

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

**IN THE MATTER OF THE ANALYSIS OF ) ORDER REGARDING  
QWEST CORPORATION'S COMPLIANCE ) CHECKLIST ITEMS 1, 11, 13,  
WITH SECTION 271(c) OF THE ) AND 14  
TELECOMMUNICATIONS ACT OF 1996 ) TC01-165**

The procedural history for this docket is set forth in the Commission's order regarding checklist items 3, 7, 8, 9, 10, and 12. At its September 5, 2002, meeting, the Commission found that, subject to its findings regarding Qwest's Operational Support Systems (OSS), Qwest is in substantial compliance with checklist items 1, 11, 13, and 14.

**FINDINGS REGARDING CHECKLIST ITEMS 1, 11, 13, and 14**

**CHECKLIST ITEM 1**

Section 271(c)(2)(B)(i) requires Qwest to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Section 251(c)(2) imposes upon Qwest the following obligations with respect to interconnection:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

With respect to collocation, section 251(c)(6) requires Qwest "to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

Section 252(d)(1) describes how state commissions determine rates for interconnection and provides that such rates must be "(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit."

The FCC has defined the term "interconnection" as "the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." 47 C.F.R. § 51.5. The FCC has identified a minimum list of technically feasible points of interconnection: (1) the line-side of a local switch; (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points necessary to exchange traffic at these points and access to call-related databases; and (6) points of access to unbundled network elements. 47 C.F.R. § 51.305(a)(2).

The FCC has defined physical collocation as follows:

Physical collocation is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

- (1) Place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;
- (2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service;
- (3) Enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements; and
- (4) Obtain reasonable amounts of space in an incumbent LEC's premises, as provided in this part, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

The FCC has defined virtual collocation as follows:

Virtual collocation is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

- (1) Designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent LEC's premises, and dedicated to such telecommunications carrier's use;
- (2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service; and
- (3) Electronically monitor and control its communications channels terminating in such equipment.

The Commission will discuss interconnection and collocation separately.

### **Interconnection**

Qwest stated that its SGAT provides the following types of interconnection: "(1) a DS1 or DS3 entrance facility provided by Qwest; (2) physical or virtual collocation associated with a CLEC-provided facility; (3) negotiated mid-span meet facilities; and (4) other technically feasible methods of interconnection." Qwest Exhibit 14 at 5. Qwest provides interconnection trunking to six facilities-based CLECs in South Dakota. *Id.* at 12. As of September 1, 2002, CLECs had 7,049 interconnection trunks in service, with 4,990 connecting CLEC end offices to Qwest end offices, and 2,059 connecting CLEC end offices with Qwest tandem offices. *Id.* According to Qwest, 94% of the interconnection trunks were two-way trunks. *Id.* A CLEC may order a local interconnection trunk through an Access Service Request which the CLEC may submit via an electronic system called EXACT, or by mail or facsimile. *Id.* at 15.

Qwest explained that Qwest and the CLECs share estimates of trunk forecasting. *Id.* at 17. Qwest maintained that it provides "facilities and equipment in sufficient quantity to connect the number of people who might, under busy-hour conditions, simultaneously attempt to pass calls between networks." *Id.* at 18. If monthly traffic data reports indicate excess blocking for a two-way

interconnection trunk group, Qwest will advise the CLEC of the need to provision additional trunks. *Id.* at 20.

## Disputed Issues Regarding Interconnection

### 1. Indemnification

#### *AT&T's Position*

AT&T recommended that an indemnity provision be added to section 7.1.1.1 of Qwest's SGAT which would indemnify a CLEC if Qwest fails to provide a CLEC interconnection at least equal in quality to the interconnection that it provides to itself. AT&T Exhibit 10 at 6-7.

#### *Qwest's Position*

Qwest responded that the proposed language is unnecessary and there is already adequate indemnification language in the General Term and Conditions portion of the SGAT, as well as incentives provided in the QPAP. Qwest Exhibit 15 at 4.

#### *Commission's Finding*

The Commission finds that AT&T's proposed language is too broad. As noted by the Facilitator in the Multi-state Proceeding, interconnection involves the *mutual* exchange of traffic and each party has facilities that support the exchange of traffic. Exhibit 23 at 31. Yet, under AT&T's proposal, the CLEC's conduct appears to be irrelevant as there is no language which allows "for a reasoned determination of responsibility in the event that harm occurs." *Id.* The Commission finds that Qwest is not required to add AT&T's proposed indemnification language. Indemnification is an issue that is properly contained in the General Terms and Conditions sections of the SGAT.

### 2. Use of Entrance Facilities

#### *AT&T's Position*

AT&T questioned the ability of a CLEC to obtain a point of interconnection (POI) on Qwest's network. AT&T stated "Qwest's SGAT does not expressly allow CLECs to obtain a POI on Qwest's network because there is no way for the CLEC to obtain the dedicated trunk necessary to reach such POI." AT&T Exhibit 10 at 10. AT&T further asserted that "[t]he only method that comes close to dedicated trunks is the offer of 'entrance facilities,' but these fall far short because they dictate the location of the POI as somewhere on the CLEC network, not on Qwest's network." *Id.* AT&T proposed additional language to sections 7.1.2.1 and 7.3.2.1.1 of Qwest's SGAT. *Id.*

#### *Qwest's Position*

Qwest asserted that "Qwest has routinely provided CLECs with dedicated trunking to CLEC-selected POIs both inside and outside Qwest central outside buildings" and that a "CLEC may choose a POI location anywhere in Qwest's ILEC territory." Qwest Exhibit 15 at 5. Qwest explained that "[w]hen trunking is configured to a POI associated with collocation, the entrance facility component of interconnection is avoided on Qwest's side of the POI." *Id.* Qwest also noted that it had agreed to allow access to UNEs via entrance facilities. *Id.* at 8.

