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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)

Docket TC01-165

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DIRECT TESTIMONY OF
MARLON GRIFFING, PH.D.

On behalf of

The Staff of the Public Utilities Commission of South Dakota

March 18, 2002

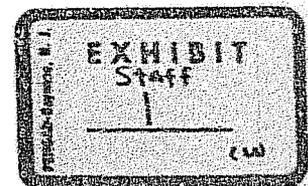


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1 1. Witness Introduction

2

3 **Q. Please state your name and business address for the record.**

4 A. My name is Marlon "Buster" Griffing, Ph.D. My business address is QSI
5 Consulting, 1735 Crestline Drive, Lincoln, NE 68506.

6 **Q. By whom are you employed?**

7 A. I am employed by QSI Consulting, Inc. ("QSI").

8 **Q. Please describe QSI and your position with the firm.**

9 A. QSI is a consulting firm specializing in the areas of telecommunications policy,
10 econometric analysis and computer aided modeling. I am a Senior Consultant
11 with QSI.

12 **Q. Please describe your experience with telecommunications policy issues and
13 your relevant work history.**

14 A. Before joining QSI, I worked as an Economic Analyst for the Communications
15 Department of the Nebraska Public Service Commission (NPSC), although I was
16 formally an employee of the University of Nebraska-Lincoln's Bureau of
17 Business Research. While at the NPSC I directed its involvement in Section 271
18 compliance initiatives. I served as the Nebraska Commission's representative on
19 the Qwest Regional Oversight Committee (ROC) Operational Support Systems
20 (OSS) Test Steering Committee and had a major role in selecting the statistical
21 methods employed in that test. Telecommunications cost dockets and federal and

1 state universal service matters were among the other issues I worked on at the
2 NPSC.

3 Since joining QSI in August 2000 I have worked on behalf of the New Mexico
4 Public Regulation Commission Advocacy Staff on a number of Section 271
5 matters. I have continued my involvement with the ROC OSS Test, participated in
6 the Multi-state 271 Collaborative that dealt with Qwest's Statement of Generally
7 Available Terms (SGAT), and taken part in the Qwest Post-Entry Performance
8 Plan (PEPP) 271 Collaborative. These latter two collaboratives produced the
9 SGAT testimony and Qwest Performance Assurance Plan (QPAP) that are part of
10 this docket.

11 In addition to my work experience, I have Bachelor of Arts, Master of Arts, and
12 Doctor of Philosophy degrees in Economics from the University of Nebraska-
13 Lincoln. One of my areas of concentration was industrial organization, which
14 deals with competition and regulation in the economy.

15 **Q. Have you provided testimony and advocacy before State Utility Commissions**
16 **in the past?**

17 **A.** Yes. I have provided testimony on behalf of the Advocacy Staff New Mexico
18 Public Regulation Commission in the Multi-state 271 Collaborative Workshops.

19 **Q. Have you been involved in other Section 271 cases recently?**

20 **A.** Yes. QSI contracted with the Nebraska Public Service Commission to provide its
21 professional consulting services in the review and analysis of the reports issued by

1 Liberty Consulting in the Multi-state proceeding. The NPSC was not a
2 participant in the Multi-state effort, but agreed to accept the record from that
3 proceeding in its review of Qwest's SGAT as part of 271 actions (Nebraska
4 Public Service Commission Docket No. C-2537). These Liberty reports are the
5 same reports filed by Qwest in this docket. I was the consultant assigned to that
6 project. My responsibilities with the Nebraska PSC included preparing issue
7 summaries for use by the Commissioners in oral arguments. Moreover, I have
8 continued to work with the Nebraska PSC on OSS Test matters and will do so
9 until that process is completed in that state.

10
11 2. Multi-State 271 Collaborative

12
13 **Q. What is the Multi-state 271 Collaborative?**

14 **A.** Qwest and the states of Iowa, Idaho, Montana, New Mexico, North Dakota, Utah,
15 and Wyoming agreed to conduct a joint process to consider aspects of Qwest's
16 Section 271 application through collaborative workshops. Competitive local
17 exchange carriers (CLECs) were given the opportunity to participate in the
18 workshops as well. The list of CLECs that took part in at least some sessions of
19 the collaborative includes:

| | | |
|--------------------|-----------------|------------|
| 20 AT&T | WorldCom (WCOM) | MacLeodUSA |
| 21 XO Utah | Sprint | Rhythms |
| 22 e.spire | New Edge | ELI |
| 23 Essen (Montana) | JATO | NEXTLINK |
| 24 Net Wright | OPCOM | Visionary |

1 Wyoming.com Contact Communications Eschelon
2 IntTee Montana Wireless 3 Rivers Fiber Optics
3

4 **Q. How was the Multi-state 271 Collaborative run?**

5 A. The states participating in the Multi-state 271 Collaborative adopted common
6 schedules and procedures. The collaborative process was managed by John
7 Antonuk of Liberty Consulting. Qwest paid the fees of Mr. Antonuk, who was
8 known as the “Facilitator.”

9 **Q. What was Mr. Antonuk’s role in the Multi-state Collaborative?**

10 A. Mr. Antonuk’s role in the collaborative was broad. Among other duties, he
11 served as a moderator of the workshops, sometimes asked questions of parties in
12 the workshop, and worked with states staff to establish procedures and calendars
13 as necessary. Most importantly for the purposes of this docket, he wrote reports
14 about the outcome of the workshops. These reports were generally organized
15 around the material presented in particular workshops, although events led to the
16 content of some workshops being addressed in more than one report and some
17 reports addressing the content of more than one workshop.

18 **Q. What was the purpose of the reports?**

19 A. The purpose of the reports was to provide the participating states with documents
20 that would assist them in evaluating Qwest’s 271 application. Therefore, the
21 Facilitator wrote about issues resolved during the workshops and issues that
22 remained in dispute. For both the Facilitator presented a review of the issue and
23 the arguments presented by parties. When an issue was resolved (identified as

1 Level I issues by Mr. Stacy in his testimony), as the vast majority of Multi-state
2 issues were, the Facilitator included the terms of the settlement. When an issue
3 was disputed, the Facilitator presented a recommended resolution with an
4 explanation of his reasoning in reaching the recommendation. A handful of items
5 were found to be tied to the OSS Test, so the Facilitator's recommended
6 resolution of these issues is to wait for the outcome of the Test before finding the
7 issue closed.

8 **Q. How were the reports identified?**

9 A. The Facilitator issued five reports that I address in my testimony. I have
10 identified the reports as Group 1, Group 2, Group 3, Group 4, and Group 5.
11 These reports, respectively, addressed relatively non-controversial items:
12 interconnection, collocation, local number portability, reciprocal compensation,
13 and resale; emerging services, unbundled network elements (UNEs), and general
14 terms and conditions, Track A, the public interest, Section 272, and the QPAP. It
15 is not uncommon for some variation of these terms to be used in identifying a
16 particular report.

17 **Q. How were the Reports used by the state commissions?**

18 A. Parties to the workshop could submit comments about the reports, according to a
19 schedule established by the collaborative. States were free to use the reports and
20 comments as they wished; they were not bound by the Facilitator's decisions.
21 Most states had some sort of oral argument about the reports. For the great
22 majority of issues, parties agreed to accept the Facilitator's recommended

1 resolution. For a few issues, however, one party or another contested the
2 Facilitator's recommendation and the state commission had to decide what course
3 to follow.

4
5 1. Purpose of Testimony

6
7 **Q. What is the purpose of your testimony in this proceeding?**

8 **A.** The purpose of my testimony in this proceeding is to focus attention on the
9 disputed issues addressed by Mr. Antonuk in his reports. For each of the several
10 dozen issues I present a digest of the arguments, a summation of the Facilitator's
11 recommended resolution, and a recommended course for the Commission to
12 follow. That testimony is presented in affidavit-style to facilitate its exposition. I
13 have included every disputed issue even though the parties have indicated in pre-
14 hearing conferences they were ready to remove some issues from this category.
15 For all but a few issues, my recommendation is simply to adopt the resolution
16 proposed by the Facilitator. It is noteworthy that Qwest (as have the CLECs) has
17 agreed to accept the Facilitator's resolution in all but a handful of instances.
18 Qwest also appears to have incorporated into its SGAT specific language
19 recommended by the Facilitator as a part of some of his recommended
20 resolutions. These issues are the Level II issues that Mr. Stacy has identified in
21 his testimony. In a few cases, the resolution is complicated and may require
22 follow-up action by the Commission. In those instances, I identify the action.

1 **Q. Do you ever disagree with the Facilitator's recommended resolution?**

2 A. I do so in one case, although it is not so much a matter of disagreement as it is
3 filling a loophole left by the Facilitator's recommendation. This one Level IV
4 issue is Tying Qwest Data Service and Voice Service, Issue 2 under Line Sharing
5 in the Group 3 Report.

6 **Q. Has Qwest agreed to accept the Facilitator's resolutions in every case?**

7 A. In a few instances, Qwest has indicated in pre-filed documents that it will contest
8 the Facilitator's recommended resolution. For these Level III issues, I call that to
9 the Commission's attention and provide short arguments about why the
10 Commission should adopt the recommended resolution.

11 **Q. Is Qwest the only party that contests some of the Facilitator's findings?**

12 A. As noted by Mr. Stacy, I have reviewed the information filed by Qwest, including
13 the affidavits of the various Qwest witnesses, five of the reports from Liberty
14 Consulting, and the post-report comments and exceptions that were filed by
15 parties in the multi-state proceeding. This information is the basis for my
16 recommendations and my testimony. Generally, parties that took part in the
17 Multi-state collaborative have followed the Facilitator's recommendations, but
18 there is no guarantee they will do so in this docket, although it would be
19 surprising if any of them opposed great numbers of the recommendations.
20 Moreover, there are parties in this docket that were not part of the Multi-state
21 proceeding and therefore may introduce fresh arguments. QSI requests that once

1 the testimony is filed, if it reflects issues or ideas not previously considered in the
2 multi-state proceeding, that QSI be given the opportunity to comment on that
3 testimony.

4 **Q. Are there any concerns about Level I issues?**

5 A. Yes, a sampling of the issues considered resolved in the Multi-state reports
6 indicates Qwest has not made all the changes in its SGAT it indicated it would as
7 part of issue resolutions.¹ Specifically, the Facilitator frequently offered specific
8 language to be incorporated in the SGAT or directed that language in the SGAT
9 be removed. Qwest must demonstrate to the Commission that it has complied
10 with the recommendations of the Facilitator for all Level I issues. If it does not,
11 the Commission should not find the issues to be closed.

12
13 4. Group 1 Report

14
15 **Q. What is the content of the Group 1 Report?**

16 A. The Group 1 Report deals with six Section 271 checklist items deemed to be non-
17 controversial. The items addressed are Item 3, Item 7, Item 8, Item 9, Item 10 and
18 Item 12. As non-controversial items, they were handled in a "paper workshop,"
19 in which the parties submitted briefs but did not negotiate the issues directly.

20 **Q. What are your recommendations for the disputed issues in the Group 1**
21 **Report?**

¹ See, for example, "2. Forecasting Process," pages 40-41, Group 1 Report, and "2. ICDF Collocation," page 54, Group 2 Report.

1 **A.** My discussion of these issues and my recommendation for the Commission
2 follow in affidavit-style testimony.

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

5 **I. Reciprocity of Access Obligations**

6 **The Issue:** Qwest's initial SGAT filing imposed on CLECs reciprocity of access
7 obligations concerning poles, ducts, conduit and rights of way. A Ninth Circuit Court of
8 Appeals decision issued since that filing said the interpretation of Section 224 upon
9 which Qwest relied was invalid. Qwest has since revised its SGAT to conform to the
10 ruling, thus eliminating the issue.

11 **Antonak Report Recommendation:** Qwest's removal of the reciprocity language in
12 its entirety, Section 10.8.1.4, responds fully to the concern.

13 **Summary:** The issue has been resolved by the Qwest action.

14
15 **II. Defining Ownership or Control Rights**

16 **The Issue:** CLECs asserted the Qwest SGAT did not provide assurances to them that
17 Qwest would provide access where it "controls" rather than "owns" the facilities
18 involved. More narrowly, the concern related to cases where Qwest's control of rights of
19 way was less than "direct."² Qwest and AT&T offered competing language changes to
20 address the issue.

² AT&T's Brief at 10.

1 **Anteink Report Recommendation:** The SGAT should be unambiguous that in
2 cases where Qwest's underlying rights are implied (rather than express) under state law
3 there is no difference in Qwest's obligations to CLECs. Qwest's proposed language
4 change does not provide such clarity. The new language should remove compensation
5 for Qwest as a factor in the situations where the rule applies. The Report offers a specific
6 revised Section 10.8.1.5 to address these two problems.

7 **Summary:** The proposed resolution has been accepted by Qwest.

8
9
10 **A. Access to Landowner Agreements**

11 **The Issue:** AT&T asserted that CLECs sometimes must have access to the
12 agreements that Qwest has with private landowners and building owners in order to
13 determine the scope of Qwest's ownership and control. Qwest said it will not provide
14 such access if the agreement does not explicitly provide for disclosure to third parties,
15 arguing that landowners' privacy expectations would be violated if third parties did not
16 have to seek permission for disclosure. AT&T stated it needs to secure permission only
17 where disclosure is expressly prohibited. AT&T also noted that if Qwest's position
18 regarding consent is accepted, then Qwest will have an incentive to have nondisclosure
19 clauses written into future agreements it makes with landowners.

20 **Anteink Report Recommendation:** Some landowners may object to disclosure.
21 Other landowners will welcome disclosure given that it will facilitate competition for
22 their telecommunications business. The Report went on to say the real issue was not
23 privacy, but that CLECs have sufficient access to landowner agreements to learn the

1 rights Qwest has. With this information, CLECs can make informed decisions about
2 investment in facilities as they pursue potential customers. The Report offered revised
3 Section 10.8.4.1.3.1 to balance the privacy rights with the needs of CLECs. The new
4 language gives CLECs the right to learn the contents of all landowner agreements if they
5 are willing to bear the risk that arises without obtaining consent. The Report did not deal
6 with the issue of landowner agreements going forward, stating that if Qwest engages in
7 behavior that is discriminatory, it will expose itself to regulatory remedies and that is
8 sufficient disincentive to discourage Qwest.

9 **Summary:** AT&T objects to the resolution on the grounds that it does not eliminate
10 the risk of legal action. It proposes that instead of CLECs indemnifying Qwest for cases
11 where disclosure results in legal actions, the parties be required to share the expenses of
12 the case. The Report has attempted to balance several interests in a way that gives Qwest
13 and the CLECs what they most need. It is recommended the Commission accept the
14 Report's resolution, but only the exact language proposed by the Report. Qwest made the
15 suggested change, but made additional changes to Section 10.8.2.27 and Exhibit D of the
16 SGAT that limit the access to CLEC personnel not involved in sales and marketing. The
17 Report stated that the purpose of the access gained by CLECs is not to use the information
18 gained in negotiations with landowners, as such personnel might do. The Report, however,
19 used the economic interest case only as an example; it did not take the next step of limiting
20 access to certain CLEC personnel. The Commission may want to adopt Qwest's additional
21 revisions, but it should do so only after its own review of the matter and not because it
22 believes the Report arrived at the conclusion, because the Report did not.

1
2 **4. Scope of CLEC Access (Multiple Dwelling Units)**

3 **The Issue:** AT&T and WorldCom claimed the SGAT language did not guarantee
4 CLECs access to poles, ducts, conduits and rights-of-way that Qwest owns or controls in
5 multiple dwelling units (MDUs). AT&T also argued Qwest could use exclusive access
6 agreements with MDU owners to exclude CLECs from serving customers in such
7 facilities. Qwest said the point has been made moot by SGAT revisions it has offered.

8 **Antenuk Report Recommendation:** Qwest has made three revisions in the SGAT
9 that resolve this issue. The revisions clarify that CLECs will have access to the rights of
10 way whether the property is public or private, that the access rules will apply to MDUs,
11 and clarify the definition of right of way.

12 **Summary:** The Qwest revisions are sufficient.
13

14 **5. Curing CLEC Breaches**

15 **The Issue:** Qwest asked that CLECs be required to secure from the landowners
16 involved the express right to be able to cure breaches of access gained from Qwest.
17 Qwest asserted that without such a clause it would risk losing the right of way due to
18 improper CLEC actions. AT&T responded that the requirement is unnecessary because
19 other parts of the SGAT sufficiently indemnify Qwest and that its inclusion in the SGAT
20 will slow CLEC access because they will have to negotiate a cure with every landowner.
21 AT&T stated furthermore that simply raising the issue will frighten some landowners
22 away from allowing access, an outcome not warranted by the degree of risk involved.

1 **Antonuk Report Recommendation:** The cure requirement (SGAT Exhibit D, ¶ 2.2,
2 and Exhibit D, Attachment 4, page 25) should be removed. The solution it seeks to
3 provide is out of proportion to the problem, which is adequately addressed in other parts
4 of the SGAT. Its presence would harm CLECs as they pursue access.

5 **Summary:** The Commission should accept the proposed resolution. It is not clear
6 from Qwest's submitted SGAT that it has made the proposed deletions.

7
8 **6. Large-Request Response Times**

9 **The Issue:** The dispute is what to do for requests by CLECs for orders of very large
10 numbers of poles. The CLECs argue that the FCC allows no exceptions to its rule
11 requiring responses by utilities within 45 days to all requests for poles. Qwest says it is
12 impossible to comply in 45 days with all such requests and instead offers to process large
13 requests as quickly as it can, providing information on a rolling basis rather than
14 withholding it until it is through with an order.

15 **Antonuk Report Recommendation:** The Report sought to strike a compromise
16 between the positions, stating that Qwest should be bound by the 45-day rule, but that it
17 has the right to seek waivers from state commissions on an individual case basis. The
18 Report noted that a rule regarding the number of poles that can be processed in a given
19 time span is not easily developed given the variation in complexity of identifying access
20 to the facilities.

21 **Summary:** The Report is correct that a rule about the number of poles that can be
22 processed in a day is not easily developed. The Commission thus is put in the position of

1 not having so much as a guideline to fall back on as it processes waiver applications from
2 Qwest in the event it adopts the recommended resolution. Despite this shortcoming, the
3 proposed resolution offers the best balance of interests. Qwest's and the CLECs
4 positions have flaws that could lead to behavior such as splitting orders in order to
5 receive better service or delaying the processing of small orders until the conclusion of
6 the 45-day period.

7

8 **7. Relationship to Other Checklist Items**

9 **The Issue:** The CLECs raised concerns that right of way issues regarding subloops
10 and MDUs might not be addressed in the subloop workshop. Qwest says they will be and
11 that there is no need to hold open this checklist item until those workshops are concluded
12 and resolutions of the issues raised in them are reached.

13 **Antonuk Report Recommendation:** The ability of parties to raise the right of way
14 issues in subsequent workshops is sufficient to accommodate CLEC concerns. There is
15 no need to make a Checklist Item 3 finding contingent on the outcome of those
16 workshops.

17 **Summary:** The Commission should adopt the recommendation.

18

19 **8. Payment for Facility Rearrangement Costs**

20 **The Issue:** McLeodUSA objected to requiring CLECs to pay to rearrange their
21 facilities if the need for modification is solely Qwest's. Qwest noted that the 60-day
22 notice it gives CLECs of such rearrangements is what the FCC requires, which is

1 sufficient time for the CLECs to perform their own rearrangement and thus avoid being
2 charge by Qwest for performing the act.

3 **Antonuk Report Recommendation:** The Qwest language is appropriate and no
4 change is required.

5 **Summary:** The Commission should adopt the recommendation.
6

7 **9. Inspection Costs**

8 **The Issue:** McLeodUSA argued that Qwest's inspection policy of charging CLECs
9 for the reviews was unfair and created an incentive for Qwest to find violations. Qwest
10 responded that it had a legitimate need to inspect CLEC installations for their
11 conformance to technical needs and that it does not charge for inspections following
12 initial findings of violation if the CLEC has subsequently corrected the problem.

13 **Antonuk Report Recommendation:** The report found no need to alter the Qwest
14 policy on inspections in the SGAT. Qwest does not pass along costs to CLECs unless the
15 CLECs cause Qwest to incur them.

16 **Summary:** The Commission should adopt the recommendation.
17

18 **10. Time Limit for Remedying Non-Complying Attachments**

19 **The Issue:** McLeodUSA asks that the term "reasonable period" be replaced by
20 specific intervals in Section 10.8.2.13 where Qwest spells out its right to ask CLECs to
21 fix non-complying attachments. The CLEC's position was that the term is too vague,
22 whereas Qwest says a case-by-case approach is necessary.

1 **Automak Report Recommendation:** The Report found Qwest's approach is
2 preferable. McLeodUSA's approach presumed that a standard correction interval is
3 definable. Qwest's approach strikes a proper balance, because the existence of safety and
4 reliability concerns makes a "one-size-fits-all" interval problematic.
5 **Summary:** The Commission should adopt the recommendation.

6
7 **11. Schedules and Fees for Inspections**

8 **The Issue:** McLeodUSA asked that Qwest's fee schedule have fixed prices rather
9 than being determined on a case-by-case basis. Qwest answered that CLECs with poor
10 records that result in more inspections should pay more and that its fee schedule
11 incorporates features that do so fairly. It further argued that it needs such flexibility in
12 setting fees in other circumstances.

13 **Automak Report Recommendation:** The Report agreed with Qwest and refused to
14 change the inspection fee schedule.

15 **Summary:** The Commission should adopt the recommendation.

16
17 **12. Unauthorized Attachment Fee Waiver**

18 **The Issue:** Qwest unilaterally proposed to change Section 10.8.2.22 to provide for a
19 waiver of half the unauthorized attachment fee.

20 **Automak Report Recommendation:** Qwest's intent in making the proposal was to
21 provide financial incentives for CLECs to fix unauthorized attachments and to avoid such
22 attachments in the first place. The Report recommends accepting the change.

1 **Summary:** The Commission should accept the recommendation.

2

3 **Checklist Item 7(I): 911 and E911 Services**

4 There are no disputed issues for this portion of Checklist Item 7.

5

6 **Checklist Item 7(II): Directory Assistance**

7 **I. Access to Qwest's Calling Name Assistance (CNAM) Database**

8 **The Issue:** WorldCom wanted bulk access to this directory assistance database rather
9 than access for individual queries. The CLEC said it is due such access because the
10 CNAM Database is a UNE. Qwest asserted that the database is not a UNE and it is not
11 bound to provide bulk access.

12 **Antonuk Report Recommendation:** The Report found that WorldCom did not
13 support its claim that CNAM Database should be accessible as a UNE. Therefore, the
14 Report's resolution of the issue was to not grant WorldCom's request.

15 **Summary:** The Commission should accept the recommendation.

16

17 **Checklist Item 7(III): Operator Services**

18 There are no disputed issues for this portion of Checklist Item 7.

19

20 **Checklist Item 8: White Pages Directory Listings**

21 **I. Parity of Treatment for CLEC Listings**

1 **The Issue:** The Regional Oversight Committee's Performance Measures Audit found
2 that there are differences in treatment of CLEC and Qwest listings updates. AT&T's
3 position was that Qwest could not be considered to be in compliance with Checklist Item
4 8 until after it changes its white-page listings practices to assure parity of treatment.
5 Qwest acknowledged the findings of the audit, but said the proper forum for
6 consideration is the OSS Test Report. It asked for conditional approval of this checklist
7 item.

8 **Antonuk Report Recommendation:** The Report found the OSS Test is appropriate
9 for evaluating the findings of the Performance Measures Audit and that it would therefore
10 be premature to come to a final conclusion in this process of compliance. That
11 recommendation can be made only after further examination of the information resulting
12 from the steps by Qwest to change its methods for updating directory listing and of the
13 audit activities that will examine the sufficiency of those changes after they are made.

14 **Summary:** The Commission should accept the recommendation of the Report to
15 determine compliance only following the release of the OSS Test results.

17 **2. Reciprocity Concerning Release of Listings to Third Parties**

18 **The Issue:** McLeodUSA asked for reciprocity concerning the release of data, but
19 failed to follow through in defining what it meant by the term. Qwest speculated that it
20 may mean a CLEC should be able to sell Qwest listings if the CLEC has allowed Qwest
21 to sell the CLEC listings.

1 **Antonuk Report Recommendation:** The Report notes several problems that could
2 arise from implementing the McLeodUSA request, including violations of agreements.
3 Therefore, the Report recommends that no change be made in the existing language.

4 **Summary:** The Commission should accept the recommendation.

5

6 **3. Applicability of Tariff Liability Limits**

7 **The Issue:** McLeodUSA argued Section 10.4.2.6 violates the doctrine of filed tariffs.
8 Qwest expressed ignorance of the doctrine, but said the language of the section
9 incorporates existing tariffs into the SGAT.

10 **Antonuk Report Recommendation:** The Report agreed with Qwest's representation
11 of the language of the section and recommends no change.

12 **Summary:** The Commission should accept the recommendation.

13

14 **4. CLEC Knowledge of State Laws Involving Listings**

15 **The Issue:** McLeodUSA argued that Qwest as well as CLECs should bear
16 responsibility for the accuracy of listings supplied to Qwest by CLECs. Qwest objected,
17 saying it cannot be held liable for CLEC errors.

18 **Antonuk Report Recommendation:** The Report noted that unless Qwest as the
19 recipient of the listings has some knowledge or standing that makes it better suited to
20 ascertain the accuracy of the listings, it is not appropriate to hold Qwest responsible for
21 the listing accuracy. Thus, no change should be made.

22 **Summary:** The Commission should accept the recommendation.

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5. Adding a Section 222(e) reference to SGAT Section 10.4.2.16

The Issue: McLeodUSA requested that the section be expanded to include the FCC rates for providing listings to Qwest. Qwest objected, saying the change would require it to pass information from CLECs to directory publishers, an action it is not required to perform.

Antonuk Report Recommendation: The Report finds no basis for granting McLeodUSA's request.

Summary: The Commission should accept the recommendation.

6. Adding the Term "Contractor" to SGAT Section 10.4.2.26

The Issue: McLeodUSA requested that the term "contractor" be added to the SGAT section after the term "affiliate." The intent of the addition is to clarify that no matter how Qwest arranges for the publishing of directories, whether through an affiliate or a third party, it has the same responsibilities regarding listings. McLeodUSA further requested that Qwest ensure that all directories with which it is associated include listings for state commissions and consumer advocates.

Antonuk Report Recommendation: The Report said McLeodUSA's proposed addition of "contractor" should be adopted, agreeing that Qwest's obligations were not affected by its relationship with a directory publisher. The Report did not recommend making the change regarding commission and consumer advocate listings.

Summary: The Commission should accept the recommendations.

1

2 **7. Dex's Continuation as Directory Publisher**

3 **The Issue:** McLeodUSA asked that the SGAT language be amended to accommodate
4 the possibility that Dex may not be Qwest's directory publisher in the future.

5 **Antonuk Report Recommendation:** The Report found that changing the language
6 was not necessary and that Qwest would change the SGAT should the need arise.

7 **Summary:** The Commission should accept the recommendation.

8

9 **Checklist Item 9: Numbering Administration**

10 There are no disputed issues for Checklist Item 9.

11

12 **Checklist Item 10: Call-Related Databases and Signaling**

13 There are no disputed issues for Checklist Item 10.

14

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

16 There are no disputed issues for Checklist Item 12.

17

18 5. *Group 2 Report*

19

20 **Q. What is the content of the Group 2 Report?**

21 **A.** The Group 2 Report deals with Section 271 checklist items 1, 11, 13, and 14.

1 **Q. What are your recommendations for the disputed issues in the Group 2**
2 **Report?**

3 **A. My discussion of these issues and my recommendation for the Commission**
4 **follow in affidavit-style testimony.**

5
6 **Common Issues**

7 Several parties raised issues that addressed a number of the checklist items within the
8 scope of this report.

9
10 **1. Lack of Available Facilities**

11 **The Issue:** NEXTLINK said it has had to wait for collocation facilities and the
12 Wyoming Consumer Counsel said CLECs in that state have expressed concern about
13 facilities availability.

14 **Antonuk Report Recommendation:** The Report defers action until the OSS Test
15 QPAP processes have been completed. Those efforts will shed light on Qwest
16 performance in a systematic manner, enabling a better evaluation.

17 **Summary:** The Commission should be aware of the possible need to revisit this
18 issue.

19
20 **2. The Need for A "Real World" Test of Qwest's Performance**

1 **The Issue:** The Wyoming Consumer Counsel argued that Qwest cannot be deemed to
2 have met the 271 checklist requirements absent some period of operation during which
3 tangible evidence of its commitments to open its local market will accumulate.

4 **Antonuk Report Recommendation:** The Report said the CLECs have failed to
5 provide evidence concerning Qwest's performance when invited to in this proceeding.
6 The absence of such data means the OSS Test is the only source of data for evaluating
7 Qwest's ability to open its local market to competition. Section 271 does not require
8 another kind of testing if such a third-party test is being performed.

9 **Summary:** The Report recognizes that CLECs have not taken the opportunity
10 afforded them to report "real-world" performance data.

11

12 **Checklist Item 1: Interconnection**

13 **1. Indemnification for Failure to Meet Performance Standards**

14 **The Issue:** AT&T wanted to add to the SGAT a new section (7.1.1.1.2) that would
15 hold CLECs harmless in the event that Qwest failed to meet the service quality standards
16 of Section 7.1.1.1. AT&T characterized this language as an "incentive" for Qwest to
17 perform. Qwest objected to this language on several grounds, including duplication of the
18 QPAP, no controlling FCC rulings, no precedent for considering the issue in other 271
19 hearings, and adequate indemnification in the General Terms and Conditions portion of
20 the SCAT.

21 **Antonuk Report Recommendation:** The Report recommends against the AT&T
22 proposal. The QPAP is one means of providing Qwest incentives to perform on behalf of

1 CLECs. Otherwise, the proposal seeks to transfer the losses of bad performance all to
2 Qwest.

3 **Summary:** The Commission should accept the recommendation.

