Although the parties have not reached the stage where they are comparing minutes of

ISP traffic. FiberCom is concerned because of Qwest's inability to track accurate usage information necessary to bill for reciprocal compensation. FiberCom reserves its right to raise this issue in subsequent proceedings within this docket if it in fact finds the number of ISP minutes are in dispute.

Based on the foregoing, Qwest has failed to prove its compliance with Checklist Item No. 6.

**4) BRANDING (CHECKLIST ITEM NO. 7):** Section 271(c)(2)(B)(vii)II and III require Qwest to provide nondiscriminatory access to directory assistance services to allow other carriers' customers to obtain telephone numbers and operator call completion services. Under these rules, a competing carrier can use Qwest's operator services and directory assistance databases (i.e. when its customer dials 1-411). The customer is connected to the Qwest operator services or directory assistance that provides the requested service on behalf of the competing carrier. Pursuant to the FCC rules, when a competing carrier uses this method of providing operator services and directory assistance, it may request that the BOC "brand" its calls. *See CFR §51.217(d); Local Competition Second Report and Order* at para. 148. For example, when customers call the operator for directory assistance, they typically hear a message such as, "Thank you for using XYZ Telephone Company." Competing carriers may request that the BOC brand the call with its own name (i.e. "Thank you for using Black Hills FiberCom."). "The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC re-brand its operator services and directory assistance, . . . creates a presumption that the providing LEC is unlawfully restricting access to its

operator services and directory assistance." *Id.*; see also *BellSouth Louisiana Order* at para. 239-341.

FiberCom purchases operator services and directory assistance services wholesale from Qwest and in turn resells these services to FiberCom's customers. On October 18, 2001, using Qwest's ordering processes, FiberCom requested that Qwest begin branding these services. As of the writing, Qwest has still not provided the requested branding. Despite various reassurances by Qwest that the requested branding had been implemented or would be very soon, it is not working.

Qwest points to its SGAT to prove that it is providing nondiscriminatory access to operator services and directory assistance, including branding. See Affidavit of Lori A. Simpson (Attachment 13) at pp. 1-2. Qwest also represents that although no CLEC has yet requested branding, it conducted a "bench test" of its capability to provide branding, and that such testing was successful. *Id.* at pp. 18-19. However, nearly three months have passed since FiberCom's initial request for branding, and to date, none has been implemented.

Based on the foregoing, Qwest has failed to prove that it meets the requirements of Checklist Item Number 7.

**5) NUMBER PORTABILITY (CHECKLIST ITEM NO. 11):**

"Number Portability" is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications to another." 47 USC §1545(b). Qwest offers evidence that it has complied with the FCC's LNP requirements and performance criteria, and that Qwest exceeds the ROC performance benchmark for number

portability performance measures. See Affidavit of Margaret S. Baumgartner, *et al.*, at pp. 1-3. FiberCom agrees that, for the most part, Qwest's LNP performance has been satisfactory. However, FiberCom has identified one recurring problem with regard to Number Portability which should be addressed in these proceedings.

On an average of at least once a month, a FiberCom customer contacts FiberCom complaining that people who call that customer's number from a Qwest line are unable to reach that customer. Instead, those calls are routed to a Qwest customer who also has the same telephone number. The problem lies in Qwest's reassignment of a ported number to another Qwest customer after the number is ported to FiberCom. For example, when Customer A changes his telephone service from Qwest to FiberCom, he has the option of keeping his old Qwest number (348-XXXX) or obtaining a new FiberCom number (721-XXXX). If Customer A keeps his old number, the number is ported from Qwest to FiberCom, and when a person calls 348-XXXX from a FiberCom line or from a Qwest line, he or she should reach Customer A who is now a FiberCom customer. In several instances, however, Qwest has reassigned its customers' telephone numbers to a new Qwest customer after the number is ported. For example, after Customer A switches to FiberCom and ports his 348-XXXX telephone number, Qwest then reassigns the 348-XXXX number to Customer B, a Qwest customer. Customer A and Customer B now have the same telephone number. If a person calls 348-XXXX from a Qwest line, intending to reach Customer A, he will reach Customer B. If the same person calls 348-XXXX from a FiberCom line he will reach Customer A. This presents obvious problems for both A and B.

This problem is particularly troublesome because it directly affects FiberCom's ability to provide telephone service to its customers. Many of these FiberCom customers who have



experienced this problem are business customers whose ability to conduct business is directly affected. While the majority of these reassignment errors are corrected by Qwest within 24 hours, two of FiberCom's customers (one business and one residential), waited more than two days to get the problem resolved. As recently as January, 2002, one of FiberCom's residential customers had his ported telephone number reassigned by Qwest twice within a two-week period.

FiberCom encourages the Commission to investigate the cause of this problem and whatever safeguards are in place to prevent it. It is also FiberCom's experience that when the problem does occur, Qwest does not have in place a consistent plan and procedure for correcting it. While the frequency of this reassignment error may seem insignificant in light of the volume of telephone numbers ported by Qwest region wide, when it happens to one of two prominent CLEC customers in the small communities of South Dakota, it presents a real risk that the CLEC will be perceived as a poor quality service provider, despite that the real problem lies with Qwest's operations.

6) **DISPUTE RESOLUTION:** FiberCom objects to the dispute resolution process contained in Qwest's SGAT. As currently drafted, the SGAT "reserves" the right of each party to resort to the Commission or to a court, agency, or regulating authority of competent jurisdiction. See SGAT at §5.18. This reservation of right to proceed before the Commission and the implied assumption that a party's dispute will remain before the Commission is illusory. If a party brings a dispute before the Commission, there is a preference and presumption that, at the request of either party, the matter will be sent to binding arbitration. In a binding arbitration proceeding, the decision of the arbitrator on issues of both law and fact are binding and generally not appealable, even if those decisions are wrong.

The PUC is charged with monitoring and insuring the existence of healthy competition among local exchange carriers. The public interest dictates that the PUC should be the presumptive arbitrator of disputes arising between the parties either by way of the normal commission complaint process, or perhaps by a variation of the mediation and arbitration process embodied in the Commission's rules. See ARSD 20:10:32:24 through 32. FiberCom's concern is to insure that the SGAT dispute resolution contains a mechanism whereby a dispute can be brought to the Commission and not be subject to dismissal for mandatory arbitration at the election of one of the parties. Instead, disputes should be presumptively justiciable by the Commission, unless both parties agree to submit it to binding arbitration.

FiberCom further objects to Section 5.18.3.2 which limits the discovery process in an arbitration proceeding. Such a limiting provision is unnecessary in light of the fact that applicable arbitration rules specifically provide for procedures for the conduct of discovery which are subject to modification in any given arbitration by the arbitrator and the parties. FiberCom's concern is that Section 5.18.3.2 may be construed to unduly and unnecessarily restrict the ability of a party to obtain discovery of relevant materials in an arbitration proceeding.

FiberCom further objects to Section 5.18.5 which limits the time in which a dispute may be brought to two (2) years after accrual of the cause of action. Disputes arising out of the parties' interconnection agreement are contract in nature. Under South Dakota law, the statute of limitations for bringing contract actions is six (6) years after accrual. See SDC 1. 15-2-17.

7) **QWEST PERFORMANCE ASSURANCE PLAN:** Qwest maintains that once it is allowed to enter into the interLATA market in South Dakota, it will be subject to a "comprehensive self-executing performance measurement and enforcement mechanism." *Qwest*

Qwest's Performance Assurance Plan (QPAP) and that the QPAP meets the FCC's expectations. See Affidavit of Mark S. Reynolds (Attachment 22) at p. 3, line 7-9. FiberCom has the following concerns regarding the QPAP:

- Initially, Qwest has committed to putting \$15,000,000 at risk. It arrived at this figure by multiplying its 1999 net return by 36%. Qwest did not commit, however, to putting 36% of its annual (or previous years') net return at risk. As the years progress and Qwest's net return increases and the dollar shrinks, \$15,000,000 will become less and less of an incentive to maintain compliance with the checklist.
- As a practical matter, the loss of \$15,000,000 is not a great incentive to maintain compliance in light of the fact that Qwest will be granted access to a lucrative interLATA market that is, by Qwest's own admission, significantly greater than \$15,000,000. See Affidavit of Larry Toll (Attachment 1). It may make economic sense for Qwest to sink to the level of substandard performance that will cost \$15,000,000 as a "loss leader." If its market predictions are correct, Qwest will be an additional \$10,000,000 ahead in revenues with the added benefit of customers frustrated at the perceived poor quality service of the CLEC, which is in fact caused by Qwest. At the very least, Qwest should be made to risk not only the 36% of annual net returns, but also the additional net returns generated from its entry into the interLATA market.
- FiberCom is also concerned that the design of the QPAP is not properly structured to achieve a payment as high as the 36% standard offered by Qwest.
- FiberCom encourages the Commission to give close scrutiny to the performance measure standards thresholds offered by Qwest to determine their likely effectiveness. Qwest

should be made to prove their effectiveness by running various scenarios of standard levels of substandard performance through its QPAP model so that the Commission can evaluate the effectiveness of the \$15,000,000 cap (i.e. at what point will all of the \$15,000,000 be spent). Furthermore, it seems unreasonable that Qwest should only be responsible for the performance failures outside of the grace window. For example, if the performance standard is 95%, and Qwest achieves 94%, it only pays for that error below 95% (i.e. 1%). A more effective incentive for Qwest to meet performance standards would be to require Qwest to make payments for all errors when it fails to meet the minimum performance standard.

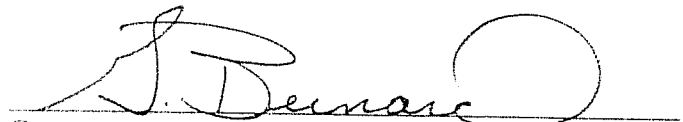
- FiberCom is concerned that Qwest does not, and will not, have the ability to accurately measure the results of its performance, and that the CLEC's and state will not recover the payments they are due. Qwest proposes limited audits of its QPAP and these audits are limited to the early stages of compliance. If the QPAP is to be effective, these audits must be conducted by nonaffiliated consultants and must be annual and included within the cost of Qwest receiving interLATA relief.
- FiberCom is also concerned that in the event Qwest fails to provide adequate service to South Dakota CLECs, the state of South Dakota will not withhold and recover any Tier 2 payments. This is because the South Dakota customer and revenues base is statistically insignificant when included with Qwest's millions of customers in other markets. The Tier 2 payments payable to the state of South Dakota should be triggered by poor performance in South Dakota, not by poor performance in other states.
- Qwest has committed to making its Tier 1 payments in the form of bill payments. FiberCom questions whether there is enough billing activity from South Dakota CLECs

to Qwest amount which \$15,000,000 of credits can be made. QPAP should provide for cash payments or carryover provisions for any CLEC to the extent that Tier 1 payments due to the CLEC exceed the amount billed to Qwest by that CLEC.

- ~~Given the importance of the QPAP in ensuring continued compliance with the checklist, arbitration is not an appropriate vehicle for resolving QPAP disputes. The South Dakota Public Utilities Commission is charged with maintaining the public interest, which includes maintenance of an open, competitive environment. The Commission needs to be aware of the problems associated with the QPAP implementation. Arbitration is a closed process which, as drafted into the SGAT and QPAP, will skirt the jurisdiction of the Commission. As discussed in paragraph 6 above, the Commission should be the presumptive arbitrator of any QPAP disputes unless the parties agree to submit the issue to binding arbitration.~~

• **OTHER:** To the extent that FiberCom has information and concerns relevant to ~~any other issues raised by the parties or the Commission within this proceeding.~~ FiberCom reserves the right to present such issues or voice such concerns as the issues arise.

Dated this 18 day of January, 2002.



Gregory J. Bernard  
Attorneys for Black Hills FiberCom, LLP  
MORRILL THOMAS NOONEY & BRAUN, LLP  
625 9<sup>th</sup> Street, 8<sup>th</sup> Floor/PO Box 8108  
Rapid City, SD 57709-8108

CERTIFICATE OF SERVICE

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of the within and foregoing Statement of Issues was mailed by first-class mail, postage prepaid thereon, to the following:

Ms. Colleen Sevold  
General  
124 South Dakota Avenue, 8<sup>th</sup> Floor  
Sioux Falls, SD 57194

Thomas J. Welk, Esq.  
Boyce, Murphy, McDowell & Greenfield  
PO Box 5015  
Sioux Falls, SD 57117-5015

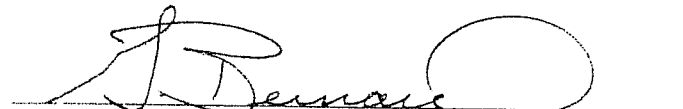
Mr. Harlan Best  
Staff Analyst  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Karen Cremer, Esq.  
Staff Attorney  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

David A. Gerdes, Esq.  
Atty. Adam Gerdes & Thompson  
PO Box 160  
Pierre, SD 57501

Steve H. Weigler, Esq.  
AT&T Law Department  
1875 Lawrence Street, Suite 1575  
Denver, CO 80202

By depositing the same in the United States Mail at Rapid City, South Dakota, this 18 day of January, 2002

  
\_\_\_\_\_  
Gregory J. Bernard

LAW OFFICES  
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PO Box 8108  
RAPID CITY, SOUTH DAKOTA 57709-8108

TELEPHONE (605) 348-7516  
FAX (605) 348-6852

OF COUNSEL  
DAVID E. MORRILL

January 22, 2007

to email: gbernard@mtnlaw.com

REGARDING: "MORRILL"  
MORRILL & COMPANY  
MORRILL & COMPANY  
MORRILL & COMPANY  
MORRILL & COMPANY  
MORRILL & COMPANY  
MORRILL & COMPANY

Mr. Dale Hinton  
Executive Director  
Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Rapid City, SD 57104

RE: Black Hills FiberCom  
13 Box 271 Application  
11/01/04  
Case File No. BU-1231

RECEIVED

JAN 24 2007

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Dear Mr. Hinton:

Please find enclosed an Amended Certificate of Service to Black Hills FiberCom.  
I E E a Statement of Issues relative to this docket.

Please call if you have any questions.

Sincerely,



Gregory J. Bernard

cc: [illegible]  
[illegible]

cc: Dale Hinton  
Ted Wirth  
Wayne H. Foster  
Mark Wery  
John J. Wynn  
Whitney "Whitney" Girdling PhD

CERTIFICATE OF SERVICE

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of the within and foregoing Statement of Issues was mailed by first-class mail, postage prepaid thereon, to the following:

Ms. Colleen Sevold  
Qwest Corporation  
125 South Dakota Avenue, 8<sup>th</sup> Floor  
Sioux Falls, SD 57194

Mark Stacy  
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Cheyenne WY 82009

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Staff Analyst  
Public Utilities Commission  
500 East Capitol Avenue  
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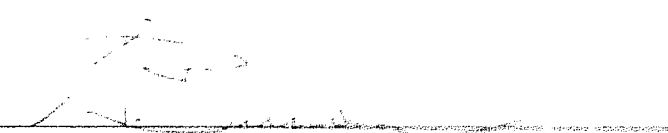
Karen Cremer, Esq.  
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Mary B. Tribby  
AT&T Communications of the Midwest  
1875 Lawrence Street, Suite 1524  
Denver, CO 80202

by depositing the same in the United States Mail at Rapid City, South Dakota.

DATE: 1-22-02

  
\_\_\_\_\_  
Gregory J. Bernard





# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

DATE: January 31, 2002

TO: All of the Parties in Docket TC01-165

FROM: Rolayne Ailts Wiest

RE: The prehearing conference scheduled for February 7, 2002

Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet Website  
[www.state.sd.us/puc](http://www.state.sd.us/puc)

Jim Burg  
Chairman  
Pam Nelson  
Vice-Chairman  
Bob Sahr  
Commissioner

Debra Elnson  
Executive Director

Harlan Best  
Martin C. Bettmann  
Sue Cichos  
Karen E. Cremer  
Christopher W. Downs  
Terry Emerson  
Michele M. Farris  
Marlette Fischbach  
Heather K. Forney  
Kelly D. Frazier  
Mary Giddings  
Mary A. Healy  
Lisa Hull  
Dave Jacobson  
Patti Jennings  
Amy Kayser  
Bob Knadle  
Delaine Kolbo  
Gregory A. Rislov  
Keith Senger  
Rolayne Ailts Wiest

On October 25, 2001, Qwest Corporation (Qwest) filed with the Commission a Petition for Commission Recommendation that the Federal Communications Commission Grant Qwest Corporation Entry into the In-Region InterLATA Market Under Section 271 of the Telecommunications Act Of 1996. By order dated December 18, 2001, the Commission set a procedural schedule.

Pursuant to that procedural schedule, intervenors and Commission Staff submitted their disputed issues as required by January 18, 2002. A prehearing conference is set for February 7, 2002. At the prehearing conference, the Commission requests that the parties be prepared to address the following questions:

1. Are there any checklist items that can be decided based on written filings as opposed to oral testimony at the April hearing? If so, should the Commission schedule oral argument on the issues presented in the written filings? If so, can the oral argument take place during the time period scheduled for the April hearing or should the Commission schedule another time to hear oral argument?
2. Are there any issues that are purely legal which should be addressed by briefs? If so, should the Commission set a briefing schedule for those issues?
3. Should the Commission set specific issues for certain days in order to allow parties the opportunity to schedule their witnesses accordingly? If so, how would the parties suggest grouping the issues?

The Commission would also like to inform the parties that they may attend the prehearing conference by teleconference. Please call the Commission by 5:00 p.m. on February 6, 2002, if you wish to join by teleconference.

Sincerely,

ROLAYNE AILTS WIEST  
General Counsel

\*\*\*\*\*  
 \*\*\* ACTIVITY REPORT \*\*\*  
 \*\*\*\*\*

ST. TIME	CONNECTION TEL	CONNECTION ID	NO.	MODE	PCS	WEEK	DT
#01/23 13:28	9p16053340618	BOYCE MURPHY MCD	1861	TRANSMIT	ECW	01	24
#01/23 15:25	9p16053394419		1862	TRANSMIT	ECW	01	24
#01/24 11:28	9p2244200		1863	TRANSMIT	ECW	01	24
#01/24 12:47	9p12024576315	PATTON BOGGS	1864	TRANSMIT	CI	01	24
#01/24 15:39	9p17122527368		1865	TRANSMIT	ECW	01	24
#01/24 16:19	3225		1866	TRANSMIT	ECW	01	24
#01/24 16:41	605 773 2501	ASBSD	6365	AUTO FAX RX	ECW	01	24
#01/25 10:58	9p16053429503	G'NDERSON PALMER	1867	TRANSMIT	ECW	01	24
#01/25 16:41	912106150877		1868	TRANSMIT	ECW	01	24
#01/25 16:42	913039655555		1869	TRANSMIT	ECW	01	24
#01/25 07:27	919134320824		1870	TRANSMIT	ECW	01	24
#01/25 08:07	918772706185		1871	TRANSMIT	ECW	01	24
#01/25 05:48	9p1p9134320824		1872	TRANSMIT	ECW	01	24
#01/25 05:56	9p1p8772706185		1873	TRANSMIT	ECW	01	24
#01/25 09:09	9p16053395390		1874	TRANSMIT	ECW	01	24
01/25 12:54			6366	AUTO FAX RX	ECW	01	24
01/29 08:11	9p16053675137	PHEASANTLAND IND	1875	TRANSMIT	ECW	01	24
01/29 09:30	9p14025335727		1876	TRANSMIT	ECW	01	24
01/29 11:37	9p13032947320		1877	TRANSMIT	ECW	01	24
01/29 16:09			6367	AUTO FAX RX	ECW	01	24
01/29 17:11	605 367 5137	PHEASANTLAND IND	6368	AUTO FAX RX	ECW	01	24
01/30 07:46	9p16053675137	PHEASANTLAND IND	1878	TRANSMIT	ECW	01	24
01/30 13:38	9p12024634198		1879	TRANSMIT	ECW	01	24
01/30 13:43	9p7735955		1880	TRANSMIT	ECW	01	24
01/31 15:05	9p14077400613		1881	TRANSMIT	ECW	01	24
01/31 16:37	9p16053395390		1882	TRANSMIT	ECW	01	24
01/31 16:38	9p16053340618	BOYCE MURPHY MCD	1883	TRANSMIT	ECW	01	24
01/31 16:40	9p12083899040		1884	TRANSMIT	CI	01	24
01/31 16:41	9p13032988197		1885	TRANSMIT	ECW	01	24
01/31 16:42	9p18015786999		1886	TRANSMIT	CI	01	24
01/31 16:43	9p16053485852	MORRILL THOMAS N	1887	TRANSMIT	ECW	01	24
01/31 16:45	9p2246289		1888	TRANSMIT	ECW	01	24
01/31 16:46	9p13032986301		1889	TRANSMIT	ECW	01	24
01/31 16:48	9p13033331233		1891	TRANSMIT	ECW	01	24
01/31 16:50	9p13032957069		1893	TRANSMIT	ECW	01	24
01/31 16:51	9p13032957069		1894	TRANSMIT	ECW	01	24
01/31 16:56	9p14024892975		1890	TRANSMIT	ECW	01	24
01/31 16:57	9p13076386073		1892	TRANSMIT	ECW	01	24
02/01 07:46	9p14024892975		1895	TRANSMIT	ECW	01	24
02/01 07:47	9p13076386073		1896	TRANSMIT	ECW	01	24

## STOEL RIVES LLP

ATTORNEYS

101 SOUTH CAPITOL BLVD . SUITE 1900  
BOISE, IDAHO 83702-5958  
Telephone (208) 389-9000  
Fax (208) 389-9040

	Name:	Fax No.	Company/Firm:	Office No.
TO:	ROLAYNE WIEST	605-773-3809	SD PUC	605-773-3201
	Colleen Sevold	605-339-5390	QWEST	605-335-4596
	Karen Cremer	605-773-3809	SD PUC	605-773-3201
	Steven Weigler	303-298-6301	AT&T	303-298-6957
	David A. Gerdes	605-224-6289	Midcontinent	605-224-8803
	Gregory J. Bernard	605-348-5852	Black Hills Fiber	605-348-7516

	Name:	Sender's Direct Dial:
FROM:	Mary S. Hobson	(208) 387-4277

Client: \_\_\_\_\_ Matter: \_\_\_\_\_

DATE: February 1, 2002

No. of Pages (including this cover): 4

Originals Not Forwarded Unless Checked:      First Class Mail      Overnight Delivery      Hand Delivery

In case of error call the fax operator at (208) 389-9000.

*This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. If the reader of this message is not the intended recipient or an employee responsible for delivering the facsimile, please do not distribute this facsimile, notify us immediately by telephone, and return this facsimile by mail. Thank you.*

COMMENTS:                      Please see attached. Mary



STOEL RIVES LLP  
ATTORNEYS AT LAW  
1000 EAST CAPITOL  
PIERRE, SD 57501  
605.773.4377

February 1, 2002

Mark S. Hanson  
Director  
1000 East Capitol  
Pierre, SD 57501  
605.773.4377

Rolayne Wiest  
SD Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: IN THE MATTER OF THE INVESTIGATION INTO QWEST  
CORPORATION'S COMPLIANCE WITH SECTION 371 OF THE  
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Wiest:

We have received your letter of January 31 outlining the questions the Commission would like to have addressed at the February 7 prehearing conference. Qwest appreciates this effort since we believe that giving the parties advance notice of what will be discussed will make the prehearing conference more productive for everyone.

In thinking about this ourselves and in response to the Commission's outline, Qwest has developed some additional items that we believe might also be appropriate topics for the prehearing conference. I am taking this opportunity to outline these ideas for the Commission and parties in the hope that people will come prepared to discuss these questions

11 pages  
12 pages  
13 pages  
14 pages  
15 pages

Initially I should note that all of the following items relate to the larger topic of narrowing the issues for the hearing in this case. Qwest believes that its response to Staff's discovery request, which it served by email to all of the parties on Thursday, demonstrates that many of the issues Staff identified have been resolved either by consensus or against Qwest by the Seven-State Process facilitator. While we recognize that such resolution does not preclude anyone from raising the issues here, it does appear likely that some of these issues will not require additional testimony, live witnesses, etc. Likewise, since AT&T has participated in the Seven-State Process and in other Qwest 271 cases, and has either prevailed on disputed issues or reached a consensus resolution with Qwest in many cases, we expect AT&T will not litigate all of its issues in South Dakota. There may be opportunity to resolve some of the issues raised by the other intervenors as well.

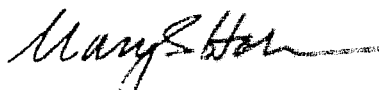
With that background, let me identify some of the things Qwest would like to discuss at the prehearing conference:

1. Qwest filed the affidavits of twelve individuals with its Petition in this case. How many of those people do the parties feel need to be present at the hearing for cross-examination?
2. If the parties agree among themselves that certain Qwest witnesses need not appear at the hearing, will the Commission accept that agreement or are there witnesses that the Commission itself wishes to see at the hearing?
3. If the parties and Commission agree that at least some of Qwest's witnesses will not need to attend the hearing, will the parties stipulate that their affidavits can be introduced into the record without further foundation?
4. If parties and Commission agree to a paper proceeding for at least some of the issues, can the parties stipulate to which materials may be used for this purpose? Qwest, for example, believes that it may be appropriate for the Commission to consider at least some of the issues presented here based on the record developed in the Seven-State Process. This record contains AT&T's position, among others. On some issues it also contains the testimony of Staff's experts.
5. Upon which issues do the other parties in this proceeding intend to provide live witnesses?

This is not intended to be an exhaustive list. Nor does Qwest intend to limit any party's ability to develop the record in this case in the manner it feels appropriate. However, it seems to me that there is no need for South Dakota to "reinvent the wheel" in this case when many of the issues presented here have already been fully developed and resolved in other states and there appears to be nothing specific to South Dakota at stake.

Thank you for your consideration of these items. I look forward to hearing any comments you or the parties have about any of these procedural questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary S. Hobson". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Mary S. Hobson

Cc: Karen Cremer  
Steven Weigler  
David A. Gerdes  
Gregory J. Bernard  
Colleen Sevold  
Mary S. Hobson

# CONTINUATION

# [REDACTED] 3

Scan ~ \_\_\_\_\_ ~ # Pages [ ]

South Dakota PUC – Response to Staff Data Request

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
1	Access to Poles, Ducts, Conduits and Rights of Way	3	Access to Landowner Agreements	CLECs should be given an option, at their risk, to obviate the need for prior landowner consent to secure access to the agreements	Attachment 27, pp. 20-22. The Facilitator suggested that the SGAT should allow a CLEC who is willing to take the risk to obviate the necessity for securing consent.	10.8.4.1.3.	Issue #1: Language was added to the SGAT in accordance with the <i>Facilitator's Report on the Paper Workshop</i> at page 21. The Report included the phrase "or the Consent Regarding Access Agreement Form". That form is no longer a requirement, and, as a result, the phrase has been deleted from this sentence.	Issue Resolved- SGAT language changed.
2	Access to Poles, Ducts, Conduits and Rights of Way	3	Curing CLEC Breaches	The obligation for CLECs to secure cure provisions from landowners should be eliminated.	Attachment 27, p. 25. The Facilitator agreed with CLEC position that requirement that CLECs secure cure provisions from landowners be eliminated.	SGAT Exhibit D  Note: A redlined version of SGAT Exhibit D is being provided under separate cover.		Issue Resolved- SGAT language changed.
3	Access to Poles, Ducts, Conduits and Rights of Way	3	Large-Request Response Times	Qwest should not have defined cases where it can be relieved of the 45-day interval governing orders for such items as pole access, but should be able to secure relief on a case-by-case basis.	Attachment 27, pp. 27-28. The Facilitator agreed that Qwest should be required to petition for relief from the 45 day interval from the state commission or under the dispute resolution sections of the SGAT.	SGAT Exhibit D  10.8.2.4	Issue #3: The redlined language in section 10.8.2.4 provides for forty-five (45) day response to requests for poles, ducts and rights-of-way	Issue Resolved- SGAT language changed.
4	White Pages Directory Listings	8	Adding the Term Contractor to Section 10.4.2.26	If Qwest should contract with a non-affiliate to publish directories, that contractor should have the same obligations as Qwest or its affiliates with respect to customer guide pages	Attachment 27, p. 49. The Facilitator recommended adding the term "contractor."	10.4.2.26.	Issue #4: As recommended by the <i>Facilitator's Order on the Paper Workshop</i> at page 49, the word "contractor" was added to § 10.4.2.26	Issue Resolved- SGAT language changed.