*Commission's Position*

The Commission notes that, as Commission Staff recommended, Qwest now allows access to UNES via entrance facilities. See Staff Exhibit 1 at 24. In addition, the Commission finds that the entrance facility requirement does not prohibit a CLEC from choosing the location of a POI. The Commission finds Qwest's language acceptable.

*3. Expanded Interconnection Channel Termination Charges*

*AT&T's Position*

AT&T also raised an issue as to Qwest's Expanded Interconnection Channel Termination (EICT) charge. AT&T Exhibit 10 at 11. AT&T acknowledged that Qwest has changed its Exhibit A to reflect a charge of zero for EICT charges. *Id.* at 12. However, AT&T requested that the Commission confirm that Qwest may not charge CLECs for EICT wires. *Id.*

*Qwest's Position*

Qwest stated that it had no objection to this request.

*Commission's Finding*

The Commission finds this issue has been resolved and further states that Qwest may not charge CLECs for EICT wires.

*4. Transport Greater than 50 Miles*

*AT&T's Position*

AT&T's next issue concerns section 7.2.2.1.5 of the SGAT regarding direct trunked transport greater than 50 miles. AT&T Exhibit 10 at 12. AT&T claimed this provision requires CLECs to build a mid-span trunk to all trunk interconnection routes over 50 miles when neither the CLEC or Qwest have facilities in place. *Id.*

*Qwest's Position*

Qwest noted that the language of section 7.2.2.1.5 provides that if the parties are unable to agree on a mid-point arrangement when direct trunked transport is greater than 50 miles, the parties can bring the matter before the Commission for resolution on an Individual Case Basis. Qwest Exhibit 15 at 10.

*Commission's Finding*

The Commission finds that the language in section 7.2.2.1.5 is reasonable. AT&T's statement that all interconnection trunks over 50 miles are arbitrarily turned into mid-span meets is simply untrue since, if the parties cannot agree, the Commission will decide how to handle such a request. Although AT&T states that Qwest has not provided a single instance of being required to build such transport (AT&T Exhibit 10 at 13), such transport is certainly not inconceivable in South Dakota.

## 5. Trunk Forecasting

### *AT&T's Position*

This issue concerns under what circumstances Qwest can require a deposit when it installs trunks pursuant to CLEC forecasts and under what conditions may those deposits be refunded. AT&T objected to Qwest's proposed SGAT language in section 7.2.2.8.6.1 which included a provision allowing Qwest to seek non-punitive liquidated damages if Qwest constructs non-reusable facilities in response to a CLEC forecast and subsequent orders are not issued by the CLEC within six months of the completed construction. AT&T Exhibit 10 at 13. AT&T proposed modifications to the language. *Id.* at 14.

### *Qwest's Position*

In its rebuttal testimony, Qwest changed its position on this issue and adopted the changes proposed by the Facilitator in the Multi-state Proceeding. Qwest Exhibit 15 at 12-13. This language provides that the basis for returning a deposit should be 50% usage of trunks installed, not forecasted, and that the usage should include usage for all CLECs, instead of only the CLEC making the deposit. *Id.* Qwest further stated that if AT&T prefers AT&T's proposed language, Qwest would agree to use it in the AT&T interconnection agreement. *Id.* at 12

### *Commission's Finding*

The Commission notes that Commission Staff recommended the approach taken by the Multi-state Facilitator. See Staff Exhibit 1 at 29. The Commission agrees with Staff that calculating usage percentage on the basis of installed trunks is preferable because it reflects Qwest's actual costs of building trunk capacity installed trunks. *Id.* The Commission finds that the language as revised by Qwest for section 7.2.2.8.6.1 is reasonable. In addition, the Commission finds that since Qwest has agreed to incorporate AT&T's proposed revisions in the AT&T interconnection agreement, this issue appears to have been resolved.

## 6. Confidentiality of Forecasts

### *AT&T's Position*

With respect to the confidentiality of forecasts, AT&T recommended that section 7.2.2.8.12 be removed because it duplicates the nondisclosure language found in a General Terms and Conditions section. AT&T Exhibit 10 at 16.

### *Qwest's Position*

Qwest agreed and deleted the provisions relating to confidentiality. Qwest Exhibit 15 at 15.

### *Commission's Finding*

The Commission finds this issue has been resolved.

## 7. Underutilized Trunks

### *AT&T's Position*

AT&T took issue with section 7.2.2.8.13 relating to underutilized trunks. AT&T Exhibit 10 at 16-17. AT&T stated the language "gives Qwest the right to unilaterally determine that the CLEC isn't using its trunks according to Qwest's utilization demands and then allows Qwest to take back the trunks that Qwest wants." *Id.* at 17. AT&T requested that the Commission require Qwest to replace the current language with previous language that was agreed to by the parties and Qwest. *Id.*

#### *Qwest's Position*

In its rebuttal testimony, Qwest agreed to include the previous version of section 7.2.2.8.13 as requested by AT&T which requires a CLEC to either resize the trunk group "or provide Qwest with its reasons for maintaining excess capacity." Qwest Exhibit 15 at 15.

#### *AT&T's Post-hearing Position*

In its post-hearing brief, AT&T argued that even as revised, the provision was still unacceptable because CLECs are in the best position to determine their future needs for interconnection trunks and Qwest should not be allowed to make the decision unilaterally. AT&T's Brief Regarding Qwest's Interconnection Obligations at 13-14.

#### *Commission's Finding*

AT&T has appeared to change its position after the hearing. AT&T does not explain why it changed its position and does not say that the revision as proposed by Qwest is not what AT&T requested in its prefiled testimony. The Commission is not sure whether AT&T is requesting the entire provision be deleted or if it wants further revision.