4 **2. Entrance Facilities as Interconnection Points**

5 **The Issue:** AT&T expressed concern that Qwest was improperly transferring DS1
6 and DS 3 entrance facilities, which are an access world concept, to the realm of local
7 exchange interconnection. AT&T considered Dedicated Transport to be the correct and
8 only element that should be required for interconnection trunks. AT&T said Qwest was
9 requiring both an Entrance Facility and Direct Trunked Transport, a configuration that
10 did not give CLECs direct access to UNEs, did not allow commingling of local and
11 interexchange traffic, and is more expensive. Qwest agreed to allow access to UNEs, but
12 opposed commingling (outside of the 9th Circuit Court of Appeals) and the ratcheting of
13 rates.

14 **Antitrust Report Recommendation:** Qwest should change the SGAT to reflect its
15 commitment to allow entrance facilities to be used as interconnection for access to UNEs.
16 The commingling and rate issues are dealt with in disputed issues in the Reciprocal
17 Compensation section of the Group 2 Report and consequently this summary.

18 **Summary:** The Commission should accept the recommendation.

19 **3. RCT Charges for Interconnection Through Collocation**

1 The ~~Issue:~~ AT&T recommended a change to the SGAT Section 7.1.2.2 to: (a)
2 eliminate the requirement that CLECs pay for Interconnection Tie Pairs, and (b) remove
3 ~~FEC~~ ~~change~~ references from Section 7.3.1.2. Qwest agreed to accept the resolution of
4 this issue as proposed in the *Initial Order Finding Noncompliance In The Areas Of*
5 *Interconnection, Number Portability And Resale*, Washington Docket Nos. UT-003022
6 and UT-003040.

7 **Anteauk Report Recommendation:** The Washington Order reflects a resolution of
8 this issue that is in accord with FCC requirements and it comports with AT&T's request.

9 **Summary:** The Commission should accept the recommendation.

10 11 4. Mid-Span Meet Points of Interconnection (POIs)

12 The ~~Issue:~~ AT&T objected to the requirement that mid-span meet points of
13 interconnection be required to be within Qwest wire center boundaries and sought the
14 right to interconnect in this fashion at any technically feasible point. AT&T also objected
15 to precluding the use of mid-span meet points to gain access to unbundled network
16 elements. Qwest agreed to allow this form of interconnection to be used for access to
17 UNEs, provided that the CLEC pay the UNE rate for the entire facility.

18 **Anteauk Report Recommendation:** The Report provides an SGAT language
19 change to allow CLECs to pay total element long-run incremental cost (TELRIC) rates
20 for the portion of the facility used to secure access to UNEs, under a rule that apportions
21 costs first by assigning to UNE access the portion of the facilities that would be required
22 for interconnection in the absence of concurrent use for interconnection. If Qwest can

1 ~~know~~ that the CLECs have used interconnection as a means to gain UNE access, they
2 ~~should expect redress from commissions.~~

3 ~~Summary: The Commission should accept the recommendation.~~

4 ~~5. Routing of Qwest One-Way Trunks~~

5 ~~The Issue: Qwest must install its own one-way trunks where a CLEC chooses one-~~
6 ~~7 way trunks to terminate its traffic to that interconnecting CLEC. In particular, AT&T~~
7 ~~8 wanted CLEC, rather than Qwest, control over the routing of Qwest's one-way trunks~~
8 ~~9 back to the CLEC. AT&T alleged that Qwest can establish inefficient trunk routes for~~
9 ~~10 which the CLECs must pay more.~~

11 ~~Antitrust Report Recommendation: The Report refuses to grant AT&T's request. It~~
12 ~~13 notes that Qwest may not select inefficient routes, and in any case is entitled to control its~~
13 ~~14 own facilities just as AT&T and other CLECs are. If Qwest does choose inefficient~~
14 ~~15 routes, CLECs can select other, cheaper means to interconnect.~~

15 ~~Summary: The Commission should accept the recommendation.~~

16 ~~6. Direct Trunked Transport in Excess of 50 Miles in Length~~

17 ~~The Issue: Qwest proposed a new SGAT section limiting its obligation to provide~~
18 ~~19 direct trunk transport to 50 miles in length in situations where neither it nor a CLEC have~~
19 ~~20 facilities. Qwest stated it might have to build direct trunk transport hundreds of miles~~
20 ~~21 long and that it would take several years to recover the costs of such facilities. AT&T~~
21 ~~22 argued that this distance limit violated CLEC rights to choose the most efficient points of~~

1 interconnection. Qwest asserted the obligation is a limited one, relying on certain FCC
2 rules and orders.

3 **Antitrust Report Recommendation:** Qwest has not presented evidence that it would
4 fail to recover its costs of installing the very long interconnection trunks needed to
5 provide direct trunk transport in the circumstances at issue. Long trunks may be more
6 costly or risky, but Qwest should demonstrate that fact in a cost proceeding. Therefore,
7 Qwest should remove its SGAT section limiting the obligation to 50 miles.

8 **Summary:** Qwest has not adopted the Report recommendation, instead
9 recommending consideration of proposed projects on an individual case basis. It asserts
10 that the FCC has said interconnection accommodation should be reasonable and states are
11 in a position to know what is reasonable in their jurisdiction. Qwest says that an
12 obligation that is unlimited would require it to provide CLECs with superior rather than a
13 merely technically feasible interconnection, as it is required to provide.

14 The Facilitator was aware of these arguments when he arrived at his decision and
15 rejected them, making the choice on economic grounds. Qwest also says the economic
16 grounds are unfair, that it may not be able to recover the costs of these long trunks
17 because appropriate prices will not be set in cost dockets due to the averaging of prices in
18 such dockets. If it can recover the costs, Qwest says, it will take years.

19 Qwest's position on costs assumes the state cannot properly set prices. For example,
20 if Qwest has a request from a CLEC for direct trunked transport for more than 50 miles, it
21 has the ability to present evidence to the Commission that such a project is more risky
22 than the average project assumed by UNE pricing. If Qwest's evidence is persuasive, the

1 Commission can set a rate of return for the project that reflects the risk and accelerates
2 Qwest's cost recovery. As for the time span issue, several years is an appropriate period
3 for cost recovery for capital facilities such as these trunks.

4 South Dakota has the discretion to adopt the finding of the Report. It is recommended
5 that the Commission accept the recommendation.

7 **7. Multi-Frequency Trunking (MFT)**

8 **The Issue:** AT&T sought multi-frequency trunking in situations where Qwest does
9 not provide multiple routes with SS7 switching. The issue is one of reliability, one that
10 many customers are aware of as they make carrier choices. The MFT gives CLECs that
11 reliability. Qwest says it does not provide such redundancy for itself and has no
12 obligation to provide it to CLECs.

13 **Antonuk Report Recommendation:** The Report recommended an SGAT language
14 change that obligates Qwest to provide MFT to CLECs where SS7 switching is not
15 present. It notes the consequences of failure are higher for CLECs than for Qwest and
16 therefore the CLECs need MFT to have the ability to offer service parity.

17 **Summary:** The Commission should accept the recommended language change to
18 Section 7.2.2.6.1.

19 **8. Obligation to Build To Forecast Levels**

20 **The Issue:** CLECs want Qwest to accept their forecasts as they request it to build
21 trunking capacity for them. Qwest said that CLEC forecasts are typically too high and

1 that it incurs costs for building capacity that is never used and therefore does not produce
2 revenue. It offered to build to its own forecasts of CLEC need, or to build to the CLEC
3 forecasts but require a deposit. Qwest offered to return the deposit if trunk usage is 50
4 percent of the forecasted level.

5 **Antitrust Report Recommendation:** The Report says Qwest can require a deposit to
6 protect itself against incurring installation costs it may never recover. However, the basis
7 for returning the deposit should be 50 percent usage of trunks installed, not forecasted,
8 and that the usage should include that of all CLECs, not just the company making the
9 deposit. The Report proposes language in Section 7.2.2.8.6.2 that implements these two
10 findings.

11 **Summary:** The Commission should accept the recommendations. Installed trunks is
12 a better basis for calculating usage percentage for the purposes of determining whether a
13 deposit should be returned because it reflects Qwest's actual costs of building trunk
14 capacity. Moreover, if other CLECs use the trunks in volumes that bring the total CLEC
15 usage to 50 percent or more, Qwest is recovering the costs, just not from the CLEC that
16 paid the deposit, but the source of cost recovery should not matter.

17 **9. Interconnection at Qwest Access Tandem Switches**

18 **The Issue:** CLECs wanted to be able to interconnect with Qwest at Qwest tandem
19 switches that are part of Qwest's long-distance network. Such switches are known as
20 access tandems, as opposed to local tandems that are switches in Qwest's local network.
21 Qwest's two-network terminology reflects how it has chosen to move traffic, not that it
22

1 actually has two separate, unconnected networks. Hence, it is technically feasible for
 2 CLECs to interconnect at the access tandems for the purpose of switching their local
 3 traffic. Such an arrangement also saves them money. Qwest objected to being forced to
 4 allow all such interconnections on the grounds it may exhaust its access tandems capacity
 5 while there is unused local tandem capacity.

6 **Antitrust Report Recommendation:** The Report recommends that CLECs be
 7 allowed to connect to access tandems. It also sets for conditions under which Qwest may
 8 seek to impose other connection arrangements on CLECs. One of these is if CLEC traffic
 9 reaches a level equivalent to DS1 traffic, at which point CLECs bear the burden of
 10 showing why a shift to connection at a local tandem would harm them economically or
 11 operationally. If they cannot make such a showing, Qwest can require the local tandem
 12 connection. Similarly, Qwest can offer to provide a local tandem connection to a CLEC
 13 for the access tandem price. The CLEC can object to the shift, but Qwest can require it if
 14 it shows its own operations will be materially harmed if the shift is not made and that the
 15 CLEC's operations will not be materially adversely affected.

16 **Summary:** Qwest has not made the recommended changes. It has offered a new
 17 option that forces CLECs to shift to local tandems at a DS1-equivalent threshold. Qwest
 18 would allow CLECs to connect at the access tandem if their traffic does not meet this
 19 threshold even if the traffic through the tandem is at or near its capacity.

20 The Qwest proposal differs from the recommendation in that it forces CLECs to order
 21 direct trunks to local tandems when they may not want to for economic or operational
 22 reasons. It is likely, as Qwest argues, that the direct trunk may take care of the economic

1 issue since it will be more efficient. Yet, the Report leaves that decision in the hands of
2 the CLEC, which also may have operational reasons for retaining the connection at the
3 access tandem despite the high level of traffic.

4 The Commission should accept the Report's recommendation, unless Qwest can
5 show that CLECs will not suffer economic or operational harm under its counterproposal
6 in the circumstances just discussed.

7
8 **10. Inclusion of Internet Protocol (IP) Telephony as Switched Access in the SGAT**

9 The Issue: AT&T objected to the inclusion of IP Telephony in the "switched access"
10 definition language in the SGAT, arguing that the FCC has specifically exempted such
11 traffic from access charges. Qwest has removed the disputed portions of the SGAT
12 directly addressing IP telephony.

13 **Antonuk Report Recommendation:** The Report finds Qwest's agreement to remove
14 the disputed portions adequate. Other AT&T request's apply to all Internet traffic, not
15 just IP Telephony and therefore are addressed in the Reciprocal Compensation portion of
16 the Report and this summary.

17 **Summary:** The Commission should accept the recommendation.

18
19 **11. Charges for Providing Billing Records**

20 The Issue: Qwest proposed charges for exchange of information that allows CLECs
21 to properly bill customers. WorldCom objected, saying the practice in the past had been
22 to exchange the information without charge.

1 **Antonuk Report Recommendation:** The Report finds that Qwest is on firm ground
2 in imposing the charges. Moreover, even if the parties had not charged each other in the
3 past, a fact Qwest disputed, there was no reason that Qwest could not now decide to
4 impose reasonable charges as long as it agreed to be subject to them too.

5 **Summary:** The Commission should accept the recommendation that leaves in place
6 Qwest's SGAT language in Sections 7.5.4 and 7.6.3.

7

8 **12. Combining Traffic Types on the Same Trunk Group**

9 **The Issue:** Sprint objected to Qwest requirements that CLECs not be allowed to
10 commingle local, intraLATA (Local Access Transport Area), and access traffic,
11 particularly on the existing Qwest long-distance network.

12 **Antonuk Report Recommendation:** The Report deals with the issue in its
13 Reciprocal Compensation section.

14 **Summary:** The shift to the Reciprocal Compensation section is appropriate.

15

16 **Checklist Item 1: Collocation**

17 **1. "Product" Approach to Collocation**

18 **The Issue:** CLECs asserted the Qwest SGAT is too rigid in requiring that requests for
19 new forms of collocation must go through a bona fide request (BFR) process. The
20 CLECs asked that this requirement be removed and new collocation be offered according
21 to the terms and conditions of existing forms of collocation in the name of speeding up
22 the introduction of new forms of collocation. The CLECs also maintained that other

1 Qwest documents were inconsistent with the Qwest SGAT, creating uncertainty in what
2 rules to follow in matters of collocation. They asked that 271 approval be withheld until
3 Qwest removed all inconsistencies among its documents.

4 **Antonuk Report Recommendation:** The Report saw no alternative to retaining
5 the BFR process. Qwest has agreed to make new forms of collocation immediately
6 available, but terms and conditions must be established by some means. Nothing better
7 than the BFR has been offered. The Report acknowledged that CLECs will be ordering
8 and employing collocation forms for which prices and other terms will be subject to
9 amendment retroactively, but saw no better way to make collocation forms available
10 quickly while respecting Qwest's rights. To put this recommendation into effect, the
11 Report has proposed an addition to SGAT Section 8.1.1. It also proposes that ways to
12 streamline the BFR process be explored in the General Terms and Conditions Workshop.

13 The second aspect of the Report's proposal, seeking consistency between the SGAT
14 and other Qwest documents, also is pragmatic. The number of publications, handbooks,
15 and manuals cross-referenced probably precludes perfect consistency, according to the
16 Report, and therefore is rejected as a condition for 271 compliance. Nevertheless, the
17 Report identifies consistency as an ideal to pursue. Furthering that goal is addressed as
18 part of the General Terms and Conditions Workshop.

19 **Summary:** The Commission should accept the recommendation. Consistency
20 between the SGAT and other publications is dealt with in Issue 5 of the General Terms
21 and Conditions section of the Group 5 Report, while the BFR process is dealt with in
22 Issue 16 of the same section and report.

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2. Adjacent Collocation Availability

The Issue: McLeod USA argued that the adjacent collocation option should not be limited to situations where space has been exhausted. Qwest argued it has no obligation to provide this form of collocation when space exists in a Qwest facility for other forms of collocation.

Antonuk Report Recommendation: The Report notes that McLeod made no response and did not establish a new adjacent collocation obligation. Therefore, the SGAT is unchanged.

Summary: The Commission should accept the recommendation.

3. Precluding Virtual Collocation at Remote and Adjacent Premises

The Issue: AT&T said the Qwest SGAT improperly prohibits virtual collocation at remote premises, relying on FCC regulations for its assertion. Qwest argued that such collocation is not feasible. Furthermore, Qwest asserted CLECs simply wanted to force installation and maintenance costs upon Qwest.

Antonuk Report Recommendation: The Report proposed that Qwest provide virtual collocation at remote premise when feasible. No SGAT change recommendations were made, but the parties were requested to submit SGAT section 4.50(a) proposals as part of their comments to the Group 2 Report.

Summary: The recommended revisions have been made by Qwest in several sections of Section 8 of the submitted SGAT.

1

2 **4. Cross Connections at Multi-Tenant Environments (MTEs)**

3 **The Issue:** AT&T said Qwest's SGAT imposes improper restrictions on CLECs by
4 requiring collocation rather than cross-connection to network interface devices (NIDs) at
5 MTEs (such as an apartment building). Qwest argued that it was a matter of safety and
6 concern for its equipment that were its motives. Qwest agreed to restricted circumstances
7 for requiring collocation at MTEs.

8 **Antonuk Report Recommendation:** The Report approved Qwest's change of
9 position and said it made any SGAT changes to Section 8.1.1.8.1 unnecessary. Where
10 collocation is required, it notes, state commissions can set intervals for provisioning that
11 would prevent delays in access by CLECs. The Report adds that the reasonableness of
12 Section 9.3 pertaining to connection in various facilities serving MTEs will be addressed
13 in a separate, future, unidentified report.

14 **Summary:** The Commission should accept the recommended resolution. Related
15 resolutions are found in the Group 3 Report, Suploop Issues 1 and 6.

16

17 **5. Listing of Space-Exhausted Facilities**

18 **The Issue:** Qwest objected to having to inventory space at its wire centers as part of
19 its efforts to keep current the required web site for reporting space availability
20 information to CLECs. Qwest wanted to be required only to report information that it
21 learned from CLEC requests associated with collocation. AT&T agreed to allow Qwest
22 to limit its reporting to only these sources for all premises other than wire centers.

1 However, AT&T believed that the FCC required Qwest, at a minimum, to independently
2 maintain the current status of space availability at wire centers. The FCC requirements
3 clearly contemplate a Qwest obligation to report within 10 days the filling of space at
4 "premises." Qwest cannot report within 10 days unless it is obliged to maintain current
5 knowledge of such status.

6 **Antonuk Report Recommendation:** The Report stated Qwest should add SGAT
7 language requiring it to report on wire center space, whether or not CLECs have inquired
8 about collocation or collocation space there.

9 **Summary:** The Commission should accept the recommendation.
10

11 **6. Individual Case Basis (ICB) Pricing for Adjacent and Remote Collocation**

12 **The Issue:** CLECs wanted standardized prices set for these forms of collocation,
13 while Qwest argued varying circumstances made it infeasible.

14 **Antonuk Report Recommendation:** The Report stated that this multi-state
15 workshop proceeding cannot identify and price standard forms of adjacent and remote
16 location. However, it indicates that Qwest's SGAT should not preclude the development
17 of standard prices. The Report therefore proposes the addition of language to SGAT
18 sections 8.3.5.1 and 8.3.6 recognizing the Commission's authority to identify elements
19 for which standard pricing can be established.

20 **Summary:** The Commission should accept the recommended resolution, but be
21 aware that accepting the recommendation creates the possibility that the Commission will
22 be called upon to address pricing for standard forms of adjacent and remote collocation.

1

2 **7. Conversion of Collocation Type – Payment of Costs**

3 **The Issue:** JATO requested the prices for collocation-conversions prices be
4 standardized and that the costs of converting from single point of termination (SPOT)
5 frames be to other collocation be reduced because SPOT frames were part of an
6 anticompetitive Qwest policy.

7 **Antonuk Report Recommendation:** No supporting brief was received, so the
8 Report did not order any changes in the SGAT and comments that the use of SPOT
9 frames by Qwest had not been shown to be inappropriate. Therefore, it did not order
10 elimination of any cost adjustments during conversions.

11 **Summary:** The Commission should accept the recommendation.

12

13 **8. Recovery of Qwest Training Costs**

14 **The Issue:** WCOM argued that CLECs should be able to provide the training for
15 working with virtually collocated equipment themselves or contract with Qwest for it at
16 "reduced rates." Qwest responded by saying that it is proper for Qwest to recover the cost
17 of training related to equipment that a CLEC collocates and that may be unfamiliar to
18 Qwest personnel. Because Qwest must maintain and repair virtually collocated
19 equipment, it should have the ability to identify and provide the training reasonably
20 required to perform those duties. Moreover, as Qwest's recovery of training costs is
21 limited to what is reasonable, what WCOM meant by arguing for reduced rates is not
22 clear.

1 **Antonuk Report Recommendation:** The Report found it is reasonable for Qwest to
2 set the level of training for its employees expected to be responsible for CLEC virtual
3 collocation equipment and to be fully compensated for it. The Report noted that the use
4 of the word "reasonable" in the context of what costs are recoverable is a possible source
5 of confusion for this issue and others. It thereby says the non-uniform use of it and
6 similar modifiers will be reviewed at the General Terms and Conditions Workshop.

7 **Summary:** The Commission should accept the recommended resolution. The
8 consideration of the term "reasonable" did not rise to the level of an issue in the General
9 Terms and Conditions section of the Group 5 Report.

10

11 **9. Removal of Equipment Causing Safety Hazards**

12 **The Issue:** Qwest's SGAT allowed it to undertake, with 15 days notice, removal of
13 CLEC equipment that is a safety hazard and do so at CLEC expense. Qwest agreed to
14 changes in Section 8.2.3.10 that set NEBS Level 1 standards as the safety criteria rather
15 than Qwest-established standards, provide for written notice to CLECs of the specific
16 equipment and its failings, require Qwest to attest its own equipment complies with the
17 standard, acknowledge a CLEC can object to the intended removal through appeal to the
18 Commission or a court, and extend the 15-day period when circumstances require it.

19 **Antonuk Report Recommendation:** The Report presented the proposed changes in
20 a general discussion. Qwest had imported changes agreed to in the Arizona proceedings
21 that comply with the recommendation.

22 **Summary:** The Commission should accept the recommendation.

1

2 **10. Channel Regeneration Charges**

3 **The Issue:** Channel regeneration may be necessary to enhance CLEC operations if its
4 collocation facilities are too great a distance from other equipment. JATO said that the
5 FCC has ruled that charging CLECs for channel regeneration is not permitted, but must
6 be provided at no charge when regeneration is necessary. McLeod wanted to limit
7 Qwest's ability to charge for regeneration because it said certain location decisions reflect
8 Qwest preferences, not necessity. Qwest asserted in its brief that it is entitled to charge
9 for channel regeneration when it is unavoidable.

10 **Antonuk Report Recommendation:** The Report said the SGAT is not precise in
11 establishing what circumstances are unavoidable. It proposed the addition of specific
12 clarifying language to Section 8.3.1.9 that says CLECs need not pay for regeneration in
13 two circumstances: (a) when upon CLEC request Qwest fails to provide them specific
14 locations where regeneration is not necessary, or (b) when CLECs are denied such space
15 because Qwest is using it.

16 **Summary:** The Commission should accept the recommendation.

17

18 **11. Qwest Training Costs for Virtually Collocated Equipment**

19 **The Issue:** Qwest's SGAT Section 8.3.2.2 provided for sharing of training costs
20 among two CLECs, but made no reference to further prorating of the expense. Qwest
21 offered no evidence that there is any reason expenses rise with the inclusion of three or
22 more CLECs in training.

1 **Antonuk Report Recommendation:** The Report proposes a revision to Section
2 8.3.2.2 that extended prorating to the number of CLECs participating.

3 **Summary:** The Commission should accept the recommendation.
4

5 **12. Requiring SGAT Execution Before Collocation May Be Ordered**

6 **The Issue:** JATO objected to Qwest's SGAT requirement that CLECs must first
7 execute the SGAT before being allowed to order collocation. It argued that the SGAT
8 should be amended to allow CLECs that pay all related charges to begin collocation
9 arrangements while examining the SGAT and before final execution of the SGAT.
10 Qwest has failed to include such changes in its filed SGAT.

11 **Antonuk Report Recommendation:** The Report said requiring completion of basic
12 information on the questionnaire is a reasonable requirement, but it is not equivalent to
13 executing the SGAT. It went on to ask that Qwest file in its comments a "demonstration"
14 that the SGAT will not require execution of the SGAT as a condition for ordering
15 collocation. Qwest did so in amending Section 3.1 and adding Section 8.4.1.1.1.

16 **Summary:** The Commission should accept the recommendation.
17

18 **13. Forfeiture of Collocation Space Reservation Fees**

19 **The Issue:** Qwest imposes a forfeiture penalty when a CLEC cancels a collocation
20 space reservation. CLECs objected to the penalty in Section 8.4.1.7.2. Qwest has agreed
21 to reduce the magnitude of the penalty from 50 percent of the nonrecurring reservation

1 fee to 25 percent. Qwest has further added Section 8.4.1.8 to the SGAT that provides
2 some of the benefits of reservation for a lower cost.

3 **Antonuk Report Recommendation:** The Report approves of the changes and does
4 not order any additional SGAT alterations.

5 **Summary:** The Commission should accept the recommendation.
6

7 **14. Collocation Intervals**

8 **The Issue:** Qwest argued that it can extend its schedule of collocation intervals when
9 CLECs do not provide accurate forecasts, relying on an FCC ruling. The CLECs
10 responded that the FCC allows for the extensions in only limited circumstances. The
11 major dispute focused upon what impact to a collocation interval should result if the
12 collocation was not forecasted by the CLEC involved.

13 **Antonuk Report Recommendation:** The Report stated that the SGAT in Sections
14 8.4.2, 8.4.3, and 8.4.4 must reflect proposed AT&T changes tightening the availability of
15 extensions. As for the relationship of forecasting to collocation intervals, the Report said
16 AT&T's approach of tying interval extensions to space, power, and HVAC needs
17 establishes a better connection between need for an interval extension. These reasons are
18 three of the principal grounds why Qwest might need added provisioning time. The
19 Report adds a fourth, basic infrastructure modifications, which allows for consideration
20 of other reasons. The Report said the SGAT should reflect the AT&T approach, rather
21 than Qwest's more liberal approach, which more loosely connects the causes and effects
22 of interval affecting circumstances. Thus, the collocation interval should be 90 days in

1 the absence of a forecast unless Qwest obtains a waiver because of shortage of space,
2 power, or HVAC, or the need for infrastructure modifications.

3 **Summary:** Qwest has not included the 90-day recommendations suggested by the
4 Report. The Commission should accept the Report's recommendation. The failure to
5 forecast a collocation should not automatically be grounds for a longer provisioning
6 interval. The failure to forecast should lead to an extension only when its absence means
7 Qwest does not have time to identify the resources necessary for a collocation request and
8 therefore cannot be expected to respond promptly to the request.

9
10 **15. Maximum Order Numbers**

11 **The Issue:** The SGAT allowed Qwest to extend the provisioning intervals for
12 collocation when orders exceed a 5-order maximum. It was agreed that Section 8.4.3.3
13 would be amended to clarify that the maximum order was per state. AT&T objected to
14 any maximum, saying that the FCC has not allowed a blanket extension of intervals
15 based on the mere number of applications, but rather has confirmed the need to meet
16 required intervals "absent the receipt of an extraordinary number of complex collocation
17 applications within a limited time frame."³

18 **Antonuk Report Recommendation:** The Report stated that the FCC allows limits,
19 but focuses not strictly on the number of orders, but their complexity. Hence, the five
20 orders per state limit is not an appropriate way to measure the need for relief from
21 interval requirements. Because of confusion as to what was included and what was

³ Group 2 Report, pages 101-102.

CONTINUATION

[3] |

1 deleted from the SGAT, parties were invited to present and defend proposed SGAT
2 language in their responses to this report. Responses will be filed with each participating
3 commission.

4 **Summary:** The Commission has no clear course to follow. Qwest offered to process
5 five orders per state per week in its original SGAT language and sticks with that number
6 in its new language. AT&T did not offer an alternative, instead putting the burden on
7 Qwest to justify that the complexity of the orders justifies an interval waiver.

8 It is recommended that the Commission follow Qwest's proposal absent compelling
9 evidence from CLECs.

10

11

12 **Checklist Item 11: Local Number Portability**

13 **1. Coordinating Local Number Portability (LNP) and Loop Cutovers**

14 **The Issue:** When a customer selects a CLEC as its carrier, and wishes to retain the
15 same phone number, and the CLEC provisions its own loop, if the CLEC fails to have the
16 customer transfer work done by the hour set by Qwest for a disconnect, the customer will
17 suffer a loss of service. CLECs stated that customers they have gained have suffered
18 disconnection of service due to failure to coordinate local number portability and loop
19 cutovers where the CLEC is provisioning the loop. The disconnection occurs when
20 Qwest does not receive notice early enough that a cutover is not going to be completed,
21 and thus cannot cancel changes programmed into its switch in time to prevent the loss of
22 service.

1 **Antonuk Report Recommendation:** The Report's recommendation was that
2 language be added to Section 10.2.2.4 that says any request to cancel a cutover received
3 by Qwest before 8 p.m. Mountain Time will ensure no disconnection occurs.

4 **Summary:** The Commission should accept this recommendation.
5
6

7 **Checklist Item 13: Reciprocal Compensation**

8 **1. Excluding Internet Service Provider (ISP) Traffic from Reciprocal Compensation**

9 **The Issue:** Most of the CLECs asserted Qwest is improperly excluding ISP traffic
10 from reciprocal compensation. On the other hand, Qwest argued that ISP treatment is not
11 a subject for 271 consideration.

12 **Antonuk Report Recommendation:** The Report agrees that, based on the FCC's
13 April 27, 2001 Order on Remand and Report and Order in CC Docket No. 96-98 and 99-
14 68, ISP traffic is not a 271 subject. Yet, the Report says the SGAT cannot ignore ISP
15 traffic. Citing two examples where the order has made the SGAT language obsolete, it
16 goes on to request the parties provide proposals during the 10-day comment period for
17 SGAT language changes that reflect the effect of the recent FCC order.

18 **Summary:** Qwest and AT&T have subsequently reached an agreement and the
19 Commission should accept it.
20

21 **2. Qwest's Host-Remote Transport Charge**

1 **The Issue:** AT&T argued that an umbilical connecting a host and a remote terminal is
2 not a trunk and therefore traffic moving over it should not be subject to a transport
3 charge. Or, if it is a trunk, then CLECs are entitled to compensation from Qwest for
4 transport to nodes along a synchronous optical network (SONET) ring. Qwest responded
5 that the connection between its host and remote switches is not part of the loop because in
6 the event of calls outside the local area, Qwest must transport such calls along dedicated
7 paths between host and remote switches. Qwest is concerned that the CLECs will secure
8 the use of the umbilical (between the host and the remote) for free.

