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DOCKET NO. \_\_\_\_\_

In the Matter of IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING  
OBLIGATIONS

**Public Utilities Commission of the State of South Dakota**

DATE	MEMORANDA
9/29 03	Filed and Docketed;
10/2 03	Weekly Filing;
10/9 03	Included USA Notice of Intent; ✓
10/10 03	AT&T's Comments; ✓
10/10 03	SOTA Comments; ✓
10/10 03	Notice of Intent to Participate and Comments (Prudential); ✓
10/10 03	Comments to the Commission's 9/29/03 Order; ✓
10/14 03	Quest's Initial Comments; ✓
10/15 03	Notice of Appearance;
10/17 03	Ten Orders Allowing Appearances of Non Resident Attorneys;
10/21 03	Order for <sup>Detailed Statement &amp; Order Requesting Comments;</sup> Notice of Deadline for Filings to <del>Set</del> <sup>Set</sup> <del>the</del> <sup>the</sup> <del>date</del> <sup>date</sup> of Dispute; Order for
10/23 03	Petition to Intervene and Comments (Prudential)
10/30 03	Petition to Intervene (Pro Lead);
10/31 03	AT&T's Petition for Leave to Intervene;
10/31 03	AT&T's Response to Order Requesting Comments;
10/31 03	Petition for Intervention and Comments (MCI Metro + MCI St Paul Com);
10/31 03	SOTA Petition to Intervene;
10/31 03	Quest's Petition to Intervene and Supplemental Comments;
10/31 03	Joint Motion for Adoption of Batch Dat. Cut Forum;
11/6 03	Order Granting Interventions and <sup>Order Requesting Comments;</sup> Joint Motion; <sup>Order Requesting Comments;</sup> Order Appointing Responder of Dispute; and
11/7 03	Petition to Intervene (Prairie State Communications, Inc.);
11/7 03	Petition to Intervene (Midstate Telecom, Inc.);
11/7 03	Petition to Intervene (Northern Valley Communications, LLC);

11/10/03	Black Hills Fiber Co's Petition to Intervene;
11/12/03	Quest's Batch Nat. Cret. Proposal;
11/12/03	Quest's Proposed List of CLEC's to Receive Commission Discovery;
11/12/03	National Resident Attorney for Nonresident Attorney to Appear Pro Hac Vice;
11/12/03	MCI Response to the Commission's Nov. 6, 2003 Order Requesting Comments;
11/13/03	Quest's Amended Proposed List of CLEC's to Receive Commission Discovery;
11/18/03	AT&T's Comments and Counter Proposals on Quest's Region-wide Batch Loop Conversion Process;
11/18/03	MCI's Response to Quest's Proposal for Region-wide Batch Loop Conversion Process;
11/26/03	Order Issuing Protective Order; Order Issuing Discovery Requests;
12/11/03	MCI's Discovery Requests to Quest Corporation;
12/11/03	Order Granting Interventions; Order for and Notice of Procedural Schedule and Hearing;
12/11/03	Quest's Motion to Postpone Mass Market Switching Code and Case Docket;
12/17/03	Order Closing Docket;
12/17/03	Docket Closed.

TC03-181 - SERVICE LIST

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TC03-181 - SERVICE LIST

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

IN THE MATTER OF THE IMPLEMENTATION	)	ORDER FOR AND NOTICE
OF THE FEDERAL COMMUNICATIONS	)	OF DEADLINE FOR FILING
COMMISSION'S TRIENNIAL REVIEW ORDER	)	NOTICE OF INTENT AND
REGARDING UNBUNDLING OBLIGATIONS	)	ORDER REQUESTING
	)	COMMENTS
	)	TC03-181

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

With respect to loops, the FCC found that, on a national level, "requesting carriers are impaired at most customer locations without access to dark fiber loops." *Order* at ¶ 311. The FCC also found that "requesting carriers are impaired on a customer-location-specific basis without access to unbundled DS3 loops." *Order* at ¶ 320. The FCC further found that "requesting carriers generally are impaired without access to unbundled DS1 loops." *Order* at ¶ 325. The FCC then stated the following:

In making affirmative impairment findings on a nationwide basis for dark fiber loops, DS3 loops, and DS1 loops, we recognize that limited alternative deployment has occurred at particular customer locations not specified in our record for certain of these high-capacity loop types which could lead to a finding of no impairment for that loop type at that location. Thus, for these loop types, a more granular impairment analysis should be applied on a customer-by-customer location basis. To that end, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled high-capacity loops pursuant to two triggers. If a state commission finds that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high-capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at that location according to the transition schedule adopted by the state commission. *Order* at ¶ 328.

With respect to dedicated transport, the FCC found that, on a national level, "competing carriers are impaired without access to unbundled dark fiber transport." *Order* at ¶ 381. Similarly, the FCC concluded that "requesting carriers are impaired on a route-specific basis without access to unbundled DS3 transport." *Order* at ¶ 386. The FCC further found that "requesting carriers generally are impaired without access to DS1 capacity transport." *Order* at ¶ 390. The FCC then delegated to the states "a fact-finding

role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers." *Order* at ¶ 394.

With respect to local circuit switching, the FCC found that, on a national level, "requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets." *Order* at ¶ 419. The FCC further found as follows:

Because we find that operational and economic factors associated with the current hot cut process used to transfer a loop from one carrier's switch to another's serve as barriers to competitive entry in the absence of unbundled switching, state commissions must, within nine months from the effective date of this Order, approve and implement a batch cut process that will render the hot cut process more efficient and reduce per-line hot cut costs. In the alternative, if appropriate for any particular geographic market, state commissions must issue detailed findings supporting a conclusion that current hot cut processes do not give rise to impairment in a market and that a batch cut process is therefore unnecessary. *Order* at ¶ 460.

In accordance with the FCC's order, the Public Utilities Commission (Commission) is requesting that any person or entity that intends to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers shall file a notice of such intent on or before October 10, 2003. The notice shall identify each network element that the person or entity intends to challenge regarding the FCC's findings of impairment.

In addition, the Commission requests written comments regarding recommendations on how the Commission should proceed. The Commission would like comments from interested persons or entities on the following issues:

1. If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport, or local circuit switching)?
2. With respect to the approval and implementation of a batch cut process, should the Commission work with other state commissions on this issue?
3. Do you intend to participate in any proceedings that are held?
4. Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

5. Please provide any additional comments the Commission should consider regarding these issues.

All written comments must be received by the Commission on or before October 10, 2003. Based on any notices of intent that are filed and the written comments, the Commission shall determine how to proceed. It is therefore

ORDERED, that any person or entity that intends to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers shall file a notice of such intent on or before October 10, 2003; and it is

FURTHER ORDERED, that any interested person or entity shall file written comments on or before October 10, 2003, regarding the issues listed above.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of September, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Deldine Kolbo</i></u>
Date:	<u>9/29/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman

*Gary Hanson*  
GARY HANSON, Commissioner

*James A. Burg*  
JAMES A. BURG, Commissioner



**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**

**For the Period of September 25, 2003 through October 1, 2003**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3201

**CONSUMER COMPLAINTS**

**CT03-149 In the Matter of the Complaint filed by Allen Funk, Bath, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant states that he purchased a seven-year pre-paid long distance service plan with a December 14, 1999, activation date. The calling cards are no longer valid. Complainant seeks to be reimbursed for the pre-paid service not provided plus any punitive damages that can be levied by the Commission.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/25/03  
Intervention deadline: N/A

**CT03-150 In the Matter of the Complaint filed by Derek Jensen on behalf of Evanson-Jensen Funeral Home, Lemmon, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant's representative states that it purchased a four-year pre-paid long distance service plan on September 11, 2002. Service was terminated on or about June 2, 2003. Complainant seeks to be reimbursed for the pre-paid service not provided.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/26/03  
Intervention deadline: N/A

**CT03-151 In the Matter of the Complaint filed by Tim Sandress on behalf of Auto Shoppe Inc., Mitchell, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant's representative states that it purchased a five-year pre-paid long distance service plan. Service was terminated after only five months of service. Complainant seeks to be reimbursed for the pre-paid service not provided.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/29/03  
Intervention deadline: N/A

**CT03-152** In the Matter of the Complaint filed by Joseph A. and Penny L. Schonebaum, Burke, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.

Complainants state that they purchased a seven year pre-paid long distance service plan. Service was terminated after only three years of service. Complainants seek to be reimbursed for the pre-paid service not provided.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 10/01/03  
Intervention deadline: N/A

### ELECTRIC

**EL03-024** In the Matter of the Petition of Otter Tail Power Company, a Division of Otter Tail Corporation, to Revise its Fuel Adjustment Clause Tariff to Accommodate Purchased Energy from Renewable Resources.

On September 25, 2003, Otter Tail Power Company filed a petition for approval to revise its Fuel Adjustment Clause Tariff. The revisions are requested to permit the inclusion of purchase power costs related to renewable energy purchases. On April 1, 2003, Otter Tail entered into a Power Purchase Agreement with FPL Energy to purchase the electric energy generated by 14 wind turbines with an approximate output of 21 megawatts. Otter Tail believes that approval of the inclusion of the costs of energy purchased from renewable sources is appropriate because when it is competitively priced, renewable energy is an appropriate addition to Otter Tail's resource mix.

Staff Analyst: Michele Farris  
Staff Attorney: Karen Cremer  
Date Docketed: 09/25/03  
Intervention Deadline: 10/15/03

**EL03-025** In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

Application by Otter Tail Power Company for approval to revise its tariffed Summary List of Contracts with Deviations. The existing contract with the City of Veblen will expire on November 3, 2003. Otter Tail states the new agreement does not contain any deviations from Otter Tail's currently filed tariff and therefore requests that reference to a contract with the City of Veblen be removed from the Summary List of Contracts with Deviations.

Staff Analyst: Dave Jacobson  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/29/03  
Intervention Deadline: 10/15/03

**EL03-026** In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

Application by Otter Tail Power Company for approval to revise its tariffed Summary List of Contracts with Deviations. The existing contract with the City of Clair City will expire on November 1, 2003. Otter Tail states the new agreement does not contain any deviations from Otter Tail's currently filed tariff and therefore requests that reference to a contract with the City of Clair City be removed from the Summary List of Contracts with Deviations.

Staff Analyst: Dave Jacobson  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/29/03  
Intervention Deadline: 10/15/03

## TELECOMMUNICATIONS

**TC03-180. In the Matter of the Application of Gold Line Telemanagement Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.**

On September 26, 2003, Gold Line Telemanagement Inc. filed an application seeking a Certificate of Authority to provide interexchange telecommunications services in South Dakota. The Applicant is a reseller which intends to offer interexchange services, including 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services, travel card services and prepaid calling card services.

Staff Analyst: Keith Senger  
Staff Attorney: Kelly Frazier  
Date Docketed: 09/26/03  
Intervention Deadline: 10/17/03

**TC03-181 In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order Regarding Unbundling Obligations.**

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order. On September 29, 2003, the Commission opened a docket requesting that any person or entity that intends to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers shall file a notice of such intent on or before October 10, 2003. The notice shall identify each network element that the person or entity intends to challenge regarding the FCC's findings of impairment. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed. These comments are also due on or before October 10, 2003.

Staff Analyst: Harlan Best  
Staff Attorney: Karen Cremer  
Date Opened: 09/29/03  
Comments and Notices Due: 10/10/03

**TC03-182      In the Matter of the Filing for Approval of an Amendment to an  
Interconnection Agreement between Qwest Corporation and PrairieWave  
Telecommunications, Inc.**

On September 29, 2003, the Commission received a Filing of Toll and Local Billing Records Terms and Conditions Amendment to the Interconnection Agreement between PrairieWave Telecommunications, Inc. and Qwest Corporation). According to the parties, the amendment is a negotiated amendment to the agreement made between the parties in Docket TC97-126, which was approved by the Commission on October 21, 1998. The amendment is made in order to add the Toll and Local Billing Records Terms and Conditions as set forth in Attachment 1 and Exhibit A, attached to the filing. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than October 20, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier  
Date Docketed: 09/29/03  
Initial Comments Due: 10/20/03

**TC03-183      In the Matter of the Request of Farmers Mutual Telephone Company for  
Certification Regarding its Use of Federal Universal Service Support.**

On October 1, 2003, Farmers Mutual Telephone Company (Farmers Mutual) provided information constituting Farmers Mutual's plan for the use of its federal universal service support and to otherwise verify that Farmers Mutual will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best  
Staff Attorney: Karen E. Cremer  
Date Docketed: 10/01/03  
Intervention Deadline: 10/10/03

**You may receive this listing and other PUC publications via our website or via internet e-mail.  
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>**

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October 9, 2003

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**RECEIVED**  
OCT 09 2003  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 1924

Dear Pam:

Enclosed for filing please find an original and ten copies McLeodUSA's Notice of Intent in the above referenced action.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Bill Courter

RECEIVED

OCT 09 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER ) **MCLEODUSA NOTICE**  
REGARDING UNBUNDLING OBLIGATIONS ) **OF INTENT**

COMES NOW McLeodUSA Telecommunications Services, Inc., by and through its attorney Brett Koenecke, of May, Adam, Gerdes & Thompson, LLP, of Pierre, South Dakota, and files this Notice of Appearance in the above captioned action.

McLeodUSA is aware of and has received copies of the Order Setting Filing Deadline and the Order for and Notice of Deadline for Filing Notice of Intent and Order Requesting Comments. McLeodUSA considers this its Notice of Intent in response to those documents.

With respect to the first question posed by the Commission regarding proceedings where no person or entity challenged the findings of impairment, McLeodUSA offers that this is a topic more appropriate for ILEC's and less appropriate for CLEC's and would defer to ILEC's and their discretion.

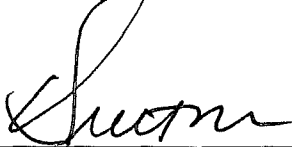
McLeodUSA does believe that the Commission's work with other state commissions on the approval and implementation of a batch cut process would be helpful for all concerned and would offer its agreement if the Commission should decide.

McLeodUSA intends to participate in proceedings held especially if they are with respect to the loops and dedicated transport issues. McLeodUSA's participation is less likely if the proceedings regard switching only.

McLeodUSA has no recommendations regarding the general procedures and would leave those questions to the Commission's discretion.

Dated this 9 day of October, 2003.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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**Janet Keller**  
Docket Manager  
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October 9, 2003

**RECEIVED**

OCT 10 2003

**Via Overnight Mail**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Pam Bonrud  
Executive Director  
SD Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of the Implementation of the Federal Communications  
Commission's Triennial Review Order Regarding Unbundling  
Obligations, Docket No. TC03-181

Dear Ms. Bonrud:

Enclosed are the original and ten copies of AT&T's Comments in the above-referenced matter.

Sincerely,

  
Janet Keller

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 10 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

In the Matter of the Implementation of the Federal )  
Communications Commission's Triennial Review Order ) Docket No. TC03-181  
Regarding Unbundling Obligations )

**AT&T'S COMMENTS**

AT&T Communications of the Midwest, Inc. ("AT&T") submits the following comments in response to the Commission's Order for and Notice of Deadline for Filing Notice of Intent and Order Requesting Comments dated September 29, 2003.

- 1. If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport or local circuit switching)?**

No. Through its Order for and Notice of Deadline of September 29, the Commission set a deadline for submitting notices of intent to challenge the findings of impairment for particular network elements made by the Federal Communication Commission ("FCC"). For loop and transport analysis, this Commission may act on a location and route specific basis only, and accordingly need not consider any loop location or transport route for which a challenge is not presented. Similarly, no mass market switching analysis is needed except as it relates to a specific market where evidence of non-impairment is presented.

- 2. With respect to the approval and implementation of a batch cut process, should the Commission work with other state commissions on this issue?**

Yes. The Commission's procedural framework for developing and analyzing a batch cut process should establish a timeframe that accommodates two critical tasks. First, it must allow



for implementation and testing to determine the adequacy of the batch cut process. This portion of the process could be conducted, in substantial part, on a regional basis, taking advantage of Qwest's regional OSS platforms. For example, to the extent the Commission retains a third-party consultant to monitor and test the batch cut process, the consultant could operate regionally rather than on a state-specific basis. AT&T would support the convening of a collaborative meeting at which representatives of state commissions are invited to discuss the extent to which a regional approach is desirable and feasible.

Second, time should be allotted to modify the batch cut process if performance does not meet expectations, and for retesting of modifications once implemented. Both of these events are essential elements in order to avoid any potential for significant customer service disruption. Any ultimate determination of the adequacy of the batch cut process must necessarily be deferred until sufficient real world experience has been developed.

A substantial part of the essential work to be done will be done by Qwest, and much of the essential information needed to evaluate the procedures adopted is in its exclusive possession and control. AT&T recommends that the Commission consider requiring Qwest to retain an independent consultant to analyze, test and confirm to the Commission that the batch hot cut process has been implemented and is operating successfully.

**3. Do you intend to participate in any proceedings that are held?**

Yes, AT&T intends to participate in any 9-month proceedings held by the Commission. AT&T does not at this time intend to challenge the FCC's findings of non-impairment in access to local switching for enterprise customers. However, if any party challenges the FCC's findings in this regard, AT&T may seek to intervene and participate in such a case. The Commission should not interpret the absence of a

challenge to the FCC's presumption of non-impairment as validation of the FCC's analysis, nor should the ability of a CLEC to demonstrate impairment in the future be viewed as waived.

AT&T will participate in any Commission proceedings addressing the approval and implementation of a batch cut process, whether those proceedings are held on a regional or state-specific basis.

**4. Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.**

AT&T will recommend procedures only for the 9-month proceedings required by the FCC in its *Triennial Review Order*<sup>1</sup>, since it does not intend to participate in the 90-day case.

**A. The 9-Month Proceedings**

There are three separate issues to be addressed in 9-month proceedings: mass market switching, loop and transport issues, and a batch hot cut process. AT&T recommends that the Commission use separate dockets or otherwise bifurcate (for procedural and hearing purposes) within a single docket the different types of 9-month proceedings since each will involve different issues and potentially different parties.

The appropriate procedural approach varies for each group of the 9-month issues: (i) Mass Market Switching; (ii) Loop and Transport; and (iii) the Batch Hot Cut Process.

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<sup>1</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*").

## 1. Procedure for Mass Market Switching Issues

*As a first step*, Qwest should be required at the earliest possible date to identify (1) those areas in which it contends that either the self-provisioning or the wholesale trigger is met; and (2) those areas in which it will contend the “potential deployment” test is met (in the event the triggers are found not to have been met). These initial filings need not be full evidentiary showings, but rather can be in the nature of “notice” pleadings sufficient to set forth Qwest’s claims as to where and in what fashion the criteria and conditions for overturning the FCC’s finding of impairment are met. Such presentations should be specific as to geographic market; that is, Qwest should specifically identify the markets (and basis for defining those markets) on which it relies and specifically allege where it contends that either a trigger or the potential deployment standard is satisfied. In particular, Qwest should identify all CLEC switches and providers of those switches that form the basis for its case of no impairment.

In order to narrow the proceedings to only those areas where it seeks to contest the national finding of impairment, Qwest should also provide a clear statement identifying any markets in which it will *not* claim that the FCC triggers are met or the

potential deployment standard is satisfied.<sup>2</sup> To the extent that this process defines certain markets where there is no dispute regarding a Commission finding of impairment, the parties may agree upon stipulated findings that would support the Commission's final determination.

Requiring Qwest to present an initial statement framing the case will bring focus to the proceeding at the outset and will result in more efficient use of the limited time available. In addition, it is an appropriate request to make of Qwest. It is Qwest that has an interest in overcoming the FCC's national finding of impairment, and therefore it is appropriate to require Qwest to identify those geographic areas that it intends to place at issue. Moreover, it is Qwest that has the best and most comprehensive access to information regarding the number and location of other carriers' switches. Requiring such an initial filing by Qwest will focus the proceeding on the issues and areas that will be contested and allow all parties and the Commission to concentrate their efforts accordingly.

**Second**, and also at the outset of the case, the Commission should feel free to request that parties file preliminary "guidance comments" on market definition, if the

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<sup>2</sup> For example, for any "relevant geographic area" proposed by an ILEC, the Commission should require it to affirmatively state its position as to whether the triggers are met. Secondly, it should also be required to state whether it will contend that the potential deployment criteria identified by the FCC are satisfied. If no ILEC asserts that the triggers are met or that non-impairment exists under the "Potential Deployment" analysis, the Commission could then, assuming the absence of any other evidence to the contrary, find that competitive carriers are impaired by the absence of unbundled local circuit switching by ILECs in the market. This process could lead to a substantial reduction in delays or wasteful filings, particularly in those defined markets where parties are least likely to disagree on whether impairment exists. Of course it is also possible that incumbent carriers will begrudge any potential defeat on this issue and insist that the triggers are met in every market defined by the Commission. Such a decision would be directly inconsistent with the FCC's decision: "[M]uch of the deployment relied upon by the BOCs in fact provides no evidence that competitors have successfully self-deployed switches as a means to access the incumbents' local loops, and have overcome the difficulties inherent in the hot cut processes." *TRO*, ¶ 440.

Commission believes that would indeed be helpful. Under ideal circumstances, it would be desirable to determine the geographic market(s) at the outset, so that all parties could prepare their showings knowing in advance the basis on which the Commission will reach its determinations. As a practical matter, however, the circumstances under which the parties and the Commission are laboring are not ideal. First of all, the nine-month schedule dictated by the FCC is extraordinarily tight, and resolving these issues “up front” necessarily would consume several weeks of valuable time. More importantly, the considerations that the FCC has identified (and those that the parties will no doubt advance) in deciding on geographic markets are highly fact-specific and best resolved on the basis of the evidence that will be collected.

Accordingly, it may well be advisable for this Commission to address geographic market issues as part of its determinations on the merits, and the parties would make their presentations on geographic market as part of their cases in chief. It is essential, in all events, that the parties have the opportunity to propose and support their recommendations on market definition, and to respond fully to the recommendations of others. If the Commission does wish to define the market up front, it should hold a separate first phase of evidentiary proceedings to do so.

*After the initial scoping and market guidance filings*, there should be two rounds of substantive simultaneous testimony filed (direct testimony followed by rebuttal), with approximately 30 days between filings, followed by final briefing after the evidentiary hearing. This would give all parties an adequate opportunity to advance their positions, including their proposals on geographic market definition and respond to the positions of others.

Rather than allowing a paper proceeding or a workshop format, a contested case proceeding should be used, allowing for presentation of evidence and cross-examination in a hearing. This could include testimony by panel on certain topics as appropriate. The FCC's Order emphasizes the importance of the state commissions' experience with finding facts based on evidentiary records,<sup>3</sup> and providing the required "granular" approach.

AT&T believes that any schedule should be put together with the participation of all parties and will require coordination among Qwest's other 13 states to set a schedule for the hearings. Two weeks should be set aside for the hearings. This is based upon AT&T having 6 or so witnesses, Qwest having a similar number and other parties, including the staff, having 6 or more witnesses. AT&T is also supportive of a proposal by Wyoming that parties agree that certain states be allowed more than 9 months to complete their proceedings.

Initial discovery requests should be funneled through the Commission and be based upon input from TRIP and from the parties. Because of the highly confidential nature of some of the discovery responses, a special protective order will be necessary. Such an order should allow for extra protections for confidential information that the carriers see as particularly competitively sensitive, including any information concerning carrier revenues and network information that affects network security. In addition, the Commission or a Commission consultant could aggregate all competitively sensitive data relating to competitive conditions before presentation to the parties or

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<sup>3</sup> *TRO*, at ¶¶ 188 (generally), 328 (loop analysis), 417 (dedicated transport), 425 (mass market switching analysis).

presentation as part of a public record. Additional discovery may be necessary after each round of testimony.

Service of documents to the other parties, including the Commission Staff, should be done electronically. AT&T recommends that the Commission Staff maintain an electronic listserve for this purpose. Filings at the Commission should be hard copies (and electronic versions if so requested). A separate list should be maintained regarding persons entitled to receive confidential material.

As a general matter, there will likely be changes necessary to SGAT and interconnection agreements following the Commission's conclusion of its Triennial Review work. However, most agreements contain a change of law provision to deal with these changes; and, in the absence of such a provision, the *TRO* provides guidance on the timeframe for effectuating such changes.<sup>4</sup> At this point in time, AT&T believes that it is preferable to move forward to conclude all outstanding dockets in the most expeditious manner allowed by the Commission's calendar. Once changes in law are effective in South Dakota following the conclusion of the Triennial Review work, those changes can be incorporated into agreements in effect in the state.

## **2. Procedure for Loop and Transport Issues**

The *TRO* lays out most (but not all) of the information that will be needed to conduct the loop and transport trigger analysis. Unlike the *mass market* trigger analysis, the Commission must act on a location or route specific basis, but it need not

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<sup>4</sup> *TRO*, ¶¶ 700-706.

consider any loop location or transport route for which evidence is not presented. Thus, like the *mass market* proceedings, Qwest should be required to go first in all cases.

Qwest should bear the burden of going forward to identify the routes or locations where it believes the triggers can be met. That performs a major screening function and prevents CLECs from having to present data on all of their facilities in a state/market. Once Qwest identifies the potentially qualifying locations and routes and identifies, in the aggregate, the CLECs they believe provide facilities on or to those routes or locations, data can be collected from those CLECs, on a confidential/proprietary basis, on those locations and routes only.<sup>5</sup>

Qwest is also permitted to make a “potential competition” argument on other locations or routes, but, again, it should have the burden of providing evidence to support its claims in the face of the national impairment finding. Notably, the FCC identifies a list of potential criteria for commissions to consider that is very localized in nature (*e.g.*, what is the relevant topography for the route, how the facilities would be deployed). *See, e.g., TRO*, ¶ 335. Thus, the ILECs are not permitted to make generalized claims of non-impairment; each location and route must be separately considered.

### **3. Batch Hot Cut Procedure**

AT&T addressed batch hot cut procedure in response to the Commission’s Question No. 2, above.

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<sup>5</sup> The amount of information on each location and route should be easily standardized for collection in tabular form. The Commission can then collect the data and count the locations and routes on which there are enough qualifying facilities to trip the trigger.



#### 4. General Comments

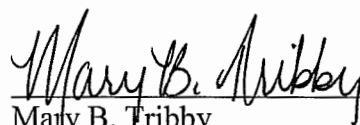
AT&T submits, as Exhibit A hereto, some comments regarding the Triennial Review Order generally and the work that must be done to implement it.

#### CONCLUSION

AT&T appreciates the opportunity to provide these comments to the Commission and respectfully requests that the Commission adopt the recommendations set forth herein.

Respectfully submitted this 10<sup>th</sup> day of October 2003.

AT&T COMMUNICATIONS  
OF THE MIDWEST, INC.



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## Exhibit A

### A. Mass Market Switching: The FCC's Finding of Impairment and The Role Of State Commissions Under the *TRO*

Among the key elements of the *TRO* is the FCC's national finding of impairment in serving *mass market* customers.<sup>1</sup> The FCC found that because there has been "only minimal deployment" of CLEC-owned switches to serve *mass market* customers, "we make a national finding that competitive carriers providing service to mass market customers are impaired without unbundled access to local circuit switching." *TRO*, ¶ 422.

The FCC based its finding on the evidence in the national record that showed that the "characteristics of the mass market give rise to significant barriers to competitive LECs' use of self-provisioned switching to serve mass market customers." *Id.* The FCC noted that "inherent difficulties arise" from ILEC hot cut processes. *Id.* It found that this is particularly true for *mass market* customers (in contrast to *enterprise* customers ) because of the high nonrecurring rates associated with hot cuts, the high volume of customer churn, the service disruptions associated with hot cuts, and ILECs' demonstrated inability to handle sufficient volumes of hot cuts. *Id.*

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<sup>1</sup> The FCC found that "[m]ass market customers consist of residential customers and very small business customers," *TRO*, ¶ 127, and include "analog voice customers that purchase only a limited number of POTS lines and can only be economically served via DSO loops." *Id.* ¶ 497. The FCC left it to the states to determine the "appropriate cut-off for multi-line DSO customers as part of its granular review." *Id.* Therefore, as part of the economic and operational analysis that the Commission will conduct, it must investigate and determine what will be the "cut-off" or limit on the number of DSO lines that a CLEC may serve at a location and still be entitled to obtain unbundled local switching from an ILEC. With respect to the specific line limit, the FCC found that the appropriate cut-off point for multi-line DSO customers, "may be the point where it makes economic sense for a multi-line customer to be served by a DS1 loop." *TRO*, ¶ 497.

Moreover, the FCC found that while there was some evidence that CLECs have deployed their own switches in increasing numbers and concentration, “without the ability to combine those switches with customers’ loops in an economic manner, competitors remain impaired in their ability to provide service.” *Id.*, ¶ 429.<sup>2</sup> Accordingly, the FCC determined that it is “critical” to ensure the CLECs’ ability “to have customers’ loops connected to their switches in a reasonable and timely manner.” *Id.*

Consequently, the FCC in the *TRO* made a national finding that CLECs are impaired without access to unbundled local circuit switching when serving *mass market* customers. However, it asked the states to conduct “a more granular market-by-market analysis of impairment on a going forward basis”<sup>3</sup> to take account of any variations in market conditions across the country.

The FCC concluded that state commissions are most appropriately situated to conduct such a granular analysis because it requires “analysis of geographic and market specific factors.” *Id.* The FCC specifically directed the states to make four determinations regarding *mass market* impairment.

First, this Commission is to determine “the relevant geographic area to include in each market.” *TRO*, ¶¶ 495, 496 & n.1536; *see also* 47 CFR § 51.

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<sup>2</sup> Thus, the FCC noted that the “record indicates that competitive LECs have self-deployed few local circuit switches to serve the mass market.” *TRO*, ¶ 438. Moreover, the FCC rejected the suggestion that carriers who had deployed local circuit switching to serve *enterprise customers* could efficiently use those same switches to serve *mass market customers*. The FCC found that this argument “ignores the substantial modifications, and attendant costs, necessary to serve mass market customers with an enterprise switch.” *Id.*, ¶ 441.

<sup>3</sup> *TRO*, ¶ 424.

319(d)(2)(i). Second, the Commission is charged with determining whether the FCC-defined self-provisioning and/or wholesale triggers are met (the “trigger” analysis) within the identified geographic markets. Third, assuming the “triggers” are not met, the Commission must then employ a holistic “balancing” analysis as to whether the market is suitable for multiple, competitive supply (the “Potential Deployment Test”), based upon a consideration of operational and economic impairment. Finally, if the Commission finds that impairment exists, it is to consider whether the impairment can be fully addressed by providing “rolling access” to unbundled switching.

### **1. Defining the Geographic Market**

The definition of the geographic market is a pivotal element of the mass market switching impairment analysis, in that it governs application of the triggers as well as the “potential deployment” review. The Commission “must use the same market definitions for all of its analysis.” *TRO*, ¶ 495.

The FCC has placed few strictures on the Commission’s determination of the relevant markets. A state may not define the geographic market as encompassing the *entire* state. On the other hand, the FCC cautioned that the Commission should not “define the market so narrowly that a competitor serving that market alone would not be able to take advantage of the available scale and scope economies from serving a wider market.” *Id.*<sup>4</sup> In delegating the granular

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<sup>4</sup> In other words, the Commission may appropriately employ a broad view in defining geographic markets that is reflective of how an efficient CLEC would actually use its own switch. This approach makes it unlikely that unduly small geographic areas would be considered a reasonable approach.

analysis to the states, the FCC noted a number of factors that the commissions should “take into consideration,” in defining the geographic market, including:

- the locations of customers actually being served (if any) by competitors;
- the variation in factors affecting competitors’ ability to serve each group of customers in the state; and
- the ability of carriers to target and serve specific markets in a particular area economically and efficiently using currently available technologies.

*TRO*, ¶ 495. It is clear, however, that the FCC has cautioned the states not to allow the need for a “more granular analysis” to override the realities faced by CLECs attempting to serve a market using their own switching. Thus, as noted, the FCC cautioned that the Commission should not define the market too narrowly. Finally, FCC notes that states may elect to define geographic markets according to “administrative tools” previously used “to distinguish among certain markets within a state on a geographic basis for other purposes. . . .”

*TRO*, ¶ 496.

## 2. Applying the “Trigger Analysis”

The *TRO* provides for application of two “triggers” established by the FCC. The *TRO* requires that state commissions “find ‘no impairment’ in a particular market when either trigger is satisfied, subject to the limitations described” by the FCC. *TRO*, ¶ 498. The two triggers are:

- *Self-Provisioning Trigger*. No impairment may be found when *three or more* unaffiliated competing carriers are serving mass market customers in a particular market using their own switches.

- *Wholesale Trigger*. The Commission must find no impairment if carriers can obtain access to switching from *two or more* unaffiliated wholesalers.<sup>5</sup>

*Id.*, ¶¶ 498-499; 47 CFR § 51.3 19(d)(iii)(A). The FCC adopted some guidelines for states to apply with regard to what carriers “count” for purposes of the triggers:

- *Each* switch provider should be “actively” providing *voice* service to mass market customers in the market. *TRO*, ¶ 499.
- Each switch wholesaler must be “operationally ready and willing” to provide service to *all* competitive providers in the designated mass market. *Id.*

The FCC also provided general guidance as to other important aspects of the triggers.<sup>6</sup> For example:

- *Intermodal Carriers*. The FCC declined to rule whether, as a general matter, “intermodal” carriers (*i.e.*, cable, “packet switches,” “soft switches”) should be counted under the triggers. *TRO*, ¶ 499 & n. 1549. The FCC required the states to consider to what extent voice services provided over these intermodal alternatives are comparable in cost, quality, and maturity to incumbent LEC services. *Id.* The FCC did, however, note that it considered CMRS providers presumptively *not* to satisfy the trigger. *Id.*
- *Bankrupt/Financially Troubled Carriers*. The Commission must count bankrupt carriers or financially unstable carriers to the extent the carriers are currently offering and able to provide service, *and* are likely to continue to do so. *TRO*, ¶ 500. For example, a carrier may be considered not likely to continue to provide service if it has filed notice of its intent to terminate service in a market. *Id.*, & n.1556.

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<sup>5</sup> The *TRO* (¶ 499 & n. 1551) notes that the national record indicated that there was virtually no wholesale market for mass market switching; however, it provided this trigger in the event that such a market might come into being.

<sup>6</sup> The FCC also stated that, in exceptional circumstances, a commission may find that three carriers are self-providing switching to a defined geographic mass market, but also determine that “some significant barrier to entry exists” — such as exhaustion of collocation space — such that service to mass market customers is foreclosed. *TRO*, ¶ 503. The FCC notes that where the self-provisioning trigger has been satisfied and a commission finds an exceptional barrier prevents further entry, “the state commission may petition the [FCC] for a waiver of the application of the trigger, to last until the impairment to deployment identified by the state no longer exists.” *Id.*

### 3. Assessing “Potential Deployment” of Switches

If the triggers are not met, the Commission must determine whether the market in question is suitable “for multiple, competitive supply.” *TRO*, ¶ 506. The FCC directs the states to consider three types of evidence: actual switch deployment, operational barriers, and economic barriers. These are to be analyzed in “concert,” so that the Commission should not consider any one of them as “determinative.” *Id.*, ¶ 507.

*Actual Competitive Deployment of Switches.* Under this factor, the Commission is to evaluate existing deployment of switches. *TRO*, ¶¶ 508-510.

- *Enterprise Switches.* If the Commission determines that there are two wholesale providers or three non-ILEC self-provisioners of switching serving the voice *enterprise* market, *and* determines that these providers are “operationally and economically capable of serving the mass market,” this evidence must be given “substantial weight” in evaluating impairment in the mass market under the potential deployment test. *TRO*, ¶ 508. In making the determination whether carriers serving the enterprise market are “operationally and economically” capable of serving mass market customers, the FCC requires consideration of the impact of the “batch hot cut processes” that it independently ordered the state commissions to implement. *Id.*
- *Mass Market Switches.* To the extent a single switch serves the entire local exchange *mass market*, this fact must be given “particularly substantial weight.” *TRO*, ¶ 510. In deciding whether to afford substantial weight to a CLEC self-deployed switch used to serve the mass market, however, the state commission should consider whether the entire market could be served by this switch.<sup>7</sup>

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<sup>7</sup> Whether a competitor is using the incumbent’s loops or its own loops (and therefore does not have to rely on a hot cut) bears on how much weight to assign this factor. *TRO*, ¶ 510 & n. 1572. In other words, the Commission may decide to accord less weight to a carrier, such as a cable telephony carrier, who self-provisions both switching and loops and thus is not burdened by an ILEC’s hot cut process.

Operational Barriers. The Commission must consider whether ILEC loop provisioning performance, collocation difficulties, and difficulties in obtaining cross-connects make entry uneconomic. *TRO*, ¶¶ 511-514.

- *Loop Provisioning.* The Commission must assess whether the ILEC is providing hot cuts on a nondiscriminatory basis in a way that would allow CLECs to use switches to serve mass markets. *TRO*, ¶ 512. The Commission has flexibility to consider hot cut performance metrics. *Id.* The Commission must also make a qualitative assessment of the ILEC's human resources and processes for providing hot cuts. *Id.*
- *Collocation.* The Commission must consider evidence concerning physical constraints associated with collocation, including, for example, the space currently available in central offices; the expected growth or decline, if any, in the amount of space available; and the expected growth or decline, if any, of requesting carriers' space needs, assuming that access to unbundled switching were curtailed. *TRO*, ¶ 513.
- *Cross-Connects.* The Commission must evaluate whether ILECs are failing to provide CLEC-to-CLEC cross-connects to a degree that entry is rendered uneconomic in the absence of unbundled switching. *TRO*, ¶ 514. Numerous factors are to be considered, including the incumbent's practices and procedures with regard to provision of cross-connects, CLEC complaints regarding the incumbent's past performance, the ILEC's response, the costs incurred in connection with deficient performance, and the degree to which those costs render entry uneconomic. *Id.*

Economic Barriers. The Commission must determine a "business case" for a hypothetical "efficient entrant," comparing anticipated revenues with expected costs to determine whether entry is "uneconomic." *TRO*, ¶¶ 515-520. The FCC provides general guidance on the content of the "business case:"<sup>8</sup>

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<sup>8</sup> This requirement was not explicit in the Press Release issued after the FCC's vote on the *TRO*. The development of the business case promises to be one of the most difficult areas of these proceedings. Like our comments in general, AT&T's comments pertaining to the business case are a summarization of some, but not all, aspects of this portion of the *TRO*.



- *Revenues.* The Commission is to consider all revenues that will derive from service to the mass market, based on the most efficient business model for entry. *TRO*, ¶ 519. Revenues include (but are not restricted to)<sup>9</sup> the basic retail price charged to the customer, the sale of vertical features, universal service payments, access charges, subscriber line charges, and, if any, toll revenues. *Id.*
- *Costs.* The Commission must consider “all factors affecting the costs faced by a competitor providing local exchange service to the mass market.” *TRO*, ¶ 520. The FCC in particular directed the states to pay attention to the impact of migration and backhaul costs, capital carrying costs, and whether costs are required to be sunk. *Id.* Other important factors include sales, marketing and customer acquisition costs, as well as other costs that a CLEC must incur to generate the revenues described above.

#### 4. Considering “Rolling Access” To UNE-P

Finally, even if the Commission finds impairment in a particular market after examining the FCC-defined triggers and conducting a “Potential Deployment” analysis, it must still consider whether the impairment can be addressed by providing “rolling access” to UNE-P. *TRO*, ¶ 521. Under rolling access, a state commission would grant CLECs access to UNE-P for a temporary period, permitting CLECs first to acquire customers using UNE-P and later to migrate these customers to the CLEC’s own switching facilities. If such access “cure[s] impairment,” the state commission is to require only “rolling access” to UNE-P.

#### B. Developing and Analyzing a “Batch” Hot Cut Process

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<sup>9</sup> For example, the FCC indicates that the states must also consider revenues a competitor is likely to obtain using its facilities for providing data and long distance services and from serving business customers. *TRO*, ¶ 519.

In addition to making the various determinations above regarding mass market switching impairment, the Commission must, also within nine months of the *TRO*'s effective date, conduct a separate analysis regarding the establishment of a “seamless, low cost batch cut process for switching mass market customers from one carrier to another. . . .”<sup>10</sup> *TRO*, ¶ 487. A batch hot cut process must be established “[i]n each of the markets that the state commission defines” (*see* FCC Rule 51.31 9(d)(2)(ii)), or the Commission must issue detailed findings explaining why such a batch process is unnecessary. *See TRO*, ¶ 488.

Among other items, the Commission must approve the specific process to be employed when an ILEC performs a batch cut and an “increment” or appropriate volume of loops that should be included in a “batch,” may require that ILECs satisfy average completion interval metrics, and should adopt TELRIC-compliant rates for batch cuts. *TRO*, ¶ 489. The batch hot cut process necessary to accomplish the Commission’s objectives must address all types of loop transfers between and among all carriers, including ILEC-to-CLEC, CLEC-to-ILEC and CLEC-to-CLEC loop migrations, including scenarios involving shared use of a loop for voice and data (*e.g.*, line splitting), as well as the required exchange of customer and network data among carriers to accomplish service transfers. *TRO*, ¶ 478.<sup>11</sup> Ultimately, CLEC loop migrations of any type

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<sup>10</sup> These analyses and substantive findings are required because the FCC has determined that there is national impairment in the mass market for switching due, in part, to the “combined effect of all aspects of the hot-cut process,” resulting in increased costs to competitors, lower quality of service and delays in service provisioning. *TRO*, ¶ 473.

<sup>11</sup> In the *TRO*, the FCC reiterated the requirement that ILECs “must make all necessary network modifications, including providing nondiscriminatory access to operations

are to be as prompt and efficient as an ILEC's transfer of customers using UNE-P.<sup>12</sup>

### C. Loop and Transport Issues

In the *TRO*, the FCC made an affirmative nationwide finding of impairment for dark fiber loops, DS3 loops, and DS1 loops. Specifically, the FCC made a nationwide determination that requesting carriers are impaired without access to dark fiber, *TRO*, ¶ 311, are impaired on a customer-location-specific basis without access to unbundled DS3 loops, *id.*, ¶ 325,<sup>13</sup> and are generally impaired without access to unbundled DS1 loops. *Id.*

The FCC delegated to the states a “fact-finding role” to adjudicate claims by an ILEC that competing carriers are not impaired without access to enterprise market loops to specifically-identified customer locations. *TRO*, ¶ 328. The FCC established two different triggers which the ILEC may satisfy to identify specific customer locations where there may be no impairment: (1) a “Self-Provisioning Trigger,” *i.e.*, “where a specific customer location is identified as being currently served by two or more unaffiliated [CLECs] with their own loop transmission

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support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.” *See TRO*, ¶¶ 251-252; 47 CFR § 51.3, 19(a)(1)(ii)(B).

<sup>12</sup> To the extent meaningful data is available, timeliness and quality as well as maintenance and repair performance data should be reviewed as one source in a determination of whether the ILEC is consistently reliable in its hot cut performance. *TRO*, ¶ 512 & n. 1574.

<sup>13</sup> The FCC limited the ILEC obligation to unbundle DS3 loops to a total of two DS3s per requesting carrier to any single customer location. *TRO*, ¶ 324 & n. 954.

facilities at the relevant loop capacity level,” and (2) a “Competitive Wholesale Facilities Trigger,” *i.e.*, where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to [CLECs] on a wholesale basis at the same capacity level.” *Id.*, ¶ 329.

The FCC also found that requesting carriers are impaired on a nationwide basis without access to unbundled dark fiber, DS3, and DS1 *transport* facilities. *TRO*, ¶ 359. It recognized that competing carriers face substantial sunk costs and other barriers to self deploy facilities, and that competitive facilities are generally unavailable. *Id.*, ¶ 360. The FCC delegated to states the authority to make findings on a route-specific basis, and established Self-Provisioning and Wholesale Facilities Triggers.<sup>14</sup> As with the enterprise loop triggers, an ILEC may prove that a particular route meets the Self-Provisioning and Wholesale Facilities Triggers to demonstrate that a specific transport route is not impaired.

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<sup>14</sup> The FCC specifically delegated to the states the authority to apply: the self-provisioning or wholesale alternative transport triggers for dark fiber transport, *TRO*, ¶ 381; the wholesale alternative transport trigger for DS1 capacity transport, *TRO*, ¶¶ 391-392; and the self-provisioning or wholesale alternative transport trigger for DS3 capacity transport, *TRO*, ¶387.

**CERTIFICATE OF SERVICE**

TC03-181

I hereby certify that on October 9, 2003, the original and 10 copies of AT&T's Comments were sent by overnight delivery service to:

Pam Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

  
\_\_\_\_\_  
Janet Keller



South Dakota Telecommunications Association  
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501  
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

*Rural roots, global connections*

October 10, 2003

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**OCT 10 2003**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Pamela A. Bonrud, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Ave.  
State Capitol Building  
Pierre, South Dakota 57501

RE: Docket TC03-181, In the Matter of the Implementation of the Federal  
Communications Commission's Triennial Review Order Regarding Unbundling  
Obligations

Dear Ms. Bonrud:

The South Dakota Telecommunications Association ("SDTA") submits these comments on behalf of its local exchange carrier members in response to this Commission's Order issued in the above referenced matter, dated September 29th, 2003.

The Commission's Order first requests that any person or entity who intends to challenge the FCC's findings of impairment relative to either loops, dedicated transport, or local circuit switching provide notice of such intent to the Commission by October 10, 2003. In addition, the Order requests written comments from interested persons or entities setting forth recommendations regarding general procedures the Commission should utilize in any process it may initiate to review the FCC's impairment findings.

At this time, SDTA does not intend to present any evidence challenging the FCC's general findings of impairment contained in the FCC's Triennial Review Order (hereinafter referenced as "FCC Order"). Although there may be instances, where it would be appropriate to find no impairment for specific customer locations, specific transport routes, or particular customer classes or markets based on the FCC's prescribed triggers, SDTA believes it is unnecessary at this time to conduct the "granular" analysis described in the FCC Order in any rural service areas within South Dakota

The FCC Order requires State Commissions to conduct an initial review of the FCC's findings of impairment and prescribes a timeline for concluding such review. Very clearly, however, the FCC Order also contemplates that State Commissions will have continuing authority to conduct further "granular reviews" subsequent to any initial review, for purposes of determining in the future whether the FCC's general findings of impairment should be changed as they relate to specific customer locations, specific facility routes, or particular markets or customer classes. (See FCC Order, paragraphs 340, 418 and 526). Paragraph 418 of the FCC Order specifically states:

After completion of their initial reviews, we expect state commissions to conduct further granular reviews, pursuant to the procedures the state commissions adopt, to identify additional routes that satisfy the triggers. Such proceedings shall be completed within six months of filing of a petition or other pleading submitted in accordance with the prescribed state commission procedures.

In footnote 1291 to the above paragraph, the FCC goes on to provide further guidance relating to subsequent impairment related reviews. That footnote states:

Subsequent to the initial review, states have the flexibility to adopt reasonable and timely procedures for the periodic collections and evaluation of evidence indicating the satisfaction of the transport triggers on additional routes to remove unbundling obligations. For example, a state may decide to include self-reporting information regarding alternative transport deployment in an annual or semi-annual report, either as an independent obligation or as part of the competitive carriers' periodic filing obligations. Alternatively, a state may decide to accept evidence of alternative deployment through petitions filed during prescribed filing windows or through rulemaking proceedings. Regardless of the procedures adopted, however, states that conduct further reviews must complete their evaluation of the evidence and reach a determination within six months of the filing of a petition or other pleading filed pursuant to the state procedures.

These provisions, along with similar language found in paragraphs 340 and 526 of the FCC Order, indicate that the FCC envisions a continuing review process by the states. State Commissions are specifically directed to establish procedures that will allow for "further granular reviews." (Paragraph 340).

To SDTA's knowledge, at present, no competitive carrier is seeking unbundled network elements from any rural carrier in the State of South Dakota. Further, none of the SDTA member LECs are providing unbundled network elements in their service areas and all still retain the rural exemption protections provided for under 47 U.S.C. § 251(f)(1) (except to the extent that their ability to claim the exemption may be limited by the provisions of § 251(f)(1)(C)). Under these circumstances, it would be pointless to undertake any factual intensive review relative to the FCC's impairment findings and the provisioning of unbundled network elements in rural service areas. Any such review at this time would impose an undue burden on rural telephone companies and is unnecessary given the State's authority to conduct "further granular reviews" in the future.

SDTA would, however, urge the Commission to consider within this proceeding how it will meet the FCC's directive to establish the procedures that would apply to future reviews of the FCC's impairment findings. Not only should the Commission be concerned with how it will meet its obligations for this initial review, it is also must address the issue of what procedures will apply to reviews conducted in the future based on the filing of a petition or pleading. (See Paragraphs 526, 340 and 418).

Consistent with the foregoing comments, SDTA offers the following in regards to each of the issues identified in the Commission's September 29th Order:

1. *If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport, or local circuit switching)?*

At this time, SDTA does not have a position on this issue.

2. *With respect to the approval and implementation of a batch cut process, should the Commission work with other state commissions on this issue?*

At this time, SDTA does not have a position on this issue.

3. *Do you intend to participate in any proceedings that are held?*

If the Commission does initiate an initial review under the FCC triggers, SDTA does intend to participate as a party.

4. *Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.*

SDTA does not at this time have any specific suggestions on the procedure to be followed, but does believe that all interested parties should be given a fair opportunity to participate in the process. This, in our view, requires that interested parties be given an opportunity to intervene at such time any challenges to the FCC's findings of impairment are made.

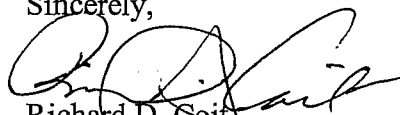
With regard to procedures for conducting further granular reviews in the future, SDTA believes the best approach would be for the Commission to initiate a separate rulemaking proceeding to establish the process that would apply to initiating and conducting such further reviews.

5. *Please provide any additional comments the Commission should consider regarding these issues.*

SDTA has no additional comments at this time.

We thank the Commission and Staff for its consideration of these comments.

Sincerely,



Richard D. Coit

Executive Director and General Counsel

CC: SDTA Member Companies



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**OCT 10 2003**

Pamela Bonrud  
Executive Secretary  
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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

RE: **MIDCONTINENT COMMUNICATIONS; TRIENNIAL REVIEW ORDER,  
UNBUNDLING OBLIGATIONS**

Docket TC03-181  
Our file: 0053

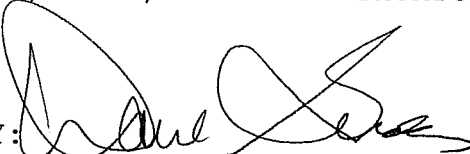
Dear Pam:

Enclosed are original and 10 copies of our Notice of Intent to Participate and Comments of Midcontinent in the above-entitled matter. Please file the enclosures.

We have not sent copies to a service list, since I did not understand the order to require it.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Tom Simmons  
Nancy Vogel  
Mary Lohnes

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OCT 10 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER ) **NOTICE OF INTENT TO**  
REGARDING UNBUNDLING OBLIGATIONS ) **PARTICIPATE AND COMMENTS**

Pursuant to the Commission's order of September 29, 2003, in this docket, Midcontinent Communications gives notice that it desires to participate in this docket should any person intend to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport or local circuit switching for mass market customers.

In further response to the Commission's order, Midcontinent responds to the request for written comments as follows:

1. If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport, or local circuit switching)?

No. However, Midcontinent agrees with the Commission's finding that the hot cut process used to transfer a loop from one carrier's switch to another's serves as a barrier to competitive entry in the absence of unbundled switching. Further, Midcontinent agrees with the Commission that competitive providers are impaired without complete access to unbundled local switching to serve "mass market" customers. Midcontinent desires to participate in any deliberations of the Commission in approving and implementing a batch cut process as ordered by the FCC.

2. With respect to the approval and implementation of a batch cut process, should the Commission work with other state commissions on this issue?

Yes.

3. Do you intend to participate in any proceedings that are held?

Yes.

4. Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

Prefiled testimony on a relatively short time schedule would produce the best record. However, that procedure can be cumbersome. As an alternative, the Commission could simply ask for written comments, followed by argument to the Commission at a hearing called for that purpose. Thereafter, if the Commission desires testimony on specific issues, it could be requested.

5. Please provide any additional comments the Commission should consider regarding these issues.

None.

Dated this 9<sup>th</sup> day of October, 2003.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES

Attorneys for Midcontinent Communications  
503 South Pierre Street  
P.O. Box 160  
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OCT 10 2003

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

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: **WORLDCOM; TRIENNIAL REVIEW ORDER; UNBUNDLING**  
Docket TC03-181  
Our file: 0175.5

Dear Pam:

Enclosed are original and ten copies of WorldCom's comments in this docket. Please file the enclosures.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

DAG:mw

Enclosures

cc/enc: Susan Travis

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OCT 10 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

TC 03-181

IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER REGARDING  
UNBUNDLING OBLIGATIONS

NOTICE OF INTENT AND ORDER  
ORDER REQUESTING  
COMMENTS

**MCI COMMENTS TO THE COMMISSION'S SEPTEMBER 29, 2003 ORDER**

MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI"), pursuant to the Commission's September 29, 2003, order to provide comments on the issues identified by the Commission hereby states the following.

- 1. If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport, or local circuit switching)?*

The FCC has made a national finding that CLECs are impaired in the offering of service to mass market customers without access to loops, dedicated transport and local circuit switching<sup>1</sup>. If no person or entity intends to challenge the applicability of the FCC's finding to any market in South Dakota, there is of course no need to proceed any further with an investigation. Otherwise, the Commission will need to adjudicate any claim by a person or entity that rebuts the national finding.

If an ILEC does intend to challenge the FCC's national finding of impairment without unbundled local switching for the mass market, the Commission will have to address a wide

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<sup>1</sup> See, e.g., TRO, ¶¶ 311, 320, 325, 381, 386, 390, 419.

variety of issues. Some key issues are summarized below along with how the Commission may effectively and efficiently address the applicable issues.

### **High Capacity Loops**

With respect to dark fiber loops, DS3 loops and DS1 loops, the FCC concluded that requesting carriers are impaired without unbundled access to ILEC loops nationwide. The FCC, however, delegated to the states the authority to perform a more granular analysis. (Triennial, ¶¶ 202 and 328). Within 9 months of the effective date of the Triennial order, the Commission must make rulings on impairment with respect to dark fiber loops, DS3 loops and DS1 loops. The Commission, based on facts presented on a customer-by-customer basis, must determine if the “Self-Provisioning Trigger”<sup>2</sup> or “Competitive Wholesale Facilities Trigger”<sup>3</sup> apply.

If applicable triggers are not met for DS-3 or dark fiber loops, then the Commission on a customer-by-customer basis must examine the potential deployment of such loops to determine whether there is impairment without unbundled access. In performing this analysis, the Commission

. . . must consider and may also find no impairment at a particular customer location . . . *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECs from economically deploying loop transmission facilities to that particular customer location at the relevant loop capacity level. In making a determination that competitive LECs *could* economically deploy loop

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<sup>2</sup> The Self-Provisioning Trigger for loops is where two or more competitive LECs have self-provisioned loop transmission facilities, either intermodal or intramodal facilities, to a particular customer location at the loop capacity level for which the state impairment analysis is being conducted (Triennial, ¶ 332). The Self-Provisioning trigger for high capacity loops does not apply to DS-1 loops. (Triennial, ¶ 334).

<sup>3</sup> The Competitive Wholesale Facilities Trigger for loops is where competitive LECs have two alternative choices (apart from the incumbent LEC’s network) to purchase wholesale high-capacity loops, including intermodal alternatives, at a particular premises. (Triennial, ¶ 337). The Wholesale Facilities Trigger does not apply dark fiber (Triennial, ¶ 334).

transmission facilities at that location at the relevant capacity level, the state commission must consider various factors affecting the ability to economically deploy at that particular customer location. These factors include: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location. (Triennial, ¶ 335) (*emphasis in original*).

The FCC also gave some guidance on how the state commissions could address their tasks relating to loops. The FCC stated that States only have an affirmative obligation to conduct this review for specific customer locations for which sufficient relevant evidence has been presented. (Triennial, ¶ 339, and note 991).

Accordingly, one way to manageably address the high capacity loop issues would be for any party who desires to assert that there is no impairment without access to unbundled dark fiber loops or DS3 loops to present prima facie evidence, testimony and exhibits showing non-impairment (based on triggers or, failing that, based on the potential deployment test) on a customer-by-customer basis by a date certain, such as within 20 days. To assist the Commission and other parties in reviewing this filing, there should be at least three charts as part of this filing associated with each type of high capacity loop at issue in the filing. One chart should focus on the Self-Provisioning trigger and show each customer location at issue and identify the Self-Provisioning CLECs and references to the evidence being submitted to support the facts set forth in the chart showing self-provisioning to the location at issue. A second chart should focus on the Competitive Wholesale Facilities trigger and should identify the alternative wholesale providers and references to the evidence being submitted to support the facts set forth in the chart. A third chart should focus on the potential deployment analysis, and for each customer location should

provide references showing where the evidence shows the factors which have to be analyzed, including but not limited to each of the following mandated factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location. (Triennial, ¶ 335)

Other parties should then be allowed 15 days to file comments on whether a prima facie case has been made for the asserted customer-by-customer locations. These comments should not include testimony, but would simply be limited to an analysis as to whether or not there is a dispute as to whether a prima facie case has been made for any customer location for any applicable trigger or potential deployment test.

The Commission should then rule on whether a prima facie case has been presented for each customer-by-customer location for each trigger or under the potential deployment test for each loop type. Where a prima facie case has been presented, then the case can proceed as to those customer-by-customer locations and responding evidence can be presented by loop type under the trigger(s) or potential deployment test for which a prima facie case has been made. Where there has been no prima facie case presented by the cut-off date for any particular customer-by-customer location by loop type for any applicable trigger or potential deployment test, then no further evidence or rulings would be appropriate on that issue.<sup>4</sup> This approach

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<sup>4</sup> For example, if for a DS3 loop to a specified customer location the Commission determines that a prima facie case has been made only with respect to the Self-Provisioning Trigger, then for



should reduce any unnecessary efforts of other interested parties in putting together discovery and testimony where no prima facie case has been made on loop issues.

### **Dedicated Transport**

With respect to dark fiber dedicated transport, DS3 dedicated transport and DS1 dedicated transport, the FCC concluded that requesting carriers are impaired without unbundled access. The FCC, however, delegated to the states the authority to perform a more granular analysis. (Triennial, ¶¶ 359, 360, and 410). Within 9 months of the effective date of the Triennial order, the Commission must make rulings on impairment with respect to dark fiber transport, DS3 transport and DS1 transport. The Commission, based on facts presented on a specific point-to-point route basis, must determine if the “Self-Provisioning Trigger”<sup>5</sup> or “Competitive Wholesale Facilities Trigger”<sup>6</sup> apply. State commissions must also consider the extent that intermodal transport facilities meet the requirements of the two triggers. (Triennial, notes 1256 and 1278).

If neither trigger applies, then the Commission on a specific point-to-point route basis must examine the potential ability of CLECs to deploy transport facilities along a particular route for DS-3 or dark fiber dedicated transport. In performing this analysis, the Commission

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that loop type and for that location there should be no further analysis in this case as to whether the Competitive Wholesale Facilities Trigger or potential deployment test has been met.

<sup>5</sup> The Self-Provisioning Trigger for dedicated transport is where three or more unaffiliated competing carriers each have deployed transport facilities on a route. (Triennial, ¶ 405). The Self Provisioning trigger does not apply to DS1 transport. (Triennial, ¶ 409)

<sup>6</sup> The Competitive Wholesale Facilities Trigger is when two or more competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale transport service completing that route. (Triennial, ¶ 412)

. . . must consider and may also find no impairment on a particular route that it finds is suitable for “multiple, competitive supply,” . . . States must expressly base any such decision on the following economic characteristics: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; the availability or feasibility of alternative transmission technologies with similar quality and reliability; customer density or addressable market; and existing facilities-based competition. We believe that it is important to delegate this limited additional analysis because states are best positioned to analyze the characteristics of local markets where national aggregation does not appear possible. (Triennial, ¶ 410)

Similar to the guidance that the FCC provided with respect to loops, the FCC also gave some guidance on how the state commissions could address their tasks relating to dedicated transport. The FCC stated that States only have an affirmative obligation to conduct this review for specific customer locations for which sufficient relevant evidence has been presented. (Triennial, ¶ 417, and note 1289).

Accordingly, similar to the recommendation above with respect to loops, one way to manageably address the dedicated transport issues would be for any party who desires to assert that there is no impairment without access to dedicated dark fiber transport, DS3 transport, or DS1 transport, to present prima facie evidence, testimony and exhibits showing non-impairment (based on triggers or, failing that, based on the potential deployment test) on a point-to-point route basis in the form a filing in this docket by a date certain, such as within 20 days. To assist the Commission and other parties in reviewing this filing, there should be at least three charts as part of this filing associated with each type of dedicated transport at issue in the filing. One chart should focus on the Self-Provisioning trigger and show each point-to-point route at issue and identify the Self-Provisioning CLECs and references to the evidence being submitted to support the facts set forth in the chart showing self-provisioning for the route at issue. A second chart

should focus on the Competitive Wholesale Facilities trigger and should identify the alternative wholesale providers for the specific point-to-point routes at issue and references to the evidence being submitted to support the facts set forth in the chart. A third chart should focus on the potential deployment analysis, and for each point-to-point route should provide references showing where the evidence shows the factors which have to be analyzed, including but not limited to each of the following mandated factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; the availability or feasibility of alternative transmission technologies with similar quality and reliability; customer density or addressable market; and existing facilities-based competition. (Triennial, ¶ 410)

Other parties should then be allowed 15 days to file comments on whether a prima facie case has been made for the asserted point-to-point routes. These comments should not include testimony, but would simply be limited to an analysis as to whether or not there is a dispute as to whether a prima facie case has been made for any type of dedicated transport for any point-to-point route for any applicable trigger or potential deployment test.

The Commission should then rule on whether a prima facie case has been presented for each point-to-point route for each trigger or under the potential deployment test for each type of dedicated transport. Where a prima facie case has been presented, then the case can proceed as to those point-to-point routes and responding evidence can be presented by type of dedicated transport at issue under the trigger(s) or potential deployment test for which a prima facie case has been made. Where there has been no prima facie case presented by the cut-off date for any

particular point-to-point route by type dedicated transport for any applicable trigger or potential deployment test, then no further evidence or rulings would be appropriate on that issue.<sup>7</sup> This approach should reduce any unnecessary efforts of other interested parties in putting together discovery and testimony where no prima facie case has been made on dedicated transport issues.

### **Mass Market Switching**

The FCC found that CLECs are impaired without switching for mass market customers. (Triennial, ¶ 419). It is important to note that this was a finding of the FCC, not just a presumption. The FCC also provides for a more granular review. The Commission within nine months from the effective date of the Triennial order must complete its analysis in determining whether carriers are impaired without unbundled switching for mass market customers. As set forth in the sub-sections below, this analysis includes the following tasks: 1.) determine the break-off point between the number of lines served for mass market and enterprise customers in each market; 2.) determine the definition of the market; 3.) determine whether the Self-Provisioning trigger and/or the Wholesale Facilities triggers apply; 4.) in the event that neither trigger is met, determine whether the potential deployment analysis shows no impairment where unbundled local switching is not provided; 5.) where appropriate, in each market establish a batch hot cut process; and, 6.) consider, and if appropriate, implement a “rolling” transitional access to local circuit switching.

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<sup>7</sup> For example, if for a DS3 dedicated transport on a specific point-to-point route the Commission determines that a prima facie case has been made only with respect to the Self-Provisioning Trigger, then for DS3 dedicated transport for that location there should be no further analysis in this case as to whether the Competitive Wholesale Facilities Trigger or potential deployment test has been met.

For the nine-month proceeding on mass market switching, the Commission should establish a procedure that allows interested parties to conduct appropriate discovery and for filing an initial round of testimony on these issues on a specific date. All parties would then file a second round of responsive testimony on a specific date, possibly followed by a third round of reply testimony on a specific date, followed by hearings and briefs.

**1. Determine the break-off point between the number of lines served for mass market and enterprise customers in each market**

As part of this analysis, the Commission must establish a maximum number of DS0 loops for each geographic area that requesting telecommunications carriers can serve through unbundled switching when serving multi-line end users at a single location. [Triennial, Rule 51.319(d)(2)(iii)(B)(4)]. The Commission must determine the appropriate cross-over point as part of the nine-month proceeding.

**2. Determine the definition of the market**

As part of the nine-month proceeding, the Commission must define the relevant geographic area to include in each market. In defining markets, the Commission shall consider the following factors: 1) the locations of mass market customers *actually* being served (if any) by competitors, 2) the variation in factors affecting competitors' ability to serve each group of customers, 3) competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. [Triennial, Rule 51.319(d)(2)(i)]. This is discussed in more detail below.

**3. Determine whether the Self-Provisioning trigger and/or the Wholesale Facilities trigger apply**

The Self-Provisioning trigger for mass market switching is when three or more unaffiliated competing carriers each is serving mass market customers in a particular market through the use of their own switches. (Triennial, ¶ 501) As part of the analysis of this trigger, the identified competitive switch providers should be actively providing voice service to mass market customers in the market. (Triennial, ¶ 499)

The Wholesale Facilities trigger for mass market switching is where there are two or more competitive wholesale suppliers of unbundled local circuit switching unaffiliated with the incumbent or each other. (Triennial, ¶463).

**4. In the event that neither trigger is met, determine whether the potential deployment analysis shows no impairment where unbundled local switching is not provided**

The Triennial order requires consideration of a number of factors as part of the determination of whether competitors are economically and operationally impaired without access to ILEC switching. The Commission must consider the following: 1) evidence of actual competitive deployment of local circuit switches; 2) operational barriers to competitive entry, and 3) economic barriers to competitive entry. (Triennial, ¶ 463).

In evaluating whether to find that requesting carriers are not impaired without access to local circuit switching, notwithstanding a market's failure to satisfy the triggers described above, the states shall evaluate three types of evidence. First, states must examine whether competitors are using their own switches to serve enterprise or mass market customers in the market at issue. Second, states must consider the role of potential operational barriers, specifically examining whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, and difficulties in

obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs. Third, states must consider the role of potential economic barriers associated with the use of competitive switching facilities. (Triennial, ¶ 507)

A state commission considering whether to find "no impairment" with regard to mass market switching must evaluate whether delays associated with an incumbent LEC's failure to provide cross-connections between the facilities of two competitive LECs on a timely basis can increase requesting carriers' costs to such a degree that entry into the market is rendered uneconomic in the absence of unbundled switching. "Evidence relevant to this inquiry would include, for example, information regarding the incumbent's practices and procedures with regard to provision of cross-connects linking competitive carriers' facilities, competitive LECs' complaints regarding the incumbent's past performance in this area, the incumbent LEC's response to these complaints, the costs incurred in connection with deficient performance in this regard, and the degree to which those costs render entry into a given market uneconomic." (Triennial, ¶ 514) This state review is necessary to ensure that customer loops can be transferred from the incumbent LEC main distribution frame to a competitive LEC collocation as promptly and efficiently as incumbent LECs can transfer customers using unbundled local circuit switching. (Triennial, note 1574).

The FCC noted that states should consider whether entry would be economic, by comparing likely revenues and costs. In determining the likely revenues available to a competing carrier in a given market, the state commission must consider *all* revenues that will derive from service to the mass market, based on the most efficient business model for entry. These potential revenues include those associated with providing voice services, including (but not restricted to) the basic retail price charged to the customer, the sale of vertical features, universal service

payments, access charges, subscriber line charges, and, if any, toll revenues. The state must also consider the revenues a competitor is likely to obtain from using its facilities for providing data and long distance services and from serving business customers. Moreover, state commissions must consider the impact of implicit support flows and universal service subsidies on the revenue opportunities available to competitors. (Triennial, ¶ 519) The analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model. (Triennial, ¶ 517)

Similarly, the state must consider all factors affecting the costs faced by a competitor providing local exchange service to the mass market. These costs would likely include (among others): the cost of purchasing and installing a switch; the recurring and non-recurring charges paid to the incumbent LEC for loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop; the cost of collocation and equipment necessary to serve local exchange customers in a wire center, taking into consideration an entrant's likely market share, the scale economies inherent to serving a wire center, and the line density of the wire center; the cost of backhauling the local traffic to the competitor's switch; other costs associated with transferring the customer's service over to the competitor; the impact of churn on the cost of customer acquisitions; the cost of maintenance, operations, and other administrative activities; and the competitors' capital costs. State commissions should pay particular attention to the impact of migration and backhaul costs on competitors' ability to serve the market. Economic impairment may be especially likely in wire centers below a specific line density. Before finding "no impairment" in a particular market, therefore, state commissions must consider whether entrants are likely to achieve sufficient volume of sales within each wire



center, and in the entire area served by the entrant's switch, to obtain the scale economies needed to compete with the incumbent. (Triennial, ¶ 520)

**5. Where appropriate, in each market establish and price a batch hot cut process**

This issue is addressed in more detail below. The new Rule 51.319(d)(2)(ii) also addresses this issue.

**6. Consider, and if appropriate, implement a "rolling" transitional access to local circuit switching**

If a state finds impairment after analyzing economic and operational factors, a state must consider whether impairment could be addressed by a rule "making unbundled switching temporarily available for a minimum of 90 days for customer acquisition purposes, rather than making unbundled switching available for an indefinite period of time." (Triennial, ¶¶ 425, 524) The FCC calls this "rolling" access to switching. (Triennial, ¶ 463) State may choose a period longer than 90 days for the rolling access. (Triennial, ¶ 524)

**MARKET DEFINITION**

The Commission must determine the definition of a market. The FCC has set forth certain parameters as to how the states must determine the proper market definition. The FCC has mandated that states conduct a rather thorough factual examination before arriving at a definition.

The triggers and analysis described below must be applied on a granular basis to each identifiable market. State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area to include in each market. State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available

technologies. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely. The state commission must use the same market definitions for all of its analysis. (Triennial, ¶ 495)

The FCC also noted that economic impairment may be especially likely in wire centers below a specific line density. Before finding 'no impairment' in a particular market, therefore, state commissions must consider whether entrants are likely to achieve sufficient volume of sales within each wire center, and in the entire area served by the entrant's switch, to obtain the scale economies needed to compete with the incumbent. (Triennial, ¶ 520)

Therefore, the state commission needs to examine evidence submitted by the parties on each of the areas identified in the two paragraphs above, and there should be hearings on this before the state commission makes its determination. While the FCC states that the "State commissions must first define the markets in which they will evaluate impairment," in context, this appears to only state the obvious -- that before any state commission can determine whether there is impairment in a market, the state commission must first define what that market is.