The provision, with the additional language as originally requested by AT&T (in italics), provides as follows:

7.2.2.8.13 If a trunk group is consistently utilized (trunks required over trunks in service) at less than fifty percent (50%) of rated busy hour capacity each month of any consecutive three (3) month period, Qwest will notify CLEC of Qwest's desire to resize the trunk group. Such notification shall include Qwest's information on current utilization levels. If CLEC does not submit an ASR to resize the trunk group *or provide Qwest with its reasons for maintaining excess capacity* within thirty (30) calendar days of the written notification, Qwest may reclaim the unused facilities and rearrange the trunk group. When reclamation does occur, Qwest shall not leave the trunk group with less than twenty five percent (25%) excess capacity. Ancillary trunk groups are excluded from this treatment.

Qwest Exhibit 81 (section 7.2.2.8.13). Qwest's rationale for including this section is that trunk shortages may occur if CLECs significantly underutilize trunk groups. Qwest Corporation's Post-hearing Reply Brief on Compliance with the 14-Point Competitive Checklist at 5.

The Commission finds that Qwest's concern regarding trunk shortages is valid. Moreover, the addition of the italicized language makes it clear that a CLEC need only provide Qwest with a reason as to why it wishes to maintain the excess capacity and Qwest will not reclaim any unused facility. The Commission accepts this section as revised.

## 8. Separate Trunk Groups

### AT&T's Position

AT&T claimed that section 7.2.2.9.3.2 requires CLECs to use separate trunk groups for interLATA, 1+ long distance calls, and for local calls. AT&T Exhibit 10 at 17.

### Qwest's Position

Qwest responded that section 7.2.2.9.3.2 explicitly allows for combining of traffic. The section states as follows:

7.2.2.9.3.2 Exchange Service (EAS/Local) traffic and Switched Access Traffic including Jointly Provided Switched Access Traffic, may be combined on the same trunk group. If combined, the originating Carrier shall provide to the terminating Carrier, each quarter, Percent Local Use (PLU) factor(s) that can be verified with individual call record detail. Call detail or direct jurisdictionalization using Calling Party Number information may be exchanged in lieu of PLU if it is available.

Qwest Exhibit 81 (section 7.2.2.9.3.2).

### Commission's Finding

AT&T did not address this issue in its post-hearing brief. Since the section allows for commingling on the same trunk group, the Commission is at a loss to understand AT&T's point. The Commission finds the section is appropriate as written.

## 9. Tandem Switch Interconnection Compensation

### AT&T's Position

AT&T's final issue in its interconnection testimony concerns compensation associated with interconnection at Qwest's tandem switches, section 7.2.2.9.6 of the SGAT. This issue is addressed in the reciprocal compensation part of the report, *infra*.

## Collocation

Qwest provides collocation as one of the ways to obtain interconnection and access to network elements. Qwest Exhibit 30 at 8. Qwest stated it provides collocation on an unbundled basis and pursuant to the FCC's collocation rules. *Id.* at 8-9. Qwest maintained that it allocates space for equipment on a first-come, first-served basis and takes the demand for collocation into account when forecasting and planning for facility growth. *Id.* at 9. Qwest stated that as of August 31, 2001, Qwest had collocation arrangements with seven CLECs in South Dakota and was providing fourteen units of physical collocation and one unit of virtual collocation. *Id.* at 20.

Qwest stated that it offers the following forms of physical collocation: (1) caged physical collocation; (2) shared caged physical collocation; (3) cageless physical collocation; (4) ICDF collocation; (5) common area splitter collocation; (6) remote collocation; and (7) adjacent collocation. *Id.* at 24-26. Qwest stated it also provides for virtual collocation which "allows a CLEC to deliver equipment to Qwest for Qwest to engineer, install, and maintain on behalf of the CLEC." *Id.* at 38.

## Disputed Issues Regarding Collocation

### 1. Availability of Collocation Facilities and Billing

#### *Midcontinent's Position*

In its prefiled testimony, Midcontinent stated it was "concerned about the availability of collocation facilities particularly in wire centers in smaller communities where it intends to offer facilities based services in the future. Much of our planning depends on the accuracy of information supplied during the feasibility study conducted by Qwest as part of a collocation request." Midcontinent Exhibit 38 at 6-7. Midcontinent also stated it was billed for a certain level of DC power for collocation but later discovered it was receiving substantially less power than was billed. *Id.* at 7.

#### *Qwest's Position*

With respect to whether there were available facilities in smaller communities, Qwest stated that it was not aware of any particular reason for concern. Qwest Exhibit 31 at 6. Regarding the billing issue, Qwest responded that it had actually provided the level of power that had been ordered but had billed for two 60 amp feeds as opposed to one. *Id.* Qwest stated that it would credit Midcontinent for the overcharges. *Id.*

#### *Commission's Finding*

The Commission notes that Midcontinent did not actually point to any instances where facilities for collocation were not available in smaller communities. As Qwest pointed out in its rebuttal testimony, in order to ensure available facilities, Midcontinent should provide a forecast of its collocation plans so Qwest can plan for Midcontinent's future collocation needs. The Commission finds that the billing issue appears to be resolved.

### 2. Productization of Collocation

#### *AT&T's Position*

AT&T contended that Qwest issues policy statements defining how the collocation process is to be accomplished and then demands that CLECs accept these policies even if the policies are contrary to the SGAT and interconnection agreements. AT&T Exhibit 10 at 21. AT&T submitted exhibits to demonstrate the difference between the policy and what is provided for in the SGAT. *Id.* at 22-23. AT&T stated that "Qwest should not be found to be in compliance with Checklist Item 1 until such time as it demonstrates that its collocation policies and performance requirements, are, in fact, consistent with its SGAT and interconnection agreements." *Id.* at 24.