9 **Antonuk Report Recommendation:** The Report rules that the umbilical connects
10 two switching systems, making it a transport element. Hence, Qwest's charge is
11 appropriate. The request for compensation to the CLEC for SONET ring traffic is
12 rejected because AT&T has not departed from using Qwest rates and costs in calculating
13 reciprocal compensation.

14 **Summary:** The Commission should accept the recommendation.

15

16 **3. Commingling of InterLATA and Local Traffic on the Same Trunk Groups**

17 **The Issue:** CLECs can use spare special access circuits for interconnection. This
18 practice leads to commingling of local and long-distance traffic. The CLECs want to pay
19 TELRIC rates in these cases. Qwest argued that the FCC had considered and specifically
20 rejected the configuration sought by the CLECs.

21 **Antonuk Report Recommendation:** The Report noted that special access rates are
22 part of a delicately balanced rate system that supports universal service. To alter that

1 system by allowing TELRIC rates for special access circuits would upset the balance.

2 The Report concludes that CLECs can use special access circuits for interconnection, but

3 will continue to pay the current (non-TELRIC) rates.

4 **Summary:** The Commission should accept the recommendation.

5
6 **4. Exchange Service Definition**

7 **The Issue:** AT&T proposed to alter the definition of "Exchange Service" to remove
8 the words "as defined by Qwest's then-current EAS/local serving areas" in Section 4.22.

9 AT&T contended that the Commissions determine the boundaries of the local calling
10 areas and that permitting Qwest to unilaterally modify this definition is inappropriate.

11 **Antonuk Report Recommendation:** The Report notes that extended area service
12 and local service boundaries have been defined by state commissions. Section 4.22 of the
13 SGAT contains language that contradicts this understanding. The Report recommends
14 this section be removed from Qwest's SGAT.

15 **Summary:** The Commission should accept this recommendation.

16
17 **5. Including Collocation Costs in Reciprocal Compensation**

18 **The Issue:** CLECs want to use their own prices for reciprocal compensation in favor
19 of Qwest prices. CLECs also want compensation for the portion of Qwest traffic that
20 uses CLEC collocation facilities. Qwest argued that the FCC mandates the use of
21 incumbent costs as a proxy for CLEC costs; therefore, the request contravenes federal
22 law.

1 **Antonuk Report Recommendation:** CLECs, the Report notes, have not proposed
2 cost studies to show their costs are different from Qwest's. Not having done so, they
3 cannot avoid using Qwest costs as a proxy. As for charges for using collocated
4 equipment, the Report finds the collocating CLECs should bear the costs of collocation.

5 **Summary:** The Commission should accept this recommendation.
6

7 **Checklist Item 14: Resale**

8 **1. Indemnification**

9 **The Issue:** AT&T asserted that Qwest should be held liable for poor service to the
10 customers of resellers and thus be responsible to indemnify CLEC resellers. Qwest
11 proposed a limited form of liability for poor service. Under the Qwest modification to
12 Section 6.2.3.1 of the SGAT, (a) Qwest credits to CLECs would be subject to the
13 wholesale discount for resale, (b) Qwest is not liable for CLEC service failures, (c) Qwest
14 shall not be liable if the CLEC is not subject to state service requirements, (d) Qwest
15 shall not be liable if the CLEC does not pay credits, (e) the amount due a CLEC shall not
16 exceed what Qwest would pay a retail customer, and (f) Qwest should not pay duplicative
17 reimbursement.

18 **Antonuk Report Recommendation:** The Report noted that the issue of
19 indemnification was raised and discussed in the section on Interconnection and that the
20 comments made there also apply here for the most part. The Report recommended that
21 this issue be moved to the General Terms and Condition workshop because
22 indemnification is an issue extending to more than interconnection issues. The Report

1 accepted Qwest's limited liability proposal, except for parts (c) and (d), which should be
2 eliminated. Payments to CLECs, the Report said, should not hinge on whether a CLEC is
3 subject to state service requirements and should be made even if the CLEC does not pay
4 credits.

5 **Summary:** The Commission should accept this recommendation.

6
7 **2. Marketing During Misdirected Calls**

8 **The Issue:** AT&T proposed new language for Section 6.4.1 that prohibits Qwest and
9 CLECs from engaging in marketing to each other's customers who have mistakenly
10 called the wrong LEC. Qwest argued that such a prohibition violates its commercial free
11 speech right.

12 **Antonuk Report Recommendation:** The Report says that the SGAT is like a forced
13 contract, and in business contracts rights are often negotiated away. Thus, the Report
14 accepts AT&T's proposed modifications to the SGAT.

15 **Summary:** The Commission should accept this recommendation.

16
17 **3. Special Contract Termination Charges**

18 **The Issue:** CLECs stated that Qwest gains a competitive advantage if it waives
19 termination charges for customers accepting a new service plan and does not enable
20 CLECs to do the same when marketing.

21 **Antonuk Report Recommendation:** The Report generally agrees with the CLECs,
22 although not to the extent of accepting their proposal in full. Instead, the Report proposes

1 an addition to Section 6.2.2.7 of the SGAT that requires Qwest to waive termination
2 charges to the same extent that it does for its own customers.

3 **Summary:** The Commission should accept this recommendation.

4

5 **4. Electronic Interface for Centrex Resale**

6 **The Issue:** The Wyoming Consumer Advocate and MacLeodUSA argued that
7 electronic interfaces are not widely available and this fact has harmed the CLECs ability
8 to compete.

9 **Antonuk Report Recommendation:** The Report says the record is insufficient to
10 draw a conclusion about whether CLECs are denied electronic access and whether Qwest
11 is obligated to provide it, let alone about the effect of electronic interface access on
12 CLECs ability to compete. The Report invites parties to comment further on the issue.

13 **Summary:** No parties presented comments and thus no changes are recommended.

14

15 **5. Inaccurate Billing of Resellers**

16 **The Issue:** Essen asserts that Qwest presents it with billing information that deletes
17 prices, unlike what is available to its own personnel. Qwest states it has taken steps to
18 help Essen.

19 **Antonuk Report Recommendation:** The Report says this issue, if it remains an
20 issue, should be addressed after the completion of the OSS tests.

21 **Summary:** The issue is closed.

22

1 **6. Ordering and Other OSS Issues**

2 **The Issue:** Essen testified about inadequacies in the Interconnect Mediated Access
3 (IMA) system of Qwest, but does not provide any supporting details.

4 **Antonuk Report Recommendation:** The Report concluded there is insufficient
5 grounds to make an assessment, and says therefore, if the issue remains in dispute, it
6 should be addressed after the completion of the OSS tests.

7 **Summary:** The Commission should note the issue is still potentially open.

8

9 **7. Other Pricing Issues**

10 **The Issue:** Essen claimed its resale discount is too small. Qwest said the agreement
11 has been arbitrated and approved by a state commission. Therefore, it must be
12 reasonable. Essen also complained customer transfer charges (CTC) in Montana are
13 higher than in other states.

14 **Antonuk Report Recommendation:** The Report stated there is insufficient evidence
15 to draw a conclusion and that cost dockets are a better forum for addressing the propriety
16 of discounts and costs.

17 **Summary:** The Commission should accept the recommendation.

18

19 **8. Qwest Centrex Contracts**

20 **The Issue:** Essen argued Qwest is using long-term contracts with aggressive
21 discounts to dominate the Centrex market. It further claims site-specific contracts and
22 associated termination provisions are too onerous. Qwest responded that it is not unfair

1 for it to enter long-term agreements with end users since the end users are free to enter
2 into agreements with the provider of their choice. Qwest also noted that the practice of
3 enforcing long-term agreements (and requiring termination charges) against the reseller is
4 nondiscriminatory as the same thing would happen to a Qwest retail end user under the
5 same circumstances.

6 **Antonuk Report Recommendation:** The Report concluded that, with respect to
7 Centrex, long-term contracts are typical and the enforcement of termination provisions
8 are appropriate on a cost basis for Qwest to include in its contracts. The Report said
9 Essen's arguments are not supported by the evidence and therefore it sees no need to
10 change Qwest's SGAT in response to this issue

11 **Summary:** The Commission should accept the recommendation.

12

13 **9. Merger Related Presubscribed Interexchange Carrier (PIC) Changes**

14 **The Issue:** PIC codes must be programmed into equipment in order to properly track
15 long-distance calls. The Qwest-U S West merger forced Essen to devote several days to
16 changing its long-distance PIC code, thus preventing it from marketing to customers and
17 accepting new orders in an 8-day span. Qwest responded that Essen was compensated
18 for its work.

19 **Antonuk Report Recommendation:** The Report recommends that Qwest's SGAT is
20 sufficient despite Essen's claims. It notes that OSS test results will be the best evidence
21 if this supposedly one-time problem recurs and interferes with CLEC operations.

22 **Summary:** The Commission should accept the recommendation.

1

2 **10. Breach of Confidentiality Agreements**

3 **The Issue:** Essen said Qwest breached confidentiality by sending reseller bills to end
4 customers. Qwest has tried to since improve its billing.

5 **Antonuk Report Recommendation:** The Report finds no evidence that Qwest has
6 systematically engaged in breaches of confidentiality. Thus, it says there is no basis for
7 concluding confidentiality has been breached frequently.

8 **Summary:** The Commission should accept this resolution.

9

10 **11. Superior Service to Qwest's Internal Sales Force**

11 **The Issue:** Essen asserted Qwest has an unfair advantage when it offers discounts to
12 its customers, but not the resale customers served by reseller like Essen. Qwest's reply
13 was none of the promotions are illegal and therefore it can do what it wants within that
14 constraint.

15 **Antonuk Report Recommendation:** The Report concludes there is no evidence that
16 Qwest has failed to abide by the requirements applicable to promotions.

17 **Summary:** The Commission should accept this resolution.

18

19 6. Group 3 Report

20

21 **Q. What is the content of the Group 3 Report?**

1 A. The Group 3 Report deals with services that emerged after the passage of the
2 Telecommunications Act of 1996 and therefore are not part of the original 14-
3 point 271 checklist. The emerging services are line sharing, subloop unbundling,
4 dark fiber, and packet switching. As a group they affect checklist items 1, 2, 4,
5 and 5.

6 **Q. What are your recommendations for the disputed issues in the Group 3**
7 **Report?**

8 A. My discussion of these issues and my recommendation for the Commission
9 follow in affidavit-style testimony.

10

11 **Line Sharing**

12 **1. Ownership of and Access to Splitters**

13 **The Issue:** Qwest asserted the FCC's interconnection and section 271 orders require
14 the CLECs to provide the equipment necessary to split the line into separate voice and
15 data bands. AT&T, Rhythms, and New Edge attempted to have Qwest assigned this
16 responsibility.

17 **Antonuk Report Recommendation:** Existing regulations do not require Qwest to
18 provide CLECs with splitters, nor is there evidence to support a conclusion that CLEC
19 installation of splitters would impose distance, cable length, or central-office space
20 problems that could be avoided by having Qwest perform the installations. SGAT
21 Section 9.4.2.3.1 allows CLECs the option of locating splitters in common areas with the

1 connection options spelled out. The same SGAT section also gives CLECs the option of
2 having Qwest serve as purchasing agent in buying splitters, a function Qwest is not
3 required to perform. In any case, economic efficiency is not a concern Qwest has to
4 satisfy for this issue.

5 **Summary:** The Commission should accept this resolution.

6

7 **2. Tying Qwest Data Service and Voice Service**

8 **The Issue:** AT&T argued that the Qwest policy of disconnecting its high-speed
9 Megabit (DSL) service from customers who transfer their voice service to a CLEC is
10 anticompetitive. The logic is that Qwest retail customers will be less likely to abandon
11 Qwest's voice services if doing so also requires them to abandon the high-speed data
12 services that they secure from Qwest. Qwest says its policy is allowed under the *Line*
13 *Sharing Reconsideration Order* and the Texas 271 Order.

14 **Antonuk Report Recommendation:** The Report commented that the FCC did not
15 consider the effect on voice competition of line sharing when it created the option of
16 unbundling the high frequency portion of loops to expand competition for data services in
17 the Reconsideration Order. Therefore, the Order should not be relied upon as an
18 endorsement of Qwest's disconnect policy. As for the Texas 271 Order, the Report said
19 the FCC does not use narrowly focused proceedings such as the Texas 271 Application to
20 initiate major changes in policy, so Qwest's reliance on the document as a basis for its
21 policy also is flawed.

1 Moreover, the Report said that states are not precluded from setting policy in such
2 areas when the FCC has not acted. Qwest's policy was cause for concern because of its
3 effect on competition. After consideration of other interpretations, the Report concluded
4 the policy is an attempt by Qwest to retain voice customers by creating negative
5 consequences for consumers with Megabit service who choose a CLEC for voice service.
6 The policy has the effect of inhibiting competition for voice service. Therefore, Qwest
7 should not be considered to be in compliance with the Section 271 public interest
8 requirement as long as it maintains the policy of denying its end users Qwest's own
9 Megabit services when it loses a voice customer to a CLEC through line sharing.

10 **Summary:** The South Dakota Commission should at a minimum adopt the
11 recommendation. It is recommended that the Commission also require the SGAT make
12 clear Qwest will provide Megabit service, now known as Qwest DSL, as a standalone
13 product to customers who have voice service with a CLEC and then ask for Qwest DSL.
14 The order in which a customer requests DSL service, before or after changing to a CLEC,
15 does not make a difference in whether a barrier to entry exists. Thus, Qwest should be
16 required to offer the product in all circumstances. In other states Qwest has agreed to
17 change its disconnect policy and in at least one state agreed to offer Qwest DSL as a
18 standalone product.

19

20 **3. Line Sharing over Fiber Loops**

21 **The Issue:** There are some loops that are combinations of fiber and copper over
22 which it is currently not feasible to have line sharing. The CLECs wanted a strong

1 commitment from Qwest to provision line sharing as technological change expands the
2 range of feasible combinations. Qwest committed in Section 9.4.1.1 to provide line
3 sharing over these loops as soon as new technology makes it possible and is deployed in
4 Qwest's network.

5 AT&T asserted that Section 9.4.1.1 includes two conditions beyond the technical
6 feasibility issue addressed by the Report. The first is that Qwest will provision line
7 sharing only as it implements the technological advances on its networks; the second is
8 that Qwest will provision line sharing as it is required by law. AT&T argued that the first
9 condition means CLECs will only be able to offer the service that Qwest offers, even
10 when new technologies are available. AT&T said the second condition allows Qwest to
11 require that each technological improvement must be individually added to the list of line
12 sharing combinations that are to be unbundled, a time-consuming process. AT&T
13 offered its own version of Section 9.4.1.1 to address these concerns.

14 **Antonuk Report Recommendation:** No evidence shows Qwest was failing to
15 provide feasible line sharing over fiber. Moreover, the new Section 9.4.1.1 addresses the
16 issue of the SGAT being flexible in accommodating new technologies as they are found
17 feasible, and should be incorporated into the SGAT.

18 **Summary:** The Report considered the issues raised by AT&T and did not find the
19 conditions to which AT&T objected to be a problem. It is possible, however, the Report
20 was not focusing on these issues. Therefore, the Commission should tread carefully
21 when it is asked to reject, overturn, or extend some recommendation of the Report. The
22 recommendation is to follow the Report.

1
2 **4. Provisioning Interval**

3 **The Issue:** Qwest committed to provide line sharing within five days to any CLEC
4 wishing to deploy competitive DSL. CLECs asked for the interval to be shorter, arguing
5 Qwest is able to perform the provisioning in a shorter time. CLECs also asked that the
6 SGAT provide for the interval to be reduced over time as Qwest service improves.

7 **Antonuk Report Recommendation:** Qwest's 5-day commitment was found
8 sufficient because it allows CLECs to compete with Qwest's 10-day retail interval for
9 DSL service. However, should Qwest be able to decrease that 10-day, then the question
10 of the appropriate wholesale interval should be revisited. The Report expressed dismay
11 that the Performance Indicator Definition (PID) for loop provisioning (OP-4) in the ROC
12 OSS test does not include line sharing. If the PID did address line sharing specifically,
13 then there would be better guidance for evaluating the appropriateness of the 5-day
14 interval. For the time being, the 5-day interval can stand, but should be subject to
15 alteration if any of several conditions change, including Qwest's DSL retail interval and
16 the definition of OP-4.

17 **Summary:** The Commission should consider requiring Qwest to submit new SGAT
18 language that would trigger a review of the 5-day provisioning interval in appropriate
19 circumstances. The Report cites these conditions on page 22. For example, a reduction
20 in Qwest's retail interval ought to lead automatically under the SGAT to a review of the
21 wholesale provisioning interval for CLECs. Otherwise, the Commission should adopt the
22 recommended resolution.

1
2 **Subloop Unbundling**

3 **1. Subloop Access at MTE Terminals**

4 **The Issue:** The CLECs argued that the FCC has granted them broad access to
5 subloops. Qwest asserted it needs to have controls at terminals outside MTE buildings
6 because of service reliability, safety, work efficiency, cost, and engineering and operating
7 practice concerns. CLECs said that a case-by-case approach to these concerns, as Qwest
8 wants, will be an impediment to access.

9 **Antonuk Report Recommendation:** The Report said the SGAT can recognize the
10 need to address the particulars of access to subloop elements at the affected terminals.
11 Qwest and the CLECs have valid concerns. The Report offered a specific addition to the
12 SGAT that will accomplish the goal of reconciling these interests. The SGAT insertion
13 establishes standards to use on a case-by-case basis in evaluating subloop access and
14 encourages Qwest to develop a set of stock solutions to apply to particular configurations
15 commonly found at the terminals.

16 **Summary:** The Commission should follow the Report. Qwest made the suggested
17 changes in the SGAT.

18
19 **2. Requiring Local Service Requests (LSRs) for Access to Premise Wiring at MTEs**

20 **The Issue:** Qwest required that CLECs submit a local service request in order to gain
21 access to premise wiring at MTEs. AT&T stated that the process is costly, time-
22 consuming, and unnecessary. AT&T offered an alternate process whereby it would

1 submit a summary of sites where it had gained access every month to Qwest. The
 2 process, according to AT&T, would meet Qwest's legitimate information needs in a
 3 timely manner and be less of a burden for CLECs.

4 **Antonuk Report Recommendation:** The Report offered a modified approach to the
 5 LSR that it says gives CLECs the speedy access they desire, keeps costs down and serves
 6 Qwest's needs. Under the approach, CLECs shall submit incomplete LSRs, which Qwest
 7 will then hold in suspension for five days. In those five days Qwest will fill in the
 8 missing information, such as circuits used. Meanwhile, the CLECs can have access to
 9 the wiring and begin delivering service.

10 **Summary:** The Report resolution addresses CLEC concerns. The requirement that
 11 CLECs not have to provide complete LSRs is reasonable, as it requires Qwest to provide
 12 information it is uniquely situated to have.

13
 14 **3. CLEC Facility Inventories**

15 **The Issue:** Qwest required in its original language that an inventory of CLEC cable
 16 and pair terminations at MTEs be conducted before CLECs be granted access. CLECs
 17 also would pay for the inventory. CLECs objected to both provisions.

18 **Antonuk Report Recommendation:** The Report proposed the SGAT be modified
 19 such that the required inventory take place during the 5-day period an LSR is in
 20 suspension, as identified in the preceding issue. The compromise reconciled Qwest's
 21 information needs with the CLECs desire for quick access. The issue of charges is not

1 addressed, in keeping with the position of the Report that such matters belong in a cost
2 packet.

3 **Summary:** The Commission should accept the recommended resolution.

4
5 **4. Determining Ownership of Inside Wire/Intervals**

6 **The Issue:** Qwest's SGAT Section 9.3.5.4.1 allowed Qwest 10 days (measured from
7 CLIC notification of an intent to provide service at a MTE) to determine if Qwest owns
8 on-premises wire. AT&T said the interval is too long, particularly when a building
9 owner asserts ownership. AT&T also said Qwest should bear the cost of the ownership
10 determination process.

11 **Antonuk Report Recommendation:** The Report stated Qwest has the responsibility
12 of keeping ownership records given that it will receive payments from CLECs when it is
13 found to be the owner of the wire and thus has the burden of absorbing the record-
14 keeping cost. The recommendation includes an addition to the end of Section 9.3.5.4.1
15 making the ownership determination interval 5 days when written evidence of an owner's
16 self-declaration is provided by the CLEC to Qwest and 2 days when any CLEC has
17 previously requested a determination regarding the specific wire.

18 **Summary:** The Commission should adopt the Report recommendation. Qwest has
19 made the suggested changes, but now has references in its submitted SGAT to sections
20 that no longer exist. Qwest needs to clarify these references.

21 The Commission also may want to consider a further reduction in the 5-day interval
22 where an owner self-declares ownership. AT&T has stated that CLECs would be liable

1 to reimburse Qwest for retroactive charges if the declaration proves incorrect. AT&T
2 presumably wants the 1-day interval it requested in its Multi-state brief, but does not
3 specifically state so in its comments. The Report offered the 5-day interval without
4 explanation. Given AT&T's stated willingness to bear the risk of relying on a potentially
5 incorrect ownership declaration, there seems little reason to not reduce the interval.

6
7 **5. Intervals**

8 **The Issue:** AT&T asked for further relief on various provisioning intervals beyond
9 what is described above.

10 **Antonuk Report Recommendation:** The Report finds that changes made elsewhere
11 mean there is no reason to consider added relief on the issue of intervals.

12 **Summary:** There is no need for Commission action.
13

14 **6. Requirement for Qwest-Performed Jumpering at MTEs**

15 **The Issue:** AT&T argued the SGAT Section 9.3.6.4 requirement that Qwest run the
16 jumpers from subloop elements or disconnect Qwest equipment gives Qwest too much
17 discretion and opens the door to abuse. Qwest said that, because segregation of facilities
18 was not realistic at Feeder/Distribution Interfaces (FDIs), allowing only Qwest
19 technicians access to the FDIs for jumpering constituted a reasonable substitute.

20 **Antonuk Report Recommendation:** The Report stated that a case-by-case analysis
21 of the needs and circumstances associated with unique and varying outside plant
22 configurations and conditions should provide a solution for this issue, as it did for

1 Subloop Issue 1. CLECs can request broad authority in these negotiations and should
2 receive it when the request is adequately supported.

3 **Summary:** The Report is vague about the recommended resolution. It seems to state
4 that the language it offers for Subloop Issue 1 should also apply as the recommendation
5 for this subloop issue. Perhaps because of the ambiguity, Qwest's cited change in the
6 SGAT addresses the ability to charge for the service and not any language it eliminated to
7 comport with the recommendation. Upon clarification of all steps taken in conjunction
8 with this issue, the recommended resolution should be adopted.

9

10 **7. Expanding Explicitly Available Subloop Elements**

11 **The Issue:** AT&T argued the SGAT must address the full range of subloop elements
12 and access points contemplated by the FCC and that the current listing is insufficient.
13 AT&T wanted broader standard listings in order to avoid substantial use of the bona fide
14 request (BFR) process as delineated in Section 9.3.4. Qwest objected to broadening the
15 offering, arguing there were many possibilities and that CLEC demand was generally
16 insufficient to warrant absorbing the cost of developing standard responses to the entire
17 set.

18 **Antonuk Report Recommendation:** The Report said it is not appropriate to expect
19 Qwest to undertake the effort to design standard offerings for every conceivable case,
20 without reference to potential demand for each, in Qwest's network. Qwest's show of
21 flexibility in its willingness to use individual case basis (ICB) and special request

1 processes (SRP) is appropriate. Review of the SRP was undertaken as part of the General
2 Terms and Conditions Multi-state Workshop.

3 **Summary:** The Commission should accept the recommended resolution, bearing in
4 mind that the SRP portion is addressed in the Group 5 Report.

5

6 **Packet Switching**

7 **1. Availability of Spare Copper Loops**

8 **The Issue:** AT&T asked for using an economic standard or adequacy standard as the
9 parity standard.

10 **Antonuk Report Recommendation:** The FCC has made it clear that where copper
11 loops are available and sufficient to fill a CLEC order, providing them constitutes full
12 satisfaction of Qwest's requirements. Moreover, AT&T has presented no evidence to
13 support a conclusion that satisfaction of its actual orders for services needs through a
14 combination of copper loops and unbundled packet switching is discriminatory, or that it
15 would impede CLEC ability to compete for customers.

16 **Summary:** The Commission should accept the Report's position.

17

18 **2. Denial of Digital Subscriber Line Access Multiplexers (DSLAM) Collocation**

19 **The Issue:** AT&T asked that SGAT Section 9.20.2.1.3 be amended to expand the
20 standard for requiring packet switching unbundling from actual denial of collocation by
21 Qwest to economic infeasibility of CLEC DSLAM collocation. Qwest argued that
22 AT&T and Rhythms provided no evidentiary support for their argument about

1 economics, and that, in any case, their request exceeded the scope of these workshops by
2 asking for the introduction of new obligations.

3 **Antonuk Report Recommendation:** AT&T and Rhythms did not support their
4 assertion that there is a substantial difference in the economics of DLSAM deployment
5 between CLECs and Qwest. FCC standards should not be overturned, especially when
6 the change would substitute an economic standard for an operational one, without
7 compelling evidence. The CLECs by failing to provide evidence of their cost
8 disadvantages and what the magnitude of those disadvantages might be have failed to
9 build a case for taking such a step.

10 **Summary:** The Commission should accept the Report's position.

11

12 **3. ICB Pricing**

13 **The Issue:** AT&T stated that Qwest has presented no testimony about its prices or
14 provisioning practices for unbundled packet switching and that ICB prices are
15 insufficient as an interim measure because no costing method has been selected. True-
16 ups are therefore an uncertain path for CLECs to take. Qwest responded that it is
17 developing packet switching prices, which will be in place by the time of its 271
18 application.

19 **Antonuk Report Recommendation:** The Report said there is no evidence of record
20 to warrant a conclusion that price methods, other than ICBs, can be supported. From the
21 state perspective, ICB pricing subject to eventual true-up is the only currently feasible
22 approach.

1 **Summary:** Qwest can assist the review of its prices by completing that effort as soon
2 as possible. The Commission may ask that these prices be highlighted in the cost docket
3 review.

4

5 **4. Unbundling Conditions as a Prerequisite to Ordering**

6 **The Issue:** AT&T asked for parallel processing of DSLAM collocation requests and
7 packet switching unbundling requests. Otherwise, the CLECs may have to wait as long
8 as 90 days before learning a DSLAM collocation request has been denied, currently a
9 condition of placing a packet switching order. AT&T wanted SGAT Section 9.20.4.1
10 changed to allow for its request, specifically by creating a 10-day interval in which
11 DSLAM collocation requests must be acted upon. Qwest said the request went beyond
12 the requirements of the FCC's packet switch unbundling Rule 319(c)(3)(B). Qwest
13 agreed to assist CLEC DSLAM collocation by providing information about where Qwest
14 had sited DSLAMs, reports that indicate where collocation space is not available, and
15 providing upon CLEC request sites where Qwest plans to locate DSLAMs.

16 **Antonuk Report Recommendation:** The combination of Qwest's disclosures about
17 its current and future DSLAM locations and the issuance of space availability reports
18 should provide substantially faster notice to CLECs. Thus, the introduction of a 10-day
19 collocation denial notice period does not appear to be warranted. However, no evidence
20 or argument was presented to show any necessity for packet switching service requests to
21 await DSLAM collocation denials. Because imposing a sequential ordering requirement
22 can extend the date when CLECs can make service available, and because there is no

1 demonstrated support for the requirement, the SGAT should make clear that Qwest
2 should be required to respond to DSLAM collocation orders and packet switching orders
3 in parallel.

4 **Summary:** The Commission should accept the proposed change.

5
6 **5. Line Card "Plug and Play"**

7 **The Issue:** Sprint, Rhythms and New Edge asked for the right to insert their line
8 cards into Qwest DSLAMs and remote terminals. This "plug and play" option would be
9 cheaper for CLECs as it would allow them to provide DSL service without full
10 collocation. Qwest argued that the CLECs purpose in making this proposal is to get
11 around the four conditions that must be present before packet switching must be
12 unbundled. Qwest also argued that the technical feasibility of this option has not been
13 determined and that the FCC is considering the issue.

14 **Antonuk Report Recommendation:** The technical concerns of the CLECs were
15 addressed in Packet Switching Issue 1. Qwest's arguments concerning FCC
16 consideration and the uncertain feasibility of the option also carry great weight.
17 Moreover, adopting the proposed rule would effectively do away with the FCC
18 conditions governing packet switching unbundling, as Qwest states. In the absence of
19 any evidence for doing so, such a dramatic change cannot be proposed.

20 **Summary:** The Commission should accept the recommendation of no change.

21

1 **Dark Fiber**

2 **1. Affiliate Obligations to Provide Access to Dark Fiber**

3 **The Issue:** AT&T contended that Sections 251(c)(3) and 252(d)(1) of the Act
4 obligate Qwest to make the in-region dark fiber of affiliates, specifically Qwest
5 Communications International, Inc ("QCI"), available to CLECs. AT&T expressed
6 concern that Qwest would manipulate affiliate relationships within the corporation to
7 avoid providing CLECs with dark fiber. Qwest contended that Qwest Corporation is the
8 only US WEST Communications Inc. successor that provides local telecommunications
9 services in the seven-state region and thus the only Qwest unit to which the terms of
10 251(c)(3) of the Act apply.

11 **Antonuk Report Recommendation:** The Report stated that nothing in the record
12 indicates Qwest has engaged in manipulation of its corporate structure to evade the
13 unbundling requirements of the Act. On the other hand, ownership is not a key in this
14 issue. The right to use dark fiber, which can be thought of as inventory in place, is what
15 ought to govern whether CLECs can have access to it. Accordingly, Qwest should be
16 required to provide access not only to what it owns directly, but to all dark fiber to which
17 it has a right to access for local telecommunications use under agreements with any other
18 party, affiliated or not. Moreover, the test should not be the type of form of such
19 agreement, but rather the nature and degree of the access that it provides to Qwest.
20 Specific offered language added to the end of SGAT Section 9.7.1 will accomplish this
21 result.