This is similar to how many state commissions handle a cost case where there are two or more competing cost models for a particular UNE. In cost cases the state commission considers all of the evidence pertaining to all of the models and then as part of its final ruling in the case first determines which model applies to the given UNE before addressing modifications or changes to that model or the inputs for that model.

This is also similar to how the FCC addresses the geographic market issue in analyzing mergers. (" . . . [T]he first step in analyzing a merger is to define the relevant product and

geographic markets." *In the matter of the merger of MCI Communications Corporation and British Telecommunications PLC*, GN Docket No. 96-245, FCC 97-302, Adopted: August 21, 1997, Released: September 24, 1997, par. 35). Even though the FCC states that the "first step" is to define the geographic markets in mergers, it does not bifurcate the proceeding. Instead, in the same order in which it determines the geographic markets for mergers, it also applies this definition of the geographic market so that the proceeding has a single order in this regard.

The wording here about "first determining" the geographic market is also similar to the wording which the FCC used in its rules on the batch hot cut issue, Rule 319(d)(2)(A), which requires states in establishing the batch hot cut process to "first determine the appropriate volume of loops that should be included in a 'batch.'" Similar to the geographic market definition, the determination on the batch hot cut issue can not be made in a vacuum and is interrelated to the other issues which the state commission will be examining. In the final state commission order which addresses batch hot cuts, however, the volume will be, by rule, the first conclusion reached on the batch hot cuts. One would not expect the batch hot cut evidence or proceeding to be bifurcated to first determine the volume in one phase and to then have evidence and argument on the remaining issues in a second or latter phase. Similarly, a reasonable person would not expect the market definition issue to be bifurcated from the rest of the pertinent evidence.

The FCC, in prior rulings, has provided further clarification on how to define a geographic market. "The geographic market is more accurately defined as a series of point-to-point markets. We can consider, as a whole, groups of point-to-point markets where customers face the same competitive conditions. We therefore treat as a geographic market an area in which all customers in that area will likely face the same competitive alternatives for a product." (In re: applications of Ameritech and SBC for consent to Transfer Control of Corporations, CC Docket No. 98-141, FCC 99-279, note 147.) In essence, under this FCC methodology, a geographic

market is determined in a bottom-up manner: start looking at the point-to-point evidence and, if appropriate based on this evidence, combine groups of point-to-point markets to determine the geographic market. This can only be done based on a granular examination of the evidence. This is similar to the approach that the FCC has taken in other parts of the Triennial order, such as by requiring that the market for a loop be a specific customer location and that the market for transport be a specific point-to-point route. The primary difference is that for loops and transport no further aggregation of markets is necessary or allowed, but with switching the evidence in the state proceedings will determine if further aggregation is appropriate.

Given that the states must use the same definition of geographic market for the impairment analysis as for the triggers for switching, and given that the economic impairment analysis and the traditional FCC approach to defining markets requires analysis at the wire center or even more granular level, the state commission must at least receive and review all of the wire center (and sub-wire-center) level evidence which is part of the economic impairment case before determining what, if any, level of aggregation of wire centers must be made in determining the geographic markets in the state. The type of evidence required in the potential deployment analysis is what the FCC wants the states to look at in defining the market, so states and parties need to gather all of the evidence relating to triggers and potential deployment, and then decide issues. The ruling on the appropriate definition should only be made at the end of the case when the state commission also rules on impairment. By approaching the issue in this way, the state commission would have information available to it showing the extent to which impairment would be found using different possible definitions of the market before locking in any given definition. This would thus result in a better informed commission decision on impairment. Furthermore, there are no other reasonable alternatives given the likely case

schedule and given the totality of the information which the FCC has mandated that the state commission consider before making its determination as to the definition of market.

The FCC also noted that sufficiently similar customer classes should be considered together (Triennial, para. 123), and further noted that there is an obligation “. . . to determine which customers could not be served by carriers without the UNEs in question, and, where practical, require unbundling only for those customers.” (Triennial, para. 125). The FCC noted that in the mass market, “. . . revenues are small, customers are typically served in large groups, using uniform technologies and mass marketing and provisioning techniques to minimize the cost of serving each customer.” (Triennial, para. 309). Accordingly, when addressing switching for the mass market, it is essential that state commissions only look to mass market customers being served.

The FCC specifically noted that, depending on the granular facts in specific states, it may not be proper to include some very small businesses in the analysis of mass market switching. (See Triennial footnote 432: “Very small businesses typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner. Therefore, we will usually include very small businesses in the mass market for our analysis. We note, however, that there are some differences between very small businesses and residential customers. For example, very small businesses usually pay higher retail rates, and may be more likely to purchase additional services such as multiple lines, vertical features, data services, and yellow page listings. Therefore, we may include them with other enterprise customers, where it is appropriate in our analysis.”)

Also, determining which types of customers competitive carriers are addressing on a facilities basis is critical to the trigger analysis. For example, if a facilities-based carrier is

ONLY serving business customers with its facilities, it cannot be counted toward the trigger. There is a critical distinction between residential and small business markets based on the smaller volume of customers, the type of loop plant, and larger revenue per line associated with small business. If the Commission were to erroneously rely on small business carriers to show that a trigger had been met, then the Commission would be effectively taking away unbundled switching to the entire "mass market" - including residential customers (who are the great majority of the "mass market"), even though no single CLEC serves a single residential customer with its own switching and economic and operational barriers do indeed exist for residential customers. That cannot be a proper outcome of the trigger analysis.

It is also critical that the Commission, in looking at similarly situated customers, determine and group customers according to whether they are being served via copper loops or via IDLC. If any customers are being served via all fiber loops or via hybrid fiber/copper DSL-capable loops, that should also be noted. Operationally, there are critical differences between serving a customer via copper and attempting to serve a customer who is presently being served via IDLC. For example, assume that in a given market 40% of the customers are served via IDLC and 60% of the customers are being served via copper. Assume that in this market, no CLEC provides switching to those customers presently served via IDLC (because of operational impediments) and assume that there are three CLECs who self-provision switching to those customers in the copper service area. It would be erroneous for the Commission were to rule that the Self-Provisioning trigger had been met for the entirety of the market, because 40% of the customers would have no competitive choice for services because of the operational barriers created by the use of the IDLC technology. Similarly, for customers who want a bundle of services that includes both voice and DSL—an increasing percentage of customers—the

Commission must recognize that the FCC has precluded competitive access to hybrid fiber/copper loops, and therefore CLECs will not have access to that potential customer base either.

**EVERY PART OF THE MARKET NEEDS TO BE SERVED BY THE EACH OF THE IDENTIFIED SELF-PROVIDERS OF MASS MARKET SWITCHING**

With the issuance of the Errata of September 17, 2003, there is cause to comment on the Errata changes to pars. 499 and 519 of the Triennial. In par. 499, which addressed the mass market switching triggers, the FCC changed some of the wording, including deleting this sentence: "They [(identified competitive switch providers)] must be operationally ready and willing to provide service to all customers in the designated market." In par. 519, which addressed economic barriers under the potential deployment analysis, the FCC deleted the following sentence: "State commissions must ensure that a facilities based competitor could economically serve all customers in the market before finding no impairment."

These Errata changes have the effect of correcting the Triennial order. Before these Errata changes were made, these two paragraphs had literally meant that any identified competitive switch provider had to be ready, willing, and economically able to serve all of the customers in the market. The "all" standard would certainly have been a very tough standard to meet. To serve "all" customers would require the identified competitive switch provider to be able to serve 100% of the customers in the market at the same time. This would require a very large collocation in the central office in the defined geographic market (and large collocations in all of the central offices in the geographic market if the market consisted of more than one central office). This would also require enough capacity on each of the identified competitive switch providers to serve 100% of the customers in the market at the same time.

It is clear that the Errata, with these changes, was replacing the stated “all customers” concept with an “every part of the market” concept. This “every part of the market” concept was kept in paragraph 510 of the Triennial, which states in pertinent part as follows: “The existence of a competitor that is serving the local exchange mass market with its own switch provides evidence that the mass market can be served effectively. The state commission should consider whether the entire market could be served by this switch.” (Triennial, par. 510). In other words, if this switch can serve any portion of the market, and thus cover the entire market, only then should this switch be counted.

Footnote 1552 of the Triennial, which applies to the trigger analysis for mass market switching, was left intact, but was added to by the Errata. That portion of this footnote which was left intact provides further support to the “every part of the market” concept. This provision states in pertinent part as follows: “In circumstances where switch providers (or the resellers that rely on them) are identified as currently serving, or capable of serving, only part of the market, the state commissions may choose to define that portion of the market as a separate market for purposes of its analysis.” This provision further clarifies that it is important that a switch provider serve every part of the market in order to be counted. The FCC, in this provision, clearly gave the states the ability to narrow the geographic range of the market to ensure that a competitive switch be counted. If it were not necessary that a competitive switch serve every part of the market to be counted, then there would have been no need for this language in footnote 1552.

This interrelationship, as to whether a competitive switch serves every part of a market, and the authority given by the FCC to the state commissions to narrow the definition of the geographic market to take into account the serving capability of a competitive switch, provides



further support that a state should not attempt to define the geographic markets until it has all of the applicable evidence at hand to make a fully informed decision.

Accordingly, the geographic market determination, like the analysis to see to it that dissimilar customers are not considered together, are all part of the overall analysis. In other words, the trigger and potential deployment determinations must be done at the end point of ultimate decision making in the state, based on the granular review of facts and:

- A) The geographic market determination;
- B) The analysis to see to it that dissimilar customers are not considered together; and
- C) A showing that each proposed triggering company is offering service to mass market customers in every part of the defined market.

***2. With respect to the approval and implementation of a batch cut process, should the Commission work with the other state commissions on this issue?***

The Triennial order has set forth an enormous number of tasks for each state commission. The level of resources and attention which is mandated over the next nine months by the Triennial order is daunting. MCI does agree that the batch hot cut process development can be handled on a regional basis in a collaborative effort. However, such a collaborative process is dependent on getting the parties and process developed quickly. If this does not occur, then the batch hot cut process will need to be addressed in this proceeding.

***3. Do you intend to participate in any proceedings that are held?***

MCI does intend to participate in this proceeding. Also, MCI is aware that the Regional Oversight Committee ("ROC") addressed the FCC's triennial review order in an effort to

coordinate hearings schedules and discovery requests. ROC President Tony Clark has stated that because so many of the same companies will be involved in multiple proceedings throughout Qwest's incumbent territory, it is important that states coordinate with one another when scheduling their hearings. President Clark also stated that coordinating discovery requests will help state commissions as well as the parties involved and ensure each commission gets the same information. The Commission should look to the ROC process to schedule hearings and to coordinate discovery requests as proposed by ROC President Clark.

***4. Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.***

The Commission and parties should focus on developing the record necessary to determine mass market switching impairment issues at the conclusion of the Nine-Month Impairment Phase. MCI believes the most efficient way to create the record in this proceeding is generally to rely on the established rules of practice and procedure at the Commission.

It is almost inconceivable that the parties will be able to avoid the need for evidentiary hearings in the Nine-Month Impairment Phase. The importance and scope of the case and the number of complexity factual issues addressed make the need for hearings virtually inevitable.

Therefore, MCI respectfully requests the Commission establish a schedule that provides for, at a minimum, a prehearing conference, concurrent filing by all parties of opening, reply and rebuttal rounds of testimony, a pre-trial conference and evidentiary hearings.

**Discovery**

Because of the likely large amount and complexity of discovery in the Nine Month Impairment Phase, we believe the respective CLEC and ILEC parties should be required to coordinate discovery to eliminate any duplication of requests. MCI is willing to meet soon with

all the participating CLECs in this proceeding with a proposed discovery request that could provide a foundation for coordination and production of a common set of initial discovery requests. MCI believes that an individual party's right to ask different questions than those agreed to in the common set of CLEC and common set of ILEC data requests should be preserved.

### **Sensitive Data**

MCI submits that an even more streamlined, expedited way of dealing with sensitive data is for the Commission to issue a protective order. MCI recommends that the Commission adopt at least two categories of confidential information. Confidential information would be sent to each receiving party who may designate specific individuals associated with the party access to the Confidential Information for purposes of litigation in this proceeding. Highly sensitive confidential information or the so-called "Lawyers Only" category is somewhat more restricted in that the information shall not be used by any individual responsible for marketing, product development or business strategy. MCI anticipates that, given the impairment criteria and benchmarks to be set by the FCC, both CLECs and ILECs will want to obtain from each other information that the producing party deems highly confidential. This modified "two-tier" approach balances a party's need to obtain competitively sensitive information from other parties, with that party's need to protect its own competitively sensitive information.

MCI submits that the issuance and enforcement of a proper protective order by the Commission in this proceeding is crucial, not only to the parties' ability to reasonably protect their own confidential information from public disclosure, but also to obtain and use necessary confidential information from other parties efficiently and effectively. Further, a protective order calibrated to the unique needs of this case will enable the Commission to base its decision in this

docket on a complete record assembled in a short period of time. The Nine-Month Impairment Phase imposes two unique constraints on this Commission and other state commissions. First, this Commission (and the commissions in the other 49 states) must complete their review of the local switching UNE, used as part of UNE-P to serve mass market customers, within nine months. Second, this Commission must conduct and complete its review simultaneously with the review undertaken by the commissions in the other 49 states.

**5. *Please provide any additional comments the Commission should consider regarding these issues.***

Please see our comments above.

Dated this 10<sup>th</sup> day of October, 2003.

MAY, ADAM, GERDES & THOMPSON LLP

BY  for

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October 10, 2003

Pamela Bonrud  
Executive Director  
Public Utilities Commission of the State of South Dakota  
500 East Capitol Avenue  
Pierre, SD 57501

*VIA OVERNIGHT UPS*

**RECEIVED**

OCT 14 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**Re: Docket TC03-181**

Dear Ms. Bonrud:

Enclosed please find the original and ten copies of Qwest's Initial Comments in the above-referenced docket.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Tina M. Colvin", written over a large, loopy flourish.

Tina M. Colvin  
Interrogatory Manager

tmc

Enclosures

cc - (w/enc.): Thomas J. Welk, Esq.  
Colleen Sevold

CERTIFICATE OF SERVICE

I, do hereby certify that on the 10th day of October, 2003, a true and correct copy of Qwest's Initial Comments were sent by UPS, overnight delivery, to the following addresses:

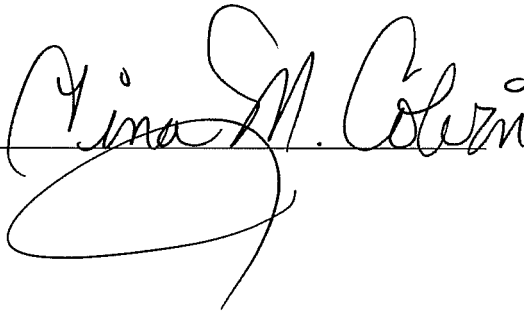
Mary B. Tribby  
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Brett M. Koenecke  
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503 S. Pierre Street  
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Pierre, South Dakota 57501-0160

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OCT 14 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Gina M. Colvin", is written over a horizontal line. The signature is stylized and cursive.

RECEIVED

OCT 14 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER—90 DAY  
PROCEEDING

TC 03-181

Qwest's Initial Comments

Qwest Corporation ("Qwest") files comments as requested by the Commission in this matter, as follows:

**1. If no person or entity intends to challenge the findings of impairment for a particular network element, should the Commission hold any proceedings regarding that network element (i.e. loops, dedicated transport, or local circuit switching)?**

As a preliminary matter, Qwest notes that it is still in the process of reviewing and analyzing the FCC's 576 page Order. Therefore, Qwest's responses to the questions raised by the Commission represent its best effort to interpret the Order given the limited time it has had to review the Order. Also, in providing its response to these questions and in suggesting possible procedures for state proceedings that result from the Order, Qwest is not waiving its right to appeal any issue in the Order, including issues related to the state proceedings required by the Order.

With that qualification, Qwest presently intends only to challenge the FCC's findings of impairment for switching at the mass market level in this 9-month proceeding. For the remaining elements, no proceedings need be held at this time. However, Qwest is still evaluating whether it will request additional Commission inquiries regarding high capacity loops and transport in one or more subsequent six-

month proceedings, as contemplated by the FCC's order. Any election by Qwest, however, to limit the challenges to the FCC's findings at this stage, should not be interpreted as an agreement that any of the FCC's findings were correct, or as a waiver of any right to initiate a proceeding to challenge any of the FCC's findings on impairment relative to any network element at a later date.

**2. With respect to the approval and implementation of a batch cut process, should the Commission work with other state commissions on this issue?**

Qwest believes its batch hot cut processes are sufficient to meet the FCC's criteria. Should changes to Qwest's hot cut process be required, however, and to approve and implement those changes, an existing process exists for carriers to work cooperatively across the region: the Change Management Process, or CMP. Qwest is willing to consider using certain components of the CMP, provided specific parameters are articulated and followed. First, the Commission and carriers involved must understand that CMP has very stringent processes and procedures that were not designed to be used in the fashion that will be required to address the batch hot cut issue. CMP does, however, provide some existing mechanisms that would facilitate industry discussion. Therefore, Qwest has expressed its willingness to use the CMP notice distribution platform, and follow the applicable procedures specified in Section 3.0 of the CMP to schedule and facilitate industry meetings.

In the event this Forum is used, Qwest has proposed the following parameters apply:

Each state commission would endorse a procedural schedule that includes using the Forum for a limited period of time to permit the industry to meet, discuss and, if



possible, agree on the components of a batch hot cut process; the suggested timeframe would be

- (a) Industry meetings through the Forum - October 10, concluding no later than December 1, 2003;
- (b) The industry discussions conducted in the Forum would be transcribed by a licensed court reporter;
- (c) Qwest and the CLECs would agree to be bound by agreements reached in the Forum;
- (d) Once the state commissions have issued decisions regarding a batch hot cut process, Qwest will implement those orders using the formal CMP.

Once the Forum is concluded, parties would simultaneously file testimony and exhibits regarding the batch hot cut process in the context of the 9-month mass market switching case as provided for in commission procedural schedules. Parties would also simultaneously file rebuttal testimony and exhibits regarding the batch hot cut process in the context of the 9-month mass market switching case as provided for in commission procedural schedules.

Qwest would not be willing to participate in this type of Forum without such parameters, but believes that these parameters would provide an efficient way to resolve any issues relating to the approval and implementation of an acceptable batch hot cut process.

### **3. Do you intend to participate in any proceedings that are held?**

Qwest intends to participate in any proceedings that are held, and as indicated above, intends to challenge the FCC's findings of impairment relative to switching at the mass market level.

**4. Please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.**

Again, Qwest notes that it is still in the process of reviewing and analyzing the FCC's 576-page Order. Therefore, Qwest's responses to the questions raised by the Commission represent its best effort to interpret the Order given the limited time it has had to review the Order. Also, in providing its response to these questions and in suggesting possible procedures for state proceedings that result from the Order, Qwest is not waiving its right to appeal any issue in the Order, including issues related to the state proceedings required by the Order.

*General Procedural Issues*

The Order has already been the subject of legal challenges by a variety of parties, including Qwest. On Thursday, August 28, 2003, Qwest joined Southwestern Bell, BellSouth and the United States Telephone Association in filing a Writ of Mandamus before the U.S. Circuit Court of Appeals in Washington D.C., asking the court to, among other things, vacate the FCC's rules governing the unbundling of mass market switching and high-capacity facilities and to order the Commission to issue a lawful order within 45 days. On Thursday, September 4, 2003, Qwest filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia seeking judicial review of the Order on the grounds that portions of the Order exceed the Commission's authority and fail to comply with the Court's order in the USTA case. In addition, on September 12, 2003, Qwest joined with Verizon, BellSouth, SBC and the USTA in petitioning the D.C. Circuit Court for a partial stay of the TRO. On September 15, 2003, the D.C. Circuit ordered the FCC to file a response to the Writ of Mandamus by

September 25, 2003, with a reply by the petitioners by October 2, 2003. On September 16, 2003, pursuant to its standard lottery procedure, the Judicial Panel for Multidistrict Litigation ordered that all appeals of the TRO be transferred to the Court of Appeals for the Eighth Circuit. On September 18, 2003, Qwest, USTA, SBC, and Verizon filed a joint motion for expedited transfer of the consolidated appeal from the Eighth Circuit to the D.C. Circuit. On September 30, 2003, the Eight Circuit granted that motion and transferred the consolidated appeal to the DC Circuit. The DC Circuit has adjusted the schedule for briefing the mandamus petition, and is currently receiving briefing.

With regard to Qwest's planned challenge to the FCC's finding of impairment, subject to further state review, relating to switching at the mass market level, the Commission should initiate a nine-month proceeding in order to determine whether carriers in relevant markets would be impaired without access to switching at the mass market level. An adjudicative hearing process is the most appropriate format for the Commission to obtain the information necessary to make the findings required by the Order. The proceeding should be binding on all carriers (ILECs, CLECs, IXCs, wireless and others). The Commission should provide notice to all such carriers that the case will bind them and that gives them an opportunity to participate in the case.

#### *Discovery*

As Qwest indicated in its comments relating to the 90-day proceeding, Qwest recommends the Commission begin compiling the data that may be used for either or both of the 90-day and 9-month proceedings, pursuant to the federal authority delegated to the states in the Triennial Review Order, paragraphs 179 to 196. Qwest recommends that the Commission issue standardized data requests to all providers of

telecommunications services in South Dakota. Attachment "A" to these responses is a preliminary set of standardized data requests Qwest proposes the Commission use for this purpose. Qwest stands ready to provide its data in response to these questions. It is essential that all telecommunications providers (CLECs, ILECs, IXCs, cable providers, wholesale providers, VoIP providers and wireless providers included) in South Dakota provide this information because they are in possession of much of the factual information identified by the FCC as relevant for state Commission consideration in determining if CLECs are impaired without access to specific UNEs. Pursuant to the Commission's investigatory powers, responses to these data requests should be mandatory and should require CLECs, cable providers and wireless providers to provide the factual information necessary to address the impairment issue, the alternatives to unbundled ILEC facilities, and other relevant factors to be considered by the Commission when making its decisions. To ensure that it promptly receives the information it needs, the Commission should explicitly state in any order or orders issued by the Commission that the responses to the questions are due within 10 business days and that the responses must be full and complete.

#### *Protective Order*

The Commission should also issue a standard protective order to ensure that competitively sensitive information of the parties and non-parties produced in response to the Commission's data requests is made available to the parties and to the Commission, but is not disclosed or used improperly. As an example, Qwest has agreed to a protective order with AT&T and MCI in Minnesota; a copy is Attachment "B" hereto. Qwest hopes to work out a similar agreement for South Dakota.

**5. Please provide any additional comments the Commission should consider regarding these issues.**

See above.

Dated: October 10, 2003.



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**ATTORNEYS FOR QWEST CORPORATION**

## Discovery Requests for Triennial Review Proceedings

### STATE OF COMPETITION

1. Please list each LATA in [state] in which [company] provides or has provided local telecommunications services since passage of the Telecommunications Act of 1996.
2. Please list each wire center in [state] in which [company] provides or has provided local telecommunications services since passage of the Telecommunications Act of 1996.
3. For each LATA and wire center identified in response to requests 1 and 2, please identify:
  - a. How many local telecommunications lines [company] has in service? Please provide this information by:
    - i. Switched Services
      - (a) POTS;
      - (b) Centrex;
      - (c) ISDN BASIC;
      - (d) ISDN Primary;
      - (e) PBX Trunk (Analog only);
      - (f) Switched Services riding a DS1 pipe (to a Digital PBX, ISDN PRIMARY, etc; Count by channel);
      - (g) Other switched services;
      - (h) Total switched services.

ii. Non-Switched Services (include facilities, not voice grade equivalents; exclude interoffice facilities; count each terminating leg of facility separately):

- (a) DS0 Services (including both Analog & Digital);
- (b) DS1 Services;
- (c) DS3 Services;
- (d) OC-3 Services;
- (e) OC-12 Services;
- (f) OC-48 Services;
- (g) Other;
- (h) Total Non-Switched Services.

b. What percentage of the lines (by line types defined above) identified in response to (a) are

- i. UNE-P Business;
- ii. UNE-P Residence;
- iii. UNE-L Business;
- iv. UNE-L Residence;
- v. Business lines provided using the [company]'s own loop facilities and another party's dial tone (switching);
- vi. Business lines provided using [company]'s own loop facilities and own dial tone;
- vii. Business lines using a third party's loop facilities and [company]'s own dial tone;
- viii. Residential lines provided using the company's own loop facilities and another party's dial tone;
- ix. Residential lines provided using the [company]'s own loop facilities and own dial tone;

- x. Residential lines using a third party's loop facilities and the [company]'s own dial tone;
  - xi. For any residential and business lines served in any manner not listed above, in what manner are those lines served?
- c. Please provide the number of end-user customer locations served by DS1 and above capacity circuits and below DS1 capacity circuits using [company]'s self-provided switching. Please identify each such customer location by address. In the Triennial Review Order, the FCC states "if a customer has purchased services from the competitive carrier that require a DS1 or above loop, it is economically feasible to digitize the traffic and aggregate the customer's voice loops at the customer's premises and put them onto a high-capacity circuit." [para 451] Please state if [firm] disputes this finding and, if it does, explain why and describe all facts that support your positions. In addition, if [company] disputes this finding, provide all documents you rely upon to support your position.

Please produce all documents that support or substantiate the information provided in any of your responses to this request.

- 4. Please provide the number of UNE-P orders that [company] has placed with any local exchange carriers in [state] over the past 12 months.
- 5. Please provide the number of UNE-P orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months, the next 24 months, and the next 36 months. Please produce all documents that reflect or relate to these forecasts.
- 6. Please provide the number of UNE-L orders that [company] has placed with any local exchange carriers in [state] over the past 12 months.
- 7. Please provide the number of UNE-L orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months, the next 24 months, and the next 36 months. Please produce all documents that reflect or relate to these forecasts.



8. If the state commission determines that competitive carriers are not impaired without access to switching in the mass market, provide projections of the number of UNE-L orders and/or conversions you would anticipate over the first 12 months after the effective date of the decision, the second 12 months, and the third 12 months.
  
9. Please state whether [company] is providing any intermodal services in [state] to compete with services offered by Qwest, including cable, wireless, and Voice Over Internet ("VOIP"). If [company] is using any of these services, please identify the geographic areas in [state] where it is offering these services, and specify which service(s) is being offered in which areas. In addition, identify the number of end-user customers you are serving using such intermodal facilities by wire center.
  
10. Please list all areas in [state] in which [company] is certified to provide local exchange service.
  
11. Please list all areas in [state] in which [company] has engaged in any form of advertising or marketing of local exchange services within the past 12 months. Please produce all documents that reflect or relate to such advertisements and marketing efforts, including copies of all advertisements and documents describing marketing campaigns.
  
12. Please state whether [company] has any business plans to begin providing local exchange service in areas of [state] where it does not currently provide such service. If [company] has such plans, please identify the new areas where it intends to provide service, and produce all documents that refer or relate to [company]'s plans to expand into these new areas.

### CLEC REVENUES AND COSTS

13. Please provide the average total revenue per line that [company] has received from its residential customers within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to residential customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, local number portability, data, video, service to Internet service providers, international calling, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

14. Please provide the average total revenue per line that [company] has received from its business customers within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to business customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, local number portability, data, international calling, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. If revenues differ depending on the type of business customer (small vs. large), please provide the total revenues and the breakdown of revenues by type of business customer. Please provide the information by POTS, DS0, DS1, DS3,

OC-3, OC-12, OC-48, and any other relevant categories. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

15. Please explain how [company] defines its business customer segments and provide any documents that reflect this definition or the criteria [company] uses to segment or classify business customers into distinct customer groups. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

16. Please provide the average total revenue per line that [company] has received from its entire customer base (residence and business combined) within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to residential and business customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, data, international calling, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

17. Please provide the average total cost per line that [company] has incurred to provision lines used to serve residential customers within [state] for each of the past two years for the following categories: (1) service provided by UNE-P, (2) service provided by UNE-L, and (3) service provided using [company]'s own facilities. Please provide a

breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

18. Please provide the average total cost per line that [company] has incurred for lines used to serve business customers within [state] for each of the past two years, and in addition to a total average, please provide separate averages for service provided through UNE-P, UNE-L, and with [company]'s own facilities. Please provide a breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. If costs differ depending on the type of business customer (small vs. large), please provide the total cost and the breakdown of costs by type of business customer. Please identify how your company defines "small" and "large" business customers. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

19. Please provide the average total cost per line that [company] has incurred to provision all the lines serving its entire customer base (residence and business combined) within [state] in each of the past two years, and in addition to a total average, please provide separate averages for service provided through UNE-P, UNE-L, and with [company]'s own facilities. Please provide a breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. Please produce

all documents that reflect, refer or relate to the information provided in your response to this request.

20. Does [company] currently order high capacity UNE-P circuits such as UNE-P-DSS or UNE-P-PRI from Qwest or any other ILEC? If yes, identify the wire centers from which [company] orders such circuits and the number of such circuits [company] currently has in service. If yes, describe [company's] rationale for ordering such circuits. Please describe and itemize all costs that [company] would incur to connect its own facilities to the wire centers in question.

21. Please list each switch that [company] has purchased, leased or upgraded at any time to provide local exchange service in [state], and provide the following information for each switch: (1) the type of switch; (2) the date of purchase; (3) the location; (4) the initial installed number of lines and trunks; (5) the initial price paid for the switch; (6) the EF&I (engineering, furnish, and install) costs of the switch (if separate from the price paid); (7) a description of any additions to the switch; (8) the price paid for each addition to each switch; (9) the amount of increased capacity provided by each addition; and (10) the price paid for each switch operating software upgrade. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

22. Please provide complete copies of [company]'s switching vendor contracts, including amendments, pricing lists, discount schedules, etc. If any redactions are required, please explain why and identify the type of information redacted.

23. Please state whether [company] has purchased switching (wholesale or retail) in [state] from any entity other than Qwest. If [company] has purchased switching from any entity other than Qwest, please identify all such entities and identify the locations of their switches that are providing the switching and the locations of the customers served by [company] via those switches.

24. Please state whether [company] is using any partitioned switches in [state] that it owns, leases, or otherwise controls jointly with another carrier(s) and whether you share a CLLI with another carrier for the switch. Please identify the locations of any such switches and the identities of the other carriers and describe the capacity and capability of the partition that [company] owns, leases, or otherwise controls. As used in this request, "partitioned" means switches shared by different entities.

25. Identify every switch for which you share a CLLI code with another carrier and, for each switch, explain why you are sharing the CLLI code.

26. For [company's] business operation in [state] that provides local exchange service, please provide the ratio of general and administrative expenses to revenues that [company] has had in each of the past two years. In providing this ratio, please exclude any extraordinary items from both the numerator and the denominator, and identify any extraordinary items, including the amounts, that are excluded. Please produce all documents and data relied upon to calculate these ratios, including data that will permit independent verification of the ratio.

27. For [company's] operation in [state] that provides local exchange service, please provide the ratio of all types of marketing costs and revenue offsets to revenues (excluding extraordinary items from both the numerator and denominator), including for the following categories.

- a. Advertising;
- b. Promotional discounts;
- c. Sales commissions;
- d. Billing and collection;
- e. Customer care (other than the above).

Please produce all documents and data relied upon to calculate these ratios, including data that will permit independent verification of the ratio. In addition, please provide the total annual amount of the costs for each category listed above for the past two years.

28. Does [company] incur any customer acquisition costs in addition to those listed above in Request 27 (excluding any charges paid to ILECs) to set up a new customer account and to establish service? If so, please identify all such costs and provide the ratio they represent in relation to revenues. Please provide the amount of all such costs, by individual cost categories, for each of the past two years.

29. For [company's] business operation in [state] that provides local exchange service, what is the allowance for uncollectable revenues as a fraction of annual revenues? In providing this response, please separate any losses (or potential losses) associated with the bankruptcies of WorldCom, Global Crossing, and XO

Communications from other bad debt. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

30. For [company's] business operation in [state] that provides local exchange service, what is the ratio of taxes (other than income taxes) to the value of the company's net plant? Please produce all documents that reflect, refer or relate to the calculation of this ratio, and produce the data that will permit independent verification of the ratio.

31. Please provide copies of any studies or analyses that [company] has conducted that evaluate or refer to the costs of collocation in [state]. In addition, please produce all documents and data that reflect, refer or relate to the collocation costs that [company] has incurred in [state].

32. Please identify all operational support systems ("OSSs") that [company] uses to support its business operation in [state] that provides local exchange service.

33. For each OSS included in your response to Request No. 32, please:

- a. Describe the functions performed by the OSS;
- b. Provide the number of local telecommunications lines that have been served by the OSS each year;
- c. Provide the total cost of each OSS, including:
  - i. The initial cost of the OSS;
  - ii. The average upgrade cost per year for the OSS; and
  - iii. The annual cost for each year in which [company] has used the OSS.



Please provide all documents that reflect or relate to the information you provide in response to this request.

34. For each OSS listed in response to Request No. 32, please state whether [company] uses the OSS to support services other than local telecommunications service. Please identify any such services.

35. Of the lines that [company] serves in [state] using UNE-Ls, please:

- a. State the percentage of these lines that [company] serves from ILEC offices in which [company] is collocated;
- b. State the percentage of these lines that are connected to DLCs in collocation space.
- c. State the percentage of these lines that are connected to DLCs in collocation space.

36. For each Qwest office in [state] which [company] uses its own DLC equipment, please provide:

- a. The number of lines served;
- b. The number of lines installed;
- c. The concentration ratio; and
- d. The cost of the equipment, fully installed.

Please produce all documents that reflect or relate to the information you provide in your response to this request, including any documents that reflect the prices [company] has paid for DLC equipment.

37. Please describe the pricing structure that governs [company's] purchases of DLC equipment, including whether [company's] purchases this equipment on an EF&I basis, pre-wired, or pursuant to any other special specifications.

38. Please identify the monthly churn rate [company] has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, you should calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company.

39. In connection with [company's] churn rates in [state] in each of the past two years for local exchange customers, of the total customers that have left [company], please identify the percentage that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please produce all documents and data that reflect or relate to the information you provide in response to this request.

40. Please produce all documents that reflect, refer, or relate to the churn rates for local exchange customers that [company] has experienced in [state].

41. Please provide all documents that summarize or otherwise reflect the financial results of [company's] CLEC operations in [state] in each of the past two years.

## CLEC RATE PLAN OFFERINGS

42. Please identify all rate plans that [company] offers in [state], and list all components (including vertical features) of the rate plans that [company] offers to businesses and all the components of the rate plans that [company] offers to residential customers. In addition, please produce all documents that describe the rate plans [company] offers in [state].

43. Please identify the percentage of [company's] revenues from local exchange customers in [state] that are derived from flat rate plans that do not include incremental charges for domestic long distance calls. Provide the percentage of total local exchange lines in [state] that are provided to the customer pursuant to a flat rate plan that does not include incremental charges for long distance calls. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

44. Please provide the average long-distance per minute usage in [state] of [company's] local exchange customers for whom [company] is also the long-distance carrier using the following breakdown:

- a. Local exchange customers using flat-rate plans that do not include incremental charges for domestic long-distance calls; and
- b. All other CLEC customers.

Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

45. Please identify the percentage of [company's] switched minutes in [state] that are directed to Internet service providers. Please produce all documents that reflect, refer or relate to the information you provide in your response to this request.

### **CLEC SWITCHES**

46. Please identify all switches owned or controlled by [company] that are being used in [state] to provide service to customers served by facilities at or above the DS-1 level. For each switch, please state the number and percentage of customers that are being served by DS-1 and above facilities that are self-provided by [company] and are not leased from another carrier.

47. Please access website <http://www.TRAinfo.com> showing publicly available specifications from the LERG Routing Guide of all central office switches currently in place in [state]. Please state whether the information in the LERG is current and accurate for the switches that [company] owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity. If any of the information is not accurate, please identify the inaccurate information and provide corrected information, including any additions, deletions or changes. As part of your review of the information in the LERG, please state whether the CLLI code is accurate for each switch that [company] owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity. In addition, please state whether the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.

48. For each switch that [company] operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please report (in Excel spreadsheet format) whether the switch is currently providing switching for local voice grade services, tandem switching<sup>1</sup> for voice calls, or both. In addition, for each switch, please provide traffic volumes, expressed in minutes of use, for year 2002 for local traffic and tandem traffic. If these data are not available for year 2002, please provide the information for the most recent 12-month period for which the data are available. Provide all documents that reflect, refer or relate to the information you provide in response to this request. In addition, please provide the following information for each switch:

- a. Switch type;
- b. The generic (feature package) loaded in the switch;
- c. Current number of equipped lines in the switch;
- d. The current number of equipped trunks in the switch;
- e. 2001 and 2002 line growth for the switch; and
- f. 2001 and 2002 trunk growth for the switch.

49. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state (in Excel spreadsheet format) if the switch is providing originating voice grade services for residential end-user customers and/or small business customers (defined for this question as businesses with four DS-0 lines or fewer). If so, please:

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<sup>1</sup> Tandem switching is defined as switching of telephone traffic between two subtending end offices.

- a. Identify the switch (by CLLI) and the LATA(s) served by each switch (the LATA in which the switch providing the originating dial tone is physically located);
  - b. Identify the geographic scope over which [company] serves residential end-user customers and/or small business customers with its own switch;
  - c. Number of originating business and residential customers served by this switch;
  - d. Provide the volume of such traffic (expressed in minutes of use) for the most recent 12-month period;
  - e. Identify the rate centers you are serving for originating traffic;
  - f. State the manner by which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs or transport via facilities owned by your entity); and
  - g. If [company] is serving customers (as defined above) in one LATA in [state] using a switch located in another LATA (including a LATA in another state), please identify the LATA and state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.
50. For each switch that [company] owns or controls within [state], please state (in Excel spreadsheet format) if the switch is providing services to end-user customers with five DS-0 lines or more (including DS-1 facilities and above.) If so, please:
- a. identify the switch (by CLLI) and the LATA's served by each switch;
  - b. identify the geographic scope over which [company] serves such end-user customers with its own switch;
  - c. provide the volume of such traffic (expressed in minutes of use) for the most recent 12-month period;
  - d. state the manner in which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs, or transport via facilities owned by your entity); and

- e. If [company is serving these end-user customers using DS-1 and above facilities in one LATA in [state] using a switch located in a different LATA (including a LATA in another state), please identify the state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.

51. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please report (in Excel spreadsheet format) the level of traffic supported by that switch relative to the installed capacity of the switch expressed as a percentage (i.e., number of CCS at average busy hour divided by installed CCS capacity of the switch). In addition, please provide:

- a. For each switch, the percentage change in that value over the most recent 12-month period; and
- b. For each switch, a statement of whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

Sample Response Form			
Switch CLLI Code	(A) Average Busy Hour CCS (August 2003)	% Change 8/2002 to 8/2003	Switch expandable beyond current capacity via modular hardware? (y/n and reason)

52. For each voice grade switch in [state] that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity, please provide (in Excel spreadsheet format), the number of in-service telephone numbers ported from Qwest wire centers, listing each wire center, as well as the total number of all in-service telephone numbers active in each switch as of March 2003. (NOTE: if

information regarding Qwest wire center from which numbers were ported is not available to you, simply provide the data for each switch as identified by its CLLI code).

Sample Response Form				
		(A)	(B)	(C)
Switch CLLI Code	Qwest Wire Center	Total in-service telephone numbers ported from Qwest as of March 2003	Total of all in-service telephone numbers as of March 2003	Percentage ported numbers in service to all in-service numbers (A/B)

53. For each switch in [state] that [company] owns or controls and that is providing switching for local voice services, please report (in Excel spreadsheet format): (a) whether the switch is serving mass market customers, enterprise customers or both; (b) whether the switch is serving third-party local service providers; (c) the number of mass market switching ports; (d) the number of enterprise switching ports. In each instance, if the response is yes, please report the percentage of "in service" switching lines and trunks relative to installed lines and trunks in the switch.

Sample Response Form						
Switch CLLI Code	Switch serving mass markets, enterprise or both (M, E, B)	(if yes) % of switching ports in service	Switch serving 3 <sup>rd</sup> party local service providers? (y/n)	(if yes) % of switching ports in service	# of mass markets switching ports	# of enterprise switching ports



54. Please identify each entity, other than Qwest, from which [company] is purchasing or leasing interoffice tandem switching in [state]. For all such switching that [company] has obtained, please provide the tandem minutes of use obtained from each entity by trunk group, wire center, and tandem.

55. Please provide all fill factors or utilization rates for each switch in [state] for which [company] is responsible.

56. Please provide copies of any current contracts the [company] has with vendors for DLC equipment, including all pricing schedules, discounts, and amendments.

57. Please explain whether [company] pays for switching on a per line basis, and identify any switching components that [company] does not pay for on a per line basis.

58. If [company] offers intrastate switched access service to other carriers, please report your current switched access prices in [state].

59. If [company] offers intrastate-switched access service in [state], for each month since December 2001, please report (in Excel spreadsheet format) total revenue received for intrastate-switched access service.

60. If [company] offers intrastate long distance service to end users in [state], please report total intrastate long distance minutes of use and revenue for full years 2001 and 2002.

Sample Response Form				
State	2001 intrastate long distance minutes of use	2001 intrastate long distance revenue	2002 intrastate long distance minutes of use	2002 intrastate long distance revenue


61. What information does the CLEC require from the ILEC switch routing table?  
From the CLEC perspective, what does "access" imply, entail, or require beyond what is currently provided?

62. Does [company] believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If [company] believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

63. Describe all activities [company] must perform on its side of the network to complete an ILEC to CLEC hot cut, and identify all costs associated with these activities. Produce all data and documents that support your response. To the extent [company's] response would differ based on whether it performed a basic or a coordinated hot cut, please provide an itemization of the cost differences.

### UNBUNDLED LOOPS

64. Please report (in Excel spreadsheet format) the number of DS0 level (voice grade) residential and business lines in [state] that [company] serves by loops or lines for which a company other than Qwest provides switching dial tone functionality. In responding to this request, please separate by the categories set forth in the following table:

Sample Response Form						
<u>State</u>	<u>Residential</u>			<u>Business</u>		
	<u># DS0 lines served via your facilities</u>	<u># DS0 lines served via Qwest leased facilities</u>	<u># DS0 lines served via leased from third party</u>	<u># DS0 lines served via your facilities</u>	<u># DS0 lines served via Qwest leased facilities</u>	<u># DS0 lines served via leased from third party</u>

65. Please report (in Excel spreadsheet format) the number of DS1 level business lines in [state] served by unbundled loops for which [company] provides switching dial tone functionality. In responding to this request, please separate loop facilities by the categories set forth in the following table:

Sample Response Form							
<u>State</u>	<u>Wire Center</u>	<u>Residential</u>			<u>Business</u>		
		<u># DS0 lines served via your facilities</u>	<u># DS0 lines served via Qwest leased facilities</u>	<u># DS0 lines served via leased from third party</u>	<u># DS0 lines served via your facilities</u>	<u># DS0 lines served via Qwest leased facilities</u>	<u># DS0 lines served via leased from third party</u>

66. If [company] provides services operating at DS-1 and above (i.e., Digital Switched Service, Primary Rate Interface, etc) that terminate directly at end users' premises, please provide the city name, wire center and street address associated with each such termination. In addition, please:

- a. Report the service being provided at each such address (e.g., local switched service, high-speed data, video, etc) and capacity level;

- b. For services operating at DS-1 level or above, identify what category of facilities over which they are being provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless);
- c. For services operating at DS-1 level or above provided over network facilities obtained from another entity, please provide the name of the entity from which you obtain the facility and identify the type of facility used in providing the DS-1-level service to the end user.
- d. For each multi-tenant building in which [company] provides services operating at DS-1 level or above, state whether [company] is capable of serving all customers located in each building with its existing, installed facilities.
- e. If answer to (d) is no, whether customers could be served by adding electronics or other steps that do not require laying new cable.

Sample Response Form							
State	City	Wire Center	Street Address	Type of service provided (local switched, data, video)	Category of facility over which service is provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)	Name of third party entity from which DS-1 level or above transport is obtained	Type of DS-1 level or above transport facility obtained from third party (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)

67. Please provide the city name, wire center and street address of every end-user location in [state] to which [company] terminates dark fiber. For each such location, please indicate (a) the number of strands of fiber terminated to that street address, (b) the wire center or other location where that loop originates, (c) identity of any other premises through which the dark fiber is routed (d) whether that fiber is self-provisioned, obtained from Qwest, or obtained from a third party (and, if so, whom) (e) whether that fiber is owned outright, held as an indefeasible right of use ("IRU"), or has been obtained on some other basis (and, if so, what basis), and (f) what loop electronics are actually

connected or available to be connected at the originating or terminating locations of those loops.

68. Please state whether [company] is using extended enhanced links ("EELs") in [state]. If so, identify each EEL, and for each such facility, explain or state (1) the services being provided over the EEL, (2) the number of customers served by the EEL, (3) whether the facility is being used in lieu of collocation, (4) the number of loops connected to the EEL, a descriptions of the type of loop facilities so connected, and the final demarcation point of each loop, and (5) whether the facility is being used as a functional private line.

69. Does [company] provide wholesale unbundled loops to any carriers in [state]? If so, please identify the carriers to which [company] has provided unbundled loops, the quantities of loops provided, and the dates that [company] provided the loops.

70. Does [company] obtain or lease unbundled loops on a wholesale basis from any other carriers (other than Qwest) in [state]? If so, please identify all these carriers, the quantities of loops obtained, and when these loops were obtained or leased.

71. Identify all customer locations (by address) in [state] to which [company] has deployed dark fiber loops.

## **TRANSPORT**

72. Please report (in Excel spreadsheet format) the speed and number of transport facilities (i.e., trunks) in [state] running between two Qwest central offices or between a

Qwest central office and a CLEC central office served via network facilities owned or controlled by [company], or leased from an entity other than Qwest. For each such facility, please identify the A location, the Z location and any other premises through which the facility is routed. In addition, please break down this total number of facilities by wire center in which those trunks or EELs are located (NOTE: if data unavailable by wire center, please report the data by city).

73. Please describe whether [company] has dark fiber transport facilities available to it. For each such dark fiber facility, provide the following information: (a) the number of strands of fiber existing in that route, (b) the A location of the fiber, the Z location of the fiber and an identification of all intermediate premises through which the fiber is routed; (c) whether that fiber is self-provisioned, obtained from Qwest, or obtained from a third party (and, if so, whom), (d) whether that fiber is owned outright, held as an indefeasible right of use ("IRU"), or has been obtained on some other basis (and, if so, what basis), (e) what electronics are actually connected or available to be connected at the originating and terminating locations of the facility and (f) whether [company] has self provisioned these electronics.

74. Please report (in Excel spreadsheet format) the number of transport trunks between any Qwest switch and a CLEC switch in [state] served via network facilities owned or controlled by [company], or leased from an entity other than Qwest. Please break down this total by wire center in which those terminations are located (NOTE: if data unavailable by wire center, please report the data by city).

Sample Response Form			
State	Wire Center	# of trunks owned by your entity	# of trunks obtained from a non-Qwest entity

75. For [state], please provide a current mapping of all existing standard copper, COAX, fiber facilities (including points of access to these facilities), dark fiber and microwave routes owned, controlled, or leased by [company]. This mapping should contain a view at the state level showing major facility routes owned, leased or controlled by [company], and metropolitan area mapping showing specific facility routes within any and all metropolitan areas in which your network facilities are now located. In addition, please specify whether these facilities are dark or lit.

76. Please report available capacity of all standard copper, COAX, fiber facilities and microwave routes installed and owned by your [company] in [state].

77. Please provide details (e.g., purchaser of capacity, specific routes involved, type of transport, number of circuits purchased) regarding any transport capacity on your network that is currently being leased, resold or otherwise provided to another telecommunications provider.

78. If you currently purchase or lease interoffice transport within [state] from a company other than Qwest, please report which entity you currently obtain this service from, and also report the routes involved as well as number/type of transport facilities

(e.g., copper, fiber, or radio) being purchased. Please report separately the quantity of DS0, DS1, DS3 optical carrier level (OC) and dark fiber connections you currently are purchasing, leasing or otherwise are being provided from non-Qwest entities.

Sample Response Form				
State	Entity from which transport is obtained	Originating and terminating points of each transport facility leased	Type of transport leased (DS0,DS1,DS3, OC,dark fiber))	Quantity of transport connections leased, by type (as of 3/03)

79. Does [company] provide transport facilities on a wholesale basis to other carriers in [state]? If so, please list identify all such facilities that [company] has provided, including (1) the entity that obtained the transport, (2) the originating and terminating point of each facility, and (3) the type of facility (DS0, DS1, DS3, OC, dark fiber).

**OPERATIONAL ISSUES**

80. Please state whether [company] alleges that Qwest has performed deficiently in providing [company] with hot cuts, collocation, provisioning of loops, provisioning of transport, CLEC-to-ILEC cross connects, or CLEC-to-CLEC cross-connects in [state] at any time since June 2001. For any such allegations, please provide a complete description of all facts that [company] relies upon, and produce all documents that relate in any way to the allegation.



81. How many CLEC-to-CLEC cross-connects has [company] performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does [company] maintain in [state] at present?

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

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Gregory Scott	Commissioner
Phyllis A. Reha	Commissioner

**In the Matter of the Commission Investigation  
Into ILEC Unbundling Obligations as a Result  
Of the Federal Triennial Review Order.**

**Docket No. P-999/CI-03-961**

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**PROTECTIVE ORDER**

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To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the Commission now issues this Protective Order ("Order") to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"), and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. In states where Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential Information and Highly Confidential Information to staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit “A”) shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory’s full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit “A” and a copy of all such signed Exhibit “A”s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential

Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN  
DOCKET NO. P-999/CI-03-961.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of “B” of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential

Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making, non-regulatory strategic or business planning or procurement on behalf of the receiving party..

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “A” or “B” within three (3) business days after receiving the challenged individual’s signed Exhibit “A” or “B”. Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit “B”. The in-house experts who have signed Exhibit “B” may inspect, review and make notes from the in-house attorney’s copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
  - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
  - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging

party.

- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.
- (d) (d) The record of said in camera hearing shall be marked “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. P-999/CI-03-961.” Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.



(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. P-999/CI-03-961” and Highly Confidential Information shall be marked “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. P-999/CI-03-961” and shall not be examined by any person except under the conditions set forth in this Order.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit “A” or “B,” unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of

an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

7. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the

Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. P-999/CI-03-961.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

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EXHIBIT "A"  
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. P-999/CI-03-961 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT "B"  
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. P-999/CI-03-961 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# *Tieszen Law Office, LLP*

306 East Capitol, Suite 300  
P.O. Box 550  
Pierre, South Dakota 57501-0550  
e-mail: tieszenlaw@usa.net

605-224-1500 FAX 605-224-1600

Richard P. Tieszen  
Thomas H. Harmon  

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Karla L. Engle

October 14, 2003

Pam Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: Triennial Review Order  
TC03-181  
Our File No. 03.888

Dear Director Bonrud:

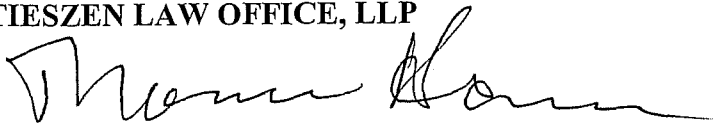
Enclosed please find a Notice of Appearance filing on behalf of this office and eleven identified attorneys representing AT&T in the above-referenced matter. In addition to myself, my partner, Richard Tieszen, and our associate, Karla Engle, may from time to time appear in this matter.

I will provide the orders granting limited admission into South Dakota bar on behalf of the identified attorneys as soon as received.

If there is anything further you need, please let em know.

Sincerely,

**TIESZEN LAW OFFICE, LLP**



Thomas H. Harmon

THH:mm  
Enclosure: Notice of Appearance

**RECEIVED**  
OCT 15 2003  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

**RECEIVED**

OCT 15 2003

IN THE MATTER OF THE )  
IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL )  
REVIEW ORDER )

NOTICE OF )  
APPEARANCE )  
SOUTH DAKOTA PUBLIC )  
UTILITIES COMMISSION )

Docket No: TC03-181

**NOTICE OF APPEARANCE**

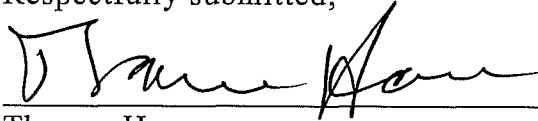
The specific counsel listed below, through local counsel Thomas Harmon, hereby enter their Notices of Appearance on behalf of Defendant AT&T Communications of the Mountain States ("AT&T") in the above-captioned matters:

1. Mary B. Tribby, in-house counsel for AT&T, who is licensed to practice law in the state of South Dakota. Mary Tribby's South Dakota attorney number is 2056. Ms. Tribby's mailing address is 1875 Lawrence Street, Suite 1575, Denver, CO 80202.
2. The following attorneys have Motions for Appearance by Nonresident Attorneys pending in Hughes County Court, and give their notice of appearance upon successful disposition of those motions:
  - a. Rebecca B. DeCook, Letty S.D. Friesen, Steven H. Weigler, Gary B. Witt, Richard S. Wolters, in-house counsel for AT&T. Their mailing address is 1875 Lawrence Street, Suite 1575, Denver CO 80202.
  - b. Walter F. Eggers, III of Holland & Hart LLP and counsel for AT&T. Mr. Eggers' mailing address is Post Office Box 1347, Cheyenne, Wyoming 82003-1347.
  - c. Thorvold A. Nelson, Robert Pomeroy, Jr., and James K. Tarpey of Holland & Hart LLP and counsel for AT&T. Their mailing address is 8390 East Crescent Parkway, Suite 400, Greenwood Village, CO 80111.
  - d. Thomas R. O'Donnell of Holland & Hart LLP and counsel for AT&T. Mr. O'Donnell's mailing address is Post Office Box 8749, Denver, CO 80201-8749.

The counsel listed above are associated with Thomas Harmon who is serving as local counsel for AT&T in this matter. Mr. Harmon's address is P.O. Box 550, Pierre, South Dakota 57501.

Dated: October 14<sup>th</sup>, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas Harmon", written over a horizontal line.

Thomas Harmon  
Tieszen Law Office, LLP  
P.O. Box 550  
Pierre, South Dakota 57501



## CERTIFICATE OF SERVICE

I certify that on October \_\_\_\_\_, 2003, I served a copy of the foregoing document to the following by:

U.S. Mail, postage prepaid  
Hand Delivery  
Fax

Pam Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

# *Tieszen Law Office, LLP*

306 East Capitol, Suite 300  
P.O. Box 550  
Pierre, South Dakota 57501-0550  
e-mail: tieszenlaw@usa.net

605-224-1500 FAX 605-224-1600

Richard P. Tieszen  
Thomas H. Harmon

Karla L. Engle

October 16, 2003

John Smith  
General Counsel  
Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

RECEIVED  
OCT 17 2003  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: **Triennial Review**  
**Notice of Appearance of Counsel**  
**Our File No. 03.888**

Dear Mr. Smith:

On October 14, 2003 I notified the Commission, on behalf of AT&T, that we had been retained as local counsel and that we were giving notice of appearance for some 11 attorneys. Ten of those attorneys are licensed out of state and, thus, we have sought approval of the circuit court for limited admission into the South Dakota Bar for the purposes of this case for these ten attorneys.

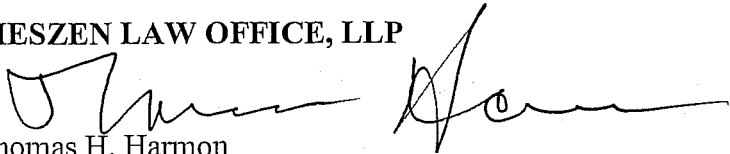
Enclosed please find the original of the ten Orders. These individuals are:

1. Thorvald A. Nelson – Civ 03-404
2. Robert M. Pomeroy, Jr. – Civ 03-405
3. Walter F. Eggers, III – Civ 03-406
4. Thomas R. O'Donnell – Civ 03-407
5. James K. Tarpey – Civ 03-408
6. Gary B. Witt – Civ 03-409
7. Richard S. Wolters – Civ 03-410
8. Steven H. Weigler – Civ 03-411
9. Rebecca B. DeCook – Civ 03-412
10. Letty S.D. Friesen – Civ 03-413

If you require anything additional to be filed at this point, please let me know.

Sincerely,

**TIESZEN LAW OFFICE, LLP**

  
Thomas H. Harmon  
THH:mf  
Enclosures

TC03-181

RECEIVED

OCT 17 2003

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA )  
  ): SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )

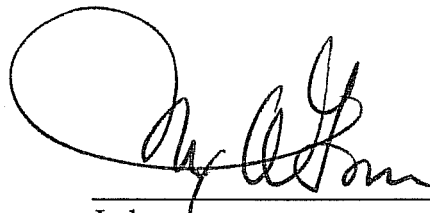
ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

CIV 03-404

This Court having been moved by THORVALD A. NELSON, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney THORVALD A. NELSON of 8390 East Crescent Parkway, Suite 400, Greenwood Village, CO 80111 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.



Judge

Christal L. Espeland  
ATTEST

3139414\_2.DOC

State of South Dakota } ss  
County of Hughes }

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 15 day of Oct, 2003  
CHRISTAL L. ESPELAND, Clerk of Courts

By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

FILED

OCT 15 2003

Christal L. Espeland Clerk

By \_\_\_\_\_ Deputy

TC03-181

RECEIVED

OCT 17 2003

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
  : SS  
COUNTY OF HUGHES )

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )


ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

03-405

This Court having been moved by ROBERT M. POMEROY, JR., an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney ROBERT M. POMEROY, JR. of 8390 East Crescent Parkway, Suite 400, Greenwood Village, CO 80111 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota } ss  
County of Hughes }  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.  
Dated this 15 day of Oct, 2003  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

FILED

OCT 15 2003

Christal L. Espeland Clerk

By \_\_\_\_\_ Deputy

TC03-181  
RECEIVED

OCT 17 2003

STATE OF SOUTH DAKOTA )  
  : SS  
COUNTY OF HUGHES )

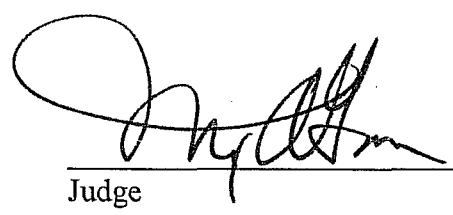
IN CIRCUIT COURT SOUTH DAKOTA PUBLIC  
  UTILITIES COMMISSION  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE ) ORDER ALLOWING  
FEDERAL COMMUNICATIONS COMMISSION'S ) APPEARANCE OF  
TRIENNIAL REVIEW ORDER ) NON RESIDENT  
BEFORE THE SOUTH DAKOTA ) ATTORNEY  
PUBLIC UTILITIES COMMISSION )  
**03-406**

This Court having been moved by WALTER F. EGGERS, III, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney WALTER F. EGGERS, III of Post Office Box 1347, Cheyenne, WY 82003-1347 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota }  
County of Hughes } ss  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.  
Dated this 15 day of Oct, 2003.  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**  
OCT 15 2003

Christal L. Espeland Clerk  
By \_\_\_\_\_ Deputy

OCT 17 2003

STATE OF SOUTH DAKOTA )  
 )  
 : SS  
 )  
COUNTY OF HUGHES )

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

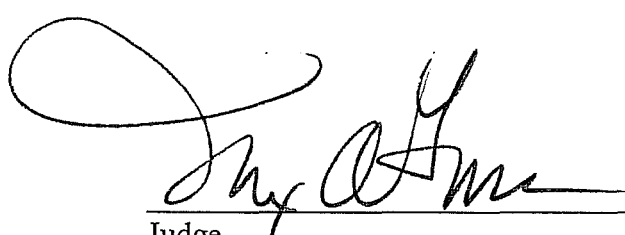
IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )

ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY  
**03-407**

This Court having been moved by THOMAS R. O'DONNELL, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney THOMAS R. O'DONNELL of Post Office Box 8749, Denver, CO 80201-8749 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**

OCT 15 2003

Christal L. Espeland Clerk

By \_\_\_\_\_ Deputy

3139414\_1.DOC

State of South Dakota } ss  
County of Hughes }  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.  
Dated this 15 day of Oct, 2003.  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy

OCT 17 2003

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF HUGHES )

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )

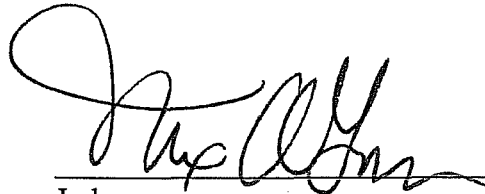
ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

03-408

This Court having been moved by JAMES K. TARPEY, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney JAMES K. TARPEY of 8390 East Crescent Parkway, Suite 400, Greenwood Village, CO 80111 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota }  
County of Hughes } ss  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.  
Dated this 15 day of Oct, 2003  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
FILED

OCT 15 2003

Christal L. Espeland Clerk  
By \_\_\_\_\_ Deputy

TC03-181

RECEIVED

OCT 17 2003

STATE OF SOUTH DAKOTA )  
  ): SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT FOR THE STATE OF SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )

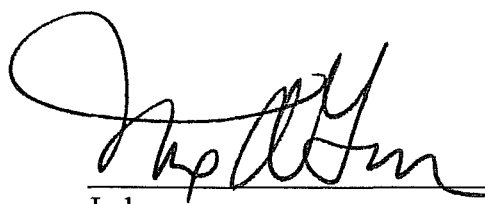
ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

03-409

This Court having been moved by GARY B. WITT, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney GARY B. WITT of 1875 Lawrence Street, Suite 1575, Denver, CO 80202 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**

OCT 15 2003

Christal L. Espeland Clerk  
By \_\_\_\_\_ Deputy

3139414\_1.DOC

State of South Dakota )  
County of Hughes ) ss  
I hereby certify that the foregoing  
instrument is a true and correct  
copy of the original on file in my  
office.  
Dated this 15 day of Oct, 2003  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy



OCT 17 2003

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF HUGHES )

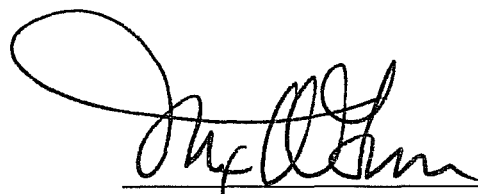
IN CIRCUIT COURT SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE ) ORDER ALLOWING  
FEDERAL COMMUNICATIONS COMMISSION'S ) APPEARANCE OF  
TRIENNIAL REVIEW ORDER ) NON RESIDENT  
BEFORE THE SOUTH DAKOTA ) ATTORNEY  
PUBLIC UTILITIES COMMISSION ) 03-410

This Court having been moved by RICHARD S. WOLTERS, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney RICHARD S. WOLTERS of 1875 Lawrence Street, Suite 1575, Denver, CO 80202 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota }  
County of Hughes } ss  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.  
Dated this 15 day of Oct, 2003.  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**  
OCT 15 2003

Christal L. Espeland Clerk  
By \_\_\_\_\_ Deputy



RECEIVED

OCT 17 2003

STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF HUGHES ) : SS

IN CIRCUIT COURT  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )

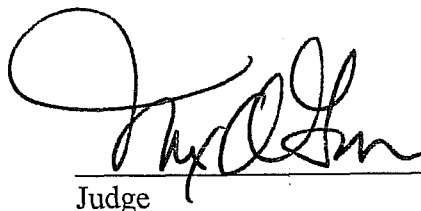
ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

03-412

This Court having been moved by REBECCA B. DeCOOK, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney REBECCA B. DeCOOK of 1875 Lawrence Street, Suite 1575, Denver, CO 80202 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.



Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota }  
County of Hughes } ss  
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 15 day of Oct., 2003.  
CHRISTAL L. ESPELAND, Clerk of Courts

By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

FILED

OCT 15 2003

Christal L. Espeland Clerk

TC03-181

RECEIVED

OCT 17 2003

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT OF SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE IMPLEMENTATION OF THE )  
FEDERAL COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
BEFORE THE SOUTH DAKOTA )  
PUBLIC UTILITIES COMMISSION )


ORDER ALLOWING  
APPEARANCE OF  
NON RESIDENT  
ATTORNEY

03-413

This Court having been moved by LETTY S.D. FRIESEN, an attorney in good standing before the bar in one or more sister states, it appearing that the proper filing fee has been paid, having reviewed the Statement in support of the motion by attorney Thomas Harmon, it is hereby ORDERED:

THAT attorney LETTY S.D. FRIESEN of 1875 Lawrence Street, Suite 1575, Denver, CO 80202 is granted admission to the State Bar of South Dakota for the limited purpose of appearing before the South Dakota Public Utilities Commission in the above-captioned matter. Said attorney shall be bound by the rules of practice and professional responsibility of the State of South Dakota while so practicing.

Done this 15th of October, 2003.

  
\_\_\_\_\_  
Judge

Christal L. Espeland  
ATTEST

3139414\_1.DOC

State of South Dakota }  
County of Hughes } ss

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 15 day of Oct., 2003.  
CHRISTAL L. ESPELAND, Clerk of Courts  
By Christal L. Espeland  
Clerk of Courts/Deputy

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
FILED

OCT 15 2003

Christal L. Espeland Clerk

By \_\_\_\_\_ Deputy

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>ORDER FOR AND NOTICE</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	<b>OF DEADLINE FOR FILING</b>
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	<b>PETITIONS TO INTERVENE;</b>
<b>REGARDING UNBUNDLING OBLIGATIONS</b>	)	<b>ORDER FOR AND NOTICE</b>
	)	<b>OF HEARING DATES;</b>
	)	<b>ORDER FOR DETAILED</b>
	)	<b>STATEMENT; AND ORDER</b>
	)	<b>REQUESTING COMMENTS</b>
	)	<b>TC03-181</b>

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

With respect to loops, the FCC found that, on a national level, "requesting carriers are impaired at most customer locations without access to dark fiber loops." *Order* at ¶ 311. The FCC also found that "requesting carriers are impaired on a customer-location-specific basis without access to unbundled DS3 loops." *Order* at ¶ 320. The FCC further found that "requesting carriers generally are impaired without access to unbundled DS1 loops." *Order* at ¶ 325. The FCC then stated the following:

In making affirmative impairment findings on a nationwide basis for dark fiber loops, DS3 loops, and DS1 loops, we recognize that limited alternative deployment has occurred at particular customer locations not specified in our record for certain of these high-capacity loop types which could lead to a finding of no impairment for that loop type at that location. Thus, for these loop types, a more granular impairment analysis should be applied on a customer-by-customer location basis. To that end, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled high-capacity loops pursuant to two triggers. If a state commission finds that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high-capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at that location according to the transition schedule adopted by the state commission. *Order* at ¶ 328.

With respect to dedicated transport, the FCC found that, on a national level, "competing carriers are impaired without access to unbundled dark fiber transport." *Order* at ¶ 381. Similarly, the FCC concluded that "requesting carriers are impaired on a route-specific basis without access to unbundled DS3 transport." *Order* at ¶ 386. The FCC further found that "requesting carriers generally are impaired without access to DS1 capacity transport." *Order* at ¶ 390. The FCC then delegated to the states "a fact-finding role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers." *Order* at ¶ 394.

With respect to local circuit switching, the FCC found that, on a national level, "requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. This finding is subject to a more granular review by the states pursuant to specifically enumerated triggers and other operational and economic criteria regarding facilities-based entry in specific geographic markets." *Order* at ¶ 419. The FCC further found as follows:

Because we find that operational and economic factors associated with the current hot cut process used to transfer a loop from one carrier's switch to another's serve as barriers to competitive entry in the absence of unbundled switching, state commissions must, within nine months from the effective date of this Order, approve and implement a batch cut process that will render the hot cut process more efficient and reduce per-line hot cut costs. In the alternative, if appropriate for any particular geographic market, state commissions must issue detailed findings supporting a conclusion that current hot cut processes do not give rise to impairment in a market and that a batch cut process is therefore unnecessary. *Order* at ¶ 460.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCI metro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings

were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission considered how to proceed in this docket. Based on the comments, the Commission shall conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. Any interested person or entity shall file a petition to intervene on or before October 31, 2003. A hearing shall be held on April 26 through April 30 and May 3 through May 7, 2004. A more detailed procedural schedule shall be issued at a later date.

In order to further define the scope of this proceeding, the Commission is requesting that Qwest provide a more detailed statement of how it intends to challenge the impairment finding regarding mass-market switching. Qwest shall identify the geographical areas in South Dakota where Qwest intends to challenge the national findings of impairment, the bases for the challenge, and, to the extent known, the competitive local exchanges carrier switches that form the bases for Qwest's contention of no impairment.

The Commission is also requesting comments from any person that files a petition to intervene on what procedure the Commission should use to determine the relevant geographical area to include in each market. In addition, any interested person may submit proposed discovery questions along with a proposal on how discovery should be conducted and who discovery should be served on. Further, any interested person may submit a proposed protective order. Finally, the Commission would like updated comments on whether the Commission should proceed with the batch cut issues using a multi-state process.

It is therefore

ORDERED, that petitions to intervene shall be filed on or before October 31, 2003; and it is

FURTHER ORDERED, that a hearing shall be held on April 26 through April 30 and May 3 through May 7, 2004; and it is

FURTHER ORDERED, that Qwest shall file a more detailed statement regarding the scope of the docket on or before October 31, 2003; and it is

FURTHER ORDERED, that any interested person that files a petition to intervene may file comments on the issues listed above on or before October 31, 2003.

Dated at Pierre, South Dakota, this 21st day of October, 2003.