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FEB 07 2002

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
5	White Pages Directory Listings	8	Parity of treatment for CLEC listings	Qwest must demonstrate it has completed changes that it agreed to make in response to findings from the ROC Performance Measures audit, which found that there are differences in treatment of CLEC and Qwest listings updates. The ROC OSS Test includes two Performance Measures (DB-1 and DB-2) that address parity between CLEC and Qwest customers in the areas of listing accuracy and reliability. If Qwest passes these items on the test, it will have demonstrated compliance.	Attachment 27, pp. 44-46. The Facilitator observed that Qwest is currently in the process of making changes so it is premature to recommend now that Qwest be deemed to have demonstrated compliance.	10.4.2.11. (note: Qwest's level of performance under the PIDs is not an SGAT issue).	Issue #5: Language reflects Qwest's commitment to provide parity of treatment for CLEC listings.	Issue Resolved-no SGAT changes required.
6	Common Issues	1, 11, 13, 14	1) Lack of Available Facilities	Collocation delays due to lack of Qwest facilities, particularly DC power.	Attachment 28, p. 17. Issues of delay are addressed by PIDs. Where Qwest does not meet the standard, the QPAP provides financial consequences.	This is a performance issue.	N/A	Issue Resolved-no SGAT changes required.
7	Common Issues	1, 11, 13, 14	2) The Need for A "Real World" Test of Qwest's Performance	271 Approval should not be granted without a period where real world results prove up Qwest's performance	Attachment 28, p. 18. No requirement for such a test period and the FCC relies on OSS tests and post-entry assurance plans.	Not an SGAT issue.	N/A	Issue Resolved-no SGAT changes required.
8	Interconnection	1	1) Indemnification For Failure to Meet Performance Standards	Indemnification of CLECs if Qwest fails to provide interconnection as stated in 7.1.1.1 to the CLEC as described in that section.	Attachment 28, p 33-35. The Facilitator rejected the argument that an indemnification clause should be included.	No language specific to indemnity clause since not required. <i>But see</i> , § 7.1.1.1.	N/A	Issue Resolved-no SGAT changes required.
9	Interconnection	1	2) Entrance Facilities as Interconnection Points	Whether or not CLECs can use a portion of facilities they use for interstate traffic for interconnection as described in the 1996 Act.	Attachment 28, pp.35-36 The Facilitator noted that Qwest agreed to allow entrance facilities to be used for access to UNEs	7.1.2.1	Issue #9 Conforms with <i>Facilitator's Report on Workshop One</i> at pages 35-36	Issue Resolved-SGAT language changed

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
10	Interconnection	1	3) EICT Charges for Interconnection Through Collocation	Whether Qwest can charge for EICT, or in other words the Interconnection Tie Pair (ITP) "rate elements".	Attachment 28, p. 37. Qwest agreed to accept resolution proposed in WA draft order.	7.1.2.2  7.3.1.2.1	Issue #10: Qwest modified § 7.1.2.2 to remove the application of EICT charges in association with Interconnection in conformance with the <i>Facilitator's Report on Workshop One</i> at page 37.  Issue #10: Qwest modified § 7.3.1.2.1 to remove the application of EICT charges in association with Interconnection in conformance with the <i>Facilitator's Report on Workshop One</i> at page 37.	Issue Resolved- SGAT language changed.
11	Interconnection	1	4) Mid-Span Meet POIs	Whether Mid-Span Meet POIs can be used by the CLEC to access UNEs	Attachment 28, p. 38-39. The Facilitator ordered changes to SGAT to accommodate CLEC concerns.	7.1.2.3.	Issue #11: Language deleted and added to the SGAT in conformance with the <i>Facilitator's Report on Workshop One</i> at pages 37-39.	Issue Resolved- SGAT language changed.
12	Interconnection	1	5) Routing of Qwest One-Way Trunks	CLEC control over routing of Qwest traffic from Qwest's One-Way Trunk when AT&T has a One-Way Trunk.	Attachment 28, p. 39-40. The Facilitator rejected AT&T's argument. Qwest should have a reasonable degree of control over the routing for one-way trunks that it has to build because CLECs choose to interconnect with one-way trunks.	No SGAT change required. <i>But see</i> 7.2.2.1.2.1, which eliminated preference for two-way trunks.	Issue #12: Section 7.2.2.1.2.1 modified to eliminate preference for two-way trunking.	Issue Resolved- SGAT language changed.
13	Interconnection	1	6) Direct Trunked Transport in Excess of 50 Miles in Length	Whether to construct facilities at the mid-point span if Direct Trunked Transport is greater than 50 miles in length	Attachment 28, pp.40-41. The Facilitator declined to adopt Qwest's proposed 50 mile limit without further cost evidence and recommended deletion of Section 7.2.2.1.5	7.2.2.1.5.	Issue#13: Qwest does not agree with the Facilitator's recommendation to remove § 7.2.2.1.5 of the SGAT. It limits the construction of new interconnection facilities of greater than 50 miles, and if Qwest refuses to build, CLEC may request the Commission to resolve the dispute.	Issue Not Resolved-Qwest wishes to litigate this issue.
14	Interconnection	1	7) Multi-Frequency Trunking	Whether CLECs can request MF trunking and when Qwest provides without MF capability but also when it cannot be provided once MF capability is available	Attachment 28, p. 42. The Facilitator agreed that MF trunking should be made available where there is MF capability but where alternate routing is not available	7.2.2.1	Issue #14: The phrase "or if the Qwest Central Office Switch does not have MF (multi-frequency) capability" was added in conformance with the <i>Facilitator's Report on Workshop One</i> at page 42.	Issue Resolved- SGAT language changed

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
15	Interconnection	1	8) Obligation to Build to Forecast Levels	Whether Qwest can build to the lower forecast pending resolutions of disagreements between a Qwest and CLEC forecast.	Attachment 28, p. 43-45. Qwest agreed to build to the higher forecast but a deposit would be required.	7.2.2.8.6.	Issue #15: Section 7.2.2.8.6 and following subparagraphs modified to conform to <i>Facilitator's Report on Workshop One</i> at page 42.	Issue Resolved- SGAT language changed.
16	Interconnection	1	9) Interconnection at Qwest Access Tandem Switches	7.2.2.9.6 - Whether CLECs can interconnect at access tandem switches, and if so, under what circumstances. 7.1.1 - Also, whether a CLEC can interconnect between Qwest local and access tandems or Qwest access tandems.	Attachment 28, pp. 47-49. The Facilitator largely agreed with CLEC positions.	7.2.2.9.6	Issue #16: With respect to § 7.2.2.9.6, Qwest does not agree with the Facilitator's recommendation. While Qwest permits CLECs to use the access tandem for the routing of local traffic, Qwest believes there should be reasonable limits on this use. The Facilitator's language would jeopardize the efficient routing of traffic on Qwest's toll network.	Issue Not Resolved-Qwest wishes to litigate this issue.
						7.1.1	Issue #16: Section 7.1.1 was modified to conform with the <i>Facilitator's Report on Workshop One</i> at page 49.	Issue Resolved: SGAT language changed.
						7.4.5	Issue #16: Section 7.4.5 was deleted in conformance with the <i>Facilitator's Final Report on Workshop One</i> at page 49.	Issue Resolved: SGAT language changed.
						4.11.2	Issue #16: Former section 4.11.2 containing definition of "tandem switch" modified to conform to <i>Facilitator's Report on Workshop One</i> at pages 49 and 110.	Issue Resolved: SGAT language changed.
17	Interconnection	1	10) Inclusion of IP Telephony as Switched Access in the SGAT	Whether references to Internet Protocol (IP) Telephony as switched access traffic has been removed from SGAT	Attachment 28, p. 49-50. The Facilitator noted Qwest's agreement to remove three sections and stated AT&T had not identified other sections containing problem language.	7.5.1 4.39 4.59	Issue #17: Section 7.5.1 modified to eliminate IP telephony language in conformance with <i>Facilitator's Report on Workshop One</i> at page 49. Issue #17: Section 4.39 deleted in conformance with <i>Facilitator's Report on Workshop One</i> , page 49. Issue #17: Section 4.59 modified to eliminate IP telephony language in conformance with the <i>Facilitator's Report on Workshop One</i> , page 49.	Issue Resolved- SGAT language changed.



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
22	Collocation	1	3) Precluding Virtual Collocation at Remote and Adjacent Premises	Whether virtual collocation should be allowed at remote and adjacent premises, not just physical collocation.	Attachment 28, pp. 78-79. The Facilitator recommended that SGAT be changed to assure that virtual collocation in remote locations is not precluded to greater extent than in wire centers.	8.1.1.8  8.2.7  8.2.7.2  8.4.6.1	Issue #22: Section 8.1.1.8 modified to conform to <i>Facilitator's Report on Workshop One</i> at page 78-79. Issue #22: Language in 8.2.7 deleted in conformance with <i>Facilitator's Report on Workshop One</i> at page 78-79. Issue #22: New section 8.2.7.2 added in conformance with <i>Facilitator's Report on Workshop One</i> at page 78-79. Issue 22: New section 8.4.6.1 added in conformance with <i>Facilitator's Report on Workshop One</i> at page 78-79.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
23	Collocation	1	4) Cross Connections at Multi-Tenant Environments	Identification of reasonable limits and protections on CLEC access to Qwest equipment located at multi-tenant locations.	Attachment 28, pp 79-80. Reference to "agreement" in Qwest's brief not to require collocation in MTE terminals located in customer owned-building.	8.1.1.8.1.	<p>Issue #23: Since filing the SGAT in South Dakota on October 24, 2001, Qwest has made additional revisions to section 8.1.1.8.1. The revised section now provides:</p> <p>8.1.1.8.1. With respect to connections for access to Subloop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning Subloop access and intervals are contained in Section 9.3. This type of access and cross-connection is not Collocation.]</p> <p>Qwest has filed this language in Nebraska, Iowa, Montana and Oregon, and is willing to make this change in South Dakota. With this change, Qwest believes that this issue is closed.</p>	Issues Resolved: post-workshop consensus. Qwest is willing to change South Dakota SGAT
24	Collocation	1	5) Listing of Spare-Exhausted Facilities	What Qwest is required to list on its website in regards to which of its "premises" are full as required by FCC Rule 51.92(f)(3)	Attachment 28, p 82 Qwest has an independent duty to investigate and report on wire centers	8.2.1.13	<p>Issue #24: The last sentence of section 8.2.1.13 was added to conform with the Facilitator's Report on Workshop One at page 87. No further revision required.</p>	Issue Resolved- SGAT language changed

Issue #	Issue	Priority	Issue	Description of Issue	Facilitator's Recommendation	Applicable SGAT	Comments	Issue Status
25	Collocation	1	6) ICB Pricing for Adjunct and Remote Collocation	Whether Adjunct and Remote collocation should be done on an ICB basis	Attachment 28, p. 87 The Facilitator recommended that the SGAT start again the possibility for development of standard pricing.	8.3.5 8.3.6	Issue #25 Revised § 8.3.5 included language conforming with the Facilitator's Report on Workshop One at page 83 Issue #25 Revised § 8.3.6 included language conforming with the Facilitator's Report on Workshop One at page 83	Issue Resolved- SGAT language changed.
26	Collocation	1	7) Conversion of Collocation Type - Payment of Costs	Whether ICB pricing for collocation-type conversions should be eliminated and whether payment for the elimination of SPOT frames should be eliminated	Attachment 28, p. 84 The Facilitator found that CLECs failed to present evidence to support elimination of these charges.		No SGAT change required	Issue Resolved-no SGAT changes required
27	Collocation	1	8) Recovery of Qwest Training Costs	Whether Section 8.2.2.7, which allows Qwest to recover the costs of training its employees for installing, maintaining, and repairing virtually collocated equipment, should be stricken.	Attachment 28, pp. 84-85 The Facilitator did not recommend striking the section or specific changes to existing language	8.2.2.7		Issue Resolved-no SGAT changes required
28	Collocation	1	9) Removal of Equipment Causing Safety Hazards	Whether Qwest's conditions in Section 8.2.3.10 for the removal or correction of non-compliant equipment problems after Qwest inspections of physical collocation are appropriate.	Attachment 28, p. 86. The Facilitator found that CLEC-proposed changes to SGAT beyond those agreed to by Qwest were not required	8.2.3.10	Issue #28. Section 8.2.3.10 is consistent with Facilitator's Report on Workshop One at page 86.	Issue Resolved-no SGAT changes required.
29	Collocation	1	10) Channel Regeneration Charges	Whether channel regeneration charges are legitimate, and if so, under what circumstances.	Attachment 28, p. 88 The Facilitator found that regeneration charges are appropriate where unavoidable and suggested changes to the SGAT to limit application of such charges.	8.3.1.9	Issue #29: The next to last sentence in § 8.3.1.9 was added pursuant to an Order in Colorado to specify the cable lengths that require regeneration. The last sentence of § 8.3.1.9 was added to comply with the Facilitator's Report on Workshop One at page 88	Issue Resolved- SGAT language changed.
30	Collocation	1	11) Qwest Training Costs for Virtually Collocated Equipment	Whether the costs for training Qwest personnel for CLEC virtually collocated equipment should not be reduced or shared on a pro-rata basis for the number of same type units for each CLEC involved	Attachment 28, pp. 88-89 The Facilitator recommended an SGAT language change to accommodate this concern	8.3.2.2	Issue #30. The revised SGAT included language conforming with the Facilitator's Report on Workshop One at page 89.	Issue Resolved- SGAT language changed

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
31	Collocation	1	12) Requiring SGAT Execution Before Collocation May Be Ordered	Whether the requirements of 8.4.1.1 will preclude a CLEC from simultaneously establishing collocation arrangements if it has paid collocation-related charges. 8.4.1.1 requests a CLEC to provide Qwest with an Implementation Schedule first.	Attachment 28, p. 89. The Facilitator suggested that the SGAT should not preclude collocation ordering prior execution of SGAT so long as Qwest has reasonable cost protections.	8.4.1.1.1.	Issue #31: Section 8.4.1.1.1 was added to conform with <i>Facilitator's Report on Workshop One</i> at page 89.	Issue Resolved- SGAT language changed.
32	Collocation	1	13) Forfeiture of Collocation Space Reservation Fees	Whether Section 8.4.1.7.4 requiring the forfeiture of nonrecurring collocation space reservation fees should be eliminated.	Attachment 28, pp. 90-91. The Facilitator found that the Qwest proposal was supported by need for recovery of actual costs and prevention of wasteful or inappropriate space reservation.	8.4.1.7.4.	Issue #32: The language in section 8.4.1.7.4. is consistent with <i>Facilitator's Report on Workshop One</i> at pages 90-91 .	Issue Resolved-no SGAT changes required.



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolutions	Applicable SGAT	Footnote	Issue Status
33	Collocation	1	14) Collocation Intervals (General Objection Testimony)	Whether a variety of collocation intervals in the SGAT are appropriate.	Ex. 26, pp. 94-95. The Facilitator addressed the disputed issues by endorsing AT&T's space, power and HVAC limitations on collocation extensions and Qwest's proposal to allow state commission waivers.	<p>8.4.2.4</p> <p>8.4.2.4.3</p> <p>8.4.2.4.4</p> <p>8.4.2.4.5</p> <p>8.4.2.4.6</p> <p>8.4.3.4</p> <p>8.4.3.4.3</p> <p>8.4.3.4.4</p> <p>8.4.3.4.5</p> <p>8.4.3.4.6</p> <p>8.4.3.4.7</p>	<p>Issue 33: Language of 8.4.2.4 is not strictly compliant with Facilitator's Report on Workshop One at page 94-95 because it ties the interval to the forecasting requirement.</p> <p>Issue 33: Language of 8.4.2.4.3 is not compliant with Facilitator's Report on Workshop One at page 94-95 because of interval for unforecasted collocations.</p> <p>Issue 33: Language of 8.4.2.4 is not strictly compliant with Facilitator's Report on Workshop One at page 94-95 because it ties the interval to the forecasting requirement. The waiver language contained therein is consistent with the Facilitator's Report.</p> <p>Issue 33: Language of 8.4.2.4.5 modified to reflect Qwest's state commission waiver proposal accepted by Facilitator's Report on Workshop One at page 95. Interval provided is not compliant with the Facilitator's Report.</p> <p>Issue 33: Language of 8.4.2.4.6 is complaint with Qwest's state commission waiver proposal accepted by Facilitator's Report on Workshop One at page 95.</p> <p>Issue 33: Language of 8.4.3.4 is not strictly compliant with Facilitator's Report on Workshop One at page 94-95 because it ties the interval to the forecasting requirement.</p> <p>Issue 33: Language of 8.4.3.4.3 is not compliant with Facilitator's Report on Workshop One at page 94-95 because of the interval for unforecasted collocation.</p> <p>Issue 33: Language of 8.4.3.4.6 is not compliant with Facilitator's</p>	Issue resolved. ENE/ST has interval issue. Qwest wishes to litigate that issue.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
34	Collocation	1	15) Maximum Order Numbers	Whether Qwest must adhere to the 5-order maximum for obtaining the provided intervals in 8.4.3.3 for ordering caged and cageless physical collocation.	Attachment 28, pp. 96-97. The Facilitator recognized that Qwest should have the opportunity to adjust intervals when the workload becomes unmanageable but rejected the original 5-order limit as proposed by Qwest and outlined principles for development of a new provision.	8.4.1.9.	Issue #34: Section 8.4.1.9 added to accommodate the Facilitator's discussion of the issues found in <i>Facilitator's Report on Workshop One</i> at page 96..	Issue Resolved-SGAT language changed
35	Local Number Portability	11	1) Number Porting	Qwest's ability and willingness to port numbers	Attachment 28, p. 101. The Facilitator found that Sprint failed up follow up on its allegations; NEXTLINK's issues were performance-related and deferred to ROC testing; WCAS issues addressed in "Common Issues" on p. 18.	Not an SGAT issue.	N/A	Issue Resolved-no SGAT changes required.
36	Local Number Portability	11	1) Coordinating LNP and Loop Cutovers	Ability of Qwest to do a loop cutover and port a customer number when the CLEC provides its own loop, and whether Qwest must provide a coordinated and not just managed cut.	Attachment 28, pp. 104-107. The Facilitator discussed issues relating to disconnect and LNP in the context where the CLEC provides the loop and suggested a language change to the SGAT and recommended Qwest study more automated means of providing coordination	10.2.2.4.	Issue #37: The last sentence of this Section 10.2.2.4 was added to the SGAT in conformance with the <i>Facilitator's Report on Workshop One</i> page 107.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
37	Reciprocal Compensation	13	1) Excluding ISP Traffic from Reciprocal Compensation	Whether reciprocal compensation should be paid to carriers for ISP traffic.	Attachment 28, pp. 112-113. The Facilitator found that the FCC had asserted jurisdiction over ISP traffic and excluded it from reciprocal compensation under Section 251 and recommended that the SGAT language be reviewed for compliance with FCC Order on this subject.  Subsequently Qwest and AT&T reached an agreement concerning language for the SGAT on this issue. That language is not reflected in the South Dakota SGAT at this time, but Qwest is willing to make the change in South Dakota. A redlined version of the new consensus language is being provided to Staff under separate cover.	7.3.4.3	Issue #37: Changes to the South Dakota SGAT made in response to the FCC's April 27, 2001 Order which reaffirmed that ISP-bound traffic is interstate in nature, and established rules for the treatment of this interstate traffic, as recommended by the <i>Facilitator's Report on Workshop One</i> page 113. <i>See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order</i> , FCC 01-131, CC Docket No. 96-98, released April 27, 2001. However, recently Qwest and AT&T reached an agreement concerning the language for the SGAT on this issue. That language is not reflected in the South Dakota SGAT at this time, but Qwest is willing to make the change in South Dakota. A redlined version of the new consensus language is being provided to Staff under separate cover.  Issue #37 Id	Issue Resolved: post-workshop consensus reached. Qwest is willing to change South Dakota SGAT.
38	Reciprocal Compensation	13	2) Qwest's Host-Remote Transport Charge	Whether reciprocal compensation is due to Qwest from a CLIC for traffic between a Qwest local switch and Qwest remote office and if so, if reciprocal compensation is due for traffic between nodes on a CLIC SGAT 7 page	Attachment 28, pp 114-115 The Facilitator found that Qwest should be compensated for "arithmetically" and left the question of whether recovery should be in whole or in part for the other carrier. The Facilitator rejected AT&T's argument that it should receive compensation for transport to SDA&T long haul	7.3.4.3	Issue #38 No SGAT changes required	Issue Resolved-no SGAT changes required

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
39	Reciprocal Compensation	13	3) Commingling of InterLATA and Local Traffic on the Same Trunk Groups	Some parties said that certain spare special access circuits are being used for interconnection service, and therefore the Telecommunications Act requires that these circuits be priced at TELRIC prices	Attachment 28, p. 117. The Facilitator recommended that CLECs be permitted to use spare special-access facilities for interconnection but only if price at special access rates.	7.3.1.1.2	Issue #39: The Facilitator rejected the CLEC position and did not recommend substantive change to § 7.3.1.1.2	Issue Resolved-no SGAT changes required.
40	Line Sharing	2	1) Ownership of and Access to Splitters	Whether Qwest has the obligation to own splitters and make them available to CLECs on a line-at-a-time basis, and whether they should own and maintain them at the option of CLECs.	Attachment 29, p. 4. The Facilitator rejected this argument because existing FCC requirements and the evidence in the workshop failed to show that such a requirement was necessary or appropriate.	9.4.2.1.1	No SGAT changes required	Issue Resolved-no SGAT changes required.
41	Line Sharing	2	2) Tying Qwest Data Service and Voice Service	Whether Qwest's policy of discontinuing megabit service to customers who choose voice service from AT&T is against the public interest standard.	Attachment 29, p. 4. The Facilitator held that Qwest should not deny its end users Qwest's own Megabit or xDSL services when it loses a voice customer to a CLEC through line sharing. Qwest does not agree with the Facilitator's recommendation and is challenging the recommendation in each of the states in the Multi-State process.			Issue Not Resolved. Qwest wishes to litigate this issue.
42	Line Sharing	2	3) Line Sharing Over Fiber Loops	CLECs contend that line sharing over fiber loops is feasible in some situations. Qwest argues that line sharing is only feasible on copper loops.	Attachment 29, p. 4. Qwest agreed to provide line sharing over fiber facilities when the technology becomes feasible and Qwest is obliged to provide access by law.	9.4.1.1	The language is in substantial compliance; only a typographical error need be corrected. (In the last sentence of § 9.4.1.1, the period after "technology" should be replaced with a comma.)	Issue Resolved-no SGAT changes required.
43	Line Sharing	2	4) Provisioning Interval	Whether the 5-day interval for Qwest provisioning line sharing to the CLEC is or is not appropriate because 1) provisioning should be determinative with Qwest's delivery of DSL or 2) it allows CLECs to provision xDSL to its customers in the 10 day period that Qwest delivers to its own customers	Attachment 29, p. 5. The Facilitator held that the 5-day interval provided ample opportunity for CLECs to complete remaining work in time to provide end users with xDSL services within time frames that are competitive with Qwest. If Qwest succeeds in materially shortening its delivery interval, then a failure to change the five-day line-sharing interval for CLECs could leave them disadvantaged."	9.4.5.1.4, Ex. C		Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
44	Subloop Unbundling	2	1) Subloop Access at MTE Terminals	Whether the NID is a demarcation point and thus collocation relevant to CLEC accessing MTE terminal, or if NID is not demarcation point and collocation standards not relevant to CLEC accessing MTE terminal. Or, whether practical standards should be developed for new scenarios for accessing subloop elements.	Attachment 29, pp. 5-6. The Facilitator recommended change to the SGAT to allow advanced solutions to be worked out for particular configuration types, provided that the focus is on the factors relevant to those particular types.	9.3.1.1.2, 9.3.1.1.3, 9.3.1.1.4	Issue #44. In compliance with Facilitator's Report on Emerging Services at pages 5-6, Qwest made the recommended change to the SGAT	Issue Resolved- SGAT language changed.
45	Subloop Unbundling	2	2) Requiring LSR's for Access to Premise Wiring at MTEs	AT&T argued that the requirement to submit LSRs to gain access to such subloops unjustifiably discriminates against CLECs.	Attachment 29, pp. 6, 33. The Facilitator recommended change to the SGAT to preclude delay in CLEC access while it processes LSRs for MTE access to on-premise wiring.	9.3.5.4.7.	Qwest made the recommended change to the SGAT. The changes in this section are a result of consensus at the Washington Workshop.	Issue Resolved- SGAT language changed.
46	Subloop Unbundling	2	3) CLEC Facility Inventories	Whether Qwest's current obligation of having to inventory CLEC cable and pair terminations at MTEs in Section 9.3.3.5 is adequate or whether Qwest should instead be required to, at its own expense, mark its owned or controlled on-premises wire and related facilities. Also, whether it is appropriate for Qwest to charge CLECs for inventorying facilities under 9.3.6.4.1.	Attachment 29, pp. 33-34. The Facilitator rejected AT&T's proposed alternative for inventory development, thereby leaving the Qwest charges in effect.	9.3.3.5 9.3.6.4.1	N/A	Issue Resolved-no SGAT changes required.
47	Subloop Unbundling	2	4) Determining Ownership of Inside Wire	Whether Qwest should pay for determining ownership of MTE on premises wire, and how long it should take to determine MTE on premises wire ownership	Attachment 29, p. 34. The Facilitator concluded that Qwest should bear the cost of ownership determinations beyond reasonable and minimal costs of examining its records. The Facilitator recommended language to cover the timing issue.	9.3.5.4.1.	Issue #47: Language added to conform to Facilitator's Report on Emerging Services at page 35	Issue Resolved- SGAT language changed.
48	Subloop Unbundling	2	5) Intervals	Whether, if AT&T's previous arguments concerning FCP Process are not accepted, if the longest interval for determining ownership and inventorying be no greater than 15 days	Attachment 29, p. 36. The Facilitator accepted much of AT&T's position, so no added relief on intervals was deemed necessary	No additional SGAT changes required.	N/A	Issue Resolved-no SGAT changes required.
49	Subloop Unbundling	2	6) Requirements for Qwest-Permitted Inventorying at MTEs	Limitations on subloop jumpering for CLEC to Qwest terminals	Attachment 29, p. 38. The Facilitator noted the overlap between this issue and Issue 44. He found the record did not support allowing CLECs to perform jumpering outside the context of on- or on-terminating MTE terminals	9.3.6.4.1	Issue #48: Language consistent with Facilitator's Report on Emerging Services page 36	Issue Resolved-no SGAT changes required

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
50	Subloop Unbundling	2	7) Expanding Explicitly Available Subloop Elements	Whether the SGAT properly addresses the scope and depth of types of subloop unbundling that has been defined by the FCC	Attachment 29, p. 38. The Facilitator found it not appropriate to expect Qwest to undertake the effort to design standard offerings for every conceivable case. Qwest's special request process allows for consideration of new offerings.	See eg. 9.3.1.1, 9.3.1.1.1; 9.3.1.1.2, 9.3.1.1.3	N/A	Issue Resolved-no SGAT changes required.
51	Packet Switching	2	1) Availability of Spare Copper Loops	Whether the CLEC should be able to 1) collocate their DSLAMs in the same place as Qwest and 2) gain access to Qwest's packet switching as a UNE.	Attachment 29, p. 43-44. The Facilitator rejected AT&T's proposed SGAT changes relating to the availability of packet switching.	9.20.2.1	N/A	Issue Resolved-no SGAT changes required.
52	Packet Switching	2	2) Denial of DSLAM Collocation	Whether SGAT Section 9.20.2.1.3 should be expanded to include language that would allow CLEC to determine if it would be economical to place a DSLAM in Qwest's premises.	Attachment 29, p. 45. The Facilitator found no sound basis for supplementing the FCC's conditions regarding DSLAM collocation with the addition of an economic feasibility test.	9.20.2.1.3	N/A	Issue Resolved-no SGAT changes required.
53	Packet Switching	2	3) ICB Pricing	Whether specific prices should be provided for the provisioning of unbundled packet switching.	Attachment 29, p. 46. The Facilitator noted that cost and pricing issues would be addressed in cost dockets.	See, SGAT Ex. A		Issue Resolved-no SGAT changes required.
54	Packet Switching	2	4) Unbundling Conditions as a Prerequisite to Ordering	Whether there should be 1) simultaneous processing of DSLAM collocation and packet switching UNE requests and 2) an interval of 10 days or less for Qwest to reject DSLAM collocation requests.	Attachment 29, p. 47. The Facilitator found that the introduction of a 10-day collocation denial notice was unwarranted in light of other Qwest disclosures. The Facilitator agreed that Qwest should be required to respond to DSLAM collocation orders and packet switching orders simultaneously.	9.20.4.1 9.20.4.1.2	Issue #54: Section 9.20.4.1.2 clarifies that DSLAM collocation and packet switching orders shall be responded to in parallel as recommended in the Facilitator's Report on Emerging Services at page 47.	Issue Resolved- SGAT language changed.
55	Packet Switching	2	5) Line Card "Plug and Play"	Whether CLECs may place their line cards into Qwest's DSLAM	Attachment 29, pp. 47-48. The Facilitator declined to order this alternative.	No SGAT change required	N/A	Issue Resolved-no SGAT changes required.
56	Dark Fiber	4 of 5	1) Affiliate Obligations to Provide Access to Dark Fiber	Does the Act obligate Qwest to make the in-region dark fiber of affiliates, specifically Qwest Communications International, Inc. ("QCI"), available to CLECs?	Attachment 29, pp. 53-55. The Facilitator proposed language to be added to the SGAT that defines Qwest's obligations with regard to the provision of dark fiber owned by affiliates and third parties.	9.7.1	Issues #56 and #57: Section 9.7.1 modified to incorporate language ordered by the Facilitator's Report on Emerging Services pages 54-56.	Issue Resolved- SGAT language changed.
57	Dark Fiber	4 of 5	2) Access to Dark Fiber in Joint Billing Arrangements	Are CLECs allowed to lease dark fiber that exists in "joint build arrangements" with third parties (e.g., other local, adjacent telephone companies) under which Qwest can use the other party's facilities, equipment, or fiber to transport communications traffic?	Attachment 29, p. 55-56. The Facilitator found the solution to the previous issue applicable to this issue.	9.7.1	Issue #57: Section 9.7.1 modified to reflect the recommendation of the Facilitator's Report on Workshop One, pp. 54-56.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
58	Dark Fiber	4 or 5	3) Applying a Local Exchange Usage Requirement to Dark Fiber	Does the same local usage test that the FCC issued with regard to Enhanced Extended Links ("EELs") apply to dark fiber?	Attachment 29, p 57. The Facilitator decided that the loop/transport combination test applies whether or not UDF is used and rejected AT&T's argument	9.7.2.9	No SGAT change was required	Issue Resolved-no SGAT changes required
59	Dark Fiber	4 or 5	4) Consistency With Technical Publications	Whether the SGAT has to be consistent with other Qwest Technical Publications and what governs when publications are different. Deferred to General Terms and Conditions	Attachment 29, p 57. The general issue of the hierarchy among the SGAT and other publications was deferred to the general terms and conditions workshop.	9.7.2.18, 2.3.	Issue #59 footnote to 9.7.2.18, 2.3 "Section 2.3 clarifies Qwest's position that the SGAT trumps a technical publication or other publication."	Issue Resolved-no SGAT changes required
60	Access to Unbundled Network Elements	2	1) Construction of New UNEs	Whether Qwest has the obligation to build UNEs and UNE combinations for CLECs on the same basis as it would for its own customers and whether these UNEs should be priced at TELRIC rates or for the actual cost of construction	Attachment 30, pp. 5, 21-26. Various CLECs took the position that Qwest has an obligation to build new UNEs and proposed amendments to various SGAT sections (see next column) to mandate it. Qwest relied on the FCC <i>UNE Remand Order</i> for the position that it had no obligation to build new UNEs. The Facilitator agreed with Qwest and concluded that Qwest has no obligation to build UNEs, including unbundled loops. (See Issue 76 below)	9.19, 9.23.1.4-6, 9.23.3.7.2.12.8	Issue #60, footnote to SGAT §§ 9.19, 9.23.1.4-6, 9.23.3.7.2.12.8 <i>Facilitator's Report on Workshop Three</i> , pages 24-26. No revisions required	Issue Resolved-no SGAT changes required.
61	Access to Unbundled Network Elements	2	3) Commingling UNEs and Tariffed Services on the Same Facilities	Whether restrictions should be placed on the commingling of UNEs and Tariffed services on the same facilities	Attachment 30, pp. 28-29. Various CLECs raised issues regarding Qwest's position on commingling, proposing a variety of SGAT changes. The Facilitator agreed that Qwest's interpretation of the FCC's commingling position was consistent with the FCC's language. (Attachment 30 at 28) The Facilitator ruled that Qwest should not be allowed to impose restrictions broader than those specifically addressed in its brief and ordered that an amendment be made to SGAT section 9.23.1.2.2. <i>id</i>	9.23.1.2.2.	Issue #61: <i>Commission Order on Qwest Compliance with 14 Point Checklist</i> dated November 20, 2001, (Checklist No. 5 - Issue No. 2) at page 8 para 3. The redlined language was not included in the <i>Workshop Three Frozen SGAT</i> to the July 10, 2001 SGAT. It is added pursuant to the <i>Workshop Three Report</i> at page 29	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
62	Access to Unbundled Network Elements	2	3) OSS Testing	Whether current SGAT language is adequate to address large scale entry by CLECs.	Attachment 30, p. 31 AT&T proposed numerous changes to the SGAT regarding OSS testing. The Facilitator rejected most of them, but ordered that language be added in lieu of a proposed change to section 12.2.9.3.5. The Facilitator also noted that subject to the specific language ordered above, "and subject to the acceptance of Qwest's specific objections to AT&T's changes, AT&T's other requested changes to Section 12.9.2.3 and its subparts (as shown in WS3-ATT-MFH-2) should be incorporated into the SGAT."	12.2.9.8.	<p>Issue #62 The SGAT filed in South Dakota failed to incorporate the appropriate change. However, Qwest agrees to add the following language to § 12.2.9.8, which conforms to the <i>Facilitator's Unbundled Network Elements Report</i> at page 31:</p> <p>In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the dispute resolution procedures of this Agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.</p> <p>Issue #62 The Facilitator ordered changes to § 12.2.9.3 in <i>Facilitator's Unbundled Network Elements Report</i> at page 31. After that workshop, Qwest and other CLECs reached agreement on text for § 12.2.9.3 and its subsections. The agreed to languages was included in SGAT Lite.</p>	Issue Resolved-subsequent consensus reached among parties.