22 **Summary:** The Commission should accept the proposed change.

1

2 **2. Access to Dark Fiber in Joint Build Arrangements**

3 **The Issue:** AT&T contended that the Act and FCC Orders call for the conclusion that
4 CLECs should be permitted to lease dark fiber that exists in "joint build arrangements"
5 with third parties. Such arrangements permit either Qwest, the third party, or both to use
6 the other party's conduit, innerduct, or fiber to transport telecommunications traffic.
7 Qwest testified that it would make available dark fiber in joint build arrangements up to
8 Qwest's side of the meet point. Qwest refused to permit CLECs to obtain access to any
9 rights Qwest may have to the use of the "third party facilities."

10 **Antonuk Report Recommendation:** The Report said that the fiber ownership
11 criterion is not appropriate. Rather, if Qwest has sufficient access rights to facilitate that
12 "carriers keep dormant but ready for service" and that are "in place and easily called into
13 service," then it must unbundle them to CLECs. A change in SCAT language similar to
14 that offered for Dark Fiber Issue 1 is needed to create this requirement. Also, as in the
15 preceding issue, Qwest must act in good faith. It is prohibited from intentionally
16 bargaining away rights in an attempt to prevent CLECs from having the right to request
17 unbundling.

18 **Summary:** The Commission should adopt the recommended resolution.

19

20 **3. Applying a Local Exchange Usage Requirement to Dark Fiber**

21 **The Issue:** AT&T objected to the SCAT Section 9.7.2.9 application of the local
22 usage test that the FCC issued with regard to Enhanced Extended Links ("EELs").

1 AT&T argued that the usage test when applied to dark fiber is prohibited by the FCC's
2 *UNE Remand Order* and the FCC's rules. Qwest responded that EELs comprise
3 combinations of the loop UNE and the transport UNE. Qwest said that dark fiber is not a
4 UNE per se, but rather "a flavor of loop and transport," like EELs, which are a
5 combination of loop and transport under paragraphs 477 and 480 of the *UNE Remand*
6 *Order*. Therefore, according to Qwest, the local traffic exchange restriction should be
7 applied to dark fiber loop and transport combinations. Qwest argued that eliminating the
8 local service restriction on dark fiber and transport unbundling would present a threat to
9 access revenues and universal service.

10 **Antonuk Report Recommendation:** The Report said that when a CLEC secures
11 access to dark fiber which provides the functionality of a loop that is connected to
12 dedicated transport, it secures an EEL, a combined loop and transport element. There is
13 no doubt that a loop-transport combination that includes dark fiber remains a loop-
14 transport combination. Therefore, the logic behind the FCC's concern about access
15 charges and universal service is in no way diminished because the facilities providing the
16 combination were unlit before a CLEC gained access to them. The Report upholds
17 Qwest's position.

18 **Summary:** The Commission should adopt the recommended resolution.

19

20 **4. Consistency with Technical Publications**

1 **The Issue:** AT&T noted that SGAT Section 9.7.2.18 incorporated by reference
2 Technical Publication 77383. AT&T determined that the publication's terms were
3 inconsistent with the commitments Qwest has made in the language of the SGAT.

4 **Antonuk Report Recommendation:** The General Terms and Conditions workshop
5 is the appropriate forum for establishing a hierarchy among the SGAT, technical
6 publications, operations guidelines and procedures, and the other documents that will
7 govern relations between Qwest and CLECs.

8 **Summary:** Qwest has clarified in Report 5 that the SGAT governs if documents are
9 in conflict. Therefore, the Commission should adopt the recommended resolution.

10

11

12 7. Group 4 Report

13

14 **Q. What is the content of the Group 4 Report?**

15 A. The Group 4 Report covers checklist items 2, 4, 5, and 6.

16 **Q. What are your recommendations for the disputed issues in the Group 4**
17 **Report?**

18 A. My discussion of these issues and my recommendation for the Commission
19 follow in affidavit-style testimony.

20

21 **Checklist Item 2: Access to Unbundled Network Elements**

22 **1. Construction of New UNEs**

1 **The Issue:** Electric Lightwave (ELI), XO, and AT&T raised various arguments that
 2 Qwest has obligations to construct new facilities for CLECs that ask for them. The
 3 CLECs argued generally that Qwest had an obligation to build facilities for them because
 4 Qwest could build UNEs for itself. For Qwest to reject a request for UNE construction
 5 from a CLEC would therefore be discriminatory, the CLECs said. The CLECs also
 6 argued that the rates Qwest could charge for such construction should be cost-based
 7 (TELRIC) rather than the prices listed in Qwest's state and federal tariffs.

8 The CLECs acknowledged that the obligation to unbundle transport had been
 9 restricted by the FCC in the First Report and Order.⁴ The fact that it had, however, was
 10 cited as support for the idea that there are no unbundling limits for other UNEs. The
 11 CLECs reasoned that if the FCC had intended there to be such restrictions, it would have
 12 addressed them in that document.

13 Qwest argued that the First Report and Order limited its unbundling obligation "to
 14 existing LEC facilities," and therefore it has no obligation to build new facilities for
 15 CLECs except where required to by law for itself, such as a carrier of last resort situation.
 16 Qwest also cited a passage of the UNE Remand Order that it said supported its position
 17 that the unbundling obligation of incumbent carriers did not extend to building new
 18 transport facilities.

19 Qwest also argued that new construction should be viewed differently than its
 20 existing network. Whereas Qwest had acquired the existing facilities in an environment
 21 of regulation, the new competitive telecommunications environment allowed CLECs to

1 build facilities for themselves. The Act protects the CLECs' right to connect such
2 construction to the Qwest network in a nondiscriminatory manner, so that is not an issue.
3 according to Qwest.

4 **Antonuk Report Recommendation:** Qwest resolved one objection of AT&T by
5 agreeing to provide new facilities built as part of its carrier-of-last-resort obligation at the
6 same price a Qwest retail customer would pay. Otherwise, the Report concludes Qwest
7 does not have an obligation to carry out construction at CLECs' request.

8 The basis for the conclusion is that Qwest does not have the same sort of advantage as
9 an incumbent for new facilities that it does for existing facilities. The CLECs can carry
10 out such construction for themselves. Moreover, any cost differences in CLEC versus
11 Qwest construction are not relevant. If Qwest has advantages, a point not proven or
12 seriously addressed by the evidence, they are advantages it can exploit on its behalf.

13 In addition, Qwest should not be exposed to the risk of constructing UNEs for
14 CLECs, a risk it would have to bear if the construction were treated as UNEs and thus
15 subject to TELRIC rates rather than actual costs. Nor do any claims of discrimination
16 hold if the construction obligation is not imposed. Businesses have the right to
17 discriminate in favor of themselves except where specifically prohibited.

18 **Summary:** The Report stated that the arguments presented by the parties in their
19 briefs had only the narrowest of applications to this issue because the precise question
20 under consideration has not been addressed explicitly, either in the Act or in the orders
21 and rules of the FCC. Hence, the conclusion the Report reaches is based on the Report's

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket

1 view of how best to promote the identified goals of the Act in the absence of explicit
2 directions.⁵ The Commission should adopt the recommendation.

3 There is no dispute that CLECs are entitled to existing UNEs at TELRIC rates, nor is
4 there any dispute that Qwest must construct new facilities for network elements listed in
5 its state and federal tariffs. What Qwest does not agree it has to do is undertake new
6 construction at TELRIC rates, a position with which the Report agrees. It says there is a
7 clear economic distinction to be made between: (a) allowing access to facilities [UNEs]
8 already built at costs that may not reflect what it took to build them and (b) requiring new
9 investments under less than compensatory terms and conditions.⁶ The first practice is
10 protected by the Act and FCC orders, while the second is not, at least not in any
11 document produced in the Workshops.

12 The Report notes that if Qwest is forced to accept an obligation to undertake new
13 construction at TELRIC rates, it is in effect absorbing investment risk for the CLECs.
14 Qwest has no guarantee that the CLEC requesting the construction or any other user will
15 use the facility for a long enough span to compensate Qwest for its costs if all it can
16 charge are UNE rates. Existing facilities in Qwest's network, on the other hand, were
17 built because Qwest weighed the risk of investing in the facilities and made the decision
18 to proceed with construction because it believed the revenue generated by the facility
19 would cover the company's costs. Thus, the UNE rates for existing facilities incorporate

No. 06-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶ 451 ("*Local Competition Order*").
⁵ An example of the ambiguity report author John Antonuk confronted is how to interpret what the FCC means when it speaks of an ILEC's obligation to modify UNEs on behalf of CLECs, which he addresses on page 30 of the Report. The obligation has been interpreted to include extensive work, including installation of equipment not previously present in a particular UNE. Yet, no rules or guidelines clearly state where installation leaves off and construction begins.

1 this risk decision made by Qwest. In contrast, the UNE rates may not adequately reflect
2 the different degree of risk for the UNE construction projects that CLECs might request.

3 The Report resolution does create a possibility to which CLECs object, namely that
4 Qwest may refuse to build facilities for CLECs at TELRIC rates, then build the same
5 facilities for itself. The CLECs say such an outcome would be discriminatory, while the
6 Report says that if it is discriminatory, it is not a form of discrimination outlawed by the
7 Act. Moreover, the Report says, the CLECs do have the option of undertaking the
8 construction themselves if Qwest will not do it at rates the CLECs like. Qwest's power
9 of incumbency does not give it any bottleneck facility control or cost advantages in this
10 circumstance, according to the Report.

11 The Report's resolution also creates the ironic possibility of Qwest building a UNE,
12 followed by a CLEC gaining access to the UNE at TELRIC rates because it is now a part
13 of the Qwest network. There is a temptation to say that because nothing about the
14 underlying costs of the facility has changed, why not skip the wait for CLECs and impose
15 a UNE construction obligation on Qwest? However, until some court orders such an
16 interpretation or the FCC issues a ruling to that effect, there is no basis for reaching such
17 a conclusion.

18
19 **2. Commingling UNEs and Tariffed Services on the Same Facilities**

20 **The Issue; Discussion:** ELI and XO asked that the SGAT allow them to use the same
21 facility to carry UNE and tariffed services, specifically special access. The companies

⁶ Group 4 Report, page 9.

1 argued that as long as the arrangement did not allow for bypass of special access, the
2 intent of the FCC's regulations is not violated. ELI and XO noted that allowing
3 commingling of the traffic would lower their costs. AT&T asked that the SGAT be
4 amended to allow for connection of UNEs and finished services. Like the other two
5 CLECs contesting the issue, AT&T said the existing SGAT would create a barrier to
6 entry by forcing CLECs to build a second network when the first network had sufficient
7 capacity to handle the commingled traffic it proposed.

8 Qwest cited FCC rulings prohibiting commingling of UNEs and special transport,
9 which affects the provision of loops and loop-transport combinations to which it is
10 willing to commit to in the SGAT.

11 **Antonuk Report Recommendation:** There is no basis for XO's and ELI's claim that
12 using the same facilities for special access and UNEs does not constitute commingling, in
13 part at least because the FCC uses the terms "connecting," "combining," and "co-
14 mingling" in ways that blur the distinctions between them, if in fact any distinctions are
15 intended. However, the FCC's ban on bringing them together in the way XO and ELI
16 desire is temporary and due to be addressed once the issue of effects on access charges
17 has been studied. Until that time, Qwest can continue to deny CLECs the arrangement
18 requested by XO and ELI.

19 The request of AT&T, on the other hand, to connect UNEs and finished services is
20 not banned by the FCC ruling. Therefore, the SGAT should be amended to allow such
21 connections as they are not specifically addressed by the FCC. Specific language for
22 Section 9.23.1.2.2 is provided to accomplish this goal.

1 **Summary:** The Report adopts the status quo because of ambiguities in FCC rules. It
2 can be inferred from the Report that the XO/ELI position has merit, but no action is
3 warranted at present. Furthermore, the FCC has acknowledged the confusion and is
4 studying the matter, which led the Report to conclude it should not attempt to guess the
5 outcome of that process. The Commission should adopt this recommended resolution of
6 the issue, but be alert for FCC action that leads to a need for a change in the SGAT.

7
8 **3. OSS Testing**

9 **The Issue:** AT&T asked that the SGAT provide for procedures for carrier-to-carrier
10 testing of such systems as new OSS releases. The AT&T argument is that CLECs need a
11 test environment separate from the OSS in service so that upgrades can be checked before
12 being put into service. AT&T also wanted the ability to test Qwest's OSS for its volume
13 capacity, stating that future large-scale market entry by CLECs would be jeopardized if
14 the capability of the Qwest system is not testable.

15 Qwest said the SGAT provides for testing and that the 271 OSS third-party test in
16 progress addresses AT&T's concerns. Besides these general objections to AT&T's
17 proposal, Qwest had several specific objections to AT&T language addressing such
18 issues as requiring Qwest to test what Qwest referred to as non-standard interfaces, the
19 standards by which testing would be evaluated, and the subject matter of pre-order
20 testing.

21 **Antonuk Report Recommendation:** The matter of a stand-alone test environment in
22 which CLECs can test their ability to work with Qwest's OSS is deferred to the

1 conclusion of the ROC OSS third-party test. Qwest says the third-party test includes an
2 evaluation of the quality of its stand-alone test capability, an evaluation that should
3 answer several CLEC questions about the testing capability. The Report says another
4 advantage of waiting is avoiding disruption of that third-party test. In the absence of any
5 CLEC-indicated need for an immediate resolution, deferring the issue is the best course.

6 The issue of access to testing is valid, however. CLECs need the flexibility to
7 manage their product introductions and the like with confidence they will not be harmed
8 by problems with Qwest's OSS. The Report offers specific language for achieving this
9 goal in Section 12.2.9.3.5. This language will give CLECs an avenue for pursuing testing
10 they feel they need. The language provides for a negotiation process. Among other
11 things, CLECs can state their concerns and Qwest can suggest that previous testing
12 addressed the issues. If the parties cannot reconcile their testing concerns in the
13 negotiations, CLECs can resort to either the dispute resolution procedures of the SGAT
14 or state commission expedited resolution if they do not feel the negotiation process is
15 satisfying their needs. The costs of the testing shall be assigned in either resolution
16 process, with the requesting CLEC bearing them unless it is shown other CLECs should
17 share them because they also share the benefits.

18 **Summary:** The Commission should adopt the proposed resolution.

19 20 **Checklist Item 4: Loops**

21 **1. Standard Loop Provisioning Intervals**

1 **The Issue:** AT&T wanted several standard provisioning intervals for loops shortened.
2 AT&T justified the request on the grounds that some intervals were discriminatory and
3 did not give CLECs a meaningful opportunity to compete. AT&T also said the current
4 loop provisioning intervals in the SGAT would create conflicts with quality of service
5 standards in several states. Qwest asserted its Quick Loops program shortening intervals
6 for two-wire unbundled loops would address many CLEC concerns, and added language
7 to the SGAT to reflect these shortened intervals. Qwest argued the other loop intervals
8 had been agreed to by CLECs in the ROC OSS Test selection of performance measure
9 standards and should remain unchanged.

10 **Antonuk Report Recommendation:** The Report stated the ROC OSS Test loop
11 intervals were developed in a process where all parties had a chance to participate.
12 Absent the presentation of evidence demonstrating these intervals are out of date or not
13 effective in providing CLECs competitive opportunities, the intervals should not be
14 changed. As for the repair intervals for loops in the SGAT, some are not identical to the
15 service-quality standards set by several states. It is possible that CLECs therefore are put
16 at risk in these states. However, no CLEC has presented evidence to support this
17 possibility and thus there is no reason to change the intervals. State-specific proceedings
18 are a better forum for addressing these discrepancies than this general report.

19 **Summary:** The intervals set in the ROC OSS Test did have substantial input from
20 CLECs. Thus, the burden is on CLECs to demonstrate their concerns are valid, given
21 their previous extensive participation in setting the ROC OSS intervals. Absent
22 compelling evidence, the Commission should adopt the proposed resolution.

1
2 **2. Long Provisioning and Repair Intervals - Utah**

3 **The Issue:** XO said that many SGAT intervals for installation and service exceed
4 Utah min. Qwest said XO's complaint mischaracterized the Utah regulations as rules,
5 asserting that guidelines is a more appropriate description. Qwest also says many of the
6 Utah guidelines are ready for change following their review in the ROC process.

7 **Ashtabak Report Recommendation:** State rules should take precedence unless Utah
8 wants to change its regulations to match the rest of the region.

9 **Summary:** As indicated, this dispute applied only in Utah. However, the
10 Commission may face a similar situation now or later as it considers consistency between
11 state rules and the SGAT.

12 **3. Reciprocity of Trouble Isolation Charges**

13 **The Issue:** AT&T asserted Qwest can charge CLECs for isolating troubles on the
14 CLEC side of a demarcation point, while there is no similar ability for CLECs to charge
15 Qwest for isolating troubles on its side of the point. Qwest countered by saying if CLECs
16 were cost-conscious, they could attempt to isolate the trouble first before turning to
17 Qwest for help. Qwest eventually agreed, and modified its SGAT to make changes
18 acceptable to the CLECs. AT&T wanted two more changes: CLEC access to NIDs and
19 to preserve the ability to challenge the issue of double recovery of trouble isolation costs
20 in forum cost proceedings.

1 **Antitrust Report Recommendation:** The Report found the CLECs' request for NID
2 ~~access is reasonable~~. The Report offers specific language to incorporate this idea in the
3 ~~FRAT~~. The ~~cost issue~~ was deferred to the cost dockets of the various states.

4 **Summary:** The Commission should accept the resolution.

5
6 **4. Delays in the Roll-Out of Asynchronous Digital Subscriber Line (ADSL)- and
7 Integrated Services Digital Network (ISDN)-Capable Loops**

8 **The Issue:** Rhythms stated that Qwest did not promptly make ADSL- and ISDN-
9 ~~capable loops available~~. The discussion also indicates the products were offered before
10 ~~the CLECs received notice~~ that the CLECs were able to order them as a wholesale
11 ~~product from Qwest~~. This difference in timing was partially due to Qwest's delay in
12 ~~adding these loops to its list of available products~~. Rhythms testified it had to go to the
13 ~~Colorado PUC~~ to get a response to its requests for orders. Qwest responded that there
14 ~~was low demand for the products~~ and therefore putting effort into making them available
15 ~~whenever was not warranted~~.

16 **Antitrust Report Recommendation:** The Report stated Qwest has a point that it
17 ~~need not provide standardized offerings for every product it offers, particularly for~~
18 ~~products for which the demand is low~~. However, if Qwest takes this stance, it also must
19 ~~be prepared to respond quickly when it receives requests for such products~~. Qwest's
20 ~~stance in responding to Rhythms raises questions about its ability to do so~~. Qwest
21 ~~expressed its intent to comply with this expectation in the comments it filed to this~~
22 ~~Report~~. ~~Qwest~~ complying with a recommendation of the Report.

1 **Summary:** The Commission should adopt the recommended resolution.

2
3 **5. Cooperative Testing Problems**

4 The ~~Issue~~ Rhythms testified it has had problems gaining cooperation from Qwest in
5 testing ~~begin~~ as they are installed. Rhythms asserted Qwest failed to perform requested
6 tests, failed to provide test results, failed to provide notice of testing, and provided
7 ~~incomplete~~ test results. Rhythms gave up asking for tests because it was not satisfied with
8 the service it was receiving.

9 Qwest said it did not possess enough information to provide a meaningful response to
10 Rhythms' assertions. Qwest did say it nevertheless has taken steps to improve its testing
11 performance including (a) upgrading installation personnel training as a result of efforts
12 to comply with the ROC OSS testing, (b) establishing a new center to coordinate
13 installations, and (c) taking scheduling measures that make installations less a matter of
14 perfect coordination between Qwest and CLECs.

15 **Antitrust Report Recommendation:** The Report states the actions Qwest has taken
16 are sufficient to address the problem absent additional evidence.

17 **Summary:** The Commission should adopt the recommended resolution.

18
19 **6. Spectrum Compatibility**

20 The ~~Issue~~ Telecommunications carriers may have traffic carried simultaneously on
21 the ~~same~~ transmission lines. Spectrum compatibility addresses the ability of these
22 facilities to carry all the traffic without significant degradation of the signal quality of any

1 carrier's traffic. Rhythms testified that certain equipment, and especially T1 lines, create
 2 signal quality problems for advanced services, which include high-speed connections like
 3 ATM. Rhythms wants T1s treated differently than other facilities because of this
 4 characteristic. Rhythms asked that Qwest be obligated to remove T1s deployed after the
 5 DSAT goes into effect that disturb CLECs' signals. It did not ask for the removal of
 6 existing T1s that cause disturbance, but noted its position that it was entitled to under
 7 FCC rules. Rhythms also said that Qwest has been slow in tracing the source of
 8 problems in spectrum compatibility and that it must provide information on orders that
 9 would be made superfluous if its proposal concerning T1s is adopted.

10 AT&T supported many of Rhythms' arguments regarding T1 deployment and
 11 ordering information. AT&T suggested that Qwest be allowed to seek waivers where it
 12 could show it had no alternatives to leaving T1s in place. AT&T added that Qwest's
 13 deployment of remote DSL facilities sometimes interfered with competitors' DSL
 14 services and that Qwest was not responding adequately to remove that interference.

15 Qwest replied first to the remote deployment issue, saying the FCC wanted the issue
 16 decided in industry groups, which it said were meeting with a target report date of
 17 January 2001. Qwest said that process should be allowed to run its course rather than
 18 being duplicated in the Multistate process. Qwest also said that the way it deploys
 19 remote facilities does not cause the problems the CLECs allege.

20 Regarding interference, Qwest says its practice of segregating T1s is adequate and
 21 endorsed by the FCC. When the practice proves inadequate, Qwest says it commits to
 22 taking additional steps. Qwest also said it needs the ordering information and that CLEC

1 concerns about it being used to competitive advantage by Qwest are addressed by FCC
2 rules strictly limiting the use of the information to technical issues.

3 **Antitrust Report Recommendation:** Qwest currently promises to manage TI
4 problems in accord with FCC rules, but the rules are not defined. Moreover, states are
5 invited to adopt their own rules. Qwest should address the issue by adopting specific
6 language in Section 9.6.2.4 that requires it to continue its practice of segregating TIs and
7 replacing them when technically feasible when segregation is not adequate in reducing
8 interference. The language also commits Qwest to managing future "known disturbers"
9 according to FCC rules.

10 The FCC will hear the remote deployment report from the industry and is expected to
11 act once it does. Thus, Qwest's argument to wait is accepted in the interim. As for
12 Qwest's actual deployment of facilities in its network, the CLECs are asking that Qwest
13 be required to configure it so that CLEC advanced services will not be affected without
14 regard for whether CLECs are using the Qwest facilities for that purpose or the cost
15 effects to Qwest. CLECs respond they should not have to identify where they are using
16 the Qwest network for advanced services through network channel/network channel
17 interfaces (NC/NCI) codes because Qwest will use the information for its competitive
18 purposes.

19 The resolution of this issue is to give CLECs a choice in new language to be added as
20 a subsection of Section 9.2.6. The alternatives for CLECs are to give Qwest the
21 information and gain responses to its interference problems, or not give Qwest the
22 information and accept the resulting operational problems. The costs to Qwest of the

1 CLEC proposals are not warranted for the benefits it might bring. The language also
2 brings state commissions into the process of apportioning costs of configuring the
3 network when CLECs ask for changes.

4 As for the information issue, CLECs must provide it to Qwest, but in LSRs. To
5 withhold it hampers Qwest's efforts to identify the source of interference problems,
6 which CLECs have asked be improved. The language in Section 9.2.6.2 addressing this
7 issue should be modified to make it explicit that the information will be given appropriate
8 confidentiality treatment.

9 **Summary:** The Commission should adopt the proposed recommendation.

10 11 **7. Conditioning Charge Refund**

12 **The Issue:** AT&T lodged a request for refunds for charges CLECs pay to have loops
13 conditioned if a CLEC loses a customer within a year of the work. Later, it amended the
14 request to offering a new Section 9.2.2.4.1 that would give CLECs refunds for such work
15 if they never served the customer, experienced long delays in conditioning, or had poor
16 quality of service, but only if Qwest was at fault.

17 Qwest objected to refunds in principle and specifically said the issue of fault was
18 difficult to ascertain. Qwest agreed to refunds as an acceptable notion, but preferred
19 dealing with them as a billing issue.

20 **Antitrust Report Recommendation:** The Report stated this issue is an example of
21 why parties often agree to liquidated damages because there is an issue with merit but
22 harm is difficult to prove and fault difficult to assign. The Report offered a resolution in

1 the form of additional SGAT language. The language made the issue a line conditioning
2 matter, rather than a billing matter, as the CLECs preferred. The language states CLECs
3 shall receive full refunds when Qwest fails to meet a line conditioning due date and a
4 CLEC does not gain the customer any time in the succeeding three months. CLECs shall
5 receive one-half refunds if Qwest's conditioning is not performed in accordance with
6 SGAT standards, unless CLEC can show the conditioned loop is incapable of providing
7 the service as obligated by Qwest in the SGAT. In these circumstances, the CLEC shall
8 receive a full refund, unless it requests Qwest to address the problem and Qwest does so
9 successfully, in which case the CLECs receive a one-half refund.

10 **Summary:** The Commission should adopt the recommendation of the Report.

11
12 **3. Pre-Order Mechanized Loop Testing**

13 **The Issue:** AT&T wants to be able to perform mechanized loop testing, which it
14 asserted Qwest does for itself. The testing provides information about the loop that
15 CLECs can use in business decisions; however, it does temporarily disrupt service.

16 Qwest claimed it does not do mechanized loop testing except for repairs. Moreover,
17 it said CLECs can obtain the information they need in a manner consistent with how it is
18 available to Qwest personnel from the Raw Loop Data Tool. The ROC OSS test, Qwest
19 said, will verify this claim.

20 **Antonek Report Recommendation:** The Report stated that mechanized testing can
21 lead to disruption of service for customers. Given this possibility for disruption, the
22 additional fact that Qwest does not conduct mechanized testing it for its own purposes,

1 and that Qwest does provide CLECs the loop information in the same way it provides it
2 to itself, there is no reason to order Qwest to allow CLECs to perform mechanized
3 testing.

4 **Summary:** The Commission should adopt the recommended resolution.

5 **2. Access to Loop Facilities and Assignment Control System (LFACs) and Other**
6 **Loop Information Databases**

7 **The Issue:** AT&T wanted access to LFACs, a system that it thought would provide it
8 information about unbundling IDLC loops for use as UNEs. AT&T contended it needed
9 the information about copper loop availability even when Qwest did not because CLECs
10 unbundle the element whereas Qwest does not. Qwest resisted, saying LFACs does not
11 have the capability AT&T is asking for, requiring modification of the system, and that
12 confidentiality concerns exist. Qwest said another tool that would provide the
13 information, Facility Check, will be available no later than December 2001.

14 **Antonuk Report Recommendation:** The Report states AT&T is correct that parity
15 is not the appropriate standard given unique CLEC needs. CLECs are entitled to the
16 information about the availability of copper loops to make marketing decisions. LFACs,
17 however, is not the appropriate system. The Report proposes specific additional SGAT
18 language that gives CLECs access to what they need through the systems Qwest has
19 indicated are appropriate. The Report finds that it is not unreasonable for Qwest to want
20 to mediate the access to allow for proprietary or confidentiality concerns. Moreover,
21

1 CLECs shall pay incremental costs of modifying Qwest systems to make the information
2 available.

3 **Summary:** The Commission should ascertain that Facility Check is available.

4 **Otherwise,** it should adopt the recommended resolution.

5
6 **Checklist Item 4: Line Splitting**

7 **L. Limiting Line Sharing to Unbundled Network Element-Platform (UNE-P)**

8 **The Issue:** AT&T and Rhythms testified that Qwest did not make access to line
9 sharing broad enough in the SGAT. The CLECs wanted such access to be available
10 through loops, EELs, and reselling, as well as UNE-P. Qwest agreed to offer loop
11 splitting, but wanted clarification of the responsibilities of the CLECs in that situation.
12 For example, Qwest did not want to face having to sort out which of the CLECs splitting
13 a loop was responsible for requesting repairs.

14 Qwest argued demand for EELs is too low (seven total in the seven states at the time
15 of the Report) to expend effort on making it a product. Qwest also said resale is similar
16 to UNE-P, so it is meeting its obligations through that offering. CLECs also argued that
17 Qwest's offer of availability for EELs and other line splitting did not offer firm
18 guarantees for availability.

19 **Antitrust Report Recommendation:** CLECs have not demonstrated Qwest is slow in
20 making line splitting available. Qwest does need to provide evidence at the time of its
21 271 application filing that it has developed acceptable terms and conditions for loop
22 splitting. In addition, there is little demand for EELs generally, let alone as split loops, so

1 Qwest need not make it a product as long as it remains willing to respond to special
2 requests for split EELs. Qwest is correct that resale splitting is not a valid concern.
3 CLECs need to acquire the UNE-P, then split it among themselves.

4 **Summary:** The Commission should adopt the recommended resolution. It is noted,
5 however, the resolution required Qwest to demonstrate at the time of its 271 filing with
6 the FCC that it has met the Report's recommendation that it develop adequate terms and
7 conditions offerings for loop splitting, a matter requiring follow-up examination.

8
9 **2. Liability for Actions by an Agent**

10 **The Issue:** The parties generally worked out the details of responsibilities where two
11 CLECs split a Qwest loop. The issues included identifying one CLEC to be the customer
12 of record, the circumstances in which the CLECs can call Qwest, which party is
13 responsible for harm, and so forth. One issue remains unresolved. Qwest wants the
14 CLEC of record responsible if third parties wrongfully obtain the passwords and other
15 security identification. CLECs said that was not appropriate.

16 **Automak Report Recommendation:** CLECs should bear the responsibility for
17 release of information wrongfully obtained from them. Qwest is responsible for harm
18 only if it released the information to an inappropriate recipient and the information is
19 used wrongfully to harm the CLEC.