**CERTIFICATE OF SERVICE**

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

By: Melaine Kalbs

Date: 10/21/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner



LAW OFFICES  
MAY, ADAM, GERDES & THOMPSON LLP  
503 SOUTH PIERRE STREET  
P.O. BOX 160  
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM  
DAVID A. GERDES  
CHARLES M. THOMPSON  
ROBERT B. ANDERSON  
BRENT A. WILBUR  
TIMOTHY M. ENGEL  
MICHAEL F. SHAW  
NEIL FULTON  
BOBBI J. BENSON  
BRETT KOENECKE

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www.magt.com

October 23, 2003

OF COUNSEL  
WARREN W. MAY

GLENN W. MARTENS 1881-1963  
KARL GOLDSMITH 1885-1966

TELEPHONE  
605 224-8803

TELECOPIER  
605 224-6289

E-MAIL  
dag@magt.com

**RECEIVED**

OCT 23 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

HAND DELIVERED

Pam Bonrud, Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: **IN THE MATTER OF THE IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING OBLIGATIONS**

Docket: TC03-181

Our file: 0053

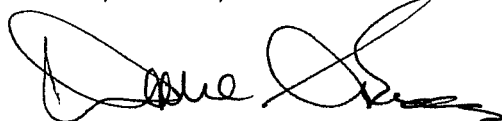
Dear Pam:

Enclosed are original and ten copies of Midcontinent's  
Petition to Intervene and Comments with Certificate of  
Service. Please file the enclosure.

With a copy of this letter, I am forwarding a copy of the  
enclosure to the service list, this being intended as service  
by mailing.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



DAVID A. GERDES

DAG:mw

Enclosures

cc/enc: Service list  
Tom Simmons

RECEIVED

OCT 23 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER ) PETITION TO INTERVENE  
REGARDING UNBUNDLING OBLIGATIONS ) AND COMMENTS

In response to the Commission's order of October 21, 2003, in this docket, Midcontinent Communications petitions to intervene as a party with an interest in this docket. Midcontinent is a competitive local exchange carrier in Qwest's exchanges and has both an economic and a regulatory interest in the outcome of the issues presented in this proceeding.

COMMENTS

In further response to the Commission's order, Midcontinent responds to the request for written comments as follows:

1. The Commission has requested comments as to the nature of the procedure the Commission should establish to determine the relevant geographical area to be included in each market. To a certain extent, the answer to this question may depend upon Qwest's more detailed statement required by the Commission's order as to how it intends to challenge the impairment finding regarding mass-market switching. However, Midcontinent continues to believe, as stated in its Notice of Intent to Participate and Comments filed in this docket, that prefiled testimony according to a time schedule established by the Commission would produce the best record. Given the fact that the Commission has set aside two weeks to hear this matter, this procedure would present the best record to enable the Commission to analyze the issue.

2. As to discovery, until Qwest's detailed statement on how it intends to challenge the impairment findings regarding mass-market switching is filed with the Commission, it is difficult to propose precise discovery questions. Those questions would, of necessity, deal with the elements of Qwest's challenge to the impairment finding.

3. Presently, Midcontinent sees no need to submit a proposed protective order.

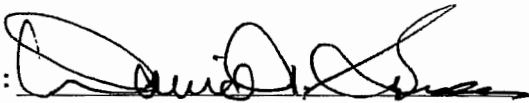
4. As to the batch cut issues, Midcontinent believes that participation in a multistate process would be beneficial. That is

not to say that all aspects of solutions identified in other states would apply to South Dakota. It would, however, take advantage of the multiple sources which would be available in a multistate process.

WHEREFORE Midcontinent prays that the Commission grant it intervention into the docket.

Dated this 23<sup>rd</sup> day of October, 2003.

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BY:   
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Attorneys for Midcontinent Communications  
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Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 23<sup>rd</sup> day of October, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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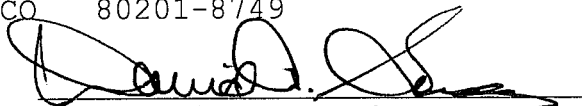
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October 30, 2003

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HAND DELIVERED

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Executive Secretary  
Public Utilities Commission  
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Pierre, SD 57501

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OCT 30 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RECEIVED

OCT 30 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 1924.10

Dear Pam:

Enclosed for filing please find an original and ten copies McLeodUSA's Petition to Intervene in the above referenced action.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Service List  
Bill Courter

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 30 2003

IN THE MATTER OF THE IMPLEMENTATION )  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

TC03-181

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

PETITION TO INTERVENE

In response to the Commission's order of October 21, 2003, in this docket, McLeodUSA Telecommunications Services, Inc., hereby petitions the Commission for an Order allowing intervention as a party with an interest in this docket. McLeodUSA is a competitive local exchange carrier in Qwest's exchanges and has both an economic and a regulatory interest in the outcome of the issues presented in this proceeding.

WHEREFORE, McLeodUSA Telecommunications Services, Inc., prays that the Commission grant it intervention into the docket.

Dated this 30 day of October, 2003.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT M. KOENECKE

Attorneys for McLeodUSA Telecommunications  
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CERTIFICATE OF SERVICE

30 Brett M. Koenecke, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of October, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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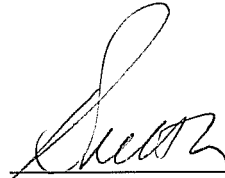
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A handwritten signature in black ink, appearing to read "Brett Koenecke", written over a horizontal line.

Brett Koenecke



**Janet Keller**  
Docket Manager  
303-298-6502

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October 30, 2003

**Via Overnight Mail**

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**OCT 31 2003**

Pam Bonrud  
Executive Director  
SD Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Re: In the Matter of the Implementation of the Federal Communications  
Commission's Triennial Review Order Regarding Unbundling  
Obligations, Docket No. TC03-181

Dear Ms. Bonrud:

Enclosed are the original and ten copies of AT&T's Petition for Leave to Intervene and AT&T's Comments in the above-referenced matter.

Sincerely,

  
Janet Keller

Enclosures





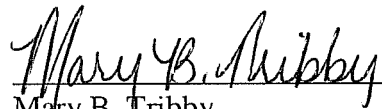
4. AT&T seeks to protect its interests in providing telecommunications services in South Dakota and the interests of its customers.

5. The evidence to be presented by AT&T will be of material value to the Commission in its determination of the issues involved in this proceeding, including the public interest. Moreover, no other party can adequately address AT&T's concerns.

WHEREFORE, AT&T respectfully requests permission to intervene as a party to this proceeding and to participate to the full extent permitted under the Commission's rules and South Dakota law.

Respectfully submitted this 31<sup>st</sup> day of October, 2003.

AT&T COMMUNICATIONS  
OF THE MIDWEST, INC.



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

**In the Matter of the Implementation of the Federal                    )**  
**Communications Commission’s Triennial Review Order        ) Docket No. TC03-181**  
**Regarding Unbundling Obligations                                    )**

**AT&T’S RESPONSE TO ORDER REQUESTING COMMENTS**

**I. INTRODUCTION**

AT&T, by and through its attorneys, submits the following comments in response to the Commission’s October 21, 2003 Order for and Notice of Deadline for Filing Petitions to Intervene; Order for and Notice of Hearing Dates; Order for Detailed Statement; and Order Requesting Comments, instructing interested persons or entities to file, on or before October 31, 2003, petitions to intervene and comments on certain issues set forth in the Commission’s Order. AT&T is filing its petition to intervene simultaneously with these comments.

**II. DETERMINING RELEVANT GEOGRAPHIC MARKETS**

In its Triennial Review Order (“TRO”), the Federal Communications Commission (“FCC”) made a national finding that CLECs are impaired without access to unbundled local circuit switching when serving *mass market* customers. *TRO*, ¶419. However, it asked the states to conduct “a more granular market-by-market analysis of impairment on a going forward basis” to take account of any variations in market conditions across the country. *TRO*, ¶424.

The FCC concluded that state commissions are most appropriately situated to conduct such a granular analysis because it requires “analysis of geographic and market specific factors.” *Id.* One analyses the FCC specifically directed the states to make is to

determine “the relevant geographic area to include in each market.” *TRO*, ¶¶ 495, 496 & n.1536; *see also* 47 CFR § 51.319(d)(2)(i). In addition, the state is charged with determining whether the FCC-defined self-provisioning and/or wholesale triggers are met (the “trigger” analysis) within the identified geographic markets, and, assuming the “triggers” are not met, the state must then determine whether the market is suitable for multiple, competitive supply (the “Potential Deployment Test”), based upon a consideration of operational and economic impairment.

The definition of the geographic market is a pivotal element of the mass market switching impairment determination, in that it governs the trigger analysis, as well as the Potential Deployment Test. The Commission “must use the same market definitions for all of its analysis.” *TRO*, ¶ 495.

The FCC has placed few strictures on the Commission’s determination of the relevant markets. A state may not define the geographic market as encompassing the *entire* state. On the other hand, the FCC cautioned that the Commission should not “define the market so narrowly that a competitor serving that market alone would not be able to take advantage of the available scale and scope economies from serving a wider market.” *Id.* In delegating the granular analysis to the states, the FCC noted a number of factors that the commissions should “take into consideration,” in defining the geographic market, including:

- the locations of customers actually being served (if any) by competitors;
- the variation in factors affecting competitors’ ability to serve each group of customers in the state; and
- the ability of carriers to target and serve specific markets in a particular area economically and efficiently using currently available technologies.

*TRO*, ¶ 495. It is clear, however, that the FCC has cautioned the states not to allow the need for a “more granular analysis” to override the realities faced by CLECs attempting to serve a market using their own switching. Thus, as noted, the FCC cautioned that the Commission should not define the market too narrowly. Finally, the FCC notes that states may elect to define geographic markets according to “administrative tools” previously used “to distinguish among certain markets within a state on a geographic basis for other purposes . . . .” *TRO*, ¶ 496.

In view of the importance of defining the relevant geographic markets, AT&T believes that the Commission should utilize the following procedure to progressively focus the case: (1) ensure at the outset that Qwest provides a meaningful narrowing of the overall geographic scope of the docket by identifying those specific locations where Qwest genuinely contests the FCC’s impairment finding, and (2) defer a ruling on the definition of the specific geographic markets until after evidence is presented by the parties as part of their case in chief.

To date, in most states this logical two-step process has been hampered by Qwest’s insistence on delaying any meaningful narrowing of the geographic scope of the case pending an unjustifiably extensive discovery process amounting to a fishing expedition. Instead of narrowing the scope of the case from the start, Qwest seeks to force the Commission and the parties to expend substantial time and resources on Qwest’s statewide discovery, needlessly complicating and delaying the case. Qwest has in its possession the information necessary to provide an initial geographic scoping of the case. The Commission should insist on Qwest’s compliance with its order that “Qwest shall identify the geographical areas in South Dakota where Qwest intends to challenge

the national findings of impairment, the bases for the challenge, and to the extent known, the competitive local exchanges carrier switches that form the bases for Qwest's contention of no impairment.

### **III. PROPOSED DISCOVERY QUESTIONS**

Based upon a very preliminary review of the template discovery questions prepared by the NARUC Triennial Review Implementation Project ("TRIP"), AT&T believes that with some streamlining the TRIP questions directed to the ILECs represent a good starting point for discovery to be issued to the ILECs. AT&T would note, however, that there are additional areas of inquiry that were not addressed by the TRIP questions. AT&T has attached as Attachment A, a preliminary list of additional questions that AT&T believes should also be issued to the ILECs.

As the parties continue to examine the Triennial Review Order ("TRO") and progress in this proceeding, additional discovery will likely be necessary. While the Commission should not limit a party's right to engage in discovery, the Commission should monitor discovery to ensure that it does not become burdensome and to ensure that it is consistent with the objectives of the TRO proceedings before it.

### **IV. PROPOSED PROTECTIVE ORDER**

AT&T has attached the proposed protective order agreed to by Qwest, MCI and AT&T as Attachment B.

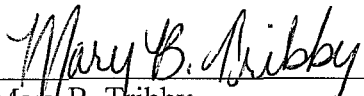
### **V. MULTI-STATE PROCESS FOR BATCH HOT CUT ISSUES**

AT&T believes an improved batch hot cut process should be developed on a multi-state basis. AT&T has attached a description of its proposed approach, as well as a corresponding proposed schedule, as Attachment C.



Respectfully submitted this 31<sup>st</sup> day of October, 2003.

AT&T COMMUNICATIONS  
OF THE MIDWEST, INC.



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**AT&T'S PROPOSED DISCOVERY QUESTIONS**

1. For each month since 1999, provide the number of and the total charges assessed for unbundled loop cutovers when the "CHC" field on the LSR form is populated with a "Y", for existing customers by wire center, separated between each type or classification of cutover provided by ILEC, including, but not limited to, "coordinated installation with cooperative testing," "coordinated installation without cooperative testing," "frame due time" or "project coordinated installation" cutovers.
2. Provide the average [ILEC] personnel time attributable to a single cutover on a single order, separated between each type or classification of cutover provided by ILEC, including, but not limited to, "coordinated installation with cooperative testing," "coordinated testing without cooperative testing," "frame due time" or "project coordinated installation" cutovers.
3. Provide the average [ILEC] personnel time attributable to multiple cutovers contained on a single order, separated between each type or classification of cutover provided by ILEC, including, but not limited to, "coordinated installation with cooperative testing," "coordinated installation without cooperative testing," "frame due time" or "project coordinated installation" cutovers.
4. Has [ILEC] ever communicated to any CLEC the total number of cutovers [ILEC] is capable of performing per central office per day? Or in any specific geographic area per day? If yes, provide the substance of those communications, including all documents relating to limitations on the number of hot cuts that can be performed. If there are differences in the maximum number of cutovers that can be performed in a central office or geographic area, explain the reasons for the differences.
5. State the highest number of unbundled loop cutovers, when the "CHC" field on the LSR form is populated with a "Y," [ILEC] has ever performed in a single day for each central office.
6. State, for the most recent 30, 60 and 90-day periods for which data are available, the average number of lines [ILEC] processes on an order when the "CHC" field on the LSR form is populated with a "Y". State the time period used to develop the averages provided and the number of observations used to develop the average.

7. For the last quarter for which such information is available, provide by end-office (by applicable CLLI code), the CLLI of the tandem switch on which each end-office homes.
  
8. Identify the overall number and percentage of loops in [ILEC's] territory in [STATE] that are currently provisioned on:
  - a. All-copper loop facilities without pair-gain devices of any type (e.g., analog pair gain, DAMLs, etc.).
  - b. All-copper loop facilities with pair gain devices.
  - c. All-copper loop facilities less than 18K feet in length.
  - d. All-copper loop facilities greater than 18K feet in length.
  - e. Fiber-fed DLC facilities that do not support DSL.
  - f. Fiber-fed DLC facilities that do or will support DSL.
  
9. If [ILEC] has plans for provisioning fiber-fed NGDLC equipment, identify the overall number and percentage of loops in [ILEC's] territory in [STATE] that will be provisioned after the completion of the deployment on:
  - a. All-copper loop facilities without pair-gain devices of any type (e.g., analog pair gain, DAMLs, etc.).
  - b. All-copper loop facilities with pair gain devices.
  - c. All-copper loop facilities less than 18K feet in length.
  - d. All-copper loop facilities greater than 18K feet in length.
  - e. Fiber-fed DLC facilities that do not support DSL.
  - f. Fiber-fed DLC facilities that do or will support DSL.
  
10. Provide the best estimate available within [ILEC] or its affiliates of the percentage of access lines that will be used (in whole or in part) to provide services in the next five years based on each of the following types of DSL:

- a. ADSL.
  - b. HDSL.
  - c. HDSL2.
  - d. GSHDLS.
  - e. VDSL
11. Describe in detail each of the OSS upgrades, modifications or changes that [ILEC] asserts are necessary to support DSL services on loops provisioned on fiber-fed NGDLC facilities. Provide all documents, including correspondence, vendor contracts, RFPs to vendors, statements of work, business cases, electronic mail, methods & procedures, core team minutes, action log, or notes, or other information that refer to such upgrades or upon which [ILEC] relied to respond to this request.
  12. Describe in detail the step-by-step physical process that must take place to convert a loop provided under a UNE-P arrangement (i.e., served by ILEC's unbundled switch), to UNE-L (served by CLEC's switch)
  13. Does [ILEC] have a "project-based" hot cut process for moving UNE-P customers to UNE-L? If so, describe the process in detail, produce all documents describing the process, identify the standard intervals and indicate the per unbundled loop charges for the process.
  14. Has [ILEC]'s "project-based" UNE-P to UNE-L migration process been subjected to testing, third party or otherwise? If so, provide the detailed results of such testing, including all documentation of the methodology that substantiates the statistical and operational validity of such testing.
  15. Can the current capacity of the UNE-P to UNE-L "project-based" process be increased? If so, how? Does ILEC have any current plans to increase the current capacity? If so, describe such plans.
  16. Describe in detail any process [ILEC] has to restore service if an end-user experiences problems resulting in loss of service during a hot cut.

17. Does ILEC have in place a single LSR process to migrate UNE loops from ILEC to CLEC, CLEC to ILEC and CLEC to CLEC for each of the following?
  - a. Voice service.
  - b. Data service.
  - c. Voice and data service
18. If [ILEC] has a single LSR process to migrate UNE loops, state whether the process provides flow through capability, and provide:
  - a. The capacity of each process in terms of number of UNE loops per day that can be migrated.
  - b. State the percentage of the service orders that flow through to completion.
19. Does [ILEC] have plans to increase its capacity to perform single LSR migrations? If so, provide the planned capacity for each type of migration and service.
20. Provide all documents analyzing or describing any external “market” for leased local switching capacity that [ILEC] reviewed in evaluating its proposed pricing for non-UNE local switching to serve voice grade loops. If no documents were reviewed, explain how [ILEC] established its prices for non-UNE local switching.
21. Provide the average revenue per line ILEC has derived from its residential customers in [STATE] in each of the last two years. Include in the average revenue per line all revenues associated with the basic retail price charged residential customers, vertical features, universal service payments, access charges, subscriber line charges, intraLATA toll, interLATA long distance, voice mail, local number portability, data and line revenues derived from any other sources. Provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total.
22. Provide the average total revenue in each of the past two years, per POTs and per DS0 line, that [ILEC] has received from business customers that are served by 1-3 voice-grade equivalent lines at one location, or are otherwise included in the definition of mass market customer as determined by the [STATE COMMISSION]. The average revenue per POTs and DS0 line should include revenues associated with the basic retail price charged to business customers,

vertical features, voice mail, universal service payments, access charges, subscriber line charges, intraLATA toll, interLATA long distance, local number portability and data. Provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. Produce all documents that reflect, refer or relate to the information provided in your response to this request.

23. Provide the average total cost per line for each of the past two years that [ILEC] has incurred to install and maintain lines used to serve mass market customers (residential customers and business customers that are served by 1-3 voice-grade equivalent lines at one location, or are otherwise included in the definition of mass market customer as determined by the [STATE COMMISSION]). Provide a breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. Produce all documents that reflect, refer or relate to the information provided in your response to this request.
24. Identify each instance in the last three years in which [ILEC] has denied a CLEC request for UNE interoffice transport in [STATE] on the basis of “no facilities available.”
25. Specify the CLLI code for each pair of end offices (if any) between which the CLEC requested UNE interoffice transport was denied due to “no facilities available.” Provide all documents, information or communications on which [ILEC] relies for its response to this request.
26. Identify each instance in the last three years in which [ILEC] has delayed provisioning a CLEC request for UNE interoffice transport on the basis of “no facilities available.”
27. Specify the CLLI code for each pair of end offices (if any) between which the CLEC requested UNE interoffice transport was delayed due to “no facilities available” at the time of the request.
28. In each instance where provisioning of a CLEC’s UNE interoffice transport was delayed due to “no facilities available” at the time of the request, describe in detail why there were no facilities available at the time of the request. How long was each such request delayed before facilities became available? Provide all documents, information or communications on which [ILEC] relies for its response to this request.

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

**In the Matter of the Implementation of the Federal                    )**  
**Communications Commission's Triennial Review Order            )**   **Docket No. TC03-181**  
**Regarding Unbundling Obligations                                    )**

**PROTECTIVE ORDER**

To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the Commission now issues this Protective Order ("Order") to govern these proceedings.

1.     (a)     Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"), and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. In states where Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential Information and Highly Confidential Information to staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.



The nondisclosure agreement (Exhibit “A”) shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory’s full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit “A” and a copy of all such signed Exhibit “A”s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential

Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of “B” of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential

Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making, non-regulatory strategic or business planning or procurement on behalf of the receiving party..

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “A” or “B” within three (3) business days after receiving the challenged individual’s signed Exhibit “A” or “B”. Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit “B”. The in-house experts who have signed Exhibit “B” may inspect, review and make notes from the in-house attorney’s copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
  - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
  - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.
- (d) (d) The record of said in camera hearing shall be marked “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181.” Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181” and Highly Confidential Information shall be marked “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181” and shall not be examined by any person except under the conditions set forth in this Order.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit “A” or “B,” unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and

use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

7. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. TC03-181.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

---



EXHIBIT "A"  
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT "B"  
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT C

### **AT&T's Proposed Schedule for Addressing Hot Cut Operational and Economic Impairment Issues**

November 17, 2003	Parties File Comments on Hot Cut Process Operational and Economic Requirements.
December 1 – 5, 2003	Initial Face-to-Face Workshop to Develop Hot Cut Process Operational and Economic Requirements Document. The workshop will focus on understanding the parties' various proposals, identification of the issues, identifying areas of agreement and establishing milestones and milestone dates.
December 8, 2003 – January 30, 2004	Weekly conference calls on Requirements Document. Face-to-Face meetings as necessary.
February 27, 2004	Simultaneous Testimony on Requirements Document
March 26, 2004	Simultaneous Rebuttal Testimony on Requirements Document
March 26, 2004 – April 9, 2004	Hearings in Multiple States.
April 9, 2004 – July 2, 2004	Commission Decision on Requirements Document.
July 3, 2004 - ?	Development of New or Modification of Existing Hot Cut Processes that complies with the Commission decision on the Requirements Document.
Ongoing after July 3, 2004	ILEC provides monthly status reports on progress towards meeting stated requirements.

**CERTIFICATE OF SERVICE**

TC03-181

I hereby certify that on October 30, 2003, the original and 10 copies of AT&T's Comments and Petition to Intervene were sent by overnight delivery service to:

Pam Bonrud  
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 October 30, 2003, addressed to:

David A. Gerdes  
May Adam Gerdes & Thompson LLP  
503 South Pierre Street  
Pierre, SD 57501

Richard D. Coit  
Executive Director and General Counsel  
SDTA  
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Pierre, SD 57501-0057

Timothy J. Goodwin  
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Colleen Sevold  
Manager – Regulatory Affairs  
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\_\_\_\_\_  
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605 224-6289

October 31, 2003

e-mail  
koenecke@magt.com

**HAND DELIVERED**

Pam Bonrud  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

RECEIVED

OCT 31 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

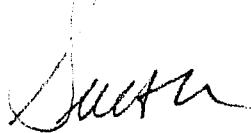
RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 0175

Dear Pam:

Enclosed for filing please find an original and ten copies MCI's Petition for Intervention and Comments in the above referenced action. By copy of this letter service is made on the service list.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Service List  
Susan Travis  
Bret Dublinske

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 31 2003

TC 03-181

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE )  
IMPLEMENTATION OF THE FEDERAL )  
COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING )  
OBLIGATIONS )

PETITION FOR  
INTERVENTION and  
COMMENTS

In response to the Commission's order of October 21, 2003, in this docket, MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI") hereby petitions the Commission for an Order allowing intervention as a party with an interest in this docket. MCI is a competitive local exchange carrier in Qwest's exchanges and has both an economic and a regulatory interest in the outcome of the issues presented in this proceeding.

**MCI RESPONSE TO THE COMMISSION'S OCTOBER 21, 2003 ORDER**

MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI"), make this response to the Commission's October 21, 2003. In that Order, the Commission required Qwest to file a more detailed statement in support of its petition. The Commission also noted that it would issue a more detailed procedural schedule at a later date. Notwithstanding the need for Qwest to file a more detailed statement, the Commission asked other parties to comment on four specific issues: (1) what procedure should be used to determine and define the relevant markets; (2) what procedures should be used for discovery; (3) what protective order should be used; and (4) what process should be used regarding establishment of a batch hot cut process. MCI's responses to these specific issues are included below or, where indicated, MCI's response is made by the documents in the attachments to this response.

**1. Procedure for Determining the Relevant Market**

It is MCI's assertion that the Commission will not be able to reach any final determination on the scope of the relevant market until the Commission and the parties have conducted discovery and been able to develop a more complete record for the Commission. Similarly, the parties themselves may be limited in their ability to address the scope of the market(s) without discovery. In this respect, MCI reiterates the comments on this matter made in MCI's initial filing.

## **2. Procedures for Discovery**

MCI believes the most efficient way to conduct discovery is to have the Commission issue an initial set of discovery requests to the parties. To facilitate that process, and as requested in the Commission's October 21 Order, MCI proposes the following initial discovery.

First, MCI proposes that the Commission should use the discovery developed through the NARUC TRIP process, particular those discovery requests at the following links:

[http://www.naruc.org/programs/trip/discovery\\_9month.pdf](http://www.naruc.org/programs/trip/discovery_9month.pdf)

[http://www.naruc.org/programs/trip/discovery\\_ilec\\_9month.pdf](http://www.naruc.org/programs/trip/discovery_ilec_9month.pdf)

<http://www.naruc.org/programs/trip/discoverythirdparties.pdf>

[http://www.naruc.org/programs/trip/discovery\\_clec\\_9month.pdf](http://www.naruc.org/programs/trip/discovery_clec_9month.pdf)

In addition, MCI is attaching further proposed initial discovery requests to both CLECs as **Attachment A**.

It is also MCI's position, however, that after reasonable times for objections to common discovery and reasonable time for parties to respond that the parties themselves should be permitted a period of time in which to conduct supplemental follow-up discovery before completing and filing testimony. In particular, MCI will not be able to determine the appropriate discovery requests to serve on Qwest until it makes its filing today, and MCI believes significant private party discovery on Qwest is appropriate and MCI anticipates developing additional

discovery requests for Qwest in the near future. With respect to Qwest, it may be efficient to allow some private discovery to clarify any filing they make today to take place at the same time as the Commission-sponsored discovery.

### 3. Protective Order

MCI reiterates its discussion on the need for a protective order and special treatment of highly sensitive data detailed in its initial comments. MCI provides as **Attachment B** a proposed Protective Order which has been negotiated and agreed to by Qwest, MCI and AT&T and which is being submitted in numerous states and requests that the Commission approve and issue this Order.

### 4. Batch Hot Cut Process.

MCI has been actively working with Qwest and other interested parties on negotiating an agreement to use a collaborative process to resolve the batch hot cut issue that would limit the need for each state to expend resources considering the issue separately. It is MCI's understanding that agreement has now been reached and that a joint filing addressing this agreement will be forthcoming.

WHEREFORE, MCI prays that the Commission grant it intervention into the docket, consider the comments provided herein, and issue orders commensurate with those comments.

Dated this 31st day of October, 2003.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

\_\_\_\_\_  
BRETT M. KOENECKE

Attorneys for  
503 S. Pierre Street  
PO Box 160  
Pierre, South Dakota 57501-0160  
(605) 224-8803



## CERTIFICATE OF SERVICE

Brett M. Koenecke, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 31<sup>st</sup> day of October, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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---

Brett Koenecke

# ATTACHMENT A

## INSTRUCTIONS

Please answer each question separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] being answered. Please copy each question immediately before the answer. Following each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer in testimony.

In response to [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] seeking the production of documents, please produce all responsive documents for inspection and copying unaltered and/or unredacted as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration, modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

In response to Interrogatories requesting you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be produced in response to a separate Request for Production. Such identification shall contain the number (and subpart, if applicable) of the Interrogatory requesting the identification and the page count or description of

the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any “Bates” or other sequential production numbering for the document or item. When responding to the Request for Production, please produce copies of all documents, other items, information or materials that were identified in response to a request or directive to “identify for disclosure” in MCI’s Interrogatories. For each document or other item, please identify by number (including subpart, if any) the interrogatory which caused the “identification for disclosure”.

Please produce the requested information at the most granular level you possess. If a [DATA REQUEST/REQUEST FOR INFORMATION/INTERROGATORY] seeks information at a level more granular than you possess, please do not object or decline to answer or produce on that basis, but rather state that you do not possess information at that level and produce the information requested at the most granular level that you possess. MCI is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described.

Please produce all information requested on any table by filling in the table provided in these [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES]. If additional explanation is required, please copy the question and provide your response below.

If you are unable to respond fully and completely to a document request, explain the reasons why you are unable to do so. The terms defined herein and the individual [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] should be construed broadly to the fullest extent of their meaning, in a good faith effort to comply with all applicable rules, including without limitation the Procedural Rules of the [PUC].

This request is directed to all documents and information in your possession, custody or

control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you (including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to requests for production of documents contained in these [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES], you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changes answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES], such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

MCI requests that you answer these [DATA REQUESTS/REQUESTS FOR

INFORMATION/INTERROGATORIES] under oath or stipulate in writing that your [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] responses can be treated exactly as if they were filed under oath.

If you claim a privilege, or otherwise decline to produce or provide, any document or information responsive to one or more [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES], then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), within [NUMBER] (#) days after receiving these [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES], the attorney asserting the privilege shall:

- a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege (including work product) that is being claimed; and
- b. provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
  - (i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;
  - (ii) for oral communications: (1) the name(s), address(es) and phone

number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

In the event that any requested information is considered by you to be confidential, the attorney asserting such confidential status shall inform MCI of this designation as soon as he or she becomes aware of it, but in any event, prior to the time the responses to the [DATA REQUESTS/REQUESTS FOR INFORMATION/INTERROGATORIES] are due to discuss or attempt to negotiate a compromise. However, the confidential documents should be produced pursuant to the protective order(s) and/or non-disclosure agreement(s) executed in this proceeding.

Answers to these requests for information are to be provided within [NUMBER] (#) days after receiving these requests, on [DATE]. Any request for information received by you prior to 5 p.m. [LOCAL TIME ZONE] shall be deemed received on the date of service. Service of responses, and all notifications, shall be made in person or by facsimile or email to:

Stephen P. Bowen  
Anita Taff-Rice  
BOWEN LAW GROUP, L.L.P.  
235 Montgomery Street, Suite 920  
San Francisco, California 94104  
Counsel for MCI

and to:

**[[[NAME AND ADDRESS OF MCI IN-HOUSE ATTORNEY]]]**



## DEFINITIONS

1. The term “analog” refers to electrical signals representing sound or data which are transmitted in a linear, non-digital format.
2. The terms “and” and “or” as used herein shall be construed as both conjunctive and disjunctive.
3. The term “any” shall be construed to include “all,” and “all” shall be construed to include “any.”
4. The terms “batch cut” and “batch hot cut” refer to a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier’s local circuit switch to another carrier’s local circuit switch.
5. The term “bundled service” refers to a package offering to an end user customer that includes at least two different services for a single, often discounted price, whether flat-rate or charged on a per-unit basis. An example would be the offering of local and long distance service to an end user customer for a price that is less than the standard retail charges that would be assessed for each service individually.
6. The term “business end user” refers to an end user customer entity that purchases voice or data services, typically supported on multiple loops, to support a commercial enterprise. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.
7. The acronym “CLEC” refers to competitive local exchange carriers.
8. The acronym “CLLI” refers to common language location identifier, a multi-character code generally composed of numerals and letters that provides a unique identifier for circuit switches used by ILECs and CLECs.
9. The acronym “CO” refers to central office, the single physical ILEC building that houses one or more Class 5/end office ILEC switch(es), and in which end user customers’ loops are cross connected to ILEC switching equipment or CLEC collocation arrangements.
10. The term “communication” includes, without limitation of its generality, correspondence, email, statements, agreements, contracts, reports, white papers, users guides, job aids, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, whether written or oral. The term includes, without limitation of its generality, both communications and statements which are face-to-face and those which are transmitted by documents or by media such as intercoms, telephones, television, radio, electronic mail or the Internet.
11. The terms “cost study,” “cost studies,” “cost model” and “cost analyses” means the detailed development of a rate element or of rate elements through a methodology based

upon engineering, operational, economic, accounting, or financial inputs, plus support for the sources of the inputs or support for the derivations of the inputs, that enables a person using the study, studies, model or analyses to start with the support for each input and to then trace the support to the input, and to then be able to trace the input through the methodology to the resulting cost and then to the resulting rate element.

12. The term “cross connect/jumper” refers to a copper pair that connects at the vertical and horizontal sides of the ILEC MDF.
13. The term “customer location” refers to a building or set of connected, contiguous, or adjacent buildings in a common area, used by residential, commercial, and/or governmental customers that share a primary street address or group of street addresses. It includes multi-unit residential, commercial, and/or governmental premises.
14. The term “customer premises” refers to the physical point at which the end user customer assumes responsibility for telecommunications wiring (i.e., the network interface device (“NID”) for single unit dwellings, and the individual point of demarcation at the end user customer’s unit for multi-unit buildings such as office buildings and apartment buildings).
15. The term “digital” refers to electrical or optical signals representing sound or data which are transmitted in a binary, discontinuous, non-linear format.
16. The term “DLC” refers to Digital Loop Carrier and includes UDLC, IDLC, and NGLDC.
17. The term “document,” as used herein, shall have the same meaning and scope as contained in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, all written, reported, recorded, magnetic, graphic, photographic matter, however produced or reproduced, which is now, or was at any time, in the possession, custody, or control of your company and its affiliates including, but not limited to, all reports, memoranda, notes (including reports, memoranda, notes of telephone, email or oral conversations and conferences), financial reports, data records, letters, envelopes, telegrams, messages, electronic mail (e-mail), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, accounts, pamphlets, pictures, films, maps, work papers, arithmetical computations, minutes of all communications of any type (including inter- and intra-office communications), purchase orders, invoices, statements of account, questionnaires, surveys, graphs, recordings, video or audio tapes, punch cards, magnetic tapes, discs, data cells, drums, printouts, records of any sort of meeting, invoices, diaries, and other data compilations from which information can be obtained, including drafts of the foregoing items and copies or reproductions of the foregoing upon which notations and writings have been made which do not appear on the originals.
18. The term “DS-0” refers to a loop or circuit operating at Digital Signal Level Zero, and capable of transmitting information at 64 kilobits per second.

19. The term "DS-0/voice grade" includes all loops or circuits normally used for the provision of a service to transmit human voice alone. In particular, it includes analog circuits and digital circuits capable of transmitting at levels greater than 2400 baud, up to and including 64 kilobits per second.
20. The term "DS-1" refers to Digital Signal Level 1, which has a transport speed of 1.544Mbps, and can be either unchannelized or channelized into 24 voice grade channels.
21. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-0/voice grade loop with live customers' service transferred.
22. The term "identify" or "identifying" means:
  - (a) When used in reference to natural persons: (1) full name; (2) last known address and telephone number; (3) whether the person is currently employed by, associated or affiliated with SWBT; (4) that person's current or former position; and (5) dates of employment, association or affiliation.
  - (b) When used in reference to a document: (1) its author; (2) actual or intended recipient(s); (3) date of creation; and (4) brief description of its contents.
  - (c) When used in reference to a communication: (1) whether the communication was oral or written; (2) the identity of the communicator; (3) the person receiving the communication; and (4) the location of the communicator and the person receiving the information, if the communication was oral.
23. The acronym "IDF" refers to an intermediate distribution frame, a physical frame located between an MDF and (1) an ILEC switch in a central office or wire center over which end user customer loops are transited for connection to the ILEC switch, or (2) a CLEC collocation arrangement.
24. The term "ILEC" refers to an incumbent local exchange carrier, and includes the ILEC's parent or any subsidiary or affiliate, and all current or former officers, directors, employees, agents, representatives, contractors or consultants of ILEC, as well as any persons or other entities who have acted or purported to act on its behalf.
25. The term "LATA" means "Local Access and Transport Area" as that term is defined in the *Modification of Final Judgment, United States v. Western Elec. Co.*, 552F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).
26. The term "MSA" refers to a Metropolitan Statistical Area as defined by the US Census Bureau and the Office of Management and Budget.
27. The term "qualifying service" refers to all telecommunications services, whether voice or data, and whether analog or digital, that have ever been offered or provided by an ILEC pursuant to tariff or an interconnection agreement.
28. The acronym "MDF" refers to main distribution frame, a physical frame located in a

central office or wire center that connects loops coming from an end user customer premises to (1) an ILEC switch located in the central office or wire center, and (2) facilities leading to a CLEC collocation arrangement.

29. The past tense includes the present tense and vice-versa.
30. "Relate, mention, reference, or pertain" shall be used to mean documents or communications containing, showing, relating, mentioning, referring or pertaining in any way, directly, or indirectly to, or in legal, logical or factual way connection with, a document request, and includes documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by such request.
31. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.
32. The term "residential end user" refers to an end user customer, typically an individual or family, who purchases voice or data services at his, her or their place of residence, or household. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.
33. The term "Telcordia" refers to Telcordia Technologies, Inc. and its parent(s), current and former affiliates or subsidiaries, and all current or former officers, directors, employees, agents, representatives, contractors or consultants, as well as any persons or other entities who have acted or purported to act on its behalf.
34. The term "wire center" is synonymous with the term "central office," and refers to the single physical building that houses one or more Class 5/end office ILEC switch(es) and in which end user customer's loops are cross connected to the Class 5/end office ILEC switch(es).
35. The term "you," "your," "yours," or "your company" refers to [insert company name] and its predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations.

## CLEC HOT CUT/CUSTOMER MIGRATION ISSUES

- MCIC-1** Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a Qwest 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer “churn” (*i.e.*, customer change from one carrier to another) on all of the following bases. If you provide local service via both UNE-P and UNE loops, please provide the requested information separately for each of these serving modes if available. If you provide local service via only one of these serving modes, please state which one.
- (a) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);
  - (b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and long distance voice services; bundled local exchange and DSL; and bundled local exchange, long distance, and DSL services);
  - (c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following customer ages: 1) churn within the first three months after the customer’s service is provisioned, and 2) churn within the first six months after the customer’s service is provisioned.
- MCIC-2** Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on an ILEC 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer “churn” (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCIC-3** Please provide, a) on a statewide basis, b) on a CLEC switch CLLI-code-specific basis, and c) on a Qwest 8-digit (wire center) CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of UNE loops that Qwest has migrated for you through hot cuts (*i.e.*, individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers’ service transferred) that involved manual frame (MDF and/or IDF) jumper work.
- MCIC-4** With respect to your response to MCIC-3, please specify the percentage of hot cuts that were performed within the agreed-upon time frame (*i.e.*, as of the deadline set

pursuant to an interconnection agreement or otherwise agreed to with Qwest or pursuant to other state requirements).

- MCIC-5** With respect to the hot cuts identified in response to MCIC-3, please provide a detailed description of the work efforts your personnel had to perform as part of the hot cut process, the costs you incurred (including non-recurring charges imposed by Qwest), and the maximum daily number of hot cuts that Qwest has accomplished for you per Qwest 8-digit (wire center) CLLI code since July 1, 2001.
- MCIC-6** With respect to your response to MCIC-3, please state whether the existing customer loop was used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at customer NID, etc.).
- MCIC-7** Please explain whether you currently have in place electronic systems that can accomplish, on an automated, flow-through basis (i.e., no manual intervention is required for completion of the migration), migrations between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCIC-8** With respect to your response to MCIC-7, please indicate whether your electronic systems can accomplish each migration type on each of the following bases:
- (a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support];
  - (b) automated flow-through individual loop hot cuts;
  - (c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]
  - (d) manual individual loop hot cuts.
- MCIC-9** Please provide, a) on a statewide basis, and b) on a Qwest 8-digit (wire center) CLLI-code-specific basis, the number of your UNE-P orders in Arizona that were fulfilled each month since July 1, 2001.
- MCIC-10** Please explain whether you have always been able to obtain a customer service record (“CSR”) from Qwest and/or other CLECs for the provision of 1) local exchange voice service on UNE-P; 2) local exchange voice service on UNE loop. If not, please provide a detailed explanation of the reason(s) you did not obtain the CSR.
- MCIC-11** Please explain whether you currently use an electronic automated (i.e., not requiring any manual intervention prior to completion of task) method to interface with Qwest to send or receive each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc); c) provisioning

(including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.

- MCIC-12** Please provide a detailed explanation of the electronic method (e.g. EDI, CORBA, etc.) that you currently use to send to or receive from ILECs and/or CLECs each of the following: a) pre-order inquiries; b) orders (including placing the order, firm order confirmations, jeopardy notices, etc.); c) provisioning (including the exchange of information for changes to 911, local number portability, and other databases); d) maintenance and repair; e) billing.
- MCIC-13** Please explain whether you currently have in place and use electronic automated systems to process orders placed by customers whose service will be provisioned using your own switches. If your ordering systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when processing customer orders.
- MCIC-14** Please explain whether you currently have in place and use electronic automated systems to provision service for customers using your own switches. If your provisioning systems are only partially electronic and automated, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions when provisioning customer orders.
- MCIC-15** Please explain whether you currently have in place and use electronic automated systems to maintain and repair service for customers whose service is provisioned using your own switches. If your maintenance and repair systems are only partially electronic, please identify specifically which portions are electronic and which are manual, and provide a detailed explanation of the limitations created by the manual portions for maintenance and repair of customer services.
- MCIC-16** Please explain whether you have adequate access to Qwest facilities to conduct trouble isolation and repair for customer services provisioned via your own switches using UNE loops. If your response is anything other than an unequivocal yes, please explain in detail the reason that you do not have such access.
- MCIC-17** Please explain whether you have adequate access to Qwest facilities to conduct testing for customer services provisioned via your own switches using UNE loops.
- MCIC-18** Please explain whether you currently have in place and use electronic automated systems to bill customers whose services are provisioned using your own switches. If your billing systems are only partially electronic, please identify specifically which portions are electronic, and which are manual, and provide a detailed explanation of the limitations created by the manual portions when billing customers.

**CLEC MASS MARKET UNE SWITCHING TRIGGER ISSUES**

**MCIC-19** For each switch you use to provide local exchange service to Arizona customers, please provide the following information for the switch and/or the switch location: **[NOTE: this question is not duplicative with TRIP #1 from 9-month case RFIs to ILECs and CLECs regarding switching, it asks for additional information]**

- (a) switch manufacturer, model, and date of installation;
- (b) currently loaded version of switch software;
- (c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
- (d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
- (e) current switch processor capacity in CCS;
- (f) busy hour and busy season utilized switch processor capacity in CCS;
- (g) any ILEC wire center subtending areas currently served by your switch for which you are currently considering discontinuing service for any reason within the next 12 months.

**MCIC-20** For each switch identified in your response to MCIC-19, please provide the information requested in TABLE 1: **[NOTE: this question is not duplicative of TRIP #2,3,4, from 9-month case RFIs to ILECs and CLECs regarding switching, it asks for more granular information and allows the Commission to determine the cross over point between enterprise and mass market customers]**

**TABLE 1**

<b>CLEC Switch CLI</b>	<b>Number Of Loops Per End-User Customer Premises</b>	<b>Number of Local Service End-User Customers</b>	<b>Type of End-User Customer</b>	<b>Number of Voice Only End User Customers<sup>1</sup></b>	<b>Number of DSL Only End User Customers</b>	<b>Number of Line Shared/Line Split DSL End User Customers<sup>2</sup></b>	
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100	
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	e.g. 100	
	2		Residential				
	2		Business				
	3		Residential				
	3		Business				
	... (continue pattern as above)						
	18		Residential				

<sup>1</sup> This category includes loops used for fax and/or modem-only traffic.

<sup>2</sup> This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).



	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	more than one DS-1		Business			

- MCIC-21** For each switch identified in your response to MCIC-19 other than circuit switches, please provide the following for each switch:
- (a) any differences in quality of service compared to local exchange service provided on circuit switches (e.g., reliability, throughput, ubiquity, outages, mean time to repair, availability of E911 service, lack of line-powered local telephone service);
  - (b) the date(s) on which you installed the switch and began providing local exchange service on the switch;
  - (c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;
  - (d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (e.g., specialized phone set; availability of computer, cable modem, set top box, need for customer premises battery backup for telephone service), access method (e.g., DSL, cable television, satellite service), provisioning interval;
  - (e) any Qwest central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

- MCIC-22** For each switch identified in your response to MCIC-19, please state whether you own the switch, or instead whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis (including wholesale and/or resale). If you do not own the switch,
- (a) state whether the entity owning the switch is an affiliate of yours;
  - (b) identify the entity owning the switch, and (if different) the entity with which you entered into an arrangement to obtain switching capacity;
  - (c) identify the nature of the arrangement through which you obtained switching capacity;
  - (d) provide a copy of the agreement (e.g. Interconnection Agreement, contract, lease, etc.) specifying the rates, terms and conditions through which you are currently obtaining switching capacity.

- MCIC-23** For each switch you own or control and from which you offer or provide wholesale local switching capacity (wholesale local switching capacity on a standalone basis, or combined with loops and/or transport) to carriers that are not affiliated with you, to use to serve Arizona customers, please provide the following information for the switch and/or the switch location: **[NOTE this question is not duplicative of TRIP**

**#10 from 9-month case RFIs to ILECs and CLECs regarding switching, it adds additional subparts]**

- (a) the 8-digit common language location identifier (“CLLI”) code as it appears in the Local Exchange Routing Guide (“LERG”);
- (b) V&H coordinates;
- (c) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
- (d) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
- (e) current switch processor capacity in CCS;
- (f) a copy of the methods and procedures document, or other documents or information, detailing the technical specifications for the provision of wholesale switching, including interface requirements, signaling capabilities, service quality parameters (including procedures to minimize service degradation, delay, echo return, and/or loss attenuation), and service procedures;
- (g) any Qwest central office or wire center subtending areas currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

**MCIC-24** For each switch identified in your response to MCIC-23, please provide the information requested in TABLE 2:

**TABLE 2**

<b>CLEC Switch CLLI</b>	<b>Number Of Loops Per End-User Customer Premises</b>	<b>Number of Local Service End-User Customers</b>	<b>Type of End-User Customer</b>	<b>Number of Voice Only End-User Customers<sup>3</sup></b>	<b>Number of DSL Only End-User Customers</b>	<b>Number of Line Shared/Line Split DSL End User Customers<sup>4</sup></b>	
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100	
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	e.g. 100	
	2		Residential				
	2		Business				
	3		Residential				
	3		Business				
	... (continue pattern as above)						
	18		Residential				
	18		Business				
	19-24		Residential				
	19-24		Business				
	one DS-1		Residential				

<sup>3</sup> This category includes loops used for fax and/or modem-only traffic.

<sup>4</sup> This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

	one DS-1		Business			
	more than one DS-1		Business			

**MCIC-25** For each switch identified in your response to MCIC-23, please provide the following information:

- (a) whether you are willing to expand your switch capacity to meet increased demand for wholesale switching from other CLECs;
- (b) your existing plans and/or procedures for ordering and implementing software upgrades for the switch;
- (c) terms and conditions (including forecasts) you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
- (d) rates, deposits or other financial information you require or expect to require from other CLECs in order to expand the capacity of your switch for the provision of wholesale switching;
- (e) whether you now have, or intend to implement, a process or procedure to ensure that your switch can provide the same features and functions as those available from Qwest switches.

**MCIC-26** For each collocation arrangement in each Qwest central office or wire center in Arizona, please provide the following information, reported by Qwest 8-digit (wire center) CLLI code and street address: **[NOTE, this question is not duplicative of TRIP #1 from RFIs to CLECs regarding collocation issues; it adds additional subparts]**

- (a) size of collocation arrangement;
- (b) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
- (c) amount of unused space in the collocation arrangement that could be used for placing additional equipment;
- (d) if the collocation arrangement is connected via transport to any switch used by CLEC to offer local service in Arizona, the CLLI code, city, street address, zip code, V&H coordinates, and owner of that switch;
- (e) all non-recurring and monthly recurring charges for the collocation arrangement;
- (f) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this Qwest central office or wire center;
- (g) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by Qwest).

**MCIC-27** With regard to all CLEC-to-CLEC cross connections you have purchased, please identify the following, reported by Qwest central office or wire center:

- (a) number of such cross connections that you have had provisioned;
- (b) the identity of the other CLEC with whom you provisioned the cross connect
- (c) the type of collocation arrangement of both CLECs;

- (d) the minimum, maximum and average provisioning time for CLEC-to-CLEC cross connections;
- (e) the identity of the entity or personnel who performs the cross connect (e.g., ILEC central office technician, certified CLEC technician, etc.)

**MCIC-28** For each collocation arrangement identified in your response to MCIC-26, please provide the information in TABLE 3. **[[[NOTE this question is not duplicative of TRIP #3 from 9-month case RFIs to ILECs and CLECs regarding switching, it adds additional information]]]**

**TABLE 3**

Qwest 8-Digit Wire Center CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End-User Customers <sup>5</sup>	Number of DSL Only End-User Customers	Number of Line Shared/Line Split DSL End User Customers <sup>6</sup>	
ABC	1	e.g. 1,017	Residential	e.g. 1,000	e.g. 2	e.g. 10	
	1	e.g. 540	Business	e.g. 500	e.g. 10	e.g. 10	
	2		Residential				
	2		Business				
	3		Residential				
	3		Business				
	. . . (continue pattern as above)						
	18		Residential				
	18		Business				
	19-24		Residential				
	19-24		Business				
	one DS-1		Residential				
	one DS-1		Business				
	more than one DS-1		Business				

**MCIC-29** For each of the collocation arrangements identified in your response to MCIC-26 that is connected via EELs to a switch you use to provide local service in Arizona, please provide the following information:

- (a) the CLLI code, street address, zip code, V&H coordinates, and owner of the switch to which the collocation arrangement is connected;
- (b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;

<sup>5</sup> This category includes loops used for fax and/or modem-only traffic.

<sup>6</sup> This category includes voice and DSL on the same wire pair (i.e., line sharing and line splitting).

- (c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
- (d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
- (f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
- (h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
- (i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

**MCIC-30**

Do you use EELs that comprise loops and transport without using collocation arrangements? If the answer is affirmative, please provide the following information:

- (a) the CLLI code, street address, zip code, V&H coordinates, and owner of the central office or other location where the loop and transport are connected to form an EEL;
- (b) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
- (c) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
- (d) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (e) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
- (f) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (g) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
- (h) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
- (i) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

**MCIC-31** For each collocation arrangement in a non-Qwest central office or wire center in Arizona (e.g., carrier hotels), please provide the following information: **[NOTE this question is not duplicative of TRIP #2 from 9-month case discovery to CLECs (collocation section), it adds additional subparts]**

- (a) size of collocation arrangement;

- (b) if the collocation arrangement is connected via transport to any switch you use to offer local service in Arizona, the CLLI code, street address, zip code, V&H coordinates, and owner of that switch;
- (c) all non-recurring and recurring charges for the collocation arrangement;
- (d) name(s) of other collocating carrier(s) to which this collocation arrangement is connected in this central office or wire center;
- (e) name(s) of other collocating carrier(s) that are sharing this collocation arrangement (if collocation sharing is permitted by owner)

**MCIC-32** For each Qwest central office or wire center subtending area in Arizona that you do not serve with your own switch, please provide a detailed explanation of the reason you do not serve that area (e.g., too few customers to achieve economies of scale; high churn rates that preclude recovery of non-recurring costs and charges, etc.).

**MCIC-33** Please provide a detailed explanation of each task you would have to undertake to provide local exchange service to mass market customers via UNE loops using your own switches, rather than via UNE-P, including but not limited to the following: implement new or modify business and operational plans to use UNE loops; hire and train loop provisioning technicians; hire and train switch technicians; establish collocation arrangements in Qwest central offices or wire centers; purchase and install equipment in collocation arrangement; hire and train new, or increase existing, customer service personnel; hire and train new, or increase existing, trouble maintenance personnel; add new or revise OSS for preordering, ordering, provisioning, repair and/or billing; develop capabilities for E911 service; develop capabilities for number portability. Please provide an estimate of the time and cost for each task identified.

**MCIC-34** Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of DS-0/voice grade loop facilities vs. DS-1s, or any other basis you use to distinguish these terms.

**MCIC-35** Please provide your calculation, estimate, or view of the economic crossover point , in terms of number of DS-0/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

**MCIC-36** With respect to each of the two customer categories identified in your response to MCIC-34, please provide the following information:

- (a) what switching arrangement you use to serve the customer category (e.g., self-provisioned CLEC switch, ILEC switch, purchase wholesale switching from another CLEC, purchase switching from a third party other than a CLEC);

- (b) the number of customers in each customer category, reported by Qwest central office or wire center for each month since July 1, 2001;
- (c) the percentage of your total customer base in Arizona in each of the two categories;
- (d) whether you target your business plans, sales or marketing to particular subsets of customers within each of the two customer categories.

- MCIC-37** If you do not currently offer service to residential customers in Arizona, please list and describe your reasons for not doing so.
- MCIC-38** If you do not currently offer service to business customers in Arizona below the DS-1 level (i.e., DS-0/voice grade loops), please list and describe your reasons for not doing so.
- MCIC-39** If you currently offer service to business customer in Arizona below the DS-1 level (i.e., DS-0/voice grade loops), but do not offer and/or market service to such customers unless they have or need a certain minimum number of loops to their premises, please state that minimum number, and list and describe your reasons for not offering and/or marketing service below that level.
- MCIC-40** Please provide your current average monthly revenues per line per customer in Arizona, stated separately for (1) residential customers served via UNE-P; (2) residential customers served via UNE loops; (3) business customers served via UNE-P; (4) business customers served via DS-0/voice grade UNE loops; and (5) business customers served via DS-1 UNE loops. Please provide the requested information at the most granular level available (e.g., per-ILEC-8-digit-CLLI serving area, per-CLEC-switch serving area, statewide, etc.). Please identify the source of the reported revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, long distance only, DSL only, bundles of any of the above, and/or other services or features). If you do not track revenues differentially for UNE-P vs. UNE loop configurations for residential and/or business customers, please so state, and provide combined numbers. For all revenues provided, exclude taxes, regulatory assessments and surcharges, and other payments made to governmental units. If it is not possible to exclude such payments, please so state.
- MCIC-41** If you currently offer service to residential customers, please provide your variable costs per residential customer.
- MCIC-42** Do you currently have access to external sources of capital for the purpose of expanding your operations by making new capital investments? If so, please list and describe all such sources, and state the quoted or estimated interest rate for each such source.
- MCIC-43** Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market is economically feasible without access to Qwest's switches, including but not limited

to those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.



# ATTACHMENT B



as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. In states where Commission Staff act as advocates in a trial or adversarial role, disclosure of both Confidential Information and Highly Confidential Information to staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is

registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit “A” and a copy of all such signed Exhibit “A’s” shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider’s network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their

designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “B” of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision

making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit "B". The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other

materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Small Company Exemption. Notwithstanding the restrictions in sections 1 and 3 applicable to persons who may access Confidential Information and Highly Confidential Information, a Small Company may designate any employee or in house expert to review Confidential Information and/or Highly Confidential Information if the producing party, upon request, gives prior written authorization for that person to review Confidential Information and/or Highly Confidential Information. If the producing party refuses to give such written authorization, the reviewing party may, for good cause shown, request an order from the Administrative Law Judge allowing a prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The producing party shall be given the opportunity to respond to the Small Company's request before an order is issued. "Small Company" means a party with fewer than 5000 employees, including the employees of affiliates' U.S. ILEC, CLEC, and IXC operations within a common holding company.

6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

- (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
  - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 6(b) above.
- (d) The record of said in camera hearing shall be marked “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181.” Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

7. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the providing party to



be placed in a sealed record shall be made.

- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181” and Highly Confidential Information shall be marked “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181” and shall not be examined by any person except under the conditions set forth in this Order.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit “A” or “B,” unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to

the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

8. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 6), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

9. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

10. The provisions of this Order are specifically intended to apply to all data,

documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. TC03-181. The provisions are also intended to apply to to all data, documents, studies, and other material designated as confidential or highly confidential by any non-party that provides such material in response to data requests in this docket, whether it is provided voluntarily or pursuant to subpoena.

11. This Protective Order shall continue in force and effect after this Docket is closed.

DATED at Pierre, South Dakota, this      day of      , 2003.

/s/ Robert K. Sahr, Chairman

/s/ Gary Hanson, Commissioner

/s/ James A. Burg, Commissioner

EXHIBIT "A"  
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in Docket No. No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT "B"  
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in Docket No. No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



South Dakota Telecommunications Association  
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501  
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

*Rural roots, global connections*

RECEIVED

OCT 31 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

October 31, 2003

Pamela Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: SD-PUC Docket TC03-181

Dear Ms. Bonrud:

Enclosed for filing in the above referenced matter are the original and ten (10) copies of the South Dakota Telecommunication Association's Petition to Intervene in the above referenced docket. Please distribute these as needed to Commissioners and Staff.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a circular scribble.

Richard D. Coit,  
320 E. Capitol Avenue  
P.O. Box 57  
Pierre, SD 57501

Encls.

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

**IN THE MATTER OF THE )  
IMPLEMENTATION OF THE FEDERAL )  
COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER REGARDING )  
UNBUNDLING OBLIGATIONS )**

**DOCKET TC03-181  
RECEIVED  
OCT 31 2003**

**SDTA Petition to Intervene**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

The South Dakota Telecommunications Association (“SDTA”), on behalf of its member companies, hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. Within the Bylaws of SDTA, duly adopted by the Association, the member companies of SDTA have delegated to the SDTA Board of Directors and its President the authority to intervene on their behalf in PUC proceedings that will or might potentially impact their common interests.

3. By this Commission’s Order of October 21st issued in the above captioned proceeding, interested parties have been directed to file petitions to intervene on or before October 31, 2003. As referenced in that same Order, the Qwest Corporation (“Qwest”) has indicated that it intends to challenge the FCC’s finding of impairment in regards to the provisioning of local circuit switching utilized to serve mass market customers.

4. As indicated by SDTA’s comments dated October 10, 2003, filed in this proceeding, although at this time it is unnecessary to undertake any review of the FCC’s findings of impairment as they relate to the provisioning of unbundled network elements in rural service areas, SDTA is interested in this process which will require that the Commission conduct a “granular review” relative to Qwest’s provisioning of certain unbundled network elements. Most importantly, SDTA believes that decisions made by the Commission in this matter relating to the procedures that are followed in conducting the granular review” and also standards that may be applied in addressing substantive issues are likely to be precedent setting. The FCC has very

clearly noted in its Triennial Review Order that state commissions have continuing authority to conduct subsequent impairment related reviews – state commissions are specifically directed to establish procedures that will allow for “further granular reviews.” The current docket is the first instance where this Commission is required to conduct a market specific review of the FCC’s impairment findings. The issues presented are issues of first impression and Commission decisions on such issues are likely to affect any process utilized by the Commission down the road in subsequent reviews. This being the case, SDTA and its member companies have an interest in this proceeding and stand to be impacted by the same.

5. Based on the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this 31st day of October, 2003.

Respectfully submitted:

THE SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION

By: 

Richard D. Coit  
Executive Director and General Counsel



*Elec. Rec'd*  
*10/31/03*

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October 31, 2003

**VIA EMAIL and UPS OVERNIGHT MAIL**

Pam Bonrud, Executive Director  
Public Utilities Commission of the State of SD  
500 East Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of the Implementation of the Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations (TC03-181)  
Our File No. 2104.128

Dear Ms. Bonrud:

Please find attached Qwest's Petition to Intervene and Supplemental Comments, Joint Motion for Adoption of Batch Hot Cut Forum and Certificate of Service. The original and ten (10) copies are being sent today.

By copy of this letter I am serving the same on all counsel.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

*Tom Welk*

Thomas J. Welk

TJW/vjj  
Enclosure

cc: Tim Goodwin  
Tina Colvin  
Larry Toll  
Service List

*Elec. Rec'd*  
*10/31/03*

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NOV 03 2003

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER REGARDING  
UNBUNDLING OBLIGATIONS**

**TC 03-181**

**Qwest's Petition to Intervene and  
Supplemental Comments**

Qwest Corporation ("Qwest") files its petition to intervene, together with supplemental comments as ordered by the Commission in this matter on October 21, 2003, as follows:

**Petition to Intervene**

Qwest is hereby requesting unbundling relief for mass market switching. Qwest is properly interested in these proceedings pursuant to ARSD 20:10:01:15.02 and 20:10:01:15.03 and SDCL 1-26-17.1, has filed comments on or about September 29, 2003 as requested by the Commission, and files additional comments below as requested by the Commission. Service on all known parties to TC03-181 is proven in the attached certificate of service. Accordingly, Qwest is a proper intervening party in these proceedings and requests that the Commission grant this petition.

**Supplemental Comments**

The Commission's October 21, 2003 Order requested that "Qwest provide a more detailed statement of how it intends to challenge the impairment finding regarding mass-market switching," identified a number of subjects on which Qwest was to respond, and identified additional areas of comment requested from any intervenor. Qwest commented on some of these

issues in its September 29, 2003 comments, which are fully incorporated herein by reference.

Qwest's responses to the issues raised in the October 21 Order follow:

**1. The Geographical Areas In South Dakota Where Qwest Intends To Challenge The National Findings Of Impairment.**

*a. Impracticalities and Difficulties of Defining the Market at the Outset.*

Qwest intends to challenge the FCC's findings of impairment in every South Dakota wire center where meaningful competition at the mass market level exists, or could reasonably exist, without competitive local exchange carriers ("CLEC" access to Qwest's switching on an unbundled, TELRIC basis. It is a practical impossibility for Qwest – at this time – to more concretely define the “markets” or geographical areas at the level of specificity contemplated in the October 21 Order. Qwest has commenced, but has not completed, its analysis of the data available to it. More importantly, however, Qwest has not yet had an opportunity to review CLEC responses to Commission discovery or engage in its own discovery. Qwest believes this discovery will disclose the granular facts that will allow Qwest to complete its analysis of the data and thereby allow it to specifically define the relevant geographical markets in this case, as well as the breakpoint between mass-market and enterprise level switching.<sup>1</sup> Much of the information necessary to inform the Commission's findings regarding mass market switching is in the exclusive control of other providers (including CLECs, CAPs, IXC's, cable providers, wholesale providers, wireless providers, and VoIP providers) and is not available to Qwest. Until Qwest can gain access to that information, Qwest must rely on a subset of (1) data that is in its possession and (2) data that is publicly available. Qwest can make certain inferences from this data, but needs access to data held by other providers in order to fully assess the “markets” for which impairment does not exist according to FCC standards. Full and complete discovery

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<sup>1</sup> In its September 29, 2003 Comments, Qwest outlined the critical importance of discovery in this case.

responses from other providers are critical to the Commission's duty to determine whether impairment exists or not. This information is equally critical to Qwest's – and the Commission's – ability to precisely define the markets and routes where a finding of non-impairment is appropriate.

The definition of appropriate markets lies near the end, not the beginning, of this analysis. The definition of appropriate markets lies near the end, not the beginning, of this analysis. MCI appears to agree, stating that “the state commission must receive and review all of the wire center (and sub-wire center) level evidence which is a part of the economic impairment case before determining the geographic markets in the state.” MCI 10/10 Comments, at 16. Similarly, AT&T recognized the difficulties of defining relevant markets up front in its October 10 comments, observing that “it may well be advisable for the Commission to address geographic market issues as part of its determination on the merits, and the parties would make their presentations on geographic market as part of their cases in chief.” AT&T 10/10 Comments, at 6.<sup>2</sup>

At the same time, Qwest is mindful of the desire of the Commission and other parties to learn the precise scope of the nine-month case. Qwest has every intention of moving forward vigorously with the analysis of its own information and to obtain, through appropriate discovery, the information necessary to allow it more discretely identify the specific markets in which unbundling relief is appropriate.

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<sup>2</sup> Curiously, before making the quoted statements, AT&T argued that Qwest should define the markets now, based on the information AT&T admits is insufficient to allow the Commission to make such a determination. This approach is not only illogical, it is unfair and conflicts with the guidance from the FCC TRO.

This approach is preferable and more efficient. By waiting until discovery responses are provided, Qwest, the Intervenors, and the Commission avoid the confusion and inefficiencies that would will inevitably result as discovery responses indicate that some identified markets should be defined differently, some markets should be deleted from consideration, or some markets should be added to Qwest's challenge.

*b. Defining a geographic market under the FCC TRO*

The FCC-prescribed approach for switching is premised on the state commission's definition of a geographic market. Market definition is critical for both analytical paths defined by the FCC TRO to analyze switching impairment. The first path ("Track 1") focuses on whether either of two triggers (Self-Provisioning and Competitive Wholesale Facilities Deployment) has been met. The second path ("Track 2") comes into play if neither trigger has been met—it focuses on whether, even if the triggers are not met, a particular market is "suitable for 'multiple, competitive supply.'"<sup>3</sup>

The FCC explained the analytical process the Commission should follow in defining a market. The state commission must use the same market definition for both tracks.<sup>4</sup> While the Commission has discretion to "determine the contours of each market," the FCC discouraged state commissions from defining a market "as encompassing the entire state."<sup>5</sup> Likewise, the FCC cautioned that state commissions should not "define the market so narrowly that a competitor serving the market alone would not be able to take advantage of the scale and scope

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<sup>3</sup> *Id.* ¶ 506. Under Track 2, the state commission is required to analyze evidence relating to actual competitive deployment, operational barriers, and economic issues (including a business case analysis of an efficient entrant). *Id.* ¶¶ 506-20.

<sup>4</sup> *Id.* ¶ 495.

<sup>5</sup> *Id.*

economies from serving a wider market.”<sup>6</sup> Instead, the state commissions should define markets on a granular level, taking into account several discrete factors:

1. The locations of customers actually being served by competitors.
2. The variation in factors that affect the ability of competitors to serve each group of customers.
3. The ability of competitors to target and serve specific markets economically and efficiently with currently available technologies.<sup>7</sup>

Each factor focuses on what competitors are actually doing or what they have the ability to do within certain geographic areas. Many of these facts must be ascertained by discovering facts from other providers.

As the Commission’s request for comments recognizes, it is critical to know where competitors have switches, whether they are serving mass market customers with them (and where the customers are located), whether the switches can be used to serve mass market customers if they are not currently serving them, the geographical scope of each switch, and a host of other issues related to evidence of actual deployment.<sup>8</sup> Even if the level of actual deployment is insufficient to meet the Track 1 switching triggers, actual deployment remains a relevant factor in a Track 2 analysis, where the state commissions must weigh evidence of actual

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* See also ¶ 496 (state commission may consider “how UNE loop rates vary across the state, how retail rates vary geographically, how the number of high-revenue customers varies geographically, and how the cost [and] how the cost of serving customers varies according to the size of the wire center and the location of the wire center.”)

<sup>8</sup> *Id.* ¶¶ 495, 498-501, 504-05, 508-10.

deployment, operational factors, and a business case modeling process to determine if an efficient CLEC could economically serve mass-market customers.<sup>9</sup>

While the Order states that the state commission must first define the relevant market,<sup>10</sup> nothing in the Order suggests that the FCC meant that the market must be defined before discovery proceeds. In so stating, the FCC was describing the analytical process a state commission should follow at the end of the case in considering the evidence placed before it by the parties. Thus, at the end of the case, the Commission must first define the market based on the evidence before it before determining whether impairment exists within that market. When considered in context, it is clear the FCC had no intention of mandating that a party or the Commission define the market at the beginning of the case.

Moreover, as noted above, even AT&T and MCI – parties that will adamantly oppose Qwest’s efforts to obtain unbundling relief for mass-market switching – recognize that it is almost impossible to define a market at this point in the case.<sup>11</sup> For the same reason the Commission cannot make the market definition decision now (*i.e.*, it lacks sufficient evidence), Qwest should not be required to state its proposed market definitions with any degree of granularity.

Further, Qwest’s position is consistent with traditional pleading principles. First, a party generally has no obligation to plead facts with specificity where the facts are within the

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<sup>9</sup> Qwest is developing a business case model to be used in this case. However, before all inputs to the model can be finalized, it is important that Qwest have an opportunity to review CLEC responses to Commission and Qwest discovery regarding actual practices of CLECs.

<sup>10</sup> Order ¶ 495.

<sup>11</sup> AT&T and MCI have filed nearly identical comments in Utah and other Qwest states.

knowledge and control of other parties.<sup>12</sup> Second, Qwest's position is consistent with notice pleading principles, which contemplate that discovery will provide parties with the opportunity to learn more detailed information about the nature of a complaint.

## **2. The Bases for Qwest's Challenge to the FCC's Finding of Impairment.**

At this time, Qwest bases its challenge to the FCC's finding of impairment on the deployment of switches and other facilities by ILECs, combined with the economics of serving mass market customers. Because it is necessary for Qwest to obtain access to a variety of factual information that is not in its possession at this time, Qwest cannot be more specific as to the precise bases for its challenge to the FCC's findings. Qwest cannot, for example, state at this time whether triggers are met in certain markets, because the information currently available is insufficient to define the markets. Nevertheless, Qwest requests that the Commission determine, based on the granular analysis required by the FCC TRO and on the basis of the facts that will be presented by Qwest following an opportunity to review carriers' responses to Commission and Qwest discovery, that CLECs are not impaired in the absence of unbundled switching for mass-market customers anywhere in Qwest's service territory within the State of South Dakota.

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<sup>12</sup> *Boeseke v. Boeseke*, 255 Cal.App. 2d 848, 852 n. 2, 63 Cal.Rptr. 651, 655 n. 2 (Cal. App. 1968) ("facts peculiarly within the knowledge of an adversary may be pleaded on information or belief or omitted on the strength of such an allegation"); *Credit Managers Ass'n v. Superior Court*, 51 Cal. App.3d 352, 361, 124 Cal.Rptr. 242, 248 (Cal. App. 1975) ("plaintiff need not plead facts with specificity where the facts are within the knowledge and control of the defendant and are unknown to plaintiff."); *Lozman v. Putnam*, 328 Ill.App.3d 761, 769-70, 767 N.E.2d 805, 812-13 (Ill. App. 2002). Even Federal Rule 9(b) (whose counterpart is SDCL 15-6-9)—the rule that requires fraud claims be pleaded with particularity—is relaxed "as to matters peculiarly within the opposing party's knowledge." *Wool v. Tandem Computers*, 818 F.3d 1433, 1439 (9<sup>th</sup> Cir. 1987) quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure*, § 1298, at 416 & n. 95 (1969). Thus, even the demanding rule 9(b) pleading requirements that apply to insider-trading cases are not so stringent that they preclude a party the opportunity for discovery. *Neubronner v. Milken*, 6 F.3d 666, 671 (9<sup>th</sup> Cir. 1993) ("But surely we can not expect a private plaintiff . . . to plead the specificity Rule 9(b) requires without allowing some limited opportunity for discovery"). In this case, there is no similar stringent pleading requirement. Indeed, the FCC has specifically declined to impose a burden of proof on any particular party. Order ¶ 92.