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#### *Qwest's Position*

Qwest stated that through the Change Management Process, Qwest provides notification to CLECs at least 30 days prior to implementing changes that can impact a CLEC and all of the CLEC documentation is available for review and comment by CLECs through the CMP. Qwest Exhibit 31 at 8. With respect to the AT&T exhibits, Qwest claimed that one was a draft document and three others have been revised and agreed to in the CMP meetings. *Id.* at 9. Qwest also noted that the revised documents state that if the terms in the product document differ from an interconnection agreement, then the interconnection agreement prevails. *Id.*

### *Commission's Finding*

The Commission finds that AT&T's concern is valid since, in the past, Qwest has submitted documents in its wholesale Product Catalog that stated that the terms contained are "effective regardless of whether it is explicitly stated in a particular Interconnection Agreement." AT&T Exhibit 10 (attached exhibits B, C, and D). However, AT&T did not refute that these agreements have now been revised. The Commission finds that the specific documents that caused AT&T's concern appear to have been taken care of in the Change Management Process. The Commission will consider whether the Change Management Process is adequate when it reviews that process in a later order.

### *3. Access to Multiple Tenant Environments*

#### *AT&T's Position*

AT&T objected to Qwest's SGAT language that treats access to multiple tenant environments as a form of collocation. AT&T Exhibit 10 at 24-25.

#### *Qwest's Position*

Qwest explained that it had agreed to change this language but had included the old language in the SGAT filed with its Petition. Qwest Exhibit 31 at 11. Qwest agreed to use the language requested by AT&T which specifically proves that this type of access is not collocation. Qwest Exhibit 31 at 12.

#### *Commission's Finding*

The Commission notes that this language is now included in the revised SGAT. See Qwest Exhibit 81 (section 8.1.1.8.1). The Commission finds this issue has been resolved.

### *4. Order Volumes for Collocation Applications*

#### *AT&T's Position*

AT&T objected to language concerning when Qwest must meet collocation intervals when Qwest receives a number of collocation applications. AT&T Exhibit 10 at 29-30. However, AT&T uses the wrong SGAT language when discussing this issue. *Id.* The language used by AT&T was in the Multi-state Proceeding but Qwest used different language in its SGAT filed with its Petition.

#### *Qwest's Position*

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**Qwest's current language regarding maximum order volumes provides as follows:**

8.4.1.9 Should Qwest receive an extraordinary number of complex Collocation Applications within a limited time frame, Qwest shall use its best efforts to meet the intervals called for in this Agreement. If Qwest nevertheless fails to meet such intervals, Qwest must demonstrate to the Commission that such failures were due solely to the fact that Qwest received an extraordinary number of complex Collocation Applications within a limited time frame.

Qwest Exhibit 81 (section 8.4.1.9).

*Commission's Finding*

This language is significantly different from the Multi-state Proceeding language which allowed Qwest to negotiate intervals if it received six or more orders in one week. The Commission finds that this language is reasonable and is an improvement on the language used in the Multi-state Proceeding. Pursuant to this language, the burden is placed on Qwest to prove to the Commission that any delays in intervals were due solely to Qwest's receipt, within a limited time frame, of an extraordinary number of complex applications.

*5. Collocation Intervals*

*AT&T's Position*

On a related issue, AT&T objected to Qwest's collocation intervals provisions. AT&T Exhibit 10 at 33. AT&T stated that Qwest's SGAT language requires a CLEC to provide very specific forecasts before Qwest will agree to meet the 90 day collocation interval. *Id.* at 33.

*Qwest's Position*

In its rebuttal testimony, Qwest stated that it reached a resolution of this issue in Arizona and agreed to change the provisions so that the interval is 90-days even without a forecast, unless Qwest obtains a waiver because of a shortage of space, power, or HVAC. Qwest Exhibit 31 at 22 (language attached as Exhibit MSB-COLLO-12). Thus, Qwest will complete a collocation installation in the 90-day interval for virtual and physical collocation when conditioned space is readily available and will meet the 45-day interval for Interconnection Distribution Frame (ICDF) collocation if an ICDF or space for a new ICDF is available. *Id.* at 24. However, Qwest did not agree that it needs to request a waiver if special conditioning or major infrastructure modifications are required. In that event, Qwest stated that:

Qwest will provision the collocation within the 120-day interval if the space is available and some conditioning is required (e.g., duct extensions). If a major infrastructure modification is required, Qwest will provide the reason for and the duration of the extended interval to the CLEC as part of the quote. If the CLEC disputes the need for and/or the duration of the extended interval, then Qwest must request a waiver from the Commission.

*Id.* at 22.

*Commission's Finding*

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The Commission finds that Qwest's revised language on this issue is acceptable and is an improvement on its original language filed in its SGAT with its Petition. The revised language addresses AT&T's concern that an unforecasted request for collocation will be given a longer interval merely because it was unforecasted, even when there was no shortage of space, power, or HVAC.

## 6. Channel Regeneration Charges

### *AT&T's Position*

AT&T next objected "to Qwest's imposition of a channel regeneration charge when the distance between the CLEC's collocation space and Qwest's network facilities is so great as to require regeneration." AT&T Exhibit 10 at 36. AT&T reasoned that the charge was unreasonable since CLECs have "no control over either the location of their collocation space within Qwest's central office or its relation to Qwest's network facilities." *Id.* AT&T requested that section 8.3.1.9, which allows for channel regeneration charges, be deleted. *Id.*

### *Qwest's Position*

Qwest argued that it should be allowed to charge for channel regeneration when it is unavoidable. Qwest Exhibit 31 at 17. Qwest explained that "[c]hannel regeneration is required when the distance from the collocation space to the Qwest network is of sufficient length to require regeneration. Regeneration enhances the signal being transmitted to ensure that it is strong enough to meet technical requirements." *Id.* In the Multi-state Proceeding, language was added to section 8.3.1.9 which provides that the charges will not apply "if Qwest fails to make available to CLEC: (a) a requested, available location at which regeneration would not be necessary or (b) Collocation space that would have been available and sufficient but for its reservation for the future use of Qwest." Qwest Exhibit 81 (section 8.3.1.9).

### *Commission's Finding*

The Commission finds that the imposition of a channel regeneration charge is appropriate under the circumstances as set forth in section 8.3.1.9. The Commission finds that the language added in the Multi-state Proceeding should alleviate, to some extent, AT&T's concern that Qwest will have no incentive to minimize the need for regeneration charges.