20 **Summary:** The Commission should adopt the proposed resolution.

1 **Checklist Item 4: NIDs**

2 **1. "NID" Definition and Access to Terminals Where Qwest Owns Facilities in the**
 3 **Direction of the End User**

4 **The Issue:** AT&T wants multitenant environments (MTEs) to be declared NIDs,
 5 while Qwest wants them considered MTE access as subloop access. At stake is whether
 6 authentication is required by CLECs when they want access to MTEs.

7 **Antonuk Report Recommendation:** The Report states parties have not raised any
 8 issues not raised in the Group 3 Report for Subloop Unbundling issue 1, Subloop Access
 9 at MTE Terminals. There is no reason to change the resolution issued in the Group 3
 10 Report. That ruling said Qwest's position better comports with the FCC rulings that
 11 govern the access, yet in individual circumstances Qwest should ease the letter of that
 12 ruling. Thus, the Report recommends that the issues of service reliability, safety, work
 13 efficiency, cost, and engineering and operating practices should govern relationships
 14 between Qwest and the CLECs, not inflexible rules.

15 **Summary:** The Commission should adopt the proposed resolution.

16
 17 **2. Protector Connections**

18 **The Issue:** AT&T wants Qwest to be required to remove its loop connections to
 19 NIDs. Qwest's position is it is not obligated to take this step. AT&T says the policy
 20 denies CLECs access to NID features and functions. AT&T asks for an amendment to
 21 Section 9.5.2.1 to require Qwest to remove its connections.

22 **Antonuk Report Recommendation:** AT&T's requested amendment did not appear
 23 until briefing. Qwest did not answer in its brief, almost certainly because it felt there was

1 no need to respond based on the workshop events. In addition to being filed late,
2 AT&T's request is not supported by evidence or witnesses. There is no basis for
3 accepting its request.

4 **Summary:** The Commission should adopt the proposed resolution of no change.

5
6 **3. CLEC Use of Qwest's NID Protector Without Payment**

7 **The Issue:** AT&T objected to paying for the use of Qwest NID protectors when it
8 uses its own NID with protectors. AT&T often connects to the Qwest NID in these
9 circumstances. AT&T argues that although it connects to the Qwest NID, it does not use
10 its "functionalities," and therefore should not have to pay for what it does not use.

11 **Antonuk Report Recommendation:** AT&T raised the issue in briefing. No factual
12 foundation is raised and Qwest has no chance for a response. These issues aside, AT&T
13 is asking to create the concept of sub-NID unbundling, which is not part of the
14 requirements of unbundling network elements. There is no reason to go any further with
15 this request.

16 **Summary:** The Commission should adopt the proposed resolution of no change.

17
18 **Checklist Item 5: Access to Transport**

19 **1. SONET Add/Drop Multiplexing**

20 **The Issue:** AT&T asked that Qwest offer SONET add/drop multiplexing to facilitate
21 CLECs going from OCn to DS3. Qwest relied on the UNE Remand Order to refuse to

1 no need to respond based on the workshop events. In addition to being filed late,
2 AT&T's request is not supported by evidence or witnesses. There is no basis for
3 accepting its request.

4 **Summary:** The Commission should adopt the proposed resolution of no change.

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9 circumstances. AT&T argues that although it connects to the Qwest NID, it does not use
10 its "functionalities," and therefore should not have to pay for what it does not use.

11 **Antonuk Report Recommendation:** AT&T raised the issue in briefing. No factual
12 foundation is raised and Qwest has no chance for a response. These issues aside, AT&T
13 is asking to create the concept of sub-NID unbundling, which is not part of the
14 requirements of unbundling network elements. There is no reason to go any further with
15 this request.

16 **Summary:** The Commission should adopt the proposed resolution of no change.

17
18 **Checklist Item 5: Access to Transport**

19 **1. SONET Add/Drop Multiplexing**

20 **The Issue:** AT&T asked that Qwest offer SONET add/drop multiplexing to facilitate
21 CLECs going from OCn to DS3. Qwest relied on the UNE Remand Order to refuse to

1 add this option to its obligations, saying it did not have to unbundle anything other than
2 its existing network.

3 **Antonuk Report Recommendation:** The Report likened this issue to the new
4 construction issue addressed in Checklist Item 2, Issue 1. Just as this report found Qwest
5 did not have to undertake new construction for CLECs there, it also found that Qwest
6 need not create multiplexing facilities on behalf of CLECs.

7 **Summary:** The Commission should adopt the proposed resolution.
8

9 **2. Unbundled Dedicated Interoffice Transport/Extended Unbundled Dedicated**
10 **Interoffice Transport (UDIT/EUDIT) Distinction**

11 **The Issue:** Qwest offers both dedicated transport and extended dedicated transport as
12 unbundled products. The extended version, EUDIT, is provided when Qwest transport
13 connects to a CLEC's facilities, such as a CLEC wire center. UDIT, on the other hand,
14 connects Qwest facilities.

15 AT&T wants the distinction between the two forms of transport ended. The price of
16 UDIT is distance-sensitive, while the price of EUDIT is not. AT&T argued the pricing
17 policy is an artifact of an environment that no longer applies. Qwest acknowledged as
18 much, but says cost dockets are the appropriate venue for addressing the issue.

19 AT&T also wanted Qwest to be required to provide the electronics necessary to make
20 EUDIT effective. Qwest said such a requirement would force it to construct new
21 facilities, which it is not obligated to do on behalf of CLECs.

1 **Antonuk Report Recommendation:** The Report stated a cost docket is the
2 appropriate venue for determining pricing for UDIT and EUDIT. As for the electronics
3 provision issue, the Report said the nature of the change requested requires new
4 equipment and thus is more than a modification. Moreover, CLECs are capable of
5 providing the electronics themselves. Therefore, Qwest is not obligated to provide the
6 electronics.

7 **Summary:** The Commission should adopt the recommended resolution, noting that it
8 includes dealing with the UDIT/EUDIT pricing issue in a cost docket.

9
10 **3. Commingling UNEs and Connection Trunks**

11 **The Issue:** AT&T said Qwest's prohibition on connecting UNEs to interconnection
12 trunks is not supported by the FCC restriction on connections to finished services. Such
13 trunks (LIS trunks) are not part of tariff services and thus do not fit the category of
14 facilities for which commingling is banned.

15 **Antonuk Report Recommendation:** Qwest agreed in its brief to drop the restriction,
16 thus settling the issue.

17 **Summary:** The Commission should adopt the proposed resolution.

18
19 **4. Applying Local Use Restrictions to Unbundled Transport**

20 **The Issue:** AT&T argued CLECs should be able to use interoffice transport as a
21 substitute for special or switched access services. AT&T said a FCC order restricting
22 loop/transport combinations does not apply to transport only.

1 **Antonuk Report Recommendation:** Qwest had proposed using less restrictive
2 language in other, unidentified jurisdictions, language that AT&T found acceptable in
3 those jurisdictions. Qwest did not take a position on importing this language, but the
4 Report assumed Qwest does not object.

5 **Summary:** The Commission should adopt the recommended resolution.

6

7 **Checklist Item 5: EELs**

8 **1. Limiting Local Use Requirements to Existing Special Access Circuits**

9 **The Issue:** ELI and XO argued at different junctures that limits on local use for
10 special access circuits do not apply to UNE combinations. UNE combinations, they
11 argued, are not conversions. Qwest responded that the limits apply to all combinations,
12 not just special access cases, because the FCC order governing the circumstances
13 discusses maintaining the status quo.

14 **Antonuk Report Recommendation:** EELs are transport/loop combinations and
15 therefore are subject to the special access restrictions, unless a CLEC can show the
16 facilities combination will carry a significant amount of local exchange traffic. CLECs
17 have the right and ability to demonstrate such conditions exist and therefore can obtain
18 the relief to which they are entitled.

19 **Summary:** The Commission should adopt the recommended resolution.

20

21 **2. Allowing Commingling Where Qwest Refuses to Construct UNEs**

1 **The Issue:** AT&T argued that CLECs sometimes are forced to acquire DS1 loops not
2 as UNEs, but from a tariff because no other DS1 loops are available and Qwest will not
3 construct them. Qwest refuses to connect these DS1s and unbundled transport because
4 such connection, in Qwest's view, would violate the FCC prohibition on commingling.
5 AT&T asserts CLECs have no choice in the matter and following the prohibition is
6 therefore unfair.

7 **Antonuk Report Recommendation:** The Report stated the purpose of the FCC
8 commingling restriction is to prevent carriers from avoiding access charges. CLECs are
9 not pursuing that goal of evasion in this situation. In fact, keeping the restriction in place
10 adds access charges they would otherwise not incur. Moreover, the prohibition applies to
11 connecting loops and loop/transport to tariffed services. Here, the loop is the tariffed
12 service. Thus, it is appropriate to allow CLECs to have the connection. The Report
13 offered specific SGAT language that provides for this outcome. It stated that CLECs
14 must demonstrate they meet all the conditions for the request to be fulfilled.

15 **Summary:** The Commission should adopt the recommended resolution.
16

17 **3. Waiver of Termination Liability Assessments for EELs**

18 **The Issue:** AT&T stated that CLECs had to acquire special access circuits or private
19 lines in the 1996-99 span only because ILECs refused to provide EELs. A 1999 Supreme
20 Court decision found that ILECs had to make EELs available. AT&T reasons that
21 CLECs should not have to pay termination charges to convert from the special access
22 circuits to EELs because they should have had access to EELs in the first place.

1 NO and EELI took a similar stance, arguing that where they had to acquire special
2 access lines after the 1999 court decision because facilities were not available for EELs,
3 they too should not have to pay termination charges included in the special access
4 agreements they signed as they convert to EELs as facilities become available. CLECs
5 would have to meet one of two conditions to gain this waiver of termination charges.

6 Qwest asserted it has no obligation to waive termination liability assessments (TLAs)
7 for special access. Qwest also argues the FCC has said TLAs should not be considered in
8 271 proceedings.

9 **Antonuk Report Recommendation:** The Report argued the public interest is not
10 served by making CLECs abide by agreements they did not want to make and that the
11 courts have found they should not have had to accept. However, CLECs have paid
12 discounted prices under some of the agreements. Thus, it is not black-and-white that
13 CLECs have suffered financially in all these cases. Qwest offers a waiver of the TLAs
14 under certain conditions, conditions that do not seem justified by any evidence and
15 should be removed from the SGAT

16 The Report proposed SGAT language that provides for a limited period ending
17 November 30, 2001 during which CLECs can identify special access circuits that will
18 qualify for TLA waivers that Qwest must grant. The agreements can ask for waivers for
19 agreements made between February 17, 2000 to May 16, 2001,⁷ according to the
20 proposed SGAT amendment. Qwest must also agree to drop certain conditions; however,

⁷ February 17, 2000 was the effective date of the UNE Remand Order and May 16, 2001 is the date Qwest began offering EELs.

1 it can if it chooses try to show Commissions why an obligation-to-build condition should
2 be kept in place.

3 **Summary:** The Commission should adopt the recommended resolution.

4
5 **4. Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs**

6 **The Issue:** AT&T stated that CLECs using private lines that could be converted to
7 EELs but are not converted because of the financial consequences of TLAs should have
8 the option of connecting them to UNEs, which it could do if it did have EELs.
9 Furthermore, AT&T argued that when Qwest refuses to build transport as a UNE, it may
10 respond affirmatively to requests for tariffed facilities (which have higher rates) that
11 serve much the same function. In this situation, AT&T wanted the right to connect the
12 tariffed facilities to UNEs. Qwest refused to make either connection.

13 **Antonuk Report Recommendation:** The Report stated the recommendation made in
14 the preceding issue to make TLA waivers to CLECs when appropriate will address CLEC
15 concerns for this issue. Hence, no additional action is needed.

16 **Summary:** The Commission should adopt the proposed resolution.

17
18 **5. Counting ISP Traffic Toward Local Use Requirements**

19 **The Issue:** XO and ELI took the position that ISP traffic should be counted when
20 considering whether CLECs can meet local usage requirements that allow them to
21 commingle traffic. There is no question of evading access charges, the concern leading
22 to the commingling prohibition, as ISP traffic is exempt from access charges. The

CONTINUATION

[3] 2

1 advantage to CLECs of allowing this change is lowered costs. XO and ELI argued Qwest
2 can provide service to its ISP customers in the desired configuration, so to deny CLECs
3 the same arrangement is discriminatory. Qwest said the ISP Remand Order prohibits
4 counting ISP traffic as local.

5 **Antonuk Report Recommendation:** The Report stated the ISP Remand Order is
6 clear that ISP traffic is interstate. However, the Report speculated the FCC may not have
7 considered the consequences of that decision for the situation XO and ELI have
8 identified. XO and ELI have made a good argument, one the FCC should recognize and
9 make adjustments for. It seems, however, that the change will have to occur at the FCC
10 level, because the Report offers no change to the Qwest SGAT that addresses the issue.

11 **Summary:** The Commission should adopt the recommended resolution.
12

13 **Checklist Item 6: Access to Switching**

14 **1. Access to Advance Intelligence Network (AIN)-Provided Features**

15 **The Issue:** The features in question are those that: (a) could be in a particular switch,
16 but have not been loaded; (b) are loaded but not activated in a switch; (c) are activated in
17 a switch; and (d) can be available in switches but also can be available through an AIN.

18 AT&T asserted some features may be provided by Qwest to itself through its AIN,
19 then denied to CLECs because they are not available through a switch. Qwest said
20 AT&T has raised an issue that does not apply, as all AIN features are available to
21 CLECs. Qwest further stated it makes the development portion of AIN available to

1 CLECs, which satisfies its obligation to make the same capabilities it uses available to
2 CLECs.

3 **Antonuk Report Recommendation:** The Report stated Qwest meets all switch
4 obligations, including continuing to provide features after it shifts provision from a
5 switch to AIN. As for the AIN, Qwest does provide the capabilities to CLECs, which
6 enables these companies to develop features themselves. Requiring Qwest to provide the
7 features it develops is not required and thus is not granted.

8 **Summary:** The Commission should adopt the proposed resolution.
9

10 **2. Exemption from Providing Access to Switching in Large Metropolitan Areas**

11 **The Issue:** Salt Lake City was the only MSA in the seven states that was identified as
12 one of the 50 largest MSAs nationwide and thus subject to this regulation. Qwest
13 identified end users in Salt Lake City that meet the exemption criteria and did so by the
14 January 1, 1999 qualifying date in keeping with federal regulations.

15 AT&T asked that it be allowed to continue serving a customer by switch if the
16 customer has three or fewer lines but later increases to four or more. Qwest said it would
17 provide such service, but at market rates rather than TELRIC rates. AT&T asked for
18 several clarifications to the Section 9.11.2.5.3. In addition to the right to continue serving
19 by switch customers that increase their total lines to four or more, AT&T wanted lines for
20 separate customer locations counted separately, billing arrangements not considered in
21 counting total lines among locations, non-voice lines not counting toward the four-line
22 limit, the high-frequency portion of a line not counting as a line, MTE end users counted

1 separately, and basic-rate ISDN counting as one line. Qwest did not accept the separate
2 locations or billing clarifications, but did accept the final four.

3 **Antonuk Report Recommendation:** The Report said all customer lines exempt from
4 the UNE switching requirement shall not be available at UNE rates. This regulation
5 applies to the first three lines in establishments with four or more lines.

6 **Summary:** Qwest has agreed to four AT&T clarifications concerning line count.⁸
7 The clarifications are: (1) only voice lines count and that data, alarm, or security lines do
8 not; (2) the high-frequency portion of a line is not counted as an additional line; (3) end
9 users in campus environments or MTEs are counted as individual units; and (4) a basic-
10 rate ISDN line counts as a single line.⁹ Therefore, the Commission should adopt the
11 proposed resolution.

12

13 **3. Basis for Line Counts in Applying the Four-Line Exclusion**

14 **The Issue:** The issue of line-count for businesses with multiple locations is addressed
15 in this issue rather than the preceding issue, where it is first raised. AT&T argued there
16 that the four-line standard should be applied to each location separately, rather than the
17 aggregate line-count for a multiple-location business.

18 **Antonuk Report Recommendation:** The Report concluded the FCC would have
19 said multiple locations for a business should be counted separately if the FCC had meant
20 for that interpretation of the four-line count to apply. AT&T's argument is rejected.

21 **Summary:** The Commission should accept this proposed resolution.

⁸ Group 4 Report, page 95.

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4. Providing Switch Interfaces at the GR-303 and TR-008 Level

The Issue: Qwest at first refused to provide CLECs such access, then noted in its brief that it made changes intended to accommodate the request in SGAT Section 9.11.1.1.2.

Antonuk Report Recommendation: AT&T was unaware of the language change made by Qwest in the brief, which resolves the matter satisfactorily.

Summary: The Commission should adopt the proposed resolution.

8. Group 5 Report

Q. What is the content of the Group 5 Report?

A. My testimony does not cover all the subjects addressed in the Group 5 Report. I deal with General Terms and Conditions, Section 272, and Track A.

Q. What are your recommendations for the disputed issues in the Group 5 Report?

A. My discussion of these issues and my recommendation for the Commission follow in affidavit-style testimony, except for the Track A testimony, which follows a question-and-answer format.

⁴ Group 4 Report, pages 94-95.

1 **General Terms and Conditions: Carryover Issue**

2 **1. Landowner Consent to Agreement Disclosure**

3 **The Issue:** AT&T argued that CLECs need access to agreements between Qwest and
4 private landowners and building owners to learn the scope of those agreements. AT&T's
5 interest is in knowing what the scope of its own offerings to those owners could be.
6 Qwest countered that it could not disclose the agreements to CLECs unless it received
7 consent from the owners because it would be exposed to liability from lawsuits by the
8 owners for disclosing sensitive information.¹⁰ CLECs opposed the consent requirement
9 as unnecessary and unwieldy given it would potentially have to be exercised for every
10 owner to which CLECs would like to offer service.

11 The Group 1 Report recommended adding Section 10.8.4.1.3.1 to the SGAT, a
12 section that gave CLECs the option of (a) gaining access to the agreements without
13 seeking consent from the owners if the CLECs agreed to indemnify Qwest for any legal
14 action arising from such access or (b) obtaining the consent from the owners.

15 Qwest accepted this resolution, but AT&T objected, saying the general indemnity
16 section of the SGAT should apply rather than creating a specific section for this issue.
17 The basis of AT&T's argument is the legal actions could result in large litigation costs
18 and it is unfair for CLECs to bear all the risk for those costs.

19 **Antonuk Report Recommendation:** The Report speculated that AT&T's assertion
20 about the scale of litigation costs associated with Qwest disclosing the contents of

¹⁰ This information could include the rates Qwest is charging, thus perhaps removing some bargaining leverage from the owners. On the other hand, if the CLECs do not know enough about the Qwest facilities to want to make an offer to the owners, the owners have no alternative from the CLECs to consider. The

1 landowner and building owner agreements is probably incorrect. However, even if
2 AT&T were right, the proper ground for a resolution is determining which party causes
3 the costs. The unequivocal answer is that CLECs are the source of any legal costs that
4 might arise and thus should pay them. If CLECs are concerned about these expenses, the
5 recommended resolution offers them a way to avoid them, namely by seeking consent
6 from owners. To adopt the SGAT general indemnity rule is also inappropriate as it
7 addresses failure on the part of Qwest to perform an SGAT obligation, not an outcome
8 caused by Qwest complying with an SGAT clause on behalf of CLECs as is the case in
9 this situation. The original recommended resolution stands.

10 **Summary:** The Commission should accept the recommended resolution.

12 **General Terms and Conditions: New Issues**

13 **I. Comparability of Terms for New Products or Services**

14 **The Issue:** AT&T proposed a new SGAT section that would require Qwest to offer
15 new products and services at substantially the same rates, terms, and conditions as
16 existing products when the existing products are comparable. Qwest objected, saying:
17 (a) new product and service prices are governed by existing laws and regulations,
18 (b) CLECs have input to new product and service offerings under the change
19 management process (CMP), (c) Qwest's rates are subject to Commission review, and
20 (d) "comparable products and services" is vague and would open the door to many
21 additional disputes.

presumption is that owners are on the whole better off with two or more choices. Therefore, access to the

1 **Antonuk Report Recommendation:** The Report said the established SGAT
2 standards and methods for resolving terms and conditions disputes are sufficient to
3 govern Qwest. These methods adequately provide for timely and effective resolution of
4 disputes. The Report also accepted Qwest's argument that comparability is a vague
5 concept that would be difficult to implement. Thus, the Report found that AT&T's
6 proposal would introduce uncertainty into this process without adding to it or improving
7 it in any other way.

8 **Summary:** The Commission should accept the proposed resolution.

9
10 **2. Limiting Durations on Picked and Chosen Provisions**

11 **The Issue:** AT&T took the position that as CLECs pick and choose provisions from
12 interconnection and other agreements with Qwest that the term of any given provision is
13 not tied to the expiration date of the particular agreement from which it is taken. AT&T
14 stated that unreasonable costs and technical infeasibility are reasons Qwest can stop
15 abiding by provisions, not the original effective date. Qwest argued that this
16 interpretation enables CLECs to extend particular terms to infinity by continuously
17 adopting provisions from new agreements and making the effective date for all provisions
18 the latest date among the provisions. Qwest said the FCC requires carriers opting in to
19 accept all terms of a provision, including the expiration date of the original agreement.

20 **Antonuk Report Recommendation:** The Report said that Qwest's ability to change
21 terms and conditions over time is at stake. Qwest, like any business, must have the

agreements should be encouraged.

1 ability to alter terms and conditions as the environment and technologies change.
2 AT&T's proposal creates the possibility of Qwest having to continue to offer services
3 under terms and conditions in a set of circumstances for which they no longer made
4 sense. No evidence is presented that such an obligation serves any useful purpose. The
5 Report stated that CLECs can choose provisions from existing agreements with the
6 longest duration and make that the expiration date for the provision. Such a rule is
7 consistent with allowing Qwest flexibility in that it is an offering Qwest has already
8 agreed to.

9 **Summary:** The Commission should adopt the recommended resolution.

10

11 **3. Applying "Legitimately Related" Terms Under Pick and Choose**

12 **The Issue:** AT&T objected to Qwest imposing on CLECs the obligation to accept
13 more provisions from agreements than the specific provisions the CLECs wanted to pick
14 and choose. AT&T cited an example from Wyoming of Qwest requiring CLECs to
15 accept unidentified provisions in order to opt in to a single point-of-connection provision.
16 Qwest argued it had the ability to impose the obligation on CLECs if the provisions were
17 "legitimately related" to one another. Qwest furthermore offered new language in the
18 form of new SGAT Section 1.8.2 and an addition to Section 4.0. The first change
19 requires Qwest to provide in writing why it believed given provisions are related, while
20 the second defines the conditions under which Qwest can impose the obligation. Qwest
21 said its ability to do so already is limited by Section 1.8.1 that places the burden of
22 demonstrating relatedness on Qwest.

1 **Antonuk Report Recommendation:** The Report said Qwest's changes are sufficient
2 when combined with the existing language to prevent abuse of the condition. There
3 should not be an expectation, however, that there will not be disputes. Section 4.0 makes
4 the need to establish business relationships among parties the criterion for evaluating
5 relatedness. This criterion will inevitably be the source of difference of opinions. These
6 disputes will have to be settled on a case-by-case basis.

7 **Summary:** The Commission should adopt the recommended resolution, while noting
8 the Report's observation that it will not bring an end to all disputes.

9
10 **4. Successive Opting into Other Agreements**

11 **The Issue:** AT&T argued Qwest denies CLECs their right to opt into any agreements
12 created by CLECs as they opt into various agreements. AT&T said Qwest forces CLECs
13 to take provisions from original agreements, not from agreements CLECs have created.

14 **Antonuk Report Recommendation:** The Report stated that this issue has no
15 practical significance if the recommended resolution of Issue 2 is adopted. Once the
16 duration of provisions is the same whether provisions are found in original agreements or
17 in agreements created by CLECs picking and choosing, the same set of terms and
18 conditions ought to be available to CLECs somewhere among all the agreements in
19 effect. Thus, it should matter not at all to Qwest that CLECs be able to choose any
20 existing agreement, including an agreement created by another CLEC picking and
21 choosing provisions from various other agreements.

1 There is one circumstance, the Report notes, where having this right does matter, but
2 it does not require Qwest to accept anything it has not already agreed to. Should Qwest
3 and a CLEC agree to extend the expiration date of a provision in a new agreement as one
4 CLEC opts in to a combination of existing agreements, other CLECs also ought to be
5 able to opt in to that extended duration of the provision. This new expiration date would
6 not be in the original agreement, so protecting CLECs right to pick it does matter.
7 Therefore, the Report stated the SGAT should be amended to reinforce this idea that a
8 term or condition created in the opting in process should be available to all CLECs. The
9 Report offers specific language for the amendment.

10 **Summary:** The Commission should adopt the recommended resolution.

11

12 **5. Conflicts Between the SGAT and Other Documents**

13 **The Issue:** The SGAT contains references to tariffs, technical publications, product
14 notifications, and other Qwest documents. AT&T asserted Qwest has the ability to
15 improperly change the SGAT by changing these referenced tariffs. Qwest, AT&T said,
16 had the sole discretion to change tariffs and therefore the changes were not subject to
17 review. XO voiced an objection with a similar theme, saying Qwest should not be able to
18 import any term from other documents. XO asked that any such change should be
19 stopped from going into effect by a CLEC complaint and dealt with in the SGAT dispute
20 resolution process. Qwest countered that its proposed changes should prevail unless
21 specifically overturned by a commission. Qwest did agree to SGAT language that
22 reinforced the idea that the SGAT prevailed over other documents.

1 **Antonuk Report Recommendation:** It is not surprising that the SGAT refers to a
2 tariff (or statute, regulation or rule) given the vast number of terms and conditions present
3 in the SGAT. Where the SGAT does so, stated the Report, the most recent version of that
4 tariff is the controlling authority, which is appropriate when the purpose is to keep the
5 SGAT up to date with subsequent changes. However, if the intent is to keep particular
6 tariff language in effect, rather than serve as a convenient administrative mechanism, then
7 the SGAT should use that language and not the reference. CLECs have had the
8 opportunity to ask for specific language in this proceeding. AT&T, moreover, has
9 mischaracterized the ability of Qwest to change the SGAT unilaterally. CLECs can
10 participate in proceedings that establish tariffs and thus have a chance to make their
11 arguments about particular tariffs before Qwest can put them into effect. The SGAT does
12 not allow tariff language to take effect without such proceedings, so CLECs are
13 protected. Furthermore, it is important that Commissions retain the right to change the
14 SGAT through changes in tariffs. Retaining the current approach reserves that right for
15 commissions.

16 As for XO's request that the status quo prevail while Commissions consider disputed
17 changes, the recommendation is that Qwest's view be allowed to prevail while the
18 dispute is considered. Qwest is providing services and as the provider is in the best
19 position to determine for itself what it believes to be appropriate terms and conditions
20 necessary to offer the service. This power is not open-ended, however. Where the
21 parties do not agree, an outside authority is expected to act promptly to resolve the
22 disagreement.

1 **Summary:** The Commission should accept the recommended resolution.

2

3 **6. Implementing Changes in Legal Requirements**

4 **The Issue:** AT&T argued for a period of transition whenever a change in law leads to
5 changes in the SGAT. The basis for this position is that it is easier for Qwest to stop
6 providing a service formerly required by the SGAT than it is for Qwest to start offering a
7 service newly required in the SGAT. In the first situation, CLECs can be abruptly left
8 without the means to carry on business, while in the second they have to wait for Qwest
9 to gear up its product offerings. AT&T wants a period where existing terms and
10 conditions remain in place so that CLECs can make adjustments made necessary by the
11 changes in law. Qwest revised SGAT Section 2.2 to allow a 60-day status quo period,
12 which would be followed by resorting to the SGAT dispute resolution process. If
13 disputes are not resolved quickly, interim operating agreements could be adopted for the
14 life of the dispute. Qwest wanted any resolutions of disputes made effective the date of
15 the original change, arguing CLECs otherwise have an incentive to delay in resolving
16 disputes.

17 **Antonuk Report Recommendation:** The Report found Qwest's SGAT change and
18 other aspects of its offered change, including true-up to the original date, are an adequate
19 response to this issue. These accommodations will encourage a reasonable and prompt
20 transition.

21 **Summary:** The Commission should accept the recommended resolution.

22

1 **7. Second-Party Liability Limitations**

2 **The Issue:** AT&T requested several changes in SGAT Section 5.8 dealing with
3 liability. Its suggested provisions generally would broaden Qwest's obligations. AT&T
4 wanted: (a) liability assessed by a state commission addressed; (b) changes addressing the
5 SGAT general damages provision and its relationship with the QPAP; (c) removal of a
6 limit on damages to the amount paid for services; (d) allowing consequential damages for
7 gross negligence and for bodily injury, death or damage to tangible property; and (e)
8 expanding Qwest's liability when CLEC customers act fraudulently. Qwest's responses
9 were that the QPAP concern is addressed adequately, allowing consequential damages is
10 not industry practice, and expanding the liability for fraud is not warranted.

11 **Antonuk Report Recommendation:** The Report deferred resolution of the sub-issue
12 regarding state commissions and liability to the next issue, Issue 9. The Report deferred
13 consideration of the sub-issue concerning the SGAT and the QPAP until the QPAP
14 Report.

15 The remaining issues concern exceptions to a rule accepted in business generally and
16 telecommunications specifically limiting damages to what is foreseeable and insurable.
17 The Report's recommendations were made against that background. Indirect, incidental,
18 and consequential damages usually are excluded. Meanwhile, the liability for foreseeable
19 risks typically is assigned to the party creating the risks. Managing those risks is a
20 reasonable responsibility and recovering the costs of that risk management through prices
21 charged is also reasonable.