Qwest has formed its preliminary conclusion based on data it possesses regarding the location of CLEC switches, the use of DS0 level loops serving CLEC customers, the existence of collocations, and the existence of customers currently being served via UNE-P. The information currently in Qwest's possession creates inferences as to actual and potential competition that can only be validated by information in the possession of other providers. Qwest recognizes that a more discrete analysis of the facts will allow it to define the market or markets for mass-market switching in the State of South Dakota with greater particularity.

**3. To the Extent Known, the Competitive Local Exchange Carrier Switches That Form the Bases for Qwest's Contention of No Impairment.**

As indicated throughout these comments, Qwest and the Commission cannot conclusively identify the switches or other facilities that will ultimately form the bases of Qwest's challenges absent appropriate discovery. At this point, however, Qwest's research of publicly available information and its own information has revealed some information about switching, which is summarized in **Attachment A**. The table provides information identifying wire centers where CLECs represent in the LERG they are serving customers with their own switches, and further stratifying that information with information showing where CLECs are purchasing unbundled loops (i.e., UNE-L), where CLECs are purchasing UNE-P, and where CLECs are collocated. CLECs own and operate switches in South Dakota and are purchasing DS-0 level unbundled loops (i.e., UNE-L) in numerous wire centers. Although the ordering of DS0 loops from Qwest is a strong indication that they are serving the mass-market, competitors are not required to inform Qwest if they are using these switches to serve mass-market customers. Also, the CLECs have not informed Qwest of the geographical scope or reach of the switches they have thus far deployed. The information in Attachment A is not a substitute for

information from CLECs related to actual switch deployment. Nothing on Attachment A provides information, for example, related to switches deployed by providers utilizing cable technology to serve mass market customers.

Qwest has proposed discovery questions for the Commission to propound that, if answered fully and completely, will provide the information necessary to allow Qwest to fully respond to questions propounded by the Commission. Until those questions are answered, Qwest cannot make more definitive responses.

**4. The Procedures the Commission Should Use to Determine the Relevant Geographical Area to Include In Each Market.**

As noted above, the FCC has delegated considerable authority to the Commission to define markets for purposes of a mass-market switching impairment case. Within those parameters, state commissions must consider the factors set forth in paragraph 495 of the FCC TRO, as well as a variety of other factors that the FCC concluded were relevant to a switching impairment analysis.

In the end, the market definition decision is driven by the specific activity of competitors, including, in a Track 2 case, the ability of potential competitors to economically operate in the market. Thus, in the absence of specific facts and discovery from competitors about their service territory and business plans, it is difficult to recommend an appropriate definition of the market. Depending on those facts (e.g., location of CLEC switches, the capability of those switches, whether there are specific operational or economic barriers in the area, and so on), the macro view of the market could be as large as Qwest's service territory in the State of South Dakota.

Although the Commission does not yet have all the facts necessary to make a determination of the appropriate markets in South Dakota, Qwest will outline some general observations on the process it will follow in determining the geographical markets in which it will seek unbundling relief. Qwest suggests the Commission follow the same process in making the ultimate market definition decisions.

*a. The Three-Step Process*

In the FCC TRO, the FCC made a national finding that the development of competition among firms providing switched local services to residential and small business customers (the mass market) is impaired without access to unbundled switching. This is a rebuttable finding. The FCC recognized “that a more geographically specific record may identify particular markets where there is no impairment.”<sup>13</sup> Because switching impairment is a market-specific concept, it is necessary to identify geographic markets—geographic areas within which firms do or can offer services in competition with ILEC services to residential and small business customers over non-ILEC switches—where there is sufficient evidence to rebut the national finding.

Qwest intends to follow a three-step process for identifying the geographic markets in which it will claim there is no impairment. These steps include: (1) assembling the facts, (2) performing a fact-based analysis of actual and/or potential competition, and (3) making a decision based upon the fact-based analysis.

*(1) Assembling the facts*

Assembling the facts is an absolute prerequisite for Qwest’s ability to precisely identify geographic markets where it believes there is no impairment. As explained above, discovery of

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<sup>13</sup> *Id.* ¶ 7 (Executive Summary at 12).

information available only to other carriers is an essential element of assembling all the necessary facts. For example, the FCC TRO states that commissions “must take into consideration the locations of customers actually being served (if any) by competitors.”<sup>14</sup> This is information that is primarily in the possession of CLECs and other providers. Geographic areas for collecting data can be subsets of the areas comprised by geographic markets. For example, the basic geographic unit for collecting data will likely be at the wire center level, but a geographic market would, at the very least, comprise several wire centers in an MSA, or could be the entire service territory of Qwest in South Dakota.

(2) *Performing a fact-based analysis*

The next step in the process is the performance of a fact-based analysis of actual and potential CLEC local service competition over non-ILEC switches. It must begin with an accurate assessment of the locations of all non-ILEC switches used by CLECs to provide local services. This should include local switches that are currently providing services to any customers, including switches currently used to provide services only to enterprise customers.<sup>15</sup>

To determine actual competition from non-ILEC owned switches, it is necessary to know the types and locations of switches that currently provide services to residential and small business customers, and the locations of the “mass market” customers served by those switches. It is likewise critical to develop a clear understanding of the nature and impact of intermodal competition in the area being analyzed—thus, data from intermodal competitors is a critical part of the discovery process.<sup>16</sup>

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<sup>14</sup> *Id.* ¶ 495.

<sup>15</sup> *Id.* ¶ 508.

<sup>16</sup> *See, e.g.*, 47 C.F.R. 51.319(d)(iii)(A)(1).

To determine potential competition, it is necessary to know the locations and capabilities of all switches, collocation arrangements, DLCs, OSS, and transport used to provide local services, because “the evidence on the record shows that the cost of providing mass market service is significantly reduced if the necessary facilities are already in place and used to provide other higher revenue services.”<sup>17</sup> The extent that CLECs have already made sunk investments and established operations related to a geographic market to serve enterprise customers can have a significant bearing on the analysis of impairment related to residential and small business customers.

The business case modeling process performed in a Track 2 analysis likewise relies on a realistic assessment of the granular facts (e.g., density, location, and proximity of wire centers, as well as a host of other factors).

(3) *Decision*

On the basis of the totality of these facts and after applying rational economic factors, the Commission will be in a position to determine the geographic markets within which it will apply the various factors required by the FCC. It is critical to keep in mind that it is not possible to get to the final step if the relevant facts are not developed and made available for the parties to analyze.

**5. Proposed Discovery Questions, Along With A Proposal On How Discovery Should Be Conducted And Who Discovery Should Be Served On.**

Qwest recommends that the Commission issue standardized data requests to all providers of telecommunications services in South Dakota. **Attachment B** to these comments is a refined set of standardized data requests Qwest proposes the Commission use for this purpose. Qwest

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<sup>17</sup> *Id.*

stands ready to provide its data in response to these questions. It is essential that all telecommunications providers (CLECs, ILECs, IXCs, cable providers, wholesale providers, VoIP providers and wireless providers included) in South Dakota provide this information because they are in possession of much of the factual information identified by the FCC as relevant for Commission consideration in determining if CLECs are impaired without access to specific UNEs. Pursuant to the Commission's investigatory powers, responses to these data requests should be mandatory and should require CLECs, cable providers and wireless providers to provide the factual information necessary to address the impairment issue, the alternatives to unbundled ILEC facilities, and other relevant factors to be considered by the Commission when making its decisions. To ensure that it promptly receives the information it needs, the Commission should explicitly state in any order or orders issued that the responses to the questions are due within 10 business days and that the responses must be full and complete.

**6. Proposed Protective Order**

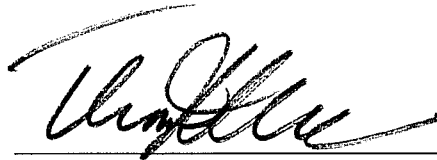
Qwest provided a proposed protective order as Attachment B to its September 29 comments. **Attachment C** to these comments is the protective order Qwest, MCI and AT&T agreed upon in Minnesota, adapted to reflect South Dakota procedure and the rules of this Commission.

**7. Updated Comments on Whether the Commission Should Proceed With the Batch Hot Cut Issues Using A Multi-State Process.**

Qwest provided extensive comments on this issue in its September 29 comments, and incorporates those by reference. Qwest is hesitant to utilize multi-state proceedings in this matter because very few of the facts relevant to the primary issues are consistent or similar across the Qwest region. The required granular level of analysis, both as to market definition

and the adequacy of batch hot cut processes, often varies from wire center to wire center, and certainly from state to state. Even so, Qwest is willing, under the conditions set forth in its September 29 comments, to utilize the Change Management Process to approve and implement any required changes.

Dated: October 31, 2003.



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**ATTORNEYS FOR QWEST CORPORATION**

SOUTH DAKOTA  
 MASS MARKET SWITCHING: COMPETITIVE SCAN  
 (Data Vintage: July 2003)

LATA Name	QWEST WIRE CENTER	QWEST Switch CLLI	Wire Center Served by CLEC Switching Per LERG	Local Interconnecti on Trunks purchased by CLEC	DS0 UNE Loops purchased by CLEC	Collocation purchased by CLEC	DS0 UNE-P Loops purchased by CLEC	DS0 Loops Self-Provisioned by CLEC
SOUTH DAKOTA	ABERDEEN	ABRSDCODS0	Y	Y			Y	Unknown
SOUTH DAKOTA	ARLINGTON	ARTNSDCORS1					Y	Unknown
SOUTH DAKOTA	BELLE FOURCHE	BLFRSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	BLACKHAWK	BLHKSDCERS1	Y		Y		Y	Unknown
SOUTH DAKOTA	CAVOUR	CAVRSDCORS1					Y	Unknown
SOUTH DAKOTA	CHAMBERLAIN	CHBLSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	COLMAN	CLMNSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	CANTON	CNTNSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	DEADWOOD	DDWSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	DESMET	DEMSDCORS1					Y	Unknown
SOUTH DAKOTA	ELK POINT	ELPNSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	FLANDREAU	FLNDSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	FORT PIERRE	FTPRSDCERS1	Y				Y	Unknown
SOUTH DAKOTA	HILL CITY	HLCYSDCORS1					Y	Unknown
SOUTH DAKOTA	HARRISBURG	HRBGSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	HURON	HURNSDCODS1					Y	Unknown
SOUTH DAKOTA	IROQUOIS	IRQSSDCORS1					Y	Unknown
SOUTH DAKOTA	LEAD	LEADSDCORS1					Y	Unknown
SOUTH DAKOTA	LAKE PRESTON	LKPRSDCORS1					Y	Unknown
SOUTH DAKOTA	MC INTOSH	MCINSDCODS0						Unknown
SOUTH DAKOTA	MADISON	MDSNSDCERS1	Y				Y	Unknown
SOUTH DAKOTA	MILBANK	MLBNSDCORS1					Y	Unknown
SOUTH DAKOTA	MILLER	MLLRSDCORS1					Y	Unknown
SOUTH DAKOTA	MORRISTOWN	MRTWSDCORS2						Unknown
SOUTH DAKOTA	MITCHELL	MTCHSDCODS1					Y	Unknown
SOUTH DAKOTA	PIERRE	PIRRSDCODS6	Y	Y			Y	Unknown
SOUTH DAKOTA	REDFIELD	RDFDSDCORS1					Y	Unknown
SOUTH DAKOTA	RAPID CITY	RPCYSDCODS1	Y	Y	Y	Y	Y	Unknown
SOUTH DAKOTA	RAPID VALLEY	RPVYSDCORS1	Y		Y		Y	Unknown
SOUTH DAKOTA	SPEARFISH	SPRFSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	STURGIS	STRGSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	SIOUX FALLS	SXFLSDCODS2	Y	Y	Y	Y	Y	Unknown
SOUTH DAKOTA	SIOUX FALLS-SE	SXFLSDSERS1	Y				Y	Unknown
SOUTH DAKOTA	SIOUX FALLS-SW	SXFLSDSWDS0	Y	Y	Y		Y	Unknown
SOUTH DAKOTA	TEA	TEA SDCORS1	Y				Y	Unknown
SOUTH DAKOTA	TIMBER LAKE	TMLKSDCORS2						Unknown
SOUTH DAKOTA	VOLGA	VOLGSDCORS1					Y	Unknown
SOUTH DAKOTA	VERMILLION	VRMLSDCODS0	Y	Y	Y		Y	Unknown
SOUTH DAKOTA	WHITEWOOD	WHWSDCORS1						Unknown
SOUTH DAKOTA	WARWICK	WRWKSDCORS1	Y				Y	Unknown
SOUTH DAKOTA	WATERTOWN	WTTWSDCODS0	Y	Y			Y	Unknown
SOUTH DAKOTA	YANKTON	YNTNSDCORS1	Y	Y			Y	Unknown



## **Discovery Requests for Triennial Review Proceedings**

1. Please identify all switches owned or controlled by [company] that are being used in [state] to provide service to customers served by facilities at or above the DS-1 level. For each switch that you identify, please identify the type (e.g., 5ESS and 4ESS) and describe the "footprint" of the switch, meaning the geographic area that the switch is capable of reaching. Separately, please provide the same information for customers served by DS-0 loop facilities.
  
2. For each switch that you identify in response to Request No. 1, please provide the capacity of the switch, with "capacity" defined as: (1) the number of lines installed; (2) the number of lines currently in use; (3) the number of trunks installed; and (4) the number of trunks currently in use. In addition, for each switch that you identify, please provide the generic (feature package) loaded in the switch.
  
3. Please state whether the information in the LERG is current and accurate for the switches that [company] owns, operates, controls, maintains in [state], or from which you lease dial tone or trunking functionality/capacity. If any of the information is not accurate, please identify the inaccurate information and provide corrected information, including any additions, deletions or changes. As part of your review of the information in the LERG, please state whether the CLLI code is accurate for each switch that [company] owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity. In addition, please state whether the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.

4. For each switch that [company] operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please report (in Excel spreadsheet format) whether the switch is currently providing switching for local voice grade services, tandem switching<sup>1</sup> for voice calls, or both.

5. For each switch that [company] owns or controls within [state] that [company] is using to provide services to end-user customers served with DS-1 facilities and above, please provide the following in Excel spreadsheet format:

- a. state the manner in which the traffic carried over the DS-1 facilities is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs, or transport via facilities owned by your entity); and
- b. if [company] is serving these end-user customers using DS-1 and above facilities in one LATA in [state] using a switch located in a different LATA (including a LATA in another state), please identify the state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.

6. Please report (in Excel spreadsheet format) the number of DS0 level business lines in [state] served by unbundled loops for which [company] provides switching dial tone functionality. In responding to this request, please separate loop facilities by the categories set forth in the following table:

Sample Response Form							
State	Wire Center	Residential			Business		
		# DS0-1 lines served via your facilities	# DS0 lines served via Qwest leased	# DS0 lines served via leased from third	# DS0 lines served via your facilities	# DS0 lines served via Qwest leased	# DS0 lines served via leased from third

<sup>1</sup> Tandem switching is defined as switching of telephone traffic between two subtending end offices.

			<u>facilities</u>	<u>party</u>		<u>facilities</u>	<u>party</u>

**9 MONTH TRANSPORT**

7. Please report (in Excel spreadsheet format) the speed and number of transport facilities (i.e., trunks) in [state] running between two Qwest central offices or between a Qwest central office and a CLEC central office served via network facilities owned or controlled by [company], or leased from an entity other than Qwest. For each such facility, please identify the A location, the Z location and any other premises through which the facility is routed. In addition, please break down this total number of facilities by wire center in which those trunks or EELs are located (NOTE: if data unavailable by wire center, please report the data by city).

8. Please describe whether [company] has dark fiber transport facilities available to it. For each such dark fiber facility, provide the following information: (a) the number of strands of fiber existing in that route, (b) the A location of the fiber, the Z location of the fiber and an identification of all intermediate premises through which the fiber is routed; (c) whether that fiber is self-provisioned, obtained from Qwest, or obtained from a third party (and, if so, whom), (d) whether that fiber is owned outright, held as an indefeasible right of use (“IRU”), or has been obtained on some other basis (and, if so, what basis), (e) what electronics are actually connected or available to be connected at the originating and terminating locations of the facility and (f) whether [company] has self-provisioned these electronics.

9. Please report (in Excel spreadsheet format) the number of transport trunks between any Qwest switch and a CLEC switch in [state] served via network facilities owned or controlled by

[company], or leased from an entity other than Qwest. Please break down this total by wire center in which those terminations are located (NOTE: if data unavailable by wire center, please report the data by city).

Sample Response Form			
State	Wire Center	# of trunks owned by your entity	# of trunks obtained from a non-Qwest entity

10. If you currently purchase or lease interoffice transport within [state] from a company other than Qwest, please report which entity you currently obtain this service from, and also report the routes involved as well as number/type of transport facilities (e.g., copper, fiber, or radio) being purchased. Please report separately the quantity of DS0, DS1, DS3 optical carrier level (OC) and dark fiber connections you currently are purchasing, leasing or otherwise are being provided from non-Qwest entities.

Sample Response Form				
State	Entity from which transport is obtained	Originating and terminating points of each transport facility leased	Type of transport leased (DS0,DS1,DS3, OC,dark fiber))	Quantity of transport connections leased, by type (as of 3/03)

11. Does [company] provide transport facilities on a wholesale basis to other carriers in [state]? If so, please list identify all such facilities that [company] has provided, including (1) the

entity that obtained the transport, (2) the originating and terminating point of each facility, and (3) the type of facility (DS0, DS1, DS3, OC, dark fiber).

### 9 MONTH SWITCHING

12. Please list each [state] LATA and each wire center within each LATA in which [company] provides local telecommunications services. In addition, please identify each LATA and wire center in [state] where [company] does not currently provide local telecommunications services but intends or plans to do so within the next 12 months.

13. For each LATA and wire center identified in response to request 12, please identify the number of in-service lines that are:

- i. UNE-P Business;
- ii. UNE-P Residence;
- iii. UNE-L Business;
- iv. UNE-L Residence;
- v. Business lines provided using the [company]'s own loop facilities and another party's dial tone (switching);
- vi. Business lines provided using [company]'s own loop facilities and own dial tone;
- vii. Business lines using a third party's loop facilities and [company]'s own dial tone;
- viii. Residential lines provided using the company's own loop facilities and another party's dial tone;
- ix. Residential lines provided using the [company]'s own loop facilities and own dial tone;
- x. Residential lines using a third party's loop facilities and the [company]'s own dial tone;

xi. For any residential and business lines served in any manner not listed above, in what manner are those lines served?

14. Please list all areas in [state] in which [company] is certified to provide local exchange service.

15. Please state whether [company] has purchased switching (wholesale or retail) in [state] from any entity other than Qwest. If [company] has purchased switching from any entity other than Qwest, please identify all such entities and identify the locations of their switches that are providing the switching and the locations of the customers served by [company] via those switches.

16. Please state whether [company] is using any partitioned switches in [state] that it owns, leases, or otherwise controls jointly with another carrier(s) and whether you share a CLLI with another carrier for the switch. Please identify the locations of any such switches and the identities of the other carriers and describe the capacity and capability of the partition that [company] owns, leases, or otherwise controls. As used in this request, "partitioned" means switches shared by different entities.

17. Of the lines that [company] serves in [state] using UNE-Ls, please state the percentage of these lines that are connected to DLCs in collocation space.

18. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state (in Excel spreadsheet format) if the switch is providing originating voice grade services for residential end-user

customers and/or small business customers (defined for this question as businesses with four DS-0 lines or fewer). If so, please:

- a. Identify the switch (by CLLI) and the LATA(s) served by each switch (the LATA in which the switch providing the originating dial tone is physically located);
- b. Identify the geographic area over which [company] serves residential end-user customers and/or small business customers with the switch;
- c. State the number of business and residential retail customers served by the switch;
- d. Provide the volume of such traffic (expressed in minutes of use) by switch for the most recent 12-month period;
- e. Identify the rate centers you are serving for originating traffic;
- f. State the manner by which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs or transport via facilities owned by your entity); and
- g. If [company] is serving customers (as defined above) in one LATA in [state] using a switch located in another LATA (including a LATA in another state), please identify the LATA and state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.

19. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

20. Please state whether [company] owns or otherwise controls any 4ESS switches in [state] that are being used to provide local exchange service to residential or business customers. If [company] is using any 4ESS switches to provide local exchange service in [state], please

provide the number of residential and business local exchange switched lines served by each switch of this type by wire center.

21. For each Qwest wire center in [state] in which [company] provides retail switched local exchange service, please report the number of switched DS-0 level lines in service per customer location that [company] serves. Please provide this information in the following format:

WIRE CENTER

<u>Quantity of DSO Lines</u>	<u>Customer Location</u>	
	<u>Residence</u>	<u>Business</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

For example, if you currently serve 100 single line residential customers and 200 2 line business customers in the wire center, show “100” in the residential column on the Quantity line of “1”, and “200” in the business column on the Quantity line of “2.”



22. Does [company] believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If [company] believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

23. Please state whether [company] is using extended enhanced links ("EELs") in [state]. If so, identify each EEL, and for each such facility, explain or state (1) the services being provided over the EEL, (2) the number of customers served by the EEL, (3) whether the facility is being used in lieu of collocation, (4) the number of loops connected to the EEL, a descriptions of the type of loop facilities so connected, and the final demarcation point of each loop, and (5) whether the facility is being used as a functional private line.

#### **ECONOMIC ISSUES**

24. Please provide the average total revenue per line that [company] received from its residential customers within [state] in 2001 and 2002. The average revenue per line should include revenues associated with the basic retail price charged to residential customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

25. Please provide the average total revenue per line that [company] has received from its business customers within [state] in 2001 and 2002. The average revenue per line should include revenues associated with the basic retail price charged to business customers, vertical features, universal service payments, interstate access charges, intrastate access charges, subscriber line charges, toll, long distance, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. If revenues differ depending on the type of business customer (small vs. large), please provide the total revenues and the breakdown of revenues by type of business customer. Please provide the information by POTS, DS0, DS1, DS3, OC-3, OC-12, OC-48, and any other relevant categories. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

26. Please explain how [company] defines its business customer segments and provide any documents that reflect this definition or the criteria [company] uses to segment or classify business customers into distinct customer groups. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

27. Please provide the average total cost per line that [company] incurred in 2001 and 2002 for lines used to serve residential customers within [state]. These costs should include costs associated with switching; loops; collocation; transport; hot cuts; operational support systems ("OSS"); signaling; customer acquisitions; backhauling traffic to [company's] switches; maintenance, operations, and other administrative activities; and capital costs. If available,

please provide a breakdown of this information for the following categories: (1) service provided by UNE-P, (2) service provided by UNE-L, and (3) service provided using [company]'s own facilities. In addition, please provide any available breakdowns of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

28. Please provide the average total cost per line that [company] incurred in 2001 and 2002 for lines used to serve business customers within [state]. These costs should include costs associated with switching; loops; collocation; transport; hot cuts; OSS; signaling; customer acquisitions; backhauling traffic to [company's] switches; maintenance, operations, and other administrative activities; and capital costs. In addition to a total average cost, please provide separate averages for service provided through UNE-P, UNE-L, and with [company]'s own facilities. Please provide a breakdown of each cost component that is part of the average total cost per line, identifying the type and amount of each cost. If costs differ depending on the type of business customer (small vs. large), please provide the total cost and the breakdown of costs by type of business customer. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

29. To the extent not provided in response to Request Nos. 27 and 28, please identify the types or categories of customer acquisition costs [company] incurred in [state] in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, to the extent not provided in response to Request Nos. 27 and 28, please provide the per line costs

[company] incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

30. For each switch identified in response to Request No. 1, please provide: (1) the initial price paid for the switch; (2) the date the switch was purchased; (3) the EF&I (engineering, furnish, and install) costs of the switch (if separate from the initial price paid); (4) a description of any additions to the switch, along with the cost of each such addition.

31. Please provide complete copies of [company]'s switching vendor contracts, including amendments, pricing lists, discount schedules, etc. If any redactions are required, please explain why and identify the type of information redacted.

32. Please list the total collocation costs that [company] incurred in [state] in 2001 and 2002 and provide a breakdown for each year of the different categories of collocation costs that [company] has incurred. In addition, please produce all documents and data that support or relate to your response.

33. Please identify any categories of OSS costs that [company] contends should be included in the revenue/cost business case analysis discussed in the FCC's Triennial Review Order (*e.g.*, ¶ 520). For each such category, please list the total costs that [company] actually incurred in [state] in 2001 and 2002, and, if available, state these total costs separately for residential and business customers. Please produce all documents that reflect any of the costs you list in your response to this request.

34. Please identify the monthly churn rate [company] has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, you should calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company. Please produce all documents that refer or relate to the information you provide in response to this request.

35. In connection with [company's] churn rates in [state] for the most recent 24 months that are available for local exchange customers, of the total customers that have left [company], please identify the percentage that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please produce all documents that refer or relate to the information you provide in response to this request.

36. Please provide all documents that summarize or otherwise reflect the financial results of [company's] CLEC operations in [state] in 2001 and 2002.

37. Please identify each rate plan that [company] offers to local exchange customers in [state]. In addition, please identify the percentage of [company's] total local exchange customers in [state] that subscribe to each plan that you identify. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

38. For rate plans identified in Response No. 37 that include a per minute of use component, please provide the average long-distance per minute usage in [state] of [company's] local exchange customers who subscribe to such plans for the most recent 24 months available. Please

produce all documents that reflect, refer, or relate to the information you provide in response to this request.

39. Please provide copies of any current contracts the [company] has with vendors for DLC equipment used in [state], including all pricing schedules, discounts, and amendments.

40. If [company] offers intrastate switched access service to other carriers, please report your current switched access prices in [state] or identify tariffs that list these prices.

### **OPERATIONAL ISSUES**

41. Please state whether [company] alleges that Qwest has performed deficiently in providing [company] with hot cuts, collocation, provisioning of loops, provisioning of transport, CLEC-to-ILEC cross connects, or CLEC-to-CLEC cross-connects in [state] at any time since June 2001. For any such allegations, please provide a complete description of all facts that [company] relies upon, and produce all documents that relate in any way to the allegation.

42. Please provide the number of UNE-P orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months. Please produce all documents that reflect or relate to these forecasts.

43. Please provide the number of UNE-L orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months. Please produce all documents that reflect or relate to these forecasts.

44. If the state commission determines that competitive carriers are not impaired without access to switching in the mass market, provide projections of the number of UNE-L orders

and/or conversions you would anticipate over the first 12 months after the effective date of the decision.

45. How many CLEC-to-CLEC cross-connects has [company] performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does [company] maintain in [state] at present?

46. Describe all activities [company] must perform on its side of the network to complete an ILEC to CLEC hot cut, and identify all costs associated with these activities. Produce all data and documents that support your response. To the extent [company's] response would differ based on whether it performed a basic or a coordinated hot cut, please provide an itemization of the cost differences.

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

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**IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING  
OBLIGATIONS**

**TC 03-181  
Protective Order**

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To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the Public Utilities Commission of the State of South Dakota ("Commission") now issues this Protective Order ("Order") pursuant to ARSD 20:10:01:43(3) to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be confidential pursuant to ARSD 20:10:01:39 (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"), and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and



requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and employees of the Commission to whom disclosure is necessary. Disclosure of both Confidential Information and Highly Confidential Information to Commission staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c)

above shall be responsible for having each such person execute an original of Exhibit “A” and a copy of all such signed Exhibit “A”s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider’s network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The

first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER  
IN DOCKET NO. TC03-181.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “Confidential Information” described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of “Exhibit B” attached. Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members and Commission Staff shall be limited to persons to whom disclosure is necessary. The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making, non-regulatory strategic or business planning or

procurement on behalf of the receiving party..

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit "B". The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party

to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
  - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
  - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.
- (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Commission and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Commission should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless

authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.
- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181” and Highly Confidential Information shall be marked “HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181” and shall not be examined by any person except under the conditions set forth in this Order and the notice required by ARSD 20:10:01:40 shall also be posted at the locked facilities, where the information is located.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to

the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Commission and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit "A" or "B," unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the Commission, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

7. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings,

briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to Docket No. TC03-181.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this \_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Attorney \_\_\_\_\_



EXHIBIT "A"  
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT "B"  
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated \_\_\_\_\_, \_\_\_\_, 2003, in  
Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Elec. Rec'd*  
*10/31/03*

**RECEIVED**

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

**NOV 03 2003**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING  
OBLIGATIONS**

**TC 03-181**

**Joint Motion For Adoption Of Batch Hot  
Cut Forum**

Qwest Corporation ("Qwest"), AT&T Communications of the Midwest, Inc. ("AT&T"), and WorldCom, Inc., on behalf of its regulated subsidiaries ("MCI") (the "Parties") jointly propose the following process and framework for addressing the batch hot cut requirements of the FCC's Triennial Review Order ("Order").

**Overview**

The Parties agree that a single, uniform batch hot cut process for all states within the Qwest region provides the most efficient and effective operating environment for both Qwest and CLECs. The Parties also agree that it is appropriate for the industry participants (ILECs and CLECs) to the extent possible, to attempt to reach agreement on a batch hot cut process prior to submitting a process to Commissions for review and approval. Toward that end, the Parties propose a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons. The Parties further agree it is essential for State Commissions to endorse this process. To the extent all of the states do not agree to endorse the process, the Parties reserve the right to withdraw this proposal and proceed on a state-by-state basis.

## **Industry participation**

The Parties agree that the forum should be structured and conducted in a manner that encourages participation by as many CLECs as possible. The Parties propose to hold the first face-to-face meeting in Denver, Colorado with the option for participants to participate via a conference bridge in the event they are unable to travel to Denver. Should the forum participants determine that additional face-to-face meetings are required, the Parties propose that subsequent meetings be held in Seattle, Washington, and Phoenix, Arizona, to minimize the travel burdens that may be experienced by any one CLEC. Participation by conference bridge will also be available for any subsequent meetings.

All discussions conducted in the forum will be transcribed by a licensed court reporter and be made a part of the record in any state's 9-month proceeding. Qwest will assume the administrative role of creating the agenda for, and documenting the results of, each meeting. All agreements reached by participants during the forum will be documented and will be binding upon the parties that entered into such agreements. Impasse issues concerning the batch hot cut process remaining at the conclusion of the forum process will also be documented and will be litigated before the State Commissions for resolution during the 9-month proceedings in each of the states. CLECs and other participants will have an opportunity to comment on, and/or revise, written materials indicating agreement, disagreement or other with the content of Qwest's documentation of the issues.

All proposals and materials to be discussed at the forum will be provided to participants electronically two (2) business days in advance of any face-to-face meetings or conference calls. In addition, the proposals, transcripts of prior meetings, and any other applicable materials will be posted on the Qwest website at: [www.qwest.com/wholesale/guides/index.html](http://www.qwest.com/wholesale/guides/index.html).

## Timelines

Given the rigorous timelines set forth by the FCC in its Order for the state proceedings regarding a batch hot cut process, the Parties propose the following schedule for the forum and the subsequent incorporation of the results of the forum into the 9-month proceedings in each state:

<b>ACTIVITY</b>	<b>DUE DATE</b>
Commission Notice to all CLECs within respective states regarding batch hot cut forum	November 5, 2003
Qwest submits its batch hot cut proposal which will include a detailed description of the process, including, but not limited to, capacity, Pre-order, Ordering and Provisioning, the proposed cost for the batch hot cut activities, and the intervals.	November 11, 2003
CLECs submit comments/counter proposals to Qwest's batch hot cut proposal	November 18, 2003
Initial Forum – Denver, Colorado	December 1-3, 2003
Weekly conference calls on batch hot cut proposal, if useful. Face-to-face meetings as necessary (in Seattle, Washington & Phoenix, Arizona)	December 4, 2003 - January 15, 2004
Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a Stipulation among parties on areas of agreement/consensus items.	January 20, 2004
Simultaneous filing of rebuttal testimony	February 15, 2004
Hearings & Commission Decision	Per each state's procedural order in the 9-month dockets

## Notice

The Parties propose each State Commission issue a Notice to all CLECs within its respective state advising that it endorses the multi-state forum, adopts the schedule and procedural requirements described above, and strongly encourages interested parties to actively participate in the multi-state forum. The parties further request that such notice be issued by November 5, 2003, to all CLECs and other interested parties.

In the interest of making this filing on an expedited basis, the undersigned is authorized to state that AT&T and MCI concur in this proposal and is further authorized to sign and file this pleading on behalf of AT&T and MCI.

Dated: October 31, 2003.



---

Thomas J. Welk  
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
Telephone: (605) 336-2424

Tim Goodwin  
Thomas Dethlefs  
QWEST CORPORATION  
1801 California Street 47<sup>th</sup> floor  
Denver, CO 80202

**ATTORNEYS FOR QWEST CORPORATION**

Thomas F. Dixon  
Michel L. Singer Nelson  
Lesley J. Lehr  
707 – 17<sup>th</sup> Street, #4200  
Denver, Colorado 80202  
303-390-6206  
303-390-6333 (fax)

**ATTORNEYS FOR WORLDCOM, INC.**

Mary B. Tribby  
AT&T Law Department  
1875 Lawrence Street, Suite 1503  
Denver, Colorado 80202  
(303) 298-6508

**ATTORNEY FOR AT&T COMMUNICATIONS OF  
THE MIDWEST, INC.**

*Elec. Rec'd*  
*10/31/03*

RECEIVED

NOV 03 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

---

IN THE MATTER OF THE IMPLEMENTATION  
OF THE FEDERAL COMMUNICATIONS  
COMMISSION'S TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING OBLIGATIONS

TC03-181

CERTIFICATE OF SERVICE

---

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 31<sup>st</sup> day of October, 2003, a true and correct copy of Qwest's Petition to Intervene and Supplemental Comments and Joint Motion for Adoption of Batch Hot Cut Forum were sent via US mail, postage prepaid, to the following addresses:

Brett M Koenecke  
May, Adam, Gerdes & Thompson, LLP  
P.O. Box 160  
Pierre, SD 57501

David Gerdes  
May, Adam, Gerdes & Thompson, LLP  
P.O. Box 160  
Pierre, SD 57501

Mary B. Tribby  
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1875 Lawrence Street #1575  
Denver, CO 80202

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AT&T Communications of the Midwest, Inc.  
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Gary B. Witt  
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Richard S. Wolters  
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Greenwood Village, CO 80111

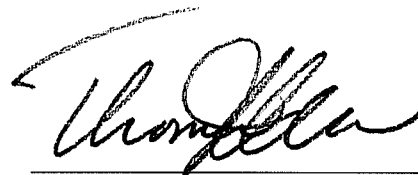
Robert Pomeroy, Jr.  
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Greenwood Village, CO 80111

Richard D. Coit  
Executive Director & General Counsel  
SDTA  
P.O. Box 57  
Pierre, SD 57501

A handwritten signature in black ink, appearing to read "Thomas J. Welk", written over a horizontal line.

Thomas J. Welk



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

IN THE MATTER OF THE IMPLEMENTATION	)	ORDER GRANTING
OF THE FEDERAL COMMUNICATIONS	)	INTERVENTIONS AND
COMMISSION'S TRIENNIAL REVIEW ORDER	)	JOINT MOTION; ORDER
REGARDING UNBUNDLING OBLIGATIONS	)	APPROVING ISSUANCE OF
	)	DISCOVERY AND
	)	PROTECTIVE ORDER;
	)	ORDER REQUESTING
	)	COMMENTS
	)	TC03-181

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCI metro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. All discussions would be transcribed and made part of the record in each state's triennial review proceeding. Impasse issues remaining at the conclusion of the forum process would be documented and then litigated before each state commission. Given the strict timelines set forth by the FCC for the development of a batch hot cut process, the following schedule was proposed:

November 5, 2003 - Commission notice to all CLECs within the state regarding a batch hot cut forum;

November 11, 2003 - Qwest submits a detailed batch hot cut proposal;

November 18, 2003 - CLECs submit comments/counter proposals to Qwest's batch hot cut proposal;

December 1-3, 2003 - Initial Forum held in Denver, Colorado;

December 4, 2003 through January 15, 2004 - Weekly conference calls if useful and meetings, if necessary, in Seattle, Washington and Phoenix, Arizona;

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 15, 2004 - Simultaneous filing of rebuttal testimony;

Hearings and Commission decision will be as determined in each state's procedural order.

In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum. The Commission will slightly modify the notice requirement by sending this order on November 6, 2003, to all telecommunications carriers in the state who have requested to receive

notice of Commission proceedings. With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to. The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission will take any additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments shall be filed on or before November 12, 2003.

It is therefore

ORDERED, that the petitions to intervene filed by Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA are granted; and it is

FURTHER ORDERED, that the Joint Motion for Adoption of Batch Hot Cut Forum is granted; and it is

FURTHER ORDERED, that the Commission will issue a Protective Order; and it is

FURTHER ORDERED, that the Commission will issue bench discovery requests; and it is

FURTHER ORDERED, that any interested person may file comments on the issues listed above on or before November 12, 2003.

Dated at Pierre, South Dakota, this 6th day of November, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melaine Kolles</u>
Date:	<u>11/6/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman *RS*

Gary Hanson  
GARY HANSON, Commissioner

James A. Burg  
JAMES A. BURG, Commissioner



November 6, 2003

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NOV 07 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Ms. Pamela Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 East Capitol Avenue  
Pierre, SD 57501

**RE: Docket No. TC03-181  
In the Matter of the Implementation of the FCC Triennial Review Order  
Regarding Unbundling Obligations**

Dear Ms. Bonrud:

On behalf of PrairieWave Communications, Inc., enclosed for filing are an original and ten (10) copies of the above referenced docket. The document is being served on all parties of the attached service list.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Haase".

Dawn Haase  
Legal Administrative Assistant

cc: Service List

RECEIVED

127 07 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATER OF THE IMPLEMENTATION )  
OF THE FCC TRIENNIAL REVIEW ORDER ) Docket No. TC03-181  
REGARDING UNBUNDLING OBLIGATIONS )

**Petition to Intervene**

Pursuant to ARSD Section 20:10:01:15.02, PrairieWave Communications, Inc.

("PrairieWave") petitions to intervene in this docket. While this petition is not timely filed, PrairieWave believes that denial of this petition would be detrimental to the public interest, for the following reasons:

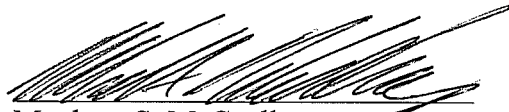
1. PrairieWave is a small, independent, facilities-based incumbent local exchange company ("ILEC") in 14 exchanges in South Dakota. While the ILEC has not received any bona fide request to provide unbundled network elements, and is subject to certain rural company exceptions under the Telecommunications Act of 1996 ("Act"), any proceeding in which an incumbent company's obligations under the Act are a matter of regulatory oversight, review and determination is a matter in which PrairieWave has an interest.
2. PrairieWave is also a small, facilities-based competitive local exchange carrier ("CLEC") in South Dakota for mass market customers in Qwest Corporation ("Qwest") exchanges. The FCC's Triennial Review Order ("TRO") is the basis for this docket.
3. PrairieWave had hoped to avoid active participation in this docket. However, it is abundantly clear from the filings of Qwest in this docket and the discussions which occurred in the Commission's open meeting on November 4, 2003, that significant participation by the CLEC is anticipated, particularly in the provisioning of relevant information in response to Commission and party discovery requests. Much of the

information being sought will be trade secret and highly confidential. Indeed, CLEC has already received significant requests from the Minnesota Department of Commerce in an identical proceeding before the Minnesota Public Utilities Commission with regard to CLEC operations in that state. A review of Qwest's petition to intervene and its supplemental comments make clear that PrairieWave facilities and operations will form at least part of the basis for its challenge of the FCC findings of impairment. PrairieWave must be able to protect its information and insure that its rights and obligations in this matter are properly represented.

WHEREFORE, PrairieWave respectfully requests that this Petition to Intervene be granted.

Signed this 5<sup>th</sup> day of November, 2003.

By:

  
Matthew S. McCaulley  
McCaulley Law Office, P.C.  
122 South Phillips Avenue, Suite 250  
Sioux Falls, SD 57104  
605.332.0500

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NOV 07 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

CERTIFICATE OF SERVICE

I, Dawn Haase, on the 6<sup>th</sup> day of November, 2003, served the attached **Petition to Intervene, Docket No. TC03-181 In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order Regarding Unbundling Obligations** by U. S. mail to all persons indicated below.

Ms. Pamela Bonrud  
Executive Director  
SD PUC  
500 East Capitol Avenue  
Pierre, SD 57501

Brett M Koenecke  
May, Adam, Gerdes & Thompson, LLP  
P.O. Box 160  
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Thomas Welk  
Boyce, Greenfield, Pashby & Welk  
101 N. Phillips Ave., Ste 600  
Sioux Falls, SD 57104

David Gerdes  
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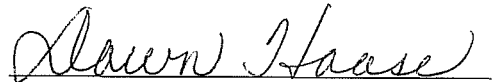
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Richard D. Coit  
Executive Director & General Counsel  
SDTA  
P.O. Box 57  
Pierre, SD 57501

  
Dawn Haase



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Professional & Executive Building  
319 South Coteau Street  
P.O. Box 280  
Pierre, South Dakota 57501-0280  
[www.riterlaw.com](http://www.riterlaw.com)

E.D. MAYER  
ROBERT C. RITER, Jr.  
DARLA POLLMAN ROGERS  
JERRY L. WATTIER  
JOHN L. BROWN

November 7, 2003

**OF COUNSEL:**  
Robert D. Hofer

**TELEPHONE**  
605-224-5825  
605-224-7889  
**FAX**  
605-224-7102

Pamela Bonrud, Executive Director  
S. D. Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: Docket Number TC03-181

Dear Ms. Bonrud:

Please find enclosed herein an original and ten copies of PETITION TO INTERVENE for filing in TC03-181 on behalf of Midstate Telecom, Inc., and an original and ten copies of PETITION TO INTERVENE for filing on behalf of Northern Valley Communications, LLC.

By copy of this letter, I am also serving those parties named on the Service List attached to the Petitions.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

Enclosures

CC: Service List  
Mark Benton  
Doug Eidahl

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RECEIVED

NOV 07 2003

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATER OF THE IMPLEMENTATION )  
OF THE FCC TRIENNIAL REVIEW ORDER ) Docket No. TC03-181  
REGARDING UNBUNDLING OBLIGATIONS )**

**Petition to Intervene**

Pursuant to Section ARSD 20:10:01:15.02, Midstate Telecom, Inc. ("Midstate") petitions to intervene in this docket for the following reasons:

1. Midstate is a wholly-owned subsidiary of Midstate Communications, Inc., which is a small, independent, facilities-based incumbent local exchange company ("ILEC") offering local exchange services in eleven exchanges in South Dakota. While ILEC has not received any bona fide request to unbundled network elements, and is subject to certain rural company exceptions under the Telecommunications Act of 1996 ("Act"), any proceeding in which an incumbent company's obligations under the Act are a matter of regulatory oversight, review and determination is a matter in which Midstate and its parent company have an interest.

2. Midstate is a small, facilities-based competitive local exchange carrier ("CLEC") in South Dakota for mass market customers in the Qwest Corporation ("Qwest") exchange of Chamberlain, South Dakota.

3. The FCC's Triennial Review Order ("TRO") is the basis for the South Dakota Public Utilities Commission ("Commission") opening this docket.

4. Midstate had hoped to avoid active participation in this docket. However, it is abundantly clear from the filings of Qwest in this docket and the discussions that occurred in the Commission's open meeting on November 4, 2003, that significant participation by Midstate may be required, particularly in the provisioning of relevant

information in response to Commission and party discovery requests. Much of the information being sought will be trade secret and highly confidential.

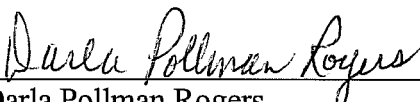
5. A review of Qwest's petition to intervene and its supplemental comments makes clear that Midstate facilities and operations will form at least part of the basis for its challenge of the FCC findings of impairment. Midstate must be able to protect its information and to ensure that its rights and obligations in this matter are properly represented.

6. This Petition is not timely filed. ARSD 20:10:01:15.02 does, however, permit the Commission to allow intervention that is not timely filed if disallowance of said petition to intervene would be detrimental to the public interest or likely to result in a miscarriage of justice.

7. As demonstrated at the November 4, 2003, Commission meeting and as set forth herein, Midstate's late petition to intervene should be granted by this Commission because failure to do so would be detrimental to the public interest and would result in a miscarriage of justice to Midstate.

WHEREFORE, Midstate respectfully requests that this Petition to Intervene be granted.

DATED this seventh day of November, 2003.

  
\_\_\_\_\_  
Darla Pollman Rogers  
Riter, Rogers, Wattier & Brown  
P. O. Box 280  
Pierre, South Dakota 57501  
Telephone (605) 224-7889  
Attorney for Midstate

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

**IN THE MATER OF THE IMPLEMENTATION            )**  
**OF THE FCC TRIENNIAL REVIEW ORDER            )** **Docket No. TC03-181**  
**REGARDING UNBUNDLING OBLIGATIONS         )**

**CERTIFICATE OF SERVICE**

Darla Pollman Rogers, of Riter, Rogers, Wattier & Brown, LLP, hereby certifies that on the seventh day of November, 2003, she mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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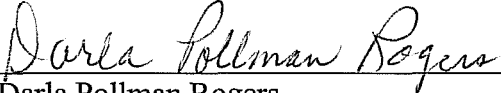
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Bill Heaston  
Corporate Counsel  
Prairie Wave Communications  
5100 McLeod Lane  
Sioux Falls, SD 57108

Dated this seventh day of November, 2003.

  
\_\_\_\_\_  
Darla Pollman Rogers  
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E.D. MAYER  
ROBERT C. RITER, Jr.  
DARLA POLLMAN ROGERS  
JERRY L. WATTIER  
JOHN L. BROWN

November 7, 2003

OF COUNSEL:  
Robert D. Hofer  
  
TELEPHONE  
605-224-5825  
605-224-7889  
FAX  
605-224-7102

Pamela Bonrud, Executive Director  
S. D. Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: Docket Number TC03-181

Dear Ms. Bonrud:

Please find enclosed herein an original and ten copies of PETITION TO INTERVENE for filing in TC03-181 on behalf of Midstate Telecom, Inc., and an original and ten copies of PETITION TO INTERVENE for filing on behalf of Northern Valley Communications, LLC.

By copy of this letter, I am also serving those parties named on the Service List attached to the Petitions.

Sincerely yours,



Darla Pollman Rogers  
Attorney at Law

DPR/ph

Enclosures

CC: Service List  
Mark Benton  
Doug Eidahl

RECEIVED  
NOV 07 2003  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 07 2003

IN THE MATER OF THE IMPLEMENTATION )  
OF THE FCC TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
Docket No. TC03-181

**Petition to Intervene**

Pursuant to Section ARSD 20:10:01:15.02, Northern Valley Communications, LLC (“Northern Valley”) petitions to intervene in this docket for the following reasons:

1. Northern Valley is a wholly-owned subsidiary of James Valley Cooperative Telephone, which is a small, independent, facilities-based incumbent local exchange company (“ILEC”) offering local exchange services in fourteen exchanges in South Dakota. While ILEC has not received any bona fide request to unbundled network elements, and is subject to certain rural company exceptions under the Telecommunications Act of 1996 (“Act”), any proceeding in which an incumbent company’s obligations under the Act are a matter of regulatory oversight, review and determination is a matter in which Northern Valley and its parent company have an interest.

2. Northern Valley is a small, facilities-based competitive local exchange carrier (“CLEC”) in South Dakota for mass market customers in the Qwest Corporation (“Qwest”) exchange of Aberdeen, South Dakota.

3. The FCC’s Triennial Review Order (“TRO”) is the basis for the South Dakota Public Utilities Commission (“Commission”) opening this docket.

4. Northern Valley had hoped to avoid active participation in this docket. However, it is abundantly clear from the filings of Qwest in this docket and the discussions that occurred in the Commission’s open meeting on November 4, 2003, that signifi-

cant participation by Northern Valley may be required, particularly in the provisioning of relevant information in response to Commission and party discovery requests. Much of the information being sought will be trade secret and highly confidential.


5. A review of Qwest's petition to intervene and its supplemental comments makes clear that Northern Valley facilities and operations will form at least part of the basis for its challenge of the FCC findings of impairment. Northern Valley must be able to protect its information and to ensure that its rights and obligations in this matter are properly represented.

6. This Petition is not timely filed. ARSD 20:10:01:15.02 does, however, permit the Commission to allow intervention that is not timely filed if disallowance of said petition to intervene would be detrimental to the public interest or likely to result in a miscarriage of justice.

7. As demonstrated at the November 4, 2003, Commission meeting and as set forth herein, Northern Valley's late petition to intervene should be granted by this Commission because failure to do so would be detrimental to the public interest and would result in a miscarriage of justice to Northern Valley.

WHEREFORE, Northern Valley respectfully requests that this Petition to Intervene be granted.

DATED this seventh day of November, 2003.

  
\_\_\_\_\_  
Darla Pollman Rogers  
Riter, Rogers, Wattier & Brown  
P. O. Box 280  
Pierre, South Dakota 57501  
Telephone (605) 224-7889  
Attorney for Northern Valley



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

**IN THE MATER OF THE IMPLEMENTATION            )**  
**OF THE FCC TRIENNIAL REVIEW ORDER            )** Docket No. TC03-181  
**REGARDING UNBUNDLING OBLIGATIONS            )**

**CERTIFICATE OF SERVICE**

Darla Pollman Rogers, of Riter, Rogers, Wattier & Brown, LLP, hereby certifies that on the seventh day of November, 2003, she mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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Attorney at Law  
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Colleen Sevold  
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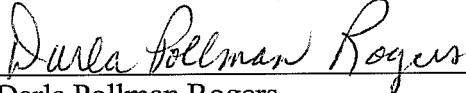
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P.O. Box 160  
Pierre, SD 57501

Bill Heaston  
Corporate Counsel  
Prairie Wave Communications  
5100 McLeod Lane  
Sioux Falls, SD 57108

Dated this seventh day of November, 2003.

  
\_\_\_\_\_  
Darla Pollman Rogers  
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Pierre, South Dakota 57501  
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LINDEN R. EVANS, P.E.  
Associate Counsel

Telephone: (605) 721-2305  
Facsimile: (605) 721-2550  
Email: levans@bh-corp.com

November 6, 2003

Ms. Pamela Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 E. Capitol Avenue  
Pierre, South Dakota 57501-5070

RECEIVED  
NOV 10 2003  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**Re: In the Matter of the Implementation of the FCC Triennial Review Order Regarding  
Unbundling Obligations  
Docket No. TC03-181**

Dear Ms. Bonrud:

Enclosed for filing are the original and ten copies of the Black Hills FiberCom, L.L.C.'s Petition to Intervene in the captioned matter. I understand that our Petition is filed after the Commission's date for Intervention; however, we hope that the Commission will nevertheless give it due consideration.

Thank you very much and please call me with any question you may have.

Sincerely,

BLACK HILLS CORPORATION



Linden R. Evans

/jmr

Enclosure

Cc: All Parties Listed on Certificate of Service  
Kyle D. White (w/encl.)

RECEIVED

NOV 10 2003

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATER OF THE IMPLEMENTATION )  
OF THE FCC TRIENNIAL REVIEW ORDER ) Docket No. TC03-181  
REGARDING UNBUNDLING OBLIGATIONS )**

**BLACK HILLS FIBERCOM, L.L.C.'S  
PETITION TO INTERVENE**

Pursuant to ARSD § 20:10:01:15.02, Black Hills FiberCom, L.L.C. ("FiberCom") petitions the South Dakota Public Utilities Commission ("Commission") to enter an order allowing for FiberCom's intervention in the captioned matter. FiberCom's petition is based upon the following:

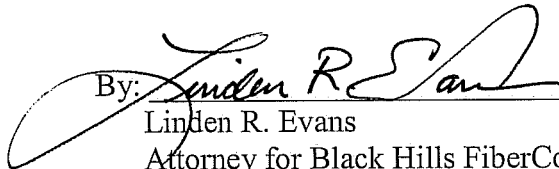
1. FiberCom notes that its petition is not timely filed. FiberCom asserts, however, that denial of this petition would be detrimental to the public interest.
2. FiberCom is a small, facilities-based competitive local exchange carrier ("CLEC") in South Dakota competing for mass market customers in four (4) Qwest Corporation ("Qwest") exchanges. The Federal Communication Commission's Triennial Review Order ("TRO") is the basis for the Commission's docket.
3. FiberCom had initially hoped to avoid active participation in this docket. However, it is now clear from Qwest's recent pleadings in this docket and the discussions that occurred during the Commission's open meeting on November 4, 2003, that significant participation by other South Dakota CLECs is anticipated, particularly in the provisioning of relevant information in response to the Commission's and other party's discovery requests. Much of the information sought to be discovered in this docket will consist of trade secrets and highly confidential information of a very sensitive nature to

FiberCom. A review of Qwest's recently filed petition to intervene and its supplemental comments make clear that FiberCom's facilities and operations will form at least part of the basis for its challenge of the FCC finding of impairment. FiberCom must be able to protect its information and to insure that its rights and obligations in this matter are properly represented.

WHEREFORE, FiberCom respectfully requests that this Petition to Intervene be granted.

Signed this 6<sup>th</sup> day of November 2003.

BLACK HILLS FIBERCOM, L.L.C.

By: 

Linden R. Evans  
Attorney for Black Hills FiberCom, L.L.C.  
625 Ninth Street, 6<sup>th</sup> Floor  
Rapid City, South Dakota 57701  
Tel: (605) 721-2305  
Fax: (605) 721-2550  
Email: levans@bh-corp.com

#### CERTIFICATE OF SERVICE

I, Linden R. Evans, do hereby certify that on the 6<sup>th</sup> day of November 2003, a true and correct copy of Black Hills FiberCom, L.L.C.'s Petition to Intervene was sent via US mail, postage prepaid, to the following addresses:

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Rebecca B. DeCook  
Letty S.D. Friesen  
Steven H. Weigler  
Gary B. Witt  
Richard S. Wolters  
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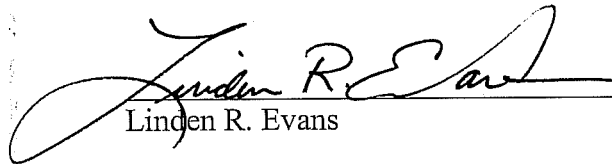
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Denver, CO 80202

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Michel L. Singer Nelson  
Lesley J. Lehr  
707 - 17<sup>th</sup> Street, #4200  
Denver, Colorado 80202



---

Linden R. Evans



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November 11, 2003

Pamela Bonrud  
Executive Director  
Public Utilities Commission of the State of South Dakota  
500 East Capitol Avenue  
Pierre, SD 57501

**VIA OVERNIGHT UPS**

**RECEIVED**

NOV 12 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**Re: Docket TC03-181**

Dear Ms. Bonrud:

I attach the original and ten copies of *Qwest's Batch Hot Cut Proposal* in this docket. I have also enclosed an additional copy, and ask that you file-stamp that copy and return it to me in the enclosed, self-addressed, stamped envelope.

I am also sending a copy of this filing to you by email. I will also serve copies on all intervenors in this case, via email and, if requested or required, hard copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Goodwin". The signature is fluid and cursive, with the first name "Tim" and last name "Goodwin" clearly distinguishable.

Timothy J. Goodwin

enclosures

RECEIVED

NOV 12 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER

TC 03-181

Qwest's Batch Hot Cut Proposal

Pursuant to the Commission's order of November 6, 2003, Qwest Corporation ("Qwest") respectfully submits this proposal for a region-wide batch loop conversion process. Qwest proposes a single, centrally coordinated ordering and conversion process that would be used in all fourteen of its states whenever a CLEC has the requisite number of qualified lines to convert from Qwest's circuit switch (both Qwest retail and CLEC UNE-P lines) to the CLEC's circuit switch. The same process could also be used to convert lines from one CLEC's circuit switch to another's to the extent that sufficient volumes existed to justify use of the batch process.

Qwest's proposal builds on, and makes improvements to, a process for provisioning unbundled loops that already operates at a demonstrably high level of performance. As discussed below, Qwest's current process does not suffer from many of the cost and operational problems that the *Triennial Review Order*<sup>1</sup> identified; Qwest does not have problems with excessive provisioning delays or service outages;<sup>2</sup> and,

<sup>1</sup> Report and Order, *Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers*, CC Dkt. No. 01-338, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*").

<sup>2</sup> Compare *TRO* ¶ 466 with *infra* at section I(B) (discussion of Qwest provisioning and outage data).



Qwest does not levy huge non-recurring charges to perform a hot cut.<sup>3</sup> Moreover, unlike some other incumbent LECs,<sup>4</sup> Qwest actually does have substantial experience migrating large batches of CLEC lines — including thousands in 2003 for one CLEC alone — from UNE-P to stand-alone unbundled loops on a project-managed basis. These batch conversions *are* reflected in Qwest’s current performance data, and establish that Qwest has continued to provide these loops to the CLEC at an extraordinarily high level of quality.

Even with this strong performance, in the two and a half months since the *Triennial Review Order’s* release, Qwest has worked hard to improve this process even further. Qwest has re-examined every step of its current loop-conversion process to find the efficiencies that become available when a CLEC works with Qwest to convert twenty-five lines or more in a single batch. Qwest has also used its experience performing large-scale project-managed conversions to identify the steps that can be streamlined or eliminated when the carriers are migrating batches of in-service loops. Qwest’s work has paid off: The batch conversion process that Qwest proposes reduces substantially the work times associated with some of the steps within the process, the number of times Qwest has to contact the CLEC, and the process of clearing the order once the work has been completed. While Qwest has not yet completed its detailed cost studies, it appears that in virtually every instance these efficiencies will reduce Qwest’s cost of performing a batch hot cut.

---

<sup>3</sup> Compare *TRO* ¶ 470 with *infra* at section II(D) (discussion of Qwest’s current NRCs).

<sup>4</sup> See *TRO* ¶ 474 & n.1466 (finding that Verizon’s procedures for performing project-managed migrations “not sufficiently developed” and noting Verizon’s failure to provide any performance data reflecting these project-managed cuts).

Qwest first provides a brief background summarizing the FCC's instructions to the state commissions concerning adoption of a new batch conversion process, as well as the loop-conversion process that Qwest is currently using. Qwest then presents its proposal for a new batch process.

## **I. BACKGROUND**

### **A. The Triennial Review Order and the FCC's Implementing Rules.**

In the *Triennial Review Order*, the FCC determined that “in the large majority of locations” (though not all),<sup>5</sup> the incumbent LECs’ existing processes for migrating in-service loops one at a time from their own switches to their competitors’ would “serve as barriers to competitive entry in the absence of unbundled switching” for mass-market customers.<sup>6</sup> The FCC found that the incumbents’ current one-at-a-time conversions, as a general matter, imposed non-trivial one-time costs and service disruption risks on CLECs, and it questioned whether these processes would be able “to handle the necessary volume of migrations” if mass-market switching is taken off the unbundling list.<sup>7</sup> The FCC did note that some incumbents had begun to perform larger numbers of loop migrations on a project-managed basis, and that “[t]he record evidence strongly suggests” that managing and performing cut-overs on a batch basis in this manner could yield significant improvements. But based on the specific record before it, the FCC concluded that these project-managed processes were not yet “sufficiently

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<sup>5</sup> TRO ¶ 473.

<sup>6</sup> TRO ¶ 460.

<sup>7</sup> TRO ¶ 459.

developed or widespread enough to adequately address the impairment created by the loop cut over process.”<sup>8</sup>

The FCC acknowledged that the evidence before it was “not sufficiently detailed” to permit it to evaluate whether these general observations held true for any carrier’s particular hot cut process in any individual market,<sup>9</sup> and that states might well find in some markets that “existing hot cut practices would be adequate even in the absence of unbundled local circuit switching.”<sup>10</sup> But for all other markets, the FCC directed the states to “approve, within nine months of the effective date of this Order, a batch cut migration process . . . that will address the costs and timeliness of the hot cut process.”<sup>11</sup> The FCC’s formal rules implementing the *Triennial Review Order* define a “batch cut process” as “a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier’s local circuit switch to another carrier’s local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops . . . on a line-by-line basis.”<sup>12</sup> The FCC held that the efficiencies that become available when migrating loops in batches rather than singly would mitigate the economic and operational burdens on which the FCC’s presumptive national finding of impairment for mass-market switching was based: “We conclude that the loop access barriers contained in the record may be mitigated through the creation of a batch cut process by spreading loop migration costs over a large number of lines, decreasing per-line cut over costs.”<sup>13</sup>

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<sup>8</sup> TRO ¶ 474.

<sup>9</sup> TRO ¶ 473.

<sup>10</sup> TRO ¶ 490.

<sup>11</sup> TRO ¶ 488.

<sup>12</sup> 47 C.F.R. § 51.319(d)(2)(ii).

<sup>13</sup> TRO ¶ 487.

The FCC rules implementing the *Order* direct state commissions to make four determinations with respect to the new batch conversion process (beyond determining whether any new process is required in a given market at all<sup>14</sup>):

(1) A state commission shall first determine the appropriate volume of loops that should be included in the “batch.”

(2) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC’s particular network design and cut over practices.

(3) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission’s pricing rules for unbundled network elements.

These rates shall reflect the efficiencies associated with batched migration of loops to a requesting telecommunications carrier’s switch, either through a reduced per-line rate or through volume discounts as appropriate.<sup>15</sup>

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<sup>14</sup> 47 C.F.R. § 51.319(d)(2)(B) provides, “If a state commission concludes that the absence of a batch cut migration process is not impairing requesting telecommunications carriers’ ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis, that conclusion will render the creation of such a process unnecessary.” The rule specifies the findings that a state must make if it chooses not to require adoption of a new batch process. *See also TRO ¶ 490.*

<sup>15</sup> 47 C.F.R. § 51.319(d)(ii)(A)(1)-(4).

The paragraphs of the *Order* giving state commissions specific instructions for the nine-month cases contain these same directives.<sup>16</sup>

## **B. Qwest's Current Hot Cut Process.**

As just noted, in considering any new batch conversion process, a state commission must “tak[e] into account the incumbent LEC’s particular network design and cut over practices.”<sup>17</sup> Qwest has already spent considerable time and effort to develop a seamless process for provisioning large quantities of unbundled loops for CLECs at an extremely high level of quality, and to develop TELRIC-compliant rates for that process. The state commissions and the FCC examined Qwest’s existing hot cut process at length in the section 271 proceedings and found it adequate. Rather than redescribing the entire process in this document, Qwest attaches the affidavit of William M. Campbell, filed before the FCC in the recent Arizona section 271 docket, which outlines Qwest’s current hot cut process. **See Exhibit 1.** To highlight:

- Qwest uses, and must continue to use, the same hot cut process in all fourteen of its states.
- Qwest has a dedicated center in Omaha, Nebraska – the QCCC – that oversees the provision of each and every hot cut throughout the Qwest region.
- Qwest has a detailed procedure that defines the hot cut process. **See Exhibit 2.**

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<sup>16</sup> See *TRO* ¶ 489.

<sup>17</sup> 47 C.F.R. § 51.319(d)(ii)(A)(2).

- Qwest has trained its technicians on the hot cut process.
- Qwest has provisioned unbundled loops for CLECs using this process at an extremely high level of quality. Qwest's audited and reconciled performance data shows that it is routinely provisioning over 98% of its hot cut commitments across the region on time. **See Exhibit 3.** This percentage varies in individual states, but in general remains within the 95-98% performance level. **See Exhibit 4.** Moreover, only a small fraction of migrated loops experience any trouble in the 30 days following cut-over. Regionally, for example 97.5%-99.99% of loops do not experience installation troubles. **See Exhibits 3-4.**

Qwest uses its current process to provision approximately 1,000 hot cuts per day on average, and has processed up to 1,350 hot cuts in a single day. Importantly, these numbers reflect CLECs' actual order levels, not the maximum number of hot cuts Qwest could perform in a single day.

Qwest has experience working with CLECs to transition very large batches of UNE-P lines to stand-alone unbundled loops simultaneously. Qwest has already worked with one CLEC to migrate thousands of UNE-P lines to the CLEC's own switching using its current form of "batch processing." These numbers continue to mount. Unlike some other LECs whom the FCC specifically considered in the *Triennial Review Order*,<sup>18</sup> Qwest includes the results of this large-scale batch conversion process

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<sup>18</sup> The FCC noted that Verizon's project-managed large-batch hot cuts were not offered at set rates, were not subject to any performance intervals, and, as a result, were not tracked by Verizon's performance metrics. *See TRO* ¶ 474 & n.1466.

in its performance data. Thus, the extremely good performance results noted above reflect Qwest's ability to perform hot cuts for its CLEC customers in larger quantities. See **Exhibits 3-4**. The batch conversion process that Qwest proposes in this forum reflects Qwest's actual experience with these types of large-scale cuts and the lessons it has learned regarding what does and does not work.

## ***II. QWEST'S BATCH LOOP CONVERSION PROPOSAL***

Qwest presents its proposal for a new batch hot-cut process in terms of the four determinations the FCC instructed state commissions to make.

### **A. The Minimum "Batch" That Qualifies for the Batch Conversion Process (47 C.F.R. § 51.319(d)(ii)(A)(1)).**

As noted above, the very point of adopting a *batch* hot cut process is to capture the operational and economic efficiencies that come from migrating many in-service loops simultaneously rather than singly. The FCC directed the states to consider batch conversions specifically because it "expect[ed] these processes to result in efficiencies associated with performing tasks once for multiple lines that would otherwise have been performed on a line-by-line basis,"<sup>19</sup> and it is the ability to "spread loop migration costs over a large number of lines, decreasing per-line cut over costs" that enables "the loop access barriers contained in the record [to] be mitigated."<sup>20</sup> But these per-loop costs drop only if the CLEC converting a high enough quantity of loops to give rise to economies and justify the slightly greater up-front coordination that batch conversions

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<sup>19</sup> TRO ¶ 489.

<sup>20</sup> TRO ¶ 487.

require. The CLEC must also be seeking to convert loops of a kind that actually permit conversion tasks to be consolidated; otherwise, there are no efficiencies to pass through.

For these reasons, the first task the FCC assigned the states was to determine what minimum “batch” of loops a CLEC must be converting in order to qualify for “batch” conversion. See 47 C.F.R. § 51.319(d)(ii)(A)(1); TRO ¶ 489. (This is a separate question from the maximum volumes of loops the batch conversion process must be prepared to handle, which is discussed in part C below). Qwest’s preliminary determination is that the necessary economies and efficiencies may be realized when a CLEC is converting twenty-five (25) voice grade lines at a single time in a single central office. The reason why CLECs need at least twenty-five (25) lines *individually* is that some of the significant efficiencies — for example the ability to reduce the number of separate calls between Qwest and the CLEC, and the ability to perform multiple pre-wirings in the same physical locations on the frame — come from performing multiple conversions *for the same CLEC*, not just from doing multiple conversions *per se*.<sup>21</sup>

In addition, batched loops must all be capable of conversion on a consolidated basis. The FCC adopted its batch conversion requirement to assist CLECs in serving the “mass market,” which the FCC defined as “consumers of analog ‘plain old telephone service’ or ‘POTS’ that purchase only a limited number of POTS lines and can only economically be served via analog DS0 loops.”<sup>22</sup> A batch conversion process is possible for these analog DS0 loops, which constitute the vast majority of Qwest’s outside plant. But it is not feasible to gain these efficiencies when the underlying facility

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<sup>21</sup> Cf. TRO ¶ 489 (FCC expects efficiencies to come from consolidating pre-wiring and reducing number of communications between ILEC and CLEC).

<sup>22</sup> TRO ¶ 459.



uses integrated digital loop carrier systems (“IDLC”). The *Triennial Review Order* itself recognizes<sup>23</sup> that IDLC is not unbundled via the same, uniform cut-over process as other loop plant: Each IDLC loop must be examined individually to determine which of the several unbundling methods used for such loops (such as finding a metallic pair alternative, hair-pinning, reconnecting the loop to a universal DLC system at the remote terminal, or installing a new central-office terminal) is available or appropriate for that loop. Qwest emphasizes that it will continue to unbundle IDLC lines a very high level of quality; however, such loops (which form the small percentage of Qwest’s plant in any event) must be migrated individually using the existing hot cut process.<sup>24</sup> **See Exhibit 5.**

Likewise, the FCC expressly defined its batch-cut requirements in terms of developing a process to migrate loops “from one carrier’s local circuit switch to another carrier’s *local circuit switch*.”<sup>25</sup> The FCC’s definition of a “batch cut process” thus does not include conversions including loop-splitting arrangements that also connect an unbundled loop to a third carrier’s *packet* switch. As the Arizona Corporation Commission has properly recognized,<sup>26</sup> the FCC directed carriers to pursue line-splitting implementation, not as part of the nine-month switching cases or the development of a batch conversion process, but rather as part of the pre-existing change management

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<sup>23</sup> See *TRO* ¶ 297 (noting that unbundling IDLC loops “may require incumbent LECs to implement policies, practices, and procedures different from those used” to unbundle other kinds of loops); *id.* n.855 (describing a number of different ways that IDLC loops might be unbundled).

<sup>24</sup> See *TRO* ¶¶ 251-252

<sup>25</sup> 47 C.F.R. § 51.319(d)(ii) (defining “batch cut process”) (emphasis added). See also 47 C.F.R. § 51.319(d)(ii)(A) (directing state commissions to establish process “for use in migrating lines served by one carrier’s local circuit switch to lines served by another carrier’s *local circuit switch*”) (emphasis added).

<sup>26</sup> See Arizona Corporation Commission, Procedural Order, *ILEC Unbundling Obligations As a Result of the Federal Triennial Review Order*, Dkt. No. T-00000A-03-0369 (Nov. 6, 2003) at 5-6 (“[T]he FCC’s Triennial Review Order did not require line splitting to be addressed in the nine-month docket and . . . no party could point to another state commission that is addressing line splitting in its triennial review proceedings.”); *id.* at 7 (“IT IS FURTHER ORDERED that line splitting will not be addressed in this docket.”).

process.<sup>27</sup> The FCC's decision *not* to include loop splits as part of the batch conversion process makes sense: conversions from UNE-P directly to loop-splitting arrangements cannot be consolidated into a batch because each loop must be individually checked to ensure it is capable of carrying DSL signals and, if not, conditioned. Just as contemplated by the *Triennial Review Order*, the voice CLEC in a potential line-splitting arrangement will be able to use Qwest's *current* processes to migrate individual lines to stand-alone unbundled loops connected to that CLEC's circuit switch.<sup>28</sup>

**B. The Process Employed (47 C.F.R. § 51.319(d)(2)(ii)(A)(2)).**

The FCC's second instruction to the states is to "adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices."<sup>29</sup> Compared to the loop conversion process that Qwest uses today, the new batch hot cut process eliminates many of the repetitive dial tone testing steps, much of the telephonic contact between the two companies, and the need for duplicative entries into Qwest systems in order to update records. The new process also has new business rules associated with it on both Qwest's and the CLEC's part. Each is intended to make the work steps within the new process more efficient and workable for both parties.