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63	Access to Unbundled Loops	4	1) Standard Loop Provisioning Intervals	Whether the ROC and SGAT approved standard intervals for the installation of a variety of unbundled loops is too long and should be replaced with different intervals	Attachment 30, pp. 49-51 The Facilitator found that the ROC established its standard intervals performance measures "through an open and collaborative process." (Attachment 30 at 49), that those intervals are entitled to great weight, and declined to change them. <i>Id.</i> 49-51	None	Issue Resolved-no SGAT changes required.	
64	Access to Unbundled Loops	4	3) Reciprocity of Troubleshooting Charges	Whether Qwest should pay CLECs for isolating the source of network troubles when the source of the problem is on Qwest's side of the network as is reciprocally required by CLECs in 9.2.5.2 & 3, and whether CLECs should be charged if customer wiring or equipment identified as the source of the problem, and whether language should be added to 9.2.5 allowing CLEC access to the NID and CLECs ability to challenge Qwest's double recovery of trouble isolation costs	Attachment 30, p. 52 The Facilitator ordered that CLEC's NID access for testing purposes (Attachment 30 at 52)	9.2.5.5	Issue #64, footnote to SGAT § 9.2.5.5. "Facilitator's Workshop Three Report at 52"	Issue Resolved- SGAT language changed
65	Access to Unbundled Loops	4	4) Delays in the Roll-Out of ADSL and ISDN Capable Loops	Whether wholesale products should be made available to CLECs as they are available to Qwest retail customers.	Attachment 30, p. 53. Rhythms argued that Qwest had been slow in responding to requests for ADSL and ISDN wholesale products. Qwest justified the delay on the ground of low demand. The Facilitator noted that the issue of Qwest response to non-standard VNEs was scheduled to be addressed in the General Terms workshop. The Facilitator asked that Qwest state its intentions regarding non-standard offerings in its comments to state commissions on this report. (Attachment 30 at 53.)	No SGAT provision was addressed. In his comments in response to the request for a statement of intention, Qwest stated: "Qwest states that it will move in an expeditious manner as outlined in the report." Qwest comments at 12.	Issue Resolved-no SGAT changes required.	
66	Access to Unbundled Loops	4	5) Cooperative Testing Problems	Whether Qwest was delivering cooperative testing on loop installations properly	Attachment 30, p. 54 The CLEC did not brief this issue, and the record indicated that Qwest had taken steps to address the problems. (Attachment 30 at 54)	None.	Issue Resolved-no SGAT changes required.	

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67	Access to Unbundled Loops	4	6) Spectrum Compatibility	Concerns the issue of interference when signals from multiple carriers are carried through a common cable Deals with the responsibility of each carrier to not impede the signals of other carriers when providing a signal of their own.	Attachment 30, pp 57-60. Three issues were addressed. 1) T1 facilities. The Facilitator ordered new language to section 9.2.6.4. (Attachment 30 at 57-58) 2) Remote Deployment of DSL. The Facilitator recommended the addition of language to section 9.2.6. <i>Id.</i> at 60. 3) Whether CLECs must disclose NC/NCI codes to Qwest. The Facilitator ruled for Qwest and did not recommend any new SGAT language	In response to issue 1, Qwest adopted the language set forth in SGAT § 9.2.6.4. In response to issue no. 2, Qwest adopted the language set forth in SGAT § 9.2.6.9. Although no language was mandated in response to issue no. 3, Qwest adopted language in SD SGAT §§ 9.2.6.2.1, 9.2.6.2.2	Issue #67, footnotes to the three SGAT sections changed should read SGAT § 9.2.6.4: "Facilitator's Workshop Three Report at 57-58." SGAT § 9.2.6.9: "Facilitator's Workshop Three Report at 60." SGAT § 9.2.6.2: "Facilitator's Workshop Three Report at 61."	Issue(s) Resolved- SGAT language changed except where no change was required by Facilitator.
68	Access to Unbundled Loops	4	7) Conditioning Charge Refund	Whether a CLEC should be refunded line conditioning charges from Qwest if the CLEC loses the customer within a year of service.	Attachment 30, p. 62. The Facilitator recommended language that balanced the interests between CLECs and Qwest. (Attachment 30 at 62.)	9.2.2.4.1.	Issue #68, footnote to § 9.2.2.4.1: "Facilitator's Workshop Three Report at page 62."	Issue Resolved- SGAT language changed.
69	Access to Unbundled Loops	4	8) Pre-Ordering Mechanized Loop Testing	Whether CLECs should be allowed to perform mechanized loop testing to gather information about loop length and conditioning	Attachment 30, p. 64. The Facilitator concluded that the information the CLECs seek is available from other sources. He declined to require Qwest to make mechanized loop testing available to CLECs.	None.		Issue Resolved-no SGAT changes required.
70	Access to Unbundled Loops	4	9) Access to LFACs and Other Loop Information Databases	Whether CLEC should have access to LFACs or other databases to determine the type and extent of facilities available in Qwest's system	Attachment 30, p. 66. The Facilitator ordered new language to address this issue.	9.2.2.2.1.1.	Issue #70, footnote to § 9.2.2.4.1. "Section added to conform to Facilitator's Workshop Three Report at page 66."	Issue Resolved- SGAT language changed.
71	Line Splitting	4	1) Limiting Line Sharing to UNE-P	Whether it is appropriate that the SGAT limit line sharing to cases where CLECs gain access to Qwest loops through the use of UNE-P or if it should be expanded to other configurations	Attachment 30, pp 68-69 The Facilitator rejected the CLECs' attempt to force Qwest to broaden the SGAT for line sharing/line splitting in other configurations	None		Issue Resolved-no SGAT changes required
72	Line Splitting	4	2) Liability for Actions by an Agent	Whether one party (CLEC) should be responsible as the "Customer of Record" for line splits	Attachment 30, p. 70 The Facilitator ruled that existing SGAT language already addresses the only valid issue raised	None		Issue Resolved-no SGAT changes required

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
73	NID	4	1) "NID" Definition and Access to Terminals Where Qwest Owns Facilities in the Direction of the End User	Definition of the NID	Attachment 30, p. 73. The Facilitator found Qwest's interpretation on the access to NIDs issue as more in accord with the language. Thus he required no SGAT change.	None		Issue Resolved-no SGAT changes required
74	NID	4	2) Protector Connections	Whether Qwest must remove the loop connections to the NID when the CLECs are restricted from NID access in cases where space is available	Attachment 30, p. 74. AT&T proposed an amendment to § 9.2.5.1 relating to protector connections. The Facilitator found that there was basis to make the change.	None.		Issue Resolved-no SGAT changes required.
75	NID	4	3) CLEC Use of Qwest's NID Protector Without Payment	Whether CLEC should pay for Qwest's protector when it has its own protector to connect to its own or Qwest's NID.	Attachment 30, p. 74. The Facilitator found AT&T's arguments to be unsupported and rejected them.	None.		Issue Resolved-no SGAT changes required.
76	Access to Unbundled Local Transport	5	1) SONET Add/Drop Multiplexing	Whether SONET add/drop multiplexing would be a CLEC transport option	Attachment 30, pp. 5, 21-26, 76-77. AT&T asked Qwest to amend section 9.6.1.2 to add SONET add/drop multiplexing as an option. Qwest refused on the ground that the FCC's <i>UNE Remand Order</i> makes it clear that Qwest need not build UNEs for CLECs. The Facilitator agreed with Qwest. (Att. 30 at 76-77.) He had earlier determined that Qwest had no obligation to build UNEs in the context of unbundled loops. ( <i>Id.</i> at 5, 21-26.) (See Issue #60 above.)	9.6.1.2.	Issue #76: Although the Facilitator's Report did not require a change to § 9.6.1.2, as a result of the Washington Loop Workshop (Consensus), the term "Unbundled Loops" has now been deleted because Loop plus multiplexing is described in § 9.2.3. The South Dakota SGAT does not reflect that change, but Qwest is willing to agree to do so.	Issue Resolved-no SGAT changes required.
	Access to Unbundled Local Transport	5	2) UDIT/EUDIT Distinction	Whether UDIT and EUDIT should be treated similarly for transport purposes and how they should be costed	Attachment 30, p. 78. AT&T argued that the UDIT/EUDIT distinction be eliminated and both charged on a flat rate, distance sensitive basis. The Facilitator concluded that questions regarding costs and "how they should be translated into UNE prices is best done on the basis of the detailed cost information that is typical of cases that address such prices." He noted that such information wasn't before him and concluded that "with Qwest's agreement that UDIT and EUDIT are not separate circuits but rather, are made a single LUM with two different pricing mechanisms, making such a distinction is unwarranted."	The distinction between UDIT and EUDIT is retained in §§ 9.6.1 through 9.6.6		Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
78	Access to Unbundled Local Transport	5	3) Commingling UNEs and Interconnection Trunks	Whether the definition of "finished services" with LIS Trunks included precludes CLECs from connecting UNEs to trunks used for interconnection.	Attachment 30, p. 79. AT&T argued that LIS trunks should be deleted from the definition of "finished services" in the SGAT. Qwest agreed to delete LIS trunks from the "finished services" definition.	Section 4.0, definition of "finished services."	Issue #78, footnote to definition of "finished services" in SGAT § 4.0: "Facilitator's Workshop Three Report at page 79 (reference to LIS Trunks removed)."	Issue Resolved- SGAT language changed.
79	Access to Unbundled Local Transport	5	4) Applying Local Use Restrictions to Unbundled Transport	Whether 9.6.2.4 should prohibit the use of interoffice transport as a substitute for special or switched access services.	Attachment 30, p. 80. AT&T argued that the SGAT improperly prohibited the use of interoffice transport as a substitute for special or switched access. Qwest proposed language that had been agreed to in other jurisdictions that limits the use of EUDIT as a substitute for special or switched access with one stated exception. Language also states that Qwest will not apply the local use restrictions in 9.23.3.7.2 "[p]ending resolution by the FCC." AT&T agreed to the proposed language.	9.6.2.4.	Issue #79, footnote to § 9.6.2.4: "Facilitator's Workshop Three Report at page 80."	Issue Resolved- SGAT language changed.
80	EELs	5	1) Limiting Local Use Requirements to Existing Special Access Circuits	Whether the FCC has limited use certification requirements to existing special access circuits and whether SGAT section 9.23.3.7.2.12.2 and 9.23.3.7.1 extends those requirements to UNE combinations to be acquired by CLECs	Attachment 30, p. 82. Several CLECs argued that two SGAT sections (9.23.3.7.1 and 9.23.3.7.2.12.2) improperly extend a local use certification to new UNE combinations—they argued the local use certifications should be limited only to conversions of existing special access circuits. Qwest argued that the intent of the FCC is to "preserve the status quo" while this issue is reviewed and, therefore, the local use restrictions in the SGAT are consistent with the FCC's intent. The Facilitator agreed with Qwest, ruling that new EELs are "subject to the same local use certification requirements as are converted special access circuits." Therefore, the Facilitator ruled that no changes needed to be made to local SGAT provisions.	9.23.3.7.1 . 9.23.3.7.2.12.2	The current version of 9.23.3.7.1 complies with the Workshop Three Frozen SGAT.	Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
81	EELs	5	2) Allowing Commingling Where Qwest Refuses to Construct UNEs.	Whether Qwest should be able to refuse commingling UNEs and tariffed services in certain cases where Qwest refuses to construct UNEs.	Attachment 30, pp. 83-84. AT&T argued that it should have the right to acquire a tariffed DS1 (where one is unavailable as a UNE) and multiplex it onto dedicated transport facilities that were acquired as a UNE. (Attachment 30 at 83.) Qwest argued that this arrangement would violate the FCC's prohibition against combining certain UNEs and tariffed services. The Facilitator acknowledged Qwest's argument, but noted that the situation hypothesized was not one that ran afoul of the FCC's anti-commingling rule. The Facilitator ordered that specific language to address this situation be included in Qwest's SGAT. <i>Id.</i> at 84.	9.23.1.2.3.	Issue #81, footnote to § 9.23.1.2.3: "Facilitator's Report on Workshop Three at page 84."	Issue Resolved- SGAT language changed.
82	EELs	5	3) Waiver of Termination Liability Assessments for EELs	Whether CLECs should have to pay termination charges for early termination charges when transforming private line purchases into EELs.	Attachment 30, pp. 84-87. This issue was raised by several CLECs who claimed that they had in the past bought special access/private line circuits in place of EELs, which Qwest had argued it had no obligation to provide. Many of the circuits they bought were subject to termination liability agreements (TLAs). Qwest is now obligated to provide EELs. The CLECs argued that they should not be required to pay termination charges when they convert these circuits to EELs. Qwest argued that the requirement to provide EELs was recent and that it would be unfair for the CLECs to take advantage of lower prices that exist under the long term arrangements entered into for these circuits, while escaping all responsibility for termination liability. The issue was resolved by the Facilitator's adoption of SGAT language that allowed waiver of TLA liability under specific circumstances.	9.23.3.12.	Issue #82, footnote to § 9.23.3.12: "Facilitator's Report on Workshop Three at page 87 ("Waiver of Termination Liability Assessments for EELs")."	Issue Resolved- SGAT language changed.
83	EELs	7	4) Waiving Local Line Restrictions on Private Line Purchases in Lieu of EELs	Whether Qwest should have to build UNEs for transport or allow the commingling of tariffed or classified services to UNEs under 9.1.5 and 9.23.1.2.3	Attachment 30, p. 88. This issue is related to the previous issue (no. 82) in addition to seeking relief from termination liability. AT&T argued that local wire connections should be removed as private lines purchased in lieu of EELs and that Qwest should be required to build UNEs for the CLECs. The Facilitator noted that in light of the entry of TLA agreements between the parties since the last order in this proceeding.	None		Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
84	EELs	5	5) Counting ISP Traffic Toward Local Use Requirements	Whether ISP should be counted toward local usage requirements.	Attachment 30, p. 88. CLECs argued that ISP traffic should be counted toward CLEC compliance with local usage requirements. Qwest responded that the FCC <i>ISP Remand Order</i> ruled that ISP traffic was interstate in nature. While expressing hope that aspects of the commingling issue will be addressed by the FCC, the Facilitator ruled that the FCC's decision mandates that ISP traffic cannot be counted as local traffic.	None.		Issue Resolved-no SGAT changes required.
85	Access to Unbundled Local Switching	6	1) Access to AIN-Provided Features	Whether Qwest need make available access to Qwest's own AIN features to CLECs.	Attachment 30, p. 93. AT&T argued that Qwest should provide AIN capabilities to CLECs. Qwest responded that it provides the feature development capabilities of AIN to the full extent required by the FCC and that access to such capabilities from which the CLECs, like Qwest, are able to provide features to end users. The Facilitator concluded that "Qwest does provide all available switch features." He also concluded that "[n]o argument exists that fails to meet the current FCC standard, which is to provide the capability for CLECs to develop their own AIN-based features. . . ." Finally, he concluded that "[t]here is not basis for concluding that Qwest should . . . be required to provide CLECs with access to the AIN-developed features themselves (or to the software that delivers them)"	None.		Issue Resolved-no SGAT changes required.
86	Access to Unbundled Local Switching	6	2) Exemption from Providing Access to Switching in Large Metropolitan Areas	Whether § 9 11 2 5 improperly limits the availability of unbundled switching in the 50 top MSAs to end users with 4 or more access lines within a wire center	AT&T argued for seven changes to SGAT § 9 11 2 5 3 on the ground that § 9 11 2 5 improperly limited the availability of unbundled switching. The Facilitator ordered no SGAT changes.	None.		Issue Resolved-no SGAT changes required.
87	Access to Unbundled Local Switching	6	3) Basis for Limiting Access to Applying the Single-Line Requirement	Whether the three-line requirement per customer should be applied on a per-customer or per-access-line basis to residential lines	Attachment 30, pp. 95-96. This relates to the application of the three-line rule in § 9 11 2 5. AT&T argued that the three-line requirement should be applied on a per-customer basis. The Facilitator interpreted the FCC's regulation regarding that the three-line rule be applied on a per-access-line basis.	No change required.		Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
88	Access to Unbundled Local Switching	6	4) Providing Switch Interfaces at the GR-303 and TR-008 Level	Whether Qwest should provide interfaces at the GR-303 and TR-008 Level.	Attachment 30, p. 96. While Qwest had objected to AT&T's request for access to switch interfaces at the GR-303 and TR-008 levels, it later incorporated language into SGAT § 9.11.1.1.2 that it felt would give AT&T the requested access.	9.11.1.1.2.	Issue #88, footnote to § 9.11.1.1.2: "The language in paragraphs 9.11.1.1.2 through 9.11.1.1.2.9 is consensus language from Washington and was included in the July 10, 2001 SGAT. It was not included in the <i>Workshop Three Frozen SGAT</i> "	Issue resolved-SGAT language changed.
89	General Terms and Conditions		1) Landowner Consent to Agreement Disclosure Issue	Whether Qwest needs landowner approval for the release of landowner agreements to CLECs.	Ex. 31 pp. 15-17. The Facilitator indicated that he had resolved this issue in a previous workshop. See Issue Number 1. The Facilitator rejected AT&T's request to revisit the issue and stated that his prior resolution was appropriate.	10.8.4.1.3.	Issue 89: See Issue Number 1.	Issue Resolved-SGAT language changed.
90	General Terms and Conditions		1) Comparability of Terms for New Products or Services	Whether a section 1.7.2 should be added requiring Qwest to offer new products and services at the same rates terms and conditions as existing products and services when these products and services are comparable	Ex. 31 pp. 23-24. The Facilitator rejected AT&T's proposal for a new Section 1.7.2 that would require Qwest to offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services were comparable	Proposed 1.7.2	Issue 90: Qwest adopted the Facilitator's recommendation. The Facilitator rejected AT&T's proposed Section 1.7.2. No SGAT changes are required.	Issue Resolved-no SGAT changes required.
91	General Terms and Conditions		2) Limiting Provisions on Pick and Choose Provisions	Whether a CLEC may use a provision of an agreement between Qwest and another CLEC for the life of the underlying CLEC's contract	Ex. 31 pp. 24-25. The Facilitator rejected AT&T's argument that "picked and chosen" provisions should adopt the termination date of the agreement in which they are being placed rather than the termination date associated with the agreement from which they are to be taken.	Generally 1.8	Issue 91: Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 1.7.2 &amp; Track A Report</i> at pages 24-25 regarding "pick and choose" provisions. "Pick and choose" provisions are generally addressed in § 1.8. The Facilitator rejected AT&T's argument. The Facilitator recommended no changes to the SGAT that was in issue in the multi-state proceeding. The required changes in the document reflect modifications that bring the final SGAT into compliance with the SGAT that was recommended by the Facilitator.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
92	General Terms and Conditions		3) Applying "Legitimately Related" Terms Under Pick and Choose	Whether Qwest has abused the "legitimately related" provision of the SGAT by requiring adherence to other peripheral SGAT requirements	Ex. 31 pp. 25-26. The Facilitator rejected AT&T's claims that Qwest abuses the "legitimately related" requirement and indicated that Qwest's voluntary changes to Section 1.8.2 and the definition of "Legitimately Related" adequately limits Qwest's right to attach other provisions to those that a CLEC might pick and choose.	1.8.2 4 - Definition of "Legitimately Related"	Issue 92: 1.8.2 - Qwest voluntarily added the following sentence which was expressly endorsed by the Facilitator in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 25: "In addition, Qwest shall provide to CLEC in writing an explanation of why Qwest considers the provisions Legitimately Related, including legal, technical or other consideration." 4 (Definition of "Legitimately Related") - Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 25-26 with minor modifications to the definition of "Legitimately Related." Specifically, Qwest replaced the last sentence of the definition quoted by the Facilitator with "This definition is not intended to limit the FCC's interpretation of 'legitimately related' as found in its rules, regulations or orders or the interpretation of a court of competent jurisdiction." This change was designed to achieve consensus among the parties	Issue Resolved- SGAT language changed.
93	General Terms and Conditions		3) Applying "Legitimately Related" Terms Under Pick and Choose	Whether CLEC's are allowed to enter into business agreements with other CLECs regarding issues a Qwest agreement	Ex. 31 pp. 26-27 The Facilitator recommended that Qwest add language to the SGAT to make it clear that CLEC may not use provisions that were introduced a part of Qwest's language	1.8.2	Issue 93 Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the Facilitator's <i>Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 26-27	Issue Resolved- SGAT language changed



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94	General Terms and Conditions		5) Conflicts Between the SGAT and Other Documents	Whether there are provisions in the SGAT that adequately spell out when SGAT provisions prevail over provisions in other documents related to the SGAT.	Ex. 31 pp. 27-29. The Facilitator rejected CLECs' arguments that the SGAT did not sufficiently address conflicts between the SGAT and other documents to prevent non-negotiated changes to the SGAT.	2.1 2.3	Issue 94: 2.1 - Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 27-29. The Facilitator found that Qwest's language was appropriate. Qwest has modified § 2.1 to make the provision more clear. Additional redlined changes indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator. Qwest's modifications have not altered the effect of the language and have not changed Qwest's compliance with the Facilitator's recommendation. 2.3 - Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 27-29. The Facilitator expressly endorsed Qwest's language. The Facilitator recommended no changes to the SGAT that was at issue in the multi-state proceeding. The redlined changes in this document indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator.	Issue Resolved- SGAT language changed.

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95	General Terms and Conditions		6) Implementing Changes in Legal Requirements	How a change in law should create changes within the SGAT.	Ex. 31 pp. 29-30. The Facilitator rejected AT&T's argument that the SGAT unduly favors Qwest when changes in law have an effect on the SGAT in light of Qwest's voluntary modifications to Section 2.2.	2.2	Issue 95: Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 29-30. The Facilitator found that Qwest's language was appropriate. The Facilitator recommended no changes to the SGAT that was at issue in the multi-state proceeding. The redlined changes in this document indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
96	General Terms and Conditions		7) Second-Party Liability Limitations	Whether the scope of Qwest's liability in section 5.8 is too narrow to protect CLECs	Ex. 31 pp. 30-33. The Facilitator recommended that (1) AT&T's proposed changes to Section 5.8.2 should be deferred until the QPAP report; (2) Qwest's limiting language in Section 5.8.3, which was moved to Section 5.8.2, should be approved; (3) Qwest should modify Section 5.8.4 to include willful or intentional misconduct and damage to tangible real or personal property; and (4) Section 5.8.6 should be modified to reflect the Facilitator's proposed language.	5.8.2 5.8.3 5.8.4 5.8.6	<p>Issue 96: 5.8.2 - Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 30-33. The Facilitator recommended no changes to the SGAT that was at issue in the multi-state proceeding at this time. The redlined changes in this document indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator.</p> <p>5.8.3 - Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 30-33. The Facilitator found that Qwest's language was appropriate. The Facilitator recommended no changes to the SGAT that was at issue in the multi-state proceeding. The redlined changes in this document indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator.</p> <p>5.8.4 - Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report at page 33.</p> <p>5.8.6 - Qwest adopted the SGAT language as an amendment of the South Dakota SGAT current with the SGAT that was considered by the Facilitator.</p>	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
97	General Terms and Conditions		8) Third-Party Indemnification	Whether sections 5.8, 5.9 and PAP provisions are integrated enough to properly protect CLECs from anti-competitive behavior, and whether section 5.9.1.2 improperly limits Qwest's responsibility for damages CLEC must pay to its end users.	Ex. 31 pp 33-35. The Facilitator rejected AT&T's argument that Section 5.9 failed to protect CLECs from potential anti-competitive and discriminatory conduct by Qwest but did recommend that Qwest modify Section 5.9.1.2 to hold a party that causes physical injury liable for that injury.	5.9.1.2	Issue 97: Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 34-35. Additional redlined changes indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator. After the Facilitator issued his <i>Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> , he corrected his proposed language for Section 5.9.1.2 by an email dated December 5, 2001. Specifically, the Facilitator changed "Indemnified Party" to "Indemnifying Party" in the first line and "Indemnifying Party to "Indemnified Party" in the last line. These changes have not yet been incorporated into the SGAT.	Issue Resolved- SGAT language changed.
98	General Terms and Conditions		9) Responsibility for Retail Service Quality Assessments Against CLECs	Whether a provision should be included in the SGAT which would transfer state commission levied sanctions against the retail provider to the wholesale provider if violation of service standard is due to poor provisioning of service by the wholesale provider	Ex. 31 p. 35. The Facilitator rejected XO's argument that Qwest should bear responsibility for assessments or fines levied against a CLEC that fails to meet a state commission's retail performance standards because of a failure by Qwest to provide the CLEC with SGAT-compliant service. The Facilitator noted that XO's position may contradict each state's policy regarding assessments and fines.	No specific SGAT section.	Issue 98: Qwest adopted the Facilitator's recommendation. No SGAT changes are required.	Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
99	General Terms and Conditions		10) Intellectual Property	Whether Qwest's current SGAT language for section 5.10 are close enough to AT&T's changes.	Ex. 31 pp. 35-36. The Facilitator noted that the parties had reached an agreement on the language for Section 5.10 but that the parties' proposed language differed slightly. The Facilitator stated that this issue should be considered closed unless a party objected.	5.10	Issue 99: Qwest adopted the Facilitator's recommendation found in the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at pages 35-36. Qwest conferred with AT&T and both parties concluded that the language contained in the SGAT is the proper consensus language for the Intellectual Property Section. The Facilitator recommended no changes to the SGAT that was at issue in the multi-state proceeding. The redlined changes in this document indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator.	Issue Resolved-no SGAT changes required
100	General Terms and Conditions		11) Continuing SGAT Validity After the Sale of Exchanges	Whether provisions to SGAT section 5.12.2 should be added to allow protection of CLEC and CLEC customers in the event Qwest should sell its exchanges.	Ex. 31 pp. 36-38. The Facilitator rejected AT&T's proposed revisions to Section 5.12.2 that would place certain requirements on Qwest during a sale of Qwest's exchanges. The Facilitator recommended his own language to provide a smooth transition when Qwest sells its exchanges.	5.12.2	Issue 100: Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 37.	Issue Resolved- SGAT language changed.
101	General Terms and Conditions		12) Misuse of Competitive Information	Whether Qwest's marketing and sales personnel have access to confidential CLEC information.	Ex. 31 pp. 38-39. The Facilitator noted that AT&T's citation of a single incident does not support a broad conclusion that Qwest misuses CLEC information. The Facilitator recommended that Qwest prepare a report detailing its programmatic efforts to minimize the possibility of, discourage, detect, or punish inappropriate conduct relating to CLEC information.	No specific SGAT section	Issue 101: Qwest adopted the Facilitator's recommendation. Qwest submitted its Report On Measures To Assure That Competitive Information Obtained Through Qwest's Ordering Systems Is Properly Protected on October 22, 2001. No SGAT changes are required.	Issue Resolved-no SGAT changes required