1 The Report found Qwest's language limiting its liability for general damages to the
2 price paid for services is appropriate. It appears in Section 5.8.2. The recommended
3 resolution for the section concerning the gross negligence and bodily injury, death, or
4 damage to tangible property, the subject of Section 5.8.4, has many facets. First, both
5 parties should bear exposure to liability for damages to tangible property, a principle that
6 ensures parties will take care as they work around each other's property. The party
7 causing the damage is to be responsible. Second, gross negligence is not the appropriate
8 standard to apply in determining liability in other cases, willful or intentional misconduct
9 is. Gross negligence, as Qwest argues, is too vague. Finally, sole negligence shall
10 determine liability. Harmed parties can seek insurance beforehand in cases where they
11 materially contribute to the loss. These recommendations are incorporated in a suggested
12 revised Section 5.8.4.

13 The Report included a finding regarding fraud and liability, but Qwest notes in its
14 comments that the parties have reached consensus on the issue in the course of post-
15 workshop and post-Report discussions with CLECs. The outcome is that Qwest agrees to
16 delete Section 5.8.6. It also will make changes in Section 11.34, which concerns revenue
17 protection, as part of the consensus.

18 **Summary:** The Commission should adopt the recommended resolution.

19

20 **8. Third-Party Indemnification**

21 **The Issue:** AT&T was concerned that Section 5.9.1.2 does too much to restrict Qwest
22 liability for damages CLECs must pay to end users. AT&T asserted it does not do

1 enough to create incentives for Qwest to avoid anti-competitive and discriminatory
2 conduct. AT&T offers language that it maintains would achieve this end, arguing the
3 language better reflects a competitive market outcome. Qwest's response is that making
4 wholesale suppliers responsible for claims in the way AT&T wants will encourage
5 CLECs to engage in overly generous offers to customers because the CLECs will be able
6 to shift the cost to Qwest. Qwest said Section 5.9.1.2 reasonably indemnifies Qwest
7 against such claims.

8 **Antonuk Report Recommendation:** AT&T's claim of mirroring the competitive
9 market with its language was rejected by the Report, which notes customer compensation
10 typically is significantly restricted in the event of failure to deliver service. If CLECs
11 want to offer more to end-users, they should charge more for the premium service, and
12 not shift the burden to Qwest. As for creating incentives for Qwest to avoid anti-
13 competitive and discriminatory conduct, the Report found the QPAP is the best vehicle,
14 not liability packages. Hence, that sub-issue is deferred to the QPAP Report. Finally,
15 Qwest should not be indemnified against its actions that cause bodily injury to CLEC
16 customers or damage to CLEC tangible property. SGAT Section 5.9.1.2 must be
17 amended to accomplish this goal, so the Report offers an amended 5.9.1.2 for that
18 purpose.

19 **Summary:** The Commission should accept the recommended resolution.
20

21 **9. Responsibility for Retail Service Quality Assessments Against CLECs**

1 **The Issue:** This issue is a sub-issue deferred from Issue 7. XO asserted that when a
2 CLEC must pay penalties for failure to meet state commission retail service standards
3 because Qwest fails to meet its SGAT obligations Qwest should pay the assessments.

4 **Antonuk Report Recommendation:** The SGAT is not the proper mechanism for
5 dealing with this matter. Commissions may not want to follow a rigid rule such as XO
6 proposes. This rule removes all responsibility for providing compliant service from
7 CLECs, who may legitimately be held responsible for failure to monitor the quality of
8 service provided by a wholesaler. This principle is in place in other industries, even
9 those where the wholesaler is also a competitor with the firm. The best way to deal with
10 this matter is in state rulemaking proceedings that set the standards and liability for
11 payments. CLECs have the opportunity to exert influence in these arenas, while
12 Commissions retain the ability to assign roles in consumer protection.

13 **Summary:** The Commission should accept the recommended resolution, recognizing
14 that the Commission accepts responsibility for making appropriate rules. The Report
15 does not reject the idea that Qwest may appropriately be assigned liability for some or all
16 of retail quality assessments against CLECs. Rather, it allows Commissions to carry out
17 their traditional role in deciding how best to apportion liability.

18

19 **10. Intellectual Property**

20 **The Issue:** AT&T offered a revised Section 5.10 and language virtually identical to
21 that revision appears in Qwest's frozen SGAT, although Qwest had not formally accepted
22 the change.

1 **Antonuk Report Recommendation:** The issue can be considered closed, according
2 to the Report, if AT&T does not object to the deviations from its proposal Qwest
3 introduced in the SGAT.

4 **Summary:** The Commission should accept the recommended resolution.

6 **11. Continuing SGAT Validity After the Sale of Exchanges**

7 **The Issue:** AT&T proposed several provisions that would apply when Qwest sells
8 exchanges in which CLECs are serving end users under terms and conditions of the
9 SGAT. All the modifications are intended to prevent CLECs from suddenly having the
10 SGAT withdrawn as a governing document.

11 AT&T's proposals included: (a) requiring the transferee to be bound by the SGAT
12 until a new agreement can be negotiated; (b) providing 180 days notice (less if the
13 transaction moves swiftly) of the transfer to the CLECs; (c) placing an obligation on
14 Qwest to facilitate discussions between CLECs and the transferee to keep the SGAT in
15 place; (d) serve transfer application copies on all CLECs; and (e) deny Qwest the ability
16 to contest CLEC participation in transfer approval proceeding or to contest the authority
17 of a commission to impose an SGAT obligation on the transferee.

18 Qwest agreed to provide as much notice as possible and to facilitate SGAT
19 continuance discussions, leaving sub-issues (a), (d) and (e) in dispute. Qwest objected to
20 these requests, saying they would be unreasonable restrictions and devalue Qwest's
21 property.

1 **Antonuk Report Recommendation:** The Report found it is reasonable for the SGAT
2 to provide for an adequate transition time for adjustment after a transfer. The goals of
3 such a provision are to: (a) provide for negotiations between the transferee and CLECs,
4 (b) give commissions time to consider whether they have the authority and desire to
5 impose conditions, and (c) enable CLECs to have a period in which to seek new suppliers
6 if the transferee does not want to continue the SGAT.

7 It is inappropriate, as AT&T would do, to mandate that transferees keep an SGAT in
8 effect until its termination date and to preclude Qwest from participating in commission
9 debate over conditions. In the first case, the rules governing transferees may not be the
10 same as they are for a Bell Operating Company (BOC) (a PAP would not apply to many
11 transferees, for example). In the second, Qwest cannot be required to give up a right of
12 participation incorporated in law. As for notice, Qwest need only serve CLECs with
13 notice, not the pending agreements. CLECs have a duty to seek agreements if they
14 believe they are affected.

15 It is appropriate, the Report said, to provide CLECs a period in which to seek
16 continuance of the SGAT or the ability to seek relief from a commission in case the
17 negotiations with the transferee are fruitless. An addition to the SGAT in the form of
18 Section 5.12.2 is offered as a resolution. The language provides that transferees shall be
19 successors to SGATs for 90 days from notice to CLECs of the transfers, or longer if a
20 state commission orders. The addition also states Qwest shall use its best efforts to
21 facilitate transfer discussions between CLECs and the transferee. The proposal gives

1 Qwest a choice between this situation and giving notice more than 60 days in advance,
2 according to the Report.

3 **Summary:** The Commission should adopt the recommended resolution.

4
5 **12. Misuse of Competitive Information**

6 **The Issue:** AT&T provided evidence that Qwest misused information when it
7 contacted a Minnesota customer seeking to have the customer reconsider switching away
8 from Qwest. AT&T asserted Qwest must have learned of the impending loss of the
9 customer through the LSR AT&T submitted. AT&T contended Qwest should be denied
10 Section 271 approval until it demonstrated such events could not happen.

11 **Antonuk Report Recommendation:** The Report stated that using information
12 gained through an LSR is a serious anti-competitive practice, and one only Qwest would
13 be in position to exploit. However, one incident does not serve as sufficient evidence to
14 justify a conclusion of a pattern of abuse. Qwest's workshop participants could not
15 answer whether Qwest personnel could learn of a customer leaving from information
16 submitted in the LSR, and AT&T did not demonstrate Qwest learned of the customer's
17 decision to leave Qwest through the LSR. The Report identifies several other possible
18 means for Qwest gaining the information. Nonetheless, Qwest has a responsibility to
19 prevent using its position to its advantage in a similar manner. The recommended
20 resolution is for Qwest to report within 30 days to the state commissions what its
21 program is to minimize the possibility of, discourage, detect, and punish this conduct.

1 **Summary:** Qwest has agreed in its comments to prepare the recommended
2 programmatic report.

3

4 **13. Access of Qwest Personnel to Forecast Data**

5 **The Issue:** CLECs had points to make about aggregated and firm-specific forecast
6 data. XO said Qwest legal staff should not have access to aggregated CLEC forecast
7 information. Discovery, XO asserted, is the proper means for Qwest to obtain the
8 information in regulatory filings. XO stated Qwest should be able to use the forecast
9 information only in ways specified in the SGAT.

10 AT&T said the SGAT description of Qwest employees who can use individual
11 forecast information is imprecise. AT&T added that Qwest should be restricted to using
12 the information only for specified purposes, saying Qwest could by transforming or
13 manipulating the information put it to other uses.

14 Qwest said SGAT Sections 5.16.9.1 and 5.16.9.1.1 prohibit the disclosure of
15 individual and aggregate CLEC forecast data to marketing, sales, and strategic planning
16 personnel. Qwest stated the SGAT sections state explicitly that only wholesale account
17 managers, wholesale LIS and collocation product managers, network, and growth
18 planning personnel can use forecasts. In addition, Qwest attorneys can use the
19 information in regard to legal issues about particular forecasts.

20 **Antonuk Report Recommendation:** The Report generally found the SGAT limits
21 on Qwest personnel access to forecast data to be sufficient. However, the Report
22 suggests a change for Section 5.16.9.1 (the Report says Section 15.16.9.1, but this is most

1 likely a typographical error) that further restricts the access of legal personnel. Under the
2 change, they could have access in cases where the quality or timeliness of the forecast is
3 at issue, but no access otherwise. The Report also recommended that Section 5.16.9.1.1
4 be amended to restrict the use of aggregate forecast data in regulatory proceedings. The
5 offered language gives Qwest the obligation to give commissions the aggregated data
6 upon a request from the commissions once Qwest has initiated appropriate protective
7 measures and given notice to the CLECs of the request. The revision not only provides
8 for protection of sensitive CLEC information, but also does not allow Qwest to use the
9 aggregated information in any other way.

10 **Summary:** The Commission should adopt the recommended resolution.

11

12 **14. Change Management Process**

13 **The Issue:** AT&T argued the Texas 271 Order makes clear a change management
14 process meeting five criteria must appear in the SGAT. The criteria the change
15 management process must address are: (a) clearly organized and accessible change
16 management process information; (b) substantial CLEC participation in the process
17 creation and operation; (c) a procedure for timely dispute resolution; (d) availability of a
18 stable test environment that mirrors the production environment; and (e) adequate
19 documentation available for CLEC use in building an electronic gateway.

20 **Antonuk Report Recommendation:** The Report stated that Qwest's change
21 management process, Co-Provider Industry Change Management Process,¹¹ is not

¹¹ Since shortened to Change Management Process (CMP).

1 complete. Thus, the record does not provide a basis for reaching a conclusion regarding
2 Section 12.2.6 of the SGAT, which is where the CMP appears.

3 **Summary:** The Commission will have to review this issue at a later date when the
4 CMP is complete. No dates are mentioned in the Report, so the Commission may want to
5 ask Qwest for an estimated conclusion date.

6

7 **15. Bona Fide Request Process**

8 **The Issue:** AT&T said Qwest's bona fide request (BFR) process in Section 17 of the
9 SGAT is not non-discriminatory. Its failings, according to AT&T, are: (a) no evidence
10 that Qwest uses processes similar to the BFR to add services requested by its end-user
11 customers when its tariffs do not provide for the services, (b) no notice of BFRs
12 performed previously, and (c) no criteria for standardizing products or services that result
13 from repeat BFRs.

14 Qwest responded to the second issue raised by AT&T by pointing to Section 17.12.
15 The section provides that Qwest will not require additional BFRs when CLECs bring
16 similar cases to Qwest and says it will accept the burden of proof for showing differences
17 when it does require another BFR. Product prices for such offerings will be at individual
18 case basis prices, however, until the product is standardized. Qwest also will refund BFR
19 application fees if it has denied a similar request previously. Qwest said it would not
20 offer notice of BFRs because CLECs that have gained a product from the process may
21 have a proprietary interest in that product. Qwest also rejected automatically making
22 offerings from BFRs into standardized products.

1 **Antonuk Report Recommendation:** The Report rejected as invalid AT&T's
2 comparison of the BFR process and Qwest's processes for non-standard requests from its
3 retail customers. BFRs are usually concerned with technical feasibility and whether
4 access is necessary to make CLECs competitive. Qwest, on the other hand, does not take
5 up these issues internally. The cost analysis performed in each process also is different.
6 Thus, there is no need for the processes to be similar

7 On the other hand, Qwest's argument that notice of BFRs will violate CLEC
8 proprietary rights is misplaced. CLECs gain access to Qwest's network in BFRs, not
9 something similar to a patent. If one CLEC has access, all should. Moreover, BFRs that
10 are granted most often are the result of technical breakthroughs, not CLEC insights into
11 how to combine Qwest facilities. Thus, the SGAT should tilt toward non-discriminatory
12 treatment of CLECs versus protecting individual CLEC business practices. In addition,
13 disclosure need not give away all CLEC secrets. Other CLECs should be told of the form
14 of access, not the contents of the BFR.

15 The Report offers SGAT language to balance these interests. The new language calls
16 for a topical list of BFRs to be made available containing just enough description for
17 CLECs to understand the general nature of products gained through BFRs. CLECs also
18 should be able to receive upon request the terms and conditions of granted requests.
19 Finally, any CLEC should be able to have the same offering under the same terms and
20 conditions, which may include ICB pricing if the circumstances warrant.

21 Qwest had noted that only 17 BFRs have been filed under the SGAT. Thus, there is
22 little history for evaluating Qwest's performance in turning granted BFRs into

1 standardized products. Having an efficient process for doing so is desirable as it reduces
2 costs for CLECs. The Report went no further, stating that the requirement of notice may
3 do much to advance the goal of standardization.

4 **Summary:** The Commission should adopt the recommended resolution.

5
6 **16. Scope of Audit Provisions**

7 **The Issue:** AT&T wanted Section 18 of the SGAT, which deals with audits, amended
8 so that audits can address areas other than billing. It cites protection of proprietary
9 documents as one area in which audits would be useful to CLECs. Qwest answered that
10 the dispute resolution process is available for such inquiries and that it is sufficient to
11 address CLEC needs. Qwest saw the request to broaden audit authority as being too
12 intrusive.

13 **Antonuk Report Recommendation:** The Report distinguished between "audits" and
14 "examinations" in its discussion of this issue. Billing, according to the Report, is an
15 appropriate subject for audits, which are limited in frequency by the SGAT, because
16 parties may make mistakes and errors that need to be reconciled. Exchanges of
17 proprietary information also are subject to mistakes and errors, which is an argument, the
18 Report says, for making the process subject to audit. However, since the number of
19 examinations allowed under the SGAT is unlimited, it may not be appropriate to extend
20 that right to other areas. Unlike billing examinations, which are limited in scope by their
21 content, examinations of proprietary information processes may be far-reaching and

1 open-ended. The Report recommends, therefore, granting the request to expand the range
2 of possible audits, but not the range of examinations.

3 The Report stated auditing provisions in the QPAP, which will be part of the SGAT,
4 are sufficient to address the matter of performance measurement verification, so the
5 SGAT does not need to address it elsewhere.

6 The Report provided an addition to the SGAT auditing section to implement the
7 recommendations discussed. The language also introduces the idea that the audited as
8 well as requesting party may ask for an independent auditor.

9 **Summary:** The Commission should adopt the recommended resolution.
10

11 **17. Scope of Special Request Process (SRP)**

12 **The Issue:** AT&T wanted the special request process to be available for more than
13 UNE combination requests. The SRP is more streamlined than the BFR, omitting
14 consideration of technical feasibility, and thus would handle requests without technical
15 feasibility more quickly. AT&T wanted this option available for all non-standard
16 offerings where technical feasibility is not an issue. Qwest said the SGAT is intended to
17 address the working of the SRP, not its applicability.

18 **Antonuk Report Recommendation:** The Report stated Qwest's position that the
19 range of application of the SRP is out of bounds as a workshop topic is incorrect.
20 Moreover, AT&T's request for broadening the scope of the SRP is reasonable. However,
21 Exhibit F of the SGAT seems to grant to CLECs the ability to use the SRP for more than

1 UNE combinations, so it is not immediately evident what it is AT&T hopes to gain.

2 AT&T may shed light on what it is after in its comments on the Report recommendation.

3 AT&T also wanted parity for the SRP for the same reasons it wanted parity for BFRs,
 4 which is as inappropriate a comparison here as it was in the BFR in Issue 15. The same
 5 resolution applies to this issue.

6 **Summary:** The Commission should accept the recommended resolution.

7
 8 **18. Parity of Individual Case Basis Process with Qwest Retail Operations**

9 **The Issue:** AT&T incorporated by reference the parity arguments raised in Issues 15
 10 and 17 for the individual case basis process.

11 **Antonuk Report Recommendation:** The Report found the ICB and Qwest retail
 12 processes do not have comparable purposes and thus no demonstration of parity between
 13 them is necessary. The resolution is the same as for similar arguments made in Issues 15
 14 and 17.

15 **Summary:** The Commission should adopt the recommended resolution.

16
 17 **Section 272**

18 **A. Separate Affiliate Requirements**

19 **I. Separation of Ownership**

20 **The Issue:** Qwest Corporation (QC) is an affiliate of Qwest Communications
 21 International. QC is the BOC, which is the provider of local service in the Qwest
 22 territory and the applicant in the Section 271 process. QC must provide in-region,

1 interLATA (long-distance) service through an affiliated company that has separate
2 ownership. QC is owned by Qwest Communications International (QCI). QCI also owns
3 Qwest Services Corporation (QSC), which in turn owns Qwest Communications
4 Corporation (QCC). As noted, it is QCC that has been designated as the Section 272
5 affiliate. Thus, QC and QCC must have separate ownership. Qwest (in this instance and
6 nearly all others in this report, this means QC) has testified that QC and QCC own no
7 stock in each other. No party presented evidence to the contrary.

8 **Antenuk Report Recommendation:** The evidence supports a conclusion that QC
9 and QCC meet the separate ownership test of Section 272.

10 **Summary:** The Commission should accept the finding.

11 2. Prior Conduct

12 **The Issue:** AT&T presented three cases that it asserted show Qwest has a history of
13 non-compliance with the separate affiliate requirement. AT&T said the FCC found
14 Qwest or U S West, its predecessor before the mid-2000 merger of Qwest and U S West,
15 in violation in all three instances. The rulings concerned: (a) a 1998 pre-merger U S
16 West-Qwest agreement for Qwest to provide in-region, interLATA service; (b) U S West
17 provision of non-local directory assistance to in-region subscribers in 1999; and
18 (c) Qwest's 1-800-4US-WEST calling card service in 2001.

19 Qwest responded that the three cases were evidence of differences of opinion as to the
20 interpretation of what it means to provide in-region, interLATA service and not a pattern
21

1 of non-compliance. Qwest also said this past behavior was not indicative of how it would
2 operate in the future.

3 **Antonuk Report Recommendation:** The proper approach to this matter is asking
4 two sequential questions. Has Qwest offered in-region, interLATA service? If yes, has
5 Qwest done so through a separate affiliate? AT&T has shown the answer to the first
6 question is affirmative, and that it was QC or its U S West predecessor that provided the
7 service, not a separate affiliate. However, Qwest or U S West failed to use a separate
8 affiliate because they believed that what they offered were not in-region, interLATA
9 services. When ordered to stop providing the services, Qwest or U S West did.

10 These violations were Section 271 violations, however, not Section 272 violations.
11 Qwest did not attempt to subvert the separate affiliate requirement in any of the cases. It
12 has shown it has created an appropriate subsidiary to serve that purpose. Therefore, the
13 three cases cited by AT&T are not evidence to warrant drawing a conclusion of Section
14 272 failure. To reach that conclusion requires using Section 271 evidence to make
15 predictions about Section 272 issues.

16 **Summary:** The Commission should accept the finding.

17
18 **B. Books and Records**

19 **I. Generally Accepted Accounting Principles (GAAP)**

20 **The Issue:** Qwest asserted QCC has followed GAAP. Both QCC and Qwest Long
21 Distance (QLD), an affiliate that formerly was the designated Section 272 company, used
22 accrual accounting as called for by GAAP. AT&T said that an examination of Qwest's

1 books and records showed QCC and QLD failures to follow GAAP. AT&T's list
2 included: (a) failure to record transactions between QC and QCC between July 2000 and
3 April 2001; (b) artificially high billing rates for services provided by other Qwest
4 affiliates to QCC, creating cross subsidies and barriers to third parties using the services;
5 (c) failure to accrue and pay expenses for services rendered to QLD in a timely manner;
6 and (d) billing monthly services to QLD only yearly.

7 Qwest agreed it had not recorded certain QC-QCC transactions and failed to accrue
8 certain expenses. In both cases, it said the transactions occurred before QCC had been
9 designated as the Section 272 affiliate. Qwest also said the accrued expenses cited were a
10 small amount, less than 1 percent of QCC's annual transactions in dollars. Qwest also
11 had explanations for some of the non-complying accruals.

12 Qwest asserted that finding a handful of transactions in error was not a serious matter,
13 and was to be expected given Qwest had switched its designated Section 272 affiliate
14 from QLD to QCC in January 2001. It took several months for the transition to be
15 complete. Qwest's record of compliance improved to zero percent discrepancies in April
16 and May 2001 after the process was complete. The improvement was aided by several
17 control measures Qwest put in place that will be ongoing, among them monitoring of
18 asset transfers, training of various kinds for involved personnel, and establishing a
19 compliance hotline. These mechanisms, Qwest argued, were similar to those employed
20 by other BOCs that had received Section 271 authority from the FCC.

21 **Antonak Report Recommendation:** Neither too little nor too much attention should
22 be paid to QCC books and records before its designation as the Section 272 affiliate. The

1 transactions are evaluated with an eye toward what they say about Qwest's future
2 performance. This approach reveals Qwest failed to record accrued expenses and interest
3 in a timely manner for QCC before it became the Section 272 affiliate. Once it became
4 the affiliate, Qwest moved with alacrity to make QCC accounting practices compliant, an
5 effort that indicates Qwest will strive to comply going forward but does not eliminate
6 concern given the total record. The record shows Qwest likely treated QC-QCC
7 transactions differently than it would have the same transactions had a third party been
8 involved.

9 The recommendation is for independent testing to be conducted of Qwest's practices
10 for the period April 2001 to August 2001. The test shall evaluate whether: (a) Qwest is
11 accurate, complete, and timely as it records QC-QCC transactions; (b) the QC-QCC
12 relationship is carried out at arms length; and (c) there are reasonable assurances
13 practices addressing the first two points will continue. A qualified independent party¹²
14 shall carry out the examination with results reported to commissions no later than
15 November 15, 2001. The report shall enable regulators to form independent conclusions.
16 The materiality standard applied in the testing shall consider only transactions between
17 QC and QCC, not other QC transactions.

18 This ordered review is an examination, not an audit. Its purpose is to verify that
19 Qwest's April and May results from 2001 have continued and will continue because of
20 practices put in place. The results of those two months are encouraging, but constitute

¹² Liberty Consulting is excluded from consideration since it is recommending the examination.

1 too short a span with too little time to be reviewed to draw a conclusion that Qwest is
 2 compliant with this Section 272 provision.

3 **Summary:** The Commission should accept the finding.

4
 5 **2 Materiality**

6 **The Issue:** Qwest relied on the opinion of an outside auditor of QCI's consolidated
 7 operations as evidence that QCI follows GAAP in all material respects. Qwest said the
 8 FCC had found such evidence about the parent company adequate in the Louisiana II 271
 9 Order. AT&T stated that using QCI as the basis for a conclusion was not proper. QCC is
 10 a small part of the parent company's operations, most of which have no bearing on QCC
 11 operations. Thus, an evaluation of materiality should be limited to QCC transactions not
 12 the consolidated operations of its parent. Moreover, all errors and discrepancies should
 13 be reported.

14 **Autonuk Report Recommendation:** The focus of the independent audits to which
 15 Qwest refers is overall results, not the activities of small units. The test procedures
 16 employed in the audit may not have encompassed a sufficient sample of QCC activity to
 17 be of value as a record for evaluation of materiality. As for judging materiality, AT&T's
 18 implicit standard of perfection is too rigid. Therefore, the examination ordered in Issue 1
 19 shall include materiality, but the universe shall be QC-QCC transactions.

20 **Summary:** The Commission should accept the finding.

21
 22 **3. Documentation**

1 **The Issue:** AT&T said QC ceased posting to its website material disclosure
2 information regarding Section 272 in January 2000. The information cited includes
3 service agreements, work and task orders issued under those agreements, and details of
4 transactions related to the agreements and orders. The absence of the information, AT&T
5 asserted, means there is not a sufficient audit trail from January 2000 until April 2001.

6 **Antonuk Report Recommendation:** The absence of the transaction details is not
7 troubling as the purpose is not to aid an audit, but rather to assist third parties in deciding
8 if they want to use the services provided to Qwest affiliates. The required information for
9 an audit can exist elsewhere. The examination required in Issue 1 should be sufficient to
10 test consistency of what is purported to be offered to affiliates with what actually is
11 provided. That examination is adequate for dealing with the concerns raised by AT&T.

12 **Summary:** The Commission should accept the finding.

14 **4. Internal Controls**

15 **The Issue:** AT&T relied on its argument that Qwest has not performed accrual and
16 billing in a timely manner as evidence that Qwest does not have adequate controls over
17 its Books and Records.

18 **Antonuk Report Recommendation:** The examination will address this element as it
19 does the others.

20 **Summary:** The Commission should accept the finding.

22 **5. Separate Charts of Accounts**

1 **The Issue:** AT&T found Qwest to be slow in providing charts of accounts for QC,
2 QCC, and QLD. The accounts were found to satisfy the separateness criterion. AT&T
3 maintained the slow response demonstrated a lack of diligence in compliance.

4 **Antonuk Report Recommendation:** The charts were found to exist and to be
5 separate, which is what matters.

6 **Summary:** The Commission should accept the finding.

7
8 **6. Separate Accounting Software**

9 **The Issue:** AT&T said QC and QLD may not be using separate accounting software.
10 Moreover, Qwest's assertion that one affiliate cannot gain access to another is in question
11 because one billing transaction had been found to be reversed, implying one code worked
12 for both Qwest entities.

13 **Antonuk Report Recommendation:** There is no requirement that accounting
14 software be separate. Moreover, AT&T has since acknowledged other evidence shows
15 the software of the affiliates is separate. The reversal of a billing transaction does not
16 demonstrate one Qwest entity can make entries while posing as another entity, which
17 would be a problem.

18 **Summary:** The Commission should accept the finding.

19
20 **C. Separate Officers, Directors, and Employees**

21 **1. Routine Employee Transfers**

1 **The Issue:** AT&T says there has been a "revolving door atmosphere" as employees
2 have moved between QC and QCC or QLD. AT&T states this movement has subverted
3 the intent of having separate officers, directors, and employees. Qwest said simultaneous
4 employment is banned, not movement between affiliates. Fewer than 100 employees had
5 moved between QC and the long-distance affiliates. Qwest also said it has taken steps
6 such as requiring employees leaving the 272 affiliate to return assets and documents, be
7 reminded of nondisclosure rules, inform employees of disciplinary consequences for
8 violating the separateness rules, and physically separate the offices of the affiliates.

9 **Antonuk Report Recommendation:** Constant movement of employees between
10 Qwest entities could compromise independence of operations, but the identified
11 movement of 100 employees out of several thousand is not evidence of unusual transfer
12 rates. Qwest's other steps are sufficient to create a climate for independent operations.
13 The biennial audit is one mechanism that will monitor the implementation of this promise
14 of independence.

15 **Summary:** The Commission should accept the finding.
16

17 2. 100 Percent Usage

18 **The Issue:** AT&T asserts QC has assigned many employees to full-time duty with
19 the 272 affiliates. Qwest says such assignments are the result of acceptable sharing of
20 services between the affiliates. Qwest says the assignments are not open-ended, and
21 usually are related to specified periods or projects. Qwest has adopted a new policy

1 prohibiting any employee from having such assignments more than four months in
2 twelve.

3 **Antonuk Report Recommendation:** Service sharing is allowed, as Qwest maintains.
4 It represents opportunities for economies of scale for Qwest, so it also makes business
5 sense to engage in assigning employee time to different affiliates. Only when such
6 assignments are long-lasting are they an indication of impropriety. Qwest's four-month
7 limit in any twelve months is an acceptable rule. Future monitoring can confirm whether
8 Qwest is in compliance with the 4-month rule..

9 **Summary:** The Commission should accept the finding.

10

11 **3. Award Program Participation**

12 **The Issue:** AT&T said incentive programs for employees had resulted in employees
13 formerly assigned to the long-distance affiliate receiving awards after they went to work
14 for QC. Furthermore, QC team awards emphasized customer referrals and cost-saving
15 ideas and included QLD employees as among those eligible for the awards. Qwest said
16 the FCC had rejected prohibiting such intertwined compensation.

17 **Antonuk Report Recommendation:** The FCC said overall performance of a parent
18 company is an acceptable component in compensation packages for employees of
19 different affiliates. If such programs create incentives for anti-competitive behavior or
20 misuse of information, further inquiry is in order. Rewards for making referrals to
21 affiliates as well as the unit of primary employment do not create such incentives for
22 Qwest employees.

1 **Summary:** The Commission should accept the finding.