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<sup>27</sup> See *TRO* ¶ 252 ("[W]e encourage incumbent LECs and competitors to use existing state commission collaboratives and change management processes to address OSS modifications that are necessary to support line splitting.").

<sup>28</sup> *TRO* ¶¶ 251-252.

<sup>29</sup> 47 C.F.R. § 51.319(d)(2)(ii)(A)(2). See also *TRO* ¶ 489.

## 1. Process flow.

**Exhibit 6** is a process diagram describing the recommended tasks for the new batch hot cut process. As illustrated in this diagram, a CLEC will perform pre-order functions including an initial batch coordination meeting with Qwest. CLEC must submit to Qwest a Local Service Request (“LSR”) with a Purchase Order Number (“PON”) and a three-letter unique identifier *e.g.*, (“BHC”) to designate it as a batch hot cut candidate in order to begin the batch conversion. Once a complete and accurate LSR is received, a service order will be generated resulting in a firm order confirmation (“FOC”) back to the CLEC. Once the service order is issued, a Qwest project manager, residing in the QCCC, will begin compiling the batch orders on a Central Office (“CO”) by CO basis.

Approximately two days prior to due date for the batch, a spreadsheet containing all loops in the batch will be forwarded to both the CLEC and the central office where the work will take place. This batch spreadsheet will contain order related information such as the CLEC Purchase Order Number (“PON”) with a three-letter unique identifier (“BHC”) describing it as a batch hot cut candidate; the Qwest order number; a Qwest project ID number; and CLEC contact information.

On the due date, the Central Office Technician (“COT”) will perform both the pre-wiring and lift and lay activity associated with the conversion order. Prior to performing the lift and lay, however, the COT will perform a dial tone test on both the Qwest switch port and the CLECs facility to verify the existence of dial tone on each facility, and that each facility has the correct number working on it. These tasks will occur before any conversion is conducted. If the COT does not have dial tone on the CLEC’s facility on the due date, the QCCC will contact the CLEC via a phone call asking the CLEC to

resolve the issue. If CLEC dial tone is present, the COT will monitor the line to ensure an idle state prior to disconnecting the Qwest circuit switch and then reconnecting it to the CLEC's switch. Upon completion of the orders identified on the batch spreadsheet, Qwest will notify the CLEC via email that it has completed the conversions. It remains the responsibility of the CLEC to ensure that each line is triggered for number porting upon completion of the order.

## **2. Batch Hot Cut Requirements.**

**Exhibit 7** contains a list of the draft requirements that both Qwest and the CLECs must follow in order to make the conversion process as seamless and efficient as possible. A summary of the most significant of these requirements is as follows:

### *a. General requirements*

The batch hot cut process is applicable to basic installations that will re-use existing facilities; this will avoid the need to dispatch a Qwest technician to the field to change outside plant facilities. Other installation options will remain available during normal business hours to provision other types of unbundled loops. For example, UNE-P loops working on Integrated Digital Loop Carrier systems, or line splitting arrangements will be converted during normal business hours using existing processes because a field dispatch may be required to complete the conversion.

### *b. Qwest-specific requirements*

Qwest will produce and distribute via e-mail a batch spreadsheet for the CLEC documenting all order activity within a given central office, and use this batch spreadsheet to communicate with the CLEC on order status and completion. Unlike the

QCCC's current process, to maximize efficiency Qwest will conduct pre-wire work on the due date, not two days earlier, to minimize the number of instances technicians must work on each order.

*c. CLEC-specific requirements*

The CLEC must provide both email and live contact information on the LSR when it is submitted. The CLEC must provide accurate end-user service address information. The CLEC dial tone must be on their designated CFA termination prior to the due date. The CLEC must make resources readily available to clear all loops identified on the batch spreadsheet in a timely manner between the hours of 3:00PM CST and 11:00PM CST. This will ensure that the CLEC and Qwest can promptly resolve any issues the COT may encounter (*i.e.*, bad CFA or no dial tone).

**C. The Capacity and Timeliness of the Batch Process (47 C.F.R. § 51.319(d)(2)(ii)(A)(3)).**

The FCC's third instruction to state commissions is to "evaluate whether the incumbent LEC is capable of migrating multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner . . . ."<sup>30</sup> This requires state commissions to make predictive judgments regarding the volumes of conversions the batch cut process must be able to handle and whether Qwest can continue to provision loops at an acceptable level of quality at those volumes.

The expected volume of conversions turns on five factors: (1) current volumes of stand-alone unbundled loop provisioning, (2) current volumes of new UNE-P orders, (3)

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<sup>30</sup> 47 C.F.R. § 51.319(d)(2)(ii)(A)(3). See also TRO ¶ 489.

the size of the embedded UNE-P base, (4) the fraction of that base and new UNE-P orders that will convert to stand-alone unbundled loops, and (5) the *Triennial Review Order's* schedule for transitioning the embedded UNE-P base to other arrangements. Qwest addresses each factor in turn. The volumes of UNE-P and UNE-L lines CLECs submit monthly are well established in Qwest's performance data. The only unknown is the percentage of UNE-P lines (new and existing) that will convert once switching is no longer available as a UNE.

The FCC set a transition schedule for moving the embedded base of UNE-P lines to unbundled loops. CLECs must submit 1/3 of their embedded UNE-P lines for conversion 13 months after the state commission decision; 1/3 of their UNE-P lines 20 months after the state commission decision; and the last 1/3 of their UNE-P lines 27 months after the state commission decision.<sup>31</sup> Assuming a July 2, 2004 decision from the state commission, that means 1/3 of the embedded base will convert between August 2005 and February 2006; 1/3 of the embedded base will convert between March 2006 and September 2006, and the remainder will convert before April 2007.<sup>32</sup> The FCC also stated that state commission decisions eliminating unbundled switching as a UNE will become effective on December 2, 2004.<sup>33</sup>

Thus, to calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state:

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<sup>31</sup> 47 C.F.R. §51.319(d)(4)(A).

<sup>32</sup> *TRO* ¶ 532.

<sup>33</sup> 47 C.F.R. §51.319(d)(4).

- December 2004 – July 2005: [Inward unbundled loop volume (growth) eligible for the batch hot cut process \* percent of UNE-P lines in markets where Qwest is challenging the impairment finding]
- August 2005 – April 2007: [Inward unbundled loop volume (growth) eligible for the batch hot cut process \* percent of UNE-P lines in markets where Qwest is challenging the impairment finding] + [Embedded UNE-P base amortized over 21 months \* percent of UNE-P lines in markets where Qwest is challenging the impairment finding]

These formulas will provide the expected volumes of unbundled loops that Qwest's must be prepared to provision in each state on a monthly basis.

**D. Batch Cut Rates (47 C.F.R. § 51.319(d)(2)(ii)(A)(4)).**

The FCC's last directive to each state commission is to "adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements," which should "reflect the efficiencies associated with batched migration . . . ." <sup>34</sup> The final rate will obviously depend on the precise procedure adopted in this forum.

As an initial matter, Qwest notes it is starting from a better position than many other incumbent LECs in this regard. The FCC found in the *Triennial Review Order* that currently hot cuts are "often priced at rates that prohibit facilities based competition for the mass market,"<sup>35</sup> citing ILEC non-recurring charges exceeding \$100 and as high as

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<sup>34</sup> 47 C.F.R. § 51.319(d)(2)(ii)(A)(4). See also TRO ¶ 489.

<sup>35</sup> TRO ¶ 465 (emphasis added).

\$185.<sup>36</sup> But Qwest's hot cut charges across its region are not nearly this high. In virtually every state Qwest's current non-recurring charges for a basic hot cut range between \$29.10 and \$65.00.<sup>37</sup>

The batch conversion process that Qwest proposes above will yield significant additional efficiencies and in most states the CLEC community can expect to experience a significantly reduced rate.

### ***III. CONCLUSION***

Qwest hereby presents a viable batch hot cut proposal that will allow CLECs to convert large volumes of DS0 lines to unbundled analog loops, while still ensuring that CLEC end-user customers have minimal service interruption, and minimal installation service problems. In most states, the process will also significantly reduce the non-recurring rate associated with provisioning an individual unbundled loop. Qwest has already demonstrated that the CLEC community can use its existing hot cut process to reach mass-market customers at a high level of quality. This simplified process should do nothing but improve an already strong process. Qwest asks the South Dakota Commission to approve its proposed process.

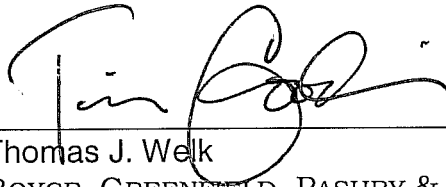
Dated: Wednesday, November 12, 2003

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<sup>36</sup> TRO ¶ 470.

<sup>37</sup> In two states, Idaho and Minnesota, the nonrecurring rates associated with hot cuts are substantially below this range. In these states, these costs are well below the cost of providing the service even with the new batch hot cut process. As such, it does not set forth these rates as an example.





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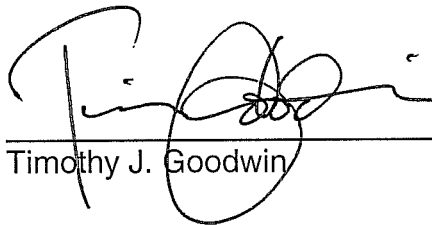
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**ATTORNEYS FOR QWEST CORPORATION**

***Certificate Of Service***

I, Timothy J. Goodwin, do hereby certify that I am an attorney with Qwest Services Corporation, and on Wednesday, November 12, 2003, a true and correct copy of the foregoing was served by email, if an email address was provided, or United States first class mail, postage prepaid, to counsel for all intervenors of record.



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Timothy J. Goodwin

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
 )  
Consolidated Application for Authority )  
to Provide In-Region, InterLATA Services )  
in Arizona )

**DECLARATION OF WILLIAM M. CAMPBELL**

**Checklist Item 4 of Section 271(c)(2)(B):  
Unbundled Loops**

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
<b>Qwest Communications</b>	)	<b>WC Docket No. _____</b>
<b>International Inc.</b>	)	
	)	
Consolidated Application for Authority	)	
to Provide In-Region, InterLATA Services	)	
in Arizona	)	

**DECLARATION OF WILLIAM M. CAMPBELL**

**Checklist Item 4 of Section 271(c)(2)(B):  
Unbundled Loops**

Pursuant to 47 C.F.R. § 1.16, William M. Campbell declares as follows:

1. My name is William M. Campbell. My business address is 1801 California Street, Denver, Colorado. I am Director, Product Marketing – Interconnection Services, at Qwest Corporation (“Qwest”). <sup>1/</sup> I am the Product Director responsible for Checklist Item 4 – Unbundled Loops. In that position, I have directed the Qwest Unbundled Loop Product Team developing products and processes for the Qwest Unbundled Loop products and have the responsibility to represent Qwest in formal Section 271 proceedings. As part of Qwest’s work to ensure its compliance with Section 271, I have participated extensively in the state

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<sup>1/</sup> A description of my professional experience and education is attached as Exhibit WMC-LOOP-1 to this Declaration.

proceedings in Arizona, Colorado, Nebraska, Oregon, Washington, and the Multi-state 271 workshops involving Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, and Wyoming. This includes directing testimony in South Dakota and Minnesota.

## I. EXECUTIVE SUMMARY

2. Qwest satisfies the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 (“1996 Act” or “Act”) and Federal Communications Commission (“Commission” or “FCC”) rules that relate to the provision of unbundled loops. Consistent with the Act and Commission precedent,<sup>2/</sup> Qwest has a concrete and specific legal obligation to provide competitors with nondiscriminatory access to unbundled loops under both its

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<sup>2/</sup> See *New York 271 Order*, 15 FCC Rcd at 3962-63 (¶ 20) (“[T]he Commission must consult with the relevant state commission to verify that the BOC has one or more state approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions (“SGAT”), and that either the agreement(s) or general statement satisfy the ‘competitive checklist.’”); see also *Texas 271 Order*, 15 FCC Rcd at 18360-61 (¶ 11) (illustrating use of an SGAT, rather than individually negotiated interconnection agreements, to test compliance with the checklist requirements). Once an SGAT has gone into effect pursuant to Section 252(f)(3)(B), every CLEC is entitled to adopt any of the services or terms of the agreement pursuant to Section 252(i). The Commission has held that the “pick and choose” rule of Section 252(i) applies to SGATs. See 14 FCC Rcd at 20984-85 (¶ 167).

Statement of Generally Available Terms and Conditions (“SGAT”) <sup>3/</sup> and state-approved interconnection agreements. <sup>4/</sup>

3. Qwest’s unbundled loop offerings comply with Commission requirements. <sup>5/</sup> Qwest makes available to CLECs all required types of unbundled loops, including analog/voice grade loops, digital subscriber line (“xDSL”) loops, and high-capacity loops. Qwest performs hot cuts for CLECs and, where technically feasible, provides CLECs with access to unbundled loops provisioned over integrated digital loop carrier (“IDLC”) technology. Qwest performs loop conditioning where necessary to allow CLECs to provide digital services. Qwest also provides CLECs with nondiscriminatory access to pre-order loop makeup

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<sup>3/</sup> Qwest’s Arizona SGAT is located at Attachment 5, Appendix B of this Application.

<sup>4/</sup> Appendix L contains state-approved interconnection agreements that Qwest has entered into with CLECs in Arizona as of August 1, 2003. The Arizona SGAT has been converted to a state-approved interconnection agreement (“SGAT-Based Interconnection Agreement”) as the result of New Edge Networks’ opt-in to the June 28, 2002, Arizona SGAT. Qwest relies on this agreement and the other interconnection agreements filed with the Arizona Commission, in addition to its SGAT, to establish checklist compliance. Unless otherwise noted, references to SGAT language and section numbers also are intended to refer to SGAT-Based Interconnection Agreements.

<sup>5/</sup> Qwest recognizes that in its Triennial UNE Review proceeding, the Commission modified its requirements with respect to unbundled loops. In the wake of the Commission’s decision, Qwest will continue to ensure that its unbundled loop policies and practices are consistent with applicable federal law.

information.<sup>6/</sup> Finally, Qwest makes available to CLECs unbundled access to dark fiber loops, to subloops, and to the high-frequency portion of the loop.<sup>7/</sup>

4. As of May 31, 2003, Qwest had in service 37,719 unbundled loops in Arizona. (These figures represent stand-alone loops only, not those provided as part of a UNE combination.) Specifically, Qwest had in service 30,253 unbundled voice-grade analog loops, 5,578 xDSL-capable loops, and 1,888 high-capacity loops. The volume of unbundled loops in service demonstrates that Qwest is provisioning loops to CLECs in Arizona in a nondiscriminatory fashion.<sup>8/</sup>

## **II. QWEST HAS COMPLIED WITH THE COMMISSION'S UNBUNDLED LOOP REQUIREMENTS**

5. Section 271(c)(2)(B)(iv) of the 1996 Act requires Bell Operating Companies ("BOCs") wishing to offer in-region interLATA service to provide "local loop transmission from the central office to the customer's premises, unbundled

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<sup>6/</sup> Qwest's loop qualification tools, policies, and practices are discussed in the Declaration of Lynn M V Notarianni and Loretta A. Huff on Operations Support Systems ("OSS").

<sup>7/</sup> These products are discussed in separate Declarations of Karen A. Stewart on, respectively, Dark Fiber, Network Interface Devices and Subloops, and Line Sharing and Line Splitting.

<sup>8/</sup> Exhibit WMC-LOOP-2 shows the growth in the number of loops in service in Arizona. Qwest's commercial performance for unbundled loops is described in the Commercial Performance Declaration of Dean Buhler.



from local switching or other services.”<sup>9/</sup> In the *UNE Remand Order*, the Commission defined the local loop as:

[A] transmission facility between a distribution frame (or its equivalent) in the incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes . . . dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning.<sup>10/</sup>

6. Qwest complies with the unbundled loop requirements of the 1996 Act and the Commission’s rules and orders. Qwest has a concrete and specific legal obligation to provide CLECs with access to unbundled loops under its SGAT and state-approved interconnection agreements. Moreover, Qwest provides unbundled loops to CLECs in a nondiscriminatory manner.

7. The loop provisions in Qwest’s SGAT have evolved not only on a state-by-state basis, but across Qwest’s region through workshops and hearings that were part of collaborative processes, conducted on an open basis with active participation by CLECs. Throughout these processes, Qwest attempted to reach consensus with CLECs on SGAT language. When that was not possible, the

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<sup>9/</sup> 47 U.S.C. § 271(c)(2)(b)(IV).

<sup>10/</sup> *UNE Remand Order*, 15 FCC Rcd at 3772-78 (¶¶ 166-79); see also 47 C.F.R. § 51.319(a)(1).

“impasse” issue went to the state regulatory authority for resolution. As a result, Qwest’s SGAT reflects a great deal of CLEC input.

8. In addition to the SGAT, Qwest further defines the specifications, interfaces, and parameters associated with unbundled loops in Technical Reference Publication Nos. 77384 (unbundled loops), 77375 (DS1), 77324 (DS3), and 77346 (OCn), all of which are available on Qwest’s web site.<sup>11/</sup> Qwest’s Wholesale Product Catalog (“PCAT”), also available on Qwest’s web site, provides CLECs with additional product information.<sup>12/</sup>

**A. Qwest Offers All Required Categories of Unbundled Loops and Related Services**

9. Qwest offers CLECs the complete range of unbundled loops. Specifically, Qwest offers (1) 2-wire and 4-wire voice-grade/analog loops; (2) four types of loops that generally can be grouped together in the category of “xDSL capable” loops; and (3) four types of high-capacity loops.<sup>13/</sup>

**1. Voice-Grade/Analog Loops**

10. *Basic 2-Wire/4-Wire Analog Loop.* The basic 2-wire/4-wire analog loop is available as a 2-wire or 4-wire voice grade, point-to-point configuration suitable for local exchange type services. This service is a

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<sup>11/</sup> Technical publications can be found at <http://www.qwest.com/wholesale/notices/techPub.html>.

<sup>12/</sup> The PCAT can be found at <http://www.qwest.com/wholesale/pcat/index.html>.

<sup>13/</sup> See SGAT §§ 9.2.2.2-9.2.2.3, 9.2.6.1.

transmission path that provides a connection from the Qwest serving central office distribution frame or equivalent to the demarcation point at the end user's location. The actual loop facilities may utilize various technologies or combinations of technologies.<sup>14/</sup>

## 2. xDSL-Capable Loops

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

12. *2-Wire/4-Wire Non-Loaded Loop.* The 2-wire/4-wire non-loaded loop is a metallic facility that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to the end user's demarcation point. It is a metallic, wire cable pair with no load coils, and, depending on the Network Channel ("NC") and Network Channel Interface ("NCI") codes specified by the CLEC, with, potentially, some limited lengths of bridged tap. Qwest will condition loops at the CLEC's request. The loop conditioning process is described in detail below.

13. *ADSL Compatible Loop.* The ADSL compatible loop is an unbundled 2-wire non-loaded metallic facility that establishes a transmission path between a Qwest serving central office distribution frame and the demarcation

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<sup>14/</sup> SGAT § 9.2.2.2.

point located at the end user's designated premises. This loop will meet the ADSL performance requirements specified in Qwest's Technical Publication No. 77384. If necessary, Qwest will condition the loop at the CLEC's request to meet ADSL technical parameters.

14. *Basic Rate ISDN ("BRI") Capable Loop.* The Basic Rate ISDN capable loop is a Qwest facility with a 2-wire interface that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to an end user's demarcation point. This loop transports bi-directional, 2-wire signals with a nominal transmission rate of 160 KBPS, meets the performance requirements specified in Qwest's Technical Publication No. 77384, and permits access to 144 KBPS channelized payload bandwidth for transport of services.

15. *xDSL-I Capable Loop.* The xDSL-I capable loop is a 2-wire facility that provides a transmission path from the Qwest serving central office distribution frame, or equivalent, to an end user demarcation point. This loop transports bi-directional, 2-wire signals with a standard transmission rate of 160 KBPS, meets the performance requirements specified in standard technical publications, and permits access to a nominal 144 KBPS unchannelized payload bandwidth for transport of services.

16. Qwest uses the terms "capable" and "compatible" to make it clear that while Qwest provides the loops themselves, CLECs provide the service over those loops. Specifically, "capable" means that Qwest assures that the loop

provisioned complies with industry technical standards.<sup>15/</sup> The term “compatible” means that Qwest assures that the loop complies with the ordered NC/NCI codes, but makes no assumptions as to the capabilities of the CLEC’s central office equipment or customer premises equipment (“CPE”).<sup>16/</sup> Qwest does not restrict the CLEC’s use of the loop except as expressly permitted or required by existing rules.<sup>17/</sup>

17. *Extension Technology.* Qwest provides extension technology, if needed, for Basic Rate ISDN (“BRI”) capable loops and xDSL-I capable loops.<sup>18/</sup> Extension technology takes into account, for example, additional regenerator placement, central office powering, and mid-span repeaters, if required, as well as BRITE cards in order to provision the Basic Rate ISDN capable or xDSL-I capable loop. Extension technology may be required to bring the circuit to the technical specifications necessary to accommodate the requested service. Qwest will add extension technology if the circuit design requires it or if requested by a CLEC to meet its specific needs. If the circuit design requires extension technology to meet

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<sup>15/</sup> SGAT § 9.2.2.1.1. For example, ANSI Standards T1.601 and T1.102 specify the ISDN and DS1 interfaces. There are test sets that indicate whether the loop is performing to the established standards. Qwest will build the capable loop using whatever equipment it takes, such as subscriber loop carrier or range extenders, to ensure that the loop meets the standards.

<sup>16/</sup> SGAT § 9.2.2.1.2.

<sup>17/</sup> SGAT § 9.1.5.

<sup>18/</sup> SGAT § 9.2.2.5.

the technical standards, then Qwest will add it at no charge.<sup>19/</sup> However, if a CLEC requests the addition of extension technology even though the loop conforms to the technical standards, then the inclusion of extension technology will result in a monthly recurring charge to the CLEC.

### 3. High-Capacity Loops

18. Qwest offers four types of high-capacity loops under the SGAT: (1) DS1-capable loops, (2) DS3-capable loops, (3) OCn loops, and (4) dark fiber loops.<sup>20/</sup>

19. *DS1-Capable Loops.* The DS1-capable loop is a transmission path between the Qwest serving central office distribution frame, or equivalent, and the demarcation point at the end user location. The DS1-capable loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbps and meets the design requirements specified in standard industry technical publications.<sup>21/</sup>

20. *DS3-Capable Loops.* The DS3-capable loop is a transmission path between a Qwest serving central office distribution frame, or equivalent, and a demarcation point at an end user location. The DS3-capable loop transports bi-

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<sup>19/</sup> *Id.*

<sup>20/</sup> SGAT § 9.2.1.

<sup>21/</sup> SGAT § 9.2.2.6.1.

directional DS3 signals with a nominal transmission rate of 44.736 Mbps that meets the design requirements specified in standard industry technical publications. <sup>22/</sup>

21. For DS1- or DS3-capable loops, Qwest will provide the necessary electronics at both ends, including any intermediate repeaters. In addition, the CLEC will have access to these terminations for testing purposes. <sup>23/</sup> Additionally, Qwest permits CLECs to add multiplexing to both DS1 and DS3-capable loops. <sup>24/</sup>

22. *OCn Capable Loops.* Qwest also stands ready to provide access to higher capacity loops, including OC3, OC12, OC48, and OC192 loops, where facilities are available. <sup>25/</sup>

23. *Dark Fiber Loops.* Qwest's dark fiber offerings are in section 9.7 of the SGAT and are discussed in the Dark Fiber Declaration of Karen A. Stewart.

**B. Qwest Complies With the Commission's Spectrum Management Rules**

24. Spectrum management is the administration of loop plant to facilitate spectrum compatibility for services and technologies that use pairs in the same cable. Spectrum compatibility, in general, refers to the ability of loop

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<sup>22/</sup> SGAT § 9.2.2.6.2.

<sup>23/</sup> SGAT § 9.2.2.6.

<sup>24/</sup> SGAT § 9.2.2.10.

<sup>25/</sup> SGAT § 9.2.2.3.1.

technology to operate and reside in the same or an adjacent binder group without causing an unacceptable degradation of service from the end user's perspective.<sup>26/</sup>

25. In the Arizona proceedings, Qwest's spectrum management policies generated an impasse issue. Qwest modified its Arizona SGAT to reflect the outcome of this issue in the ACC's final order on loops.<sup>27/</sup> Qwest's spectrum policies therefore comply with the ACC's final order on loops. Qwest is also in compliance with current federal requirements for spectrum management. As the Commission continues to develop its spectrum management policies, Qwest will revise its spectrum policies as necessary to remain consistent with them.

**C. Qwest Policies and Procedures with Respect to Unbundled Loops Demonstrate Qwest's Compliance with Checklist Item 4**

26. The following sections describe the steps through which a CLEC obtains unbundled loops from Qwest, including ordering, provisioning, and maintenance and repair. Qwest has well-developed processes in place for provisioning, maintaining, and repairing unbundled loops for CLECs.

**1. Ordering Process**

27. *The Local Service Request Form.* CLECs order unbundled loops by completing a local service request ("LSR") and submitting it over one of Qwest's

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<sup>26/</sup> *Line Sharing Order*, 14 FCC Rcd at 20988-89 (¶178).

<sup>27/</sup> *ACC Loops Final Order*, ¶¶ 73-86.



electronic or manual interfaces.<sup>28/</sup> For each unbundled loop ordered, CLECs must specify the loop type (including the NC/NCI codes), provide the Connecting Facility Assignment (which identifies where the loop should be wired in the central office), specify the desired installation option, and note the desired due date.

28. *Desired Due Dates and Standard Installation Intervals.* CLECs may calculate a due date based on the minimum number of days provided in the SGAT as Qwest's standard installation interval for the specified loop type. A CLEC may also specify a later date (*i.e.*, allow a longer installation interval than the standard interval). The following chart is a summary of Qwest's loop installation intervals in Arizona<sup>29/</sup>:

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<sup>28/</sup> SGAT §§ 9.2.4.1, 9.2.4.4.

<sup>29/</sup> Qwest's loop installation intervals are consistent with the ACC's final order. *ACC Loops Final Order*, ¶¶ 27-34.

Loop Type		1-8 loops	9-16 loops	17-24 loops	25+ loops
Analog/Voice Grade Loops	Standard Analog Loops	5 days	6 days	7 days	ICB
	Quick Loop Analog-Conversion <sup>30/</sup>	3 days	3 days	3 days	ICB
xDSL-Capable Loops	No Conditioning Required	5 days	6 days	7 days	ICB
	Conditioning Required	15 days	ICB	ICB	ICB
High-Capacity Loops	DS1-Capable	5 days	7 days	9 days	ICB
	DS3-Capable	7 days (1-3 loops)	ICB (4-16 loops)	ICB	ICB
	Fiber/OCn/Other High-Capacity	ICB	ICB	ICB	ICB

29. During the state proceedings, Qwest made a number of CLEC-friendly modifications to the loop installation intervals. For instance, Qwest reduced the interval for xDSL-I loops from 10 days to align with the intervals of 5, 6, and 7 days for xDSL- and ISDN-capable loops. Qwest also created a shorter installation interval for analog loop conversions, called Quick Loop. Quick Loop offers a three-day installation interval for conversion of existing service to a 2-wire analog loop ordered with the basic installation option. <sup>31/</sup> Since October 22, 2001,

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<sup>30/</sup> Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated installation or cooperative testing. Quick Loop is not available for loops served over IDLC technology. As discussed herein, Quick Loop is also offered for loops with number portability. The installation intervals for Quick Loop with LNP are 3 days for 1 to 24 loops and ICB for 25 or more loops.

<sup>31/</sup> All Quick Loop performance results are reflected in the analog loop performance indicators.

this option has also been available for analog loops with number portability. Few CLECs have utilized the Quick Loop option to date. CLECs do not need a contract amendment to utilize these shortened intervals.

30. *Process for Requesting Loop Conditioning.* Loop conditioning (or line conditioning) is the term used to describe the process of removing load coils and excess bridged tap from existing copper loops that would negatively affect the transmission of a digital signal. In many cases, the data portion of the loop is diminished if there are load coils or certain amounts of bridged tap on the loop. To allow CLECs full use of the loop's capability, Qwest provides CLECs with loop conditioning for xDSL-capable services upon request, consistent with Commission rules.<sup>32/</sup> The ability to condition loops is not, however, unlimited. The conditioning requirement is subject to a technical feasibility standard the Commission has delineated.<sup>33/</sup>

31. Although the Commission does not require that Qwest condition loops proactively, in 2000 Qwest voluntarily established a bulk de-loading project to remove load coils from copper loops that are under 18,000 feet in length in selected wire centers and routes in which CLECs and Qwest were providing DSL services.

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<sup>32/</sup> See 47 C.F.R. § 51.319(a)(3)(i) & (h)(5) (ILECs must “remov[e] from the loop . . . any device that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service”); see also SGAT §§ 9.2.2.4 and 9.2.4.9.

<sup>33/</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15691-92 (¶ 381).

The CLECs assisted Qwest in prioritizing the project schedule for this work. The de-loading project reduced the occurrence of short copper loops that needed to be conditioned on a one-by-one basis. Qwest provided the CLECs with a web-based tool that identified the wire centers and routes included in the project as well as an expected completion date. Once Qwest de-loaded a route and updated the databases, the route was posted on the web as a completed route. Two hundred ninety-eight wire centers were included in this project regionwide.<sup>34/</sup>

32. The bulk de-loading project was completed in March 2001 at no cost to the CLECs. As the individual jobs were completed, the conditioned pair status was updated in the loop qualification databases, increasing the available inventory of digital-capable loops. This inventory is available, as with all loops, on a first-come, first-served basis.

33. Qwest's loop qualification tools provide CLECs with information to determine whether loop conditioning will be required.<sup>35/</sup> When submitting an unbundled loop order, CLECs may indicate that they approve loop conditioning, where needed, by entering a "Y" (for yes) in the space provided for "special

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<sup>34/</sup> Qwest initiated a second bulk de-loading program in 2002. Thus Qwest continues to take voluntary steps to minimize the need for line-at-a-time conditioning.

<sup>35/</sup> These tools are described in the pre-order section of the OSS Declaration of Lynn M V Notarianni and Loretta A. Huff.

construction authorization” on the LSR form.<sup>36/</sup> This entry on the LSR provides Qwest with approval to complete any required conditioning. If the LSR form contains the indicator for loop conditioning but conditioning is not required, then the due date can be consistent with the installation interval based on loop type and the number of non-conditioned loops ordered, as described above.<sup>37/</sup>

34. If the CLEC fails to indicate on the LSR form that loop conditioning is approved, but Qwest determines that conditioning is required, then Qwest will inform the CLEC of the need for conditioning. The CLEC then has a four-hour window to provide positive authorization via a supplement to the LSR. If the CLEC does not respond within four hours, Qwest cancels the order.

35. *Firm Order Confirmation.* Qwest will provide the CLECs with confirmation of the receipt of their LSR and indicate the due date for the service installation via a Firm Order Confirmation (“FOC”). One of Qwest’s performance measures, PO-5, monitors the timeliness with which Qwest returns FOCs to CLECs in response to LSRs. PO-5 requires Qwest to provide the CLEC with a FOC for unbundled analog loops within 24 hours of receiving a valid and complete LSR. For

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<sup>36/</sup> SGAT § 9.2.2.4.

<sup>37/</sup> SGAT § 9.2.4.9.1.

xDSL- and DS1-capable loops, the PIDs require Qwest to return the FOC within 72 hours.<sup>38/</sup>

## 2. Provisioning Process

36. *Facility Assignment.* Although Qwest recommends that CLECs pre-qualify loops prior to placing an order, pre-qualification is not mandatory. Once a valid service order has been received by Qwest, all retail and wholesale orders follow the same facility assignment process.<sup>39/</sup> The mechanized assignment process searches for compatible facilities and will assign the first compatible facilities that can support the requested loop type. If compatible facilities are not available for DS0-level facilities, Qwest uses a standard 11-step facility assignment process to try to identify compatible facilities. This process includes, but is not limited to, looking for a line and station transfer (“LST”) or recovering defective pairs. The 11-step facility assignment process is presented in Exhibit WMC-LOOP-6.

37. *Provisioning Process.* When Qwest provisions an unbundled loop, a central office technician must be dispatched to run jumpers connecting the unbundled loop to the CLEC’s connecting facility assignment (“CFA”) as specified on

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<sup>38/</sup> As a result of a trial conducted during the Colorado workshops, Qwest and CLECs agreed to support revising the FOC interval in the PO-5 PID for xDSL and DS1 loops from 24 to 72 hours. The ROC TAG approved that modification, and Qwest notified CLECs of the change through the Change Management Process. Qwest’s performance under PO-5 is discussed in the Commercial Performance Declaration of Dean Buhler.

<sup>39/</sup> SGAT § 9.1.2.1.1.

the LSR by the CLEC. Additionally, a field technician may need to be dispatched to perform cross connect work at the feeder distribution interface (“FDI”), pedestal, or network interface device (“NID”). Exhibits WMC-LOOP-7 and WMC-LOOP-8 delineate the tasks Qwest personnel perform to install an unbundled loop.

38. *Installation of Loops Provisioned with IDLC Technology.* The Commission requires Qwest to unbundle loops that are provisioned over integrated digital loop carrier (“IDLC”) technology. However, the Commission acknowledged in the *UNE Remand Order* that unbundling loops provisioned over IDLC is difficult and may even be impossible in some circumstances.<sup>40/</sup> Qwest is committed to providing CLECs access to unbundled loops, even when IDLC technology is deployed, whenever technically feasible.<sup>41/</sup> Qwest has continuously provided loops on this type of facility since early 1999, long before Qwest offered an IDSL solution to Qwest’s retail end users in April 2000. Throughout 2000 and 2001, Qwest worked through the difficulties inherent with the provisioning of loops for DSL generally, and loops provisioned with IDLC specifically. IDLC technology was the subject of discussion in state 271 workshops, and numerous CLEC meetings focused on identifying provisioning alternatives. Qwest worked cooperatively with CLECs to clear loop orders that were held due to IDLC provisioning issues by identifying viable engineering solutions. Further, Qwest established a specialized team within

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<sup>40/</sup> *UNE Remand Order*, 15 FCC Rcd at 3788-89 (¶ 204, n.390).

<sup>41/</sup> SGAT § 9.2.2.2.1.

the Qwest CLEC Coordination Center (which is described in paragraph 48 of this Declaration) to focus specifically on supporting CLEC unbundled loop orders over IDLC. Qwest developed and utilizes an engineering decision tree, depicted in Exhibit WMC-LOOP-5, to determine the best method to provision unbundled analog, ISDN, and xDSL-I loops served by IDLC.

39. To assist the CLEC considering future market opportunities, Qwest provides access to its ICONN database.<sup>42/</sup> The ICONN database, available on Qwest's external website, provides information at a wire center level. Information includes number of total lines available, lines in service, and lines served by universal or integrated DLC.

40. Qwest also makes available wire center makeup information in the Wire Center Raw Loop Data Flat File.<sup>43/</sup> This flat file is comma delimited and downloadable to an Excel type spreadsheet that allows the CLEC to manipulate and analyze the data. CLECs may also use Qwest's electronic interfaces, IMA-GUI and IMA-EDI, to obtain individual loop makeup information.<sup>44/</sup>

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<sup>42/</sup> The ICONN database is located at <http://www.qwest.com/iconn>.

<sup>43/</sup> CLECs must obtain a digital certificate in order to use this tool. Qwest's OSS web site, <http://www.qwest.com/wholesale/systems>, includes instructions for obtaining a digital certificate and for using the Wire Center Raw Loop Data Flat File.

<sup>44/</sup> These tools are described in the OSS Declaration of Lynn M V Notarianni and Loretta A. Huff.



41. *Process for Conditioning Loops.* Qwest provides for loop conditioning to ensure that CLECs can obtain a copper loop without load coils and excessive bridged tap. Conditioning requires an engineering job to be issued and a construction technician is dispatched to the field to cut away from the load coil cable stub and re-splice the loop together. For efficiency, CLECs may request both line conditioning and installation on the same LSR.

42. Two loop conditioning issues reached impasse in the Arizona Section 271 proceedings. The first involved a question of whether Qwest must reimburse a CLEC for conditioning costs if the CLEC loses the customer within a certain period of time, as the CLECs presumed that such a loss would be due to Qwest's actions. The ACC ordered a change to SGAT section 9.2.2.4.1, providing for a credit of conditioning charges if Qwest does not meet a due date for line conditioning or does not perform conditioning in accordance with the standards applicable under the SGAT.<sup>45/</sup>

43. The second loop conditioning issue involved a question of whether Qwest may charge CLECs for conditioning lines of less than 18,000 feet in length. The ACC affirmed that the *UNE Remand Order* permitted such charges and required no change to the SGAT language on this issue.<sup>46/</sup>

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<sup>45/</sup> *ACC Loops Final Order*, ¶¶ 70-72.

<sup>46/</sup> *Id.*, ¶¶ 66-67.

44. *Installation Options.* Qwest's SGAT offers CLECs five installation options, all of which are available for both the conversion of existing customer lines to unbundled loops and the installation of new unbundled loops.<sup>47/</sup> These options are: (1) basic installation; (2) basic installation with performance testing; (3) basic installation with cooperative testing; (4) coordinated installation; and (5) coordinated installation with cooperative testing. In addition, Qwest offers an enhancement to the standard installation options called project coordinated installation, which is available for high-volume orders and other special orders.<sup>48/</sup> Regardless of the installation option chosen, Qwest notifies the CLEC when the installation work is complete. Qwest also coordinates the activities associated with installation of unbundled loops and number portability, as depicted in Exhibit WMC-LOOP-4. Qwest's installation options are described in further detail below.

45. *Basic Installation Options.* CLECs may select from among three options for basic (*i.e.*, non-coordinated) installation. First, the Qwest central office technician and field technician execute basic performance tests and perform the installation.<sup>49/</sup> If a CLEC selects basic installation with performance testing, Qwest technicians conduct performance tests and provide the results to the CLEC

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<sup>47/</sup> SGAT §§ 9.2.2.9.1 - 9.2.2.9.5.

<sup>48/</sup> SGAT § 9.2.2.9.7.

<sup>49/</sup> SGAT § 9.2.2.9.1.2.

after the tests are concluded.<sup>50/</sup> Qwest has implemented a process to e-mail the test results to CLECs within two business days so that CLECs have a written record of the tests Qwest performs.<sup>51/</sup> For the basic installation with cooperative testing option, after the Qwest technicians conduct their performance tests, they contact the CLEC with the results, and the CLEC performs its own loop back acceptance test. The CLEC then accepts the loop, and the parties exchange demarcation information.<sup>52/</sup> If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the non-recurring charge for the installation option.<sup>53/</sup>

46. *Coordinated Installation Options.* Coordinated installation and testing are often needed by the CLEC in order to have a seamless installation for the end-user customer. The coordinated installation options allow the CLEC to designate a specific appointment time on the date when Qwest will begin the installation of an unbundled loop. The CLEC may request installation outside the standard business hours of 8:00 a.m. to 5:00 p.m. on business days, but additional charges apply. CLECs most often request a coordinated installation to coordinate work between Qwest and the CLEC when the service is associated with an existing

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<sup>50/</sup> SGAT §§ 9.2.2.9.2.1-9.2.2.9.1.3.

<sup>51/</sup> SGAT § 9.2.2.9.3.2.

<sup>52/</sup> SGAT § 9.2.2.9.5.1.

<sup>53/</sup> SGAT § 9.2.2.9.5.3.

after the tests are concluded. <sup>50/</sup> Qwest has implemented a process to e-mail the test results to CLECs within two business days so that CLECs have a written record of the tests Qwest performs. <sup>51/</sup> For the basic installation with cooperative testing option, after the Qwest technicians conduct their performance tests, they contact the CLEC with the results, and the CLEC performs its own loop back acceptance test. The CLEC then accepts the loop, and the parties exchange demarcation information. <sup>52/</sup> If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the non-recurring charge for the installation option. <sup>53/</sup>

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<sup>50/</sup> SGAT §§ 9.2.2.9.2.1-9.2.2.9.1.3.

<sup>51/</sup> SGAT § 9.2.2.9.3.2.

<sup>52/</sup> SGAT § 9.2.2.9.5.1.

<sup>53/</sup> SGAT § 9.2.2.9.5.3.

working line, although coordinated installation is also available for new customer lines.<sup>54/</sup> Coordinated installation enables the CLEC and its customer to plan ahead for minimal service interruption.

47. Qwest has established a control center, the Qwest CLEC Coordination Center (“QCCC”), to coordinate all loop installations. Qwest created the QCCC to improve the level of service on hot cuts. After observing the best practices of other ILECs and customizing for Qwest use, Qwest invited the CLEC community to review and suggest modifications to the QCCC’s business processes.<sup>55/</sup> The QCCC continues to improve performance through focused operational analysis, continued CLEC feedback, and proposed Change Request (“CR”) activity.<sup>56/</sup> Approximately 100 Qwest employees work at the center, all having completed unique and focused training. After the establishment of the

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<sup>54/</sup> Exhibit WMC-LOOP-7 is the process flow for coordinated installation of new loops, which includes a description of the tasks performed for these types of installations. Exhibit WMC-LOOP-8 is the process flow for the coordinated installation of an existing customer, commonly called a “hot cut.” Page two of the Exhibit defines the tasks, and page three is a sample of the data collected by Qwest implementers to track the coordinated installation.

<sup>55/</sup> Qwest invited the CLEC community to a forum dedicated to reviewing the new hot cut procedures in the QCCC. The May 2001 session was a constructive two-way dialogue modifying and clarifying the resulting processes for the QCCC operation.

<sup>56/</sup> CR# 5548229 is an example of a CLEC-submitted CR. This CR, accepted and implemented by Qwest, allows CLECs to verbally change Connecting Facility Assignment (“CFA”) on an order to resolve CLECs’ CFA assignment issues without renegotiating a new due date. CR# 5548229 can be found on Qwest’s web site, at <http://www.qwest.com/cmp/changerequest.html>.

QCCC in March 2001, Qwest's performance for providing coordinated installations improved significantly, as Exhibit WMC-LOOP-10 shows. In April 2002, the QCCC assumed all control responsibility for installing unbundled loops.

48. On the order due date at the appointment time specified by the CLEC, a QCCC coordinator coordinates activities between the CLEC and Qwest. A call is placed to the CLEC to determine if the CLEC is ready for the service to be transferred. If the CLEC is ready, Qwest central office and field work is performed. If the CLEC indicates that it is not ready, Qwest will wait up to 30 minutes from the appointment time. If the CLEC is still not ready, then a new appointment (date and time) is scheduled. If Qwest misses the appointment time by 30 minutes or fails to perform cooperative testing, due to Qwest's fault, Qwest will waive the non-recurring installation charge. If Qwest fails to perform testing, Qwest will reschedule the test at no charge to the CLEC if the CLEC still wishes to perform cooperative testing.<sup>57/</sup>

49. The first coordinated installation option is coordinated installation without cooperative testing. On the due date, at the CLEC-designated appointment time, the QCCC coordinator contacts the CLEC to ensure that they are ready for the installation. The Qwest technicians complete the installation and

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<sup>57/</sup> SGAT §§ 9.2.2.9.3, 9.2.2.9.4.

work with the Qwest implementor/tester to complete the required performance tests. The CLEC is verbally advised that the installation is complete.<sup>58/</sup>

50. The second option is coordinated installation with cooperative testing. This option permits the CLEC to request an appointment time as well as joint testing with Qwest. When a CLEC requests a coordinated installation with cooperative testing, Qwest will perform testing with the CLEC to ensure connectivity between a CLEC's collocated equipment and its network demarcation point.<sup>59/</sup> Cooperative testing is performed after the Qwest installation and testing. The cooperative test is requested by the CLEC, and Qwest will assist in these tests at the CLEC direction. As with basic installation with cooperative testing, Qwest provides CLECs with an option to receive the Qwest test results via e-mail.

51. Qwest also offers project coordinated installation. This highly synchronized form of coordinated installation permits the CLEC to obtain a coordinated installation for unbundled loops with or without number portability where the CLEC orders unbundled DS1-capable loops, DS3-capable loops, or 25 or more DS0 unbundled loops. Because of the increased collaboration between Qwest and the CLEC with a project coordinated installation, Qwest and the CLEC must negotiate the date and time for the installation in advance. Project coordinated

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<sup>58/</sup> SGAT §§ 9.2.2.9.4.1-9.2.2.9.4.2.

<sup>59/</sup> SGAT § 9.2.2.9.3.

installation was negotiated during the state workshop processes and can be added to any CLEC interconnection agreement in Arizona. <sup>60/</sup>

52. To perform a coordinated installation, both companies must be ready at the same time on the scheduled due date. The activities that occur on the due date are critical to the success of an “on time” installation. In order for a coordinated installation to be considered on time, Qwest must perform the following due date activities: contact the CLEC prior to starting the installation; complete the Qwest physical work within a specified time period; and call the CLEC when the job is completed.

53. When coordinated installations involve existing customers, they are often referred to as “hot cuts.” A hot cut involves a “lift and lay” procedure in the central office: a Qwest technician removes the customer’s line from a Qwest switch and attaches it to a CLEC switch. At the QCCC, Qwest employs “hot cut coordinators” who review hot cut orders for accuracy and are responsible for events on the hot cut due date, including final verification of the order, calls to the central office and the CLEC, the lift and lay, dial-tone verification, and notification of completion. Qwest’s commercial performance with respect to hot cuts has been excellent and is discussed in the Commercial Performance Declaration of Dean Buhler.

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<sup>60/</sup> SGAT § 9.2.2.9.7.



54. *Installation of Loops If No Compatible Facilities Exist.* Qwest's policies with respect to the construction of UNEs in Arizona are fully consistent with the ACC's final order on unbundled loops.<sup>61/</sup> If a CLEC orders an unbundled loop and compatible facilities are available, Qwest will perform incremental facility work (*i.e.*, conditioning, placing a drop, adding a network interface device, adding a card to existing equipment in the central office or remote locations, adding central office tie pairs, or adding field jumper cross-connects) if necessary to complete the order. If the CLEC requests an unbundled loop and compatible facilities are not available, the following process takes place:<sup>62/</sup>

- If an engineering job is pending that satisfies the request, Qwest will accept the LSR and inform the CLEC of the ready-for-service date.
- If the LSR is requesting a loop to provide an end user with primary voice grade service that would fall under Qwest's Provider of Last Resort ("POLR") or Eligible Telecommunications Carrier ("ETC") obligation, Qwest will accept the order and build the new facility.
- If the request is for the unbundling of a loop supported by IDLC technology, Qwest will accept the LSR and process it according to the process described above for IDLC loops.
- If the LSR does not fall into one of the above categories, Qwest holds the order for 30 business days and continues to attempt to assign compatible facilities.<sup>63/</sup> If a facility becomes available during the 30 business day period, the order will be released and installed for the retail or wholesale order. The availability of

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<sup>61/</sup> ACC Loops Final Order, ¶¶ 56-62.

<sup>62/</sup> SGAT §§ 9.1.2.1.3, 9.1.2.1.3.1, 9.1.2.1.3.2.

<sup>63/</sup> SGAT § 9.2.2.16.

facilities is on a first-come, first-served basis. The CLEC must approve the activity prior to installation of the CLEC order. If after 30 business days compatible facilities still are not available, Qwest will reject the order and inform the CLEC that no compatible facilities exist. <sup>64/</sup> At any time, the CLEC has the option to request the facilities according to the construction process outlined in the SGAT. <sup>65/</sup>

55. In a petition for enforcement filed in WC Docket No. 02-314, CLECs recently raised concerns about Qwest's construction policies as they apply to DS1 loops. <sup>66/</sup> CLECs have raised the same concerns in Arizona and other states in Qwest's territory. In response, Qwest has agreed to provision DS1 loops to CLECs where existing DS0 facilities can be used to construct new DS1 facilities. This policy will remain in effect until rates for the construction of DS1 loops from existing DS0 facilities can be developed. Any remaining CLEC concerns relating to DS1 loops will be addressed in separate proceedings at the Commission and in the states.

### **3. Maintenance and Repair Process**

56. Consistent with Commission requirements, <sup>67/</sup> Qwest maintains unbundled loops utilizing a defined maintenance and repair flow. <sup>68/</sup> A CLEC can

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<sup>64/</sup> After 30 business days the CLEC may submit a second order, and Qwest will continue to attempt to assign compatible facilities for another 30-day period.

<sup>65/</sup> SGAT § 9.19. In addition, Qwest provides notification of major facility builds through the ICONN database. SGAT § 9.1.2.4.

<sup>66/</sup> *Petition for Enforcement Pursuant to Section 271(d)(6) of the Act*, WC Docket No. 02-314 (filed July 29, 2003).

report repair problems by issuing repair tickets or by calling Qwest's repair center. Qwest creates a trouble ticket, which is processed using the same systems that are used to process trouble tickets for Qwest retail services. The trouble ticket is passed to the appropriate groups to analyze, test, and repair any Qwest problems that are identified. The repair technician closes the ticket when the CLEC is notified that the trouble is resolved. Qwest will also advise the CLEC if no trouble is found or if the problem is not in the Qwest network.

57. Exhibit WMC-LOOP-9 is a flow chart that delineates the tasks Qwest personnel perform to maintain unbundled loops. This Exhibit also includes a matrix that describes each of the work tasks identified in the flow chart.

58. Qwest charges CLECs for trouble isolation only if the trouble is isolated to the CLEC side of the Loop Demarcation Point or as otherwise provided for in the CLEC's contract.<sup>69/</sup>

59. *Commercial Volumes.* As of May 31, 2003, Qwest had in service 37,719 unbundled loops for 14 CLECs in Arizona. (These figures represent stand-alone loops only, not those provided as part of a UNE combination.) Specifically, Qwest had in service 30,253 unbundled voice-grade analog loops, 5,578 xDSL-capable loops, and 1,888 high-capacity loops. Qwest's performance in provisioning

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<sup>67/</sup> See, e.g., *Second Louisiana 271 Order*, 13 FCC Rcd at 20692 (¶ 145).

<sup>68/</sup> SGAT § 9.2.5.

<sup>69/</sup> SGAT §§ 9.2.5.1-9.2.5.3.

and repairing these loops has been outstanding and is described in the Commercial Performance Declaration of Dean Buhler.

### **III. THE ARIZONA COMMISSION HAS THOROUGHLY REVIEWED QWEST'S UNBUNDLED LOOP OFFERINGS**

60. The ACC has thoroughly reviewed Qwest's provisioning of unbundled loops in an open and collaborative process. The first unbundled loop workshop was held on March 5, 2001. In addition to Qwest, parties participating in the workshops included AT&T, MCI WorldCom, Sprint, Electric Lightwave, Inc., e.spire, Eschelon Telecom, and Allegiance Telecom. Parties filed testimony and comments between July 2000 and March 2001. An additional workshop was held on May 14, 2001. Through the workshop process, all but eleven disputed unbundled loop issues were resolved, with the appropriate changes made to the Arizona SGAT.

61. On February 20, 2002, ACC Staff filed a Final Report on Qwest's Compliance with Unbundled Loops. After another round of comments by the parties and a recommendation by an administrative law judge, the ACC issued its final order on unbundled loops on May 17, 2002.<sup>70/</sup>

62. Most of the significant impasse issues relating to unbundled loops are described in this Declaration. However, two issues relating to loop qualification are discussed in the pre-ordering section of the OSS Declaration of Lynn M.V. Notarianni and Loretta A. Huff. Although other impasse issues arose in

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<sup>70/</sup> ACC *Emerging Services Final Order*.

the workshop processes relating to unbundled loops, they are not significant for purposes of examining Qwest's Section 271 compliance, and Qwest is in full compliance with the ACC's resolutions of each of them. <sup>71/</sup>

#### IV. SUMMARY AND CONCLUSION

63. Qwest satisfies the unbundled loop requirements of Section 271(c)(2)(B)(iv). Qwest provides unbundled loops in a nondiscriminatory manner to CLECs in Arizona. This Commission should therefore find that Qwest has satisfied Checklist Item 4.

64. This concludes my Declaration.

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<sup>71/</sup> These issues are: 1) allegations of cooperative testing failures, on which the ACC approved Qwest's position; 2) allegations of anticompetitive behavior by Qwest employees, for which the ACC required a change to the SGAT that Qwest promptly made; 3) reciprocity of trouble isolation charges, which the ACC determined had been closed already, and 4) redesignation of interoffice facilities as loop facilities, on which the ACC approved Qwest's policies but required a clarification of those policies in the SGAT. *ACC Loops Final Order*, ¶¶ 87-104, 111-17.

**VERIFICATION**

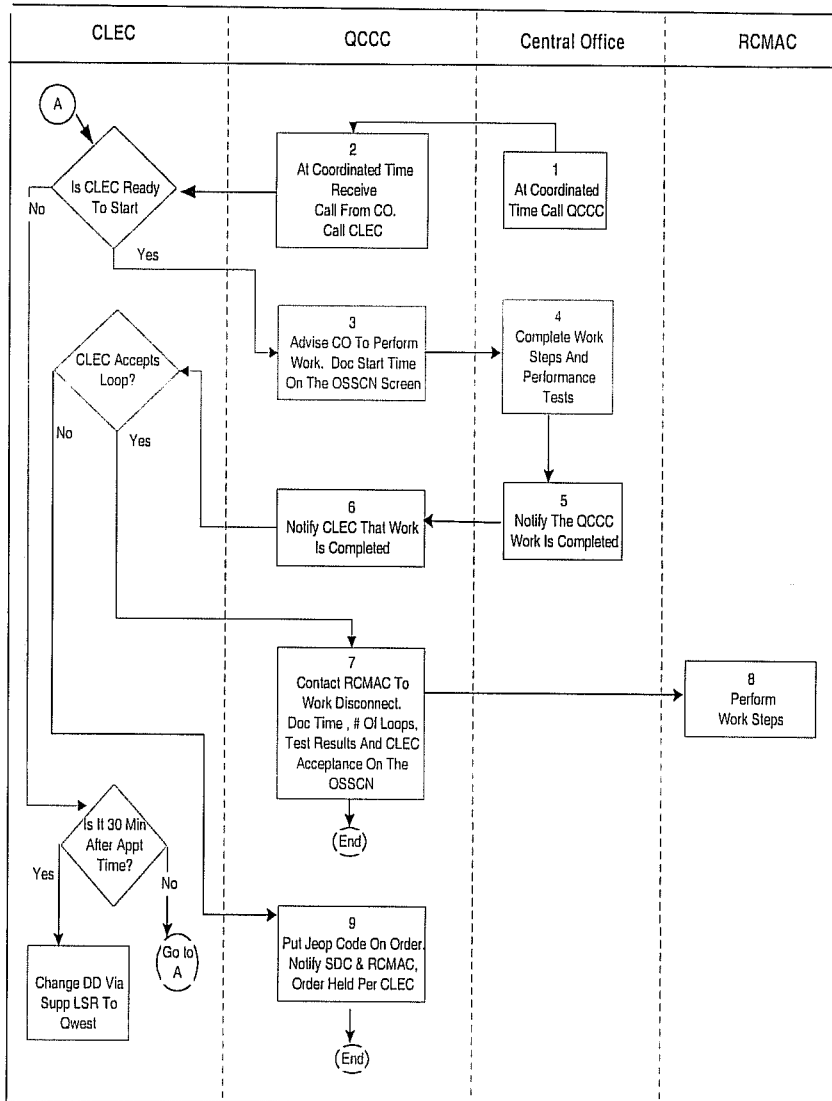
I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_, 2003.

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William M. Campbell

**BHCP – EXHIBIT 2**

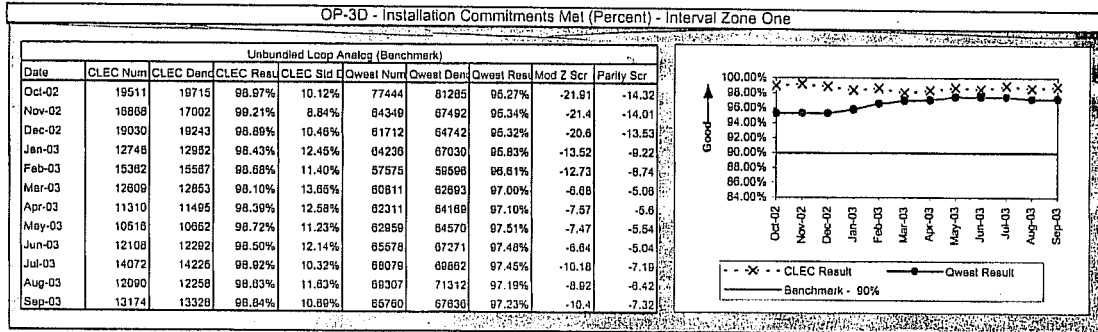
### Coordinated "Hot Cut" (reuse of facilities)





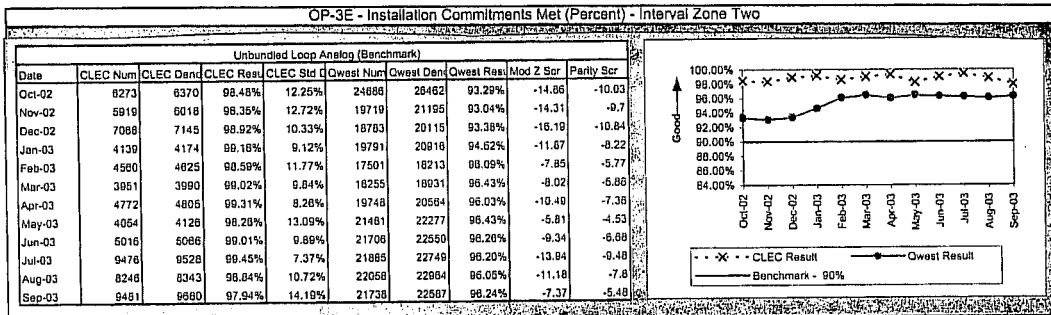
# Coordinated Hot Cut Reuse Process Task List

Task #	Activity
1	At the requested appointment time the Qwest central office technician (COT) contacts the Qwest CLEC Coordination Center (QCCC) to indicate readiness to start the cut.
2	The QCCC contacts the CLEC to determine readiness.
3	QCCC advises the COT to start the cut and document the start time of the cut.
4	The COT performs the central office wiring and appropriate tests. The COT documents the start time of the "lift" and the end of the "lay" process
5	The COT notifies the QCCC that the work is complete and provides the QCCC with: the "lift" and "lay" time and the test results.
6	The QCCC documents the stop time of the cut and phones the CLEC that the work is complete providing test results. If the CLEC has purchased Cooperative or Performance Testing, the test results are also forwarded to the CLEC via email within two business days of order completion. .
7	Once CLEC accepts the loop, QCCC contacts RCMAC and documents the cut information manually on the form and electronically on the OSS-CN screen in WFA
8	RCMAC completes any necessary work.
9	CLEC does not accept the loop, the QCCC enters a jeopardy code on the order and notifies the Service Delivery Coordinator (SDC) and the RCMAC that the order will not be completed due to customer reasons.



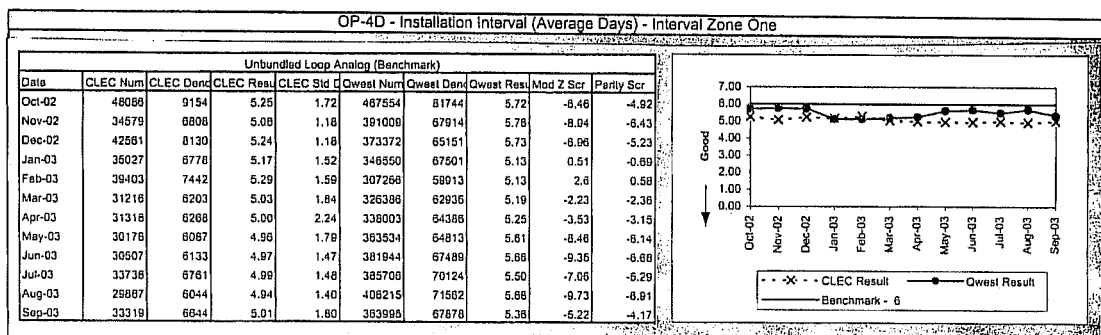
October 22, 2003

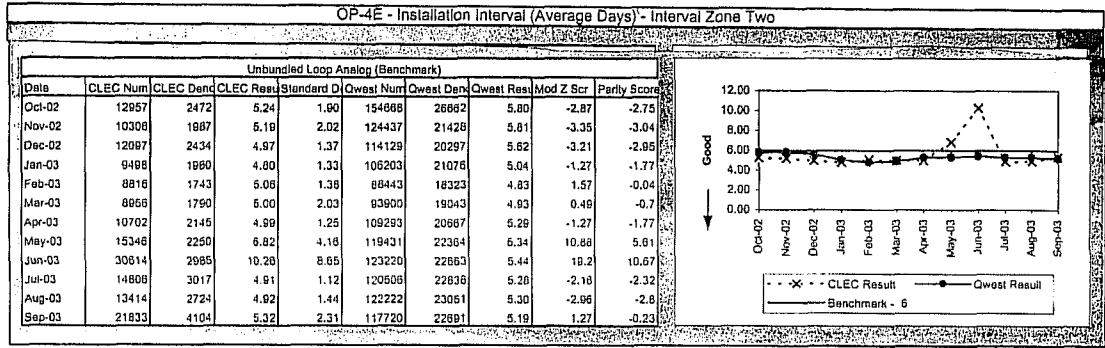
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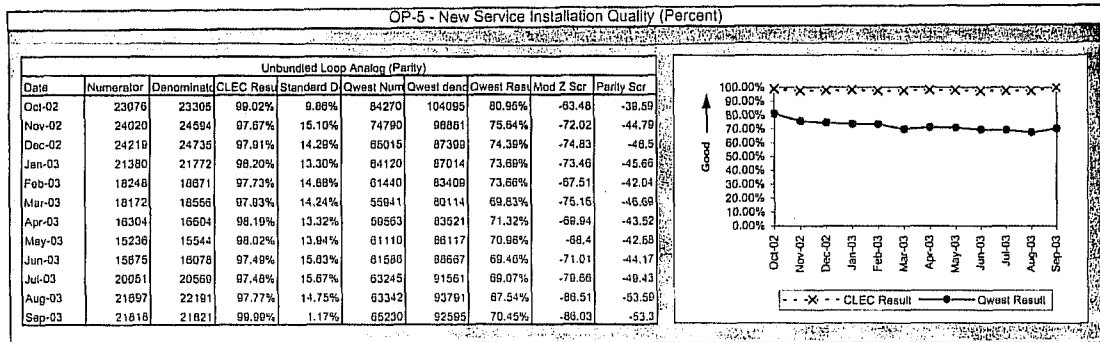
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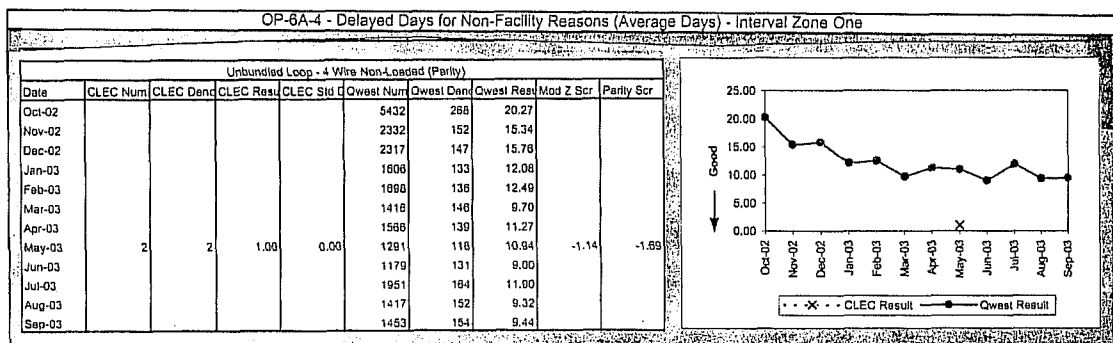
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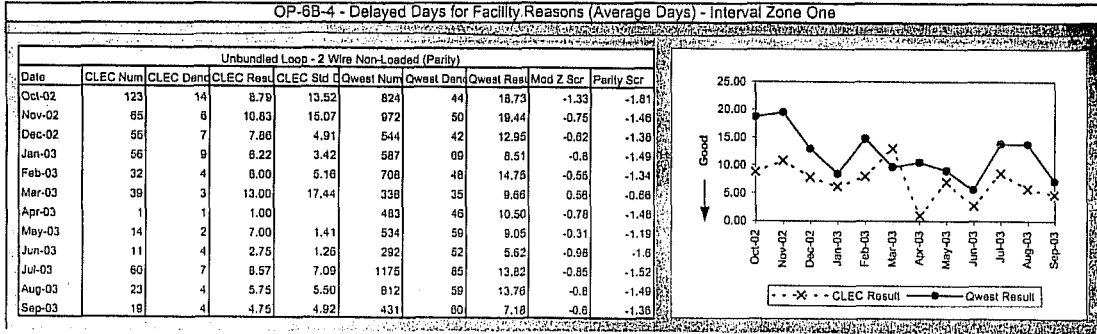


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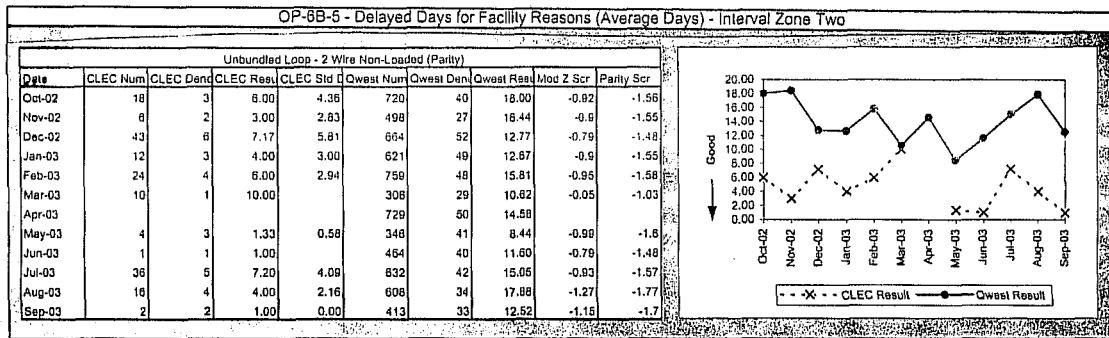
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Qwest Perf Results - PID (14-State 271 PID 5.0)

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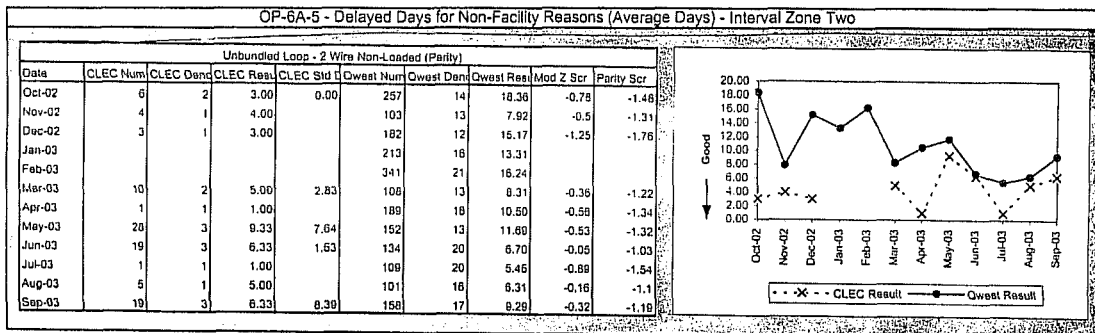