## 7. Individual Case Basis Pricing for Adjacent and Remote Collocation

### *AT&T's Position*

AT&T also objected to Qwest's pricing of both adjacent collocation and remote collocation on an Individual Case Basis (ICB). AT&T Exhibit 10 at 37. AT&T stated that Qwest should develop standard adjacent and remote collocation elements in order to prevent delay, unjust pricing, and potential discrimination. *Id.* AT&T stated that at a minimum, this issue should be deferred to an appropriate cost docket. *Id.*

### *Qwest's Position*

Qwest responded that it had received zero requests for adjacent collocation and had only minimal activity involving remote collocation across the Qwest region. Qwest Exhibit 31 at 13. Qwest further stated that it will address standardized pricing in the cost proceeding currently pending before the Commission, and has put language in the SGAT which provides that charges for adjacent and remote collocation will be priced on an ICB except where a commission finds that standard pricing elements can be identified and their costs determined. *Id.* (referencing sections 8.3.5 and 8.3.6.)

*Commission's Finding*

The Commission finds that it will consider this issue in its pending cost docket.

**8. Collocation Space Reservation Forfeiture Fee**

*AT&T's Position*

AT&T's final collocation issue related to the collocation space reservation forfeiture fee contained in section 8.4.1.7.4. AT&T Exhibit 10 at 37-38. AT&T opposed requiring CLECs to forfeit the space reservation fee upon cancellation of a collocation space reservation.

*Qwest's Position*

Qwest stated that it reduced the amount of the penalty from 50% of the nonrecurring reservation fee to 25%. Qwest Exhibit 31 at 20. In addition, Qwest pointed out that the SGAT provision includes a lower cost alternative which allows a CLEC to secure some right to space, but if another CLEC requests space through a collocation application then the first CLEC must either submit an application or a reservation, otherwise it will lose the space. *Id.*

*Commission's Finding*

The Commission finds that some restrictions on space reservation are necessary in order to prevent a CLEC from reserving space in an attempt to deprive another CLEC or Qwest of the ability to use the space. The FCC allows reasonable restrictions on the warehousing of unused space by CLECs. See 47 C.F.R. § 51.323(f)(6). This section provides that "[a]n incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary." The Commission finds the Qwest forfeiture fee is a reasonable restriction, especially in light of the lower cost alternative available to a CLEC.

**Commission's Finding for Checklist Item 1**

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

**CHECKLIST ITEM 11**

Section 271(c)(2)(B)(xi) requires Qwest to provide number portability. Number portability is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30).

The FCC has set eight performance criteria that LECs must follow when providing number portability. The criteria are:

- (1) Supports network services, features, and capabilities existing at the time number portability is implemented, including but not limited to emergency services, CLASS features, operator and directory assistance services, and intercept capabilities;
- (2) Efficiently uses numbering resources;
- (3) Does not require end users to change their telecommunications numbers;
- (4) Does not result in unreasonable degradation in service quality or network reliability when implemented;
- (5) Does not result in any degradation in service quality or network reliability when customers switch carriers;
- (6) Does not result in a carrier having a proprietary interest;
- (7) Is able to migrate to location and service portability; and
- (8) Has no significant adverse impact outside the areas where number portability is deployed.

47 C.F.R. § 52.23(a)(1)-(8).

Qwest has chosen to provide local number portability (LNP) through the Location Routing Number (LRN) method. Qwest Exhibit 38 at 8. According to Qwest, LNP is available to 100% of Qwest's access lines in South Dakota. *Id.* at 6. Qwest stated that it had ported 28,440 telephone numbers in South Dakota at the end of February, 2002. Hearing Transcript for April 23, 2002, at 84. Qwest maintained that LRN is consistent with the eight performance criteria as established by the FCC and that Qwest complies with the technical, operational, architectural, and administrative requirements set forth in NANC's Technical and Operational Task Force Report and Architecture Task Force Report which were adopted by the FCC. Qwest Exhibit 38 at 8, 13.

Qwest explained the processing of LNP requests as follows:

To initiate a number portability request, a CLEC submits a local service request ("LSR") to port the end user's telephone number(s). The LSR can be submitted by facsimile or electronically. When Qwest receives the LSR, Qwest processes the LSR and returns a firm order confirmation ("FOC") to the requesting CLEC. After the CLEC receives the FOC, the CLEC is required to forward a "subscription version" ("SV") to the NPAC indicating its intent to port a telephone number. Qwest also will create an NPAC SV, which will match the CLEC's NPAC SV to port the number. . . . The requesting CLEC activates its NPAC SV on the due date designated in the CLEC's LSR. The NPAC then broadcasts the telephone number(s) with the associated LRN routing information to all of the local number portability databases.

*Id.* at 15-16.

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Qwest stated that it recovers its costs pursuant to a competitively neutral cost-recovery mechanism created by the FCC. *Id.* at 17. Under an FCC approved tariff, Qwest is allowed to charge for database queries and assesses monthly end-user LNP charges. *Id.* at 18.

### Disputed Issues Regarding Checklist Item 11

#### 1. Provisioning of LNP

### *FiberCom's Position*

At the hearing, Black Hills FiberCom stated that when it first tried to use local number portability, it could only process maybe five or six LNP orders a day per employee but it was acquiring 25 to 60 customers a day.<sup>1</sup> Black Hills FiberCom had to offer one month of free service to attempt to convince customers to change their telephone numbers. *Id.* at 68. FiberCom said this cost its company about \$170,000.00. *Id.* If a customer chose to keep his or her telephone number, the customer was charged a monthly fee of \$2.00. *Id.* Black Hills FiberCom stated that this showed that even though a service may be listed in Qwest's catalog, it does not mean that Qwest is able to adequately serve a competitor's needs. *Id.* However, FiberCom also stated that Qwest had improved its processes. *Id.* at 67.