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
102	General Terms and Conditions		13) Access of Qwest Personnel to Forecast Data	What Qwest personnel and what form of access Qwest should be allowed to have concerning CLEC forecast data.	Ex. 31 pp. 39-40. The Facilitator recommended that Qwest modify the SGAT to narrow the circumstances when Qwest's legal personnel can have access to forecast data and to limit the use of aggregated forecast data.	5.16.9.1 5.16.9.1.1	Issue 102: 5.16.9.1 - Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 40. Additional redlined changes indicate modifications that bring the South Dakota SGAT current with the SGAT that was considered by the Facilitator. 5.16.9.1.1 - Qwest adopted the Facilitator's recommendation. Language was added to the SGAT in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 40.	Issue Resolved- SGAT language changed.
103	General Terms and Conditions		14) Change Management Process	Whether Qwest meets with FCC criteria for its CICMP for the purposes of the SGAT.	Ex. 31 p. 41. The Facilitator noted that Qwest was changing and revising its change management process. The Facilitator noted that there was not a sufficient record to provide a meaningful consideration of the issue.	12.2.6	Issue 103: Changes to this section are being considered in the CMP review process.	Issue Resolved-no SGAT changes required.
104	General Terms and Conditions		15) Bona Fide Request Process	Some parties argue that Qwest's bona fide request (BFR) process in Section 17 of the SGAT is not non-discriminatory.	Ex. 31 pp. 41-44. The Facilitator (1) rejected AT&T's argument that Qwest's BFR process has a retail analog, (2) recommended that Qwest include language in the SGAT providing general notice to CLECs of BFRs that Qwest has received, (3) rejected AT&T's claim that Qwest should have a process to "standardize" repeated BFRs.	17	Issue 104: Qwest adopted the Facilitator's recommendation. Language was added to the SGAT (Section 17.15) in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 43.	Issue Resolved- SGAT language changed.
105	General Terms and Conditions		16) Scope of Audit Provisions	Whether to expand the audit procedures in the SGAT to other aspects of performance under the SGAT.	Ex. 31 pp. 44-46. The Facilitator recommended language that would permit audits of billing information as well as the treatment of the other party's confidential information.	18	Issue 105: Qwest adopted the Facilitator's recommendation. Language was added to the SGAT (Section 18.3.1) in accordance with the <i>Facilitator's Report on General Terms and Conditions, Section 272 &amp; Track A Report</i> at page 45.	Issue Resolved- SGAT language changed.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
106	General Terms and Conditions		17) Scope of Special Request Process	Whether SRP process should be expanded to offerings in SGAT besides UNE combinations	Ex. 11 pp. 44. The Facilitator recognized that the SRP process should extend beyond UNE combinations but noted that Qwest's Exhibit F already includes sufficient language. The Facilitator also rejected AT&T's claim that Qwest's SRP process should be evaluated based on a parity comparison with Qwest's retail operations.	Exhibit F	Issue 106: Qwest adopted the Facilitator's recommendation. The Facilitator found Qwest's Exhibit F to be sufficient. No SGAT changes are required.	Issue Resolved-no SGAT changes required
107	General Terms and Conditions		18) Parity of Individual Case Basis Process with Qwest Retail Operations	Whether ICB offering to CLECs should be evaluated in parity with Qwest's offering to its retail customers	Ex. 11 p. 46. The Facilitator rejected AT&T's "parity" argument. The Facilitator noted that parity with Qwest's retail operations is not an appropriate way to evaluate Qwest's ICB process.	Exhibit I	Issue 107: Qwest adopted the Facilitator's recommendation. No SGAT changes are required.	Issue Resolved-no SGAT changes required
108	Section 272 Separate Affiliate Requirements	Separate Affiliate Requirements	1) Separation of Ownership	The requirement that Qwest and affiliates have separate ownership	Attachment 31, p. 49. The Facilitator concluded that Qwest Communications Corporation, the section 272 affiliate and Qwest Corporation, the local exchange service provider are separate in a manner that complies with section 272.	None		Issue Resolved per Antonuk order
109	Section 272 Separate Affiliate Requirements		2) Prior Conduct	That in-region InterLATA services be provided through a separate affiliate	Attachment 31, pp. 49-50. A CLEC argued that three instances of prior Qwest conduct demonstrate a history of non-compliance with section 272. (Attachment 31 at 49.) The Facilitator noted that the prior instances all related to section 272 and ruled that an effort to extend that to section 272 "is at best peripheral to a predictive assessment of whether Qwest" will meet the requirements of section 272. <i>Id.</i> at 50.	None		Issue Resolved- per Antonuk order

Issue #	Statutory Issue	Resolved Sub-Topic	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SCA?'	Resolved	Issue Status
110	Section 272 Separate Affiliate Requirements	Books and Records		Para 11.3 defines "books, records, and accounts as the matters prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the field operating company of which it is an affiliate"	Attachment 10, p. 54, 10.70 The Facilitator concluded that "Qwest has the bulk of the separate affiliate requirements established by section 272" (at 10.68)  As a compliance issue, however, the Facilitator ordered Qwest to provide by November 15, 2001 the results of a third party examination that changes being implemented by Qwest are producing an "accurate, complete and timely" recording of transactions. (At 11 at 5, 54-55)  On November 15, 2001, Qwest filed with of the multi-state commission, the independent report of KPMG that concluded that, with the exception of 12 instances, Qwest complied with the section 272 accounting rules "in all material respects." The same report was filed with the South Dakota Commission on November 27, 2001. This filing is relevant to the accounting sub-issues below (Issues 111-14.)	None		Issue Resolved-per Antonuk order and independent report of KPMG
111	Section 272 Separate Affiliate Requirements		1) Generally Accepted Accounting Principles	Whether QCC follows GAAP	See resolution of issue 110, immediately preceding	None		Issue Resolved-per Antonuk order
112	Section 272 Separate Affiliate Requirements		2) Materiality	Whether Qwest will follow the FCC's GAAP Materiality Principle	Attachment 31, p.56 The Facilitator concluded that materiality should be part of determining compliance with section 272, but the universe to which it is applied should be all transactions between QC and QCC or QLD (Qwest Long Distance) (See also issue 110.)	None		Issue Resolved- per Antonuk order
113	Section 272 Separate Affiliate Requirements		3) Documentation	Some parties accused Qwest of having insufficient documentation of work and task orders and other transactions.	Attachment 31, p. 57. The Facilitator rejected the claim, but noted that the independent analysis (see issue 110) should address the consistency of posting.	None		Issue Resolved- per Antonuk order
114	Section 272 Separate Affiliate Requirements		4) Internal Controls	Some parties said that Qwest has not performed accrual and billing in a timely manner as evidence that Qwest does not have adequate controls over its Books and Records	Attachment 31, p. 57. The Facilitator noted that this was the same factual issue raised in issues 110-11 and concluded that the independent analysis would address the concern.	None		Issue Resolved- per Antonuk order



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
115	Section 272 Separate Affiliate Requirements		5) Separate Charts of Accounts	Some parties said that slowness in providing this data by Qwest demonstrates lack of diligence.	Attachment 31, p. 58. The evidence demonstrated that the CLEC concern had been met and that the "record demonstrates that Qwest maintains separate charts of accounts for the entities involved."	None.		Issue Resolved- per Antonuk order
116	Section 272 Separate Affiliate Requirements		6) Separate Accounting Software	There is some question as to whether there is separation, since codes appear to work for either affiliate.	Attachment 31, p. 58. The Facilitator concluded that no substantial argument existed to conclude that the accounting was inadequately separated.	None.		Issue Resolved- per Antonuk order
117	Section 272 Separate Affiliate Requirements	Separate Officers, Directors, and Employees	1) Routine Employee Transfers	Whether the 272 affiliate has separate officers, directors, and employees from the Bell operating company of which it is an affiliate"	Attachment 31, p. 60. The Facilitator found "that the steps Qwest has taken to assure independent operation and protection of confidential are adequate" and that Qwest "maintains the required degree of employee separation."	None.		Issue Resolved- per Antonuk order
118	Section 272 Separate Affiliate Requirements		2) 100 Percent Usage	Whether Qwest's shared usage of employees is in line with 272(b)(3) requirements.	Attachment 31, p. 61. The Facilitator concluded that the existing Qwest practice of temporarily assigning some QC employees to the 272 subsidiary is not inappropriate. He also found the new Qwest policy of not assigning employees for more than four months out of twelve is "acceptable for present purposes."	None.		Issue Resolved- per Antonuk order
119	Section 272 Separate Affiliate Requirements		3) Award Program Participation	Whether a Qwest award program that included both QC and QCC personnel constituted a conflict of interest between the two companies.	Attachment 31, p. 62. The Facilitator found that the CLEC evidence did "not present any evidence of improper inducements." He refused to conclude that reward system caused a violation of section 272.	None.		Issue Resolved- per Antonuk order
120	Section 272 Separate Affiliate Requirements		4) Comparing Payroll Registers	Whether Qwest adequately separates payroll between QC and 272 affiliate	Attachment 31 at 62-63. The issue related to whether there was overlapping employments. The Facilitator concluded that the primary issue relates to the current practice, concluding that there is no present employment overlap, that Qwest recognizes the need to preclude an overlap and that examination of payroll registers is an appropriate tool for the future. He thus concluded that the requirements of section 272 on this issue are being met.	None.		Issue Resolved- per Antonuk order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
121	Section 272 Separate Affiliate Requirements		5) Separate Payroll Administration	Whether the lack of separate payroll administration for QC and QCC violates the requirements of section 272(b)(1).	Attachment 31, p. 63. CLEC complained of the lack of separate payroll administration. The Facilitator ruled that provision of common services is appropriate and that the purpose of the Act was not to hamstring the BOC or prevent the development of proper efficiencies. The Facilitator declined to impose other requirements.	None.		Issue Resolved- per Antonuk order
122	Section 272 Separate Affiliate Requirements		6) Officer Overlap	Independence of 272 affiliate employees, officers, and directors.	Attachment 31, pp. 64-65. CLEC challenged status of one officer. The Facilitator ruled that there had been no simultaneous service and found no violation.	None.		Issue Resolved- per Antonuk order
123	Section 272 Separate Affiliate Requirements	Transaction Posting Completeness		FCC says the standard for BOC transactions to be "reduced to writing and available for public inspection" is "The description of the asset or service and the terms and conditions of the transactions should be sufficiently detailed to allow the FCC to evaluate any compliance with our accounting rules".	Specific CLEC complaints related to following four issues (issues 124-27).	None.		Issue(s) Resolved-see below
124	Section 272 Separate Affiliate Requirements		1) Posting Billing Detail	What detail and how billing amounts need to be posted under 272 requirements.	Attachment 31, p. 65. CLEC complained that Qwest did not post individual transaction detail. The Facilitator ruled that monthly posting of "reconciliation" data sufficed. The Facilitator noted that the independent examination previously ordered (see issue 110) could address the sufficiency of what was posted.	None.		Issue Resolved-per Antonuk order and independent report of KPMG
125	Section 272 Separate Affiliate Requirements		2) Initiation of the Posting of QCC Transactions	Whether Qwest violated 272 requirements by not posting for affiliates between January 1, 2001 onward	Attachment 31, pp 66-67. The Facilitator found no violation.	None.		Issue Resolved- per Antonuk order
126	Section 272 Separate Affiliate Requirements		3) Indefinite Service Completion Dates	Whether the FCC has a requirement that transaction postings provide either the length of time or estimated completion date of any project and if Qwest has violated this standard	Attachment 31, p. 67. The Facilitator found no violation.	None.		Issue Resolved- per Antonuk order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
127	Section 272 Separate Affiliate Requirements		41 Verification	Requires that transaction information available for public inspection be accompanied by a certification declaring that "An officer of the BOC has examined the submission and that to the best of the officer's knowledge all statements of fact contained in the submission are true and the submission is an accurate statement of the affairs of the BOC for the relevant period."	Attachment 31, p. 69 CLEC complained that a verification was signed by a person who was not at the time an officer of the company for whom the verification was made. The verification was later amended. The Facilitator ruled that the independent examination discussed under issue 110 above would address the effectiveness of Qwest actions and found that the issue complained of "raises no other predictive concerns about Qwest compliance."	None		Issue Resolved- per Antonuk order and independent report of KPMG
128	Section 272 Separate Affiliate Requirements	Non-Discrimination		When a BOC is dealing with a 272 affiliate "May not discriminate between that company or affiliates and any other entity in the provisions or procurement of goods, services, facilities, and information, or in the establishment of standards"	Attachment 31, p. 69 The Facilitator noted that the "list of items [presented by AT&T] ignores that the general issue of discrimination was addressed at length at the preceding workshops, at which many of the issues on the list were the subjects of testimony." He concluded that the issues have been addressed and took no further action.	None		Issue Resolved- per Antonuk order
129	Section 272 Separate Affiliate Requirements	Compliance with FCC Accounting Principles		A BOC, when dealing with a 272 affiliate, "account for all transactions, in accordance with accounting principles designated or approved by the Commission."	Attachment 31, p. 70 "The Facilitator concluded that this issue had been dealt with in the disc of Books and Records (see issues 110-16 above)."	None		Issue Resolved- per Antonuk order
130	Track A Requirements	Existence of Binding, Approved Interconnection Agreements		Whether Qwest has entered into binding, approved interconnection agreements in South Dakota.	Attachment 31, p. 73. The Facilitator found that in the seven states in the Multi-State process there were 464 binding, approved interconnection agreements (ranging from 52 in Wyoming to 94 in Iowa). On the basis of that evidence, the Facilitator concluded that "Qwest has met the portion of the § 271(c)(1)(A) requirements that requires it to have signed one or more binding interconnection agreements that have been approved under section 252."  In the present case, the Affidavit of David L. Teitzel, Attachment 21, provides the support for Qwest's compliance. See e.g. Attachment 21, pp 10-11.	None.	N/A	State specific issue

Issue #	Checklist Item	Number/Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
131	Track A Requirements	Provision of Access and Interconnection to Competitors		Whether Qwest is providing access and interconnection in South Dakota.	Attachment 31, p. 74. The Facilitator concluded that § 271(c)(1)(A) "imposes neither geographic range, order volume number, nor market penetration requirements." He noted that in each of the seven multi-state jurisdictions that unbundled loops (from 2,111 to 138,192) were being provided to multiple carriers in each state. Facilitator ruled un rebutted evidence demonstrates that it meets this requirement.  For purposes of the present proceeding, <i>see e.g.</i> , Affidavit of David L. Teitzel, Att. 21, pp. 13-43; Affidavit of Jean M. Liston, Att. 9, pp. 4-40.			State specific issue
132	Track A Requirements	Existence of Competing Residential and Business Service Suppliers		Whether actual residential and business competition exists under agreements between Qwest and CLECs	Attachment 31, pp. 74-85. The Facilitator concluded that "the test is whether collectively the CLECs in the state serve both type customers." (Attachment 31 at 74) He also stated that the FCC had "decided that it will not impose a market share test and that it has deemed Track A to be satisfied at very low CLEC levels of penetration into the residential market." <i>Id.</i> at 76. For five of the state, the Facilitator found that the Track A requirement that service be provided to residential customers had been met. In two state—Idaho and New Mexico—he found that it had not been established. <i>Id.</i> at 85.  The Affidavit of David L. Teitzel, Att. 21, establishes competition at levels well in excess of states where the Facilitator found that the Track A test relating to residential customers had been met. Mr. Teitzel estimates that over 27,000 residence access lines and 38,000 business access lines are currently being served in South Dakota by Qwest's competitors. Att. 21, p. 3	None.		State specific issue
133	Track A Requirements	1) Market Share of Competing Providers		Whether the market share of competitors in a state is a factor in the satisfaction of the Track A requirements	See discussion of issue no 132, immediately preceding. No market share test.	None	Teitzel affidavit nevertheless presents market share testimony that demonstrates that CLECs have a market share from 16% to 22%, which at a higher level of interconnection is less than many other states.	Legal issue resolved per Antitrust order and other authorities.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
127	Section 272 Separate Affiliate Requirements		4) Verification	Requires that transaction information available for public inspection be accompanied by a certification declaring that "An officer of the BOC has examined the submission and that to the best of the officer's knowledge all statements of fact contained in the submission are true and the submission is an accurate statement of the affairs of the BOC for the relevant period."	Attachment 31, p. 69. CLEC complained that a verification was signed by a person who was not at the time an officer of the company for whom the verification was made. The verification was later amended. The Facilitator ruled that the independent examination discussed under issue 110 above would address the effectiveness of Qwest actions and found that the issue complained of "raises no other predictive concerns about Qwest compliance."	None.		Issue Resolved- per Antonuk order and independent report of KPMG
128	Section 272 Separate Affiliate Requirements	Non-Discrimination		When a BOC is dealing with a 272 affiliate "May not discriminate between that company or affiliates and any other entity in the provisions or procurement of goods, services, facilities, and information, or in the establishment of standards"	Attachment 31, p. 69. The Facilitator noted that the "list of items [presented by AT&T] ignores that the general issue of discrimination was addressed at length at the preceding workshops, at which many of the issues on the list were the subjects of testimony." He concluded that the issues have been addressed and took no further action.	None.		Issue Resolved- per Antonuk order
129	Section 272 Separate Affiliate Requirements	Compliance with FCC Accounting Principles		A BOC, when dealing with a 272 affiliate, "account for all transactions in accordance with accounting principles designated or approved by the Commission.	Attachment 31, p. 70. The Facilitator concluded that this issue had been dealt with in the discussion of Books and Records (see issues 110-16 above).	None.		Issue Resolved- per Antonuk order
130	Track A Requirements	Existence of Binding Approved Interconnection Agreements		Whether Qwest has entered into binding, approved interconnection agreements in South Dakota	Attachment 31, p. 73. The Facilitator found that in the seven states in the Multi-State process there were 464 binding, approved interconnection agreements (ranging from 52 in Wyoming to 94 in Iowa). On the basis of that evidence, the Facilitator concluded that "Qwest has met the portion of the § 273(c)(1)(A) requirements that requires it to have signed one or more binding interconnection agreements that have been approved under section 252."  In the present case, the Affidavit of David L. Tenzer, Attachment 21 provides the support for Qwest's compliance. See e.g. Attachment 21, pp. 1b-1c.	None.	N/A	State specific issue

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
131	Track A Requirements	Provision of Access and Interconnection to Competitors		Whether Qwest is providing access and interconnection in South Dakota.	<p>Attachment 31, p. 74. The Facilitator concluded that § 271(c)(1)(A) "imposes neither geographic range, order volume number, nor market penetration requirements." He noted that in each of the seven multi-state jurisdictions that unbundled loops (from 2,111 to 138,192) were being provided to multiple carriers in each state. Facilitator ruled un rebutted evidence demonstrates that it meets this requirement.</p> <p>For purposes of the present proceeding, <i>see e.g.</i> Affidavit of David L. Teitzel, Att. 21, pp. 13-43; Affidavit of Jean M. Liston, Att. 9, pp. 4-40.</p>			State specific issue
132	Track A Requirements	Existence of Competing Residential and Business Service Suppliers		Whether actual residential and business competition exists under agreements between Qwest and CLECs.	<p>Attachment 31, pp. 74-85. The Facilitator concluded that "the test is whether collectively the CLECs in the state serve both type customers." (Attachment 31 at 74) He also stated that the FCC had "decided that it will not impose a market share test and that it has deemed Track A to be satisfied at very low CLEC levels of penetration into the residential market." <i>Id.</i> at 76. For five of the state, the Facilitator found that the Track A requirement that service be provided to residential customers had been met. In two state—Idaho and New Mexico—he found that it had not been established <i>id.</i> at 85.</p> <p>The Affidavit of David L. Teitzel, Att. 21, establishes competition at levels well in excess of states where the Facilitator found that the Track A test relating to residential customers had been met. Mr. Teitzel estimates that over 27,000 residential access lines and 21,000 business access lines are currently being served in South Dakota by Qwest's competitors. Att. 21, p. 8.</p>	None.		State specific issue
133	Track A Requirements	Existence of Competing Residential and Business Service Suppliers		Whether the market class of competition in a state is a factor in the resolution of the Track A requirements.	The Affidavit of David L. Teitzel, Att. 21, establishes competition at levels well in excess of states where the Facilitator found that the Track A test relating to residential customers had been met. Mr. Teitzel estimates that over 27,000 residential access lines and 21,000 business access lines are currently being served in South Dakota by Qwest's competitors. Att. 21, p. 8.	None.		State specific issue

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Facilitator	Issue Status
134	Track A Requirements		2) Estimates of Bypass Lines	Whether Qwest's estimation of the number of bypass lines served by residential and business customers is acceptable	Attachment 31, p. 79. The Facilitator noted that Qwest used a combination of estimated information (because it lacks access to confidential information of other carriers) and other direct information (e.g., UNEs). Among these are ported numbers as its estimation base. The Facilitator found that Qwest's "explanation of the relationship [between ported numbers and the number of access line served by CLECs] was logical."	None	Facilitator allowed Qwest to use the estimates for estimating CLEC access lines, including the non-competitive ported numbers measure that allowed 22.5% lines.	Issue Resolved per Antomuk Order
135	Track A Requirements		3) Number of CLECs Serving End Users	Whether Qwest's qualitative showing of the amount of residential and business competition in South Dakota is sufficient.	See issue no. 132 above	None	Under the standards followed by the FCC and followed by the Facilitator, the Qwest evidence in CD meets this test.	Legal issue resolved per Antomuk order; factual issue may be state specific
136	Track A Requirements		Existence of Facilities-Based Competitors	Whether competing telephone exchange service is being provided 1) exclusively over CLEC telephone facilities or 2) predominantly over such facilities in combination with the resale of the telecommunications services of another carrier. CLEC "own" facilities include UNEs leased from an incumbent provider	The Facilitator found that the same evidence submitted regarding issues 131-35 above was equally probative on this issue	None	CD evidence based on the standards followed by the Facilitator would likely be adequate to pass this requirement.	Factual issue is state specific
137	Public Interest	Meaningful and Significant Incentive - Total Payment Liability	1) The 36 percent of Net Revenue Standard	The QPAP filed by Qwest in the multi-state 271 proceeding included a yearly cap on payments of 36% of ARMIS net intrastate revenues. This cap has been described as a "hard" cap. Various parties to the multi-state proceeding have criticized this hard cap, as potentially not providing appropriate incentives for Qwest to comply with the terms and conditions of the SGAT.	Attachment 32, p. 15-16. The Facilitator rejected the CLECs' argument in accordance with the FCC's conclusion that 36 of net interstate revenues is sufficient to provide an adequate incentive in other contexts.	Att 27 Es. MRR QPAP 1 2 2 1 1 1	N/A	Issue Resolved per Antomuk Order
138	Public Interest		2) Procedural Caps	CLECs support a "procedural" rather than a "hard" cap - citing that such a cap makes it more difficult for Qwest to calculate whether it is more economical to continue to bear the cost of non-compliance, rather than to bring its performance up to standard.	Attachment 32, p. 16-36. The Facilitator rejected the CLECs' proposal but did recommend inclusion of language to avoid a cap whatsoever through in the QPAP (at 19-20).	Att 27 Es. MRR QPAP 1 2 2 1 1 1 1 2 2 1 2 2 1 1 1 1 1 1	N/A	QPAP issues open to discussion

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
139	Public Interest		1) Qwest's Marginal Cost of Compliance	Whether the best method to examine the propriety of a firm payment cap would be to compare Qwest's marginal cost of complying with the performance standards against the payments to which it would be exposed for not complying	Attachment 32, p. 20-21 The Facilitator rejected this approach because there was no evidence to enable its use	AU 22, Ex MSR-QPAP-1 § 13.0	N/A	Issue Resolved: per Antonuk Order
140	Public Interest		4) Continuing Propriety of a Cap Based on the 1999 Net Revenues	Qwest argued for basing the cap on 1999 net revenues, while other parties suggested the cap should fluctuate based on actual net revenues going forward	Attachment 32, p. 21-22 The Facilitator rejected the CLEC's position because firm dollar amounts were preferable to ratcheting risk of unknown direction and magnitude	AU 22, Ex MSR-QPAP-1 § 12.2	N/A	Issue Resolved: per Antonuk Order
141	Public Interest		5) Likely Payments in Low Volume States	Whether the small amount of CLEC business in low volume states would make it unlikely that Qwest could reach the cap limit	Attachment 32, p. 22 The Facilitator rejected the change to the QPAP because it directly addresses this issue	AU 22, Ex MSR-QPAP-1 § 12.0	N/A	Issue Resolved: per Antonuk Order
142	Public Interest		6) Deductibility of Payments	CLEC's wanted the QPAP to specify Qwest payments could not be deducted for income tax purposes	Attachment 32, p. 22-23 The Facilitator rejected the CLEC's position because the Facilitator saw no reason unique to Qwest that would justify a tax-netting factor in the QPAP	N/A	N/A	Issue Resolved: per Antonuk Order
143	Public Interest	Meaningful and Significant Incentives	Magnitude of QPAP Payments	Total economic exposure addresses only part of the broader issue of the sufficiency of payments under the QPAP to provide a meaningful and significant incentive to Qwest. Equally material is the question of what level of event-specific payments apply. A total exposure of over 1000 million may be present if not intrastate revenues might not deter substandard performance.	Attachment 32, p. 23-26 The Facilitator rejected this argument because, "[t]he arguments made against the relevance or the accuracy of Qwest's calculations were inapplicable or incorrect."	AU 22, Ex MSR-QPAP-1 § 12.0	N/A	Issue Resolved: per Antonuk Order
144	Public Interest	Meaningful and Significant Incentives	1) Deductibility of Compensation as a QPAP Cap	The issue is regarding the relevance of the goal of compensating CLECs for damages incurred as a result of non-compliance Qwest's standard performance. CLEC parties said that the goal of a performance standard goal is to create incentives to deter and improve their substandard performance and to compensate CLECs for the harm.	Attachment 32, p. 26-28 The Facilitator rejected the CLEC's position because prior FCL decisions and opinions have found that compensation damages induce acceptable behavior.	AU 22, Ex MSR-QPAP-1 § 8.0	N/A	Issue Resolved: per Antonuk Order



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
145	Public Interest		2) Evidence of Harm to CLECs	Would QPAP payments be sufficient to compensate CLECs for the actual harm suffered as a result of Qwest non-compliance?	Attachment 32, p. 28-30. The Facilitator rejected a change to the SGAT because of lack of evidence of actual CLEC damage.	Att. 22, Ex. MSR-QPAP-1 § 6.0	N/A	State specific evidence could be reviewed
146	Public Interest		3) Preclusion of Other CLEC Remedies	CLECs argued they should not be precluded from seeking certain other remedies if the adopted the QPAP.	Attachment 32, pp. 30-33. The Facilitator suggested changes to the QPAP to prohibit actions based on contractual theories of liability, but to allow actions based on noncontractual theories to recover damages not recoverable under contractual theories of liability.	Att. 22, Ex. MSR-QPAP-1 §§ 13.6, 13.7	N/A	QPAP issues open to discussion
147	Public Interest		4) Indemnity for CLEC Payments Under State Service Quality Standards	CLECs want the QPAP to provide for their indemnification if Qwest performance means they have to pay fines under state quality of service rules.	Attachment 32, pp. 33-34. The Facilitator rejected the CLEC's position because the issue of indemnification was fully addressed and rejected in prior workshops.	N/A	N/A	Issue Resolved per Antonuk Order
148	Public Interest		5) Offset Provision (Section 13.7)	Qwest wants any award to CLECs by courts or other bodies that duplicates QPAP payments to be offset by the QPAP payments. There are three issues 1. Qwest's ability to unilaterally decide whether or not an offset is allowed, 2. the ambiguity of the term analogous performance, 3. QPAP method of dealing with injury to persons of physical property.	Attachment 32, pp. 34-36. The Facilitator recommended technical changes to the SGAT to provide for offsets related to Qwest payments related to CLEC or third-party physical damage to property or personal injury.	Att. 22, Ex. MSR-QPAP-1 § 13.7	N/A	QPAP issues open to discussion
149	Public Interest		6) Exclusions (Section 13.3)	This issue deals with force majeure, bad faith, and other exclusions. These are essentially a list of circumstances that would excuse Qwest from having to make payment under the QPAP.	Attachment 32, pp. 37-41. The Facilitator recommended changes to the SGAT to address certain situations relating to CLEC bad faith, excuse of Qwest performance, and force majeure.	Att. 22, Ex. MSR-QPAP-1 §§ 13.1, 13.2	N/A	QPAP issues open to discussion