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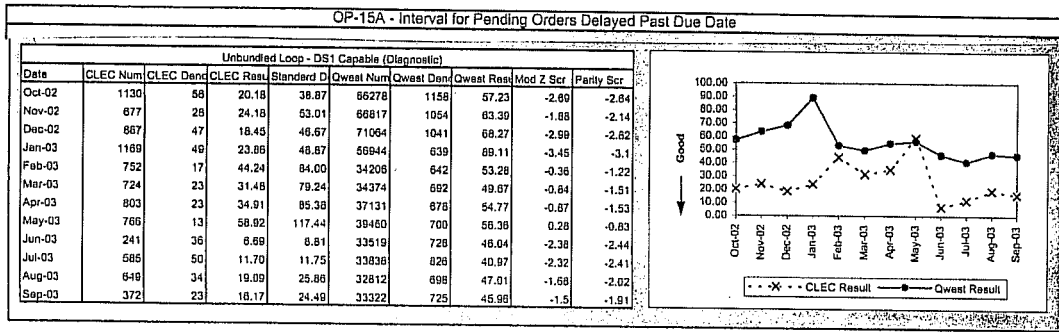
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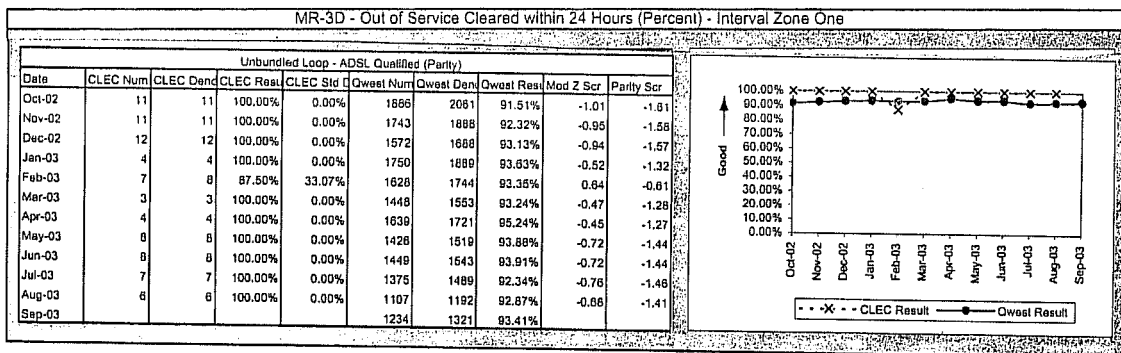
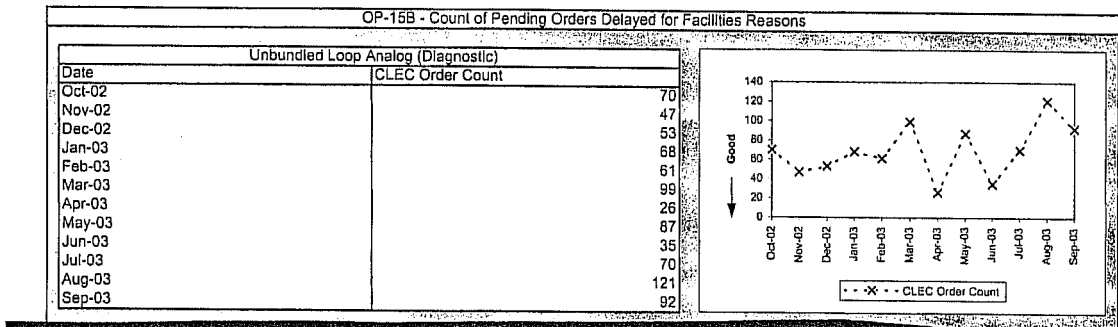
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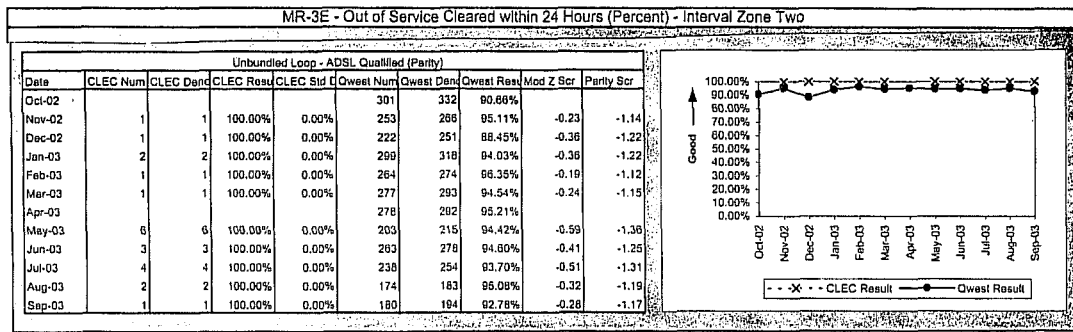
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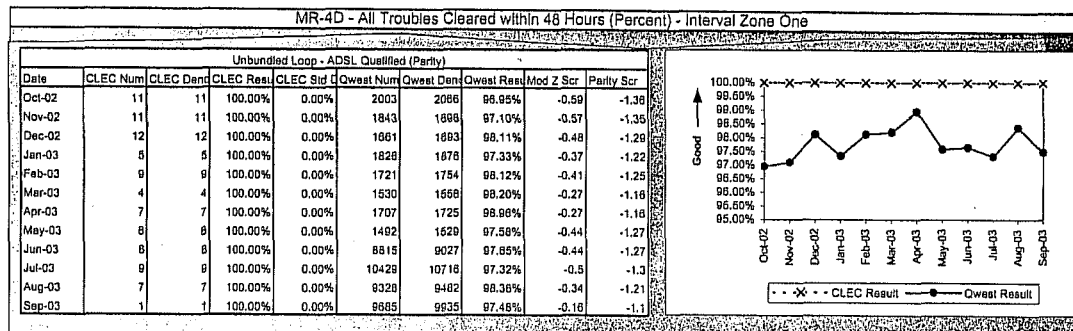
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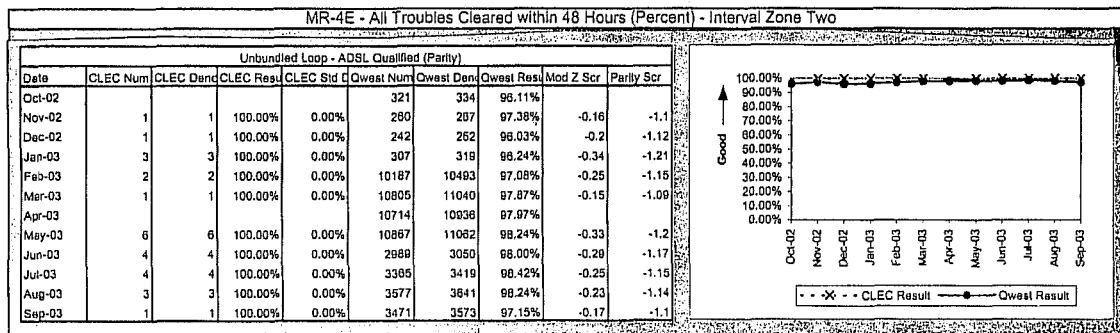


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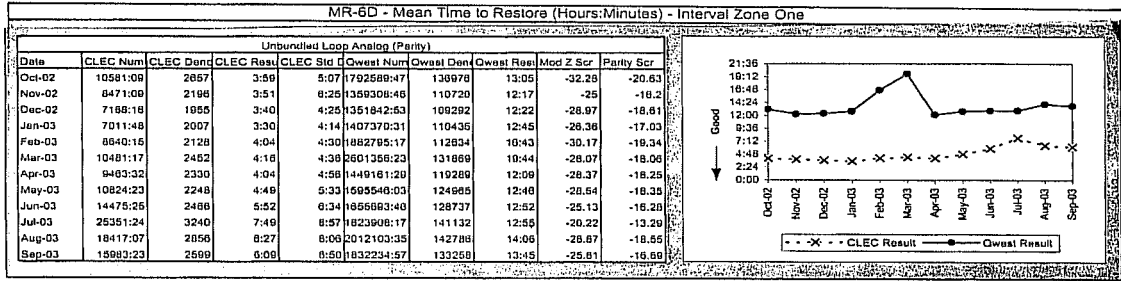
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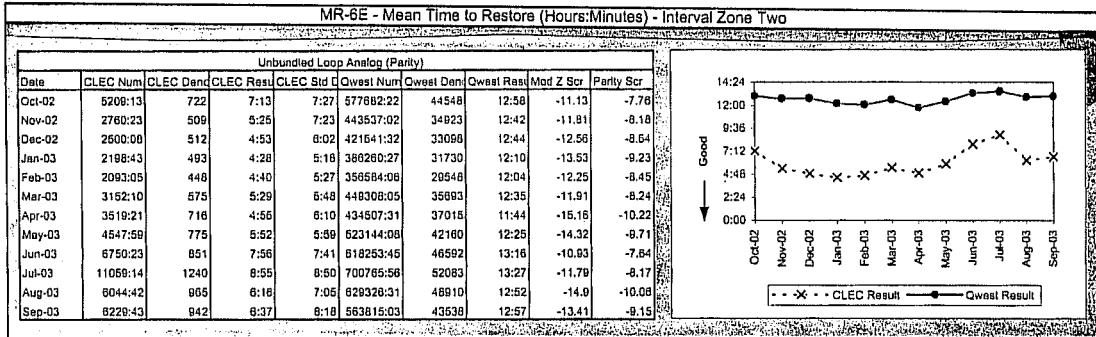
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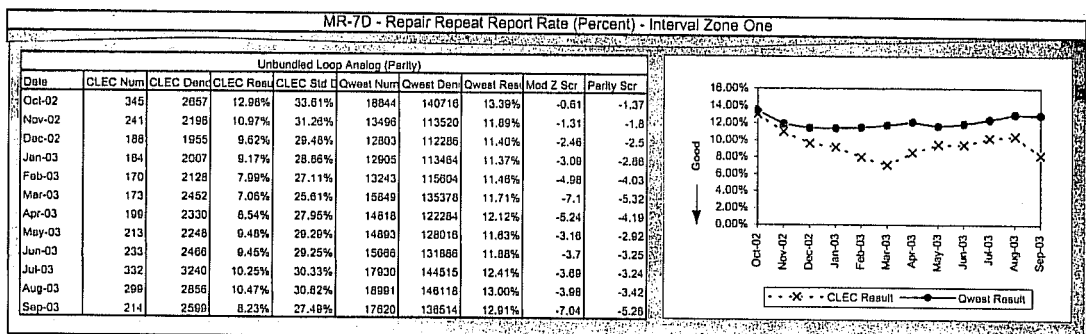
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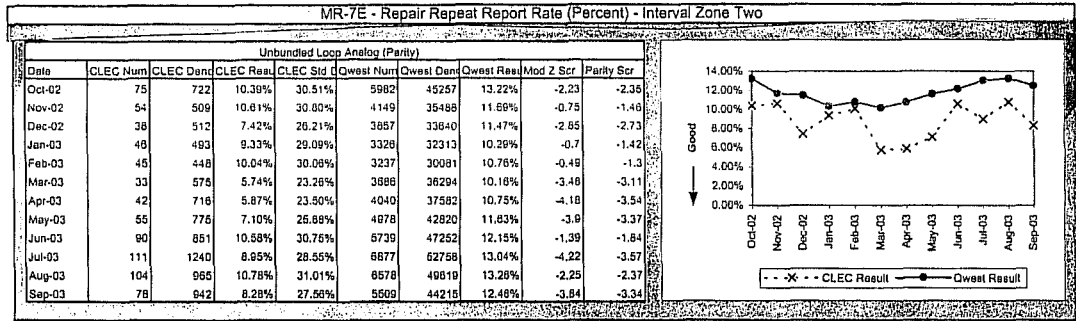
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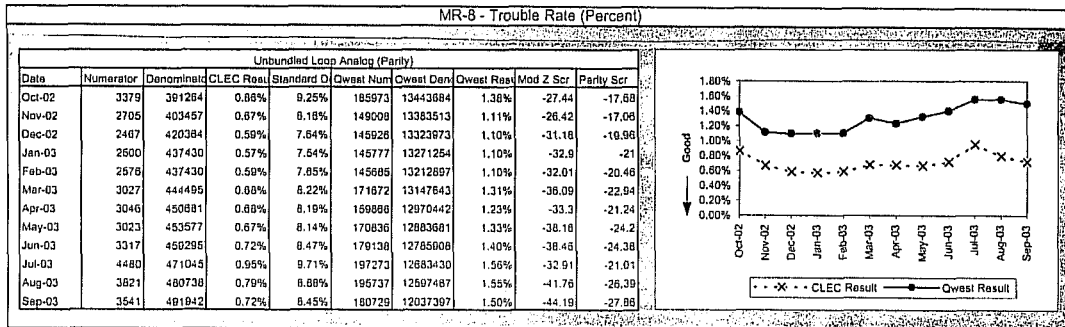
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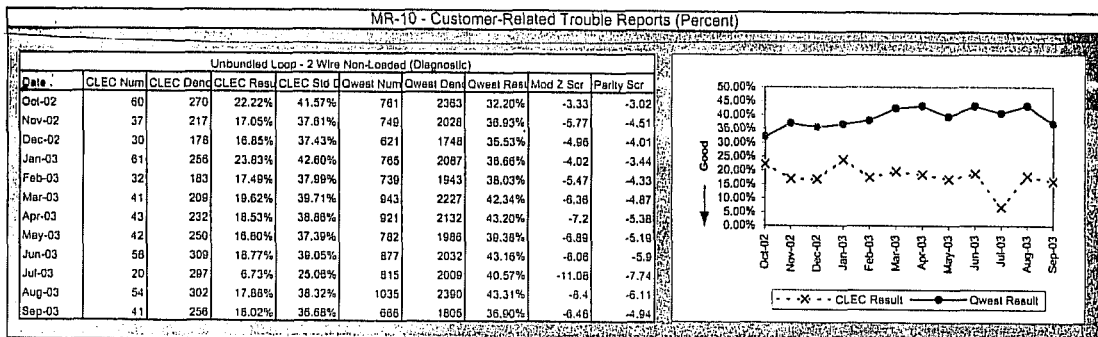
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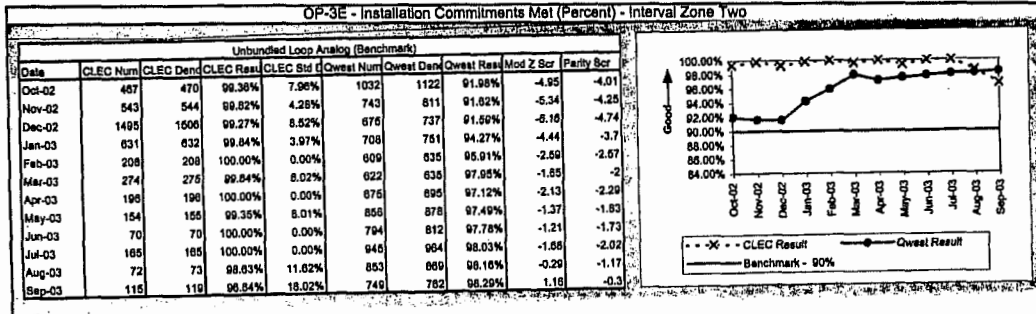
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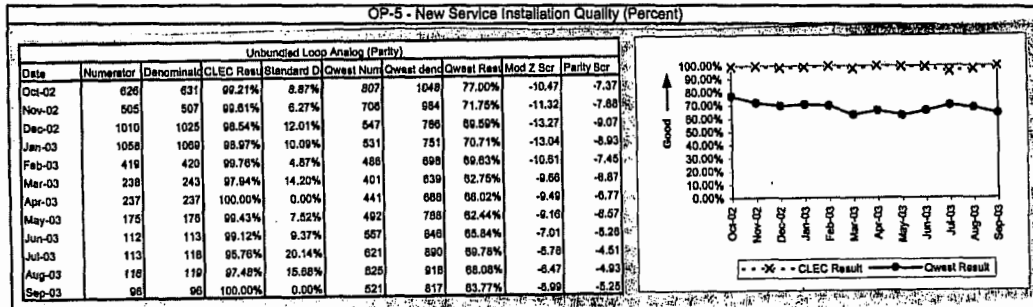
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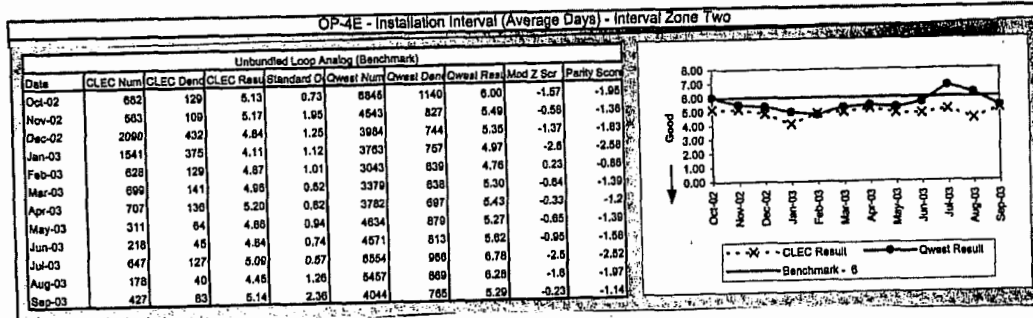
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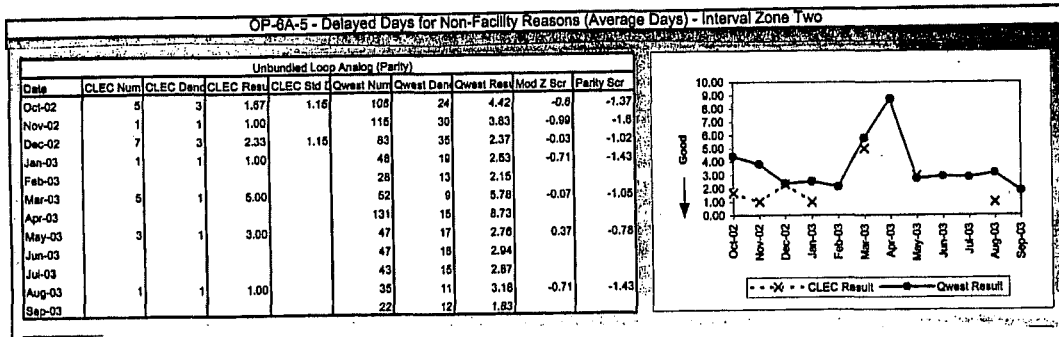
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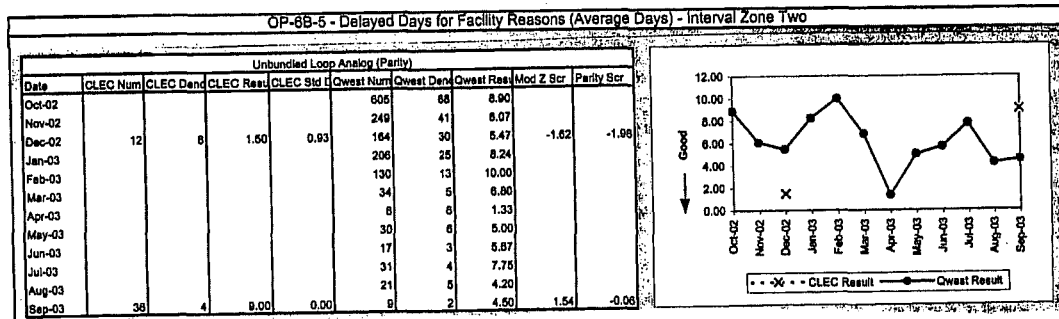
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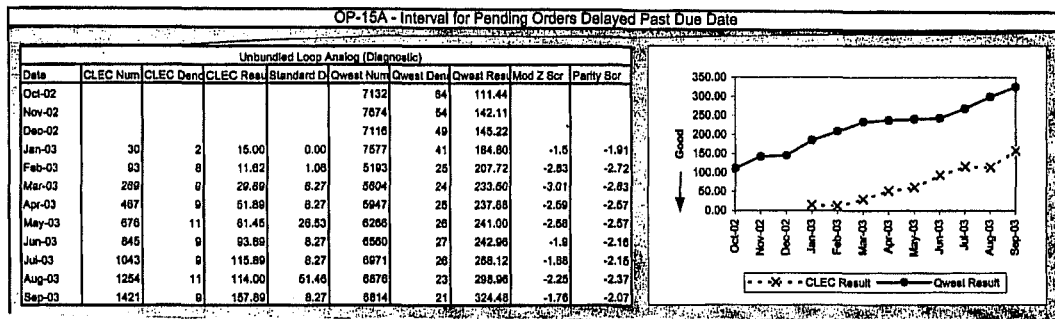
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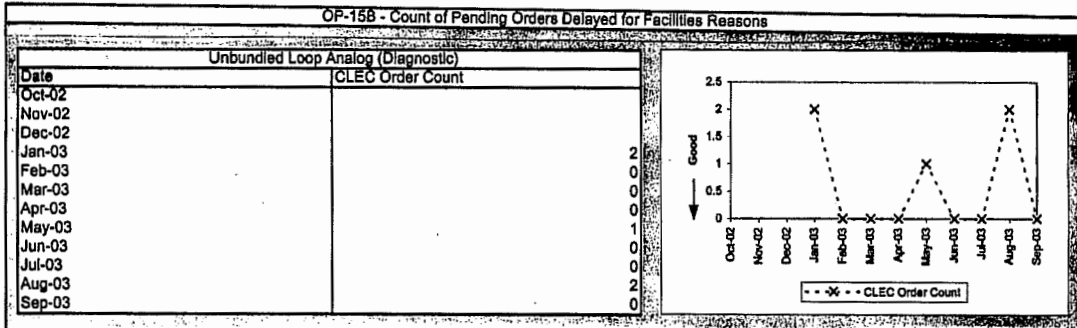
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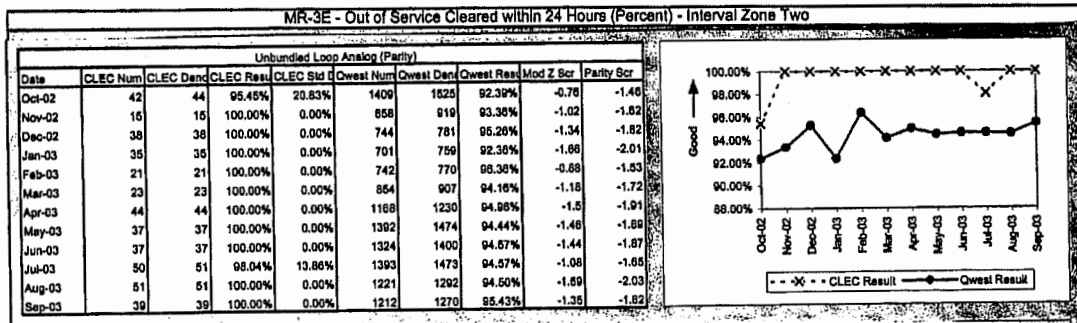
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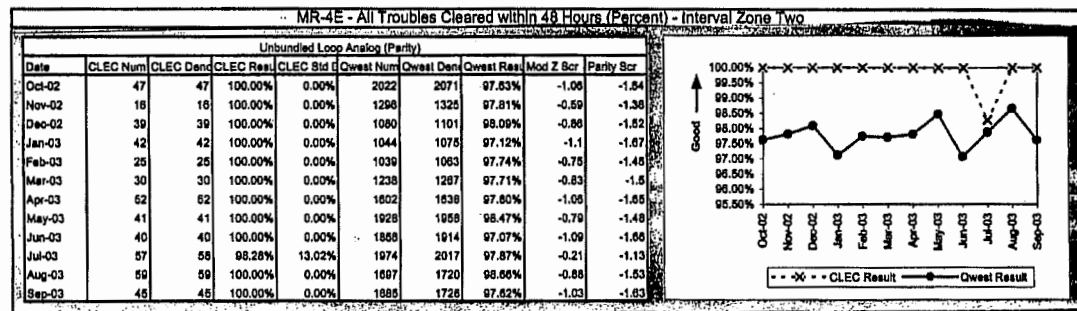
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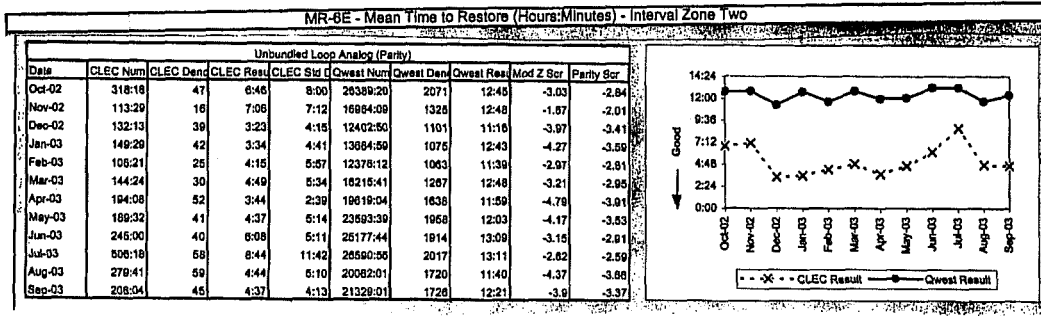
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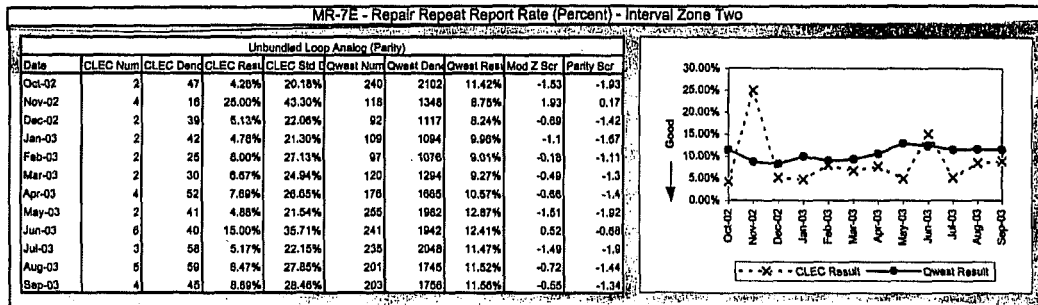
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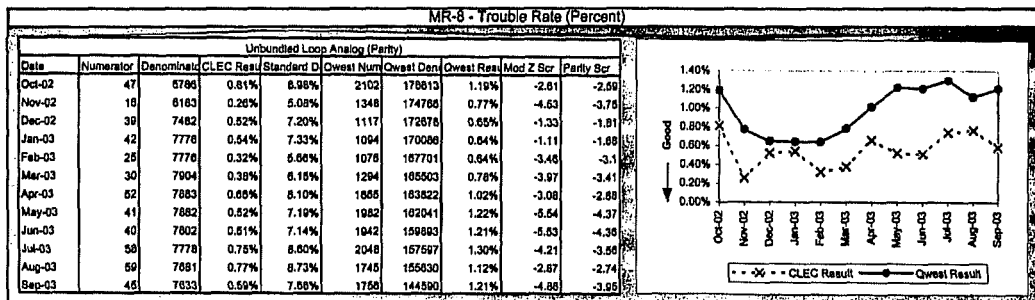
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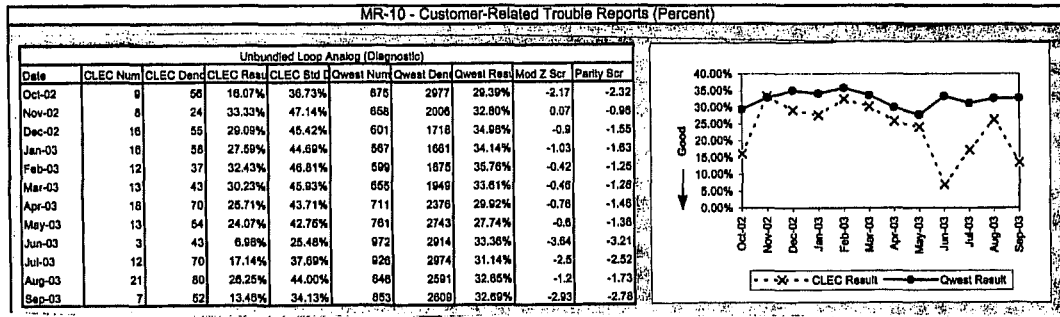
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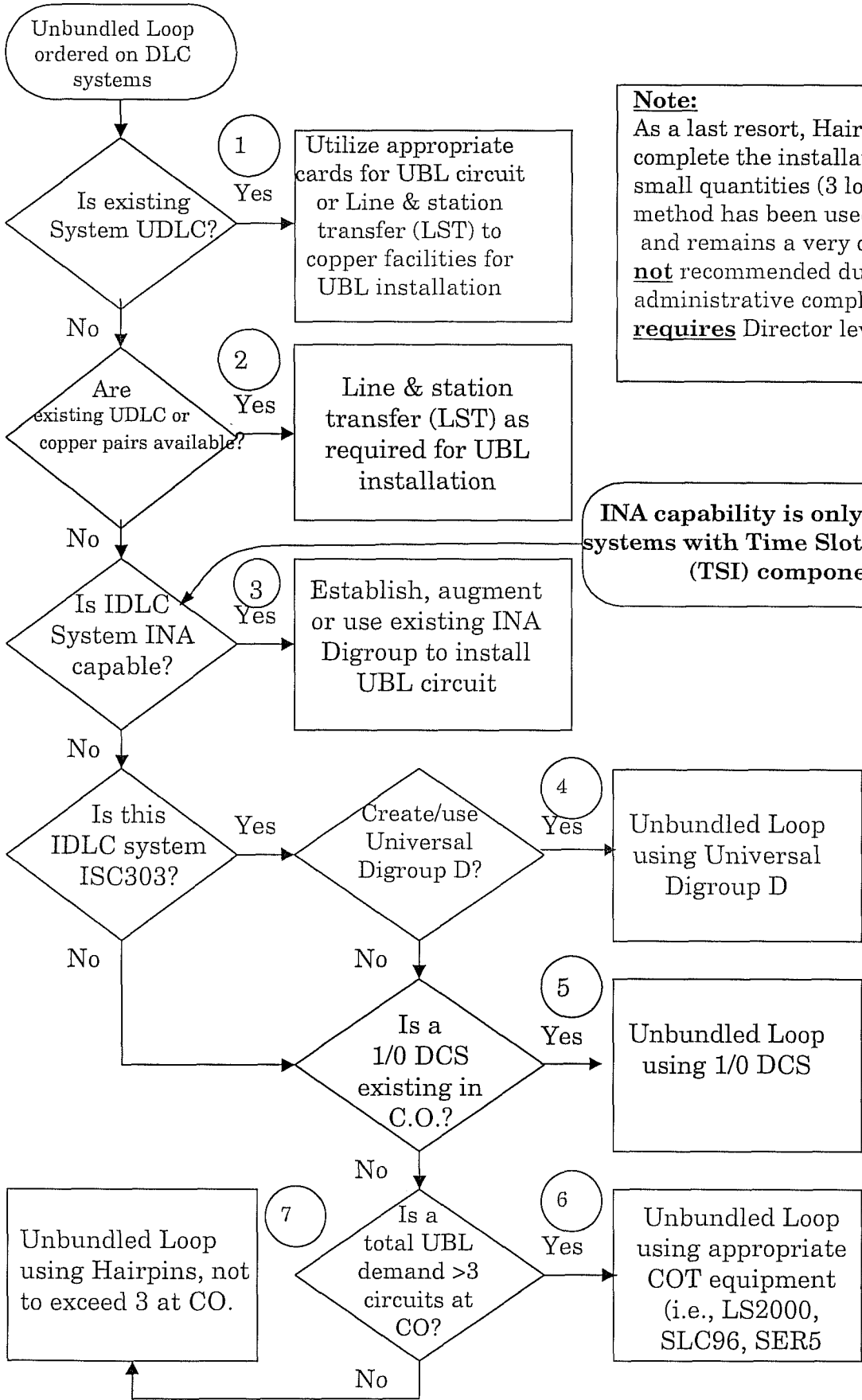


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**BHCP – EXHIBIT 5**



**Note:**  
 As a last resort, Hairpins can be used to complete the installation of UBLs in very small quantities (3 loops or less). This method has been used by Qwest in the past and remains a very difficult method, although **not** recommended due to several severe administrative complications. Use of Hairpins **requires** Director level approval to proceed.

**INA capability is only possible in systems with Time Slot Interchange (TSI) components.**

**Note:**  
 Manufacture Discontinued (MD) COT equipment should be obtained from Reuse stock

## Legend for IDLC Flow

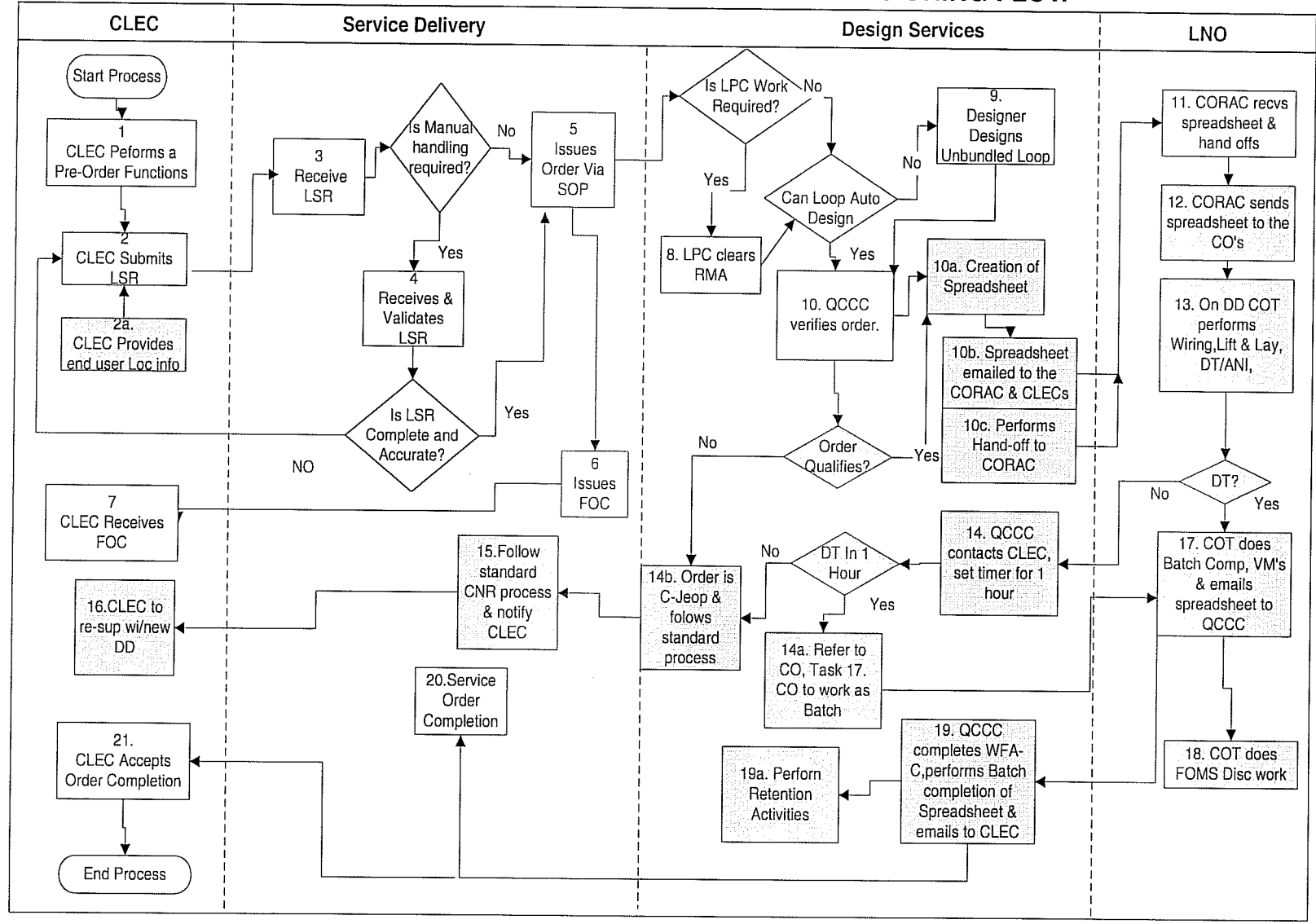
### Solution provisioning intervals:

- 1) UBL circuit cards – 5 days  
LST – 5 days
- 2) LST – 5 days
- 3) INA Digroup (D4 Channel Bank, dedicated DS1 ) – 5 days if span capacity
- 4) Order COT – 90 days – 120 days
- 5) 1/0 DCS (Adtran BR110) - 90 days – 120 days
- 6) LS 2000, SLC 96, Series 5 - 90 days – 120 days
- 7) Hairpin – 15 days after approval



Proposed

### PROPOSED BATCH HOT CUT PROVISIONING FLOW



## Proposed Batch Hot Cut Process Task List

1. CLEC performs per-order loop functions.
2. CLEC submits Local Service Request (LSR) to Qwest.
- 2a. CLEC provides accurate end user service address information to Qwest via LSR.
3. Qwest receives LSR from CLEC.
4. If LSR does not flow through, Qwest validates LSR for completeness and accuracy.
5. If LSR is flow through the service order is automatically created in the Service Order Processor (SOP).  
If LSR is not flow through, the Service Delivery Consultant (SDC) issues the service order into the SOP upon completion of Task 4..
6. Qwest issues the Firm Order Confirmation (FOC) to the CLEC.
7. CLEC receives FOC.
8. If necessary, the Loop Provisioning Center (LPC) must clear RMA.
9. Circuit design is created based on the service request. A Word Document is generated and sent to the central office (CO) and field technicians with the information necessary to wire the circuit.
10. QCCC verifies the order for completeness and accuracy. If order does not qualify for the Batch Hot Cut Process, QCCC will follow the standard Customer Not ready (CNR) process (Go to Step 14b).
- 10a. QCCC project manager will create the Batch Hot Cut spreadsheet. Spreadsheet will include: PON#, order #, TN, DT validation, order completion validation.
- 10b. QCCC project manager will email Batch Hot Cut spreadsheet to the CORAC and CLECs.
- 10c. QCCC performs hand-offs to the CORAC for due date activities.

## Proposed Batch Hot Cut Process Task List

11. CORAC receives work requests for the handoffs and the spreadsheet. CORAC loads appropriate LNO personnel.
12. CORAC sends spreadsheet to the Central Office.
13. On DD, the COT performs wiring, 'lift and lay', DT/ANI. If NDT, the COT will notify the QCCC.
14. QCCC contacts the CLEC to advise of NDT, QCCC sets a 1 hour timer for CLEC callback to confirm DT now available.
- 14a. CLEC now has DT, QCCC refers the order back to the CO for Batch - go to Step 17.
- 14b. If there is no callback from CLEC or still NDT, QCCC follows the standard process the order(s) is C-Jeop'd.
15. Service Delivery follows standard Customer Not Ready (CNR) process and performs jeopardy notice back to CLEC.
16. CLEC reissues the LSR.
17. COT does Batch completion, voice mails the QCCC, and emails the Batch spreadsheet to QCCC.
18. COT does FOMS disconnect work.
19. The QCCC completes the order in WFA-C, performs completion of spreadsheet and emails to CLEC, billing information flows to the SOP.
- 19a. QCCC follows the standard Record Retention Process.
20. The service order is completed and distributed to other downstream systems such as billing.
21. CLEC accepts order completion.

## Batch Hot Cut Process (BHCP) Requirements - Draft

### General:

- IDLC, OSP facilities with an EX designation and Line Splitting circuits will not be candidates for the Batch conversions.
- Batch conversions will utilize existing UNE-P, CLEC or Retail facilities.
- Basic Installation only on batch conversions
- Coordinated and/or basic installation is still offered for business as usual activities – for example – requests not identified as part of the conversion or a part of a project managed hot cut.

### Qwest Impacting:

- Qwest will continue to perform a line verification test and issue a trouble ticket if trouble is found to exist on the circuit prior to the conversion to UNE-Loop.
- 100 orders (total) per Central Office per day is the limit. (100 is the maximum per office while 25 per central office is the minimum)
- RCMAC – Translations completed on Due Date (“DD”)
- UNE-P with line splitting (511 in AZ, CO, MN, OR, WA) will not be included in the batch conversion – Qwest will provide a list of those TNs (CLEC specific) where line splitting has been deployed by the CLEC and these orders will be scheduled during normal business hours.
- Once an LSR is submitted to Qwest, Qwest will produce a spreadsheet that contains the following information: CLEC PON with 3 letter identifier (e.g., “BHC”), Qwest order number, TN, Qwest project ID #, valid CLEC CBR information

### CLEC Impacting:

- CLEC will interface with a Qwest representative(s) to negotiate order entry and the prioritization of the Batch Hot Cut activity.
- CLEC will be responsible for submitting LSR to Qwest - LSR must contain contact information including CLEC contact number and email address.
- PON number assigned will end in “BHC” to identify that the order is a part of the Batch Hot Cut Process.
- CLEC industry standard dial tone needs to be at the ICDF prior to DD.
- If industry standard Dial Tone (“DT”) is not present when a technician is ready to perform the lift and lay, the order will be referred to the CLEC via a phone call for the CLEC to resolve. The CLEC will have one hour to provide industry standard DT. If not resolved by the end of conversion shift or tour, the order, and all lines associated with that specific order, will be jeoped back to the CLEC and will have to be resubmitted following the normal process flow.
- Batch clearing/closing of orders is via the Qwest provided spreadsheet and will be sent to the CLEC provided email address.
- CLEC must complete activation of their subscription for number porting upon notification of order completion.
- If CLEC experiences trouble on the newly converted UNE-Loop within the first 30 days, the CLEC should contact the QCCC for resolution through the warranty group.

### Proposed changes to the current hot cut process:

- **CLEC requirements:**
  - CLEC must provide/copy accurate end user service address ..
  - If industry standard dial tone is not available on DD, CLEC will have one hour to resolve the issue or the order will be dropped from the BHCP.

- **Qwest Requirements**

- Qwest will pre-wire the CLEC jumper on due date not on DVA date (DD-2).
- Qwest would submit a spreadsheet to the CLEC of the conversions by CO, by end user, etc. within 24 hours of receipt of the FOC.
- Qwest will not perform the 48 hour pre-due date industry standard DT test in the CLEC's switch terminations.
- Qwest will only notify the CLEC of a no industry standard DT condition on the due date. CLEC will be notified of the No DT condition on the DD (notification is by phone call) and update in TIRKS OSSLOG once the order is jeop'ed to new date.
- DT/ANI test on CLEC switch termination and existing UNE-P terminations will take place on the DD with COT updating TIRKS records upon order completion.
- No email distribution of test results.
- COT will no longer call to RCMAC to work the disconnect of the UNE-P.
- The Central Office process will change to do the FOMs disconnect work the day after the DD.
- Central Office will only call the QCCC if translations are not completed.
- QCCC performs batch close out of CLEC orders using the Qwest generated spreadsheet via email. Close out is completed and is sent to CLEC designated email address.
- LNP activation is verified by both Qwest and CLEC..
- A failure of one order within the batch does not constitute the failure of the entire batch cut.



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[tim.goodwin@qwest.com](mailto:tim.goodwin@qwest.com)

November 11, 2003

Pamela Bonrud  
Executive Director  
Public Utilities Commission of the State of South Dakota  
500 East Capitol Avenue  
Pierre, SD 57501

**VIA OVERNIGHT UPS**

RECEIVED

NOV 12 2003

SOUTH CAROLINA PUBLIC  
UTILITIES COMMISSION

Re: Docket TC03-<sup>181</sup>~~178~~

Dear Ms. Bonrud:

I attach the original and ten copies of *Qwest's Proposed List of CLECs to Receive Commission Discovery* in this docket. I have also enclosed an additional copy, and ask that you file-stamp that copy and return it to me in the enclosed, self-addressed, stamped envelope.

I am also sending a copy of this filing to you by email. I will also serve copies on all intervenors in this case, via email and, if requested or required, hard copy.

Sincerely,

Timothy J. Goodwin

enclosures

RECEIVED

NOV 12 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER

TC 03-181

Qwest's Proposed List of CLECs  
to Receive Commission  
Discovery

Qwest Corporation ("Qwest") submits the following list of CLECs it proposes to receive discovery from the Commission as discussed in the Commission's November 4, 2003 meeting:

AT&T

Black Hills FiberCom

Dakota Telecom

ICG

McLeod

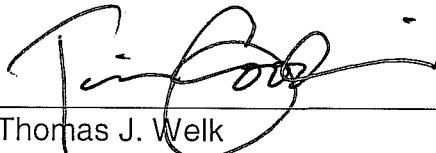
Midcontinent Communications

Northern Valley Communications

Sprint

PrairieWave Communications

Dated: Tuesday, November 11, 2003



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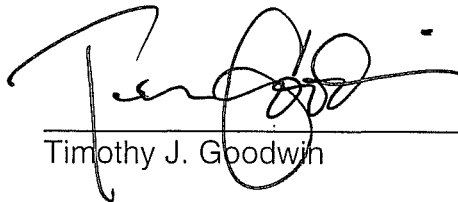
Thomas J. Welk  
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.  
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Telephone: (605) 336-2424

Tim Goodwin  
Thomas Dethlefs  
QWEST CORPORATION  
1801 California Street 47<sup>th</sup> floor  
Denver, CO 80202

**ATTORNEYS FOR QWEST CORPORATION**

***Certificate Of Service***

I, Timothy J. Goodwin, do hereby certify that I am an attorney with Qwest Services Corporation, and on Tuesday, November 11, 2003, a true and correct copy of the foregoing was served by email, if an email address was provided, or United States first class mail, postage prepaid, to counsel for all intervenors of record.



---

Timothy J. Goodwin



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November 12, 2003

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Pam Bonrud  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

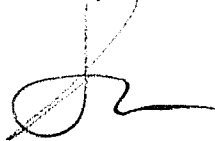
RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 0175

Dear Pam:

Enclosed for filing please find eleven copies of a Motion of Resident Attorney for Nonresident Attorney to Appear Pro Hac Vice and Order signed and file stamped by the Hughes County Clerk of Courts in the above referenced action.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Susan Travis  
Bret Dublinske

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

NOV 12 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE IMPLEMENTATION )  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

TC03-181

MOTION OF RESIDENT  
ATTORNEY FOR  
NONRESIDENT ATTORNEY  
TO APPEAR PRO HAC VICE

COMES NOW Brett Koenecke, an attorney residing in this state and a member in good standing of the State Bar of South Dakota and moves the Circuit Court for Hughes County, South Dakota, pursuant to SDCL §16-18-2 to admit Bret A. Dublinske as a nonresident attorney pro hac vice in the above-entitled action. In support of said motion the undersigned represents that he will be associated with the said nonresident attorney in the trial or hearing in the above-entitled action, and the undersigned finds said nonresident attorney to be a reputable attorney and recommends said nonresident attorney for admission to practice in the above-entitled matter pro hac vice.

Dated this 4 day of November, 2003.

MAY ADAM GERDES & THOMPSON LLP

BY: 

Brett Koenecke  
Attorneys for MCI  
503 South Pierre Street  
PO Box 160  
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605-224-8803  
605-224-6289

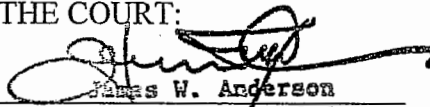
**ORDER**

It is hereby

**ORDERED** that the above entitled Motion for Admission Pro Hac Vice for Bret A. Dublinske is granted.

DATED this 6 day of Nov., 2003

BY THE COURT:

  
\_\_\_\_\_  
James W. Anderson  
Circuit Court Judge

ATTEST:

Christal L. Espeland  
Clerk

(SEAL)

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**

NOV 06 2003

Christal L. Espeland Clerk

By \_\_\_\_\_ Deputy

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November 12, 2003

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Pam Bonrud  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 0175

Dear Pam:

Enclosed for filing please find an original and ten copies of a MCI Response To The  
Commission's November 6, 2003 Order Requesting Comments in the above referenced action.  
By copy of this letter service is made on the service list.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Service List  
Susan Travis  
Bret Dublinske

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

TC 03-181

**RECEIVED**

NOV 12 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

IN THE MATTER OF THE )  
IMPLEMENTATION OF THE FEDERAL )  
COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING )  
OBLIGATIONS )

**MCI RESPONSE TO THE COMMISSION'S NOVEMBER 6, 2003 ORDER  
REQUESTING COMMENTS**

In its November 6, 2003, Order, the Commission granted petitions to intervene, approved the batch hot cut forum proposal, determined that the Commission will issue a Protective Order and Bench Discovery, and then sought further comments on the above issues from any interested parties. Specifically, the Commission sought comments on which entities should be served with Bench Discovery, and on "how confidential information should be handled, especially with respect to any non-parties." MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc., (hereinafter collectively, "MCI"), make this response to the Commission's November 6, 2003.

With regard to Bench Discovery, because of the timeframes required by the Triennial Review Order, MCI suggests that obtaining as much information as is reasonably possible early in the proceeding will benefit both parties and the Commission. Accordingly, MCI advocates serving initial Bench Discovery on all certified LECs in the state. MCI also refers the Commission to the various NARUC TRIP discovery discussed in MCI's October 31 Comments. Among the sets for which MCI provided World Wide Web links was a set for equipment manufacturers. Those should also be served where necessary as initial Bench Discovery. Finally, it is possible that Qwest may at some point in the proceeding raise issues involving non-

certified carriers. Should that occur, the Commission should seek additional comment from the parties as to what Bench Discovery, if any, should be served on such non-certified carriers.

With regard to the treatment of confidential and highly confidential information, particularly responses of non-parties to data requests, MCI advocates that the best course of action is usage of the Protective Order which the Commission has agreed to issue. When the Commission issues Bench Discovery, it should include a copy of the Order and advise that any entity, party or non-party, who believes its responses are confidential or highly confidential, should execute the attachments to the Protective Order. This is a proper device for protecting confidential and highly confidential information. The Commission has a long standing history of successful usage of documents similar to the Protective Order.

Under broad usage of the proposed Protective Order, further concealment of the identity of a responding entity is not necessary. Moreover, such concealment might very well be counterproductive to the necessary understanding of the status of the market required for the Commission and the parties to take positions and make decisions. It may also interfere with ability of the parties to make the showings required by the FCC. The carriers participating in the proceeding have knowledge from their business interactions and from being “in the field” that can and should be used to establish the veracity of discovery responses, and to determine, for example, if an entity claiming to have a switch has capabilities that are a legitimate substitute for that of the ILEC. For example, If all MCI knows is that “CLEC #4” claims to have a switch, it has little or no way to compare that declaration to information MCI may have about the specific CLECs it interacts with in the marketplace.

If there is any possibility that Qwest will use a specific carrier as a “trigger” or to demonstrate a potential for entry into the switching market, it will be critical that a CLEC or the

Commission can thoroughly evaluate issues such as how actively a carrier is providing service to mass markets, the precise territory being served by the carrier, whether and how the carrier has overcome economic or operational barriers. Even if all of this information can be allegedly determined from “masked” discovery responses, there is little way to truly and thoroughly test the responses through further examination without knowing the entity. MCI is concerned that it and other CLEC’s might have no meaningful way to respond to masked discovery responses, and no manner which is not unduly burdensome in which to use live testimony to draw out distinctions necessary for the Commission to make decisions. On the other hand, if enough information is provided through discovery responses to protect the rights of all CLECs who like MCI who are resisting Qwest’s petition, the identity of the responding carrier will likely be evident, making the efforts at concealment an unproductive exercise.

Ultimately, it is MCI’s position that it is fairer, more accurate, and is much easier for the Commission and the parties to administer to use the processes already provided for through the Protective Order, and to let that be the way (and the only way) that confidential data is secured.

MAY, ADAM, GERDES, & THOMPSON LLP

BY: 

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

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

**CERTIFICATE OF SERVICE**

12 Brett M. Koenecke, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of November, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the **MCI Response To The Commission's November 6, 2003 Order Requesting Comments** in the above-captioned action to the following at their last known addresses, to-wit:

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Brett Koenecke



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[tim.goodwin@qwest.com](mailto:tim.goodwin@qwest.com)

November 12, 2003

Pamela Bonrud  
Executive Director  
Public Utilities Commission of the State of South Dakota  
500 East Capitol Avenue  
Pierre, SD 57501

**VIA OVERNIGHT UPS**

**RECEIVED**

NOV 13 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**Re: Docket TC03-181**

Dear Ms. Bonrud:

As we reviewed the intervention of Midstate Telecom we received yesterday, we reviewed the testimony filed in the recent reclassification proceeding, which indicates they provide facilities-based services. Accordingly, we file the attached original and ten copies of *Qwest's Amended Proposed List of CLECs to Receive Commission Discovery* in this docket. I have also enclosed an additional copy, and ask that you file-stamp that copy and return it to me in the enclosed, self-addressed, stamped envelope.

I am also sending a copy of this filing to you by email. I will also serve copies on all intervenors in this case, via email and, if requested or required, hard copy.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Goodwin". The signature is fluid and cursive, with the first name "Tim" and last name "Goodwin" clearly visible.

Timothy J. Goodwin

enclosures

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

---

**IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER**

**TC 03-181**

**Qwest's Amended Proposed List  
of CLECs to Receive  
Commission Discovery**

---

Qwest Corporation ("Qwest") submits the following list of facilities-based CLECs it proposes to receive discovery from the Commission as discussed in the Commission's November 4, 2003 meeting, amended to reflect the addition of Midstate Telecom:

AT&T

Black Hills FiberCom

Dakota Telecom

ICG

McLeod

Midcontinent Communications

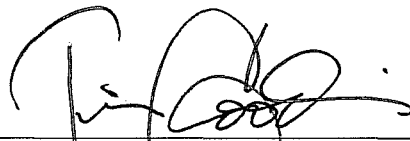
Northern Valley Communications

Sprint

PrairieWave Communications

Midstate Telecom, Inc.

Dated: Wednesday, November 12, 2003



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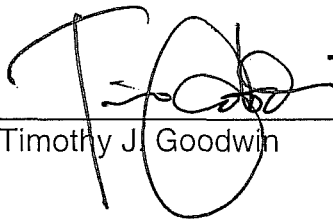
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Sioux Falls, SD 57117-5015  
Telephone: (605) 336-2424

Tim Goodwin  
Thomas Dethlefs  
QWEST CORPORATION  
1801 California Street 47<sup>th</sup> floor  
Denver, CO 80202

**ATTORNEYS FOR QWEST CORPORATION**

***Certificate Of Service***

I, Timothy J. Goodwin, do hereby certify that I am an attorney with Qwest Services Corporation, and on Wednesday, November 12, 2003, a true and correct copy of the foregoing was served by email, if an email address was provided, or United States first class mail, postage prepaid, to counsel for all intervenors of record.



---

Timothy J. Goodwin



**Janet Keller**  
Docket Manager  
303-298-6502

1875 Lawrence St.  
Room 14-42  
Denver, CO 80202

RECEIVED

November 17, 2003

NOV 18 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**Via Overnight Mail**

Pam Bonrud  
Executive Director  
SD Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of the Implementation of the Federal Communications  
Commission's Triennial Review Order Regarding Unbundling  
Obligations, Docket No. TC03-181

Dear Ms. Bonrud:

Enclosed for filing are the original and ten copies of AT&T's Comments and Counter Proposals on Qwest's Proposal for Region-Wide Batch Loop Conversion Process.

Sincerely,

  
Janet Keller

Enclosures

cc: Service List



RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

NOV 18 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

In the Matter of the Implementation of the Federal )  
Communications Commission's Triennial Review Order ) Docket No. TC03-181  
Regarding Unbundling Obligations )

---

AT&T'S COMMENTS AND COUNTER PROPOSALS ON  
QWEST'S REGION-WIDE BATCH LOOP CONVERSION PROCESS

---

AT&T Communications of the Midwest, Inc. ("AT&T") submits the following comments and counter proposals to Qwest's batch hot cut proposal.

I. INTRODUCTION

Fundamentally, every time a hot cut is performed, an incumbent local exchange carrier ("ILEC") technician must physically disconnect the customer's loop from the current carrier's switch and reconnect it to the new provider's network. Those same manual, loop-by-loop activities must be performed whether they are done for one customer or for a batch of customers. Qwest's proposal does nothing to change those fundamental facts. Instead, Qwest's proposal reinforces why the FCC found the hot cut process was a source of operational impairment and why the Federal Communications Commission ("FCC"): concluded that ILECs must offer competitive local exchange carriers ("CLECs") access to mass market switching.

That is not to say that AT&T is uninterested in having Qwest improve its current hot cut process. Any proposal that seeks to improve the efficiency, capacity, quality and cost of the current individual hot cut process is a welcome step in the right direction. However, based on AT&T's review, Qwest's proposal is but a very small step in what

may prove to be a long journey to get agreement on a batch hot cut process that the Commissions and the CLECs can support and meets the FCC's requirements. AT&T believes Qwest's proposal falls far short of curing the operational and economic impairments that exist with the current hot cut process.

AT&T finds Qwest's proposal to be either short on essential details or outright deficient in a number of critical areas such as cost, quality of service to the end user, scalability and functionality. As an initial matter, there are certain key principles that must be followed during the batch hot cut collaborative. The first key principle is that any process changes must consider the impact on Qwest, the CLEC(s)<sup>1</sup> and the CLEC's customer. For example, a process change that reduces Qwest's cost by \$1.00 but increases a CLEC's cost by \$2.00 is a change that should not be made. Qwest should not be the only party considered in the batch hot cut process design. A second key principle is that any process changes must consider the effect on all of the critical hot cut characteristics. For example, a change that reduces a cost but also increases the frequency of customer outages should not be made. Changes should not be viewed in isolation but should be viewed as part of the overall process. Unfortunately, many of Qwest's proposed changes fail to consider all of the affected parties or suboptimize one element at the expense of another. The following describes AT&T's primary concerns with each of these key areas. As AT&T better understands Qwest's proposal, it reserves the right to raise other concerns.

---

<sup>1</sup> Multiple CLECs will be involved for the migration of an unbundled loop from one CLEC's switch to another.

## II. AT&T's CONCERNS

### A. Cost of a Hot Cut

On page 3 of its proposal Qwest admits that it has not yet completed its detailed cost studies; however, they state “it appears that in **virtually every instance** these efficiencies will reduce Qwest’s cost of performing a batch hot cut.” Emphasis added. Qwest goes on to state on page 15 that “the batch conversion process that Qwest proposes above will yield significant additional efficiencies and in **most** states the CLEC community can expect to experience a significantly reduced rate.” Emphasis added. The Commissions and the CLECs cannot rely on vague statements such as these to get a sense of whether Qwest’s batch hot cut rates will even begin to address the economic impairment concerns expressed by the FCC in the Triennial Review Order (“TRO”). Before the Commission considers this proposal Qwest should be required to specifically state what its batch hot cut cost structure will be and provide the cost studies it conducted to support its proposed rates.

With respect to its current loop hot cut non-recurring costs, Qwest congratulates itself on page 15 of its proposal by stating, “As an initial matter, Qwest notes it is starting from a better position than many other incumbent LECs in this regard. The FCC found in the *Triennial Review Order* that currently hot cuts are ‘often priced at rates that prohibit facilities based competition for the mass market,’ citing ILEC non-recurring charges exceeding \$100 and as high as \$185. But Qwest’s hot cut charges across its region are not nearly this high. In virtually every state Qwest’s current non-recurring charges for a basic hot cut range between \$29.10 and \$65.00.” Footnotes omitted. What Qwest has failed to point out is that its coordinated installation with Cooperative Testing loop



installation option is as high as \$171.87 per loop for the first installation. That rate would place Qwest at the upper end of the range discussed by the FCC. Even assuming a Qwest hot cut rate of \$60<sup>2</sup> there remains much room for improvement to remedy the economic impairment experienced by the CLECs when trying to serve the mass market with unbundled loops. In contrast to the much less than \$1.00 non-recurring charge the CLECs pay Qwest to migrate a customer to UNE-P, Qwest needs to make significant reductions in its hot cut non-recurring rates to make UNE-L a viable alternative for serving the mass market from a non-recurring charge perspective.<sup>3</sup>

## **B. Quality of Service**

Using the current hot cut process, which requires a physical disconnection of the customer's line from its existing local service provider's switch and reconnecting it to the new service provider's switch, a service outage is unavoidable. When each of the steps of the process is done correctly this service outage can be measured in seconds. However, because of the manual nature of the process and all of the human touch points involved, there is a tremendous opportunity for human error and a resulting service outage. When performing an individual hot cut from retail to UNE-L these outages are a concern for the CLEC because it is the customer's first experience with the CLEC and the CLEC does not want it to be a negative experience. However, when this does happen, at least the CLEC can explain to its new customer that something went awry during the migration process. On UNE-P (or resale) to UNE-L conversions, where the

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<sup>2</sup> The approved rate for a coordinated installation without cooperative testing is \$59.81 in ten of the Qwest states.

<sup>3</sup> Of course there are other economic impairment issues that the CLECs will face when trying to serve the mass market with UNE-L such as the collocation and backhaul costs. These comments are only related to the economic impairment issues associated with the hot cut non-recurring charges.

batch hot cut process will most likely be used 100% of the time (see functionality section below), these service outages become even more of a concern for the CLEC. In these cases the customer already has his/her service with the CLEC and may have been doing business with that CLEC for an extended period of time. When a hot cut is performed on these customer's lines and an outage occurs, the customer can only think that the CLEC has a maintenance issue. Because the customer impacted by the outage did not request to have his/her service modified, any outage is viewed as poor performance on the part of the CLEC, even though it most likely would have been caused by Qwest. As far as this customer is concerned Qwest is not even in the picture. Therefore, it is of critical importance that hot cut migrations of existing CLEC UNE-P customers be as seamless and go as flawlessly as possible. It should also be noted that Qwest is not above taking advantage of quality problems experienced by CLEC customers that it may have created. Qwest has recently been running radio and television advertisements where it describes how a competitor "dropped the ball" with a customer and how Qwest saved the day.

Qwest's current batch hot cut proposal leaves much to be desired in the area of service assurance and quality. Fundamentally, Qwest's proposal sacrifices service assurance and quality for a reduction of a few process steps. There are many pitfalls Qwest's proposed process that put the CLEC's customers in jeopardy of an extended service outage. Some of the service quality concerns that AT&T has with Qwest's proposal include the following:

## 1. Batch Hot Cuts Limited to Basic Installation Only

One of the requirements of Qwest's proposed batch hot cut process is "basic installation only on batch conversions."<sup>4</sup> Qwest further underscores the unavailability of coordinated conversions when it states, "Coordinated and/or basic installation is still offered for business as usual activities – for example – requests not identified as part of the conversion or a part of a project managed hot cut."<sup>5</sup> Qwest's proposal to limit batch hot cuts to basic installation only significantly and negatively impacts the CLEC customer in two areas. The first area is that performance testing is not done with basic installation for existing customers. Qwest's SGAT states:

9.2.2.9.1.1 For an existing End User, the Basic Installation option is a "lift and lay" procedure. The Central Office Technician (COT) "lifts" the Loop from its current termination and "lays" it on a new termination connecting to CLEC. *There is no associated circuit testing performed.*<sup>6</sup>

Qwest identified the following testing activities as part of performance testing:

### 2-Wire and 4-Wire Analog Loops

- No Opens, Grounds, Shorts, or Foreign Volts
- Insertion Loss = 0 to -8.5 dB at 1004 Hz
- Automatic Number Identification (ANI) when dial-tone is present<sup>7</sup>

While Qwest does propose to check for dial tone and ANI, its proposal does not include the other types of performance testing. Qwest's proposal of only basic installation for batch hot cuts is nothing more than reducing the amount and level of testing that it typically does for hot cuts. Qwest's proposal to reduce testing will potentially result in negative impacts on CLEC customers.

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<sup>4</sup> Qwest BHCP – Exhibit 7, p. 1.

<sup>5</sup> *Id.*

<sup>6</sup> Colorado SGAT, March 4, 2003 (emphasis added).

<sup>7</sup> Colorado SGAT, March 4, 2003, § 9.2.2.9.6.

The second major problem with the basic installation only option is that it extends the period of time a customer cannot receive incoming calls. With a coordinated installation option, Qwest contacts the CLEC after the “lift and lay” procedure is completed. Once the CLEC is notified, the CLEC can complete the number portability activities. In contrast, with Qwest’s new proposal, the CLEC will be notified only when every line in the batch has been completed.

Page 12 of Qwest’s proposal states; “Upon completion of the orders identified on the batch spreadsheet, Qwest will notify the CLEC via email that it has completed the conversion. It remains the responsibility of the CLEC to ensure that each line is triggered for number porting upon completion of the order.” This is totally unacceptable from a quality of customer service standpoint. From the moment that Qwest migrates the customer’s line on the MDF to the time that the CLEC issues the trigger to port the customer’s number, the customer cannot receive phone calls. Considering that Qwest has indicated that a batch project can be as many as 100 lines and Qwest has its technicians performing all of the work (e.g. pre-wiring, dial tone checks, telephone number verifications, and actual “lift and lay” cutover) to migrate these lines on the day of the cut it could literally take hours between the time the first lines are cut over to the CLEC and the CLEC is informed via email of the completion of the cutover. Leaving a customer without the ability to receive calls for this length of time is totally unacceptable. Qwest must revisit its position regarding the timing of the CLEC notification to make this proposal acceptable in this area.

Qwest’s proposal of basic installation only clearly sacrifices the CLEC’s customer’s experience for some yet unquantified benefit.

## **2. Pre-wiring of the circuit**

For individual hot cut orders, Qwest currently performs the Main Distribution frame (“MDF”) pre-wiring of the CLEC’s Connecting Facility Assignment (“CFA”) to the loop two days prior to the cutover. This lead time gives the Qwest frame technician ample time to ensure all of the wiring work has been performed correctly, and is connected to the proper CFA assignment for CLEC’s collocated equipment and to the proper cable and pair assignment for the customer’s line. However, when this pre-wiring is performed on the day of the cutover, as proposed by Qwest’s batch process, there is no margin for error on the part of the Qwest or the CLEC. Considering Qwest’s frame technicians work on activities other than batch hot cuts, including individual hot cut orders, new line installs for both retail and wholesale customers, disconnect orders and trouble shooting of maintenance and repair trouble tickets, many times these technicians may be stressed to the limit to complete all of their work for that day. This is especially true in cases where the batch job approaches the Qwest proposed 100 line limit. AT&T feels that to help ensure continuity of customer service, this pre-wiring function must continue to have at least a one day lead time from the batch project due date. Qwest’s proposal to eliminate the pre-wiring step sacrifices service quality and the customer’s experience solely for Qwest’s own efficiency.

## **3. Qwest’s proposed spreadsheet**

Qwest is short on details regarding how this spreadsheet is to be prepared and how it is going to be used. AT&T supports the use of an electronically prepared spreadsheet developed by Qwest’s OSS’s based on the information supplied on the

batch project LSRs. However, if it is Qwest's intention to develop these spreadsheets manually, this adds yet another human touch point to a process that is already very manual. Human errors on this spreadsheet will create confusion and possibly delay the project. They can also result in hot cuts being missed or service outages. Qwest must be required to provide additional details on how this spreadsheet is to be created, how it will be distributed to the stakeholders, what each stakeholder will use the spreadsheet for, how the spreadsheet will be synchronized with the CLEC's LSRs and Qwest's service orders and how errors found on the spreadsheet will be corrected. In addition, creation of a spreadsheet appears on Qwest's proposed process as a new step. It is likely that the spreadsheet creation step is going to put upward pressure on Qwest's already uneconomic hot cut costs.

#### **4. Dial tone checks**

Qwest's current hot cut process requires the central office frame technician to check for dial tone and verify the line for the proper telephone number two days prior to the scheduled cutover date. Whereas, Qwest's batch hot cut proposal has its technicians performing these verifications on the day of the cutover just prior to performing the conversion. If a problem is discovered with the CLEC dial tone, Qwest's proposal gives the CLEC one hour to remedy the problem. If the problem cannot be resolved, the affected line is removed from the project.

As was the case for the pre-wiring (item #2 above), AT&T is concerned that performing this quality check on the day of the cut leaves no margin for error for either Qwest or the CLEC. In cases where the no dial tone problem must be resolved by the CLEC, often times one hour is not going to be sufficient, especially in

instances where the CLEC must dispatch a technician to its collocated equipment. When the CLEC cannot quickly resolve these problems, the customer's line must be removed from the batch project. When this happens for multi-line customers, the CLEC must be assured that all lines for that customer are also removed from the project to insure continuity of features such as hunting arrangements. Considering the Qwest frame technicians will be working from either the individual internal service orders that are created for each line that is included in the project or from the proposed spreadsheet, it is not clear how the frame technician will be able to relate the orders to make the determination that the line with no dial tone is associated with a multi-line customer. It is also unclear how the technician will be able to determine the other lines that need to be removed from the project even though they are not experiencing the same no dial tone issues. Additionally, Qwest's proposal is silent on what occurs if the technician discovers a no dial tone condition or an incorrect telephone number on the customer's cable and pair on the line side of the frame.<sup>8</sup> This would be a problem that Qwest would need to correct. AT&T can only assume that these lines will also be removed from the project. If so, the same issue involving multi-line customers is of a concern. AT&T believes that without further details on how the dial tone checks will be performed and how the CLECs can be assured that the right lines are being removed from the project the proposal as written is too risky.

In addition, a Qwest decision to remove one or more lines from the project must be accompanied by a step to assure that Qwest does not disconnect the customer's service under the assumption that the cut would have been completed. In very short

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<sup>8</sup> These problems can occur as a result of inaccurate cable and pair inventory records.

order, Qwest technicians must be able to communicate to Qwest's back office systems that an order has been removed from a project and to ensure that no associated disconnect orders are inadvertently completed.

#### **5. CLEC notification**

In addition to the previously mentioned problems with the timeliness of the notification, AT&T has a concern with regard to the quality of Qwest's notification process. Qwest's statement indicates that this notification will be based "upon completion of the orders identified on the batch spreadsheet" yet; as discussed in item 4 above, some line may have to be removed from the project even in cases where they did not have a no dial tone problem. Qwest has not indicated how the CLEC will know exactly which of the orders identified on the spreadsheet were cut over and which were not. Unless the CLEC has absolutely accurate information regarding the exact identification of the lines that were cut, the CLEC may port numbers that it should not be porting, thereby adversely impacting customer service.

#### **C. Scalability**

As an initial matter, Qwest claims that it provisions "1,000 hot cuts per day on average."<sup>9</sup> The most recent results that Qwest published for the OP-7 Coordinated "hot cut" interval – Unbundled loops – Analog measurement belie that claim. In September of 2003, Qwest completed 9,488 hot cuts in the entire 14-state region. Assuming a twenty day work month, Qwest averaged about 475 hot cuts a day in September of 2003 – nearly half of Qwest's claimed rate. Over the last year, Qwest's OP-7 results show that Qwest averaged about 400 analog loop hot cuts a day in its entire 14-state region. This

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<sup>9</sup> Qwest Proposal, p. 7.



represents an average of 28 per workday per state. Qwest's current average daily volume of hot cuts in a state would barely make what Qwest identifies as a minimum batch for its proposed batch hot cut process. Either Qwest's claim of 1,000 hot cuts per day is erroneous, or Qwest is excluding significant volumes of hot cuts from the OP-7 results. Qwest needs to explain the incongruity between its claim of 1,000 hot cuts per day and its OP-7 results for analog loops.

The only specifics that can be found in Qwest's proposal regarding the scalability of the process is that an individual CLEC must have at least 25 and no more than 100 lines in a given CO to qualify for a batch project.<sup>10</sup> Qwest also, on page 14 of its proposal, makes the premature assumption of a finding of non-impairment and therefore lays out the timetable with vague and inaccurate formulas for determining how many hot cuts will be required to convert the embedded base of UNE-P customers. AT&T believes that the Commission should not take Qwest's assumption of a non-impairment finding seriously. Notwithstanding Qwest indulging itself with a little wishful thinking, Qwest needs to provide specific information in the following areas with respect to its ability to handle significantly larger numbers of hot cuts.

### **1. Limitations imposed on the process**

Other than the stated limit of one project consisting of no more than 100 lines per day per CLEC, what other limits does Qwest impose on its process? Some examples of questions that Qwest needs to address are:

- Will Qwest work with multiple CLECs in the same central office on the same day if the sum of the CLECs' batch projects does not exceed 100 lines (e.g. four different CLECs where each CLEC had a bulk project of 25 lines)?

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<sup>10</sup> One can assume that CLEC's who have more than 100 lines may break them up into individual batches of less than 100, however, that is not specified in the Qwest proposal.

- Does Qwest impose any limits on the number of CLECs that can migrate 100 lines in a central office in a day?
- Will Qwest allow a CLEC that had two different collocation arrangements in the same CO to include facilities in each of the arrangements on the same project?<sup>11</sup>
- Are there any limitations on the number of simultaneous batch projects Qwest is capable of working within a given geographic area?
- Are these projects limited to central offices that Qwest has staffed on a full time basis or can a project be performed in any central office?

## **2. Potential Hot Cut Volumes**

Qwest's formulas for estimating the potential hot cut volumes it will be faced with in a mass market environment do not provide any specifics with respect to the number of actual hot cuts Qwest estimates it will have to perform during the 27 month transition period. Instead Qwest states, "To calculate the expected monthly volumes in each state, the state commissions should apply the following formulas based on the volumes of UNE-P lines and UNE-L lines in each individual state." Rather than ask the state commissions to estimate the hot cut volumes based on a formula that is neither clear nor accurate (e.g., the formula does not account for the significant hot cut activity that will be required by customer churn and Qwest win-backs), Qwest should come forward on a state by state basis with its estimate of how many hot cuts will be required each month. Qwest must also provide the details on how it came up with this estimate.

## **3. Additional Qwest Personnel**

Assuming that Qwest's work centers, field technicians and central office frame technicians are currently working at optimal capacity, Qwest needs to disclose how many additional people it will need to add to its staff to meet the hot cut demand

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<sup>11</sup> CLECs will sometimes have multiple collocation arrangements in the same central office as a result of an acquisition of another CLEC.

estimated in item #2 above. Qwest also needs to specify how it arrived at this estimate and how it plans on recruiting, hiring and training these people to ensure that they are qualified to perform the work that will be required of them without impacting customer service. Additionally, Qwest needs to reveal how the hiring of these additional people will impact the CLEC's hot cut costs.

#### **D. Functionality of the proposed process**

The Qwest proposal is extremely short on many of the details needed to determine whether its proposed batch hot cut process will be functional. Additionally, in other areas where Qwest did provide specific information it is clear that there is much room for improvement to make the process of value. Following are some of the specific areas of concern for AT&T with respect to the functionality of the process.

##### **1. Project Intervals**

Qwest must clearly state what its interval is between the time the CLEC initiates a request for a batch hot cut project and the due date for the project. In a robust market with many CLECs requesting batch projects these intervals cannot be individually negotiated on a project-by-project basis. Qwest must publish its standard interval for these jobs and be measured on its performance in meeting these intervals. This is particularly critical if a CLEC wants to use this process for a migration from Qwest retail to UNE-L, a migration that Qwest states is supported by its bulk process. Unless the CLEC can give its prospective customer a date certain of when the migration will occur this process can never be used for the migration of retail customers to a CLEC.<sup>12</sup>

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<sup>12</sup> It is critical to note that even with standard intervals, unless the interval is reasonable (e.g. 6 business days or less), this process will be virtually useless for migrating retail customers to UNE-L.

Additionally, the introduction of a standard interval for requesting a batch hot cut project will eliminate the time/resource consuming step of conducting the initial batch hot cut project coordination meeting required by the Qwest proposal. With a standard interval a CLEC can initiate a project via a simplified email notification to Qwest of its intent to engage in a batch project. This email would supply Qwest with the details it will need, such as the central office location, the desired project date and time and the number of customer accounts and lines involved with the project. Qwest can respond to this email with the project code and a confirmation of the date which would trigger the CLEC to issue its LSRs. While Qwest's proposal is not entirely clear, it appears that unique Qwest-supplied project codes would be required on the individual LSRs that a CLEC submits as part of the batch. Qwest needs to clarify whether unique project codes are required on an LSR; and, if so, how those project codes are obtained.

## **2. The process must be voluntary**

Qwest's proposal indicates on page 11 that at the initiation of a project request "a CLEC will perform pre-order functions including an initial batch coordination meeting with Qwest." The initiation of a batch project must be at the option of the CLEC and cannot be dictated by Qwest. There are many factors that would prevent a CLEC from wanting to perform a batch hot cut job in a specific central office, even in cases where the CLEC may have the requisite quantity of lines to qualify for a batch project. These factors include, but are not limited to, not having a collocation arrangement in the central office, not having sufficient spare capacity on the collocated equipment that the CLEC has in the central office and a temporary

congestion problem that the CLEC may be experiencing on its network. There should be no mistake that the batch hot cut process that the parties will be creating is voluntary on the part of the CLEC. A CLEC may conclude that Qwest has not reduced the economic or operational impairments of hot cuts sufficiently to justify converting a UNE-P customer to UNE-L. The true measure of the worth of Qwest's batch hot cut process will be seen when CLECs voluntarily choose to exercise that process.

### **3. Limits on loop types**

Qwest's proposal limits the loop types that qualify for a batch project to analog POTS loops and further underscores the operational impairment involved with hot cuts. On page 9 of its proposal Qwest states, "A batch conversion process is possible for these analog DS0 loops, which constitute the vast majority of Qwest's outside plant. But it is not feasible to gain these efficiencies when the underlying facility uses integrated digital loop carrier systems ('IDLC')." AT&T agrees that when the Qwest network is viewed as a whole, the analog DS0 loops do constitute the majority of the loops. However, the batch job is not performed on a network-wide basis; it is performed at a central office level.

When viewed at a central office level, the IDLC restriction becomes a bit more problematic. Qwest has many large central offices with over 30,000 lines that have 30% or more IDLC lines. This is particularly true in states such as Arizona, Washington and Colorado that have experienced a high degree of growth over the past 10 years. In these states, as well as in some of the other states, there are many central offices that would have a large proportion of the loops that terminate in the

office precluded from the batch hot cut process under the current Qwest proposal. In fact there are a number of offices that have more than 50% of their lines on IDLC facilities.<sup>13</sup>

To make this process functional in a mass market environment, Qwest needs to revisit its removal of IDLC lines from the process. In addition, Qwest needs to disclose to the commission and the CLECs what its capacity is for migrating these lines in the high density offices to non-IDLC facilities as required for a hot cut. In wire centers with a high number of hot cuts, Qwest may be limited in the amount of spare copper/UDLC facilities it can use to overcome the IDLC problem. Qwest needs to explain how it will ensure the necessary inventory of spare non-IDLC facilities.

In addition to the restriction of IDLC loops, Qwest's proposal restricts the migration of line splitting loops. Qwest's rationale for this is two-fold. First, Qwest states, "The FCC expressly defined its batch-cut requirements in terms of developing a process to migrate loops "from one carrier's local circuit switch to another carrier's *local circuit switch*." The FCC's definition of a 'batch cut process' thus does not include conversions including loop-splitting arrangements that also connect an unbundled loop to a third carrier's *packet switch*." Footnote omitted; emphasis added. Qwest goes on to state, "conversions from UNE-P directly to loop-splitting arrangements cannot be consolidated into a batch because each loop must be individually checked to ensure it is capable of carrying DSL signals and, if not,

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<sup>13</sup> Per Qwest's ICONN database. See [www.qwest.com/iconn](http://www.qwest.com/iconn).

conditioned.”<sup>14</sup> It seems that on both of these points Qwest seems to have misstated the facts.

To the first point, when cutting over a loop to a CLEC using a line splitting arrangement, the voice frequency portion of the loop does not go to the CLEC’s packet switch. After the loop is connected to the CLEC’s splitter, the voice frequency is connected to the CLEC’s circuit switch. Therefore, the line is being connected “from one carrier’s local circuit switch to another carrier’s local circuit switch” just as the FCC had envisioned. Secondly, it is highly unlikely that a customer who is receiving standalone POTS service via UNE-P is going to need to be migrated to a DSL capable loop as described by Qwest. However, it is very likely that a customer who is currently on a line splitting arrangement today where the voice service is provided via UNE-P will need to be converted to line splitting when the CLEC is using Qwest’s loop and connecting the voice frequency to a CLEC’s switch. In these cases there is no need to determine whether the loop requires conditioning for the DSL service because the customer is already receiving DSL service on a loop that is already meeting the requirements for a DSL service. Qwest’s rationale for restricting line splitting loops from the batch process is without merit. AT&T believes that Qwest should remove this restriction from its proposed process.

#### **4. CLEC-to-CLEC migrations**

Qwest’s proposal indicates that its batch process will support CLEC-to-CLEC of migrations. However, Qwest is silent on how it plans to include these migrations into the ordering flow for a batch hot cut. Given the current lack of industry procedures

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<sup>14</sup> See Qwest’s proposal on pages 9 and 10.

on CLEC-to-CLEC migrations, AT&T believes that Qwest needs to provide specific details on how it plans to incorporate these types of migrations into a batch project.

### **5. Project cutover times**

Qwest's proposal on page 13 states; "The CLEC must make resources readily available to clear all loops identified on the batch spreadsheet in a timely manner between the hours of 3:00PM CST and 11:00PM CST." For any of us who have sat around waiting for the telephone installer or repair person who is supposed to show up between the hours of 8 AM and 5 PM, we know how inefficient a use of time this is for the person kept waiting. In addition to providing the CLEC more timely notice on the status of the project as described in the "Quality of Service" section of this document, Qwest needs to be more specific as to what time the project is going to start and what time it anticipates it will end to allow the CLEC to properly plan the workload for its staff members. Additionally, there are going to be times when, because of the nature of the customers being cutover, a CLEC may not wish to have the migrations performed between the hours of 3:00PM and 11:00 PM. In these cases the Batch process should be flexible enough to allow the CLEC to request a batch hot cut project at any time of the day and on any day of the week.

### **6. Pending orders**

The Qwest process has the CLEC issuing LSRs for the lines involved in the project. However, as stated in #1 above, without knowing what the interval is for these LSRs, they may be waiting a considerable amount of time in Qwest's systems as pending orders before the due date of the batch project. Considering that these orders will most likely be exclusively for existing CLEC customers, it is not clear what



happens to that order should the CLEC needs to issue an interim order to make a change on the existing customer's account (e.g. a feature change to a UNE-P customer). Additionally, Qwest needs to clarify what the process is for ensuring that the customer's line does not get migrated as part of the batch process in cases where the customer churned over to another carrier in the time between when the batch order was issued and the due date of the batch project.

### **7. Service outages**

Qwest needs to make clear what the process is for the CLEC to quickly resolve service outages discovered after the CLEC receives the project completion notification. Specifically, will there be a process in place for a "throw-back" of the affected customer's line to its original state to quickly restore the customer's service, or will the CLEC have to go through the normal trouble reporting process? AT&T believes that Qwest needs to have a process in place that will allow Qwest and the CLEC to work cooperatively to restore the customer's service in an expedited time frame.

### **8. Testing the process**

Qwest's proposal is also silent on how it proposes to test its batch hot cut proposal to make sure it is operational. Because the industry has absolutely no experience with operating in a mass market environment using a manual hot cut process, any process being proposed must be thoroughly tested to guarantee its operational readiness. Because of the incentive that Qwest has to make such a test appear that its proposed process is flawless, AT&T believes that this testing should be closely monitored by the Commissions and an independent third-party tester. Additionally, AT&T believes

that this test should not impact any CLEC customer's service and, therefore, should be conducted by having Qwest using its proposed process to migrate a significant number of its own retail customers from a direct connection of the customer's line from the existing Qwest switch over to another Qwest switch connected via collocated equipment located in the original central office. Testing should include independent third-party monitoring of the conversion activities and monthly monitoring of performance results for the converted customers.

### **III. CONCLUSION**

AT&T is encouraged by the fact that Qwest has taken the initial step to propose a batch hot cut process. However, as indicated by these comments, AT&T has many serious concerns about the cost, customer impact, scalability and functionality of the process that was outlined by Qwest in its batch hot cut proposal. Additionally, AT&T is also concerned about the necessary details that were *not* addressed by Qwest.

AT&T looks forward to working collaboratively with Qwest and the other industry participants to work through the Qwest proposal to resolve these initial issues identified by AT&T and issues that are raised by other participants. This collaborative should also determine what other improvements need to be made to improve upon the Qwest proposal and make the batch hot cut process one that is beneficial to Qwest, the CLECs and, most importantly, to the end-user consumer.

Respectfully submitted on November 18, 2003.

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**CERTIFICATE OF SERVICE**  
TC03-181

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

I hereby certify that on November 17, 2003, the original and 10 copies of AT&T's Comments and Counter Proposals on Qwest's Proposal for Region-Wide Batch Loop Conversion Process were sent by overnight delivery service to:

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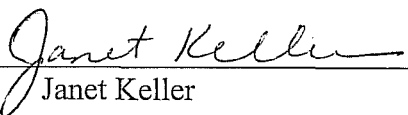
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November 18, 2003

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SOUTH DAKOTA PUBLIC  
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Pam Bonrud  
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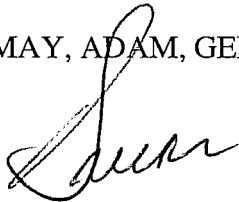
RE: In The Matter Of The Implementation Of The Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket Number: TC03-181  
Our file: 0175

Dear Pam:

Enclosed for filing please find an original and ten copies of a MCI's Response To Qwest's Proposal for Region-Wide Batch Loop Conversion Process in the above referenced action. By copy of this letter service is made on the service list.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Service List  
Susan Travis  
Bret Dublinske

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

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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**MCI'S RESPONSE TO QWEST'S PROPOSAL FOR REGION-WIDE BATCH LOOP  
CONVERSION PROCESS**

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WorldCom, Inc., on behalf of its regulated subsidiaries, ("MCI") submits this response to Qwest Corporation's ("Qwest") proposal for a region-wide batch hot cut ("BHC") process. These are preliminary comments based upon MCI's review of Qwest's proposal in less than a week. Qwest's proposal is being circulated within MCI to its relevant business units and its information technology personnel for review and comment. Accordingly, MCI requests and reserves the right to provide additional and more complete comments as the 14-state collaborative forum progresses.

**INTRODUCTION**

Qwest has made a number of legal arguments concerning what it believes it is obligated to provide for a batch hot cut process. MCI does not intend to address those legal arguments in depth in this preliminary filing. Rather, MCI will state from a business perspective what it needs for a batch hot cut process.

Although Qwest states that its current process to convert lines from one competitive local exchange carrier's ("CLEC") circuit switch to another in a "batch process", is adequate, it nevertheless has proposed modifications which, in MCI's opinion, are not sufficiently defined and create risks that the end user customers may have a greater likelihood of losing service for

longer periods of time. In other words, Qwest's proposed changes tend to reduce the quality of services proposed, for example, by eliminating certain testing, by eliminating the sending of test results, by contacting CLECs by e-mail to notify of the completion of a hot cut, and by doing pre-wiring on the day of the cut instead of in advance of the cut. This elimination of services associated with conversion of lines poses greater risks to end users that their lines will be out of service longer, that the cut will not take place when scheduled, or that other service failures will increase.

Nevertheless, MCI remains hopeful that procedures and practices eventually emanating from the Qwest's BHC process will help to facilitate the orderly and seamless migration of a portion of its current, or embedded, UNE-P-based mass market customers to services provided over unbundled loop ("UNE-L") facilities purchased from Qwest and switching facilities owned and/or controlled by MCI itself in areas where it is economically viable to do so. It is MCI's expectation that any processes designed to facilitate such a migration will be efficient, economical and, most importantly, non-customer impacting. MCI does not believe, however, that the mere *identification* – as distinguished from the designing, testing, implementing and on-going performance in a commercial environment – of a BHC process is sufficient to address questions of actual impairment.

MCI encourages Qwest, the Commission and its Staff, and all other Parties involved in this collaborative forum to recognize that the establishment or modification of a BHC process must be considered along with all other affected systems, procedures and practices in order to verify that each such system, procedure and practice will effectively perform its designed functions simultaneously under commercial loads. Also, a BHC process must address other areas of impairment relating to other types of hot cuts - such as CLEC-to-CLEC migrations, CLEC-to-



ILEC migrations which will occur after the embedded base of a given has been transitioned to UNE-L in a given geographic market or the migration of customers who have CLEC data services from UNE-P line splitting to UNE-L line splitting.

MCI also encourages Qwest, the Commission and its Staff, and all other Parties involved in this collaborative forum to remain focused on the long-term objectives involved with the establishment of an efficient BHC process and to consider not only the short-term, manual modifications, but the longer term possibilities including, for example, the wider implementation of GR303 capable Integrated Digital Loop Carrier (“IDLC”) systems which would allow for the unbundling of IDLC based loops without migration to “other facilities,” which often times contributes to additional manual processing, delays and errors. The use of automated or robotic frames should also be contemplated as a longer-term solution, particularly in unmanned central offices (“COs”) similar to those in which such technologies have already been tested, proven and are currently operational.

Finally, consideration must be given to a competitively neutral cost recovery mechanism for all costs. Qwest has failed to provide any total element long run incremental cost (“TELRIC”) studies or proposed any new rates for its proposed BHC process. This is critical since the pricing must reflect Qwest’s efficiencies gained from the BHC process. For instance, the BHC process will significantly reduce coordination costs and such reductions should be reflected in the economic costs.

### **SUMMARY OF MCI’S BHC PROCESS CRITERIA**

The Federal Communications Commission’s (“FCC”) BHC process must be implemented by Qwest for purposes of provisioning unbundled loops. [see FCC rule §51.319(d)(2)(ii)]. Any BHC process implemented by MCI, including the internal systems/processes needed to

complement the Qwest process, will be directly affected by Qwest's BHC process ultimately adopted by the Commission. It is not possible to identify all relevant CLEC operational issues in a vacuum, because the systems of both Qwest and the CLECs must be considered together. That is, systems and processes must be in place in the functional areas of pre-ordering, ordering, provisioning, and maintenance and repair in order to identify all operational issues.

There are, however, certain criteria that MCI believes must be captured by Qwest's BHC process to be consistent with the FCC's *Triennial Review Order* ("TRO"). Those include at least the following:

- a. The process must be largely mechanized if it is to comply with the FCC's requirements of seamlessness, scalability and low cost. MCI believes that the mechanized process currently available for UNE-P migrations stands as a workable benchmark against which any seamless, scalable and low cost BHC process should be measured.
- b. The process must be largely free of exclusions, i.e., a CLEC must be allowed to use the process to move any loop from another carrier's circuit switch to its own circuit switch. This should include any line splitting scenarios, any equipment types such as IDLC and should not be restricted by class or size of an end user customer.

The BHC process should not only accommodate these loops from a physical provisioning standpoint, but should also include them in any performance metrics as well. The FCC places no restrictions on the BHC process relative to different types of loops and MCI believes such restrictions would dramatically reduce the benefit and effectiveness of the BHC process as envisioned by the FCC.

- c. The process should maximize the ability for both Qwest and CLECs to rely upon existing electronic bonded systems, such as electronic data interchange ("EDI"). While

opportunities exist for enhancements in this area, such as the passing of status information relative to BHC pre-wiring, wiring, LNP in real-time, and system-to-system interface, graphical user interfaces (“GUP”) interfaces should be used only as a last resort but nevertheless be available to obtain information. CLECs should be allowed to submit orders which identify a given hot cut batch, using EDI or other established ordering mechanisms that generally flow through their existing systems for individual or multiple lines. Qwest should not be allowed to require some type of manual ordering scenario or require the CLEC to provide spreadsheets, or “cut sheets” even if such sheets are required for ordering loops today. Indeed, there should never be a need to call Qwest provisioning centers or to exchange faxes or other time consuming and error prone exchanges of information.

d. The BHC process should provide both a coordinated hot cut (“CHC”) and frame due time (“FDT”) option. Both options should include a due date scheduling function that can be accessed electronically by CLECs.

e. Performance measures, remedies and commercial testing must be an integral part of any approval process. Again, the existing UNE-P migration process and related performance criteria should be used as a starting point for these exercises. Provisioning intervals should be established in advance. A CLEC should not be required to “negotiate” the provisioning date for each BHC in advance.

The appropriate average completion intervals for BHC processes should be similar, if not identical, to the existing UNE-P migration process and the applicable completion intervals that exist therewith. Consistent with MCI’s primary concern relative to the applicable customer experience, it is absolutely imperative that the customer be completely oblivious to whether he/she is being served via UNE-P or UNE-L, or when that change in provisioning technology

might have taken place. Part of that transparency is the ability to serve customers on a relatively short timeframe, consistent with the timeframe available using UNE-P today. Completion intervals for the BHC process that exceed existing UNE-P migration intervals will not provide adequate transparency for the customer and will negatively impact a CLEC's ability to effectively compete.

f. After having established proper metrics, the Commission should establish a testing schedule for at least the long-term process to ensure that all systems work as advertised under testing and commercial conditions.

g. After Qwest has successfully completed BHC process testing, a TELRIC-compliant rate that reflects the efficiencies resulting from the "batch" processes must be established. MCI would expect a rate structure that would reflect costs for the initial hot cut and additional hot cuts. The pricing might also vary by 2-wire and 4-wire circuits. There is currently no detail in Qwest's filing that would help MCI understand the pricing structure or underlying costs.

### **SPECIFIC COMMENTS**

Qwest's filing begins by suggesting that the TRO's comments about problems with the incumbent local exchange carriers' current hot cut processes does not apply to Qwest, because its Arizona 271 application was reviewed, presumably by the FCC, with the TRO findings in mind. Nothing supports this assertion in the TRO. The TRO speaks to mass markets hot cuts at high volumes so that customers may be transitioned from UNE-P to UNE-L. Nowhere does the TRO state that Qwest has a process that meets its new criteria of a seamless, scalable, low-cost process. The FCC has had Qwest's current process under 271 review for some time, and if the

FCC considered Qwest's process to be adequate, it likely would have said so and provided guidance to other ILECs and CLECs.

Qwest states that its process applies when a CLEC has "requisite number of lines" and defines that as 25 lines. MCI may want a lower number based on unique customer requirements or other circumstances. CLECs should be allowed to determine a minimum or maximum amount of orders to send per batch, per CO. This change allows CLECs the opportunity to continuously examine their UNE-P customer base and/or targeted sales volume by CO location and make informed decisions about which COs to convert with a BHC and which would be best served by individual orders.

In addition, Qwest must define "sufficient volumes" for CLEC-to-CLEC migrations and must provide another seamless process to move these customers. If MCI has to transition its customer base, it appears that Qwest is stating that MCI cannot use the BHC if MCI does not have enough lines/customers/orders for a Qwest-defined batch. This needs to be clarified.

MCI's initial transition of UNE-P customers will be UNE-L with LNP 100% of the time. Qwest must clarify how many orders it is able perform per CO, per CLEC in a single day for both CHC and FDT hot cuts. In its proposal (Exhibit 7), it sets a cap at 100 "orders" per day, per CO. While Qwest states that it will do batches of at least 25 "lines", its proposal does not address multiple CLECs and the largest number of BHCs it can do in a single day per CO. Qwest discusses completing orders with line splitting during "normal business hours" but doesn't define those hours or indicate whether batch cuts will be completed at times other than normal business hours. These timing issues are critical since Qwest's process envisions "phoning the CLEC" to resolve issues. Qwest's proposal includes only POTS lines; however, as noted above MCI also requires that IDLC lines and line splitting/line sharing loops be included. It is MCI's

understanding that other incumbent local exchange carriers will include IDLC in their BHC processes. Finally, Qwest uses “lines” and “orders” in addressing sizing and BHC limitations. The correct nomenclature needs to be clarified.

The BHC (CHC and FDT) process and relevant systems and related processes must apply to multiple scenarios including, but not limited to, CLEC UNE-P to UNE-L (same CLEC), CLEC UNE-P to ILEC-retail, CLEC UNE-P to CLEC UNE-L (different CLEC), CLEC UNE-L to CLEC UNE-L (different CLEC), just to name a few. All of the functional areas are implicated in one or more ways—and more importantly, in different ways—by the various possible serving scenarios. By way of example, beyond the processes associated with the physical cutover of Qwest’s loop to the CLEC’s collocation are numerous critical database issues, including Line Information Database (“LIDB”), Customer Name (“CNAM”), 9-1-1 Automatic Location Identification (“ALI), and directory listings and NPAC-Number Portability Administration Center impacts. Each of these databases contains customer-impacting data, and there is a critical need to develop coordinated, seamless, and scalable processes and systems addressing all of the possible serving scenarios to avoid putting at risk a variety of customer features and functionalities

When MCI transitions its customers from UNE-P to UNE-L in a specific CO, MCI will likely transition all lines in a given CO. MCI will also require migrating a line splitting line from "one carrier's circuit switch to another" when MCI moves an in-place line splitting customer. The fact that CLECs continue to have an interest in the provision of DSL-based services—including, for example, via line-splitting—adds yet another level of difficulty to the complexities already noted. Loop splitting thus remains a critical area that must be reviewed and tested prior to any finding that the BHC process has been adequately addressed.

Qwest must provide a detailed summary of its "new business rules" associated with the process and a time frame for implementation. The final business rules cannot be developed, however, until the process is fully defined, in place and tested. Qwest must also provide information on the current OSS used for this process and whether the orders "flow through" and whether and under what circumstances orders will fall out to manual processing. The process must be applicable for both EDI and GUI. Qwest's BHC Provisioning Flow (Exhibit 6) is not nearly detailed enough. Finally, the BHC process must be implemented and tested to prove it is effective and working as defined. Testing must also ensure that the BHC process works as defined under commercial loads. There must be new metrics for the new process.

MCI does not want to have meetings to negotiate due dates. Spreadsheets or cut sheets sent to the CLEC by Qwest are inadequate and cause delay. Qwest must develop an automated due date scheduler or some other method of time selection that will allow CLECs to know when the process can start and be completed. Negotiations and contacts with project managers must not be required and only serve to increase the time required for the transitions. Qwest should develop an electronically bonded and on-line system for communicating with CLECs similar to the Verizon Wholesale Provisioning Tracking System ("WPTS") system.<sup>1</sup> This will eliminate work steps and miscommunications and enhance efficiencies. MCI does not believe that a good process requires that problems will be communicated by phone calls. This takes time and is a manual process prone to errors. An on-line, real-time electronic system should be used.

Delaying a dial tone check and the final jeopardy until the day of the cut is dangerous for consumers. MCI also disagrees with Qwest's proposal that CLECs be informed of cut

completion via an e-mail. This is a wholly manual process that will lead to additional problems. The completion of the cutover should trigger an electronic service order completion (“SOC”) notice within 10 minutes of the cut in order to prevent undue delay for the LNP process calls for an extended period of time that consequently delays when customers will be able to receive calls.

The Qwest BHC process takes a step backwards from the “migrate by telephone number (“TN”)” procedures that MCI previously requested and were recently implemented by Qwest as a result of MCI’s change request submitted through Qwest’s change management process. CLECs should not have to send service addresses or customer code for any of these orders. Moreover, Directory listings must be “migrated as is”. Qwest must specify all ordering requirements. Qwest must also provide the highest number of number portability transactions (ILEC to CLEC, CLEC to ILEC, and CLEC to CLEC) done on one day over the past year. Additionally, Qwest must provide a description of any metrics or measurements relating to the accuracy and seamlessness of LNP transactions, both pertaining to conduct of NeuStar and also relating to conduct of carriers in general. Finally, Qwest’s proposal eliminates the dial tone check two days prior to the cut date (“DD-2”) and moves the dial tone check to the day of cut. This will not give the CLEC time to fix any problems and will cause customer dissatisfaction.

Finally, some general observations are appropriate. Qwest never really discusses number porting and how quickly after the BHC is completed, the TN is released. Qwest does not address whether it will notify a CLEC only after the entire batch is completed or after a certain number of orders within the batch are completed in order to allow the CLEC to continue updating its systems. In Exhibit 6, Qwest refers standard “Record Retention Process”, but does not describe

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<sup>1</sup> By referencing the Verizon system does not mean that MCI considers that system in its presently identified status to be ideal or acceptable to MCI; however, it is one form of an



that process or what it entails. In Exhibit 7, under “CLEC Impacting”, in the 1<sup>st</sup> bullet there is a reference order entry and prioritization of BHC by Qwest. What is Qwest prioritizing? Under “Qwest Requirements”, in the 2<sup>nd</sup> bullet, MCI does not need a spreadsheet from Qwest after the FOC, the FOC should be sufficient. Finally, Qwest has not proposed a “throwback” timeframe, during which period such as three hours, after a cut has taken place, the CLEC can request the customer be returned to UNE-P to address any subsequent problems that might arise and maintain a customers telephone service.

### **RECOMMENDATIONS AND CONCLUSIONS**

1. Allow CLECs to determine a minimum or maximum amount of orders to send per batch per CO. This change allows CLECs the opportunity to continuously examine UNE-P customer base and/or targeted sales volume by CO location and make informed decisions about which CO’s to convert with a BHC and which would be best served by individual orders.

2. Allow CLECs to designate orders as part of a batch via a unique identifier on individual LSR. CLECs should control which orders will be subject to BHC process and will minimize changes to CLECs’ order processing stream for order creation, work flow management, error resolution and reporting.

3. The data on LSR should be similar to what is required for UNE-P Migration-TN, minimal address fields, CFA, etc. This will minimize changes to LSR data population and reduces chance for rejects because requiring less information means less editing by Qwest.

4. LSRs will specify a due date five (5) business days in the future. This interval minimizes the amount of time a customer is held in a “limbo” state of no changes.

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electronically bonded and on-line system for communicating with CLECs.

5. Qwest must process batch orders when received (first in first out). Qwest must send both electronic and on-line notification to CLEC within 1 day of reject or if Busy carrier facility assignments (“CFAs”) are found. CLECs can expect a specific cutover window and better manage the customer’s experience. This also allows CLECs time to correct any CFA issues.

6. Qwest must refrain from any order activity against a customer’s account while the batch order is pending, except to cancel an individual batch order, or if a disconnect of dial tone or migrate away order has a more current date than the conversion order (after which changes could be made). Qwest should send electronic and on-line notification to CLEC if this should, nevertheless, occur. This still leaves the customer in a “no change” situation. However, selecting a due date and shortening the due date interval positions CLECs to better manage their customers’ expectations of when a change can be made to their account. Allowing disconnect or migration away orders to override conversion orders will minimize delays the customer could experience trying to migrate to other carriers after converting to UNE-L.

7. Qwest must send both electronic and on-line notification to CLECs 2 days prior to cut date if there is no dial tone. “No Dial Tone” issues must be identified prior to the BHC in order to allow CLECs time to correct prior to the cut date.

8. Qwest must send both electronic and on-line notifications as soon as BHC has taken place. Ultimately notification should be real-time, but in any case no longer than 10 minutes after cut completion. This also allows CLECs to develop better back-office processes for those customers with time-sensitive needs, such a small business customers.

9. Qwest must submit the number-port activation order to NPAC w/in 10 minutes after the BHC was completed on the due date. This offers potentially the quickest turnaround for

NPAC notification. Qwest would trigger its NPAC Release order within a specified interval, such as 5 minutes, after cut completion, then initiate the winning CLEC's Port-In order to NPAC within a specified interval, such as 5 minutes. CLECs would also need notification after successful completion of each step.

10. Qwest must send EDI provisioning and completion notifications to close out LSR. This is consistent with UNE-P workflow process. This would allow CLECs to continue to acquiring customers using UNE-P and convert after acquisition. This would also give CLECs the option to continue acquiring customers and allow for churn.

11. Qwest must ensure the following are included in the batch hot cut process: 1.) CLEC-to-CLEC UNE-L migrations, 2.) Lines provisioned with DSL, and 3.) Lines provisioned by IDLC. This will remove the cumbersome "pre-qualification" selection for batch candidates and minimize fallout.

Dated this 18 day of November, 2003.

MAY, ADAM, GERDES & THOMPSON LLP


BY: 

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

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

**CERTIFICATE OF SERVICE**

 Brett M. Koenecke, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of November, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the **MCI Response To Qwest's Proposal for Region-Wide Batch Loop Conversion Process** in the above-captioned action to the following at their last known addresses, to-wit:

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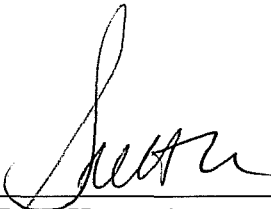
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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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November 26, 2003

**TO:** Qwest Corporation, MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., AT&T Communications of the Midwest, Inc., Black Hills FiberCom, L.L.C., ICG Telecom Group, Inc., McLeodUSA Telecommunications Services, Inc., Midcontinent Communications, Northern Valley Communications, LLC, Sprint Communications Company L.P., PrairieWave Telecommunications, Inc. and Midstate Telecom, Inc.

**FROM:** SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

**RE:** Docket TC03-181, In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order Regarding Unbundling Obligations -- Issuance of Discovery Requests

**DISCOVERY REQUESTS** - The Public Utilities Commission (Commission), as directed by the FCC in the Triennial Review Order, has compiled the following discovery requests based on a discovery template created by the Regional Oversight Committee (ROC) discovery group. The Commission is sending this discovery request to both parties and non-parties in order to develop a sufficient record on which to base its decision in this docket. The Commission has the statutory authority to obtain information from telecommunications companies operating in this state. See SDCL 49-31-7.1. The response time for discovery is December 19, 2003. Please respond accordingly within the time frame established. In order to protect confidential information, the Commission has entered a Protective Order which is attached. Please review the Protective Order carefully in order to insure compliance with the Order.

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>ORDER ISSUING</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	<b>PROTECTIVE ORDER;</b>
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	<b>ORDER ISSUING</b>
<b>REGARDING UNBUNDLING OBLIGATIONS</b>	)	<b>DISCOVERY REQUESTS</b>
	)	<b>TC03-181</b>

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

The Commission has jurisdiction over this matter pursuant to SDCL chapter 49-31, specifically 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCImetro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and

comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T, and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. All discussions would be transcribed and made part of the record in each state's triennial review proceeding. Impasse issues remaining at the conclusion of the forum process would be documented and then litigated before each state commission. Given the strict timelines set forth by the FCC for the development of a batch hot cut process, the following schedule was proposed:

November 5, 2003 - Commission notice to all CLECs within the state regarding a batch hot cut forum;

November 11, 2003 - Qwest submits a detailed batch hot cut proposal;

November 18, 2003 - CLECs submit comments/counter proposals to Qwest's batch hot cut proposal;

December 1-3, 2003 - Initial Forum held in Denver, Colorado;

December 4, 2003 through January 15, 2004 - Weekly conference calls if useful and meetings, if necessary, in Seattle, Washington and Phoenix, Arizona;

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 15, 2004 - Simultaneous filing of rebuttal testimony;

Hearings and Commission decision will be as determined in each state's procedural order.

In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum. The Commission also slightly modified the notice requirement by sending the order on November 6, 2003, to all telecommunications carriers in the state who have requested to receive notice of Commission proceedings.



With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee (ROC) discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to.

The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order.

The Commission finds that the amended Protective Order is needed to facilitate the disclosure of documents and information and to protect confidential information. Pursuant to its November 6, 2003, order, the Commission issues the Protective Order which is attached to this order.

Pursuant to its November 6, 2003, order authorizing the issuance of discovery requests, the Commission issues discovery requests based on the discovery questions formulated by the ROC discovery group. The discovery requests are attached to this order.

With respect to the issue of which entities the discovery should be served upon, the Commission allowed any party to file a proposed list of entities. Qwest, in its amended list, requested that the discovery requests be sent to the following companies: AT&T, Black Hills FiberCom, L.L.C., Dakota Telecom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Communications, and Midstate Telecom, Inc. However, the Commission notes that Dakota Telecom no longer exists and the PrairieWave CLEC is PrairieWave Telecommunications, Inc., not PrairieWave Communications. Thus, the Commission will amend Qwest's list to exclude Dakota Telecom and change PrairieWave Communications to PrairieWave Telecommunications, Inc. The only other party submitting a list was MCI who requested that the discovery requests be sent to all certified LECs in South Dakota and to equipment manufacturers, where necessary. The Commission finds that, at this time, it will send its bench discovery requests to Qwest, all parties who have been granted intervention in this docket, and the companies specified by Qwest as amended by the Commission.

On the issue of confidentiality, MCI stated in its comments that with the issuance of the Protective Order, concealment of the identity of the responding entities is not necessary and could be "counterproductive to the necessary understanding of the status of the market required for the Commission and the parties to take positions and make decisions." MCI further noted that any attempt to conceal the responding entities may turn out to be unproductive because, if enough information is eventually provided, the identity of the responding entity will probably become apparent anyway. No other entity commented on this issue.

The Commission finds that it will not attempt to conceal the identity of the responding entities but will rely on the Protective Order to prevent the disclosure or dissemination of confidential information in a manner that would competitively disadvantage any responding entity. The Commission notes that the Protective Order includes provisions for submission of confidential and highly confidential information.

It is therefore

ORDERED, that the Protective Order, attached to this order, is issued for this docket; and it is

FURTHER ORDERED, that the discovery requests, attached to this order, are issued to the following entities: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.; and it is

FURTHER ORDERED, that each of the above-listed entities shall answer the discovery requests on or before December 19, 2003, by filing them with the Commission.

Dated at Pierre, South Dakota, this 26th day of November, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>          Nelaine Kolbo          </u>
Date:	<u>          11/26/03          </u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

          Robert K. Sahr            
ROBERT K. SAHR, Chairman

          Gary Hanson            
GARY HANSON, Commissioner

          James A. Burg            
JAMES A. BURG, Commissioner

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>PROTECTIVE ORDER</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	<b>TC03-181</b>
<b>REGARDING UNBUNDLING OBLIGATIONS</b>	)	

To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the Public Utilities Commission of the State of South Dakota ("Commission") now issues this Protective Order ("Order") pursuant to ARSD 20:10:01:43(3) to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be confidential pursuant to ARSD 20:10:01:39 (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"),

and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents either (1) that no such employee is engaged in the sale or marketing of that party's products or services, or (2) that such person is employed by a Small Company. A Small Company is a company with fewer than 5,000 employees, including the employees of any of the Small Company's United States affiliates that operate as an ILEC, CLEC, or IXC within a common holding company. A Small Company may designate any employee or in-house expert to review Confidential Information and/or Highly Confidential Information if the producing party, upon request, gives prior written authorization for that person to review Confidential Information and/or Highly Confidential Information. If the producing party refuses to give such written authorization, the reviewing party may, for good cause shown, request an order from the Commission allowing a prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The producing party shall be given the opportunity to respond to the Small Company's request before an order is issued.

In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and

employees of the Commission to whom disclosure is necessary. Disclosure of both Confidential Information and Highly Confidential Information to Commission staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings,

cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose

a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

"HIGHLY CONFIDENTIAL-USE RESTRICTED PER PROTECTIVE ORDER  
IN DOCKET NO. TC03-181."

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of "Exhibit B" attached. Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "Highly Confidential." Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members

and Commission Staff shall be limited to persons to whom disclosure is necessary. The Exhibit "B" also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making, non-regulatory strategic or business planning or procurement on behalf of the receiving party, unless such person is employed by a Small Company, as defined in section 1(c). If the person is employed by a Small Company, then the conditions in section 1(c) apply.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B." Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.



Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit "B." The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Commission and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

(e) In the event that the Commission should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

(1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.

(3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL-USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181" and shall not be examined by any person except under the conditions set forth in this Order and the notice required by ARSD 20:10:01:40 shall also be posted at the locked facilities, where the information is located.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any

cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Commission and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit "A" or "B," unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the Commission, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty

(30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

7. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to Docket No. TC03-181.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated at Pierre, South Dakota, this 26th day of November, 2003.

**CERTIFICATE OF SERVICE**

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

By: Helaine Kolbo

Date: 11/26/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

EXHIBIT "A"  
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated November 26, 2003, in Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT "B"  
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated November 26, 2003, in Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

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Name

---

Employer

---

Job Title and Job Description

---

Business Address

---

Party

---

Signature

---

Date



**DISCOVERY REQUESTS ISSUED BY THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

**REQUESTS FOR INFORMATION REGARDING SWITCHING**

**A. Questions for CLECs**

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the Triennial Review Order) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.
2. Identify each ILEC wire center district (i.e., the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines<sup>1</sup> you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.
4. For each switch identified in response to Question 1, identify the approximate capacity of the switch - that is, the maximum number of voice-grade equivalent lines it is capable of serving - based on that switch's existing configuration and component parts.
5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number

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<sup>1</sup>Voice-grade equivalent lines would include DSO lines and, by the definition in FCC Form 477, *Instructions for the Local Competition and Broadband Reporting Form*, include traditional analog POTS lines, Centrex-CO extensions, and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP fiber).

being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the Triennial Review Order.
  
7. For each Qwest wire center in South Dakota in which you provide retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that you serve. Please provide this information in the following format:

WIRE CENTER: \_\_\_\_\_

Quantity of VGE	Customer Location	
	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
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8. For each switch you own, operate, control, maintain, or from which you lease dial tone or trunking functionality/capacity within South Dakota, please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.
9. Do you believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If you believe that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.
10. Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (i.e., percentage of your customers lost to another carrier) on all of the following bases:
  - (a) number of customers by customer type (e.g., residential, business with one to three lines; business with more than three lines);
  - (b) percentage of churn by customer type (e.g., residential, business with one to three lines, business with more than three lines);
  - (c) number of customers by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services); and
  - (d) percentage of churn by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services). For customers that purchase up to 24 voice-grade equivalent lines, please

identify the types or categories of customer acquisition costs CLEC incurred in the state in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

**B. Questions for Qwest**

1. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that you directly serve.
2. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.
3. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.
4. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through the CLECs' own facilities.
5. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that you directly serve.
6. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.
7. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.
8. For each wire center in your territory in the state, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).
9. For each wire center in your territory in the state, please provide the number of in-service collocation arrangements

that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.

10. For each wire center in your territory in the state, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.
11. For each wire center in your territory in the state, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.
12. For each wire center in your territory in the state, please provide a list of restrictions on equipment, cross-connects between CLEC collocation cages, or other restrictions or limitations that you place on a CLEC's use of collocation space.
13. For each wire center in your territory in the state, please identify whether or not collocation space is currently available to CLECs. For each wire center where collocation space is currently not available to CLECs, please include an explanation of why space is not available in those wire centers.

**C. Questions for CLECs and Qwest**

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice-grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.
2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including

installation and engineering costs, and the number of initial equipped lines.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than, and unaffiliated with, an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.
  
4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that you own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:
  - (a) the make, model, age, and current software upgrades of each switch;
  - (b) the geographic location of the switch;
  - (c) the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch; and
  - (d) provide the capacity of each switch, including:
    - (i) percentage of switch capacity in use;
    - (ii) percentage of switch capacity reserved for your company's own use and future use; and
    - (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
  - (e) For each switch identified, please state in detail:
    - (i) the anticipated service life of the switch; and

(ii) whether your company intends to utilize the identified switch for the full anticipated service life.

**REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT  
OF AN EFFICIENT LOOP MIGRATION PROCESS**

**A. Questions for CLECs**

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data, i.e. time/motion studies, SME analysis, etc.
3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.
4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.
5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required:
  - (a) to migrate existing UNE-P customers to another form of service and
  - (b) to connect new customers in the ordinary course of business.

Provide supporting documentation for these volume estimates.

**B. Questions for Qwest**

1. Provide, in an electronic format, on a monthly basis, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month, and at the end of the month. Provide this information for the period



- of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
2. Provide, in an electronic format, on a monthly basis for every wire center, the number of UNE-L lines at the beginning of the month, added during the month, disconnected during the month, and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
  3. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
  4. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the sources of the data, i.e., time/motion studies, SME analysis, etc.
  5. Describe a batch hot cut process that Qwest would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of number of lines per batch.
  6. List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data, i.e., time/motion studies, SME analysis, etc.
  7. List each task that is part of the batch hot cut process that is not included in the current hot cut process.
  8. List each task that is part of the current hot cut process that is not included in the batch hot cut process.
  9. On a monthly basis, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail residential lines, UNE served residential lines, and

wholesale served residential lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

10. For each wire center, on a monthly basis, provide the total number of business mass-market lines served and the number of business mass-market lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail business mass-market lines, UNE served business mass-market lines, and wholesale served business mass-market lines. Explain how Qwest determined which business lines are mass-market lines and which are enterprise lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
11. If the tasks related to the hot cut process for lines served using integrated digital line carriers differ from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks.
12. On a monthly basis, provide the average time a customer's service was disconnected due to the hot cut process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
13. On a monthly basis, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
14. On a monthly basis, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process.

Count only those employees who can perform the manual process. Do not include management of supervisory personnel who can perform these tasks but do not do so as part of their regular work effort. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

15. On a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
16. Provide a list of all carriers with which Qwest has an interconnection agreement for the provision of local service in the state.
17. Provide a list of all carriers to which Qwest has sold collocation services in the state. For each carrier, list the wire centers where the carrier is collocated.
18. Provide a list of Qwest wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.
19. If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented?
20. For each technician identified as trained in the hot cut process, when did that training occur?
21. For each technician identified as trained in the hot cut process, is that training documented or posted? If so, where is that training documented or posted?

22. For each technician identified as trained in the hot cut process, how often does that technician get trained in the hot cut process?
23. For each technician identified as trained in the hot cut process, is there a refresher course for that technician? If so, how often is the refresher course offered?
24. For each technician identified as trained in the hot cut process, is the technician required to take the refresher course if one is offered?

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**RECEIVED**

DEC 11 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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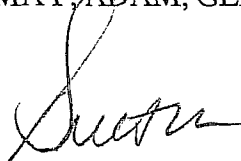
RE: In the Matter of the Implementation of the Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations  
Docket No.: TC 03-181 (Triennial Review)  
Our file: 0175.37

Dear Tom:

Enclosed please find MCI's First Set of Discovery Requests on Qwest in the above referenced matter. Please consider this service by mail.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosure

cc: Service List  
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Bret Dublinske w/o encl.



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December 9, 2003

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DEC 11 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Thomas Welk  
Boyce, Greenfield, Pashby and Welk  
P.O. Box 5015  
Sioux Falls, SD 57117

**RE: MCI's First Set of Discovery Requests on Qwest  
South Dakota PUC Docket TC 03-181 (Triennial Review)**

Dear Mr. Welk:

With this letter I am serving MCI's First Set of Discovery Requests on Qwest. While they are similar to requests served in other states, please note that MCI-97 is a new request, all subsequent requests have been accordingly renumbered, and what may appear in other states as MCI-264 is now MCI-197.

It is my understanding that the time permitted for responses in South Dakota is thirty (30) days. Given that in states with shorter response periods Qwest has negotiated 30-day response times, we would anticipate that no additional time will be needed. If that is not correct, please let me know as soon as possible.

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

Respectfully,

Bret A. Dublinske  
Attorney for MCI

BAD/krc  
enclosure

cc: Susan Travis  
Bret Koenecke

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**RECEIVED**

**DEC 11 2003**

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>TC03-181</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	
<b>REGARDING UNBUNDLING OBLIGATIONS.</b>	)	<b>MCI'S DISCOVERY REQUESTS</b>
_____	)	<b>TO QWEST CORPORATION</b>
	)	
	)	

YOU WILL PLEASE TAKE NOTICE that MCImetro Access Transmission Services LLC ("MCImetro") and MCI WorldCom Communications, Inc. ("MCIWCOM"), (hereinafter collectively, "MCI") requests that Qwest Corporation ("Qwest" or "QWEST") answer the following Discovery Requests in accordance with the South Dakota Public Utilities Commission's Rules of Procedure.

**INSTRUCTIONS**

Please answer each question separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the data requests being answered. Please copy each question immediately before the answer. Following each answer, please identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer in testimony.

In response to data requests seeking the production of documents, please produce all responsive documents for inspection and copying unaltered and/or unredacted as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any request, the whole document is to be produced. If there has been any alteration, modification or addition to a

document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

In response to Interrogatories requesting you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be produced in response to a separate Request for Production. Such identification shall contain the number (and subpart, if applicable) of the Interrogatory requesting the identification and the page count or description of the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any “Bates” or other sequential production numbering for the document or item. When responding to the Request for Production, please produce copies of all documents, other items, information or materials that were identified in response to a request or directive to “identify for disclosure” in MCI’s Interrogatories. For each document or other item, please identify by number (including subpart, if any) the interrogatory which caused the “identification for disclosure”.

Please produce the requested information at the most granular level you possess. If a data request seeks information at a level more granular than you possess, please do not object or decline to answer or produce on that basis, but rather state that you do not possess information at that level and produce the information requested at the most granular level that you possess. MCI is not asking for the creation of new data, but is seeking all available data for the specific categories and sub-categories described.



Please produce all information requested on any table by filling in the table provided in these data requests. If additional explanation is required, please copy the question and provide your response below.

If you are unable to respond fully and completely to a document request, explain the reasons why you are unable to do so. The terms defined herein and the individual data requests should be construed broadly to the fullest extent of their meaning, in a good faith effort to comply with all applicable rules, including without limitation the Procedural Rules of the South Dakota Public Utilities Commission.

This request is directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you (including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to requests for production of documents contained in these data requests, you shall produce the documents, including all appendices, exhibits, schedules, and attachments, that are most relevant to the request.

If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

These data requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, then in such case, you should change or modify such answer and submit such changes answer as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of this data requests, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

MCI requests that you answer these data requests under oath or stipulate in writing that your data requests responses can be treated exactly as if they were filed under oath.

If you claim a privilege, or otherwise decline to produce or provide, any document or information responsive to one or more data requests, then in addition to, and not in lieu of, any procedure that you must follow under law to preserve your objection(s) and/or privilege(s), the attorney asserting the privilege shall:

- a. identify in the objection to the request for information, or sub-part thereof, detailed reasons for your claim of privilege or other basis for protecting the document or information from disclosure; and the nature of the privilege (including work product) that is being claimed; and
- b. provide the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
  - (i) for documents: (1) the type of document; (2) subject matter of the document; (3) the date of the document; (4) the number of pages in the document; (5) the location or custodian of the document; (6) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where available, the names(s), address(es) and telephone number of the author(s) of the

document and all recipient(s), and, where not apparent, the relationship of the author and addressee to each other;

(ii) for oral communications: (1) the name(s), address(es) and phone number(s) of the person making the communication and the name(s), address(es) and phone number(s) of the persons present while the communication was made; (2) the relationship of the person(s) present to the person(s) making the communication; (3) the date and place of each communication; (4) the general subject matter of the communication.

In the event that any requested information is considered by you to be confidential, the attorney asserting such confidential status shall inform MCI of this designation as soon as he or she becomes aware of it, but in any event, prior to the time the responses to the data requests are due to discuss or attempt to negotiate a compromise. However, the confidential documents should be produced pursuant to the protective order(s) and/or non-disclosure agreement(s) executed in this proceeding.

## DEFINITIONS

1. The term “analog” refers to electrical signals representing sound or data which are transmitted in a linear, non-digital format.
2. The terms “and” and “or” as used herein shall be construed as both conjunctive and disjunctive.
3. The term “any” shall be construed to include “all,” and “all” shall be construed to include “any.”
4. The terms “batch cut” and “batch hot cut” refer to a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier’s local circuit switch to another carrier’s local circuit switch.
5. The term “bundled service” refers to a package offering to an end user customer that includes at least two different services for a single, often discounted price, whether flat-rate or charged on a per-unit basis. An example would be the offering of local and long distance service to an end user customer for a price that is less than the standard retail charges that would be assessed for each service individually.
6. The term “business end user” refers to an end user customer entity that purchases voice or data services, typically supported on multiple loops, to support a commercial enterprise. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.
7. The acronym “CLEC” refers to competitive local exchange carriers.
8. The acronym “CLLI” refers to common language location identifier, a multi-character code generally composed of numerals and letters that provides a unique identifier for circuit switches used by incumbent local exchange carriers (“ILECs”) and CLECs.
9. The acronym “CO” refers to central office, the single physical ILEC building that houses one or more Class 5/end office ILEC switch(es), and in which end user customers’ loops are cross connected to ILEC switching equipment or CLEC collocation arrangements.
10. The term “communication” includes, without limitation of its generality, correspondence, email, statements, agreements, contracts, reports, white papers, users guides, job aids, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, whether written or oral. The term includes, without limitation of its generality, both communications and statements which are face-to-face and those which are transmitted by documents or by media such as intercoms, telephones, television, radio, electronic mail or the Internet.

11. The terms “cost study,” “cost studies,” “cost model” and “cost analyses” means the detailed development of a rate element or of rate elements through a methodology based upon engineering, operational, economic, accounting, or financial inputs, plus support for the sources of the inputs or support for the derivations of the inputs, that enables a person using the study, studies, model or analyses to start with the support for each input and to then trace the support to the input, and to then be able to trace the input through the methodology to the resulting cost and then to the resulting rate element.
12. The term “cross connect/jumper” refers to a copper pair that connects at the vertical and horizontal sides of the ILEC MDF.
13. The term “customer location” refers to a building or set of connected, contiguous, or adjacent buildings in a common area, used by residential, commercial, and/or governmental customers that share a primary street address or group of street addresses. It includes multi-unit residential, commercial, and/or governmental premises.
14. The term “customer premises” refers to the physical point at which the end user customer assumes responsibility for telecommunications wiring (i.e., the network interface device (“NID”) for single unit dwellings, and the individual point of demarcation at the end user customer’s unit for multi-unit buildings such as office buildings and apartment buildings).
15. The term “digital” refers to electrical or optical signals representing sound or data which are transmitted in a binary, discontinuous, non-linear format.
16. The term “DLC” refers to Digital Loop Carrier and includes UDLC, IDLC, and NGLDC.
17. The term “document,” as used herein, shall have the same meaning and scope as contained in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, all written, reported, recorded, magnetic, graphic, photographic matter, however produced or reproduced, which is now, or was at any time, in the possession, custody, or control of your company and its affiliates including, but not limited to, all reports, memoranda, notes (including reports, memoranda, notes of telephone, email or oral conversations and conferences), financial reports, data records, letters, envelopes, telegrams, messages, electronic mail (e-mail), studies, analyses, books, articles, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, accounts, pamphlets, pictures, films, maps, work papers, arithmetical computations, minutes of all communications of any type (including inter- and intra-office communications), purchase orders, invoices, statements of account, questionnaires, surveys, graphs, recordings, video or audio tapes, punch cards, magnetic tapes, discs, data cells, drums, printouts, records of any sort of meeting, invoices, diaries, and other data compilations from which information can be obtained, including drafts of the foregoing items and copies or reproductions of the foregoing upon which notations and writings have been made which do not appear on the originals.
18. The term “DS-0” refers to a loop or circuit operating at Digital Signal Level Zero, and capable of transmitting information at 64 kilobits per second.

19. The term "DS-0/voice grade" includes all loops or circuits normally used for the provision of a service to transmit human voice alone. In particular, it includes analog circuits and digital circuits capable of transmitting at levels greater than 2400 baud, up to and including 64 kilobits per second.
20. The term "DS-1" refers to Digital Signal Level 1, which has a transport speed of 1.544Mbps, and can be either unchannelized or channelized into 24 voice grade channels.
21. The term "hot cut" refers to an individual coordinated simultaneous transfer of a DS-0/voice grade loop with live customers' service transferred.
22. The term "identify" or "identifying" means:
  - (a) When used in reference to natural persons: (1) full name; (2) last known address and telephone number; (3) whether the person is currently employed by, associated or affiliated with Qwest; (4) that person's current or former position; and (5) dates of employment, association or affiliation.
  - (b) When used in reference to a document: (1) its author; (2) actual or intended recipient(s); (3) date of creation; and (4) brief description of its contents.
  - (c) When used in reference to a communication: (1) whether the communication was oral or written; (2) the identity of the communicator; (3) the person receiving the communication; and (4) the location of the communicator and the person receiving the information, if the communication was oral.
23. The acronym "IDF" refers to an intermediate distribution frame, a physical frame located between an MDF and (1) an ILEC switch in a central office or wire center over which end user customer loops are transited for connection to the ILEC switch, or (2) a CLEC collocation arrangement.
24. The term "ILEC" refers to an incumbent local exchange carrier, and includes the ILEC's parent or any subsidiary or affiliate, and all current or former officers, directors, employees, agents, representatives, contractors or consultants of ILEC, as well as any persons or other entities who have acted or purported to act on its behalf.
25. The term "LATA" means "Local Access and Transport Area" as that term is defined in the *Modification of Final Judgment, United States v. Western Elec. Co.*, 552F. Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).
26. The term "MSA" refers to a Metropolitan Statistical Area as defined by the US Census Bureau and the Office of Management and Budget.
27. The term "qualifying service" refers to all telecommunications services, whether voice or data, and whether analog or digital, that have ever been offered or provided by an ILEC pursuant to tariff or an interconnection agreement.

28. The acronym "MDF" refers to main distribution frame, a physical frame located in a central office or wire center that connects loops coming from an end user customer premises to (1) an ILEC switch located in the central office or wire center, and (2) facilities leading to a CLEC collocation arrangement.
29. The past tense includes the present tense and vice-versa.
30. "Relate, mention, reference, or pertain" shall be used to mean documents or communications containing, showing, relating, mentioning, referring or pertaining in any way, directly, or indirectly to, or in legal, logical or factual way connection with, a document request, and includes documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by such request.
31. The singular form of a word shall be interpreted to include the plural, and the plural form of a word shall be interpreted to include the singular whenever appropriate.
32. The term "residential end user" refers to an end user customer, typically an individual or family, who purchases voice or data services at his, her or their place of residence, or household. To the extent that your own tariff and/or business practices define this term differently, please use this definition in your response.
33. The term "Telcordia" refers to Telcordia Technologies, Inc. and its parent(s), current and former affiliates or subsidiaries, and all current or former officers, directors, employees, agents, representatives, contractors or consultants, as well as any persons or other entities who have acted or purported to act on its behalf.
34. The term "wire center" is synonymous with the term "central office," and refers to the single physical building that houses one or more Class 5/end office ILEC switch(es) and in which end user customer's loops are cross connected to the Class 5/end office ILEC switch(es).
35. The term "you," "your," "yours," or "your company" refers to Qwest Corporation and its predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations.

MAY ADAM GERDES & THOMPSON LLP

BY: \_\_\_\_\_

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## QWEST HOT CUT/CUSTOMER MIGRATION ISSUES

- MCI-1 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer “churn” (*i.e.*, customer change from one carrier to another) on each of the following bases:
- (a) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises);
  - (b) number of customers changing carriers, and percentage of then-current customers changing carriers, by service type (*i.e.*, local exchange voice service only; long distance voice service only; bundled local exchange and long distance voice services; bundled local exchange and DSL; and bundled local exchange, long distance, and DSL services);
  - (c) number of customers changing carriers, and percentage of then-current customers changing carriers, by customer type (*e.g.*, residential, business with one to three DS-0/voice grade lines to a single customer premises; business with more than three DS-0/voice grade lines to a single customer premises) by the following customer ages: 1) churn within the first three months after the customer’s service is provisioned 2) churn within the first six months after the customer’s service is provisioned.
- MCI-2 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer “churn” (*i.e.*, the number of customers changing from one carrier to another) for residential local exchange customers between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCI-3 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer “churn” (*i.e.*, the number of customers changing from one carrier to another) for business local exchange voice customers with one to three lines between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCI-4 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 for your retail customer

“churn” (i.e., the number of customers changing from one carrier to another) for business local exchange voice customers with more than three lines between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].

- MCI-5 Please provide, on a CLLI-code-specific basis, the number of loops that Qwest has migrated through hot cuts (i.e., individual coordinated simultaneous transfer of DS-0/voice grade loops with live customers’ service transferred) since July 1, 2001 that involved manual frame (MDF and/or IDF) jumper work, reported on a daily, weekly and monthly basis, from each of the following: 1) Qwest retail analog services; 2) CLEC UNE loops. Please provide all supporting documents or information regarding such provisioning volumes.
- MCI-6 For each CLLI code in South Dakota, please provide the number of individual cross connects/jumper jobs performed on (1) the MDF, and (2) any IDF(s), during each month since July 1, 2001.
- MCI-7 Please provide the actual (i.e., unadjusted and not subjected to performance measure metrics) minimum, maximum, and mean provisioning intervals for Qwest provisioning of UNE loops for each month since July 1, 2001, reported on a CLLI code basis.
- MCI-8 For each CLLI code, and on a statewide basis in South Dakota, please provide the number of UNE-P orders that were fulfilled each month since July 1, 2001 in South Dakota.
- MCI-9 With regard to your response to MCI-5, please provide on a CLLI code-specific basis, the number of trouble reports within the first five days after the hot cut.
- MCI-10 With regard to your response to MCI-5, please specify the percentage of hot cuts that were performed within the agreed-upon time frame (e.g., as of the deadline set pursuant to an interconnection agreement or otherwise agreed to with the other carrier or pursuant to other state requirements). Please report this information on the same daily, weekly and monthly basis as in MCI-5.
- MCI-11 With regard to your response to MCI-5, please state whether the existing customer loop was re-used for each of the migrations identified. If the loop was not re-used, please provide a detailed explanation of the reasons why it was not re-used, and any consequence of not being able to reuse the loop (i.e., delayed installation interval, loss of customer telephone number, need for rewiring at remote terminal/FDI/customer NID, etc.).

- MCI-12 With respect to the hot cuts identified in response to MCI-5, please provide a detailed description of each work effort your personnel had to perform, the costs you incurred, and the maximum number of hot cuts that you have accomplished per day per CLLI code since July 1, 2001.
- MCI-13 For each CLLI in South Dakota, provide the maximum number of hot cuts that can be performed per day, week and month with current workforce levels for (a) loops carrying voice only; and (b) loops carrying voice plus DSL. State the basis for the maximum number (e.g., methods and procedures, union work rules, informal guidelines, Qwest policy, etc.).
- MCI-14 State and describe in detail any plans to increase workforce levels in the next 12 months for job classifications that perform hot cuts, state whether such plans have received budgetary approval and funding, and provide a copy of the approved and funded budget and related documentation.
- MCI-15 Please state whether you agree that a proper hot cut process requires Qwest to re-use the existing loop for the following migration types: a) UNE-P to UNE DS-0/voice grade loops; b) line sharing over UNE-P when the DSL service is removed; c) line sharing over UNE-P migrated to line split UNE loop. If you agree, do you always perform hot cuts for the listed migration types in this manner? If not, why not? If you disagree, please state concisely your reasons for disagreement.
- MCI-16 On a South Dakota-statewide basis and for each CLLI code, please identify all service disruptions of the type referenced in paragraphs 421, 422 and 459 of the Triennial Review Order that have occurred each month since July 1, 2001 during your hot cut process, and provide a detailed explanation of the cause of the service disruption. As part of your response, please quantify the subset of service disruptions where customers were unable to place or receive calls and/or data for a period of greater than five minutes.
- MCI-17 On a South Dakota-statewide basis and for each CLLI code, reported monthly for each month since July 1, 2001, please provide a detailed description of UNE loop orders cancelled prior to customer migration. Your response should include the number and percentage of such order cancellations compared to the total number of UNE loop orders; a detailed description of the number and percentage of trouble reports during the hot cut process; and a detailed description of the reason the customer cancelled the order prior to migration.
- MCI-18 On a South Dakota-statewide basis and for each CLLI code, reported monthly for each month since July 1, 2001, please provide the percentage of hot cuts that were successfully completed and tested consistent with the time intervals specified in Qwest's Methods and Procedures or other guidelines or work rules.

- MCI-19 Please provide the name(s) of the work group(s) whose members routinely perform cross connects/jumper jobs in Qwest central offices, and provide the following information for each:
- (a) a list and description of every job classification (e.g. frame technician) within such work group(s);
  - (b) whether each job classification is staffed by members of a union, and whether non-union employees may perform the same job function;
  - (c) for each job classification, the minimum job requirements, including training, job experience, education, etc;
  - (d) a description of all on-the-job training required or provided for each job classification once in the position;
  - (e) a copy of the methods and procedures or similar documents that contain any kind of instructions specifying the steps, processes, techniques, tasks, materials, etc. for performing cross connects/jumper jobs.
- MCI-20 Please 1) state whether Qwest's methods, procedures, scheduling, and/or completion intervals are different in any way, 2) provide a detailed explanation of all such differences, and 3) provide all Methods and Procedures and other documents that describe the work effort required for the following types of cross connects/jumper jobs:
- (a) new retail service installation to a premises with no previous telephone service;
  - (b) adding a second line to a premises with existing service;
  - (c) performing a line and station transfer ("LST") that involves cross connects/jumper jobs at the MDF on a loop with live traffic;
  - (d) changing loops with live traffic from one type of retail service to another (e.g., POTS to ISDN);
  - (e) changing loops with live traffic from one type of provider to another (e.g., UNE-P to UNE loop; one CLEC UNE loop to another CLEC UNE loop)
  - (f) changing loops with live traffic from one service on a loop to two services on a loop (e.g., line shared DSL and voice; line split DSL and voice);
  - (g) any other type of cross connect/jumper job in the Qwest central office not covered by (a) through (f) above.
- MCI-21 For each type of cross connect/jumper job identified in response to MCI-20, please identify each step or task in the process (e.g., obtain work order for frame wiring, review work order, travel to central office (if required), travel to remote terminal/FDI/customer premises serving terminal (if required), locate binder posts for service to be installed, locate binder posts for service to be removed (if any), remove old jumper(s), install new jumper(s), test for dial tone/connectivity, troubleshoot lack of dial tone/connectivity, enter job completion in work force administration system and/or other record(s), etc.)
- MCI-22 On a South Dakota-statewide basis and for each CLLI code, for each type of cross connect/jumper job identified in response to MCI-20, please identify the minimum, maximum and average actual work time(s) for 1) the total work effort and 2) each

step or task in the work effort identified in response to MCI-21, reported monthly for each month since July 1, 2001.

- MCI-23 On a South Dakota-statewide basis and for each CLLI code, for each type of cross connect/jumper job identified in response to MCI-20, please identify the minimum, maximum and average work time(s) for 1) the total work effort and 2) each step or task in the work effort identified in response to MCI-21, specified in: a) Qwest union contracts covering workers who routinely perform cross connect/jumper jobs in the Qwest central offices; b) Qwest methods and procedures, guidelines, rules, regulations, specifications or any other written directive; c) employee performance evaluation criteria.
- MCI-24 On a South Dakota-statewide basis and for each CLLI code, for each type of cross connect/jumper job identified in response to MCI-20, and for cross connect/jumper jobs in general, please identify the minimum, maximum and average number of such jobs that must be performed by each individual employee or worker during the time interval specified in Qwest employee performance requirements and/or union contracts (i.e., the number of cross connect/jumper jobs that must be performed per hour, day, shift, or other time interval).
- MCI-25 Please state whether cross connect/jumper job performance has ever been the subject of litigation, arbitration, mediation, labor negotiations, formal labor disputes, informal labor disputes, or evaluation by any third party (e.g. federal or state agencies, etc.). If the answer is anything other than an unqualified no, please provide supporting details and documentation.
- MCI-26 Please describe how you prioritize cross connects/jumper jobs during normal working conditions (e.g., first come first served, by service type, etc.) and state whether those priorities change during strikes and other labor related work disruptions. If the priorities change, please provide a detailed description of the manner in which they change.
- MCI-27 Please provide all time and motion studies, special studies, or other evaluations of cross connect/jumper job work times and processes.
- MCI-28 Please provide the studies, analyses, and/or calculations of cross connect/jumper job work times and loaded labor costs from the most recent non-recurring cost study submitted by Qwest to South Dakota Public Utilities Commission.
- MCI-29 For each central office in South Dakota, for each month since July 1, 2001, please state:  
(a) whether the central office was staffed with one or more resident frame technician(s) (or other job classification(s) that routinely perform cross connect/jumper jobs);  
(b) for each central office that was so staffed, the hours during which it was staffed;

- (c) for each central office that was so staffed, the number of person hours per day or per week devoted to cross connect/jumper jobs;
- (d) for each central office that was not staffed, the number of person hours per day or per week devoted to cross connect/jumper jobs.

- MCI-30 Please provide a list, detailed description, method of sampling, method of calculation, and monetary penalty for all UNE performance measures or metrics applicable in South Dakota. State which of these measurements or metrics you assert is relevant to the issues in this proceeding.
- MCI-31 Please provide all UNE performance measure or metric reports applicable in South Dakota, including a report of any penalties paid, for each month since July 1, 2001.
- MCI-32 Please provide all third party evaluations and/or reports addressing and/or assessing Qwest performance under the UNE performance measures or metrics applicable in South Dakota.
- MCI-33 Please list, define and describe each type of migration of service from one carrier to another in South Dakota for which you have current methods and procedures (e.g., hot cut, coordinated hot cut, bulk hot cut, frame due time, project managed cutover, loop conversion, line and station transfer, etc.), and provide a copy of the business rules and methods and procedures for each such migration type.
- MCI-34 For each type of service migration in South Dakota listed in your response to MCI-33, please:
  - (a) provide the current total non-recurring charge(s);
  - (b) separately state the service ordering charge(s), the provisioning (cross connect/jumper job) charge(s), and any other charge(s);
  - (c) list and describe any current volume discounts applicable to non-recurring charges;
  - (d) list any changes in non-recurring charges and/or volume discounts planned or expected in the next 12 months.
- MCI-35 Please state the number of loops that you believe is appropriate to include in a single "batch," as the FCC uses that terminology and concept in ¶ 489 of the *Triennial Review Order*, and provide the basis for your belief and all documentation that supports your belief.
- MCI-36 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-37 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Ordering for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-38 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Provisioning for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-39 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-40 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Billing for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-41 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-42 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Ordering for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia

documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-43 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Provisioning for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-44 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-45 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Billing for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-46 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-47 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Ordering for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.



- MCI-48 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Provisioning for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-49 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-50 Please provide a detailed description of the current QWEST OSS capabilities to support automated, flow-through processes for Billing for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to Telcordia documents, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-51 To the extent that Qwest's responses to MCI-36 to MCI-50 assert that Qwest has in place OSS capabilities to support automated, flow-through processes, please provide for each response to Data Request MCI-36 to MCI-50, the statewide volumes that have been supported on an automated flow-through basis for each month since July 1, 2001.
- MCI-52 To the extent that Qwest's responses to MCI-36 to MCI-50 assert that Qwest has in place OSS capabilities to support automated, flow-through processes, please provide for each Data Request MCI-36 to MCI-50 the monthly fall-out rates (*i.e.*, percentage of transactions that were designed to flow through but did not) since July 1, 2001.
- MCI-53 To the extent that Qwest's responses to MCI-36 to MCI-50 assert that Qwest has in place OSS capabilities to support automated, flow-through processes, please provide for each response to Data Request MCI-36 to MCI-50 the maximum daily, weekly and monthly volumes that can currently be supported.
- MCI-54 To the extent that Qwest's responses to MCI-36 to MCI-50 state that Qwest does not have in place OSS capabilities to support automated, flow-through processes,

please provide for each response to Data Request MCI-36 to MCI-50 a detailed estimate of the costs, work effort and timeframes associated with any OSS modification or upgrade necessary to convert Qwest's manual and/or semi-mechanized process to an automated, flow-through process for each of the OSS functions and each of the service types in MCI-36 to MCI-50. Please provide a copy of all documents describing these modifications or upgrades, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-55 To the extent that Qwest's responses to MCI-36 to MCI-50 state that Qwest does not have in place OSS capabilities to support automated, flow-through processes, please provide a detailed description of the current manual and/or semi-mechanized QWEST OSS processes for each of the OSS functions and each of the service types in MCI-36 to MCI-50. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-56 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-57 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Ordering for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-58 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Provisioning for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-59 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please

provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-60 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Billing for DS-0/voice-grade UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-61 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-62 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Ordering for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-63 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Provisioning for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-64 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for DSL-capable UNE loops on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-65 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Billing for DSL-capable UNE loops

on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-66 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Pre-ordering for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-67 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Ordering for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-68 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Provisioning for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-69 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Maintenance/Repair for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.
- MCI-70 Please provide a detailed description of the planned QWEST OSS capabilities to support automated, flow-through processes for Billing for UNE loops capable of supporting line splitting (*i.e.* voice service and DSL service carried on a single wire

pair entering the customer's premises) on a) all-copper facilities; b) hybrid fiber-copper facilities using IDLC and c) hybrid fiber-copper facilities using UDLC or NGDLC. Please provide a copy of all documents describing these processes, including but not limited to documents sent to or received from Telcordia, Qwest Methods and Procedures, Workgroup User Manuals, Guidelines, Bulletins, etc.

- MCI-71 To the extent that Qwest's responses to MCI-56 to MCI-70 assert that Qwest plans to deploy OSS capabilities to support automated, flow-through processes, please provide for each Data Request MCI-56 to MCI-70 the maximum daily, weekly and monthly volumes that could be supported.
- MCI-72 Please provide a detailed description of current and planned Qwest OSS capabilities to support automated, flow-through single-order migration between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus data; 3) Qwest data only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC data only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCI-73 Please provide a detailed description of current and planned Qwest OSS capabilities to support automated, flow-through single-order migration from 1) Qwest to CLEC; 2) CLEC to CLEC and 3) CLEC to Qwest, for each of the following: a) adding or dropping local exchange voice service from line shared or line split DSL; b) adding or dropping DSL service from line shared or line split local exchange voice service.
- MCI-74 Please state whether Qwest provides CLECs with real-time, read-only access to all data in all Qwest OSS (including what some QWEST'S have called back-office systems) related to loop and transport facilities.
- MCI-75 To the extent that the response to MCI-74 indicates that CLECs have real time, read-only access to the described data, please provide a detailed description of the manner in which CLECs may access and use all data in Qwest OSS related to loop and transport facilities on a real-time, read-only basis.
- MCI-76 Please provide a list of all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for Qwest retail services, including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by Qwest or by third party (and name of third party).
- MCI-77 Please provide a list of all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a Qwest subsidiary or affiliate, including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by Qwest or by third party (and name of third party).

- MCI-78 Please provide a list of all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for CLEC UNE-P including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by Qwest or by third party (and name of third party).
- MCI-79 Please provide a list of all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for UNE loop and transport facilities, including all of the following: 1) full name of system; 2) acronym for system (if any); 3) detailed description of capabilities and function of system; 4) whether system was developed and is maintained by Qwest or by third party (and name of third party).
- MCI-80 Please provide a schematic drawing showing the interrelationships between all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for Qwest retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-81 Please provide a schematic drawing showing the interrelationships between all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a Qwest subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-82 Please provide a schematic drawing showing the interrelationships between all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for CLEC UNE-P including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-83 Please provide a schematic drawing showing the interrelationships between all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for UNE loop and transport facilities, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-84 Please provide a detailed process flow chart for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for Qwest retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-85 Please provide a detailed process flow chart for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a Qwest subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-86 Please provide a detailed process flow chart for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for CLEC

UNE-P including but not limited to the following: 1) full name of system; 2) acronym for system (if any).

- MCI-87 Please provide a detailed process flow chart for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for UNE loop and transport facilities, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-88 Please provide a complete set of the current business rules for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for Qwest retail services, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-89 Please provide a complete set of the current business rules for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for services offered by a Qwest subsidiary or affiliate, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-90 Please provide a complete set of the current business rules for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for CLEC UNE-P including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-91 Please provide a complete set of the current business rules for all OSS used by Qwest for pre-ordering, ordering, provisioning, maintenance and repair and billing for UNE loop and transport facilities, including but not limited to the following: 1) full name of system; 2) acronym for system (if any).
- MCI-92 Please provide a detailed description of any current Qwest processes that you claim will support batch cuts (as defined in Rule 51.319(d)(2)(ii)) between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only].
- MCI-93 With regard to your response to MCI-92, please indicate whether your electronic back end systems can accomplish each migration type on each of the following bases:
- (a) automated flow-through batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support];
  - (b) automated flow-through individual loop hot cuts;
  - (c) manual batch cuts [please indicate the maximum number of simultaneous loop migrations that you can support]
  - (d) manual individual loop hot cuts.

- MCI-94 Please provide a detailed description of any current Qwest processes to support individual loop hot cuts between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only]. Please provide a copy of all documents or information describing or discussing such processes.
- MCI-95 Please provide a detailed description of any planned Qwest processes to support batch cuts between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only]. Please provide a copy of all documents or information describing or discussing such processes.
- MCI-96 Please provide a detailed description of any planned Qwest processes to support individual customer hot cuts between each of the following service configurations: 1) Qwest voice only 2) Qwest voice plus DSL; 3) Qwest DSL only; 4) CLEC UNE-P voice only; 5) CLEC switch-based voice only; 6) CLEC line sharing; 7) CLEC line splitting; 8) CLEC DSL only [e.g., Qwest voice only to CLEC UNE-P voice only; CLEC A switch-based voice only to CLEC B switch-based voice only]. Please provide a copy of all documents or information describing or discussing such processes.

### **QWEST MASS MARKET UNE SWITCHING TRIGGER ISSUES**

- MCI-97 Please list and identify any and all entities which Qwest, on information or belief, asserts or believes provides, to itself or others, any switching services in or to any portion of South Dakota. For each such entity, describe and provide any documents which constitute Qwest's information or are the basis for Qwest's belief regarding any such switching, and fully describe Qwest's understanding or belief as to the nature of the switching provided, and the location of the switch(es).
- MCI-98 For each switch you use to provide local exchange service to South Dakota customers, please provide the following information for the switch and/or the switch location:
- (a) the 8-digit common language location identifier ("CLLI") code as it appears in the Local Exchange Routing Guide ("LERG");
  - (b) V&H coordinates;
  - (c) street address, city and zip code;
  - (d) switch manufacturer and model;
  - (e) currently loaded version of switch software;
  - (f) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;



- (g) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
- (h) current switch processor capacity in CCS;
- (i) busy hour and busy season utilized switch processor capacity in CCS;
- (j) function of the switch (e.g., stand-alone, host, or remote, other [e.g. DLC node with no intelligence and/or no or limited switching capability]);
- (k) the initial cost of the switch, including equipment, software, and EF&I ("engineered, furnished and installed") costs;
- (l) number of (1) DS-0/voice grade circuits and (2) DS-1 circuits equipped at the time of installation;
- (m) any central offices or wire centers currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

MCI-99 For each switch identified in response to MCI-97 above, please provide the information requested in TABLE 1:

**TABLE 1**

Qwest Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers <sup>1</sup>	Number of DSL Only End User Customers	Number of Line Shared/Voice Plus DSL End User Customers <sup>2</sup>	
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 5	e.g. 100	
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	e.g. 100	
	2		Residential				
	2		Business				
	3		Residential				
	3		Business				
	... (continue pattern as above)						
	18		Residential				
	18		Business				
	19-24		Residential				
	19-24		Business				
	one DS-1		Residential				
	one DS-1		Business				
	more than one DS-1		Business				

<sup>1</sup> This category includes loops used for fax and/or modem-only traffic.

<sup>2</sup> This category includes voice and DSL on the same wire pair (i.e., line sharing and QWEST voice plus DSL).

- MCI-100 For each switch you own or control and from which you offer or provide wholesale local switching capacity via UNE-P to carriers that are not affiliated with you, please provide the following information for the switch and/or the switch location:
- (a) the 8-digit common language location identifier (“CLLI”) code as it appears in the Local Exchange Routing Guide (“LERG”);
  - (b) V&H coordinates;
  - (c) street address, city and zip code;
  - (d) switch manufacturer and model;
  - (e) current loaded version of switch software;
  - (f) currently equipped line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
  - (g) currently utilized line side capacity in (1) DS-0/voice grade circuits and (2) DS-1 circuits;
  - (h) current switch processor capacity in CCS;
  - (i) busy hour and busy season utilized processor capacity in CCS;
  - (j) percentage of line side or processor capacity reserved for your own current or future use;
  - (k) percentage of line side and processor capacity that you currently make available, or that you plan to make available, on a wholesale basis to other CLECs;
  - (l) the expected useful service life of each switch;
  - (m) whether your company intends to utilize the switch for the full expected useful service life;
  - (n) the rates, terms and conditions under which you provide wholesale switching for local exchange service, and/or loops and transport provided in conjunction with wholesale switching (if rates, terms and conditions are not currently available, please state when they will be available);
  - (o) any wire center subtending areas currently served by your switch for which you are considering discontinuing wholesale local switching for any reason within the next 12 months.

MCI-101 For each switch identified in response to MCI-100 above, please provide the information requested in TABLE 2:

**TABLE 2**

Qwest Switch CLLI	Number Of Loops Per End-User Customer Premises	Number of Local Service End-User Customers	Type of End-User Customer	Number of Voice Only End User Customers <sup>3</sup>	Number of Line Split End User Customers <sup>4</sup>	
ABC	1	e.g. 10,155	Residential	e.g. 10,000	e.g. 100	
	1	e.g. 5,300	Business	e.g. 5,000	e.g. 100	
	2		Residential			
	2		Business			
	3		Residential			
	3		Business			
	... (continue pattern as above)					
	18		Residential			
	18		Business			
	19-24		Residential			
	19-24		Business			
	one DS-1		Residential			
	one DS-1		Business			
	More than one DS-1		Business			

MCI-102 Please provide the following information regarding (1) the Class 5 (end office) circuit switch most recently installed in South Dakota by Qwest, and (2) any planned new installations of a Class 5 (end office) circuit switch in South Dakota by Qwest: a) manufacturer, b) model, c) date to be placed in service, d) location (street address, city, and zip code), e) CLLI code and f) V&H coordinates.

MCI-103 For each switch identified in your response to MCI-97 above other than circuit switches, please provide the following:

- (a) any differences in quality of service compared to local exchange service provided on circuit switches (i.e., reliability, throughput, ubiquity, outages, mean time to repair, etc.)
- a. the date(s) on which you installed the switch and began providing local exchange service on the switch;
- (c) the geographic area served by the switch compared to the geographic area served by any circuit switches you use to provide local exchange service;
- (d) any differences in the technical or operational requirements for the customer to obtain local exchange service from the switch, including customer premises equipment or software (i.e., specialized phone set; availability of computer,

<sup>3</sup> This category includes loops used for fax and/or modem-only traffic.

<sup>4</sup> This category includes UNE-P voice and CLEC DSL on the same wire pair.

- cable modem, set top box), access method (i.e., DSL, cable television, satellite service), provisioning interval;
- (e) any central offices or wire centers currently served by your switch for which you are considering discontinuing service for any reason within the next 12 months.

- MCI-104 Please identify all switches, other than circuit switches, currently in use by cable operators to provide local exchange voice service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, and provide the following information:
- (a) the identity of the cable operator;
  - (b) the number of units passed (reported separately by residential and business units) by the portion of the cable operator's network capable of supporting local exchange voice service;
  - (c) the number of residential units passed by the cable operator's network that are subscribing to cable (video) services;
  - (d) the number of residential units passed by the cable operator's network that are subscribing to broadband data services;
  - (e) the number of residential units subscribing to cable (video) services that also obtain local exchange voice service from the cable operator;
  - (f) the date on which the cable operator first began providing local exchange voice service;
  - (g) the price of local exchange voice service provided by the cable operator;
  - (h) service quality of local exchange service provided by cable operators compared to local exchange service provided by Qwest (e.g., service outages, dropped calls; E911, etc.);
  - (i) maps of the cable operator's serving territories with locations of QWEST central offices or wire centers identified;
  - (j) any business cases, analysis, or projections for entry of cable companies into the broadband data and/or local exchange voice markets (whether the information or documents were prepared by you, on your behalf, or by a third party).

- MCI-105 Please identify all switches, other than circuit switches, currently in use by CMRS operators to provide local exchange voice service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, and provide the following information:
- (a) the identity of the CMRS operator;
  - (b) the number of customers of the CMRS operator who are subscribing to local exchange voice services;
  - (c) the number of customers of the CMRS operator who are subscribing to broadband data services;

- (d) the minimum, maximum and average throughput rate for the CMRS operator's broadband data services each month for the last 12 months;
- (e) the date on which the CMRS operator first began providing local exchange voice service;
- (f) the price of local exchange voice service provided by the CMRS operator;
- (g) the service quality of local exchange service provided by the CMRS operator compared to local exchange service provided by Qwest (e.g., service outages, dropped calls, etc.);
- (h) a description of the entire service territory the CMRS operator can reach;
- (i) the percentage of Qwest's serving territory (by central office or wire center) that the CMRS operator can reach;
- (j) the percentage of Qwest's serving territory (by central office or wire center) to which the CMRS operator is providing local exchange voice service;
- (k) the percentage of Qwest's serving territory (by central office or wire center) to which the CMRS operator is providing broadband data service;
- (l) any business cases, analysis, or projections for entry of CMRS operators into the broadband data and/or local exchange voice markets (whether the information or documents were prepared by you, on your behalf, or by a third party).

MCI-106 For each CLEC or other carrier collocation arrangement in each Qwest wire center in South Dakota, please provide the following information, reported by CLLI code, street address and zip code:

- (a) name of CLEC or other carrier;
- (b) type of collocation arrangement (e.g. caged, cageless, virtual, etc.);
- (c) size of collocation arrangement;
- (d) amount of power (including both "A" and "B" DC feeds and AC power) supplied to the collocation arrangement;
- (e) number of 2-wire cross connects currently provisioned from the MDF to the collocation arrangement;
- (f) number of 4-wire cross connects currently provisioned from the MDF to the collocation arrangement;
- (g) all equipment installed in the collocation arrangement, including make, model, and total installed capacity for each piece of equipment;
- (h) type(s) of Qwest transport connected to the collocation arrangement (e.g., special access, UNE transport, etc.);
- (i) capacity(ies) of Qwest transport connected to the collocation arrangement (e.g., DS-1, DS-3, OC-3, etc.), and number of circuits at each level of capacity.

MCI-107 For each Qwest wire center in South Dakota, please identify the amount of available unused collocation space, in terms of total square feet of space and type(s) of collocation for which available space can be used. Please identify all wire centers that you previously listed as out of space for collocation that now have space available. Please provide a detailed explanation of what was done to free up space, and identify for disclosure of all documents on which you relied for your response, or that are relevant to this request.

MCI-108 With regard to all CLEC to CLEC cross connections you have provisioned, please identify the following, reported by wire center:

- (a) number of such cross connections that you have provisioned;
- (b) the identity of both CLECs for whom you provisioned the cross connect;
- (c) the type of collocation arrangement of both CLECs;
- (d) the minimum, maximum and average provisioning time for CLEC to CLEC cross connections;
- (e) the identity of the entity or personnel who performs the cross connect (e.g. QWEST central office technician, certified CLEC technician, etc.)

MCI-109 For each Qwest central office or wire center at which loops and transport are connected at collocation arrangements to form EELs in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, please provide the following information:

- (a) the CLLI code, street address, zip code, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
- (b) the CLLI code, street address, zip code, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
- (c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
- (d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
- (e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
- (g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
- (i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
- (j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio;
- (k) what equipment is required to deploy EELs;
- (l) whether collocation is required for CLECs to utilize EELs;
- (m) the concentration ratio allowed for EELs.

MCI-110 For each Qwest central office or wire center at which loops and transport are connected to form EELs *without* using collocation in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest

is unable to provide South Dakota-specific data, please provide the following information:

- (a) the CLLI code, street address, zip code, and V&H coordinates of the Qwest central office or wire center where such EELs are created;
- (b) the CLLI code, street address, zip code, V&H coordinates, and owner(s) of the switch(es) to which such EELs are connected;
- (c) number of such EELs that comprise DS-0/voice grade transport connected to DS-0/voice grade loops;
- (d) number of such EELs that comprise DS-1 transport connected to multiplexed DS-0/voice grade loops;
- (e) number of such EELs that comprise DS-1 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (f) number of such EELs that comprise DS-3 transport connected to multiplexed DS-0/voice grade loops;
- (g) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-0/voice grade loops, and the loop-to-transport concentration ratio;
- (h) number of such EELs that comprise DS-1 transport connected to DS-1 loops;
- (i) number of such EELs that comprise DS-3 transport connected to multiplexed DS-1 loops;
- (j) number of such EELs that comprise DS-3 transport connected to multiplexed and concentrated DS-1 loops, and the loop-to-transport concentration ratio.

MCI-111 Please provide the definition you use internally for business purposes for the following terms: (1) "mass market customer" and (2) "enterprise customer," in terms of type of customer (e.g., residential vs. business), number of lines per customer, use of analog loop facilities vs. DS-1s, or any other basis you use to distinguish these terms.

MCI-112 Please state whether you view a crossover point between mass market customers and enterprise customers set at 4 DS-0/voice grade lines per single customer premises to have any economic, engineering, operational, or business basis from the perspective of your non-regulatory business purposes. If your response is not an unqualified "no," please explain such basis in detail and provide supporting documentation.

MCI-113 Please provide your calculation, estimate, or view of the economic crossover point, in terms of number of DS-0/voice grade lines to a single customer premises, at which you offer service at a DS-1 level rather than using a number of analog lines, and provide the basis for that crossover point (e.g., equivalency point of analog service rates and DS-1 service rates, consideration of whether the customer premises equipment can accept a DS-1 interface, etc.).

MCI-114 With respect to each of the two customer categories identified in response to MCI-111, please provide the following information:

- (a) the number of customers in each category, reported by central office/wire center for each month since July 1, 2001;
- (b) the percentage of your total customer base in South Dakota in each of the two categories;
- (c) whether you target your business plans or marketing to particular sub-sets of customers within each of the two categories identified in response to MCI-111.

- MCI-115 Please identify, by CLLI code, city, street address and zip code, all switches you have deployed in South Dakota in density zone 1 of the top 50 largest Metropolitan Statistical Areas (MSAs), and whether each of those switches is subject to the FCC's unbundled switching "carve out."
- MCI-116 Please state the technical characteristics and capabilities of all loops that you consider to be a DS-0 and/or voice grade loop, and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.
- MCI-117 Please state the technical characteristics and capabilities of a DSL-capable loop, and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.
- MCI-118 Please state the technical characteristics and capabilities of loops capable of supporting 1) line sharing and 2) line splitting (*i.e.* voice service and DSL service carried on a single wire pair entering the customer's premises), and provide any relevant public and/or confidential technical publications and any other documents that describe these characteristics and capabilities.
- MCI-119 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops carrying DS-0/voice grade service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.
- MCI-120 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops carrying standalone DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.
- MCI-121 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops carrying line shared Qwest voice plus CLEC DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops



for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.

- MCI-122 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops carrying line split voice plus DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises; 5) UNE loops.
- MCI-123 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops carrying Qwest voice plus Qwest/Qwest affiliate DSL service on all of the following bases: 1) total loops in service 2) residential loops in service; 3) business loops for business with 1-3 loops in service to a single customer premises; 4) business loops for businesses with more than 3 loops in service to a single customer premises.
- MCI-124 Please provide, a) on a South Dakota-statewide basis, and b) on a CLLI-code-specific basis, monthly data for each month since July 1, 2001 on the number of loops that are provisioned using: 1) all-copper facilities; 2) hybrid fiber/copper facilities; 3) all-fiber facilities; 4) IDLC; 5) UDLC; 6) NGDLC; 7) DAML.
- MCI-125 Please state whether you currently provision in South Dakota UNE loops over loops provisioned using 1) IDLC and 2) NGDLC. Please provide a copy of any methods and procedures, technical service descriptions, and other technical documents that describe the service arrangement and/or identify the supported features, functions and supported throughput rates.
- MCI-126 Please provide, on a CLLI-code-specific basis for South Dakota, detailed information concerning copper feeder plant that 1) has been retired since January 1, 2000 or 2) Qwest plans to or is considering retiring in the next three years.
- MCI-127 Please provide, on a CLLI-code-specific basis, detailed information concerning Qwest's plans for South Dakota over the next three years to use copper feeder plant that has been replaced with fiber-feeder plant, for reinforcement to meet growth needs on shorter all-copper feeder routes.
- MCI-128 Please provide a detailed description of Qwest's current policy for South Dakota regarding maintenance of copper outside plant facilities once those facilities have been retired. Please provide a copy of all documents, including Methods and Procedures, guidelines, bulletins, business rules and/or business analysis on which you relied, or that are relevant to this Request. Also please state whether Qwest is considering revising this policy, and if so, when such revision is anticipated.

- MCI-129 Please provide detailed information, including supporting and related documents, regarding Qwest's plans, incentives, justification, benefits and/or analysis of upgrading its loop plant in South Dakota by installing additional 1) hybrid copper/fiber loops; 2) all-fiber loops.
- MCI-130 Please provide, on a wire center basis, detailed information concerning dark fiber in the loop plant that is currently available in South Dakota for use by CLECs.
- MCI-131 On a statewide and CLLI-code-specific basis in South Dakota, please state the percentage of working loops used or available to support Qwest retail services that are configured as "connect through"/"warm line" (i.e., loops that have electrical continuity between the customer premises and the Qwest switch, and over which a person at the customer premises can call 911 and Qwest repair service).
- MCI-132 Please state whether collocation rates, terms and conditions in Qwest's service territory in South Dakota are controlled by tariff, interconnection agreements, documents controlled by Qwest (e.g., CLEC handbook) or a combination of these documents. Please provide a complete copy (including attachments or amendments) of each such document.
- MCI-133 With respect to MCI-132, if the collocation rates, terms and/or conditions vary among interconnection agreements, please provide a copy of each different collocation section.
- MCI-134 With respect to MCI-132, please state whether Qwest is considering changing the type of document that controls collocation rates, terms and conditions (e.g. using tariffs instead of interconnection agreements). If Qwest is considering such change, please provide all documents that address such change.
- MCI-135 Please list and describe all types of physical collocation offered by Qwest in South Dakota.
- MCI-136 Please provide the non-recurring (including EF&I ["engineered, furnished and installed"] charges) and monthly recurring charges that Qwest charges for all elements of all types of collocation in South Dakota.
- MCI-137 Please list and describe all restrictions on the types and/or quantities of equipment or facilities that may be placed in Qwest collocation space in South Dakota. For each such restriction, please provide the rationale for the restriction and the basis for the restriction (e.g. QWEST business decision, FCC order, South Dakota PSC order, etc.).
- MCI-138 With respect to MCI-137, please provide all documents that support or address the restriction or the basis for the restriction.

- MCI-139 On an individual wire center basis, please provide the following for Qwest in South Dakota:
- (a) total collocation space (used and unused space stated in square feet) for each type of collocation you offer;
  - (b) total collocation space currently occupied by carriers (in square feet; for caged collocation, state the number of cages);
  - (c) names of carriers currently occupying collocation space;
  - (d) collocation space (stated in square feet) held by carriers who are currently in bankruptcy proceedings;
  - (e) collocation space (stated in square feet) occupied by CLECs no longer operating;
  - (f) total unoccupied collocation space (stated in square feet) available for carriers; and
  - (g) total non-collocation space available or suitable for conversion to collocation space.
- MCI-140 Please list, by CLLI code and street address, the central offices in South Dakota where collocation space of any type has been exhausted, or for which collocation space exhaustion is anticipated in the next 3 years, including the date of exhaust or expected exhaust.
- MCI-141 For cross-connects between CLEC collocation arrangements in your central offices in South Dakota, please provide:
- (a) your Methods and Procedures, guidelines, and practices relevant to, or describing cross-connects between CLEC collocation arrangements;
  - (b) non-recurring charges;
  - (c) monthly recurring charges;
  - (d) applicable performance measures and penalties;
  - (e) complaints from CLECs regarding any aspect of such cross-connects (e.g., cost, timeliness, etc.);
  - (f) your response to and resolution of any such complaints.
- MCI-142 Please state the rates you charge for flat and measured local exchange service for all 1) residential and 2) business customers in South Dakota, and if the rate varies by location, please identify the geographic coverage of the area to which the rate applies (e.g., wire center, rate zone, etc.) and the statewide average rate you charge for each category. If the rates you charge vary by central office, please identify the rate that applies to each central office by CLLI code, and the rate zone applicable to each central office.
- MCI-143 Please identify the average monthly revenue per line that you consider to constitute low revenue, average revenue and high revenue for 1) residential customers and 2) business customers. Please provide a detailed explanation of whether customers typically purchase a single service, or a bundle of services, and if they purchase a

bundle, which services, features or functions are included in the bundle and the average monthly revenue for each type of bundle.

- MCI-144 Please identify, by CLLI code, all wire centers for which you receive universal service fund subsidies and provide the following information for each:
- (a) whether the subsidy is from federal or state sources
  - (b) the amount of the subsidy on a per loop or per customer basis
  - (c) whether the subsidy applies to all customers served by the central office/wire center, or only a portion thereof;
  - (d) if the subsidy applies only to a portion of the customers, please provide the number of customers and the percentage of those customers to the total number of customers served in the central office/wire center.
- MCI-145 With respect to any subsidies that you contend are implicit and/or explicit in your South Dakota retail rates for any service, please:
- (a) identify and describe the service;
  - (b) state separately the amount of the subsidy you contend is implicit and/or explicit in the non-recurring and monthly recurring rates for the service;
  - (c) provide all cost studies, calculations, and other materials that directly support your contention that the service is implicitly and/or explicitly being subsidized.
- MCI-146 With respect to each of the rows of Table 1 identified in response to MCI-99 above, please state the average total monthly revenues earned each month per line in South Dakota since July 1, 2001 by wire center, MSA and LATA. Also please identify the source of those revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).
- MCI-147 For each switch identified in your response to MCI-97 above other than circuit switches, please provide the following for each switch:
- (a) all costs arising from the provision of local exchange service using the switch (including the recurring and non-recurring charges for the switch, software, installation, maintenance, loops, collocation, transmission/concentration equipment, etc.);
  - (b) the average total monthly revenues earned per line in South Dakota since July 1, 2001, reported by wire center, MSA and LATA. Also please identify the source of those revenues by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features);
- MCI-148 With respect to each of the two customer categories identified in response to MCI-111, please provide the following:
- (a) all categories and amounts of costs arising from providing local exchange service to each customer category (including the recurring and non-recurring charges for the switch, software, installation, maintenance, loops, collocation, transmission/concentration equipment, transport, hot cuts, OSS, signaling, etc.);

- (b) the average total monthly revenues earned per line since July 1, 2001 for each customer category, reported by wire center, MSA and LATA.
- (c) the source of all revenues derived from each category loop identified in subpart (b) by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

MCI-149 For each type of digital loop carrier (“DLC”) equipment deployed by Qwest, please state the minimum and maximum configuration deployed in South Dakota, in terms of number of lines supported.

MCI-150 For each type of digital loop carrier (“DLC”) equipment deployed by Qwest in South Dakota, please provide Qwest’s equipment capital costs for minimum, average and maximum configurations, in terms of number of lines supported.

MCI-151 For each type of digital loop carrier (“DLC”) equipment deployed by Qwest in South Dakota, please provide Qwest’s Engineered, Furnished and Installed (“EF&I”) costs for minimum, average and maximum configurations, in terms of number of lines supported.

MCI-152 Please provide all non-recurring and recurring rates and charges applicable in South Dakota for UNE loops of all types as found in:  
(a) intrastate tariffs  
(b) interstate tariffs  
(c) currently effective Interconnection Agreement(s) with CLEC(s)  
(d) your Statement of Generally Available Terms (“SGAT”).

MCI-153 Please provide all non-recurring and recurring rates and charges applicable in South Dakota for UNE transport of all types as found in:  
(a) intrastate tariffs  
(b) interstate tariffs  
(c) currently effective Interconnection Agreement(s) with CLEC(s)  
(d) your Statement of Generally Available Terms (“SGAT”).

MCI-154 Please provide a copy of all business cases, business analysis, cost studies, or other analyses or evaluations concerning whether entry into the mass market in South Dakota, or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, is economically feasible without access to Qwest’s switches, including those analyses and studies that were submitted to the FCC, performed but not submitted to the FCC, and performed since February 22, 2003. Provide all supporting documentation and work papers, in electronic format if available.

MCI-155 Please state whether you have deployed facilities of any type (e.g. switches, loops, transport, DLC, DSLAMs, splitters, etc.) to provide local services as a CLEC in

any state or other geographic area outside your QWEST serving territory. If so, please provide all of the following:

- (a) all states, cities or other geographic area in which you have deployed facilities;
- (b) a detailed description of the facilities for each geographic region;
- (c) a detailed description of the criteria you used to choose the geographic areas in which you would deploy facilities;
- (d) a copy of all business cases, business analysis, cost studies, or other analyses or evaluations (whether created by you or on your behalf) regarding competitive entry into the geographic area outside your QWEST serving territory;
- (e) the date on which you first began providing competitive local services using your own facilities in each state, city or other geographic region outside your QWEST serving territory;
- (f) the number of 1) residential and 2) business customers at the most granular level for which data has been retained (e.g., QWEST wire center, city, state, etc.) for your operations outside your QWEST serving territory for each month since such operations began;
- (g) all categories and amounts of costs arising from providing competitive local services in each state, city or other geographic region outside your QWEST serving territory (including the recurring and non-recurring charges for the switch, software, installation, maintenance, loops, collocation, transmission/concentration equipment, transport, hot cuts, OSS, signaling, etc.);
- (h) the average total monthly revenues earned per customer for each customer type (e.g., residential, small business, enterprise) served in each state, city or other geographic region outside your QWEST serving territory, reported by CLLI, LATA, MSA;
- (i) the source of all revenues derived from each customer type identified in your response to subpart (h) by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

MCI-156 Please state whether you have ever offered, or are currently offering, local services via UNE-P as a CLEC in any state or other geographic area outside your QWEST serving territory. If so, please provide all of the following:

- (a) all states, cities or other geographic area in which you have, or are, offering local services;
- (b) a detailed description of the criteria you used to choose the geographic areas in which you would offer local services;
- (c) a copy of all business cases, business analysis, cost studies, or other analyses or evaluations (whether created by you or on your behalf) regarding competitive entry into the geographic area outside your QWEST serving territory;
- (d) the date on which you first began providing competitive local services using UNE-P in each state, city or other geographic region outside your QWEST serving territory;
- (e) the number of 1) residential and 2) business customers at the most granular level for which data has been retained (e.g., QWEST wire center, city, state,

- etc.) for your operations outside your QWEST serving territory for each month since such operations began;
- (f) all categories and amounts of costs arising from providing competitive local services in each state, city or other geographic region outside your QWEST serving territory;
  - (g) the average total monthly revenues earned per customer for each customer type (e.g., residential, small business, enterprise) served in each state, city or other geographic region outside your QWEST serving territory, reported by CLLI, LATA and MSA;
  - (h) the source of all revenues derived from each customer type identified in subpart (g) by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

MCI-157 Please state whether you have ever offered, or are currently offering, local services via resale as a CLEC in any state or other geographic area outside your QWEST serving territory. If so, please provide all of the following:

- (a) all states, cities or other geographic area in which you have, or are, offering local services;
- (b) a detailed description of the criteria you used to choose the geographic areas in which you would offer local services;
- (c) a copy of all business cases, business analysis, cost studies, or other analyses or evaluations (whether created by you or on your behalf) regarding competitive entry into the geographic area outside your QWEST serving territory;
- (d) the date on which you first began providing competitive local services using resale in each state, city or other geographic region outside your QWEST serving territory;
- (e) the number of 1) residential and 2) business customers at the most granular level for which data has been retained (e.g., QWEST wire center, city, state, etc.) for your operations outside your QWEST serving territory for each month since such operations began;
- (f) all categories and amounts of costs arising from providing competitive local services in each state, city or other geographic region outside your QWEST serving territory;
- (g) the average total monthly revenues earned per customer for each customer type (e.g., residential, small business, enterprise) served in each state, city or other geographic region outside your QWEST serving territory, reported by CLLI, LATA, and MSA;
- (h) the source of all revenues derived from each customer type identified in subpart (g) by service and/or feature type (i.e., local voice only, local voice plus vertical features, local long distance only, DSL only, bundles of any of the above, and/or other services or features).

MCI-158 Please provide all documents addressing Qwest currently offered bundles of the following: a) business local exchange and long distance services, b) residential local exchange and long distance services, c) business local exchange, long

distance and broadband/DSL services, d) residential local exchange, long distance and broadband/DSL services; e) residential local exchange and DSL; and f) business local exchange and DSL.

- MCI-159 Please provide all documents addressing Qwest planned bundling of the following: a) business local exchange and long distance services, b) residential local exchange and long distance services, c) business local exchange, long distance and broadband/DSL services, d) residential local exchange, long distance and broadband/DSL services; e) residential local exchange and DSL; and f) business local exchange and DSL.
- MCI-160 On a CLLI-code-specific basis in South Dakota, please provide all forecasts of Qwest's expected, estimated or forecasted demand growth or decline for each of the next five years for circuit switched voice grade services, stated on all available bases (e.g., number of lines, minutes of use, processor utilization CCS, etc.).
- MCI-161 On a CLLI-code-specific basis in South Dakota, please provide Qwest's current capacity utilization for each Class 5 circuit switch for the major switch components (e.g, processor, line cards, trunk cards, etc.).
- MCI-162 On a CLLI-code-specific basis in South Dakota, please provide the Qwest's demand growth or decline for circuit switched voice grade services for each of the last three years, stated on all available bases (e.g., number of lines, minutes of use, processor utilization CCS, etc.).
- MCI-163 On a CLLI-code-specific basis in South Dakota, please provide the Qwest's demand growth or decline for each of the last three years for each of the following Qwest retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, Qwest DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.
- MCI-164 On a CLLI-code-specific basis in South Dakota, please provide Qwest's current in-service quantities for each of the following Qwest retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, Qwest DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.



- MCI-165 On a CLLI-code-specific basis in South Dakota, please provide Qwest's expected, estimated or forecasted demand growth or decline for each of the next three years for each of the following Qwest retail services: primary business voice lines, primary residential voice lines, additional business voice lines, additional residential voice lines, standalone DSL lines, Qwest DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, CLEC DSL service provisioned in the high frequency portion of a loop that also supports Qwest narrowband analog voice service, and CLEC DSL service provisioned in the high frequency portion of a loop that also supports [CLEC] narrowband analog voice service.
- MCI-166 On a CLLI-code-specific basis in South Dakota, please provide the Qwest's demand growth or decline for each of the last three years for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local exchange service, e) resold QWEST business local exchange service and f) resold QWEST residential local exchange service.
- MCI-167 On a CLLI-code-specific basis in South Dakota, please provide the Qwest's current in-service quantities for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local exchange service, e) resold QWEST business local exchange service and f) resold QWEST residential local exchange service.
- MCI-168 On a CLLI-code-specific basis in South Dakota, please provide the Qwest's expected, estimated or forecasted demand growth or decline for each of the next three years for each of the following: a) UNE loops used for circuit switched voice service, b) UNE loops used for DSL service (including line split configurations), c) UNE-P residential local exchange service, d) UNE-P business local exchange service, e) resold QWEST business local exchange service and f) resold QWEST residential local exchange service.
- MCI-169 Please provide all documents that address or assess the risk of stranded capacity on all or any portion of Qwest's existing network in South Dakota.
- MCI-170 Please provide all calculations and/or estimates in Qwest's custody or control of the market demand elasticity for local exchange service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] ) if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

- MCI-171 Please provide all calculations and/or estimates in Qwest's custody or control of the market demand elasticity for long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-172 Please provide all calculations and/or estimates in Qwest's custody or control of the market demand elasticity for broadband service (i.e., DSL) in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-173 Please provide all calculations and/or estimates in Qwest's custody or control of the market demand elasticity for bundled local and long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-174 Please provide all calculations and/or estimates in Qwest's custody or control of the market demand elasticity for bundled local, long distance, and broadband service (i.e., DSL) in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, or at any geographic level, if Qwest cannot provide either South Dakota-specific or regionwide data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-175 Please define the following terms, as Qwest understands and uses them in South Dakota, and whether Qwest's definition these terms is the same as those found in the South Dakota PSC's Costing and Pricing Rules found at 4 CCR 723-30 and the South Dakota PSC's decisions in Docket Nos. 96A-331T and 97A-577T defining total element long run incremental costs ("TELRIC") and distinguish each defined term from all of the others on this list:
- (a) variable cost
  - (b) sunk cost
  - (c) marginal cost
  - (d) incremental service incremental cost

- (e) Total Service Long Run Incremental Costs (“TSLRIC”)
- (f) TELRIC.

- MCI-176 Please provide Qwest’s calculation and/or estimate of its variable costs for providing local exchange service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-177 Please provide Qwest’s calculation and/or estimate of its marginal costs for providing local exchange service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-178 Please provide Qwest’s calculation and/or estimate of its variable costs for providing long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-179 Please provide Qwest’s calculation and/or estimate of its marginal costs for providing long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-180 Please provide Qwest’s calculation and/or estimate of its variable costs for providing broadband service (i.e. DSL) in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-181 Please provide Qwest’s calculation and/or estimate of its marginal costs for providing broadband service (i.e. DSL) in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.

- MCI-182 Please provide Qwest's calculation and/or estimate of its variable costs for providing bundled local exchange and long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-183 Please provide Qwest's calculation and/or estimate of its marginal costs for providing bundled local exchange and long distance service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-184 Please provide Qwest's calculation and/or estimate of its variable costs for providing bundled local exchange, long distance and broadband service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-185 Please provide Qwest's calculation and/or estimate of its marginal costs for providing bundled local exchange, long distance and broadband service in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, stated separately for residential and business customers, if such separate calculations and/or estimates exist. Please provide all supporting documentation for such calculations and/or estimates.
- MCI-186 Please state whether Qwest has any affiliates or subsidiaries that provide local exchange voice services, long distance voice services and/or DSL services in South Dakota. If the response for any of these services is affirmative, please provide the full name of the affiliate or subsidiary and a list of the service(s) provided by the affiliate or subsidiary.
- MCI-187 Please provide a copy of each executed contract (including attachments and/or amendments) between Qwest and a long distance carrier that Qwest uses to provide inter-LATA toll services and/or facilities.
- MCI-188 With respect to each contract requested in MCI-187, please provide the total minutes of use, and/or total transport capacity purchased, as well as the total dollar amount paid for such minutes of use and/or transport capacity, stated on a quarterly basis for the past three years.

- MCI-189 Please provide all calculations or estimates in Qwest's custody or control of Qwest's current total and component (e.g., debt, preferred stock, equity, etc.) cost of capital, in South Dakota or regionwide [Qwest 14 states (AZ, CO, ID, IA, MN, MT, NE, ND, NM, OR, SD, UT, WA, WY)] if Qwest is unable to provide South Dakota-specific data, based on each of the following: a) market capital structure, b) book capital structure, and c) target capital structure. Please provide supporting documentation, including the documents relied upon to answer this question.
- MCI-190 With respect to the cost of capital calculations or estimates requested in MCI-189, please provide such calculations or estimates for Qwest's major types of service, at the most granular level available, including the following: a) residential local exchange service, b) business local exchange service, c) long distance service, d) DSL service and e) unbundled network elements (UNEs). Please provide supporting documentation, including the documents relied upon to answer this question.
- MCI-191 Please describe in detail the approach and manner in which Qwest segments its sales and marketing efforts and personnel on the basis of customer size, type (e.g., residential, small business, medium business, large business), monthly level of revenues, and/or service(s) taken by customer (individually or as part of a bundle), and provide the basis on which such segmentation is made.
- MCI-192 Please describe in detail any legal, regulatory or other constraints on Qwest's ability to target price reductions 1) to specific geographic areas, and 2) to types of customers (including individual customers), for each of the following: a) business local exchange service, b) residential local exchange service, c) long distance service and d) DSL service.
- MCI-193 Please describe in detail any price floors imposed by any law, regulation, South Dakota PSC orders or rulings that constrain Qwest's ability to reduce prices for each of the following: a) business local exchange service, b) residential local exchange service, c) long distance service and d) DSL service. For each such price floor, provide the basis for the calculation for the price floor (e.g., price freeze, cost-based calculation, etc.).
- MCI-194 Please provide average total revenue for each Qwest wire center in South Dakota.
- MCI-195 For each CLLI code in South Dakota, please provide for the most recent period available (1) the underlying data Qwest used to provide the South Dakota-statewide data found in Table II and Table III of the most recently filed FCC ARMIS Report 43-08; (2) the number of switched DS-1 lines/loops in service when Qwest filed its most recently filed FCC ARMIS Report 43-08; (2) the number of non-switched DS-1 lines/loops in service when Qwest filed its most recently filed FCC ARMIS Report 43-08; and (4) the number of DS-3 lines/loops in service when Qwest filed its most recently filed FCC ARMIS Report 43-08.

- MCI-196 For each CLLI code in South Dakota, please provide the most current monthly average revenues per line for (1) residential voice-only customers; (2) residential voice plus DSL customers; (3) business DS-0/voice grade customers; (4) business DS-1 customers; for local service, vertical features, and voice mail. For customers in each of these four categories who also subscribe to Qwest long distance service, provide the current monthly average long distance revenues per line.
- MCI-197 Please provide a copy of your responses to all audit and data requests that you have received in this proceeding to date and to any audit and data requests you receive in the future from other parties in this proceeding.

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

IN THE MATTER OF THE IMPLEMENTATION ) TC03-181  
OF THE FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER )  
REGARDING UNBUNDLING OBLIGATIONS )

**CERTIFICATE OF SERVICE**

10 Brett M. Koenecke, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of December, 2003, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the **MCI's Discovery Requests to Qwest Corporation** in the above-captioned action to the following at their last known addresses, to-wit:

Thomas J. Welk  
Attorney at Law  
Boyce, Greenfield, Pashby & Welk  
PO Box 5015  
Sioux Falls, SD 57117-5015



\_\_\_\_\_  
Brett Koenecke

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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>ORDER GRANTING</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	<b>INTERVENTIONS; ORDER</b>
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	<b>FOR AND NOTICE OF</b>
<b>REGARDING UNBUNDLING OBLIGATIONS</b>	)	<b>PROCEDURAL SCHEDULE</b>
	)	<b>AND HEARING</b>
	)	<b>TC03-181</b>

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCImetro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T, and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.



At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum.

With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee (ROC) discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to.

The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order. Pursuant to its November 26, 2003, order, the Commission issued the Protective Order and discovery requests. The Commission served the discovery requests upon the following companies: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.

On November 7, 2003, the Commission received late-filed petitions to intervene from Midstate Telecom, Inc. (Midstate), PrairieWave Communications, Inc. (PrairieWave), and Northern Valley Communications, LLC (Northern Valley). On November 10, 2003, the Commission received a late-filed petition to intervene from Black Hills FiberCom L.L.C. (FiberCom)

At its December 2, 2003, meeting, the Commission considered this matter. Qwest did not object to the granting of the interventions. Pursuant to ARSD 20:10:01:15.02, the Commission found denial of the late-filed petitions to intervention would be detrimental to the public interest and voted to grant the petitions filed by Midstate, PrairieWave, Northern Valley, and FiberCom. The Commission also voted to set the following procedural schedule:

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 6, 2004 - Initial round of testimony due. Qwest shall file its primary case addressing the issues of market definition, the DS0 cut-off level, and the trigger analyses and potential deployment analyses for mass-market switching. All other parties shall file testimony regarding the issues of market definition and the DS0 cut-off level. The other parties may present testimony on the trigger and potential deployment analyses at this time or wait until the second round of testimony;

February 17, 2004 - Simultaneous filing of rebuttal testimony on impasse issues regarding the batch hot cut process;

March 19, 2004 - Second round of testimony due. If not presented in the first round, parties, other than Qwest, may present their initial testimony on the trigger and potential deployment analyses. All parties may present testimony in response to testimony filed in the initial round of testimony;

April 2, 2004 - Optional rebuttal testimony due;

April 26 through April 30 and May 3 through May 7, 2004 - Hearing to begin at 1:00 p.m., on April 26, 2004, in the Kneip Room of the Governor's Inn, 700 W. Sioux Avenue, Pierre, South Dakota.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-16, 1-26-18, 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing will be held on the application beginning on April 26, 2004. One of the issues at the hearing is whether requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers. The second issue is whether the Commission shall approve and implement a batch cut process that would make the hot cut process more efficient and reduce per-line hot cut costs, or, in the alternative, whether, for any particular geographic market, the current hot cut processes do not give rise to impairment in the market.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence, if any, presented during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties and the public, will make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may determine whether requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers and may approve and implement a batch cut process, or, in the alternative, find, for any particular geographic market, that the current hot cut processes do not give rise to impairment in the market. The Final Decision made by the Commission may be appealed by any party to the Circuit Court and the South Dakota Supreme Court as provided by law.

It is therefore

ORDERED, that the late-filed petitions to intervene are granted for Midstate, PrairieWave, Northern Valley, and FiberCom; and it is

FURTHER ORDERED, that the parties shall comply with the procedural schedule as set forth above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 11<sup>th</sup> day of December, 2003.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u><i>William Koelb</i></u></p> <p>Date: <u>12/11/03</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
---

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman *dk*

*Gary Hanson*  
GARY HANSON, Commissioner

*James A. Burg*  
JAMES A. BURG, Commissioner

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December 11, 2003

*File*  
**Received DEC 11 2003**

**VIA EMAIL AND UPS OVERNIGHT**

Pam Bonrud, Executive Director  
Public Utilities Commission of the State of SD  
500 East Capitol Avenue  
Pierre, SD 57501

**RECEIVED**

**DEC 12 2003**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Re: In the Matter of the Implementation of the Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations (TC03-181)  
Our File No. 2104.128

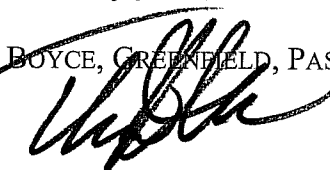
Dear Ms. Bonrud:

Please find enclosed the original and ten (10) copies of Qwest's Motion to Postpone Mass Market Switching Case and Close Docket and Certificate of Service.

By copy of this letter I am serving the same on all counsel by mail and one representative of each party via email as indicated on the certificate of service.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.



Thomas J. Welk

TJW/vjj

Enclosure

cc: Tim Goodwin  
Larry Toll  
Service List

**BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.**  
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December 11, 2003

*Elec. Rec'd*  
**RECEIVED**

DEC 11 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**VIA EMAIL AND UPS OVERNIGHT**

Pam Bonrud, Executive Director  
Public Utilities Commission of the State of SD  
500 East Capitol Avenue  
Pierre, SD 57501

Re: In the Matter of the Implementation of the Federal Communications Commission's  
Triennial Review Order Regarding Unbundling Obligations (TC03-181)  
Our File No. 2104.128

Dear Ms. Bonrud:

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Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

Thomas J. Welk

TJW/vjj

Enclosure

cc: Tim Goodwin  
Larry Toll  
Service List

DEC 11 2003

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATTER OF THE  
IMPLEMENTATION OF THE FEDERAL  
COMMUNICATIONS COMMISSION'S  
TRIENNIAL REVIEW ORDER  
REGARDING UNBUNDLING  
OBLIGATIONS**

**TC 03-181**

**Qwest's Motion To Postpone Mass Market  
Switching Case And Close Docket**

Qwest Corporation ("Qwest") requests that the Public Utilities Commission of the State of South Dakota (the "Commission") enter an order postponing its inquiry into issues related to Qwest's obligation to provide unbundled switching for mass market customers (the "Inquiry"). Accordingly, Qwest requests that the Commission permit Qwest to withdraw without prejudice its intervention for the Inquiry or, alternatively, that the Commission defer indefinitely any action in this docket, both subject to Qwest's right to refile or reinstate the Inquiry at a future time. Thus, Qwest moves the Commission to vacate: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, subject to Qwest's right to move forward with the Inquiry in the future.

**Discussion**

***Grounds for Motion***

1. As many of the parties to this proceeding have stipulated, and the Commission has declared in connection with the recent proceeding seeking reclassification of local exchange telecommunications service (Docket TC03-057), competition for local exchange in South Dakota is vigorous and meaningful. Qwest therefore maintains that switching for mass-market customers should not be subject to the unbundling obligations of Section 251 of the Telecommunications Act. This competition notwithstanding, however, Qwest has determined

that it is not prudent or practical at this time for it to continue to prosecute the issues associated with the Inquiry or to ask the Commission to devote its scarce resources to the Inquiry. The reasons Qwest has reached these conclusions are fourfold:

(a) Qwest has decided to pursue unbundled switching cases for mass market customers in only those states where it clearly meets the triggers for elimination of the unbundling obligation as set by the FCC in the Triennial Review Order (“Order”).<sup>1</sup> Based upon the information available to Qwest as of this date, however, Qwest cannot verify unequivocally that the three-switch trigger is met in South Dakota.

(b) As the mass-market switching proceedings in Qwest’s 14-state region have unfolded, it has become clear that Qwest underestimated the resources required to prosecute 14 separate state actions simultaneously. Moreover, Qwest has received voluminous discovery requests from out-of-region states with respect to its out-of-region business, and Qwest had not anticipated discovery of this magnitude.

(c) Qwest quite simply is presently resource-constrained, a fact well known to the Commission and the general public. Accordingly, Qwest must choose and prioritize carefully where it litigates issues, including the Inquiry.

(d) It is well known that many parties have appealed the Order, that these appeals have been consolidated in the United States Circuit Court of Appeals for the D.C. Circuit and that the D.C. Circuit has ordered the appeals be briefed and argued on an expedited basis. While these facts do not necessarily indicate anything about the timing and substance of the D.C. Circuit’s rulings, many observers believe there is a significant possibility that the FCC’s rulings in the Order will be reversed and remanded to the FCC

for further proceedings before that agency. This possibility, in and of itself, would not militate in favor of a deferral of the Inquiry, and Qwest will pursue mass market switching cases in many of its other in-region states; however, when considered in combination with the foregoing factors, Qwest has concluded that the Inquiry should not take place at the present time.

2. For the above and foregoing reasons, considered together, Qwest has determined not to proceed with the Inquiry at this time and with similar proceedings in Montana, Idaho, and Wyoming. This motion is timely in South Dakota because Qwest and the other parties in the case have not yet responded to any outstanding discovery requests, and if Qwest's request is promptly granted, the parties will avoid significant effort and expenditure in responding to the requests. Qwest's decision at this time to request postponement of its nine-month mass market switching case will allow it and other parties to focus their resources on other states so that those cases can be completed within the nine-month period required by the Order.

3. Qwest is simultaneously filing a similar motion with the state commissions of the aforementioned states asking them to postpone their investigation of issues related to mass market switching impairment and, without prejudice, to close their dockets related to that issue. However, because of the degree of competition in South Dakota, Qwest reserves its ability under the Order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching. *See, e.g.*, proposed regulation 47 CFR § 51.319(d)(5)(ii).

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<sup>1</sup> In those states where the triggers are met, Qwest also will be presenting other evidence relating to economics, competition, and operational matters in the market demonstrating that switching for mass-market customers should not be unbundled.



### ***Batch Hot Cut Issues***

On October 31, 2003, Qwest (on behalf of AT&T and MCI) filed a joint proposal of a process and framework to address the batch hot cut issue.<sup>2</sup> On November 12, 2003, consistent with its obligations under the joint proposal, Qwest filed its proposal for a region-wide batch loop conversion process,<sup>3</sup> wherein Qwest, among other things, summarized its proposal regarding implementation of a process for batch hot cuts. On November 6, 2003, the Commission issued an order approving the joint motion of Qwest, AT&T and MCI, agreeing to participate in the multi-state forum process related to batch hot cut issues and likewise adopting the procedural schedule proposed for batch hot cut testimony proposed by Qwest, MCI, and AT&T.

By filing this Motion, Qwest has decided not to seek relief at this time from its current obligation to provide unbundled switching for mass-market customers in South Dakota. Thus, there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes.

This issue was recently addressed by an administrative law judge ("ALJ") in Washington. Several weeks ago, after Verizon decided not to seek mass market switching relief in Washington, the ALJ requested comments on whether it was necessary for the Washington Commission to conduct a batch hot cut analysis of Verizon. Verizon, MCI, and Commission Staff filed comments agreeing that "the requirement for states to approve and implement a batch-cut process for ILECs is an integral part of the mass-market switching analysis" under TRO, but also concluding that "there is no obligation for ILECs or the Commission to develop a batch-cut process unless the ILEC files a petition with the Commission contesting the FCC's findings of

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<sup>2</sup> *Joint Motion for Adoption of Batch Hot Cut Forum*, October 31, 2003.

<sup>3</sup> *Qwest's Proposal For Region wide Batch Loop Conversion Process*, November 12, 2003.

impairment for mass-market switching.”<sup>4</sup> On November 19, 2003, the ALJ agreed, declining “to initiate further proceedings at this time to address development of a batch-cut process for ILECs other than Qwest.”<sup>5</sup> A copy of the ALJ’s decision in Washington is attached hereto as Exhibit A.

By filing this motion, Qwest hereby withdraws its request for mass market switching relief, thus placing it in the same posture as Verizon in Washington. Thus, as the ALJ concluded in Washington, there is no need for the Commission to proceed with the batch hot cut issue and all filing dates and hearings related to that issue should be vacated.

That said, Qwest remains committed to the batch hot cut forum and, even though no further action should be taken on that issue in South Dakota, Qwest has no objection to Commission staff monitoring and otherwise participating in the batch hot cut forum.

### ***Scope Of Motion***

This Motion relates only to issues related to mass market switching impairment (including batch hot cut issues). Nothing herein should be construed as Qwest’s agreement to forego or otherwise discontinue action to implement any other aspects of the TRO. In a technical sense, Qwest believes it has the unilateral right to withdraw its case that is the subject of the Inquiry because, in the absence of such a case, the status quo favors the CLECs. That having been said, Qwest believes that since the Commission has opened the Inquiry and initiated proceedings, it is appropriate to request an order from the Commission memorializing the dismissal or deferral of the Inquiry. Furthermore, since no party has responded to discovery, filed testimony, or formalized its advocacy, there can be no prejudice flowing from Qwest’s decision.

---

<sup>4</sup> Order Declining to Initiate Proceedings to Address ILEC Batch Cut Processes; Closing Docket (Order No. 3), Docket No. UT-033025, Washington Utilities and Transportation Commission (November 19, 2003) ¶ 7.

<sup>5</sup> *Id.* ¶ 14.

***Conclusion And Contact With Other Parties***

Qwest therefore moves this commission to postpone the current proceedings relating to switching for mass market customers by vacating: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, all without prejudice to the ability of Qwest to re-open for a determination on the merits.

Qwest has contacted counsel for AT&T and MCI regarding its request, and AT&T and MCI have represented that that they have no objection to vacating these proceedings consistent with the request contained in the immediately preceding paragraph.

DATED this 11<sup>th</sup> day of December, 2003.

---

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1801 California Street 47<sup>th</sup> floor  
Denver, CO 80202

**ATTORNEYS FOR QWEST CORPORATION**

*Rec'd Elec.*

[Service Date November 19, 2003]

**RECEIVED**

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

**DEC 11 2003**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

In the Matter of the Implementation of the	)	
Federal Communications Commission's	)	DOCKET NO. UT-033025
Triennial Review Order	)	ORDER NO. 03
	)	
	)	ORDER DECLINING TO INITIATE
	)	PROCEEDINGS TO ADDRESS
	)	ILEC BATCH CUT PROCESSES;
	)	CLOSING DOCKET
.....	)	

- 1 **Nature of the Proceeding:** The Washington Utilities and Transportation Commission (Commission) initiated this proceeding to implement the provisions of the Federal Communications Commission's (FCC) Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, also known as the Triennial Review Order, released on August 21, 2003, in CC Docket Nos. 01-338, 96-98, and 98-147.
- 2 **Procedural History:** The Commission initiated this proceeding on August 22, 2003, by issuing a notice requesting comments from all interested persons concerning the process for implementing the FCC's Order in Washington state. The Commission established the docket to scope and implement the Commission's response to the Triennial Review Order. The Commission received responses from nine telecommunications companies, Commission Staff and Public Counsel.
- 3 The Commission convened prehearing conferences in this docket on September 26, 2003, and October 13, 2003. At these prehearing conferences, the Commission, with the assistance of the parties to this proceeding, established a procedural schedule for proceedings arising from the FCC's Triennial Review Order. In Order No. 01, the first prehearing conference order in this proceeding, the Commission required all persons interested in challenging the FCC's national finding of no impairment for enterprise market switching to file a petition by October 3, 2003. The Commission also required all persons interested in challenging the FCC's national finding of impairment for mass-market switching, dedicated transport, and DS1, DS3, and dark fiber loops to file a petition with the Commission by October 10, 2003.
- 4 No person or corporation filed a petition on October 3, 2003, challenging the FCC's enterprise market switching findings. On October 10, 2003, Qwest Corporation (Qwest) filed a petition with the Commission in Docket No. UT-033044 to initiate a review of the FCC's findings concerning mass-market switching and dedicated transport. No other person or company filed a petition with the Commission concerning mass-market switching, dedicated transport, or loops.

- 5 In paragraph 8 of Order No. 01, the Commission noted a disagreement between the parties concerning a requirement in the Triennial Review Order that state commissions approve a batch hot cut migration (batch-cut) process for incumbent local exchange companies (ILECs) to address impairment in mass-market switching caused by existing ILEC hot cut processes. Specifically, the parties disagreed about the obligations of state commissions and ILECs operating in Washington state to develop a batch-cut process within the state of Washington. The Commission will address the development and implementation of a batch-cut process for Qwest in Docket No. UT-033044.
- 6 On October 14, 2003, the Commission issued a notice to all parties and interested persons requesting comments by October 21, 2003, concerning the obligations under the Triennial Review Order of the Commission and ILECs, other than Qwest, operating in Washington state to initiate development of a batch-cut process within the state of Washington.
- 7 **Batch Cut Migration Process.** On October 21, 2003, Verizon Northwest Inc. (Verizon), MCI, Inc. (MCI), Covad Communications Company (Covad), United Telephone Company of the Northwest d/b/a Sprint (Sprint), and Commission Staff filed comments with the Commission. Verizon, MCI, and Staff assert that the requirement for states to approve and implement a batch-cut process for ILECs is an integral part of the mass-market switching analysis in the Triennial Review Order. These companies also assert that there is no obligation for ILECs or the Commission to develop a batch-cut process unless the ILEC files a petition with the Commission contesting the FCC's findings of impairment for mass-market switching.
- 8 Sprint asserts that its current processes are sufficient and that a batch-cut process is not necessary because the company does not provide UNE-P to any competitive local exchange carrier (CLEC) and provisions only low levels of UNE loops. Covad argues that the Commission should examine the effect of hot cuts on line splitting when examining an ILEC's hot cut processes.
- 9 **Discussion.** The FCC finds that CLECs are impaired without access to unbundled local circuit switching for mass-market customers. *Triennial Review Order*, ¶459. The FCC makes this finding "based on evidence in our record regarding the economic and operational barriers caused by the cut over [or hot cut] process." *Id.* The Triennial Review Order describes a hot cut as "a process requiring incumbent LEC technicians to disconnect manually the customer's loop, which was hardwired to the incumbent LEC switch, and physically re-wire it to the competitive LEC switch, while simultaneously reassigning (*i.e.*, porting) the customer's original telephone number from the incumbent LEC switch to the competitive LEC switch." *Triennial Review Order*, n.1293.
- 10 Specifically, the FCC requires that "state commissions, must, within nine months from the effective date of the Order, approve and implement a batch-cut process that will render the hot cut process more efficient and reduce per-line hot cut costs." *Triennial Review Order*, ¶¶ 423, 460. In the alternative, state commissions must make detailed

findings by geographic market to support a conclusion that current hot cut processes do not create impairment and that a batch cut process is unnecessary. *Id.*

- 11 It is not clear from the text of the Order whether the state commission approval of a batch-cut process is independent of or an integral part of the state commission's market-by-market analysis of CLEC impairment without unbundled mass-market switching. The final rules adopted in the Order, however, include state commission review of an ILEC batch-cut process as a part of the state commission's impairment analysis. *See 47 C.F.R. §51.319(d)(2)(ii)*. Under these final rules, state commissions need only conduct a batch-cut analysis for an ILEC if a state commission is conducting an impairment analysis of unbundled mass-market switching provided by the ILEC.
- 12 Verizon and MCI assert that Verizon need not develop a batch-cut process because Verizon has not filed a petition with the Commission to initiate a proceeding. The Triennial Review Order is silent concerning how state commission proceedings should be initiated. While the Commission is not precluded from initiating a Triennial Review Order proceeding on its own motion, the Commission chose to require parties to petition the Commission to initiate proceedings.
- 13 Sprint asserts that a review of its hot cut process is unnecessary, and MCI asserts that such a review is not presently necessary for Verizon. No party or interested party requests that the Commission initiate a mass-market switching proceeding involving Verizon or the other ILECs operating in Washington state.
- 14 Based upon the comments filed and the discussion above, the Commission declines to initiate further proceedings at this time to address development of a batch-cut process for ILECs other than Qwest.
- 15 **Closure of the Docket.** As there are no issues remaining for the Commission to resolve in this docket, Docket No. UT-033025 is now closed.

Dated at Olympia, Washington, and effective this 19<sup>th</sup> day of November, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 11<sup>th</sup> day of December, 2003, a true and correct copy of Qwest's Motion to Postpone Mass Market Switching Case and Close Docket was sent via US mail, postage prepaid, to the following addresses:

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Thomas J. Welk



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

<b>IN THE MATTER OF THE IMPLEMENTATION</b>	)	<b>ORDER CLOSING DOCKET</b>
<b>OF THE FEDERAL COMMUNICATIONS</b>	)	
<b>COMMISSION'S TRIENNIAL REVIEW ORDER</b>	)	<b>TC03-181</b>
<b>REGARDING UNBUNDLING OBLIGATIONS</b>	)	
	)	
	)	

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCImetro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T, and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum.

With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee (ROC) discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to.

The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order. Pursuant to its November 26, 2003, order, the Commission issued the Protective Order and discovery requests. The Commission served the discovery requests upon the following companies: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.

On November 7, 2003, the Commission received late-filed petitions to intervene from Midstate Telecom, Inc. (Midstate), PrairieWave Communications, Inc. (PrairieWave), and Northern Valley Communications, LLC (Northern Valley). On November 10, 2003, the Commission received a late-filed petition to intervene from Black Hills FiberCom L.L.C. (FiberCom). At its December 2, 2003, meeting, the Commission granted the petitions to intervene and set the following procedural schedule:

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 6, 2004 - Initial round of testimony due. Qwest shall file its primary case addressing the issues of market definition, the DS0 cut-off level, and the trigger analyses and potential deployment analyses for mass-market switching. All other parties shall file testimony regarding the issues of market definition and the DS0 cut-off level. The other parties may present testimony on the trigger and potential deployment analyses at this time or wait until the second round of testimony;

February 17, 2004 - Simultaneous filing of rebuttal testimony on impasse issues regarding the batch hot cut process;

March 19, 2004 - Second round of testimony due. If not presented in the first round, parties, other than Qwest, may present their initial testimony on the trigger and potential deployment analyses. All parties may present testimony in response to testimony filed in the initial round of testimony;

April 2, 2004 - Optional rebuttal testimony due;

April 26 through April 30 and May 3 through May 7, 2004 - Hearing to begin at 1:00 p.m., on April 26, 2004, in the Kneip Room of the Governor's Inn, 700 W. Sioux Avenue, Pierre, South Dakota.

On December 11, 2003, the Commission received a Motion to Postpone Mass Market Switching Case and Close Docket from Qwest. In its Motion, Qwest requested that "the Commission permit Qwest to withdraw without prejudice its intervention for the Inquiry or, alternatively, that the Commission defer indefinitely any action in this docket, both subject to Qwest's right to refile or reinstate the Inquiry at a future time." Qwest stated that "it is not prudent or practical at this time for it to continue to prosecute the issues associated with the Inquiry or to ask the Commission to devote its scarce resources to the Inquiry." Qwest stated that it had "decided to pursue unbundled switching cases for mass market customers in only those states where it clearly meets the triggers" and that, based on current information, "Qwest cannot verify unequivocally that the three-switch trigger is met in South Dakota." Qwest further stated that it "underestimated the resources required to prosecute 14 separate state actions simultaneously" and that Qwest is "presently resource-constrained. . . ." Qwest also asserted that "many observers believe there is a significant possibility that the FCC's rulings in the Order will be reversed and remanded to the FCC for further proceedings before that agency." Citing to section 51.319(d)(5)(ii), Qwest stated that it was reserving "its ability under the Order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching."

With respect to the batch hot cut issues, Qwest stated that "[b]y filing this motion, Qwest has decided not to seek relief at this time from its current obligation to provide unbundled switching for mass-market customers in South Dakota. Thus, there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes."

At its December 16, 2003, meeting, the Commission considered Qwest's motion. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-16, 1-26-18, 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81. No party objected to closing the docket. The Commission voted unanimously to close the docket. The Commission notes that it had required that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers to file a notice of intent. Qwest was the only entity to file a notice of intent and Qwest limited its notice of intent to the challenge of mass market switching. Thus, with Qwest's request that it be allowed to withdraw from these proceedings, there is no entity challenging the FCC's findings of impairment at this time. The Commission finds that without any entity seeking to challenge the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers, there is no need to conduct an inquiry within the initial nine month time frame as set by the FCC. The Commission further finds that there is no need to proceed with an evaluation of Qwest's batch hot cut process either. Pursuant to the FCC's rules, it is apparent that the establishment of an incumbent LEC batch cut process is to be done in conjunction with a proceeding to determine whether a requesting carrier is impaired without access to unbundled switching serving

mass market customers. See 47 C.F.R. § 51.319(d)(2)(i) and (ii). The Commission further finds that this docket will be closed without prejudice in recognition of section 53.319(d)(5)(ii) which allows a state commission to complete a review applying the triggers and other criteria, subsequent to any initial review, "within six months of the filing of a petition or other pleading to conduct such a review." Thus, Qwest is not foreclosed from requesting that the Commission conduct an impairment proceeding at a later date.

The Commission further finds that the closing of this docket means that no entity is required to respond to any outstanding discovery requests, including the discovery requests issued by the Commission which were due December 19, 2003. In addition, the Commission vacates the procedural schedule issued December 11, 2003.

It is therefore

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of December, 2003.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>          Melaine Kalbo          </u>
Date: <u>          12/17/03          </u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

          Robert K. Sahr            
ROBERT K. SAHR, Chairman *dk*

          Gary Hanson            
GARY HANSON, Commissioner

          James A. Burg            
JAMES A. BURG, Commissioner

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December 19, 2003

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**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Pam Bonrud, Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue  
Capitol Building, 1<sup>st</sup> Floor  
Pierre, SD 57501-5070

**Re: Docket TC03-181, In the Matter of the Implementation of the Federal  
Communications Commission's Triennial Review Order Regarding  
Unbundling Obligations – Responses to Discovery Requests**

Dear Ms. Bonrud:

ICG Telecom Group, Inc. ("ICG"), through undersigned counsel, hereby provides its response to the Commission's Discovery Requests in the above-referenced proceeding.

ICG makes the following general objections to the Discovery Requests:

1. ICG objects to the Discovery Requests to ICG to the extent that they are overly broad, unduly burdensome, and/or oppressive.
2. ICG objects to the Discovery Requests to the extent they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. By way of illustration and not limitation, ICG objects to interrogatories that seek information that is unrelated to or inconsistent with the methodology and parameters of the analysis of impairment prescribed by the FCC in its Triennial Review Order.
3. ICG objects to the Discovery Requests to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests.
4. ICG objects to Discovery Requests to the extent that they purport to impose discovery obligations on ICG that exceed the scope of discovery allowed by the applicable South Dakota Rules of Civil Procedure and the Commission's Rules.

5. ICG objects to the Discovery Requests to the extent that they seek discovery of materials and/or information protected by the work product doctrine, the accountant/client privilege, the attorney/client privilege or any other applicable privilege.

6. ICG objects to the Discovery Requests to the extent that they would require disclosure of information that constitutes trade secrets and/or confidential, proprietary business information, which either should not be disclosed at all or should be disclosed (provided the information is otherwise discoverable) only pursuant to the terms of a mutually acceptable confidentiality agreement and use of the Commission's rules and procedures relating to confidential and proprietary information.

7. ICG objects to all Discovery Requests that would require ICG to provide information which is already in the Commission's possession, or is in the public record before the Commission. To duplicate information that the Commission already has or is readily available to the Commission would be unduly burdensome and oppressive.

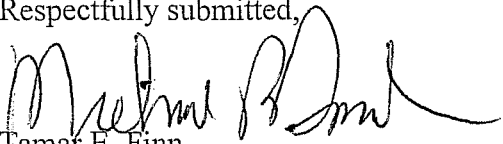
8. ICG objects to the Discovery Requests to the extent they seek to impose an obligation on ICG to respond on behalf of subsidiaries and/or former officers, employees, agents, and directors on the grounds that such requests for production are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

9. ICG objects to the Discovery Requests to the extent they request information that is not readily available to ICG or in the form requested and would therefore require ICG to perform a special study and are unduly burdensome.

Subject to and without waiving these objections, ICG states that it does not own switches or other facilities in South Dakota and does not provide local voice telecommunications in South Dakota. As such, ICG does not have information relevant to the Commission's analysis in this proceeding.

An original and ten (10) copies of this response are enclosed. Please date stamp and return the extra copy in the enclosed self-addressed, postage-prepaid envelope. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,



Tamar E. Finn

Michael P. Donahue

Counsel for ICG Telecom Group, Inc.

cc: Scott E. Beer  
Andrea Guzman