### *Commission's Finding*

The Commission finds that this appears to have been a problem that has been resolved. However, the Commission recognizes the point being made by Black Hills FiberCom on this issue and may consider this issue in another portion of its findings in this proceeding.

## **2. Scheduling of Ported Numbers**

### *AT&T's Position*

AT&T brought up the issue of the scheduling of porting numbers in order to prevent any service disruption. AT&T Exhibit 12 at 62-70. The problem occurs when a CLEC requests the porting of a new customer's number and Qwest disconnects its loop before the CLEC's loop is in place, resulting in the loss of telephone service. *Id.* at 62-63. AT&T stated that some of the reasons why this may occur is that customers do not keep their installation appointment, the installers could be delayed, or there are installation problems. *Id.* at 63. In its post-hearing brief, AT&T acknowledged that Qwest's new process, which delays disconnection upon notification by the CLEC, has recently been incorporated in OP-17, but stated that there is no performance data yet for this revised PID.<sup>2</sup> AT&T further asserted in its brief that Qwest had not included the new SGAT language to reflect the new process for delayed disconnection and states that "Qwest refuses to reflect this solution in its SGAT." *Id.* at 40. Moreover, even with the new language, AT&T disagreed with Qwest's use of the words "try to" when describing Qwest's efforts to ensure the service is not disconnected. *Id.* at 41.

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<sup>1</sup> Hearing Transcript for April 29, 2002, at 67. In FiberCom's prefiled testimony, FiberCom stated it had problems with Qwest taking numbers assigned to FiberCom as ported telephone numbers and reassigning those numbers to Qwest retail customers. However, FiberCom chose not to put this testimony into the record.

<sup>2</sup> Response Brief of AT&T Regarding Checklist Item 4 - Unbundled Loops and Checklist Item 11 - Local Number Portability at 38-39. PID OP-17 "[e]valuates the quality of Qwest completing LNP telephone number porting, focusing on the degree which porting occurs without implementing associated disconnects before the scheduled time/date." Qwest Exhibit 71, (attached as Exhibit MGW-PERF-6 at 53).

### *Qwest's Position*

In its rebuttal testimony, Qwest stated that it agreed to change the SGAT language to delay the disconnection, upon notification by the CLEC. Qwest Exhibit 39 at 14. Qwest pointed out in its post-hearing reply brief that Qwest's revised SGAT submitted after the hearing includes the language AT&T asserted is missing. Qwest Corporation's Post-Hearing Reply Brief on Compliance with the 14 Point Competitive Checklist at 42-43. Qwest further noted that in its rebuttal testimony, it had already offered to change the words "try to" to "use its best efforts" and that AT&T had not addressed this new language. *Id.*

### *Commission's Position*

A review of Qwest's revised SGAT demonstrates that Qwest has included the language as it offered to do in its reply testimony. See Qwest Exhibit 81, (section 10.2.5.3.1). The Commission finds that this language is reasonable, including the words that Qwest will "use its best efforts." Although AT&T stated that the revised PID has not yet produced any results, the Commission notes that AT&T has not reported any Qwest failures that AT&T has experienced in this area. The Commission finds that the issue of disconnects of ported numbers has been satisfactorily resolved by the inclusion of the revised SGAT language.

### **Commission's Finding for Checklist Item 11**

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

### **CHECKLIST ITEM 13**

Section 271(c)(2)(B)(xiii) requires Qwest to provide "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." Pursuant to section 252(d)(2)(A), Qwest must provide reciprocal compensation on "(i) such terms and conditions [that] provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions [must] determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

Through its rules, the FCC defines "reciprocal compensation" as an arrangement between two carriers "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of the telecommunications traffic that originates on the network facilities of the other carrier." 47 C.F.R. § 51.701(e).

The FCC defines "transport" as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." 47 C.F.R. § 51.701(c). According to Qwest, it offers transport to competitive carriers through Direct Trunked Transport, Tandem Switched Transport, or a combination of the two. Qwest Exhibit 18 at 7. Direct Trunked Transport provides an uninterrupted path between the switches of two different carriers and has a fixed, per month charge and a fixed, per mile charge. *Id.* at 8-9. Qwest stated that it complies with the FCC rule which provides that "[t]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will

terminate on the providing carrier's network." *Id.* at 9 (quoting 47 C.F.R. § 51.709(b)). Tandem Switched Transport allows calling between a CLEC's switch and a Qwest end office through an intermediate switch. *Id.* at 10.

The FCC defines "termination" as "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. § 51.701(f). In its SGAT, Qwest has a per minute charge for call termination. Qwest Exhibit 81 (attached Exhibit A). Qwest has also entered into interconnection agreements that use some form of bill-and-keep arrangements, with a provision that allows for conversion to reciprocal compensation when the traffic is unbalanced. Qwest Exhibit 18 at 13-14. With respect to internet-bound traffic, Qwest maintained that it exchanges that traffic at the rates ordered in the FCC's ISP Order. *Id.* at 14 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, Order on Remand/Report and Order, FCC 01-131 (rel. Apr. 27, 2001)). Qwest asserted that it also provides a transit service which allows "CLECs to interconnect indirectly with other local carriers using Qwest's facilities. Qwest's transit service allows one CLEC to send traffic to another local carrier's network through Qwest's tandem, thus avoiding the cost of investing in facilities otherwise necessary to interconnect to all other local carriers in a local calling area." *Id.* at 15.

### Disputed Issues Regarding Checklist Item 13

#### 1. Compensation for Interconnection at Tandem Switches

##### *AT&T's Position*

In its testimony on interconnection, AT&T raised an issue concerning compensation associated with interconnection at Qwest's tandem switches, section 7.2.2.9.6 of the SGAT. AT&T stated that a CLEC should be allowed to interconnect at the local tandem for the same cost it would pay for interconnection at the access tandem if Qwest prefers interconnection at the local tandem. AT&T Exhibit 10 at 19-20. AT&T quoted language from Qwest's Washington SGAT which AT&T stated was adopted in the Multi-state Proceeding.