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
150	Public Interest		7) SGAT Limitation of Liability to Total Amounts Charged to CLECs	Should it be made clear that SGAT and QPAP payments are mutually exclusive?	Attachment 32, p. 41. The Facilitator recommended an addition to the SGAT to clarify that QPAP payments should not be counted against the limit in SGAT § 5.8.1.	5.8.1.  5.8.2	Issue #150: Section 5.8.1 has not yet been amended in South Dakota. However, Qwest is willing to add the following language to section 5.8.1: " Payments pursuant to the QPAP should not be counted against the limit provided for in this SGAT section."  Issue #150: Language change to 5.8.2 consistent with Attachment 32, p. 41.	Issue resolved; Qwest is willing to change South Dakota SGAT
151	Public Interest	Meaningful and Significant Incentive - Incentive to Perform	1) Tier 2 Payment Use	Qwest wanted Tier 2 payments limited to use in the Qwest serving territory, while other parties did not.	Attachment 32, pp. 41-42. The Facilitator recommended a change to the SGAT to clarify that the restriction applies only to payments to be administered by the commission.	Att. 22, Ex. MSR-QPAP-1 § 7.5.	N/A	QPAP issues open to discussion
152	Public Interest		2) Three-Month Trigger for Tier 2 Payments	Qwest wanted the trigger for Tier 2 payments to be three months of noncompliant performance. Other parties argued for immediate payments with one month of noncompliant performance, exactly like Tier 1 payments work.	Attachment 32, pp. 42-43. The Facilitator suggested changes to accept Qwest's proposal for Tier 2 payments without a Tier 1 obligation and accept the CLECs' position with regard to Tier 2 payments with a Tier 1 payment counterpart	Att. 22, Ex. MSR-QPAP-1 §§ 7.3, 7.4.	N/A	QPAP issues open to discussion
153	Public Interest		3) Limiting Escalation to 6 Months	Qwest wants the escalation of Tier 1 payments to occur after six months of noncompliant performance. Other parties want Tier 1 payments to escalate without limit. The Report recommends keeping the escalation limit at six months.	Attachment 32, pp. 44-45. The Facilitator accepted Qwest's position because six months of escalation is adequate incentive to perform.	Att. 22, Ex. MSR-QPAP-1 § 6.0, Table 1	N/A	Issue Resolved per Antenuk Order
154	Public Interest		4) Limiting Total Payments to CLECs and the State	CLECs argued that they should receive more of the Tier 2 payments from Qwest due to generally CLECs's cost recovery in interstate and noninterstate	Attachment 32, p. 47. The Facilitator rejected the CLECs' argument because Tier 1 payments under the QPAP adequately reimburse CLECs.	Att. 22, Ex. MSR-QPAP-1 § 7.0	N/A	Issue Resolved per Antenuk Order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
155	Public Interest	Clearly Articulated and Pre-Determined Measures - Measure Selection Process		Do substantial grounds existed for including additional measures?	Attachment 32, p.46. The Facilitator generally rejected adding measures because the QPAP contains a "generally articulated set of pre-determined measures and standards that span the range of carrier-to-carrier performance."	N/A	N/A	Issue Resolved: per Antonuk Order
156	Public Interest	Clearly Articulated and Pre-Determined Measures - Adding Measures to the Payment Structure	1) Requiring Payments for Canceled Orders	CLECs wanted to add this indicator to the performance measurements.	Attachment 32, pp.47-48. The Facilitator rejected the CLECs' argument because CLECs presented no evidence to demonstrate the strength of the relationship between Qwest performance and canceled orders.	N/A	N/A	Issue Resolved: per Antonuk Order
157	Public Interest		2) Requiring Payments for "Diagnostic" UNEs	Qwest has agreed to add performance measures to the payment structure as standards are developed for them	Attachment 32, p. 48. The Facilitator recommended including a diagnostic standard in the QPAP payment structure as soon as is practicable		N/A	QPAP issues open to discussion
158	Public Interest		3) Cooperative Testing	Some parties wanted cooperative testing added to the QPAP as a performance measurement. Qwest did not	Attachment 32, p. 49. The Facilitator rejected this argument because there was no basis to conclude that that this approach would be preferable	N/A	N/A	Issue Resolved: per Antonuk Order
159	Public Interest		4) Adding P&L to address Data Usage Charges	Some parties wanted this indicator added to the QPAP as a performance measurement	Attachment 32, pp. 49-50. The Facilitator rejected this position because the CLECs offered no recommendations for what the standard should be	N/A	N/A	Issue Resolved: per Antonuk Order
160	Public Interest		5) Including P&L to include Impact Transfers on Tier 2	Some parties wanted this indicator added to the QPAP as a performance measurement	Attachment 32, p. 50. The Facilitator rejected this argument because the P&L Call-Related argument extended not to include IC agreements and there was no attempt to derive the appropriate standard for this issue	N/A	N/A	Issue Resolved: per Antonuk Order
161	Public Interest		6) Adding Change Management	Some parties wanted this indicator added to the QPAP as a performance measurement	Attachment 32, pp. 50-51. CLECs argued for adding a "Change Management" or "High" Tier 2 measurement after the "P&L" Call-Related argument was rejected. The Facilitator rejected this argument because the CLECs offered no recommendations for what the standard should be	N/A	N/A	Issue Resolved: per Antonuk Order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
162	Public Interest		7) Adding a Software Release Quality Measure	Some parties wanted this indicator added to the QPAP as a performance measurement.	Attachment 32, p. 51. The Facilitator rejected this argument because they are better raised in the context of the established procedure for addressing PID and QPAP changes.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
163	Public Interest		8) Adding a Test Bed Measurement	Some parties wanted this indicator added to the QPAP as a performance measurement.	Attachment 32, p. 51-52. The Facilitator rejected this argument because it is premature to express opinions about the future inclusion of a measure that is in a state of development.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
164	Public Interest		9) Adding a Missing-Status-Notice Measure	Some parties wanted this indicator added to the QPAP as a performance measurement.	Attachment 32, p. 52. The Facilitator rejected this proposal because no proper basis was laid for inclusion of this indicator.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
165	Public Interest	Clearly Articulate and Pre-Determined Measures  Aggregating the PO-1A and PO-1B Performance Measures		Fourteen sub measurements for these performance measurements were combined in the PEPP. Qwest says two seven-part measures were created. AT&T says seven two-part measures were created.	Attachment 32, p. 52-53. The Facilitator agreed with Qwest because the agreement reached in the PEPP collaborative was on the terms represented by Qwest.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
166	Public Interest	Change Articulate and Pre-Determined Measures and Aggregate Measures	1) Changing Measure Weights	After I presented you with the weights assigned a performance measurement CLICs wanted to increase some weights without reducing others. Qwest agreed with customers that would compensating decreases in other measurement weights.	Attachment 32, pp. 53-54. The Facilitator rejected changes because the QPAP is reasonable and no reasonable alternatives acceptable to Qwest and CLICs was proposed.	Att. 22, Ex. MSR-QPAP-1 §§ 4 R. 50, 60	N/A	Issue Resolved: per Antonuk Order
167	Public Interest	Change Articulate and Pre-Determined Measures and Aggregate Measures	2) Changing the Measure Weights	After I presented you with the weights assigned a performance measurement CLICs wanted to increase some weights without reducing others. Qwest agreed with customers that would compensating decreases in other measurement weights.	Attachment 32, pp. 53-54. The Facilitator rejected changes because the QPAP is reasonable and no reasonable alternatives acceptable to Qwest and CLICs was proposed.	Att. 22, Ex. MSR-QPAP-1 Attachment 1	N/A	Issue Resolved: per Antonuk Order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
168	Public Interest		3) LIS Trunks Weighting	CLECs want LIS Trunks given a special high weighting given how much they affect CLEC lines.	Attachment 32, p. 55. The Facilitator found no basis to treat LIS trunks separately; the QPAP payment structure reflects an adequate treatment of measure weights.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
169	Public Interest	Clearly Articulated and Pre-Determined Measures - Collocation		Some parties wanted collocation noncompliance treated differently than other performance measurements given its sweeping effect on CLEC capabilities.	Attachment 32, p. 56. The Facilitator rejected a change to the SGAT, which was based on agreement and is reasonable.	N/A	N/A	Issue Resolved: per Antonuk Order
170	Public Interest	Clearly Articulated and Pre-Determined Measures - Including Special Access Circuits		CLECs want to include special access circuits as a performance measurement	Attachment 32, pp. 56-58. The Facilitator rejected this request because a lengthy review of special access circuits led to the conclusion that they were not entitled to special treatment.	Att. 22, Ex. MSR-QPAP-1 Attachment 1.	N/A	Issue Resolved: per Antonuk Order
171	Public Interest	Clearly Articulated and Pre-Determined Measures - Proper Measure of LWE Results		Some parties said the SGAT Exhibit C should be the source of QPAP standards, not the Performance Indicator Definitions used in the ROC OSS Test	Attachment 32, p. 58. In accordance with the reasons set out in the Facilitator's August 20, 2001 report, it is appropriate for the QPAP to apply the PII performance measures, not SGAT Exhibit C	Att. 22, Ex. MSR-QPAP-1 Exhibit C	N/A	Issue Resolved: per Antonuk Order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
172	Public Interest	Clearly Articulated and Pre-Determined Measures - Low Volume CLECs		Some CLECs said that small companies are under compensated by the QPAP. They also argued the rounding at small volumes allows Qwest too much leeway in meeting performance measurements.	Attachment 32, pp. 58-59. The Facilitator recommended a change to the SGAT to provide for escalation in any month where any miss occurred for CLECs with order volumes at the level in question, and where the annual calculation shows violation of the applicable requirement.	Att. 22, Ex. MSR-QPAP-1 § 2.4.	N/A	QPAP issues open to discussion
173	Public Interest	Structure to Detect and Sanction Poor Performance as it Occurs - 6 Month Plan Review		The QPAP provides for review every six months of its contents, with certain limits. Qwest had wanted final approval of any changes. Many parties felt that this encroached upon state commission authority.	Attachment 32, pp. 59-62. The Facilitator recommended changes to the SGAT to apply normal SGAT dispute resolution procedures to a dispute with a review recommendation and to provide for biennial commission review of the QPAP's continuing effectiveness.	Att. 22, Ex. MSR-QPAP-1 § 16.0.	N/A	QPAP issues open to discussion
174	Public Interest	Structure to Detect and Sanction Poor Performance as it Occurs - 6 Month Plan Review		CLECs were underpaid upon review	Attachment 32, p. 61. The Facilitator recommended changes to the SGAT to ensure that at no time under the QPAP for calculating or using monthly caps.	Att. 22, Ex. MSR-QPAP-1 § 11.9	N/A	QPAP issues open to discussion

Issue #	Checklist Item	Number/Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
175	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Sticky Duration		Parties argued that Tier 1 payments should remain at the level to which they escalated before Qwest achieved noncompliant performance. The rationale is it took that level of payment to get Qwest to comply, therefore the step-down de-escalation provided for in the QPAP gets away from the level of payment that was necessary to bring about compliance.	Attachment 32, pp. 62-63. The Facilitator rejected this argument because it would ignore entirely successful performance by Qwest regardless of how long Qwest provided it.	Att. 22, Ex. MSR-QPAP-1 § 6.2.1.	N/A	QPAP issues open to discussion
176	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Low Volume Critical Values		The critical value for parity measures was reduced for low volumes for certain performance measurements in the PEPP, thereby making it more likely Qwest will have to make payments.	Attachment 32, pp. 63-65. The Facilitator rejected the argument that the critical values should change from those agreed to during the PEPP collaborative process.	Att. 22, Ex. MSR-QPAP-1 §§ 2.4, 5.0, Table 1.	N/A	Issue Resolved: per Antonuk Order
177	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Adjusting the Critical Values for 4-Wire Services		CLEC's wanted the [1 (4 critical)] value applied to 4-wire loops for low volumes.	Attachment 32, pp. 65-66. The Facilitator rejected this argument due to a lack of evidence to show a high rate of cost of 4-wire loops for delivering high value services.	Att. 22, Ex. MSR-QPAP-1 § 5.6, Table 1.	N/A	Issue Resolved: per Antonuk Order

Issue #	Checklist Item	Number/Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
178	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Measures Related to Low Volume, Developing Markets		CLECs want to increase the payments provided for in the QPAP for low-volume markets and increase the minimum payments provided for.	Attachment 32, pp. 66-67. The Facilitator rejected this argument because existing § 10.0 of the QPAP adequately provided an incentive for Qwest to perform in developing markets.	Att. 22, Ex. MSR-QPAP-1 § 10.0	N/A	Issue Resolved: per Antonuk Order
179	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Minimum Payments		WorldCom commented that small order counts would not produce significant payments by Qwest. WorldCom therefore recommended a \$2,500 per occurrence minimum payment, with escalation.	Attachment 32, pp. 67-68. The Facilitator recommended a revision to the SGAT to provide that all Qwest monthly payments to low-volume CLECs should count against the annual order minimum.	Att. 22, Ex. MSR-QPAP-1 § 6.4	N/A	QPAP issues open to discussion
180	Public Interest	Structure to Detect and Sanction Poor Performance as It Occurs - Escalation Requirements		CLECs wanted a form of severity built into payments for interval measures. Qwest did not.	Attachment 32, pp. 68-70. The Facilitator rejected this argument because there was no evidence supporting treatment different than that provided in the QPAP.	Att. 22, Ex. MSR-QPAP-1 § 8.2.1.2	N/A	Issue Resolved: per Antonuk Order



Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
181		Structure to Detect and Sanction Poor Performance as it Occurs - Assigning severity Levels to Percent Measures		A plan was proposed for including severity of miss for percent measurements.	Attachment 32, pp. 70-71. The Facilitator rejected this suggestion because it would be inappropriate to graft a new formula onto base payment amounts negotiated at the PEPP collaborative.	Att. 22, Ex. MSR-QPAP-1 § 8.2.2.	N/A	Issue Resolved: per Antonuk Order
182	Public Interest	Self Executing Mechanism - Dispute Resolution		Qwest's brief added a dispute resolution provision specifically applicable to the QPAP. It would allow the general SGAT dispute resolutions to apply, but only in the event of disputes arising under QPAP sections 13.3, 13.5.1, 13.7, 13.9, 15.1, 15.2, and 15.9.	Attachment 32, pp. 72-73. The Facilitator recommended a revision to the SGAT to clarify that the dispute resolution provisions of the SGAT apply to QPAP disputes involving CLECS who use the SGAT.	Att. 22, Ex. MSR-QPAP-1 § 18.0.	N/A.	QPAP issues open to discussion
183	Public Interest	Self Executing Mechanism - Payment of Interest		The QPAP did not provide for interest on late P&P payments. Qwest agreed that interest at the one-year Treasury rate would be appropriate on late payments, provided that the same rate would apply to overpayments and to underpayments.	Attachment 32, p. 73. The Facilitator recommended a change to the SGAT to provide for interest at a public benchmark.	Att. 22, Ex. MSR-QPAP-1 § 11.1.	N/A.	QPAP issues open to discussion
184	Public Interest	Self Executing Mechanism - Sanctioning Poor Performance		Qwest argued that Qwest should either have to pay pending dispute resolution or to make payments to its customers pending dispute resolution. Qwest argued to bring together its other dispute resolution provisions.	Attachment 32, pp. 73-74. The Facilitator held that the provision for interest adequately addressed the same value of dispute issues. However, a party could petition for Qwest to make payments and interest upon a showing of cause or, e.g., ELEC provides the institutional arrangements.	Att. 22, Ex. MSR-QPAP-1 § 13.1.1.	N/A.	QPAP issues open to discussion

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
185	Public Interest	Self Executing Mechanism - Effective Dates	1) Initial Effective Date	Some parties asked that the QPAP become effective when a state public service commission issues its consultative report. The goal of this recommendation is to prevent backsliding while the FCC considers a Qwest 271 application. Some parties also argued for making the QPAP effective essentially immediately.	Attachment 32, pp. 74-75 The Facilitator recommended that, as Qwest suggested, the QPAP should become effective in a state as Qwest receives FCC 271 approval in that state. However, the QPAP should require Qwest to make monthly QPAP reports as if the QPAP had become effective on October 1, 2001.	Att. 22, Ex. MSR-QPAP-1 § 13.1.	N/A	Issue Resolved: per Antonuk Order
186	Public Interest		2) "Memory" at initial Effective Date	AT&T said that when the QPAP becomes effective it should effectively calculate performance for as many prior months as are necessary to provide that escalated, rather than baseline, payments apply from the first month.	Attachment 32, pp. 75-76 The Facilitator rejected this suggestion because it would be inappropriate to start the QPAP payment structure in "mid-stream."	Att. 22, Ex. MSR-QPAP-1 § 13.2.	N/A	Issue Resolved: per Antonuk Order
187	Public Interest		3) PAP Effectiveness if Qwest Exits InterLATA Market	Some parties argued to continue the QPAP payment obligations should Qwest exit the in-region, InterLATA market.	Attachment 32, p. 76 The Facilitator rejected this argument for the same reasons that the QPAP should become effective upon entry by Qwest into the market.	Att. 22, Ex. MSR-QPAP-1 § 16.3.	N/A	Issue Resolved: per Antonuk Order
188	Public Interest	Self Executing Mechanism - QPAP Inclusion in the SGAT and Interconnection Agreements		WorldCom said that Qwest failed to address the question of how the QPAP should be made a part of the SGAT, which requires commission consideration of the issue.	Attachment 32, p. 76 The Facilitator made no recommendation on this issue, but requested Qwest to address the issue in its 10-day comments.	N/A	N/A	QPAP issues open to discussion
189	Public Interest	Self Executing Mechanism - Structure of Payments to CLICs		The QPAP provides for QPAP payments to be made by bill credit, rather than by cash or check. CLICs want cash payments.	Attachment 32, pp. 78-79 The Facilitator rejected the CLICs' arguments because the QPAP provision is appropriate. Qwest should provide more information to substantiate the claims that are provided in the sample provided to CLICs and the Commission.	Att. 22, Ex. MSR-QPAP-1 § 11.2	N/A	QPAP issues open to discussion

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
190	Public Interest	Assurances Of the Reported Data's Accuracy - Audit Program		Qwest said that it modeled the QPAP audit provisions after the Texas plan, and that it included the concept of risk-based auditing, as proposed in the report by The Liberty Consulting Group (Liberty) recommending the adoption of an ongoing monitoring program.	Attachment 32, pp 77-82 The Facilitator recommended changes to the SGAT to explicitly provide for an integrated monitoring program.	Att. 22, Ex. MSR-QPAP-1 §§ 11.3, 15.0	N/A	QPAP issues open to discussion
191	Public Interest	Assurances Of the Reported Data's Accuracy - PUC Access to CLEC Raw Data		QPAP Section 14.2 authorizes Qwest, upon Commission request, to provide CLEC raw data to that commission. Qwest said it would be inefficient for commissions to follow the CLEC approach, which would be to ask the CLECs directly for the information.	Attachment 32, pp 82-83 The Facilitator agreed with Qwest and recommended changes to the QPAP, similar to SGAT 5.16.9.1.1 to provide for Qwest to provide Clec-specific data directly to a Commission	Att. 22, Ex. MSR-QPAP-1 § 14.2	N/A	Issue Resolved per Antonuk Order
192	Public Interest	Assurances Of the Reported Data's Accuracy - Providing CLECs Their Raw Data		AT&T recommended a deadline of two weeks from a CLEC's request for Qwest to provide a CLEC with its specific data relevant for QPAP measurement and payment purposes. AT&T said that the lack of an explicit deadline could leave Qwest free to provide the data well after CLECs need it	Attachment 32, pp 83-84 The Facilitator rejected the request for firm response dates but did recommend a three-year retention period.	Att. 22, Ex. MSR-QPAP-1 §§ 14.3, 14.4	N/A	QPAP issues open to discussion
193	Public Interest	Assurances Of the Reported Data's Accuracy - Late Reports		WorldCom proposed a payment schedule that Qwest disputes	Attachment 32, pp 84-86 The Facilitator made recommendations for penalties regarding incomplete reports, and escalating penalties for late reports	Att. 22, Ex. MSR-QPAP-1 § 14.3	N/A	QPAP issues open to discussion
194	Public Interest	Other Issues - Penalties of QPAP Payment Recovery on Events		AT&T argued that there should be specific language precluding QPAP recovery on events	Attachment 32, pp 86-87 The Facilitator rejected this argument because neither the FCC nor the state commissioners require guidance on how or when to determine what to do about QPAP payment recovery on events.	N/A	N/A	Issue Resolved per Antonuk Order

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
195	Public Interest	Other Issues - No-Admissions Clause		Some parties argued that measurements under the PID and payments based on them should be admissible as evidence in other proceedings.	Attachment 32, p. 87. The Facilitator declined to accept CLECs' proposal to delete QPAP § 13.4.1.	Att. 22, Ex. MSR-QPAP-1 § 13.4.1.	N/A	Issue Resolved per Antonuk Order
196	Public Interest	Other Issues - Qwest Responses to FCC-Initiated Changes		Qwest cited three proposed QPAP changes that Qwest said came from informal FCC input, and that Qwest noted were not objected to or commented upon at the hearings on the QPAP. These should be considered.	Attachment 32, p. 87. The Facilitator recommended incorporation of these changes into the QPAP because there were no objections to them.	Att. 22, Ex. MSR-QPAP-1 § 7.0, Attachment 1.	N/A	Issue Resolved per Antonuk Order
197	Public Interest	Other Issues - Specification of State Commission Powers		Section 12.3 provides that a state commission may recommend to the FCC that Qwest be prohibited from offering in-region interLATA services to new customers in the event that the annual cap is reached.	Attachment 32, p. 88. The Facilitator recommended deletion of QPAP § 12.3 because it added no value to the QPAP.	Att. 22, Ex. MSR-QPAP-1 § 12.3.	N/A	QPAP issues open to discussion
198	Public Interest		UNE Prices	Several CLECs argued that monthly and non-recurring UNE prices were too high to permit CLECs to enter the local exchange market in a profitable way. AT&T's evidence to support this conclusion was that IFR rates were lower than UNE prices.	Attachment 33, pp. 5-6. The Facilitator noted that UNE prices must meet the standards of the Act. He also noted that wholesale prices "remains [an issue] for the states to address through some other means." (Attachment 33 at 5.) Responding to the AT&T IFR rate comparison, the Facilitator rejected the AT&T arguments on several grounds (e.g., its failure to include vertical features and toll, its ignoring of the resale option, its lack of a comparison to business rates, and AT&T's potential access to subsidies if it provides local exchange service) <i>Id</i> . He concluded by quoting the FCC order in the SBC Kansas/Oklahoma order: "The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market." <i>Id</i> at 6.	None	N/A	Issue Resolved-no SGAT changes required.
199	Public Interest		Intrastate Access Charges	Even where Qwest's affiliate pays the same access charges, or they are otherwise adjusted, access charges are not intrastate charges that exceed costs.	Attachment 33, pp. 6-7. The Facilitator noted a lack of evidence on this subject, which dealt with questions of subsidies and business entry.	None		Issue Resolved-no SGAT changes required.

Issue #	Checklist Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Facilitator Resolution	Applicable SGAT	Footnote	Issue Status
200	Public Interest		Post-Entry Assurance Plan	A sound plan is necessary for assuring that local markets would remain open should Qwest receive 271 approval. The QPAP, which is Qwest's means for providing that assurance, is addressed thoroughly in a companion report (QPAP Report).	Attachment 33, p. 7. The Facilitator concluded that these issues were more properly included in the consideration of QPAP.	None		Issue Resolved-no SGAT changes required
201	Public Interest		Lack of Competition	The thrust of the arguments made on this issue was that competition has not reached a level that is sufficient to meet the public interest.	Attachment 33, p. 8. The Facilitator concluded that the proper inquiry is whether CLECs are allowed "free entry in accord with statutory and regulatory requirements of the federal and state governments." He also noted that the FCC position was that "there is no explicit or implied minimum market share test." In response to an issue relating to "the turbulent financial times" faced by CLECs, he concluded that the data "shows according to Qwest's un rebutted evidence that CLEC market share early in 2001 was actually increasing"	None	The Teitzel testimony is supportive of the Facilitator's conclusions on market share gain in 2001.	Issue Resolved-no SGAT changes required.
202	Public Interest		Prior Qwest Conduct	Some parties argued that Qwest's history of non-compliance with the section 272 separate affiliate requirements and with its obligations to serve CLECs under sections 251 and 252 compels a conclusion that the public interest would not be served by granting 271 authority now	Attachment 33, p. 10. The Facilitator found that the examples cited by CLECs were "in-sufficient to demonstrate a pattern of past abuse that is either: (a) insufficiently mitigated by our resolution of disputed issues in prior workshops, (b) so severe as to give reasons to doubt the ability of an otherwise effective QPAP to mitigate, or (c) otherwise so pervasive and significant as to call into question the public interest of permitting Qwest to enter" the long distance market	None.		Issue Resolved-no SGAT changes required.
203	Public Interest		Structural Separation	Several CLECs offered structural separation as a means for mitigating the effects of Qwest actions to favor affiliates	Attachment 33, p. 11. The Facilitator concluded that the point of the long distance re-entry process is to "detect, detect, and sanction failures to conform to the rules of self-dealing." He noted the many non-structural safeguards are being placed into effect that will be effective. He also noted that all structural separation will do is "increase the transaction costs that will inevitably follow complete separation." He recommended "ensuring that structural separation is required as a condition."	None		Issue Resolved-no SGAT changes required.

Issue #	Character Item	Number/ Sub Issue	Issue	Synopsis of Issue	Multi-State Fairness Resolution	Applicable SECT	Reason	Issue Status
204	Public Interest		Swissair Checklist Compliance	Some parties argued that Qwest should have to show checklist compliance for a sustained period before the public interest would be served by granting a 271 approval.	Attachment II, p. 17. The Facilitator explains the argument, concluding: "What is at both adequate and preferable to rely instead upon a signed P.A.P. as opposed to a history of compliance as the means of ensuring that carriers will remain open."	None		Issue Resolved via SRA V change request
205	Public Interest		Industry Competition	If all 271 pre-conditions associated with entry are met, does it promote the public interest. Does the evidence presented demonstrate that such 271 approval tends to further induce local market entry by CLECs.	Attachment II, p. 12. The Facilitator notes that "there is reason to believe that the opening of the in-region, unregulated AFA market to Qwest will have the effect of inducing carriers in that market to accelerate their efforts to enter the local exchange market."	None		Issue Resolved via SRA V change request

# CONTINUATION

# [REDACTED] 4

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. 1001-165

Transcript of Proceedings  
February 7, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
BOB SAHR, COMMISSIONER

**ORIGINAL**

COMMISSION STAFF

Rolayne Ailts West  
John Smith  
Karen Cremer  
Kelly Frazier  
Gregory Rislov  
Harlan Best  
Keith Senger  
Dave Jacobsen  
Michele Farris  
Heather Forney  
Sue Cichos  
Debra Elofson

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FEB 10 2002

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

APPEARANCES

DAVID GERDES, MIDCONTINENT COMMUNICATIONS  
MARY HOBSON, QWEST  
GREG BERNARD, BLACK HILLS FIBERCOM

ALSO PRESENT:

COLLEEN SEVOLD, QWEST  
MARY LOHNES, MIDCONTINENT COMMUNICATIONS  
KYLE WHITE, BLACK HILLS FIBERCOM  
LARRY TOLL, QWEST  
TIM DOUGHERTY

Reported By Cheri McCormsey Wittler, RPA

**PRECISION REPORTING**  
**L I M I T E D**



IN THE MATTER OF THE ANALYSIS INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996 DOCKET NO. TC01-165

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LARRY TOLL, QWEST  
TIM DOUGHERTY

Reported By Cheri McComsey Wittler, RPR

APPEARANCES BY TELEPHONE  
MARLON BUSTER GRIFFING, QSI CONSULTING  
MARK STACY, QSI CONSULTING  
STEVE WEIGLER, AT&T  
LYNN STANG, QWEST  
TOM WELK, QWEST  
JEFF CARMON - QWEST

TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room 464, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 7th day of February 2002,  
commencing at 2:30 p.m.

(There were no exhibits marked for identification)

MS ALTS WEST: Now when the  
proceeding conference that's held to go  
it go through the end of the  
Marlon Griffing QSI Warren Frazier  
MR GRIFFING: Marlon Griffing is  
here

MS ALTS WEST: Warren Frazier  
MR GRIFFING: Yes, and here we  
won't be able to join at today  
MS ALTS WEST: What time?  
MR STACY: Yes  
MS ALTS WEST: Steve Greiner?  
MR WEIGLER: Present  
MR ALTS WEST: Lynn Stang?  
MS STANG: Yes, here  
MS ALTS WEST: Tom Welk?  
MR WELK: Yes, here  
MS ALTS WEST: Jeff Carmon?  
MR CARMON: I'm here  
MS ALTS WEST: Okay, we have a  
number of people in the room. If all the people  
could go around and tell who you are to the public  
on the phone can they  
You can start here Kyle  
MR WHITE: Kyle White with

Black Hills Fibercom  
MR BERNARD: Greg Bernard with  
Black Hills Fibercom  
MS NELSON: May I request  
representing Qwest  
MR SEVOLD: Colleen Sevoll Qwest  
MR TOLL: Larry Toll Qwest  
MR GRIFFING: Steve Greiner  
representing Midcontinent Communications  
MR LOHNES: Mary Lohnes  
Midcontinent  
MR BEST: Greg Best Commissioner  
MR  
MR GRIFFING: Warren Frazier with  
MS ALTS WEST: And at this  
Commissioner, are there I would ask all the people  
who are standing at all the points of all time I would  
request to stand you around clearly present  
Thank you very  
And what I would like to do is I would like a  
letter to all the parties about January 21 I  
would like to go through some of the items that  
were raised there. And then we also received a  
letter from Qwest and they also raised additional  
items they would like to discuss. We can go

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through both of those and we will also be open to discussing any other issues that any other parties would like to raise

But before we get to the issues that I raised in my letter does anybody need to say anything before we just start with that?

(No audible response)

MS. AILTS WIEST: If not, the first question that we asked of parties was whether there were any checklist items that can be decided based on written things as opposed to oral testimony at the April hearing

And this is kind of based on the fact that at least in the multi-state workshop I believe a number of issues were argued or talked about through what they termed a paper workshop. And those items on the checklist were items number 3, 7, 8, 9, 10, and 12

And I don't know how well the grouping worked in the multi-state, but I did notice, for example, staff's consultants followed the groupings and Qwest more or less followed the groupings too in their testimony. So does anybody have any comments on that issue?

I will just mention that, according to my

1 be presented on those kinds of issues is going to  
2 have more to do with what Midco has experienced  
3 and what Qwest's response is to that experience and  
4 those facts specific to them

5 And while we are -- by we I mean  
6 representatives of Qwest -- talking to  
7 representatives of both Midco and Fibercom at this  
8 point about the issues that they have raised in  
9 their issues lists, we have not yet resolved any of  
10 those issues. We hope that we will be able to  
11 resolve some of those issues before we get to  
12 hearing

13 But my point being here we think we're going  
14 to have a different kind of testimony and so on  
15 when it comes to the issues raised by those two  
16 interveners than we will with regard to Qwest  
17 and -- I'm sorry, AT&T and staff who have raised  
18 more sort of philosophic issues that are similar to  
19 those that have been addressed in the other 271  
20 processes across the US West territory. So when I  
21 say the issues I have a tendency to be focusing on  
22 the staff and AT&T issues

23 Having said that, back to number 7, 911, and  
24 E-911, Fibercom did raise one issue on that. We  
25 hope to get that resolved. And AT&T has one what I

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calculations going through the issues, it would appear that no party has raised any issues with respect to item number 9, number administration, and item number 12, local dialing parity at this time

Maybe we should just begin with Qwest.