2
3 **4. Comparing Payroll Registers**

4 **The Issue:** Qwest argues that a comparison it performed of payroll registers for QC
5 and the 272 affiliates showed no overlap. AT&T responded that such comparisons had
6 been undertaken only recently, so there is an insufficient history on which to base a
7 finding of compliance.

8 **Antonuk Report Recommendation:** There is no evidence that payroll register
9 comparison have been ongoing for any length of time. Qwest's performance of the
10 comparison is evidence it understands it has an obligation conduct such comparisons as a
11 means of detecting prohibited simultaneous employment. The biennial audit will test
12 whether Qwest continues to meet this obligation.

13 **Summary:** The Commission should accept the finding.

14
15 **5. Separate Payroll Administration**

16 **The Issue:** AT&T said that QC's providing payroll administration to QCC
17 compromises the required operating independence. Qwest asserted that separate payroll
18 administration is not a requirement, but that offering payroll administration at the same
19 terms and conditions as provided to QCC is, and that QC is doing so. AT&T said QC
20 also conducts recruiting for QCC and that it was further evidence of non-independence.

21 **Antonuk Report Recommendation:** As stated previously, sharing common services
22 is good business practice and not prohibited by the Act.

1 **Summary:** The Commission should accept the finding.

2

3 **6. Officer Overlap**

4 **The Issue:** Qwest said an individual who had been an officer of QCC gave up that
5 status on March 26, 2001, the date QCC became the 272 affiliate. The individual has
6 since been an employee and officer of QSC and a director of QC.

7 **Antonuk Report Recommendation:** No simultaneous employment or involvement
8 has been shown. Movement between affiliates is not prohibited, and indeed is expected
9 after mergers.

10 **Summary:** The Commission should accept the specific finding. However, there is a
11 variation of the issue it will want Qwest to address. It is not clear how much
12 independence each board of directors has from the parent of the entire Qwest
13 organization, QCI. This is critical to ascertain because three of the QCC officers (of
14 which two are also directors of QCC) are officers of QCI. Ms. Judy Brunsting of Qwest
15 states on page 13 of her affidavit that "[T]he 272 Affiliate has two directors – Drake
16 Tempest and Robin Szeliga. Neither Mr. Tempest nor Ms. Szeliga is an officer, director,
17 or employee of the BOC." However, Mr. Tempest and Ms. Szeliga are listed as General
18 Counsel and Executive VP/CFO, respectively, of QCI on the Qwest website and of QCC
19 in Exhibit JLB 272-7. QC does not have CFO and General Counsel positions as does
20 QCC, which is odd because QC is the largest entity in the QCI organization. Therefore,
21 the Commission should ascertain who performs these critical functions for QC. If the

1 noted individuals are officers of the overall parent company as well as the 272 affiliate,
2 they must have some measure of control and influence over QC, the BOC.

3 Qwest should demonstrate this relationship is not prohibited under Section 272.

4
5 **D. Transaction Posting Completeness**

6 **1. Posting Billing Detail**

7 **The Issue:** AT&T charged that Qwest's decision to stop website posting of the
8 details of transactions violated the requirement that BOC transactions with its affiliates be
9 "reduced to writing and available for public inspection." Qwest said posting of
10 agreements and work orders were adequate. Parties willing to sign non-disclosure
11 agreements could inspect the details of the transactions. The FCC, Qwest said, had
12 agreed when it did not require SBC to make such postings.

13 **Antonuk Report Recommendation:** The posting requirement is intended to
14 accomplish two goals. The first is to enable CLECs to have enough information to make
15 business decisions concerning using Qwest services. Transaction detail is not necessarily
16 needed for this purpose. The ordered examination under Books and Records will
17 evaluate the sufficiency of Qwest postings.

18 The second purpose of transaction detail posting is to allow audits or other formal
19 examinations to be conducted. Again, a public posting is not necessary to satisfy this
20 requirement. The non-disclosure agreement requirement is justified.

21 **Summary:** The Commission should accept the finding.

22

23 **2. Initiation of the Posting of QCC Transactions**

1 **The Issue:** Qwest argued QCC became subject to 272 posting requirements upon the
2 date of its designation as the long-distance affiliate, March 26, 2001. AT&T asserted
3 January 1, 2001, was the date. Thus, Qwest's failure to post from then until March 26,
4 2001, constituted non-compliance. AT&T also argued July 2000 was a date posting
5 should have begun, and the when QLD was the affiliate, posting did not begin until
6 September 1998, two years after it should have.

7 **Antonuk Report Recommendation:** Qwest has met the obligations. It is now
8 posting for its designated 272 affiliate. AT&T's assertions that earlier posting was
9 required are not supported by law.

10 **Summary:** The Commission should accept the finding.

11

12 **3. Indefinite Service Completion Dates**

13 **The Issue:** AT&T said transaction postings must have the time span or estimated
14 completion date of a project. Some Qwest postings have indefinite completion dates.
15 Qwest said that was because the service offerings are ongoing for an indefinite period.

16 **Antonuk Report Recommendation:** It is common for commercial agreements to
17 have indefinite terms. There is no basis for finding that the FCC or the Act intended for
18 Qwest and other BOCs to be precluded from offering such terms.

19 **Summary:** The Commission should accept the finding.

20

21 **4. Verifications**

1 **The Issue:** AT&T said its evidence showed Qwest did not have an officer sign
2 required certificates for transaction information in 1998 and 1999, and that the wrong
3 officer signed for QC in March 2001. Qwest said its failure to have signed certificates in
4 1998 and 1999 were due to a misunderstanding of the 272 requirement, which it thought
5 applied only after a filing of a 272 application. The incorrect signature was due to a
6 vacancy in a position and was replaced.

7 **Antonuk Report Recommendation:** QC currently recognizes its obligation to have
8 signed verification certificates, so its past practices are not an issue. The improper
9 signing in 2001 is an issue. It likely came about because of the transition Qwest was
10 making in its designated 272 affiliate. Thus, the Books and Record examination ordered
11 should determine if Qwest has put appropriate controls in place in the intervening interval
12 to prevent the error from recurring.

13 **Summary:** The Commission should accept the finding.

14

15 **E. Non-Discrimination**

16 **The Issue:** Qwest cannot discriminate in favor of its 272 affiliate. AT&T says Qwest
17 has allowed its 272 affiliate to make late payments. AT&T also says QCC may receive
18 preferred treatment in obtaining information, establishing interconnection, access to OSS,
19 and more.

20 **Antonuk Report Recommendation:** AT&T's objections have been dealt with in
21 other parts of the Multistate Workshops and Reports.

22 **Summary:** The Commission should accept the finding.

1
2 **F. Compliance with FCC Accounting Principles**

3 **The Issue:** AT&T states the examples of non-compliance it has identified also show
4 non-compliance with FCC accounting principles.

5 **Antonuk Report Recommendation:** This issue has been dealt with satisfactorily in
6 the Books and Records provision. Qwest was found in compliance with GAAP, which is
7 sufficient.

8 **Summary:** The Commission should accept the finding.
9

10 **Track A**

11 **Q. What is Track A?**

12 **A.** Under Section 271, the Bell Operating Companies (BOCs) have to demonstrate
13 they have created an obligation to interconnect with competing carriers. Track A
14 of the Section addresses the requirements when a BOC has interconnection
15 agreements, while Track B applies in cases where no competing carrier has come
16 forward in a state to ask for an interconnection agreement.

17 **Q. What are Qwest's Track A obligations?**

18 **A.** The Group 5 Report identified the following four obligations for Qwest:

19 (1) whether Qwest has signed one or more binding agreements that have
20 been approved under section 252;

21 (2) whether Qwest is providing access and interconnection to unaffiliated
22 competing providers of telephone exchange service;

1 (3) whether there are unaffiliated competing providers of telephone
2 exchange service to residential and business customers; and

3 (4) whether the unaffiliated competing providers offer telephone exchange
4 service exclusively over their own telephone exchange service
5 facilities or predominantly over their own telephone exchange service
6 facilities in combination with the resale of the telecommunications
7 services of another carrier.

8 **Q. What has the FCC said is required to meet the first obligation?**

9 A. The FCC has stated that agreements approved under § 252 of the Act, relating to
10 the negotiation and arbitration of interconnection agreements are considered
11 binding for purposes of Track A, even if they contain interim prices, most-
12 favored-nation clauses, or fail to include every possible checklist item. The FCC
13 held that, for agreements to be binding, it is sufficient that they "specify the rates,
14 terms, and conditions under which [the BOC] will provide access and
15 interconnection to its network facilities."¹³

16 **Q. What should the Commission consider in judging whether Qwest meets this**
17 **obligation?**

18 A. The Commission should look at any interconnection agreements Qwest has with
19 carriers in South Dakota. In addition, Qwest has submitted its SGAT, which can
20 be characterized as a template for interconnection agreements, in this docket.

21 **Q. What about the contention of some CLECs that the SGAT is inappropriate**
22 **for a Track A proceeding?**

¹³ Ameritech Michigan Order at paragraphs 72 and 73. Note, however, that interim prices may have relevance to satisfaction of the checklist requirements of § 271.

1 A. I do not take a position on that matter. When the Commission has ruled, it may
2 affect the content of this testimony. Therefore, I would like to have an
3 opportunity to amend or supplement my testimony after the ruling.

4 **Q. What has the FCC said about the second obligation?**

5 A. Satisfaction of this element of the Track A standard does not require that CLECs
6 receiving access or interconnection have any given geographic service range in a
7 state,¹⁴ nor does it require that they have placed "a substantial commercial
8 volume" of orders or achieved a minimum market share.¹⁵

9 **Q. What has Qwest done in other states regarding this obligation?**

10 A. Qwest has submitted as evidence the number of loops it is unbundling to CLECs.
11 It should make a similar showing in South Dakota.

12 **Q. What has the FCC said about the third obligation?**

13 A. This element of the Track A test addresses whether the CLECs involved are
14 actually providing telephone exchange services to residential and to business
15 customers. The FCC has held that there need not be a CLEC that serves both
16 residential and business customers. The test is whether collectively the CLECs in
17 the state serve both customer types.¹⁶

18 **Q. Is there a market-share requirement?**

¹⁴ Ameritech Michigan Order at paragraph 76.

¹⁵ Ameritech Michigan Order at paragraph 77.

¹⁶ Ameritech Michigan Order at paragraph 82.

1 A. The FCC has provided limited guidance regarding market share. The Ameritech
2 Michigan Order made it clear that this element of the Track A test is satisfied
3 where a competing carrier is serving more than a de minimis number of end users.
4 However, the FCC did not provide a quantitative indication of what would
5 constitute more than a de minimis number of competitively served access lines.
6 Its subsequent rulings on other 271 applications do not provide a lower limit.

7 **Q. What is required of Qwest if there is no minimum market-share**
8 **requirement?**

9 A. Qwest has to demonstrate that both residential and business customers are served
10 by other carriers. The Facilitator accepted Qwest estimates of bypassed loops in
11 the Multi-state proceeding as a fair gauge of the size of CLEC activity. He did
12 not, on the other hand, accept it as evidence of residential competition. For that,
13 he required an independent showing of competition. Qwest, therefore, had to
14 demonstrate through actual numbers that carriers were providing residential
15 service.

16 **Q. What has the FCC said about the fourth obligation?**

17 A. The FCC has held that a CLEC's "own" facilities include UNEs that it leases
18 from the incumbent provider.¹⁷

19 **Q. How had Qwest met this obligation in other states?**

¹⁷ Ameritech Michigan Order at paragraph 99.

1 A. The Facilitator found Qwest's estimation of access lines served by CLECs and its
 2 survey of services provided by CLECs in each state also addressed the question of
 3 what facilities were being used.

4

5 9. Conclusion

6

7 **Q. Does this conclude your testimony?**

8 A. Yes.

9

CONTINUATION

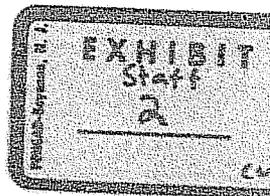
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South Dakota PUC QPAP/ Public Interest Summary

Direct Testimony of Mark Stacy

On behalf of the Staff of the South Dakota Public Utilities Commission

April 30, 2002



QSI CONSULTING

Overview

Purpose of the QPAP

- To ensure that enforcement mechanisms are in place that will ensure that Qwest will continue to maintain market-opening performance after receiving §271 authorization.
 - TO ENSURE THAT QWEST WILL DO WHAT THEY HAVE PROMISED.
- The details of such mechanisms developed at the state level “may vary widely” (FCC, NY Order, ¶ 433).

Qwest's Incentives

- **Today**

- To enter the InterLATA long distance market.
 - To gain access to long distance revenues.
- To protect its existing local market.
 - To offer customers “one stop shopping”.

- **Post-271**

- To protect its existing local market.

FCC Standards

- Payment liability should provide meaningful and significant incentive to comply with the designated performance standards.
- The structure of the plan should detect and sanction poor performance when it occurs.
- The FCC has recognized that State Commissions are free to adopt plans that “vary significantly” from plans developed in other states and approved by the FCC.

Total Payment Liability

Qwest's proposal to limit total payment liability may place South Dakota's current and future competitive market in jeopardy.

- The Facilitator's rationale is flawed.
 - Past FCC findings should be given the weight intended by the FCC.
 - The Colorado Report is inconsistent with Qwest's proposal.
 - Qwest made no showing that 36% is a "meaningful incentive".

Total Payment Liability

Qwest's support for 36%.

- Other parties have not shown it to be inadequate.
 - Qwest has not shown that it *is* adequate.
- FCC might step in if there is a problem with compliance.
 - How and when is uncertain.
- Qwest stock prices could be adversely impacted.
 - QPAP is not intended to bolster Qwest's stock.

Total Payment Liability

Cap elimination accomplishes numerous objectives.

- Eliminates issues related to what the “magic number” is.
- Eliminates issues related to CLEC compensation if cap is reached.
- Does not penalize Qwest.
- Provides incentive for Qwest to live up to its promises.

Total Payment Liability

Staff Recommends elimination of the hard cap.

- Should Qwest provide solid evidence proving a hard cap's efficacy, based on hard facts (profit numbers), Staff may support such a cap.
- Absent such a showing, Staff recommends elimination of the cap in order to ensure that the incentive for Qwest to perform under the SGAT is preserved.

Tier 2 Payment Triggers

- The purpose of these payments is to add to Qwest's incentive to perform.
 - Should be noted that some measures don't have corresponding Tier 1 penalties.
- A watered down version decreases Qwest's incentive.
- The Facilitator's solution would likewise provide less incentive for Qwest to avoid noncompliant behavior than an immediate trigger.

Tier 2 Payment Triggers

Staff recommends no lag in payments

- The FCC clearly states that the payment structure of the enforcement mechanism should be designed to detect and sanction poor performance *when* it occurs.
- The Facilitator's proposal would allow Qwest to comply some time after the noncompliant behavior occurs, jeopardizing the QPAP's ability to provide meaningful and significant incentive.

Payment Escalation

- The Facilitator's rationale for Qwest's noncompliance is flawed.
 - Qwest's future non-compliance should not be excused based on this rationale.
- Staff recommends that the Facilitator's 6-month limitation on escalation be rejected.

Six Month Plan Review

Staff recommends Commission Authority.

- Staff recommends that, under no circumstances, should the SDPUC limit its ability to perform its duties and to promote the public interest and to serve and protect the public.
- Qwest should not have veto power.
- QPAP modification should be done via a proceeding before the Commission which preserves the due process and other rights of the parties and retains the Commission's ability to act in the public interest regarding this critical document.

Sticky Duration

Staff recommends “sticky duration”.

- Once a payment has escalated to a level at which Qwest complies, that particular payment should remain at that level.
- Qwest is “rewarded” through compliance – when Qwest complies, it is subject to no payment, no escalation, and has access to long distance revenues.
- The QPAP was not intended to reward compliant behavior, but to sanction noncompliant behavior.

UNE Prices – Public Interest

- An imbalance between Qwest's retail service prices and wholesale UNE prices may eliminate CLEC ability to compete via UNEs.
 - May constitute a “price squeeze”.
- Staff recommends that the Commission withhold a recommendation on this point, pending the conclusion of the upcoming TELRIC proceeding.

Conclusion

- Each of Staff's recommendations are intended to promote the public interest by assuring that the local exchange market would remain open to competition subsequent to Qwest receiving §271 relief.
- Staff recommends that Qwest provide the Commission and parties with an updated SGAT and QPAP that incorporate Staff's recommendations.

Issues in Prefiled Testimony

- Group 1 Report: Checklist Item 3

Issue 3: Access to Landowner Agreements (Pages 10-11)

Prohibiting access by CLEC marketing and sales personnel

Recommendation: Accept the restriction but understand its origin

Issue 6: Large Request Response Times (Pages 13-14)

45-day rule for requests involving large numbers of poles

Recommendation: Accept the proposed resolution

- Group 2 Report: Checklist Item 1: Interconnection

Issue 6: Direct Trunked Transport in Excess of 50 Miles in Length (Pages 26-28)

Who has the obligation to build such transport

Qwest's revised language says the parties may turn to the Commission on an individual case basis for resolution

Recommendation: Qwest's revision is acceptable

Issue 9: Interconnection at Qwest Access Tandem Switches (Pages 29-31)

Whether CLECs have the option to elect to connect at access tandems

Qwest has revised its SGAT to comply with the Facilitator's recommendation

Recommendation: Accept Qwest's revision

- Group 2 Report: Checklist Item 1: Collocation

Issue 14: Collocation Intervals (Pages 41-42)

What is the appropriate interval for provisioning collocation in the absence of a CLEC forecast

Qwest has offered a revision based on an agreement reached in Arizona; the revision is similar to the "90-day" recommended resolution of the Facilitator

Recommendation: Accept Qwest's revision

- Group 3 Report: Emerging Services: Line Sharing

Issue 2: Tying Qwest Data Service and Voice Service (Pages 54-55)

Under what circumstances should Qwest be required to provide DSL service to CLEC voice customers

Qwest said it will continue or initiate its DSL service to a CLEC customer when the customer is served by resale or UNE-P; Qwest objects to providing its DSL product stand-alone; e.g. for unbundled loops

Recommendation: Qwest's position is acceptable; it presents as much of an opportunity to CLECs as it does a barrier and is what was approved in New Mexico on April 2, 2002

- **Group 3 Report: Emerging Services: Line Sharing**

- Issue 6: Provisioning Interval (Page 57)

- Adjusting the line-sharing provisioning interval as circumstances warrant

- Qwest committed to including the conditions cited by the Facilitator in its SGAT

- Recommendation: Accept Qwest's revision

- **Group 4 Report: Checklist Item 4: Loops**

- Issue 9: Access to Loop Facilities and Assignment Control System (LFACS) and Other Loop Information Databases (Pages 86-87)

- How to provide CLECs the information they need about copper loop availability

- The Facilitator identified Facility Check as the appropriate system to which

- CLECs need access; Qwest indicated in its rebuttal that IMA Release 9.0 (available in late February 2002) contains a version of Facility Check that addresses the identified need

- Recommendation: Find Qwest in compliance

- Group 4 Report: Checklist Item 4: Line Splitting
Issue 1: Limiting Line Sharing to Unbundled Network Element Platform (UNE-P)
(Pages 87-88)

Develop adequate terms and conditions for loop splitting

Qwest has revised and inserted SGAT Sections 9.21 and 9.24 to comply with the
Facilitator's recommendation

Recommendation: Find Qwest in compliance

- Group 5 Report: General Terms and Conditions

Issue 14: Change Management Process (Pages 117-118)

Adequacy of Qwest's Change Management Process (CMP)

Qwest presented evidence its CMP redesign effort is well under way, but likely
will not be completed until mid-2002

Recommendation: Find Qwest provisionally in compliance, continue to monitor
redesign effort progress

- Group 5 Report: Section 272: Separate Officers, Directors, and Employees

Issue 6: Officer Overlap (Pages 133-134)

Qwest's interLATA unit (QCC) has directors that are also directors of the Qwest parent company (QCI), thereby creating a situation where QCC directors have at least indirect control over the Qwest BOC (QC)

Qwest states the FCC does not prohibit this arrangement and does not require BOCs to outline their reporting structure

A Minnesota ALJ¹ has found the arrangement is not in compliance; however, the finding is not final and the FCC has not commented on it

Recommendation: Find Qwest in compliance

¹ Findings of Fact and Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with the Separate Affiliate Requirements of the Telecommunications Act of 1996 (Section 272)* Docket No. 7-2500-14487-2 (Minnesota Public Utilities Commission, Mar. 14, 2002).

- Comment about the SGAT

Facilitating verification of Qwest changes

Record demonstrates Qwest has not updated its SGAT to comply with all of the Facilitator's changes that it accepted

Recommendation: Qwest shall present a table with its SGAT that identifies the action it has taken on (1) consensus items from the Multi-state Reports and (2) disputed items from the Multi-state Reports; a suggested format follows

| Report | Issue Number-Title | Action |
|-------------|----------------------------|--|
| 1-Consensus | 1-Access to poles | No action required |
| 2-Consensus | 12-Collocation intervals | Antonuk recommended language inserted in Section 8.1.2.1 |
| ---- | ---- | ---- |
| 3-Disputed | 1-Direct trunked transport | Qwest compromise language accepted by the commission, Section 11.7.4 |
| 4-Disputed | 6-Line splitting intervals | Inserted Commission-ordered new language for Section 10.2.4.4.6 |
| ---- | ---- | ---- |

Issues in Raised by Qwest Rebuttal Testimony

- Public Interest: Hausman Study

Primer in econometrics

Dependent variable: The factor that changes as other variables change; e.g., benefits to consumers of telecommunications

Independent variable: A factor that is tested for having an effect on a dependent variable; e.g., BOC entry into the long-distance market

Sample relationships

Hypothesis 1

The bushels per acre of corn produced in a field depends on the amount of fertilizer applied

Hypothesis 2

The bushels per acre of corn produced in a field depends on the amount of fertilizer applied, time span between planting and application of fertilizer, date of planting, amount of precipitation, soil quality, subsequent tillage

Variables not considered

Opening the market

The effect of the 14-point checklist on CLEC entry into the local market was not considered in the study

Checklist compliance is linked to BOC long-distance entry

They are thus substitutes for one another as independent variables

UNE prices

Neither the level of UNE prices nor the freshness of a UNE cost docket were considered in the study

Either of both of these factors could be included as independent variables

So What?

Hausman study

Technically sophisticated, does not include important variables

Hypothesis 1

The size of benefits to consumers depends on BOC entry into long distance

Alternate specifications

Hypothesis 1

The size of benefits to consumers depends on BOC compliance with the 14-point checklist

Hypothesis 2

The size of benefits to consumers depends on BOC compliance with the 14-point checklist, BOC entry into long distance, the level of UNE prices in the local market, span since UNE prices were updated

Separating checklist compliance and long-distance entry as factors

Incorporate Oklahoma and Louisiana; 271 applications denied in both states,

Oklahoma has since been approved, Louisiana moving toward approval
BOC receives 271 approval, does not exercise its right to interLATA entry

- **Public Interest: Price Squeeze**

- Subscriber Line Charge (SLC)**

- Created in 1985 as a means of moving away from subsidizing local service through above-cost access charges

- Schedule of charges for residential and business lines was created; in return access charges were reduced

- CLECs and ILECs alike have the ability to levy SLCs, which are a source of revenue, not a payment any LEC passes on to some other entity

- The CALLS Order of 2000 revised the schedule of SLCs, but the principle remains the same

CONTINUATION

[4.]

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)

Docket TC01-165

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DIRECT TESTIMONY OF

MARK L. STACY

On behalf of

The Staff of the Public Utilities Commission of South Dakota

March 18, 2002

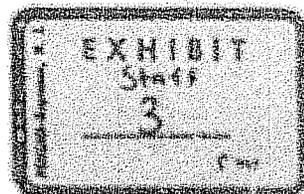


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1 **1. Witness Introduction**
2

3 **Q. Please state your name and business address for the record.**

4 A. My name is Mark Stacy. My business address is QSI Consulting, Inc.,
5 5300 Meadowbrook Drive, Cheyenne, Wyoming 82009.
6

7 **Q. By whom are you employed?**

8 A. I am employed by QSI Consulting, Inc. ("QSI").
9

10 **Q. Please describe QSI and your position with the firm.**

11 A. QSI is a consulting firm specializing in the areas of telecommunications
12 policy, econometric analysis and computer aided modeling. I am a Senior
13 Consultant with QSI.
14

15 **Q. Please describe your experience with telecommunications policy
16 issues and your relevant work history.**

17 A. Before joining QSI, I was President of Stacy & Stacy Consulting, LLC.
18 Like QSI, Stacy & Stacy is a consulting firm providing consulting services
19 to domestic and international telecommunications carriers. During my
20 tenure at Stacy & Stacy, I testified on behalf of a number of clients in
21 regulatory proceedings in the Western United States on a wide range of
22 subjects. Before joining Stacy & Stacy, I was employed by Kenetech

1 Windpower, Inc., where I was the regional manager of business and
2 project development for the Rocky Mountain Region. Before my tenure at
3 Kenetech, I was the Chief Economist for the Wyoming Public Service
4 Commission. While at the Wyoming PSC, I was responsible for providing
5 the Commission with a wide range of policy, economic, and technical
6 expertise regarding telecommunications and other public utility issues.

7 In addition to my occupational experience, I hold a Bachelor of Science
8 degree in Geology and a Master of Science degree in Public Utility and
9 Regulatory Economics from the University of Wyoming.

10

11 **Q. Have you provided testimony and advocacy before State Utility**
12 **Commissions in the past?**

13 A. Yes. Over the past 10 years, I have provided testimony and advocacy
14 before state utility commissions in the following states: Arizona, Colorado,
15 Connecticut, Florida, Idaho, Indiana, Montana, Nebraska, New Jersey,
16 New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma,
17 Oregon, South Dakota, Utah, Washington and Wyoming.

18

19 **Q. Have you been involved in other Section 271 cases recently?**

20 A. Yes. QSI contracted with the Wyoming Public Service Commission to
21 provide its professional consulting services in order to assist the
22 Commission in the review and analysis of the reports issued by Liberty

1 Consulting, in connection with Wyoming Public Service Commission
 2 Docket No. 70000-TA-599 (the same reports filed by Qwest in this
 3 docket). I was the primary consultant assigned to that project. My
 4 responsibilities with the Wyoming PSC included attending and
 5 participating in oral arguments as well as providing the Commission with
 6 oral recommendations and advise during the Commission's deliberations.

7

8 2. Purpose of Testimony
 9

10 Q. What is the purpose of your testimony in this proceeding?

11 A. The purpose of my testimony in this proceeding is to focus attention on
 12 certain areas of the Facilitator of the multi-state proceeding's (Facilitator)
 13 report on the Qwest Performance Assurance Plan (QPAP). In the QPAP
 14 Report, QSI believes that a number of the Facilitator's findings were
 15 counter to the public interest, and the continued development of
 16 competition in South Dakota. I will present a brief summary of each of
 17 these issues, as well as a discussion of why the Facilitator's findings
 18 should be rejected by the Commission. Finally, I will provide the
 19 Commission with a recommended alternative that would serve the public
 20 interest. It is QSI's intent to make recommendations to the Commission
 21 regarding whether the SGAT submitted by Qwest is adequate to allow for
 22 the development of competition in South Dakota to the extent that it would
 23 permit the entry of Qwest into the long-distance market.

1

2 **Q. How has QSI approached this case?**

3 **A.** QSI, on behalf of the Staff of the South Dakota Public Utilities Commission
4 has approached this case in the context of Qwest's filing. Qwest's filing
5 consists mainly of the reports produced by the Facilitator John Antonuk of
6 Liberty Consulting that resulted from the Multi-state process and the
7 related affidavits of Qwest witnesses. Issues in the multi-state process
8 can be categorized into four basic groups. Those groups are as follows:

9

| | | |
|-----------|---|------------------|
| Level I | Issues resolved within the multi-state process | Lowest priority |
| Level II | Issues decided by Liberty Consulting but not subsequently challenged | Low priority |
| Level III | Issues decided by Liberty Consulting and subsequently challenged in post Report briefs or exceptions. | High priority |
| Level IV | Issues decided by Liberty Consulting with which QSI does not agree | Highest priority |

10

11 The Level I and II issues are presumed by Staff and QSI to be issues that
12 have been resolved either through negotiations, or through Liberty
13 Consulting's decision. Because consensus among the parties has
14 presumably been reached regarding these issues, the Commission will
15 likely not be required to render a decision with respect to them, other than
16 to concur with the Facilitator's findings. The Level III and IV issues are

1 presumed to remain in dispute, and therefore have received the highest
2 priority. The Commission should be the final decision maker with respect
3 to these issues. QSI, therefore, has focused its attention on these
4 remaining disputed issues. It should be noted, that the negotiation and
5 renegotiation process is fluid, and ongoing. Because of this fluid situation,
6 issues that were presumed to have been resolved previously may be re-
7 opened in this proceeding. In addition, it should be noted that there are
8 parties to this proceeding who did not participate in the multi-state
9 proceedings. Therefore, these parties may introduce fresh arguments or a
10 different perspective that the Commission may want to consider with
11 respect to what QSI has defined as lower priority issues. QSI would
12 request that once the testimony is filed, if it reflects issues or ideas not
13 previously considered in the multi-state proceeding, that QSI be given the
14 opportunity to comment on that testimony.

15
16 Q. How is QSI's testimony organized?

17 A. The multi-state information was organized into reports. QSI will follow that
18 organizational structure in its testimony. My colleague, Dr. Marten
19 "Buster" Griffing will address issues contained in reports 1 – 5. In general,
20 those issues, at least at this point in time, fall into the lower priority
21 category, however, Dr. Griffing will bring to the Commission's attention, a
22 select number of issues from those reports that QSI considers to be of
23 higher priority. My testimony in this proceeding will focus on the most

1 controversial issues from the QPAP Report¹ and the Public Interest
2 Report².

3

4 Q. What documents have you reviewed in preparation of your testimony in
5 this proceeding?

6 A. Dr. Griffing and I have reviewed the information filed by Qwest in this
7 case, including the affidavits of the various Qwest witnesses, and the
8 reports from Liberty Consulting. In addition, QSI has reviewed the post-
9 report comments and exceptions that were filed by parties in the multi-
10 state proceeding.

11

12 3. QPAP Report Summary
13

14 Q. Please provide the Commission with a brief explanation of what the
15 QPAP is, and what it is designed to do.

16 A. Certainly. To begin, QPAP is an acronym for Qwest Performance
17 Assurance Plan. Performance assurance plans are used by ILECs such
18 as Qwest as a means to comply with the requirements of Section
19 271(d)(3)(C) of the 1996 Telecommunications Act that the ILEC's
20 requested authorization to provide InterLATA service is consistent with the
21 public interest, convenience, and necessity. Essentially, the QPAP is
22 intended to provide assurance, assuming it is found that that Qwest has
23 opened its local market to competition, that the local market will remain

¹ See Qwest Exhibit EX3 -- final qpap report

1 open should Qwest be granted Section 271 approval. This performance
2 assurance plan is of critical importance to the future development and
3 expansion of competition in the local market, since once Qwest receives
4 271 approval, the incentive to refrain from utilizing its existing market
5 power to prevent vigorous competition in the local market may be
6 diminished.

7

8 **Q.** How does the QPAP assure that once Qwest receives 271 approval,
9 Qwest will have the incentive to keep the local market open to
10 competition?

11 **A.** At this phase of the development of competition, Qwest has strong
12 incentives to provide an environment that at least appears to be conducive
13 to allowing CLECs the ability to enter the local market and compete.
14 Qwest's incentive at this time is driven by its desire to enter the long
15 distance market (receive 271 relief from the FCC based on the
16 recommendation of state commissions) and gain access to long distance
17 revenues. After Qwest receives such relief, the incentive would be
18 significantly diminished, since its goal of entering the long distance market
19 will have been accomplished.

20 The parties to the Qwest Regional Oversight Committee (ROC) OSS Test
21 collaborative have developed a set of performance measures that are
22 designed to measure Qwest's performance as it relates to providing

² Qwest Exhibit EX32 - Public Interest Final Report

- 1 • Self-executing mechanism that does not open the door unreasonably
2 litigation and appeal
- 3 • Reasonable assurance that the reported data are accurate.

4
5 The Findings of the Facilitator regarding QPAP issues will be evaluated in
6 this testimony based on these criteria.

7
8 **Q.** As a general matter, you have concurred with the decisions of the
9 Facilitator of the multi-state workshops, pending any additional
10 information received onto the record from the other parties in this
11 proceeding. Is that the case with the QPAP report?

12 **A.** The QPAP Report differs from the other reports in that I have found areas
13 where I believe the Facilitator has proposed resolutions to issues that
14 would be counter to the public interest. Those issues from the QPAP
15 Report deal with:

- 16 • Total Payment Liability (Cap Issues)
- 17 • Payment Triggers
- 18 • Limiting Escalation to 6 Months
- 19 • Sticky Duration
- 20 • 6-Month Plan Review Limitations

21 I will address each of these issues in detail below.

1 4. Total Payment Liability

2

3 **Q. Please summarize the total payment liability issues.**

4 **A.** The discussion of these issues begins at page 12 of Liberty Consulting's
5 *QPAP Report*.

6 As noted above, the QPAP is designed to provide the assurance, should
7 Qwest receive the section 271 relief requested, that the local market will
8 remain open to competition. The total payment liability issue essentially
9 defines what limits if any should be placed on Qwest's liability, should
10 Qwest be found to not be in compliance with the agreed upon
11 performance measures. According to Attachment 3 of Exhibit K to the
12 SGAT (Performance Assurance Plan), the South Dakota annual cap on
13 payments is limited to \$15 million, based upon 36% of 1999 ARMIS
14 reported local earnings. In other words, the SGAT, and the accompanying
15 QPAP as proposed by Qwest in South Dakota would limit Qwest's liability
16 for non-compliance to \$15 million.

17 The prospect of limiting Qwest's liability for non-compliance might well be
18 considered the most controversial issue dealt with during the multi-state
19 proceedings. As will be discussed in more detail later in this testimony, a
20 number of parties to that proceeding disagreed with the Facilitator's
21 findings regarding that issue.

22

1 **Q. Are you in agreement with the Facilitator's findings regarding limiting**
2 **Qwest's total payment liability?**

3 A. No. I do not think it is appropriate to limit Qwest's liability. To do so opens
4 the door for Qwest to treat QPAP assessments, not as penalties that
5 provide incentive for Qwest to comply with its agreements, but as
6 business expenses to be absorbed during the period in which CLECs
7 continue to have an interest in competing in South Dakota. If Qwest's
8 performance was at such a substandard level that CLECs elected to exit
9 the market, Qwest's liability would be reduced to \$0, since CLECs that
10 have exited the market would no longer be receiving payments from
11 Qwest. It is therefore critical that Qwest's incentive to perform adequately
12 be preserved. Limiting Qwest's payment liability places that incentive in
13 jeopardy.

14
15 **Q. Please explain the Facilitator's rationale for finding that it is appropriate**
16 **to limit Qwest's liability.**

17 A. In the Report, the Facilitator noted that the FCC has found the measure of
18 net revenue a "meaningful incentive" to maintain adequate performance in
19 271 orders from New York, Texas, Kansas, and Oklahoma. The
20 Facilitator also referred to the Colorado Special Master's Report
21 concluding that that Colorado document supported a similar 36 percent
22 cap. The Facilitator also noted that Qwest had presented evidence in
23 support of the 36% cap, and that the CLECs provided only general
24 objections to the 36% standard.

1 The Facilitator goes on to say that while "a number" of participants in the
2 multi-state proceeding argued regarding the adequacy of a 36% cap, that
3 those parties failed to answer "the fundamental question raised by such an
4 attack, i.e., how much would be sufficient."
5

6 **Q. Would you please comment on the Facilitator's findings?**

7 **A.** Yes. To begin, the Facilitator's observation regarding the fact that the
8 FCC has made decisions regarding this issue is irrelevant. In fact, the
9 FCC has provided guidance to state commissions with respect to how
10 they should approach this issue, noting that the FCC does not require any
11 structure for monitoring or enforcement plans whatsoever. Additionally,
12 the FCC has made it clear that states are free to differ from the FCC and
13 from one another as they create their own state-specific plans that are part
14 of the evolutionary process of attempting to accurately reflect actual
15 commercial performance in the local marketplace. The following FCC
16 language illustrates the FCC's clear guidance to states regarding this
17 issue:

18 In prior section 271 orders, the Commission has reviewed
19 performance assurance plans modeled after either the New York
20 Plan or the Texas Plan.³ Although similar in some respects, the
21 current Pennsylvania plan, however, differs significantly from each
22 of these two plans. As stated above, we do not require any
23 monitoring and enforcement plan and therefore, we do not impose
24 requirements for its structure if the state has chosen to adopt such a

³ In our other section 271 applications, the relevant state commission had adopted either the New York or Texas plans for use in their respective state. See *SWBT Texas Order*, 15 FCC Rcd at 18360, para. 421; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

1 plan.⁴ We recognize that states may create plans that ultimately vary
2 in their strengths and weaknesses as tools for post-section 271
3 authority monitoring and enforcement.⁵ We also recognize that the
4 development of performance measures and appropriate remedies is
5 an evolutionary process that requires changes to both measures and
6 remedies over time. We anticipate that state commissions will
7 continue to build on their own work and the work of other states in
8 order for such measures and remedies to most accurately reflect
9 actual commercial performance in the local marketplace.⁶

10 It is clear from this FCC language that the past decisions of the FCC
11 should not be given the weight that the Facilitator has given them in this
12 case.

13
14 **Q. Should the South Dakota Commission accept the findings of the**
15 **Facilitator with respect to the 36 percent cap because the Colorado**
16 **Special Master's Report applied a similar standard?**

17 **A. No.** In fact, the conclusion reached by the Facilitator that his findings and
18 what has occurred in Colorado are similar with respect to this issue can be
19 disputed.

20
⁴ *SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 423; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

⁵ *See Ameritech Michigan Order*, 12 FCC Rcd at 20748, para. 393. The Commission has previously predicted that the enforcement mechanisms developed in different plans developed by New York and Texas would be effective in practice. *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433. This prediction was based on five characteristics: potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data are accurate. *Id.*; *see also SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 423.

⁶ *Verizon Pennsylvania Order*, FCC 01-029, Released September 19, 2001, para. 127-128.

1 **Q. Are the Colorado Performance Assurance Plan and the proposed QPAP**
2 **similar with respect to this issue?**

3 A. No, they are not. The QPAP as proposed by Qwest, and as advocated by
4 the Facilitator differ significantly. The QPAP for example, places a hard
5 cap limitation on the annual liability to which Qwest is subject for
6 noncompliance. This creates some problems that are very difficult to
7 overcome, including what to do with respect to compensating CLECs for
8 harm after the cap has been reached.

9 The Colorado Performance Assurance Plan (CPAP) places no such hard
10 cap on Qwest's liability for a given year. An initial reading of the CPAP
11 may be confusing in that the plan calls for an annual cap of \$100 million.
12 The CPAP and the QPAP are similar in that there is a \$100 million cap in
13 Colorado, and a \$15 million cap in South Dakota. However, a closer
14 reading of the CPAP, and a complete understanding of the CPAP
15 mechanism illuminates a significant difference between the two plans, that
16 being that the QPAP limits the amount that can be recovered from Qwest
17 for non-compliance during a given year, while the CPAP places no such
18 limit. This is because, although the annual cap in the CPAP is set at \$100
19 million, and monthly caps are set at one-twelfth of that amount, if Qwest's
20 liabilities exceed the cap, that amount carries forward until a month when
21 it can be paid, with interest, even if the complete payment takes longer
22 than a year. In other words, while Qwest would never pay more than \$100
23 million during one given year under the CPAP, if Qwest incurred more

2 still be paid in following years. Under the proposed QPAP, Qwest's
3 liability is strictly limited to its cap of \$15 million. If Qwest's non-
4 compliance resulted in assessments greater than its cap under the QPAP,
5 the excess is essentially forgiven.

6 Given this significant contrast, the Facilitator's reliance on Colorado
7 proceedings to support his findings should be completely discounted.

8
9 **Q. In your opinion, did Qwest present evidence in the multi-state
10 proceeding that would support a 36% hard cap as suggested by the
11 Facilitator?**

12 **A.** No, and that lack of evidence which would establish the appropriateness
13 of the cap level is critical. The hard cap advocated by Qwest and adopted
14 by the Facilitator constitutes a point of reference for Qwest, from which
15 Qwest can calculate the cost of non-compliance, weighed against the
16 benefits of the elimination of competition in the local market and its entry
17 into the long distance market. It is therefore critical that a cap (if one
18 exists) is set at a level in which the costs of non-compliance are greater
19 than the benefits of non-compliance. Further, Qwest has not made a
20 sufficient case for the 36% cap that it advocates in the absence of
21 providing solid evidence that a 36% cap would provide meaningful and
22 significant incentive. In fact, Qwest provided absolutely no economic
23 justification for the 36% number.

1

2 **Q. What kind of evidence should Qwest have presented in support of a**
3 **36% cap?**

4 A. The evidence that would support such a cap would come from a
5 comparison of Qwest's marginal cost of complying with the performance
6 standards and the assessments to which it would be exposed for not
7 complying. This cost/benefit analysis would show whether or not a 36%
8 cap would provide sufficient incentive for Qwest to comply with the agreed
9 to standards, because it would clearly show whether the cost of
10 compliance could be absorbed by Qwest as a cost of doing business. In
11 other words, there is no evidence whatsoever, that at a 36% cap, Qwest
12 would not be better off and more profitable by not complying with the
13 measures. If Qwest had the ability to absorb the costs of non-compliance
14 as a cost of doing business, and still remain profitable, there would be little
15 if any incentive for Qwest to comply with the agreed to standards, in fact, if
16 such a situation existed, Qwest would have the incentive to avoid
17 compliance, since it could eliminate its competitors while maintaining
18 positive profits. In other words, if Qwest's total payment liability is set at
19 such a level that it is less than the profits to be maintained, and/or gained
20 by protecting its local market share, and its entry into the long-distance
21 market, Qwest's incentive to participate in a process that is conducive to
22 the development and growth of competition in South Dakota would be

1 significantly diminished if not entirely eliminated. Clearly, under those
2 circumstances, competition would not be sustainable.

3
4 **Q. Was this type of evidence discussed during the multi-state proceeding?**

5 **A.** Yes it was.⁷ The Facilitator determined that although such an analysis had
6 "theoretical appeal", that there were a number of insurmountable problems
7 associated with applying it. Whether or not it would be possible for Qwest
8 to perform such an analysis in order to support a 36% cap is somewhat
9 irrelevant to this discussion, in that my recommendation to this
10 Commission is to eliminate the cap on total payment liability entirely. If
11 Qwest's payment liability is essentially unlimited, it eliminates the
12 possibility that Qwest could make the calculation discussed previously,
13 and Qwest's incentive would be clear – to comply. In any event, the
14 marginal cost analysis, which the Facilitator found to be impossible to
15 perform would not be required in the absence of a cap.

16
17 **Q. The Facilitator in the multi-state proceeding appeared to indicate that**
18 **the parties in opposition to the 36% cap failed to show that such a cap**
19 **was not appropriate, since they did not answer the question "how much**
20 **would be sufficient". Would you comment on the Facilitator's finding?**

21 **A.** Yes. To begin, the 36% cap is advocated by Qwest. Therefore, I believe
22 that in order to support a 36% cap, rather than a 20% cap, or a 50% cap,
23 Qwest should have provided evidence showing that the 36% cap provides

1 a meaningful incentive to comply. In the absence of such evidence,
2 neither the Facilitator, the parties to the multi-state proceeding, the parties
3 to this proceeding, nor this Commission can be sure that the cap
4 advocated by Qwest will accomplish its intended purpose, that being to
5 provide an incentive for Qwest to remain compliant should 271 relief be
6 granted. With respect to the Facilitator criticizing the CLECs for not
7 answering the fundamental question of "how much would be sufficient", I
8 believe that criticism is misplaced. Qwest alone has the information
9 needed to perform such an analysis. Laying the responsibility at the feet
10 of the CLECs is inappropriate, especially given the Facilitator's conclusion
11 that performing such an analysis at all is fraught with insurmountable
12 problems. The problems associated with such an analysis, whether
13 insurmountable or not, would be much greater when faced by a CLEC
14 than when faced by Qwest.

15 **Q. Do you have any further comments with respect to this issue?**

16 **A.** Yes. The cap as proposed by Qwest is set at 36% of its 1999 revenues.
17 This equates to roughly \$15 million. Should Qwest's proposed QPAP be
18 adopted and should Qwest receive section 271 relief, it should be noted
19 that once Qwest gains access to the long distance market, its revenues
20 would increase (perhaps significantly), so that \$15 million may not
21 represent anything near 36% of its revenues. In such a case, the
22 incentive (which has not been shown to be sufficient to induce compliant

⁷ See QPAP report at page 20.

1 behavior) would be diluted, going forward. This is just another reason why
2 a hard cap is not logically effective in providing incentive for Qwest once
3 section 271 relief is granted.

4

5 **Q. What is your recommendation with respect to the total payment liability**
6 **issue?**

7 **A.** I recommend that the South Dakota Commission reject the Facilitator's
8 findings with respect to this issue, and eliminate the proposed cap on
9 Qwest's payment liability for several reasons.

10 First and foremost is the reason that, as noted, if a cap is established at a
11 level that allows Qwest to be profitable, while acting in a discriminatory
12 manner, Qwest will have no incentive to comply. Under those
13 circumstances, it would be very difficult, if at all possible for competition to
14 continue to develop in South Dakota.

15 Second, Qwest failed to provide the evidence to support the 36% cap. In
16 the absence of such evidence, this Commission does not know whether
17 the cap should be set at 36%, or if Qwest would only have the incentive to
18 comply at a much higher level, and a 36% cap could be absorbed by
19 Qwest as a cost of doing business. In the absence of a cap, the
20 Commission can be certain that Qwest will have the economic incentive to
21 comply with its obligations.

1 Finally, the issues associated with the cap, such as lack of proper
2 evidence (or even the ability to provide such an analysis) and the
3 payments at the end of the year issue would be entirely avoided by
4 removing the annual cap.

5

6 **Q. Would such an action by the Commission penalize Qwest?**

7 **A.** Absolutely not. Qwest has already agreed to the standards to which it is
8 obligated. While an unlimited payment liability removes the cap on what
9 Qwest could be obligated to pay, what Qwest pays is entirely under
10 Qwest's control. Qwest could limit its payments under the QPAP to \$0.
11 All Qwest has to do is live up to the standards to which it has already
12 agreed.

13

14 **Q. Are you saying that Qwest maintains control over its total payment**
15 **liability regardless of the cap level?**

16 **A.** Yes. It should be clear that Qwest's total payment liability is not so much
17 a function of a cap, but of Qwest's commitment to living up to their
18 promises. Increasing the cap, or eliminating it entirely, is not the same as
19 subjecting Qwest to higher payments. Qwest's payments are completely
20 under the control of Qwest.

21

1 Q. If Qwest could provide the evidence you discussed earlier in your
2 testimony with respect to showing that a certain level of cap is adequate
3 would your recommendation change?

4 A. If Qwest could provide the evidence discussed previously, in such a way
5 that there was no doubt that a cap did provide sufficient incentive for
6 Qwest to comply, my recommendation may be different. However, other
7 issues, such as the mechanism for payment to CLECs at the end of the
8 year would still need to be addressed.

9

10 **5. Payment Triggers**

11
12 Q. Please summarize this issue.

13 A. This issue is found at page 42 of the QPAP Report.

14 In the multi-state proceeding, Qwest argued for a trigger for Tier 2
15 payments (payments not made to CLECs) of three months of
16 noncompliant performance. CLEC parties argued that Tier 2 payments
17 should be triggered after only one month of noncompliant performance,
18 exactly like the Tier 1 payments (payments to CLECs). The Facilitator
19 agreed in principle with the CLECs, and proposed a payment mechanism
20 of his own.

21
22 Q. Does the Facilitator's proposal provide sufficient incentive for Qwest to
23 comply?

1 A. No. The Facilitator proposed a complicated mechanism that would trigger
2 payments sooner than after three consecutive months of noncompliant
3 performance, but would still allow for a lag in payment by Qwest. By
4 allowing Qwest to lag behind in its payment obligations, the Facilitator's
5 proposed solution would actually act as a disincentive for Qwest to take
6 immediate action to address performance issues, thereby, jeopardizing
7 CLECs' ability to effectively compete for retail customers.

8
9 **Q. What do you recommend with respect to this issue?**

10 A. I recommend that the Commission reject the Facilitator's proposal, and
11 require that Tier 2 payments be triggered without any lag. This solution
12 would be consistent with the criteria set forth by the FCC that the
13 performance assurance plan's structure be designed to detect and
14 sanction poor performance *when* it occurs.

15
16 **6. Limiting Escalation to 6 Months**

17
18 **Q. Please summarize this issue.**

19 A. This issue is addressed beginning at page 44 of the QPAP Report.

20 The Facilitator adopted Qwest's proposal to limit payment escalation to six
21 months, citing among other things that Qwest's noncompliance for 6
22 months, raises the question of whether Qwest can even comply with the
23 standard.

1
2 **Q. Do you agree with the Facilitator's findings with respect to this issue?**
3 **A.** No. The same logic that supports doing away with an overall annual cap
4 (and limiting total payment liability) applies to the elimination of limits on
5 payment escalation on individual performance measures. As discussed
6 previously, the only way to ensure that Qwest will have sufficient financial
7 incentive to live up to its agreements is to eliminate the caps on what
8 Qwest would have to pay for not complying.

9
10 **Q. The Facilitator noted that Qwest's noncompliance may be due to the**
11 **fact that Qwest simply cannot meet the performance measures and**
12 **sustain compliance with those measures. Could you comment on that?**
13 **A.** Yes. I find the Facilitator's rationale with respect to that particular
14 argument to be ludicrous. The standards to which the Facilitator is
15 referring were not foisted upon Qwest, but rather, were agreed to by
16 Qwest in the Regional Oversight Committee's OSS Test process. If
17 Qwest did not fully expect to be able to meet those standards, one could
18 wonder why Qwest ever agreed to such standards, unless, of course,
19 Qwest never intended to comply with those standards in the first place,
20 and is now seeking to limit the penalties associated with noncompliance.
21 Given that Qwest has previously agreed to each standard for which
22 noncompliance payments would escalate, and given the need to provide
23 Qwest with adequate incentive to perform in a manner consistent with

1 those standards, there appears to be no logical reason for limiting the
2 escalation of payments to which Qwest is subject for noncompliance.

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Q. Did the Facilitator discuss any other concepts with respect to this issue?

A. Yes. Once again, the Facilitator criticized certain parties for raising the issue regarding Qwest's marginal cost of compliance. Essentially, the position advocated by these parties was that if after the payments had been escalated to their maximum values (after 6 months), the cost of noncompliance was less than the benefits of noncompliance, that Qwest would be better off not complying than complying. In spite of the clear logic and sound economic incentive concepts incorporated in that argument, the Facilitator rejected that argument, refuting it by presenting a list of reasons why Qwest may not comply with the standards that were not incentive driven, almost as if it should be expected that Qwest will fail to comply with the agreed-upon standards. Once again, the Facilitator's logic is flawed and his findings should be rejected because the standards of which he is speaking are standards that Qwest not only agreed to, but in many cases are standards with which Qwest is currently already in compliance.

Q. Did you find other flaws in the Facilitator's findings?

A. Yes. The Facilitator has in his findings shifted the responsibility away from Qwest. Qwest has agreed to be bound by the obligation to perform, those

1 obligations would be completely meaningless if Qwest can make itself
2 better off by not complying. By shifting the obligation away from Qwest,
3 the Facilitator has shifted a burden to the CLEC competitors who could
4 possibly be faced with the prospect of attempting to compete in South
5 Dakota under circumstances where Qwest has no incentive to live up to
6 the agreed-upon standards necessary for competition to thrive.

7
8 **Q. What is your recommendation with respect to this issue.**

9 A. I recommend that the Commission reject the Facilitator's adopted six-
10 month limit on payment escalations, and instead place no limit on payment
11 escalations. This would ensure that Qwest could not treat the costs of
12 noncompliance as a business expense, but instead would consider
13 payments for noncompliance a significant incentive to comply with its
14 agreed to performance standards.

15
16 **Q. Would this penalize Qwest unfairly?**

17 A. No. Again, Qwest alone can control how much these payments escalate
18 by performing in accordance with the standards to which it has agreed.
19 Qwest can assure itself of a 0% escalation rate simply by complying. The
20 stated purpose of the QPAP is to obtain such a result.

21
22 **7. Six Month Plan Review Limitations**
23

1 **Q. Please summarize this issue.**

2 A. This issue is addressed at page 59 of the QPAP Report.

3 Section 16 of the QPAP provides the means for amending the plan,
4 allowing for the following changes:

- 5 • Addition, deletion, or change of measurements (based on whether
- 6 there was an omission of failure to capture intended performance)
- 7 • Change of benchmark standards to parity standards, (based on
- 8 whether there was an omission or failure to capture intended
- 9 performance)
- 10 • Changes in weighting of measurements (based on whether the
- 11 volume of "data points" was different from what was expected)
- 12 • Movement of a measure from Tier 1 to Tier 2 (based on whether the
- 13 volume of "data points" was different from what was expected).
- 14

15 This section of the QPAP requires that any change must be approved by
16 Qwest.

17

18 **Q. What do you recommend with respect to this issue?**

19 A. I recommend that under no circumstances should the South Dakota Public
20 Utilities Commission limit its ability to unilaterally modify the QPAP should
21 the public interest warrant such modification, regardless of what that
22 modification is deemed by the Commission to be.

23 It is not my position that changes be made without due consideration of
24 the interests of all parties. For example, the Commission may want to
25 explore joining with other states in a regular collaborative review of the

1 QPAP where Qwest and CLECs would also participate. Or, the
2 Commission may want to establish such a procedure only for South
3 Dakota. But in no instance should any party other than the Commission
4 have the final say on how, or whether, the QPAP should be modified.

5

6 **§. Sticky Duration**

7

8 **Q.** Please summarize this issue.

9 **A.** This issue is addressed beginning at page 62 of the QPAP Report.

10 This concept is that once a penalty payment has escalated to the point
11 that Qwest comes into compliance, that payment level should be
12 maintained. The logic being that penalty payments should stand at the
13 level that provided Qwest with the incentive to comply. The alternative to
14 this is to allow penalty payments to escalate until compliance occurs, and
15 then to let the payment level slide back with the payment dropping one
16 level for each consecutive month of compliant performance until the base
17 level was reached. The Facilitator once again rejected this argument,
18 stating that it would ignore entirely successful performance by Qwest
19 however long Qwest provided it.

20

21 **Q.** Do you agree with the Facilitator?

22 **A.** No. The Facilitator once again, completely ignores the concept of
23 economic incentives, instead, focusing on the potential sufferings of

1 Qwest, and the lack of awarding Qwest for compliant behavior. As I have
2 discussed previously in this testimony, Qwest can completely avoid
3 penalty payments by complying with the standards to which it has
4 previously agreed. No matter what level at which the payment is set,
5 Qwest can be liable for \$0 in penalties simply by doing what it has
6 committed to do. Further, with respect to the Facilitator's criticism of this
7 concept on the basis that it does not reward Qwest for compliant behavior,
8 the QPAP is not intended as a vehicle to dispense rewards to Qwest. It is
9 clearly intended as a mechanism that is put in place to keep Qwest from
10 acting in a discriminatory, anti-competitive manner. Based on these
11 arguments, I disagree with the Facilitator's findings.

12

13 Q. What do you recommend with respect to this issue?

14 A. I recommend that the Commission reject the Facilitator's findings, and
15 apply the concept of sticky duration to payments to which Qwest is subject
16 under the QPAP for noncompliance.

17

18 9. Public Interest – UNE Prices

19

20 Q. Did you find fault with any of the findings of the Facilitator in his Report
21 on Public Interest issues?

22 A. Yes. I found the findings of the Facilitator with respect to the "UNE Prices"
23 issue to be counter to the public interest.

24

1 **Q. Please summarize this issue.**

2 **A.** This issue is addressed at page 5 of the Public Interest Report.

3 CLECs provided testimony to the effect that UNE prices were in excess of
4 Qwest's retail prices. Under these circumstances, it was argued that entry
5 into the local market via UNEs was therefore unprofitable. The Facilitator,
6 in spite of noting that it is clear that checklist compliance indeed requires
7 UNE pricing to meet the standards of the Act, side-stepped this issue by
8 noting that the multi-state proceeding did not address Qwest's wholesale
9 prices, instead deferring the issue to the States. The Facilitator went on to
10 comment on the evidence presented in the multi-state proceeding that
11 clearly showed that Qwest's retail rates were lower than UNE prices,
12 noting that this difference could be made up by CLECs by offering vertical
13 features and in other ways, and that CLECs could turn to resale as an
14 option if UNE prices are set at such a level that retail service cannot be
15 offered by CLECs profitably.

16
17 **Q. Please comment on the Facilitator's findings.**

18 **A.** The Facilitator's comments regarding this issue should be completely
19 discounted by this Commission. It is clear that Congress and the FCC
20 intend for CLECs to have the ability to access the incumbent carrier's
21 unbundled network and to provide competitive alternatives to retail
22 consumers through the use of unbundled network elements. While it is
23 true that CLECs must work to be efficient in order to achieve profitability in

2 competition), such profitability is not achievable with respect to certain
3 markets that were assessed by the Facilitator. This is because, based on
4 the evidence reviewed by the Facilitator, CLECs electing to compete via
5 UNEs would be forced to offer competitively priced retail service to
6 customers at a loss, because the retail prices would not recover the costs
7 of the UNEs utilized by the CLEC to provide service. The Facilitator
8 glosses over this fundamental drawback to his findings by saying that
9 CLECs could make up the loss somewhere else, or concentrate their
10 efforts on competing using other means. This is clearly not what was
11 intended by the Act.

12
13 **Q. What do you recommend with respect to this issue?**

14 **A.** I am aware that the Commission is planning to take up the issue of UNE
15 prices in an upcoming Docket. Because UNE prices that are in excess of
16 Qwest's retail prices constitutes a significant barrier to entry, I recommend
17 that the Commission withhold a recommendation on this point pending the
18 conclusion of that proceeding, and a finding that there is no imbalance
19 between retail service prices and wholesale UNE prices that would
20 prohibit competitive entry into the local market.

21
22 **10. Conclusion**
23

1 **Q. Can you characterize your recommendations to this point?**

2 A. Yes. Each of my recommendations in this testimony is intended to lay the
3 foundation for the development of a local market in South Dakota in which
4 competition will thrive and grow. Each of my recommendations should
5 therefore be adopted by this Commission.

6 **Q. Do you have any further recommendations?**

7 A. Yes. I recommend that if the Commission adopts my recommendations
8 that the Commission order Qwest to provide them with an updated version
9 of the SGAT, including the QPAP, which incorporates the changes I have
10 advocated.

11

12 **Q. Does this conclude your direct testimony?**

13 A. Yes it does.

CONTINUATION

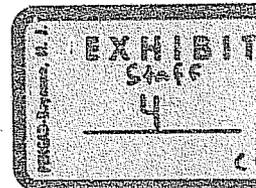
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South Dakota Checklist Items/Public Interest Summary

Direct Testimony of Marlon "Buster" Griffing, Ph.D.

On behalf of the Staff of the South Dakota Public Utilities Commission

April 30, 2002



CONTINUATION

[6]

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May 2002, the original and 10 copies of an Additional Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan were sent by overnight mail to:

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

and a true and correct copy was sent by U.S. Mail on May 8, 2002 addressed to:

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