##### *Qwest's Position*

Qwest responded that it accepts the verbatim language drafted by the Facilitator in the Multi-state Proceeding. Qwest Corporation's Post-Hearing Brief on Workshop 1 at 51.

##### *Commission's Finding*

The Qwest language provides that "Qwest may propose to provide Interconnection facilities to the Local Tandem or End Offices served by the Access Tandem at the same cost to CLEC as Interconnection at the Access Tandem." Qwest Exhibit 81 (section 7.2.2.9.6.) This language differs from the language AT&T states is in Qwest's Washington SGAT. However, AT&T did not dispute in its post-hearing brief that this language resolves the issue regarding compensation. Thus, the Commission considers this issue to be resolved.

#### 2. Treatment of Internet Service Provider Traffic

##### *AT&T's Position*

With respect to the treatment of internet service provider traffic, AT&T stated it had reached a consensus on the language with Qwest and requested that the Commission accept the consensus language. AT&T Exhibit 11 at 7.

#### *Qwest's Position*

Qwest agreed that it had reached a consensus on the language, although it asserted that this issue is not relevant to checklist approval, since ISP-bound traffic does not fall under the reciprocal compensation obligations. Qwest Exhibit 19 at 3-4.

#### *Commission's Finding*

The Commission notes that Qwest has placed the consensus language in its revised SGAT filed following the hearing and, therefore, finds this issue has been resolved. See Exhibit 81 (section 7.3.4).

### *3. Single Point of Presence*

#### *AT&T's Position*

AT&T raised concerns regarding section 7.2.2.9.6 and the SPOP product. In essence, AT&T contended that Qwest is attempting to limit a CLEC's ability to interconnect at a single POI or at any technically feasible point in order to reduce Qwest's interconnection and reciprocal compensation costs. AT&T Exhibit 11 at 8-13. AT&T stated that Qwest refuses to accept that "a CLEC may interconnect at any technically feasible point, including a single point of interconnection ("POI"). Qwest refuses to accept that where the CLEC establishes a single POI, Qwest must carry traffic to that POI at its own expense, based on properly apportioned reciprocal compensation for such traffic." *Id.* at 9.

#### *Qwest's Position*

Qwest pointed out that its SGAT specifically provides for a single POI per LATA:

7.1.2 Methods of Interconnection The Parties will negotiate the facilities arrangement used to interconnect their respective networks. CLEC shall establish at least one Physical Point of Interconnection in Qwest territory in each LATA the CLEC has local Customers. The Parties shall establish, through negotiations, at least one of the following Interconnection arrangements; (1) a DS1 or DS3 Qwest provided facility; (2) Collocation; (3) negotiated Mid-Span meet POI facilities; (4) other Technically Feasible methods of Interconnection.

Qwest Exhibit 81 (section 7.1.2).

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#### *Commission's Finding*

Given the language in section 7.1.2, the Commission finds that Qwest does not require a CLEC to have more than a single POI per LATA. The Commission finds no changes are needed for this section.

#### 4. Ratcheting of Rates

##### *AT&T's Position*

AT&T contended that section 7.3.1.1.2 of Qwest's SGAT "improperly requires CLECs to pay private line rates for interconnection service provided using spare capacity on special access facilities." AT&T Exhibit 11 at 13. AT&T stated that "since certain of the circuits on the special access facility are being used for local interconnection purposes, the Act requires that those circuits be priced at TELRIC rates and not at rates taken from Qwest's non-cost-based, interstate or intrastate private line tariffs." *Id.*

##### *Qwest's Position*

Qwest responded that when a CLEC has arranged a special access facility with a portion of it idle, and the CLEC chooses to use the idle portion of transport for local interconnection trunking, that local transport is provided at no charge. Qwest Exhibit 19 at 6. Similarly, Qwest asserted that "Qwest does not assess any charge when a CLEC uses spare capacity to provide local interconnection service on a special access facility that is otherwise being used to provide access service." *Id.* at 6-7. Qwest claimed that proportional pricing schemes are prohibited by the FCC. *Id.* at 5-6. Qwest further noted that in the Multi-state Proceeding, the Facilitator concluded that CLECs can use special access circuits for interconnection, but should continue to pay the tariffed rate for those circuits. *Id.* at 7. Qwest also asserted that its position was consistent with FCC decisions. *Id.* at 5.

##### *Commission's Finding*

The Commission finds that Qwest's position on this issue is consistent with current FCC Orders. See Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 ¶ 22(3) at 13-14 (rel. June 2, 2000); Memorandum Opinion and Order, *In the Matter of Net2000 Communications, Inc. v. Verizon-Washington D.C., Inc.*, File No. EB-00-018, FCC 01-381 (rel. Jan. 9, 2002). Moreover, the Commission agrees with the Facilitator in the Multi-state Proceeding that allowing TELRIC prices on special access circuits may affect the rate system that supports universal service. See Exhibit 23 at 104. Thus, the Commission finds that Qwest is not required to allow the use of excess capacity on an existing special access facility as an interconnection trunk at TELRIC prices.

#### 5. IntraLATA Toll Carrier Access Billing

##### *Midcontinent's Position*

Midcontinent raised an issue concerning intraLATA toll carrier access billing. Midcontinent Exhibit 38 at 21.

##### *Qwest's Position*

Qwest stated that this is not a reciprocal compensation issue. Qwest Exhibit 19 at 13-14. However, Qwest did address the issue and stated it was working with Midcontinent at resolving the problem. *Id.* at 14-15.

## Commission's Finding

The Commission finds no action is needed on this issue.

### Commission's Finding for Checklist Item 13

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

### CHECKLIST ITEM 14 - RESALE

Section 271(c)(2)(B)(xiv) requires Qwest to provide "[t]elecommunications services . . . for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." Section 251(c)(4) places the following requirements on Qwest:

The duty -- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the [FCC] under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Under section 252(d)(3), this Commission has the power to determine the wholesale rates on the basis of retail rates, less avoided costs. Qwest must provide services for resale "that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." 47 C.F.R. § 51.603(b).