MS. HOBSON: Thank you. I think that's correct that -- it's correct that no one on the record has raised any questions with regards to number 9 and 12. For that reason Qwest would submit that the Commission doesn't need further record evidence on those points at all since there's no contest or no issues that have been raised about them

With regard -- it seems to me that we're also fairly close to resolving all issues on a number of other checklist items. Checklist item number 7, for example, which is 911 and E-911 access, when I'm speaking about the issues today I want to separate the issues that have been raised by Midco and Fibercom separate from those that have been raised by AT&T and staff because Midco and Fibercom issues we believe are more specific to those particular companies

And so the kinds of evidence that's going to

1 would call a generic issue on that, the nature of  
2 which I don't fully understand. But assuming that  
3 we can somehow reach consensus with AT&T -- we're  
4 very close on number 7 -- that's all that's  
5 outstanding on those two

6 Item number 8, which is access to the white  
7 page listings and white page -- processing of white  
8 page issues, again, Fibercom has identified one  
9 issue. Staff has identified two issues, but we  
10 believe that those issues have been resolved and  
11 really that this checklist item can probably be  
12 taken off the list

13 The reason I say that is because the first  
14 staff issue which they've identified on their list  
15 as number 4 was whether or not the word contractor  
16 should be put into a certain provision of the SGAT.  
17 And that has now been accomplished

18 You have a red line version with the word  
19 contractor put in there. We think that issue is  
20 resolved. We haven't had confirmation from staff,  
21 but if that issue is what it says it was, then that  
22 issue should be resolved

23 Likewise, on issue number 5, while the issue  
24 has not been -- it's not the same kind of issue, it  
25 is an issue regarding the results of the OSS tests

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And I think we all understand a certain -- Qwest is in the position to state that we are not expecting this Commission to resolve the checklist items without knowing what the OSS tests ultimately produce

But what the other State Commissions have done with these kinds of issues is that they have decided the checklist item has been met pending the results of the OSS test, and we believe that checklist item number 8 is one of those issues that you can resolve on the record that's in front of you right now without developing a further record on it subject to the results ultimately coming out of the OSS test. So we would submit we're very close on checklist item number 8

Likewise, on checklist item number 10 the only party that identified an issue there was AT&T and maybe AT&T can explain to us sometime what that issue is but there's only one outstanding issue on number 10

We believe there are a number of checklist items that more than simply put in on paper record can be deemed resolved insofar as no party has raised an issue or no party continues to have an issue about those five

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With regard to the rest of the checklist items and the other items such as the 271 compliance, the Track A compliance and so on, we believe all the rest of those issues can be resolved on a paper record, and we would urge the Commission to think about doing that

MS AILTS WIEST: Which all other issues --

MS HOBSON: All of the other checklist items that I haven't talked about and then all of the track A, public interest, 272 compliance, and QPAP issues we believe can be resolved on a paper record

MS AILTS WIEST: You don't think a hearing is necessary on any of the issues?

MS HOBSON: We don't believe so, no. Now obviously if people want to talk to witnesses, that is their choice. And, again, I think those are different -- when I say all of those other issues I'm talking about the issues that are on the staff's list and on the AT&T list

I don't see us being able to resolve the issues with Midco and Fibercom in that way necessarily, although we would certainly be open to doing that. But those are issues that, again, are

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facts specific to the State and require the development of records different than those that have been developed elsewhere and so we're perfectly willing to accept that you may need to hear some specific facts about those

MS AILTS WIEST: So we may need to have a hearing?

MS HOBSON: On Fibercom and Midco assuming that we don't otherwise reach agreement with them before the hearing, that's correct

MS AILTS WIEST: Fibercom, do you have any response?

MR BERNARD: Greg Bernard from Fibercom. Only very briefly I think we can agree that number 9, number 12, dialing party, number administration, and the 911, E-911 can be resolved rather quickly if they aren't already. We haven't identified any issues, and I'm not aware of anybody else that has. It can be resolved on paper

With regard to the comments on the paper resolution of the public interest and the QPAP and the 271, those issues, I think that most likely we're going to need a hearing on those issues specifically because the way -- if I'm understanding Mary and some of the correspondences

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that we've had, they've essentially asked if somebody wants to talk to somebody from Qwest under oath, please identify those people

It seems to me that that's really somewhat of a burden shifting in this case. I mean, Qwest has the burden of proof always through these proceedings

They have prima facie met the burden with their application, and now to the extent that anybody comes up with a counter-argument or any evidence that that particular element under scrutiny has not been met, Qwest is going to have to come forward with whatever proof they have, whether that be witnesses, more testimony, et cetera, to carry their case. That is, they haven't carried their case if there is some rebutting evidence against any one of these elements

And I guess I agree with Mary that with respect to the issues that Fibercom has raised, some of the limited issues, I know that we've had some contact with Qwest and we're trying to resolve some of them and we'll work with Qwest to get them resolved before the hearing and I'm thinking that some of them will go away

1 Other than that, I have no comment  
 2 MS AILTS WIEST: Just to clarify, I  
 3 know you mentioned 911 and E-911 That's under  
 4 checklist item 7 But you're not excluding  
 5 directory assistance and operating services --  
 6 MR BERNARD: No  
 7 MS AILTS WIEST: So it's really  
 8 part of that checklist item that you would agree no  
 9 issues were raised as to --  
 10 MR BERNARD: That's right  
 11 MS AILTS WIEST: -- Midco  
 12 MR GERDES: I think we essentially  
 13 agree with what the two that have gone before have  
 14 said I mean, I'm not agreeing that we shouldn't  
 15 have a hearing Because I think I'm having a  
 16 little trouble understanding the logic of  
 17 segregating the Fibercom and Midco issues from  
 18 AT&T's  
 19 So somebody can take me to the wood shed after  
 20 the meeting and explain it to me, but otherwise I  
 21 essentially agree  
 22 MS AILTS WIEST: AT&T?  
 23 MR WEIGLER: Yes This is  
 24 Steve Weigler from AT&T I guess my major concern  
 25 is that this Commission, like others before it and

1 to file our comments and Qwest is going to have to  
 2 rebut that  
 3 So this Commission shouldn't just close those  
 4 issues And I'm not sure Ms. Hobson was saying  
 5 that But as far as AT&T's concerned, we have  
 6 viable issues that are of concern on those  
 7 particular issues as well as the other issues that  
 8 we've listed in the checklist  
 9 The only other thing I would say is that I  
 10 also received Ms. Hobson's kind of graph It's  
 11 a I don't know it's maybe a 25 page graph it  
 12 says, issue resolved A lot of these things say  
 13 issue resolved SGAT language changed And I  
 14 looked at it and as far as AT&T's issues, these  
 15 issues aren't resolved at all And I think maybe  
 16 it's something we'll discuss later, but I just  
 17 wanted to put that on the record  
 18 MS AILTS WIEST: Okay Anything  
 19 else?  
 20 MR WEIGLER: That's it  
 21 MS AILTS WIEST: Thank you Staff?  
 22 MS CREMER: Yeah I guess I'm  
 23 somewhat confused by your terminology in your  
 24 letter, Rolayne, about based on the written  
 25 filings

1 others after it, are going to have to do according  
 2 to -- the FCC has detailed an extensive  
 3 investigation for the FCC to give any credence to  
 4 its recommendation And I just want to make sure  
 5 that, I guess, if this Commission feels that it  
 6 requires oral argument or hearing, then it would be  
 7 appropriate to have oral argument or hearing  
 8 If the Commission believes it can do a  
 9 detailed and extensive investigation by a paper  
 10 filing -- and, you know, the problem I guess with  
 11 paper is there's not going to be anyone around to  
 12 answer the various questions or clarify the  
 13 issues -- then certainly this Commission -- there's  
 14 nothing in AT&T's view then that would prohibit  
 15 this Commission from not having an oral argument or  
 16 a hearing It's just that AT&T's concern is that a  
 17 detailed and extensive investigation has to be  
 18 done  
 19 With regard to what Ms. Hobson indicated,  
 20 that's well and good that somebody's checklist  
 21 items are close to being closed, but AT&T --  
 22 Black Hills' attorney indicated its Qwest's burden  
 23 and AT&T has issues that its articulated in  
 24 checklist item 7, 8, and item 10 and we're going to  
 25 put our evidence forward in the time that we have

1 When you're talking written things are you  
 2 talking Qwest testimony only, or are you talking  
 3 Qwest testimony and Antunack's report? That's the  
 4 written filings you want to go forward on, or what  
 5 were you thinking?  
 6 MS AILTS WIEST: It was mainly I  
 7 guess I was thinking of Qwest testimony as well as  
 8 intervenor and staff testimony that could be filed  
 9 later  
 10 MS CREMER: Okay  
 11 MS AILTS WIEST: And it's also  
 12 always possible the Antunack, to the extent that  
 13 people want to put those in the record and have  
 14 that considered by the Commission I mean, that's  
 15 always a possibility also  
 16 MS CREMER: So if we were to -- if  
 17 the Commission is to decide that based on written  
 18 filing, it would be testimony of Qwest and staff  
 19 and then where does cross examination come in or  
 20 there isn't -- where's the clarifying come in if  
 21 the Commission has questions following a written  
 22 MS AILTS WIEST: Well and that was  
 23 my whole question And the reason I brought it up  
 24 is because I know that in other cases they have  
 25 conducted paper workshops where they did have an

1 opportunity, is my understanding, to question the  
2 witnesses, and they did decide it just on the paper  
3 filings

4 And so in those cases I was just wondering if  
5 that would be something that we would consider  
6 here. If it's not viable, then it's not viable

7 MS CREMER: Well, so then if the  
8 Commission is left unsatisfied because they have  
9 questions that are unanswered, then Qwest fails on  
10 that checklist item because they haven't met their  
11 burden? I mean --

12 MS AILTS WIEST: Right. It would  
13 be based on the written filings

14 MS CREMER: They are the ones  
15 taking the risk

16 MS AILTS WIEST: It certainly could  
17 be, yes

18 MS CREMER: The only other thing I  
19 could think, you know, possibly there are issues  
20 that staff and Qwest may resolve. And I have no  
21 idea in looking at this thing that they handed out  
22 today if we have truly come to a conclusion on  
23 those issues

24 It's possible we could stipulate -- you know,  
25 we could stipulate, say, for instance, checklist

1 item 3 in the testimony of Qwest is enough for the  
2 Commission to go forward and make a recommendation  
3 on that. I'm thinking, you know, we may be able to  
4 do that, point out in their written filing, you  
5 know, here's the checklist item, here's their  
6 testimony, here's what we think backs up that  
7 testimony, you know, and stipulate all of that into  
8 the record

9 My concern is that your record is going to be  
10 incomplete. You don't have anybody up there, you  
11 know, taking the oath and saying I move this  
12 evidence in. So I think, you know -- and it would  
13 be the interveners too. They're going to have to  
14 agree that those issues are closed before you're  
15 going to have a complete record. And so --

16 MS AILTS WIEST: Right.

17 MS CREMER: So I guess my concern  
18 was on the written filings. I wasn't sure what --  
19 I wanted to make sure we're all talking about the  
20 same thing here.

21 MS AILTS WIEST: Sure. Well, then  
22 it kind of brings up the question, for example, as  
23 I pointed out, no one raised any issues on items 9  
24 and 12, and so is there -- did the parties believe  
25 there's anything to discuss on those items, or does

1 it make sense for example we hold a hearing that  
2 the witness who testified on 9 and 12 will need to  
3 be here in order to put her testimony into the  
4 record? I think it was her

5 MS CREMER: Well, they wouldn't  
6 from staff's perspective. But the Commission would  
7 then have to conclude that they don't have anything  
8 to ask of them either

9 MS AILTS WIEST: I understand your  
10 point. Right.

11 MS CREMER: You know, I mean

12 MS AILTS WIEST: Uh-huh.

13 MS CREMER: Because then we get to  
14 the hearing, and we have that same old thing, where  
15 are they, they're not here. I don't see that I'm  
16 running a risk here.

17 MS AILTS WIEST: I understand your  
18 point. And actually the witness that did 9 and 12  
19 did a number of ones that could not have been  
20 settled. So it certainly would be if the  
21 Commission goes to hearing, they could move on 9  
22 and 12 and any questions could be asked at that  
23 point anyway.

24 MS CREMER: Right.

25 COMMISSIONER NELSON: Well, where are

1 I going to see that you guys, the staff and the  
2 interveners, agree that these things are settled?  
3 Because it's one thing for Qwest to sit here and  
4 say this is all agreed to. And already AT&T

5 disputes there's an agreement on this stuff.  
6 So I guess for myself I expect staff to be  
7 able to show me somewhere, somehow that they looked  
8 at these items and you're sure they've been met.

9 MS CREMER: That would be the only  
10 thing. The way I envision it is Qwest and the  
11 interveners and staff are going to have to get  
12 together and go through these things and decide,  
13 yes, we have agreed this is a closed matter.

14 And I don't want to call it a settlement  
15 agreement but in that format, you know, where we  
16 come before the Commission and say we have settled  
17 these 27.

18 COMMISSIONER NELSON: For myself I  
19 could pay ties to the AT&T and US West  
20 Interconnection Agreement thing that went on for  
21 days at the hotel and you know, I left that  
22 meeting at least feeling at least we really looked  
23 at the issues and they had been really resolved.

24 And I just want to know how I'm going to be  
25 assured of that without a hearing here.

1 MS CREMER: Right I would  
 2 disagree with Qwest I believe we do need a  
 3 hearing I think we need to go, and I think we  
 4 need to have witnesses present Maybe not on each  
 5 and every issue, I would agree, but I don't think  
 6 this thing can be done totally on paper  
 7 COMMISSIONER NELSON: Well, I'm  
 8 definitely not very comfortable with doing it on  
 9 paper  
 10 CHAIRMAN BURG: The thing I'd ask is  
 11 from a Commission position if there are no issues,  
 12 what would we be asking questions about?  
 13 MS AILTS WIEST: Well, at this  
 14 point --  
 15 CHAIRMAN BURG: If there's no  
 16 disputed issue?  
 17 MS AILTS WIEST: As far as for  
 18 example, checklist items 9 and 12 no one brought up  
 19 any issues I believe the question Karen has  
 20 raised is whether that's from the interveners  
 21 themselves But it could be that the Commission  
 22 has issues on any of those  
 23 CHAIRMAN BURG: Yeah Uh-huh  
 24 MS AILTS WIEST: Or would like to  
 25 ask any questions about Qwest testimony concerning

1 those, and as far as I was just wondering if staff  
 2 would intend to, after they've had a chance to go  
 3 through what Qwest has filed, which is where  
 4 they've said a number of issues And I'm only  
 5 talking about staff issues because I believe this  
 6 whole matrix --  
 7 It's my understanding that everyone has gotten  
 8 this It's called South Dakota PUC Response To  
 9 Staff Data Request, and I believe it's all based on  
 10 staff issues is my -- looking through it, it looks  
 11 to be like the same format --  
 12 MS HOBSON: That's correct  
 13 MS AILTS WIEST: -- that staff went  
 14 through Anyway after looking through this and  
 15 looking through staff's issues, and I looked up a  
 16 few of them, it would appear that some of those  
 17 have been resolved, and so I was wondering if staff  
 18 would consider refiling their synopsis of issues  
 19 with those issues that it believes has been  
 20 deleted?  
 21 You've talked about a stipulation I'm  
 22 wondering if that would be an option also with  
 23 staff  
 24 MS CREMER: Mark Stacy?  
 25 MR STACY: Yes, Karen

1 MS CREMER We could do that  
 2 right?  
 3 MR STACY: Yeah We've already  
 4 taken some preliminary steps in doing that I  
 5 believe we discussed a few days ago We didn't  
 6 want to put anything forward that might prejudice  
 7 something as far as the other interveners are  
 8 concerned so just because we had kind of had the  
 9 feeling that some of these things had gone away, we  
 10 wanted to make sure that the other intervening  
 11 parties had come to the same conclusion  
 12 MS CREMER: Our concern was that  
 13 some people may have seen our list and seen that it  
 14 was on our list and put it on their list as issues  
 15 to be considered so we wanted to make sure that we  
 16 didn't -- because we had thought they were  
 17 resolved didn't mean Midco thought it was  
 18 resolved  
 19 MR GERDES: Right  
 20 MS CREMER: And I'm not sure  
 21 MR WEIGLER: But it seemed to me  
 22 what -- and I had talked before you thought some of  
 23 the issues -- so you didn't necessarily put them on  
 24 your list So we would have to have everyone's  
 25 agreement It couldn't just be staff and Qwest

1 here  
 2 MR STACY: Right That's my only  
 3 concern For example I look at issue number 44 on  
 4 subloop unbundling, and it says on the right  
 5 corner, issue resolved, SGAT language changed  
 6 because Qwest at least in this graph indicated it  
 7 took the facilitator's report  
 8 Well, other State Commissions haven't resolved  
 9 it that way necessarily, and to AT&T that issue  
 10 isn't resolved I could go through more, but I  
 11 mean my only point of bringing that up is AT&T  
 12 still has a lot of issues where in this graph it  
 13 says issue status issue resolved And so  
 14 MS AILTS WIEST: Right And I  
 15 just  
 16 MR STACY: And we want the  
 17 opportunity to bring that issue in front of the  
 18 Commission  
 19 MS HOBSON: May I respond, please  
 20 MS AILTS WIEST: Go ahead  
 21 MS HOBSON: I want the document to  
 22 be understood what it is This matrix that we're  
 23 all talking about was driven off of staff's  
 24 original issue list, and it was my effort to put  
 25 together something here not for the record but to

facilitate discussion amongst the parties about whether or not some of these issues have really moved to the point of resolution across the Qwest territory

And so while some of them, I imagine, are very clear cut, we are perfectly willing to accept the possibility that some parties are going to believe that even though Qwest made some changes, they haven't gone far enough or whatever

This is intended as a tool strictly to facilitate discussion. We don't intend to put this on the record. We don't intend this to be our advocacy vis-a-vis these items. So please don't hold us to this. This was purely an off-the-record discussion tool

So what you see in issue status column on this document is Qwest's position, vis-a-vis where the issue stands. Now it's exactly this kind of discussion that we're attempting to engender, but it's not a discussion we're attempting to put on the record at this point. We're not trying to mislead anybody this is our position, vis-a-vis where we think things stand

And we want to have a discussion about it with you, AT&T, and with you, staff, but probably today

on the record might not be the time. If this is, you know, great, we can go through them one by one, but that was why we put it out there. And I know that Ms. Wiest indicated it's in the record. We haven't put it in the record. We don't intend to put it in the record

MS AILTS WIEST: Well, I believe Qwest did tell me to put it in the record this morning, and it is in the record. It has been filed in your Docket

MS HOBSON: Speaking as Qwest counsel, I didn't ask you to do that

COMMISSIONER NELSON: Who asked?

MS AILTS WIEST: Mr. Toll brought it in to me, and I said do you want it into the Docket and my indication was yes, he did. I'm not trying to put anybody --

MR TOLL: I believe I said that was between the lawyers as whether it was part of the -- would become part of the record or not, but it really truly is just a tool to try to negotiate with staff and work through some of the issues, just a way to start conversation on those specific issues

MS AILTS WIEST: Well, if you want

it out of the record, you're going to have to get it out of the record because as of right now it is in there in the Docket

MS HOBSON: Okay. Thank you

MR GERDES: May I make a comment?

MS AILTS WIEST: Go ahead

MR GERDES: Dave Gerdes from

Midcontinent. From what has been said to this point, it might be worthwhile and I think it sounds like this is where we're heading for -- us, meaning perhaps just the lawyers to sit down with these issues lists and -- because I agree with what Ms. Wiest said and that is that simply because staff signs off on an issue, I think all issues stated by all parties are of interest to all parties

In other words, just because staff signs off on its issue, and staff may have been the only one that raised it, that doesn't necessarily mean it's not an issue for Midcontinent or Fibercam or any of those

And so it occurs to me that it might move this along a lot more quickly if we have a day when the lawyers just sit down and say what's an issue and what's not an issue, put together a report, take it

to the Commission because the Commission is the ultimate decider, and the Commission then if the Commission has questions -- I'm thinking about Commissioner Nelson's comments -- then those things can be submitted to the Commission and we can decide if we have to go further with them or not that kind of a thing, to just sort of clear the air so we're not floundering around here

COMMISSIONER NELSON: Well, not being a lawyer, I have a little problem only lawyers meeting to discuss this because lawyers are only one part of the staff and I think if we have analysts who worked on a specific issue or something, they too would have concerns. So I don't think you could have just a lawyer-to-lawyer meeting

MR GERDES: No. And I didn't mean it that way, Commissioner Nelson. Commissioners can be there too, as far as I'm concerned, I'm thinking of doing it so it's not to waste your time. Once we get it narrowed down, we'd take the things to you

COMMISSIONER NELSON: It wasn't my time I was concerned about but I know we've had more than lawyers assigned to this case and a lot

of people have spent a lot more time analyzing the technical aspects of this necessarily than the lawyers

MR GERDES And I was not meaning to exclude anybody

CHAIRMAN BURG What I would see happening in that case, if all parties agreed it is no longer an issue, we would still need an opportunity -- if the Commissioners said I don't agree it would be included as an issue, and we'd have to basically negotiate it

MR GERDES I agree with that Let's sit down, identify the issues, and take them to the Commission and say this is what we think, what do you think, and that way I think we could narrow the issues for the hearing so we're not going over all 14 points at the hearing if only five or seven of them are in contention That's the overall goal I had in mind

MS AILTS WIEST Do any of the other parties have any response to Mr Gerdes's suggestion?

Qwest

MS HOBSON That's what we've been trying to do We would love to have an opportunity

1 the Commission if they do have questions of things  
2 that they don't understand, they may be able to  
3 inquire of the attorneys -- wouldn't be providing  
4 evidence but could perhaps clarify evidence  
5 presented in their oral argument

6 That's an opportunity and one I think we  
7 should consider, especially for things like the  
8 paper workshop items 3 7 8 9, 10 and 12 But  
9 nobody has really found an issue before that was  
10 worth bringing testimony forward and having people  
11 cross-examined on

12 One interconnection, collocation, those have  
13 been the kind of issues people have really been  
14 excited about talking about QPAP some of those  
15 others you may want to have witnesses present and  
16 cross-examine on those It seems to me there's a  
17 whole variety of possibilities

18 Another possibility that we haven't talked  
19 about yet is in addition to the affidavit that we  
20 filed here, the testimony that the other parties  
21 are expected to file in response on those issues we  
22 could also introduce either all or pieces of the  
23 record that has been developed in other  
24 jurisdictions, and that gives the Commission a much  
25 more in depth

to meet and talk about these issues But I think maybe getting back to your original question, I think we've kind of mixed together a bunch of stuff that doesn't really need to be mixed together

We started out talking about two checklist items that no parties identified an issue for so we would submit at this point that this Commission has everything it needs to decide that issue because no one has any other argument about those issues So that maybe -- maybe that's a paper resolution of that issue or maybe it's not, but that seems to be one category of things

We move down to checklist items where people have identified issues that are not going to be resolved before we get there And it seems to me that, nonetheless, we could still agree to hear those issues a variety of ways And one way is to do the traditional thing where everybody files testimony, brings witnesses and they're cross-examined and we have the hearing

Another way to do it is for the parties similarly to file their testimony and to have an oral argument and allow the attorneys the opportunity to brief the issue And that may be -- that may serve kind of a middle ground here where

1 If what you want to do is hear people talk  
2 about these things, see people cross examined about  
3 these things, you may be satisfied reading a record  
4 where that was done I don't know but that's a  
5 possibility and certainly that has the advantage of  
6 giving you the expertise of a lot more people than  
7 identified for testimony so far in this Docket and  
8 a lot more interveners than you currently have in  
9 your case

10 So you could look at what the seven state  
11 process had, for example and you can work your way  
12 through those issues So that's an opportunity  
13 and we would like you to consider that I'm  
14 pushing all of these points at this time because  
15 this Commission only has a week scheduled right now  
16 for hearing, and we have 205 issues on the staff's  
17 list alone

18 Frankly, my belief is that you will need an  
19 additional week or more if we really go to hearing  
20 And Qwest has 13 witnesses identified Well, we  
21 have 12 identified, and we have another one we  
22 would put on on terms and conditions We have 13  
23 witnesses at a minimum that we would be bringing to  
24 a hearing, and they're testifying on a huge, huge  
25 array of issues, potentially if all of this and



1 all of AT&T, Midco, and Fibercom issues are  
 2 litigated  
 3 So we really think it's in everyone's  
 4 interests to see if we can't get this pared down,  
 5 get some of these issues resolved on paper and not  
 6 try to do it all. But if we are going to try to do  
 7 it all, we strongly urge you to set another week or  
 8 two right now because it's not going to happen in a  
 9 week.

10 MR. BERNARD: Greg Bernard from  
 11 Fibercom. If I'm hearing Commissioner Nelson  
 12 correctly, and I know this applies for me, she  
 13 doesn't know the issues but she wants to at least  
 14 preserve the opportunity to ask questions on the  
 15 issues. And if what we're discussing right here is  
 16 does Qwest bring witnesses or not, are we trying to  
 17 save witnesses time for Qwest, or are we trying to  
 18 save hearing time for everybody?

19 I would suggest that we allow these issues to  
 20 proceed, and they'll take care of themselves  
 21 through the testimony submission process. For  
 22 example, I don't envision that I'll submit any  
 23 testimony on access to poles and ducts and  
 24 conduits, and if no one else does, that still  
 25 reserves the issue for the Commission.

1 that have decided. Well, then if those are  
 2 detailed and extensive records, then I think that's  
 3 an issue.

4 MS. AILTS WIEST: Okay. Thank you.  
 5 Does anybody identify any purely legal issues  
 6 addressed by briefs that could be addressed by  
 7 briefs?

8 Qwest  
 9 MS. HOBSON: Again, we believe that  
 10 the Black Hills Fibercom issue with regard to  
 11 Track A versus Track B proceedings is purely a  
 12 legal issue, and we think that should be resolved  
 13 by briefs. I haven't talked to my co-counsel about  
 14 that.

15 MR. BERNARD: I agree that is purely  
 16 a legal issue that can be resolved on briefs.

17 MS. AILTS WIEST: Anyone have any  
 18 comments on that?

19 MR. BERNARD: Well, there may be  
 20 some factual issues about what specific  
 21 interconnection agreements they're going to rely  
 22 on. I think that can still be done with an  
 23 addendum and exhibits and things.

24 MS. AILTS WIEST: Oh, okay.  
 25 MS. HOBSON: And again, there have

1 If they've got something they want to say,  
 2 they can ask either on paper or the parties what  
 3 about this, Qwest, or they can reserve that for  
 4 when all 13 witnesses are here and say what about  
 5 this? Is there an easy answer to this? Yes.  
 6 Okay, I'm satisfied. And no one else has  
 7 submitted anything on this. That issue is done.

8 And it may take another week of hearing, but I  
 9 would prefer to see another week of hearing so that  
 10 we all have the opportunity... if, like I say, I  
 11 don't know all the issues when an issue arises, I  
 12 want to have somebody there to talk to about it.  
 13 And in my opinion, that's the best way to go.

14 MS. AILTS WIEST: Does anybody else  
 15 have any comments on what we've discussed so far?  
 16 Anyone on the phone? AT&T?

17 MR. WEIGLER: The only thing is  
 18 Mrs. Hobson said maybe we can bring in the  
 19 seven-state record and I don't have any problem  
 20 with bringing in the seven-state record but there's  
 21 other states that have decided this issue that are  
 22 equally as relevant to this Commission's  
 23 determination.

24 So if we bring in the seven-state record, we  
 25 certainly should be able to bring in other states

1 been a number of Track A issues identified by  
 2 staff, and so we anticipate that absent some sort  
 3 of agreement by the parties in this case that one  
 4 Tritel (phonetic) affidavit correctly captures the  
 5 facts.

6 We understand there may be a factual  
 7 discussion about what interconnection agreements;  
 8 there are now many lines are being served by  
 9 competitors and so on. We see those as being  
 10 factual issues that may or may not be contested.  
 11 At this point we don't know.

12 But we also believe that in addition to  
 13 whether we should be under Track A or B, which is  
 14 the Fibercom issue, there may be other Track A  
 15 related issues that are really legal. What is the  
 16 standard, how much competition do you have to show  
 17 before you have met the standard, and so on.

18 Those kinds of issues are legal issues so we  
 19 think those will require briefing too. I  
 20 anticipate that we would brief those in a  
 21 posthearing brief, but it may be that the Track A  
 22 Track B issue is one that we need to resolve before  
 23 then. I don't know, mean, certainly we would  
 24 welcome the opportunity to resolve anything earlier  
 25 rather than later.

1 MS AILTS WIEST Okay

2 MR GERDES Just so that we're

3 clear, I agree with Fibercom on the Track A Track B

4 issue, even though I didn't mention it. So just

5 don't think it's their issue. If I file a brief on

6 it, I don't want you to be surprised.

7 MS HOBSON Okay. No problem.

8 MR BERNARD And I just want to

9 clarify when I say it's purely a legal issue that

10 is just the macro issue of can they proceed under

11 Track A.

12 Now, as Mary has mentioned, there are a number

13 of probably factual findings that I don't know will

14 be addressed in the briefs, and that is is there

15 actual viable competition in South Dakota

16 et cetera.

17 MS AILTS WIEST Anyone else? AT&T

18 or staff on that issue? Does anyone else have any

19 legal issues that they've identified?

20 COMMISSIONER NELSON I'm personally

21 still back before you moved on. I don't know that

22 we resolved that issue.

23 MS AILTS WIEST I guess my plan

24 was that the Commission would gather information at

25 this point, but we could put out something

1 MS AILTS WIEST ... you're right. We

2 had not resolved it. But, just looking for

3 information from the other parties on that. How

4 let's go on to number 3 in my offer.

5 Does anyone have any comments on whether the

6 Commission should set specific conditions for

7 certain days?

8 And this is under the premise we'll be holding

9 hearings with testimony in order to allow parties

10 to schedule their witnesses. And should there be

11 any specific grouping of studies or is it too

12 difficult to determine how much time you will need

13 for specific studies?

14 How about if the parties meet and if

15 needed on the two dates, grouping of studies

16 but of course those were mutual workshops and

17 now they had a lot of scheduling problems and had

18 to schedule additional workshops and those and

19 well they did a lot of changes to their schedules.

20 Question

21 MS HOBSON That's right. That

22 with all due respect to those concerns that they

23 not be treated inequally. Question continues to

24 believe that the issues raised, many of the

25 issues raised by Fibercom and the issues raised by

1 afterwards after -- and resolve it later.

2 COMMISSIONER NELSON Okay.

3 MS AILTS WIEST If you want to

4 resolve it now, you can, but my whole point was --

5 CHAIRMAN BURG I was under the

6 impression it was resolved, we would always have

7 the opportunity to bring up issues --

8 COMMISSIONER NELSON Well, I'm not

9 concerned about bringing up the issue because I

10 think you can do that. But I am concerned about

11 whether or not there are going to be live speaking

12 people here who can look at the issue in depth and

13 answer the questions.

14 Having gone to other hearings and had those

15 people not available and there's no record on it,

16 then I have a problem with that.

17 MS AILTS WIEST And my

18 anticipation, Commissioner Nelson, was that after

19 this prehearing conference that the Commission

20 would issue an Order and set out what it intends to

21 do in this matter.

22 COMMISSIONER NELSON Okay. Good.

23 Because I just didn't feel I had resolved that

24 issue, and I wasn't too excited about moving on

25 until we did.

1 Those are of a different nature than the issues

2 raised by the staff and by AT&T.

3 And by that I mean they are actually

4 specific. Those compare that their experience

5 with proposed item number 2 is a particular thing

6 and there is going to be a particular hearing

7 attempt or persons from those talking about their

8 experience and Question will have a witness responding

9 to that experience.

10 And that's different than someone that will be

11 talking for example about customer experience

12 in general. And so what we would like to do is

13 have the witness and Fibercom, what will be specific

14 days so that we can be sure that we have the people

15 who are not necessarily the witnesses that agree

16 that those witnesses. So we can have those

17 people here with the experience on the day-to-day

18 basis with those witnesses to talk about those and

19 if you will agree. Question was about

20 Beyond that, if you recall, there are a number

21 of witnesses that talk about several issues and

22 it obviously I would be best for us if we could

23 have studies 1, 2 and 3 all of which are

24 Tom Frisberg (phonetic) is our witness. It would

25 be best to have all of those studies heard in

roughly the same time period so Mr. Frieberg doesn't have to come back three different times during what could turn out to be quite a lengthy hearing process

But I think that until we get this opportunity which Midco suggested that we take to sit down as attorneys and their support off the record and talk about how much of these issues really are going to be things that we are going to contest. I think it will be difficult for us to know exactly how many days we're going to need for any given topic and hence start designing a schedule

I think it's premature, and I think a better use of our time today would be to try to find a date where we would start that discussion so we could narrow down the issues. And I think we want to do that sooner rather than later because there's a testimony deadline coming up here not too long for people who don't get their issues resolved

MS AILTS WIEST: You anticipate with respect to Midco and Fibercom issues you'll be addressing that through rebuttal, written testimony. During that you have an opportunity to submit rebuttal written testimony, if these are continued to be unresolved issues

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1 getting Qwest to brand their operator service calls the way they want them branded

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3 Now hopefully we can get that worked out and we never have to hear about this at all. But if you do, that's not an issue that seems to be impacting anyone else. That only seems to be impacting Fibercom, and it may be due to very specific Fibercom Qwest miscommunications whatever. I'm not sure about that.

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6 So that's the reason that's a different kind of issue, because it's not a question does Qwest provide branding? Is Qwest required to provide branding? It's not really that question. It's why isn't it working for Fibercom?

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15 COMMISSIONER NELSON: Or Midco MS HOBSON: Well, Midco hasn't claimed they have the problem.

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18 MS AILTS WIEST: They haven't requested it.

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21 COMMISSIONER NELSON: You didn't raise it?

22  
23 MR GERDES: Not that one.

24  
25 MR BERNARD: We raised it. I don't agree with Ms. Hobson, and I'm I guess with Mr. Gerdes that the Midco and Fibercom issues are

Is that how you intend to address those issues?

MS HOBSON: Well, we certainly intend to address any issues that require rebuttal. But my concern again was moving on to the question of the live witnesses. I anticipate we may well have different live witnesses with those interactions with individual company kind of issues as opposed to sort of the Qwest overall policy about the generic checklist item. And for those reasons we'd like to see the Midco and Fibercom issues confined to particular days.

And I think that would be more convenient for you folks, frankly, than have them sort of spread out across the --

COMMISSIONER NELSON: Can you explain to me why the Black Hills Fibercom and the Midco issues are separate and don't affect everybody, they affect Midco and Fibercom, and what example of that there might be?

MS HOBSON: Well, for example, there is the question -- no one else has raised the question to my knowledge anywhere that Qwest isn't providing branding. Nonetheless, we have an intervenor here who says they are having difficulty

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1 checkpoint issues

2 So, for example, to take the example of the branding that we've raised, issue number 7, if the Commission decides that on day four we're going to talk about checklist point number 7, that's when we raise our issues of branding.

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7 Now to segregate the Fibercom issue or to isolate Fibercom into an issue that doesn't affect everyone else, if Fibercom comes forward and says on the day of the hearing we can't get branding, that's presumptively anti-competitive under the FCC's rulings. They haven't met the checklist item, and that affects everyone. They can't make their checklist item.

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15 I really don't see this as a Fibercom issue that's only between Fibercom and Qwest. I really don't.

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22 MR WEIGLER: This is Steve Weigler from AT&T. I agree just going through Fibercom's right now they put it in checklist order and they also put, for example, Qwest performance assurance

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24  
25 AT&T had some of the same issues so to deal with Fibercom's issues one day and AT&T's philosophical issues another day doesn't make much sense, and I don't think the Commission's going to

get a clear picture to do it two different times  
 COMMISSIONER NELSON: I think that's my concern because branding is the issue. It's not necessarily Fibercom. It's branding in general and if you I think there's an opportunity to meet it or not meet it for whoever you feel like it would be an opportunity to not meet it for

So I think it's a basic issue of branding for everybody and I imagine that I'm not interested in necessarily isolating those issues from everybody

MR GERDES: Well, and I also agree I think if we're talking about checkpoint item 7 or whatever number it is, we bring all the issues under that checkpoint. I don't think we segregate them based upon who has the problem or whether it's a factual issue or if it's a local issue. I mean, if it falls within that checklist item, then that's when we ought to handle it

MS AILTS WIEST: Does anybody have any additional comments on my third issue about scheduling witnesses or grouping issues?

MS HOBSON: Can we revisit that issue then as we get closer to the hearing since at this point I don't think any of us are prepared to

1 hearings. I mean, I'm going to have to talk to Sue  
 2 but we may just set another week just so we have  
 3 it

4 MS CICHOS: An additional week, you  
 5 mean?

6 MS AILTS WIEST: Yes

7 MS CICHOS: Not a new week

8 MS AILTS WIEST: An additional  
 9 week. And going to what Qwest filed, I was going  
 10 to go through their questions, and maybe some of  
 11 this stuff are things that you guys are going to  
 12 talk about now among yourselves

13 For example, number 1, Qwest filed affidavits  
 14 of 12 individuals. How many of those people do the  
 15 parties feel need to be present at the hearing for  
 16 cross-examination?

17 Would you agree with that, Ms. Hobson? Would  
 18 you like to talk among the parties about that  
 19 issue?

20 MS HOBSON: Yes

21 MS AILTS WIEST: If you want to  
 22 talk about it now, that's fine. But is there any  
 23 information you want to give to the Commission on  
 24 that issue?

25 MS HOBSON: I still maintain that

say when we expect that we will want to talk about which checkpoint items?

MS AILTS WIEST: Yes. And I'll bring this up now. And after going through the issues and realizing a number of these issues might be resolved, what I was anticipating is the Commission should probably hold another prehearing conference a little bit closer to any hearing that we might hold

MS CREMER: This is Karen Cremer. I was wondering once we all meet and narrow down the issues, we may be able to come up with some sort of grouping for you

MS AILTS WIEST: Okay. You can always propose it to us, right?

MS CREMER: Right. We can say --

MS AILTS WIEST: At that point too you can inform the Commission whether you think you need an additional prehearing conference

Anyone else have anything on that third issue?

CHAIRMAN BURG: Would it also be reasonable to say that we could determine we were going to lengthen the hearing time based upon --

MS AILTS WIEST: Well, at this point if the Commission chooses to go forward with

1 this is a viable alternative for some of these  
 2 individuals that I would hope that the parties  
 3 will -- if they're not ready to talk about that  
 4 today, will get themselves to the point where they  
 5 can discuss that

6 It's not at all unusual in my experience in  
 7 multiple Public Utilities Commissions across the  
 8 Qwest territory for parties to agree that certain  
 9 testimony can go in without the witnesses being  
 10 present

11 MS CREMER: But how do you do that?  
 12 How do you move that in?

13 MS HOBSON: You stipulate to it

14 MS CREMER: But that presupposes  
 15 that the Commission is having no questions on it

16 MS HOBSON: That's why we ask the  
 17 later question, whether the Commission would accept  
 18 such a stipulation on it. And I think it would be  
 19 worthwhile to the parties to the extent they can  
 20 reach a stipulation to do that in advance and allow  
 21 the Commission an opportunity to accept or reject a  
 22 stipulation

23 MS CREMER: Right. That's going to  
 24 have to be done well in advance of a month

25 MS HOBSON: A month of the hearing

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1 date because?

2 MS CREMER: So that the Commission

3 can have time to look at it and determine whether

4 or not they're going to -- I have no problem

5 stipulating it in. My concern is we're going to

6 get there to the hearing and suddenly they're going

7 to go now that I've looked at it more closely --

8 We're looking at it all along here. This

9 isn't the only thing we do. I mean, it may be the

10 only thing Qwest does, but for the rest of the

11 world we do do other things. So generally their

12 preparation is going to take place later than

13 sooner, and my concern is that we're going to get

14 there --

15 Again, it's not my risk. I'm not the one

16 taking the risk if the record's incomplete. That's

17 totally Qwest's risk that you're taking.

18 MS HOBSON: I'm willing to accept

19 that. But I think if the parties can reach a

20 stipulation about some of these individuals, then I

21 don't expect that list to be long, frankly, given

22 today's reaction.

23 But, if so, I think the Commission would have

24 the opportunity to look at that and decide whether

25 or not they will accept such a stipulation. If

1 bring this witness.

2 That's really the Commission's call. If they

3 want to say a month in advance we don't have any

4 questions either of that person or Qwest, you don't

5 need to bring them. But I don't think you and I

6 can agree that they don't have to bring the

7 witness.

8 MS AILTS WIEST: Well, if anybody

9 stipulates to anything, I agree with Karen it will

10 be up to the Commission whether it will accept any

11 such stipulations or not.

12 Going on to number 2 -- well, I think number 2

13 is something that the Commission will have to see

14 if the parties do, in fact, agree that certain

15 witnesses may not appear at the hearing. And even

16 looking at the rest of the issues here, most of

17 these issues, Ms. Hobson, do you think it would be

18 best for the parties to talk about at this point

19 or is there something you would like to discuss?

20 MS HOBSON: Well, I think we should

21 discuss the question of whether the parties are

22 interested in seeing the record here supplemented

23 with record of other proceedings. I guess if

24 there's not going to be narrowing of the issues,

25 vis-a-vis the live witnesses presented here, then

1 they won't. Qwest will put on its live witness and

2 you can have your opportunity to ask questions.

3 MR WEIGLER: This is Steve Weigler.

4 It kind of puts me in a weird position to tell

5 Qwest that I can stipulate or not stipulate to a

6 certain witness not showing up. I thought when we

7 had this discussion it was, well, is it the whole

8 reason Qwest would present witnesses or any of us

9 so that the Commission could be informed?

10 And for AT&T to stipulate it's okay for Qwest

11 not to bring a witness -- I really don't feel it's

12 my place to say that. So I don't know if I'd be

13 doing any stipulating or not stipulating. It's

14 kind of a weird position to be in under the

15 circumstances.

16 MS CREMER: I think Steve, at best

17 we would stipulate that we don't have any questions

18 regarding that issue. That's the way I see it as

19 staff's position. We would acknowledge that we

20 don't have -- you know, we wouldn't have any

21 questions of that witness.

22 But I'm with you. I'm not sure I'm going to

23 go out and say but therefore you don't need to

24 bring the witness. I'm not going to have it come

25 back to me later, well, staff said I don't have to

1 maybe there's not a need for that.

2 Mr. Weigler has pointed out there are various

3 records we can incorporate, and that's certainly

4 the case. I guess I'm wondering how helpful it

5 ultimately becomes if the Commission gets, you

6 know, the records on collocation from five or six

7 commissions.

8 That's going to be a very daunting pile of

9 paper. And so it might be worth talking about what

10 it is that the Commission is interested in seeing

11 from these other commissions.

12 MS STANG: This is Lynn Stang. Can

13 I provide some input?

14 MS AILTS WIEST: Go ahead.

15 MS STANG: I think -- I represent

16 Qwest in our QPAP proceedings. And I think my

17 perspective would -- I don't think that we've had

18 any response to our filing of testimony on QPAP.

19 So before, you know, it would be appropriate

20 to say whether additional transcripts would be

21 helpful, we probably need to have the parties who

22 are going to be responding respond so we can

23 actually have an identification of what the issues

24 are going to be in South Dakota.

25 MS AILTS WIEST: You're saying that

people didn't bring up issues with respect to QPAP?

MS STANG: Well, I haven't seen any testimony on it. So it's one thing to say here's an issue but then to have some testimony to know what the parties' positions are going to be on that.

MS AILTS WIEST: So you need to look at the testimony first? My point is, you know staff I counted had 61 issues on there. I believe a number of issues. And Fibercom brought up a number of issues.

MS STANG: Well, and I understand that but I think what those issues are in terms of where they lead are best crystallized through a party being - making a verified statement in testimony.

MS AILTS WIEST: Does anybody else have any comment on this point?

MR BERNARD: I have one comment, and that is the evidence and findings of other states' commissions are really only relevant and is a function of whether or not the Commission resolves the Track A issue in favor of Qwest.

It really boils down to are we going to conclude that there is competition in South Dakota

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MS AILTS WIEST: So your point, any additional hearings may not be held consecutively?  
MR BERNARD: Precisely. That's exactly right.  
MR GERDES: Put some time between.  
MR BERNARD: Give us a month between all of the issues or this group of three issues or four.  
MR GERDES: I agree.  
MS AILTS WIEST: Any comments?  
MS HOBSON: Qwest needs to respond to that. We very much object to having this spread out over a lengthy period of time. We're doing everything we can to try to work with the parties, and we will continue to do so. But time is of the essence and we really need to have the hearings scheduled if you need additional time to have them consecutively if at all possible or certainly to keep any breaks between them very limited in time.  
So that would be our concern with that. I think again that as the parties sit back and look at some of these things, this 500 pound gorilla will begin to shrink a little bit. Today I think it's sort of -- everyone's kind of daunting a worse case scenario, but I believe we will find ways to

because the SGAT says there is? And I think that's the only time that becomes relevant. And so at that point I don't see personally that that's going to benefit me any to get all of that testimony.

Just knowing that in Washington this is how they do things, I don't know that that's -- it's proof that the SGAT in Washington works, but I don't know that it's proof there's competition in South Dakota here.

I would make another point. I suspect we've bitten off more than we can chew in terms of concluding this in the week that's scheduled. I would propose that once we get the groupings of issues that -- you know, at the risk of being accused of dragging our feet, isolate two or three issues that are going to be tackled in this one week.

And I guess there's a selfish reason for that in Fibercom, and that is because our resources are already stretched pretty thin. You're looking at the staff that works this issue in front of you. To bite off all four of these and particularly with the proposed extra boxes of stuff we're going to get, I don't know that that's going to be an efficient use of time or an effective use of time.

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nail these issues down and get us back into some sort of a descent time frame on these issues.  
MS AILTS WIEST: Any other comment? Are there any other issues that anyone would like to bring up at this time?  
Just to summarize, I guess, I think it would be helpful if the parties would get together and maybe go through some of these issues and get back to the Commission. And I'm not sure the point -- it depends on how fast you guys can do that, whether the Commission would wait until it hears back from you and then we'll issue some sort of an Order addressing a number of the issues that were raised.  
And I guess my question is whether you think that you can get together and get to some sort of an agreement on some of these and get back to the Commission, or whether you would like some initial guidance right away pursuant to a Commission Order.  
MS HOBSON: Qwest would like to get together on the issues first, if that's possible, and we would encourage the parties to leave today with a date or at least tentative dates in mind for us to do that so we can let the Commission know what our time line is for doing that.

So if we can meet immediately after or whatever and find some dates that are going to work let's do that

MR GERDES This is Dave Gerdes I was going to suggest if we've got our calendars with us let's pick out a couple of dates and set them now and see if they work and we can let the Commission know when we're going to meet hopefully within a few days

MS HOBSON Great

MS AILTS WIEST Anyone else have any comments?

MR BERNARD I'll agree to that procedure That sounds good to me

MR WEIGLER Steve Weigler I'm an eternal optimist and everything but AT&T's issues have been our issues for a long time and we've gone through a lot There are a lot of other issues that are taken off the table but these particular issues have stood the test of time between the parties

So I'm going to try to be optimistic, but I don't know whether there's going to be a lot of leeway with either party on any issues

MS AILTS WIEST I would say it's

1 have begun to prioritize the issues so we've  
2 already made some significant progress towards that  
3 enc

MS AILTS WIEST Okay Well, at  
4 this point then the Commission won't issue anything  
5 until it's heard back from the parties If there's  
6 nothing further, that will close the hearing  
7  
8 (The hearing concluded at 3:45 p.m.)  
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not just an issue of narrowing the issues, but whether you can come to some sort of agreement on grouping of witnesses or issues would be helpful

MR WEIGLER Absolutely

MS AILTS WIEST Did anybody else have anything? Did the Commissioners have anything they'd like to state? Any comments?

CHAIRMAN BURG I think we'd like to see what comes out of this

MS AILTS WIEST If not, I would appreciate it if you could let me know when you're meeting so we could have some sort of time line for us if possible, if one of you would write a letter after you decided when you were meeting and as soon as possible thereafter give some sort of filing with the Commission as to what was decided or what was not decided

MS HOBSON Okay

MS AILTS WIEST And also if staff and their consultants can go through some of their issues and narrow them down, you know, that would be helpful also at some point But I guess that's just part of the whole process here

MR STACY This is Mark Stacy Over the past week or so, like I said earlier, we

1 STATE OF SOUTH DAKOTA )  
2 :SS CERTIFICATE  
3 COUNTY OF HUGHES )  
4  
5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter and Notary Public in and for the  
7 State of South Dakota:  
8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 7th day of  
11 February 2002, and that the attached is a true and  
12 correct transcription of the proceedings so taken.  
13 Dated at Pierre, South Dakota this 19th day  
14 of February 2002.  
15  
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18 Cheri McComsey Wittler,  
19 Notary Public and  
Registered Professional Reporter  
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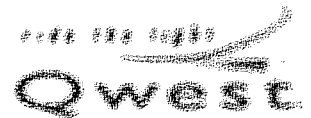
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Qwest Corporation  
125 South Dakota Avenue  
Sioux Falls, SD 57194



February 11, 2002

RECEIVED

FEB 11 2002

SOUTH DAKOTA PUBLIC  
UTILITY COMMISSION

Ms. Rolayne Ailts-Wiest, General Counsel  
Public Utilities Commission  
State Capitol Building  
Pierre, South Dakota 57501

Dear Ms. Wiest:

On February 7, 2002 Larry Toll brought a document to you regarding Staff issues in the 271 docket.

Apparently there was a misunderstanding regarding the intent of this document. Qwest did not intend this to be admitted into the record. Therefore, Qwest requests the document be removed from the 271 docket record.

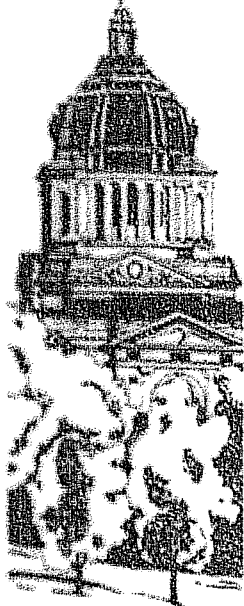
Sincerely,

A handwritten signature in cursive script, appearing to read "Colleen E. Sevoid". The signature is written in dark ink and is positioned above the printed name.

Colleen E. Sevoid  
Manager-Policy & Law

CC: Mary Hobson  
Tom Welk  
Larry Toll





# South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

February 22, 2002

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Sioux Falls, SD 57194

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Chairman  
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Vice-Chairman  
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Commissioner

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Patti Jennings  
Amy Kayser  
Bob Knadlie  
Delaine Kolbo  
Gregory A. Rislov  
Keith Senger  
Rolayne Ailts Wiest

RE: Docket TC01-165, In the Matter of the Analysis of Qwest Corporation's Compliance with Section 271(c) of the Telecommunications Act of 1996

Dear Ms. Sevold:

On February 13, 2002, I received a letter from you requesting that a document be removed from Docket TC01-165. This document was given to me by Larry Toll and he was told that I could not review the document unless all parties had received the document and it was placed in the record. He told me the document had been given to all of the parties and then agreed that it should be placed in the record.

If Qwest would like the document to be removed from the record, Qwest should have one of its attorneys make a motion to remove it.

Sincerely,

ROLAYNE AILTS WIEST  
Commission Attorney

Enc.

CC: All parties of record

LAW OFFICES  
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TIMOTHY L. THOMAS\*  
JOHN K. NOONEY\*  
LONNIE R. BRAUN\*  
KURT E. SOLAY  
GREGORY J. BERNARD  
\*ALSO LICENSED IN WYOMING  
\*ALSO LICENSED IN NEBRASKA

March 4, 2002

(e-mail gbernard@mtn.com)

# 6050000  
Date: 3/4/02

Ms. Debra Elofson  
Executive Director  
Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501

RECEIVED

STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION

RE: Black Hills FiberCom/US West 271 Application  
TC01-165  
Our File No. BH-1231

Dear Ms. Elofson:

Please find enclosed the original and ten (10) copies of Black Hills FiberCom, L.L.C.'s Motion for Order Denying Petition and brief in support thereof. Please call if you have any questions.

Sincerely,

Gregory J. Bernard

GJB/mkt  
Enclosures  
cc: Clients  
Service List

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED


SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS  
INTO QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 271(c) OF  
THE TELECOMMUNICATIONS ACT OF  
1996

DOCKET NO. TC01-165  
**BLACK HILLS FIBERCOM, L.L.C.'S  
MOTION FOR ORDER DENYING  
PETITION**

Black Hills FiberCom, L.L.C., moves the Commission for an order denying Qwest's Petition for Recommendation that the FCC Grant Entry into the In-Region InterLATA Market in South Dakota for the reason that Qwest has failed to meet its prima facie burden of showing that it meets the requirements of 47 USC §271(c)(1)(A), commonly referred to as "Track A." This motion is supported by an accompanying brief.

Dated this 4<sup>th</sup> day of March, 2002.

  
\_\_\_\_\_  
Gregory J. Bernard  
Attorneys for Black Hills FiberCom, L.L.C.  
MORRILL THOMAS NOONEY & BRAUN, LLP  
625 9<sup>th</sup> Street, 8<sup>th</sup> Floor/PO Box 8108  
Rapid City, SD 57709-8108  
(605) 348-7516

## CERTIFICATE OF SERVICE

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of Black Hills Fibercom, L.L.C.'s Motion for Order Denying Petition was mailed by first-class mail, postage prepaid thereon, to the following:

Ms. Colleen Sevold  
Qwest Corporation  
125 South Dakota Avenue, 8<sup>th</sup> Floor  
Sioux Falls, SD 57194

Mr. Mark Stacy  
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Cheyenne WY 82009

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Mr. Ted Smith  
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Mr. Steve H. Weigler  
Ms. Mary B. Tribby  
AT&T Communications of the Midwest  
1875 Lawrence Street, Suite 1524  
Denver, CO 80202

by depositing the same in the United States Mail at Rapid City, South Dakota, this 4<sup>th</sup> day of March, 2002.

  
\_\_\_\_\_  
Gregory J. Bernard

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

COMMUNICATIONS SECTION  
PUBLIC UTILITIES COMMISSION

|   |  |
|---|--|
| IN THE MATTER OF THE ANALYSIS INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996 | DOCKET NO. TC01-165<br><b>BRIEF IN SUPPORT OF BLACK HILLS FIBERCOM, L.L.C.'S MOTION FOR ORDER DENYING PETITION</b> |
|---|--|

Black Hills FiberCom, L.L.C. (FiberCom), through undersigned counsel, submits this brief in support of FiberCom's Motion for Order Denying Petition.

**DISCUSSION**

On October 25, 2001, Qwest Corporation (Qwest) submitted its Petition for Commission Recommendation that the FCC Grant Entry into the In-Region InterLATA Market Under Section 271 of the Telecommunications Act of 1996. Qwest's petition is accompanied by volumes of testimony and documentary evidence in support thereof. Qwest requests that the Commission specifically find "Based upon the record presented, that Qwest has met the competitive checklist and other requirements of [Section 271]. ..." *See Petition at p. 1.* As Qwest correctly notes, to gain approval to provide in-region interLATA services, it must first prove that it satisfies the requirements of either 47 USC §271(c)(1)(A) ("Track A") or Section 271(c)(1)(B) ("Track B"). *Id. at p. 8.* Qwest professes to be proceeding in this docket under Track A. *Id.*

Qwest states in its Petition that "The South Dakota Utilities Commission has approved 34 Interconnection Agreements between Qwest and CLIC's in South Dakota, and 31 Interconnection Agreements are pending approval." *See Affidavit of Thomas Freeberg (Attachment 1) at p. 1, lines 19-21.* Qwest also states that it "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" *Petition at p. 18*

Despite its claim that it meets the 14-point checklist through its Interconnection Agreements,

however, Qwest further states:

Although Qwest has entered into a number of Interconnection Agreements that offer evidence of its compliance with [the 14-point competitive checklist], for purposes of this proceeding, Qwest relies primarily on its SGAT to demonstrate its concrete legal obligation to provide each of these checklist items.

*See Id. at p. 21.*

In reality, Qwest relies on its SGAT nearly *exclusively* to demonstrate its compliance with the checklist. Qwest makes no showing that it complies with the checklist items through its 14 state approved Interconnection Agreements. Instead, Qwest suggests that it is entitled to relief on the basis that it is offering interconnection and access to its network on a non-discriminatory basis through its SGAT. *Id.* Qwest is improperly using a Track B analysis to prove its entitlement in a Track A proceeding.

A plain reading of Section 271 shows that when a BOC is proceeding under Track A, it must show that it has entered into one or more binding, approved Interconnection Agreements and that those agreements which the BOC offers as evidence meet the requirements of the 14-point checklist. The relevant language of Section 271 provides:

- (c) (1) A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) ...

(A) ... A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms

and conditions under which the Bell operating company is providing access and interconnection

(2) ... A Bell operating company meets the requirements of this paragraph if, within the state for which the authorization is sought --

(i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) ... and

(ii) such access and interconnection meets the requirements of [the competitive checklist]

Track B on the other hand, is only available if no CLEC has made a qualifying request for access and interconnection, and the BOC has in place an SGAI generally offering access and interconnection, and such generally offered access and interconnection meet the requirements of the competitive checklist. §271(c)(1)(B); §271(c)(2)(ii). Once a BOC establishes that it has entered into binding Interconnection Agreements within the state, however, it is precluded from proceeding under Track B to prove that it is entitled to interLATA relief. *See Oklahoma Order at para. 27-59; SBC Communications, Inc. v. FCC*, 138 F.3d 410 (DC Cir. 1998). A BOC may not obtain interLATA relief by first showing it has one or more approved, binding Interconnection Agreements with CLECs and then pointing to its SGAI to prove that it provides access and interconnection which meet the checklist requirements. Any doubt as to the appropriate procedure of proving entitlement to interLATA relief through Track A is cleared up by the language of Section 271(d)(3)(A):

(3) ... The [FCC] shall not approve the authorization requested in an application ... unless it finds that --

---

<sup>1</sup> Application by SBC Communications, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-131 (June 30, 1997)

(A) The petitioning Bell operating company has met the requirements of subsection (c)(1) and

(i) With respect to access and interconnection provided pursuant to [Track A], has fully implemented the competitive checklist ...; or

(ii) With respect to access and interconnection generally offered pursuant to [an SGAT under Track B], such [SGAT] offers all of the items included in the competitive checklist.

Section (d)(3)(A) clearly indicates that use of an SGAT to prove compliance with the competitive checklist is restricted to a Track B proceeding. The FCC agrees:

"Reading the statute as a whole, we think it is clear that Congress used the term 'provide' as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved Interconnection Agreements and the phrase 'generally offer' as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of generally available terms and conditions." *Id.* at 114 (Emphasis added).

Pursuant to a Track A analysis, Qwest must show that it is "providing" access and interconnection pursuant to the terms of the competitive checklist. *Section 2* " *In re Qwest Ameritech Michigan Order*<sup>2</sup> at 108. "[T]he mere fact that a BOC has 'offered' to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance." *Ameritech Michigan Order* at 110. "A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnections

---

<sup>2</sup> In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in Michigan, CC Docket No. 97-117 (August 14, 1997).



available, reflecting the fact that no competing provider has made a qualifying request therefor.” *Id. at 114*. Instead, a BOC is “providing” a checklist item “if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and practical matter.” *Id. at 110*. The BOC must have a “concrete and specific legal obligation to furnish the item upon request *pursuant to state-approved Interconnection Agreements* that set forth prices and other terms and conditions for each checklist item.” *Id.* (Emphasis added).

To be providing a checklist item, therefore, Qwest must be actually furnishing that item at rates and on terms and conditions that comply with the Act; or for those items not being used by competitors, by making them contractually available “as a legal matter” through complete terms in binding approved Interconnection Agreements, and “as a practical matter” by standing ready to fulfill a competitor’s request on demand.

Qwest suggests that its SGAT provides its “concrete legal obligation” to provide each checklist item. *Petition at p. 21*. The checklist items are not available “as a practical matter,” however, to those competitors who must graft provisions of the SGAT into their Interconnection Agreements before Qwest will provide the requested service. Competitors in such a position will not receive the requested services “upon demand.” *Ameritech Order at 113*. Instead, they will have to first amend their Interconnection Agreement, potentially haggle with Qwest over what additional contract provisions they must adopt as “reasonably related” to the desired provisions, and then get Commission approval of the amended agreement. *See Attachment 26 (SGAT) at*

§1.8 *et. seq.* The potential for delay is obvious, and an item is certainly not available “upon request” when this is the procedure.

“With regard to each checklist item, the Commission must first determine whether the items of the *Interconnection Agreements establishing [Qwest's] obligation to provide a particular checklist item* comply with the Act. In case of checklist items that have not been furnished, the Commission must make a predictive judgment to determine whether a petitioning BOC could actually furnish the requested checklist items upon demand.” *Id. at 113 (emphasis added)*. Qwest must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality. *Id.* In this regard, “[e]vidence of actual commercial usage of a checklist item is most probative but [Qwest] may also submit evidence such as carrier-to-carrier testing, independent third party testing, and internal testing to demonstrate its ability to provide a checklist item.” *BellSouth South Carolina Order at 78.*<sup>3</sup>

### CONCLUSION

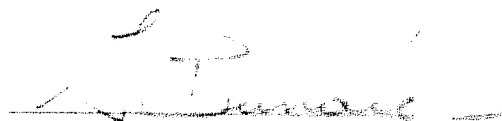
It is clear that if Qwest wishes to pursue interLATA relief through Track A, it must demonstrate that it has entered into binding Interconnection Agreements in South Dakota, that pursuant to those Interconnection Agreements it is actually obligated to provide all checklist items in compliance with the Act, and that pursuant to those Interconnection Agreements, it is actually providing, or stands ready and able to provide, upon demand all checklist items in South

---

<sup>3</sup> In the Matter of Application of BellSouth Corporation, *et al.* pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in-region, interLATA services in South Carolina, CC Docket No. 97-208 (December 24, 1997).

Dakota. Because Qwest has not identified those Interconnection Agreements through which it claims to be meeting all requirements of the fourteen point checklist, and because it has not shown its actual compliance with the checklist through those Interconnection Agreements, it has not met its prima facie burden of proof. Until Qwest points to binding agreements which actually meet the fourteen point checklist, there is no way for the Commission to know if Qwest is actually providing the checklist items, or whether it is instead offering to provide the items if the CLECs would only renegotiate their Interconnection Agreements to include provisions of the SGAT. On this basis alone, Qwest's petition must be denied.

Dated this 4<sup>th</sup> day of March, 2002.

  
Gregory J. Bernard  
Attorneys for Black Hills FiberCom, L.L.C.  
MORRILL THOMAS NOONEY & BRAUN, LLP  
625 9<sup>th</sup> Street, 8<sup>th</sup> Floor/PO Box 8108  
Rapid City, SD 57709-8108  
(605) 348-7516

**CERTIFICATE OF SERVICE**

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of Black Hills FiberCom, L.L.C.'s Motion for Order Denying Petition was mailed by first-class mail, postage prepaid thereon, to the following:

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Mr. Harlan Best  
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Mr. John L. Munn  
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David A. Gerdes, Esq.  
May Adam Gerdes & Thompson  
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Marlon "Buster" Griffing Ph.D.  
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Lincoln NE 68506

Ms. Mary S. Hobson  
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Boise ID 83702-5958

Thomas J. Welk, Esq.  
Boyce, Murphy, McDowell & Greenfield  
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Sioux Falls, SD 57117-5015


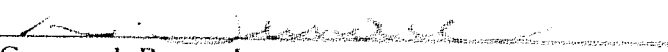
Mr. Ted Smith  
Qwest Corporation  
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Salt Lake City UT 84111

Karen Cremer, Esq.  
Staff Attorney  
Public Utilities Commission  
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Mr. Warren R. Fischer  
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Denver CO 80209-2945

Mr. Steve H. Weigler  
Ms. Mary B. Tribby  
AT&T Communications of the Midwest  
1875 Lawrence Street, Suite 1524  
Denver, CO 80202

by depositing the same in the United States Mail at Rapid City, South Dakota, this 4<sup>th</sup> day of March, 2002.

  
  
Gregory J. Bernard



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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

March 5, 2002

Mary S. Hobson  
Public Utilities  
Commission  
226 East Capitol  
Pierre, SD 57501

Debra Elofson, Executive Director  
SD Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: APPLICATION FOR interLATA RELIEF OF U S WEST  
COMMUNICATIONS INC. PURSUANT TO SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TCO1-165

Dear Ms. Elofson:

Enclosed for filing please find an original and 10 copies of Qwest Corporation's Motion to Remove Document from Commission Record.

Sincerely yours,

  
Mary S. Hobson

MSH:cw

Enclosures

Cc: Steven Weigler  
David A. Gerdes  
Gregory J. Bernard  
Colleen Sevold  
Tom Welk



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ST. PAUL, MINN.  
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J. W. BROWN  
ST. PAUL, MINN.

March 5, 2002

MARY S. HOBSON  
District Clerk  
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PO Box 8108  
Rapid City, SD 57709

Midcontinent Communications  
David A. Gerdes  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre St.  
Pierre, SD 57501-0160

Re: APPLICATION FOR interLATA RELIEF OF U S WEST  
COMMUNICATIONS INC. PURSUANT TO SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996 -- Docket No. TC01-165

Dear Counsel:

Enclosed please find a copy of Qwest Corporation's Motion to Remove Document from  
Commission Record.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary S. Hobson", written in dark ink.

Mary S. Hobson

MSH:cw  
Enclosures

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ST. PAUL, MINN.  
MAY 10 1878  
J. W. BROWN  
ST. PAUL, MINN.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES

|  |  |
|--|--|
| <p>IN RE: APPLICATION FOR interLATA<br/>RELIEF OF U S WEST COMMUNICATIONS<br/>INC. PURSUANT TO SECTION 271 OF THE<br/>TELECOMMUNICATIONS ACT OF 1996</p> | <p>)<br/>)<br/>) Docket No. TCU1-165<br/>)<br/>)<br/>)</p> |
|--|--|

NOTICE OF FILING MOTION TO REMOVE DOCUMENT FROM  
COMMISSION RECORD

Qwest Corporation ("QWEST") hereby submits for filing with this  
Commission the Motion to Remove Document from Commission Record.

DATED this 5<sup>th</sup> day of March, 2002.

Respectfully Submitted,



Mary S. Hobson  
Stoel Rives LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702

Attorneys for Qwest Corporation

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED  
MAY 1 2002  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

|  |   |
|--|---|
| <b>IN RE: APPLICATION FOR interLATA<br/>RELIEF OF U S WEST COMMUNICATIONS<br/>INC. PURSUANT TO SECTION 271 OF THE<br/>TELECOMMUNICATIONS ACT OF 1996</b> | )<br>)<br>) <b>Docket No. TC01-165</b><br>)<br>)<br>) |
|--|---|

**MOTION TO REMOVE DOCUMENT FROM COMMISSION RECORD**

Qwest Corporation (Qwest) moves the South Dakota Public Utilities Commission (Commission) for its order removing a document that was inadvertently filed from the Commission's official record in the above-captioned case.

**BACKGROUND**

On February 7, 2002 Qwest South Dakota Vice President, Larry Toll, provided an informational copy of a certain document prepared by Qwest to the Commission's General Counsel, Rolayne Ailts-Wiest. Due to miscommunication by Mr. Toll to Ms. Ailts-Wiest, the latter entered the document into to the official record of the above-captioned case on that date.

The document in question was a multi-page "matrix" depicting potential issues initially identified by Commission Staff and their experts, and Qwest's preliminary responses thereto. The document was created for use as a tool in continuing discussions between the parties to identify and narrow the issues for testimony and hearing. It had previously been distributed to the parties of record and was being provided to Ms. Ailts-Wiest as a courtesy in the event that discussion on the record at the prehearing conference of February 7 referenced the document.



The document was not intended by Qwest to constitute record evidence. Subsequent discussions between the parties on the potential issues for testimony and hearing have caused this particular version of the matrix to be replaced with more inclusive and refined versions of the same. Moreover the document is not evidence and was never intended to fully represent the position of any party to this case.

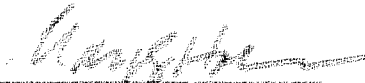
#### REQUESTED RELIEF

Based on the foregoing Qwest respectfully requests that the Commission remove the issue matrix document inadvertently filed on February 7, 2002 from the official record of this case.

Dated this 5<sup>th</sup> day of March, 2002.

Respectfully submitted,

QWEST CORPORATION

  
Mary S. Hobson  
Steel River LLP  
101 S. Capitol Blvd., #1800  
Boise, ID 83702

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN RE: APPLICATION FOR interLATA  
RELIEF OF U S WEST COMMUNICATIONS  
INC. PURSUANT TO SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

)  
)  
) Docket No. TC01-165  
)  
) CERTIFICATE OF SERVICE  
)

I, Mary S. Hobson, do hereby certify that I am a member of the law firm of Steel Rives  
LLP, and on this 5<sup>th</sup> day of March, 2002, true and correct copies of Qwest's Motion to  
Remove Document from Commission Record were sent to the following intervenors:

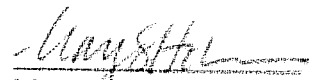
Steven H. Weigler via E-mail  
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Denver, CO  
Email: [weigler@lga.att.com](mailto:weigler@lga.att.com)

Black Hills Fiber Com via Overnight Delivery  
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Midcontinent Communications via Overnight Delivery  
David A. Gerdes  
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Attorney for Qwest Corporation

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: MIDCONTINENT TELECOMMUNICATIONS; QWEST 271 COMPLIANCE  
APPLICATION  
Docket TC01-165  
Our file: 0053

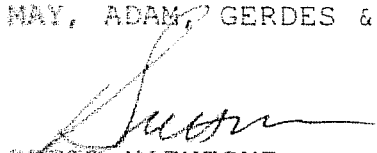
Dear Debra:

Enclosed are original and ten copies of a motion and brief in  
the above-entitled matter. Please file the enclosures.

With a copy of this letter, I am sending copies of the  
enclosures to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

  
BRETT KOENECKE

BK:mw  
Enclosures  
cc/enc: Service List  
Tom Simmons  
Mary Lohnes

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

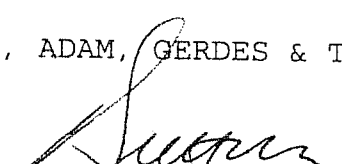
IN THE MATTER OF THE ANALYSIS ) TC01-165  
INTO QWEST CORPORATION'S )  
COMPLIANCE WITH SECTION 271(c) ) MOTION FOR DEFINITION  
OF THE TELECOMMUNICATIONS ACT ) OF TRACK A ANALYSIS  
OF 1996 )

COMES NOW Midcontinent Communications and moves the Commission to define the Track A proof required of Qwest Corporation ("Qwest") to satisfy its burden of proof to prove compliance with Section 271(c) of the Telecommunications Act of 1996. Given the fact that competitive local exchange carriers are in the market through interconnection agreements with Qwest in this state, a Track A analysis is appropriate to Section 271's 14-point checklist. Track A analysis requires actual proof of compliance with the checklist items, rather than treatment of those items in Qwest's statement of generally available terms. Proof of Section 271 compliance with the 14-point checklist under Track A analysis is accomplished through proof of actual physical compliance with the checklist, not theoretical or promised compliance through a statement of generally available terms. Midcontinent's motion, therefore, asks that the Commission clearly delineate that Qwest's proof must be through actual evidence of performance, not through promised performance through the written word.

This motion is based upon the accompanying brief and all of the records and files in this proceeding.

Dated this 7 day of March, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
DAVID A. GERDES AND BRETT KOENECKE  
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Telefax: (605)224-6289

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MAR 7

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

CERTIFICATE OF SERVICE

Brett M. Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the \_\_\_\_\_ day of March, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Colleen Sevoid  
Manager-Regulatory Affairs  
Qwest Corporation  
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Attorney at Law  
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Gregory J. Bernard  
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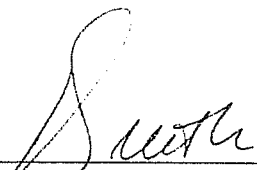
Marlon "Buster" Griffing PhD  
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Joanne Ragge  
Qwest Corporation  
1801 California Street Suite 4900  
Denver, CO 80202



---

Brett M. Koenecke

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

MAR 17 2001

IN THE MATTER OF THE ANALYSIS )  
INTO QWEST CORPORATION'S )  
COMPLIANCE WITH SECTION 271(c) )  
OF THE TELECOMMUNICATIONS ACT )  
OF 1996 )

TC01-165

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BRIEF IN SUPPORT OF  
MOTION FOR DEFINITION  
OF TRACK A ANALYSIS

Midcontinent Communications, by and through its undersigned attorneys of record, files this brief in support of its Motion for Definition of Track A Analysis filed of even date herewith.

FACTS

Qwest Corporation has filed a petition before the South Dakota Public Utilities Commission seeking entry into the interLATA market, pursuant to USC Section 271(c)(1)(a), commonly referred to as "Track A." Midcontinent notes that Qwest has mixed its avenues for doing so, by seeking to prove compliance with the requirements of the 14 point competitive checklist through both its statement of generally available terms (SGAT), and through its actual agreements with

"The 14-point competitive checklist is found in (sic) 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." Qwest Petition, at 20.

Attached to Qwest's Petition were the lengthy affidavits of 12 Qwest witnesses, demonstrating the compliance of the SGAT language with the legal requirements of each of the 14 checklist items. In some instances, Qwest noted its compliance with references to its SGAT

alone, in others to its SGAT and its 34 approved interconnection agreements with CLECs in South Dakota, and/or the 31 interconnection agreements pending approval.

**Checklist Item 1: Interconnection.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavits of Thomas R. Freeberg (Interconnection), Attachment 2, and Margaret A. Bumgarner (Collocation), Attachment 3.

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

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the affidavits of Karen A. Stewart, Attachments 5 and 7, Lori A. Simpson, Attachment 4, Lynn M. V. Notarianni, Attachment 6.

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

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, Affidavit of Thomas R. Freeberg, Attachment 8.

**Checklist Item 4: Unbundled Local Loops.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Jean M. Liston, Attachment 9.

**Checklist Item 5: Unbundled Local Transport.**

Qwest appears to rely on its currently approved interconnection agreements. See, the Affidavit of Karen Stewart, Attachment 10.



**Checklist Item 6: Unbundled Local Switching.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Lori Simpson, Attachment 11.

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

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavits of Margaret S. Bumgarner, Attachment 12 and the Affidavit of Lori Simpson, Attachment 13.

**Checklist Item 8: White Pages Listings.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Lori Simpson, Attachment 14.

**Checklist Item 9: Numbering Administration.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Margaret S. Bumgarner, Attachment 15.

**Checklist Item 10: Databases and Associated Signaling.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Margaret S. Bumgarner, Attachment 16.

**Checklist Item 11: Number Portability.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Margaret S. Bumgarner, Attachment 17.

**Checklist Item 12: Local Dialing Parity.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Margaret S. Bumgarner, Attachment 18.

**Checklist Item 13: Reciprocal Compensation.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Thomas R. Freeburg, Attachment 19.

**Checklist Item 14: Resale.**

Qwest appears to rely on both approved interconnection agreements and its SGAT to demonstrate its compliance. See, the Affidavit of Lori A. Simpson, Attachment 20.

Qwest has filed voluminous affidavits as described above, and in its petition. However, Qwest appears to have failed to point to specific interconnection agreements as evidence of its compliance. Qwest refers to its SGAT repeatedly in its attempts to make its case.

**ARGUMENT**

**I. Track A requires specific references to existing interconnection agreements, and proof that a BOC is implementing those agreements, where available, and a BOC may not rely on its SGAT as evidence that its interconnection agreements are compliant with the competitive checklist.**

Qwest Corporation (Qwest), a Bell operating company (BOC) within the meaning ascribed by 47 USC 271, has filed a Petition with the South Dakota Public Utilities Commission, seeking its recommendation that the FCC grant Qwest entry into the In-Region InterLATA Market. Qwest has supplied the Commission with evidence, documentary and in the form of testimony, to support its position.

Qwest has filed for the recommendation under the procedures delineated in 47 USC 271, a part of the Telecommunications Act of 1996. Section 271 provides for a BOC's entry into the intended market under the conditions found therein. Qwest must prove that it fulfills the mandates of Section 271 prior to being granted entry into the interLATA market. *Ameritech Michigan Order*, at Para. 43.

Section 271 contains language providing such entry, commonly called "Track A" and "Track B." Track A is found at 271(c) (1)(A), and Track B is found at 271(c) (1)(B). Track A is available and is the only avenue to the market where a BOC has entered into agreements with one or more "facilities based competitors." Where such agreement or agreements have been made, Track A requires the BOC to prove that the agreements, and its performance, meet the competitive checklist of fourteen points found in the statute.

Track B is foreclosed by the terms of the statute in that event, as it is only open where "no such provider has requested the access and interconnection described..." The statute goes on to allow a BOC in such a position to enter the market by promulgating a listing of generally available terms (SGAT) under which such access could be had by a competitor. See, *Ameritech Michigan Order*, at Footnote 130.

In its petition, Qwest notes that it is proceeding under Track A. In order to do so, Qwest must show that it meets the competitive checklist, through the agreements in place, and performance thereunder. Qwest's brief with supporting attachments goes to great lengths to show that Qwest offers, in its SGAT, contractual relationships which meet the checklist. That is unacceptable under the statute. What Qwest's SGAT offers is not relevant, as Track B is foreclosed. Track A requires a showing of the meshing of Qwest's agreements and its performance for CLEC's, with the competitive checklist, the proof that the rubber meets the

road. That proof IS relevant, and is lacking in Qwest's submissions. A BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent upon future behavior *Ameritech Michigan Order*, at Para. 55. Further, a BOC "provides" a checklist item if it makes that item available as a legal and practical matter. *Ameritech Michigan Order*, at Para. 107. A BOC "provides" a checklist item if it actually furnishes the item at rates and on terms and conditions that comply with the Act, or where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter. *Ameritech Michigan Order*, at Para. 110.

#### CONCLUSION

Upon the record and arguments submitted, the Intervenor, Midcontinent, urges that the Commission delineate the proofs necessary from Qwest, with instruction to reform its proofs to comply with the statute and acceptable law.

Dated this 7 day of March, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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Attorneys for Midcontinent Communications  
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CERTIFICATE OF SERVICE

7 Brett M. Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of March, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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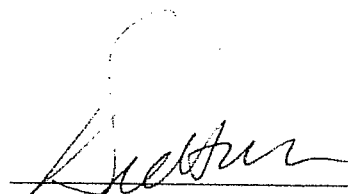
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Debra Elofson  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

SOUTH DAKOTA  
UTILITY

RE: **MIDCONTINENT TELECOMMUNICATIONS; QWEST 271 COMPLIANCE APPLICATION**

Docket TC01-165  
Our file: 0053

Dear Debra:

Enclosed for filing are original and ten copies of a motion asking that the procedural schedule in this docket be suspended or that supplemental prefiled testimony be permitted by the Commission. Please file the enclosure.

With a copy of this letter, I am sending copies of this motion to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures  
cc/enc: Service List  
Tom Simmons  
Mary Lohnes

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS  
INTO QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 271(c)  
OF THE TELECOMMUNICATIONS ACT  
OF 1996

MOTION TO SUSPEND  
PROCEDURAL SCHEDULE  
OR SUPPLEMENT PREFILED  
TESTIMONY

COMES NOW Midcontinent Communications and moves the Commission to suspend the due date for Staff and Intervenor's testimony until it has decided Midcontinent's Motion for Definition of Track A Analysis dated March 7, 2002, or in the alternative, to permit Staff and Intervenor to file supplemental prefiled testimony following receipt of the Commission's decision on the motion, if necessary.

Midcontinent filed its Motion for Definition of Track A Analysis with the Commission, dated March 7, 2002. In that motion, Midcontinent asked the Commission to define the Track A proof required of Qwest Corporation to satisfy its burden of proof to prove compliance with Section 271(c) of the Telecommunications Act of 1996. Given the fact that Staff and Intervenor's testimony is due March 18, 2002, it is possible that the content of prefiled testimony would vary on certain issues depending upon whether the Commission rules that the Statement of Generally Available Terms is satisfactory proof under Track A Analysis. Thus, to properly present the case to the Commission, it will be necessary to accommodate the possibility of modifying prefiled testimony based upon the Commission's ruling on the motion. Midcontinent prefers simply to supplement its prefiled testimony after receipt of the Commission's decision. However, if for some reason the Commission believes this is not possible, Midcontinent then asks that the procedural schedule be suspended until after the Commission has ruled on the Motion for Definition of Track A Analysis.

This motion is based upon Midcontinent's Motion for Definition of Track A Analysis dated March 7, 2002, and all supporting affidavits, and upon all of the records and files in this case.


WHEREFORE Midcontinent prays that the Commission will grant this motion.



order suspending the production of documents and the supplementation of prefiled testimony, as requested herein.

Dated this 11<sup>th</sup> day of March, 2002.

MAY, ACORN, GERDES & ASSOCIATES, P.C.

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CERTIFICATION OF SERVICE

David A. Gerdes of May, Acorn, Gerdes & Associates, P.C. hereby certifies that on the 11<sup>th</sup> day of March, 2002, he caused by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above captioned case to be delivered to the following at their last known addresses, to-wit:

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**FROM:** Tom Welk

**DATE:** March 12, 2002

**RE:** § 271 Filing

**PAGES:** 2 (including cover sheet)

**COMMENTS:** Attached is a copy of a letter to faxed to Greg Bernard and Dave Gerdes this morning.

**\*\*\* IMPORTANT NOTICE \*\*\***

This message is intended only for the use of the individual entity to which it is addressed, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

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U.S. Patent 6,896,000  
U.S. Patent 6,896,001  
U.S. Patent 6,896,002

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March 12, 2002

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P.O. Box 8108  
Rapid City, SD 57709

David A. Gerdes 605-224-6289  
May, Adams, Gerdes & Thompson  
P.O. Box 160  
Pierre, SD 57501

RE: In Re: Application for interLATA Relief of U S WEST Communications, Inc. Pursuant  
to Section 271 of the Telecommunications Act of 1996 (TC01-165)  
Our File No. 2104.006

Dear Greg and Dave:

This letter will confirm my separate conversations with you on March 11<sup>th</sup> regarding a response to the Black Hills Fibercom's Motion for Order Denying Petition and Midea's Motion for Definition of Track A Analysis that you have filed on behalf of your respective clients in this docket. We have agreed that Qwest will file a response to both of your motions on March 21, 2002. You would file a reply with the Commission by March 26, 2002. The motions would be heard on March 28<sup>th</sup> at the Commission regularly scheduled meeting. If I have stated anything incorrectly, please let me know immediately.

Best regards.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL  
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj

cc: Rolayne Wiest  
Karen Cremer  
Colleen Sevold  
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Steven H. Weigler  
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March 12, 2002

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

*Via Facsimile*

Debra Elofson  
Executive Director  
SD Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of the Analysis into Qwest Corporation's Compliance with  
Section 271(c) of the Telecommunications Act of 1996, TC01-165

Dear Ms. Elofson:

Enclosed is a facsimile copy of AT&T's Joinder on Midcontinent  
Communications' Motion to Suspend Procedural Schedule and Request for  
Expedited Decision. The original and ten copies will be sent by overnight  
delivery.

Please call me if there are any questions.

Sincerely,

Steven H. Weigler

SHW/jb

Enclosures  
cc: Service List

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS INTO QWEST )  
CORPORATION'S COMPLIANCE WITH SECTION ) Docket No. TC01-165  
271(C) OF THE TELECOMMUNICATIONS ACT OF )  
1996

AT&T'S JOINDER ON MIDCONTINENT COMMUNICATIONS'  
MOTION TO SUSPEND PROCEDURAL SCHEDULE  
AND REQUEST FOR EXPEDITED DECISION

On March 7, 2002, Midcontinent Communications ("Midcontinent") filed its Motion for Definition of Track A Analysis. In such motion, Midcontinent asked the South Dakota Public Utilities Commission (the "Commission") to determine that Qwest can only rely on its South Dakota interconnection agreements pursuant to §271(c)(1)(A) of the Telecommunications Act of 1996 and not on its Statement of Generally Available Terms pursuant to §271(c)(1)(B).

As Midcontinent indicated in its March 7, 2002 brief, on Checklist Item 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, and 14, Qwest relies, in part, on its SCAT to evidence §271 compliance. As also laid out in Midcontinent's brief, pursuant to §271(c)(1)(B), SCAT reliance is only relevant under certain defined circumstances. Accordingly, Midcontinent has requested that this Commission determine the relevancy of the SCAT to this proceeding. Obviously, if Qwest's reliance on the SCAT is determined to be misplaced, a significant part of Qwest's case would be declared irrelevant and the nature of the proceeding would change.

Testimony from the intervening parties in this matter is due on March 18, 2002. Midcontinent filed its Motion to Suspend Procedural Schedule or Supplement Profiled

Testimony on March 11<sup>th</sup>, 2002 articulating "it is possible that the content of the prefiled testimony would vary on certain issues depending on whether the Commission rules that the Statement of Generally Available Terms is satisfactory proof under Track A analysis." Considering that the Commission may determine that a significant portion of what Qwest relies upon to establish §271 relief (i.e. the SGAT) is irrelevant, it is not only possible that any parties testimony including Qwest's would vary, it is definite. Accordingly, it is imprudent for this Commission to merely allow the supplementation of the intervenors' prefiled testimony.

As such, AT&T would propose that the Commission suspend the procedural schedule, to determine the issue of whether the SGAT is relevant to this Commission at its earliest possible convenience.

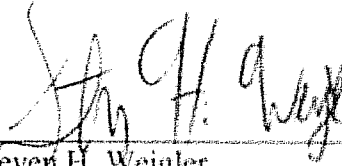
If the Commission determines that Midcontinent's Motion has merit and strikes Qwest's reliance on the SGAT, Qwest should have the opportunity, if it so desires, to revise its testimony to establish its case exclusively pursuant to §271(c)(1)(A). The parties should then have a reasonable opportunity to respond.

If the Commission denies Midcontinent's Motion, it would be reasonable to require all interveners to submit its case within one week of the Commission's Order.

In summary, due to the fact that Qwest relies on the SGAT to establish its case, it is impossible to provide a sufficient response to Qwest's case-in-chief until this Commission determines whether that reliance on the SGAT is valid.

Respectfully submitted on March 12, 2002.

AT&T COMMUNICATIONS  
OF THE MIDWEST, INC

A handwritten signature in black ink, appearing to read "Steven H. Weigler", written over a horizontal line.

Steven H. Weigler  
Mary B. Tribby  
AT&T Law Department  
1875 Lawrence Street, Suite 1575  
Denver, Colorado 80202  
(303) 298-6957

CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of March 2002, a facsimile copy and the original and 10 copies by overnight delivery of AT&T's Joinder on Midcontinent Communications' Motion to Suspend Procedural Schedule and Request for Expedited Decision in Docket No. TC01-165, were sent to:

Debra Elston  
Executive Director  
South Dakota Public Utilities Commission  
505 East Capitol Avenue  
Pierre, SD 57501

and a true and correct copy was sent by facsimile and U.S. Mail on March 12, 2002 addressed to:

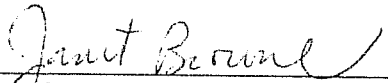
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\_\_\_\_\_  
Janet Browne



March 8, 2002



Ms. Debra Elston  
Executive Director  
Public Utilities Commission  
State Capitol Building  
Pierre, South Dakota 57501

Public Utilities Commission

Dear Ms. Elston:

Enclosed is an overview of Qwest's October through December 2001 performance data as reported under the ROC created performance metrics. Also included are hard copies of the complete South Dakota performance results and the Qwest Regional performance results. When evaluating a 271 application, the Federal Communications Commission has studied the four most recent months of performance data. The enclosed report is a summary of the last four months. I am providing an original and 10 copies for your convenience. These results are also available on the Internet at [www.qwest.com/wholesale/results/checklist.html](http://www.qwest.com/wholesale/results/checklist.html). The results establish that Qwest is meeting its Section 271 objectives.

Also enclosed are copies of the data reconciliation exhibits for Arizona, Colorado, Nebraska, an update for Colorado, and Washington. This information describes the results of the data reconciliation Liberty performed as requested by the ROC. Additionally enclosed are the "Blue Charts" for South Dakota and the Qwest Region which identify the specific performance measures where Qwest has missed its performance objective in more than one of the four most recent months.

If you have any questions, please call me on 605-339-6871.

Sincerely,

Jeff M. Carmon  
Manager Policy and Law

Enc.

Cc: K. White  
T. Simmons  
S. Weigler  
M. Stacy