According to Qwest, it provides services for resale in accordance with the Act and FCC rules. Qwest Exhibit 53 at 4-5. Qwest stated that the wholesale rates Qwest charges are the rates determined by the Commission in its arbitration decision between Qwest and AT&T. *Id.* at 5. In addition, Qwest claimed that preordering and ordering processes and functions, as well as maintenance and repair processes and systems for resold services are the same processes, systems, and functions used by Qwest for its retail services. *Id.* at 6.

As of August 31, 2001, Qwest asserted that "Qwest provides 13,987 resold lines, including 5,282 residential lines, 8,650 business lines, and 55 Centrex lines, to eight reseller CLECs in South Dakota. As of the same date Qwest provides 687 resold private lines, including 613 analog, 35 DS0, and 39 DS1 private lines, and three resold Qwest DSL services, to reseller CLECs." *Id.* at 7.

### Disputed Issues for Checklist Item 14

#### 1. Indemnification

##### AT&T's Position

AT&T raised two issues with respect to resale. The first issue concerns indemnification and AT&T proposed indemnity language which AT&T stated would make "Qwest expressly responsible for the service quality it provides to its wholesale customers." AT&T Exhibit 10 at 40.

### *Qwest's Position*

Qwest responded that its current SGAT provisions obligate Qwest to "give credits to reseller CLECs related to the quality of resold services provided to the reseller CLECs, and to reimburse reseller CLECs for fines or penalties to which they are subject based on state service quality rules." Qwest Exhibit 54 at 10. Qwest further stated that it should not have to credit a CLEC for more than the amount a CLEC pays Qwest for the resold service since Qwest has no control over the amount a reseller CLEC chooses to charge its end user customers or pay its end user customers for service problems. *Id.* at 11.

### *Commission's Finding*

As the Commission noted in its discussion on a similar issue regarding indemnification language for interconnection, indemnification is an issue that is properly contained in the General Terms and Conditions sections of the SGAT. The Commission further finds that the language in sections 6.2.2 and 6.2.3 is reasonable and the language is designed to place a reseller CLEC at parity with Qwest's retail services. The Commission notes that in the Multi-state Proceeding, Qwest was required to delete proposed provisions that would prohibit credits or reimbursements to CLECs if the CLEC was not subject to state service requirements or did not pay credits to its end user customers. See Qwest Exhibit 23 at 119-120. Given these revisions, the Commission finds the current language is acceptable.

### *2. Misdirected Customer Calls*

#### *AT&T's Position*

The second issue raised by AT&T concerned when a customer, in error, calls the wrong carrier with questions about service. AT&T Exhibit 10 at 43-35. AT&T stated Qwest should be prohibited "from using the misdirected CLEC end-user calls as a sales opportunity." *Id.* at 45. AT&T requested that the words "seeking such information" be added to section 6.4.1. *Id.*

#### *Qwest's Position*

Qwest pointed out in its reply testimony that it had already adopted AT&T's proposed language to section 6.4.1 and had added the words "seeking such information." Qwest Exhibit 54 at 13.

#### *Commission's Finding*

The Commission finds this issue is resolved.

### *3. Billing Problems*

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#### *Midcontinent's Position*

Midcontinent raised issues regarding billing problems with resold services, ordering telephone number prefixes for SmartPak service, and notice issues regarding the offering of new retail products. Midcontinent Exhibit 38 at 10-12, 13-15. One of the billing problems concerned Qwest adjusting Midcontinent's resale rate to the amount stated in the Interconnection Agreement even though that rate was no longer valid because it had been changed in the first amendment to the

Interconnection Agreement. *Id.* at 15. Midcontinent stated that Qwest's response to this problem was slow and was reportedly due to Qwest personnel changes and lack of available personnel. *Id.* Midcontinent stated the amount in dispute had grown to over \$200,000.00. *Id.* Midcontinent noted that its personnel spent numerous overtime hours reconciling the bills and that the "additional accounting burden has continued for six months to date, unfairly costing us time and money." *Id.* at 16.

In its post-hearing brief, Midcontinent stated that it had "raised a number of issues in its prefiled testimony filed March 18, 2002, which Qwest witnesses pointed out were resolved by the time of the hearing." Midcontinent's Post Hearing Brief at 5. However, Midcontinent went on to say:

Two significant points should be kept in mind here, the level of Qwest's attention to and resolution of issues increased markedly as the time of the hearing approached, and Midcontinent's motive for mentioning many of these items was to show the evolution of Qwest cooperation and performance from first contact with Midcontinent to more recent interaction between the two.

*Id.*

#### *Qwest's Position*

Qwest claimed that the prefix problem arose when Midcontinent ordered new NXX's prior to their availability. Qwest Exhibit 54 at 4. With respect to the billing issues, Qwest now pulls a random 10% sample of Midcontinent's resale orders and audits them. *Id.* Qwest said that it does provide "written notice to reseller CLECs in South Dakota advising of new Qwest retail products and services in advance of or on the date the service is available to Qwest retail end users." *Id.* at 5.

#### *Commission's Finding*

It would appear that Qwest has addressed Midcontinent's concerns regarding resale at this time. However, as it noted in its decision on checklist item 8, the Commission shares Midcontinent's concern that Qwest's attention to a CLEC's concerns may lessen if granted section 271 approval. The Commission may address this concern in another portion of its findings regarding this proceeding.

#### **Commission's Finding for Checklist Item 14**

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

#### **Verification of Compliance With This Order**

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The Commission finds that no compliance filing is needed for this order since the Commission has not ordered any changes regarding these checklist items.

It is therefore

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

Dated at Pierre, South Dakota, this 19<sup>th</sup> day of September, 2002.

**CERTIFICATE OF SERVICE**

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

By: Albino Kalks

Date: 9/19/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner