BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996	))))))	**ORDER REGARDING OPERATIONAL SUPPORT SYSTEMS, ROC OSS TEST, AND COMMERCIAL PERFORMANCE DATA TC01-165**

Procedural History

The South Dakota Public Utilities Commission (Commission) participated in the Regional Oversight Committee ("ROC") collaborative section 271 performance measurements proceeding. The ROC Operational Support Systems ("OSS") test final report was issued on May 28, 2002. At its May 30, 2002, meeting, the Commission listened to comments from the parties on how to proceed with consideration of the ROC OSS test. By order dated June 19, 2002, the Commission set the following procedural schedule to consider the ROC OSS test:

July 3, 2002 - Parties may file comments on the ROC OSS test. These comments are optional. A party may present testimony at the hearing without filing comments;

July 11, 2002 - A hearing will be held beginning at 8:30 a.m. on July 11, 2002, in Room 412, State Capitol Building, Pierre, South Dakota. The ROC OSS vendors will present testimony on the ROC OSS test. The following vendors will be giving presentations: MTG - Denise Anderson and Marie Bakunas; KPMG - Mike Weeks and Joe Dellatorre; and HP - Geoff May, Liz Gragert, and Don Petry. All parties will be allowed an opportunity for cross-examination. Following that testimony, all parties will be allowed the opportunity to present additional testimony, which will also be subject to cross-examination. The Commission is scheduling only one day for this hearing. If necessary, the hearing may extend into the evening hours;

July 22, 2002 - Qwest may file a post-hearing brief concerning issues related to the ROC OSS test;

August 5, 2002 - Staff and Intervenors may file a post-hearing brief concerning issues related to the ROC OSS test; and

August 12, 2002 - Qwest may file a rebuttal brief.

On June 25, 2002, the Commission received Qwest's Motion to Amend the Scheduling Order for Review of the ROC OSS Test. Qwest stated that it did not anticipate a need to file a post-hearing brief and requested that Staff and Intervenors file a post-hearing brief on or before July 22, 2002, and Qwest file a rebuttal brief on or before July 29, 2002. No parties objected to the motion to amend and the Commission amended the procedural schedule accordingly.

Prior to the hearing, comments were submitted by Commission Staff, Qwest, and AT&T. The hearing on the ROC OSS test was held as scheduled on July 11, 2002. Testimony on the ROC OSS test was given by the consultants involved in the ROC OSS test. Denise Anderson and Marie Bakunas testified on behalf of Maxim Telecommunications Group Consulting ("MTG"), which acted as the Project Manager. Michael Weeks and Joe Dellatorre testified on behalf of KPMG Consulting ("KPMG"). KPMG prepared the test plan and the final report evaluating the results of the test. Don Petry and Geoff May testified on behalf of Hewlett-Packard Consulting ("HPC") which generated test transactions through the creation of a pseudo-CLEC. None of the parties submitted briefs following the hearing.

On September 30, 2002, the Commission received Qwest's Request for Acceptance of PO-20 for Inclusion in the QPAP. Qwest requested that the Commission approve Qwest's proposed PO-20 performance measurement and payment scheme for inclusion in its QPAP. Qwest stated that its proposed PID "measures Qwest's performance in accurately processing manual service orders and is designed as a 95% benchmark measure with payments for non-compliance made to the states." On October 10, 2002, the Commission received AT&T and WorldCom, Inc.'s Comments on Qwest's Proposed PO-20 Measurement. AT&T and WorldCom opposed Qwest's request, stating that the PO-20 PID should be developed through a collaborative process and asserting that the proposed PID contained significant flaws. On October 16, 2002, the Commission received AT&T's Notice of Supplemental Authority Regarding PO-20. At its October 17, 2002, meeting, the Commission considered Qwest's request for acceptance of the PID. After listening to the arguments of the parties, the Commission deferred action on the request. At its November 20, 2002, meeting, the Commission again considered the request. The Commission voted to accept PO-20 on an interim basis. The Commission finds that acceptance of PO-20 on an interim basis does not eliminate the opportunity to make changes to this PID during the six-month review or through the collaborative process.

OPERATIONAL SUPPORT SYSTEMS

FCC Standards

Section 271(c)(2)(B)(ii) requires Qwest to provide to other telecommunications carriers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." The FCC set forth a minimum list of unbundled network elements that incumbent LECs must provide to competing carriers on an unbundled basis. The list includes operations support systems. *See* 47 C.F.R. § 51.319.

The FCC has determined that:

> For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness. The BOC must provide access that permits competing carriers to perform these functions in "substantially the same time and manner as the BOC. . . ."
>
> For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete." In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, we will examine, in the first instance, whether specific performance standards exist for those functions. In particular we will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement. If such performance standards exist, we will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.

Bell Atlantic New York Order, at ¶¶ 85, 86 (citations omitted).

In evaluating each OSS function, the FCC uses a two-step approach. *Id.* at 87. The FCC first looks to "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Id.* (citations omitted). Under this inquiry, the "BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions." *Id.* at 88 (citations omitted). Under the second step, the FCC assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." *Id.* at 87 (citations omitted). The FCC reviews:

> performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable demand volumes. The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.

Id. at 89 (citations omitted). The FCC requires a BOC to provide CLECs with access to five OSS functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing. *Georgia/Louisiana 271 Order*, Appendix. D, at ¶¶ 33-39. In addition, the FCC requires a BOC to provide an adequate change management process ("CMP").

> The FCC has established the following criteria that it uses to evaluate a BOC's CMP:
>
> (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.

Id. at ¶ 40. In addition, the FCC looks to whether the BOC is adequately assisting competing carriers to use available OSS functions and whether the BOC has adhered to the change management process over time. *Id.* at ¶ 40.

ROC OSS Process

The South Dakota Commission, as a member of the Regional Oversight Committee joined 12 other states in a collaborative process to design a plan that would test whether CLECs are being provided with nondiscriminatory access to Qwest's OSS. The ROC hired MTG to act as project manager. Hearing Transcript for July 11, 2002, at 5. The ROC technical advisory group ("TAG") served as the primary forum for developing the test and was comprised of CLECs, industry associations, the ROC Steering Committee, Qwest, and the vendors. *Id.* at 10-11. ROC retained KPMG to serve as test administrator. Qwest Exhibit 88 at 8. KPMG defined test criteria and expected test results and evaluated Qwest's performance against the expected results. *Id.* KPMG developed a Master Test Plan ("MTP"). *Id.* The first version was finalized on November 17, 2000. *Id.* at 9. The MTP was subject to numerous changes and the final MTP version, version 5.2, was issued on April 9, 2002. *Id.* at 9. The MTP used transaction-based testing and operational analysis testing. Staff Exhibit 7 at 5. HPC, acting as the pseudo-CLEC, was involved in the transaction-based testing which "involved the submission of orders that replicated the content of orders CLECs would submit as they gained customers." *Id.* Operational analysis testing involved observation of Qwest's business processes, review of the documents used in those processes, and review of the actions of the Qwest personnel charged with implementing the processes. *Id.*

The TAG agreed to a set of measurement definitions, named Performance Indicator Definitions ("PIDs"), which describe the manner in which Qwest's performance is measured. Qwest Exhibit 88 at 9. The PIDs currently contain 53 measures and more than 700 submeasures. *Id.* at 10, fn. 17. The PIDs measure whether there is parity between retail and wholesale, or whether benchmarks are met. Hearing Transcript for July 11, 2002, at 21. There were also a number of diagnostic measures which report Qwest's performance data, but do not establish a standard. *Id.* at 24. The Liberty Consulting Group was hired to conduct an audit of the PIDS developed by the TAG to ensure that Qwest was accurately measuring and recording its commercial data and to ensure that the PIDS measured were accurate. Qwest Exhibit 88 at 8.

Before a test was started, criteria were established to determine whether the results satisfied a measurement. Hearing Transcript for July 11, 2002, at 8. KPMG assigned one of four outcomes to a performance measurement: satisfied, not satisfied, unable to determine, and diagnostic. Staff Exhibit 7 at 7. If there was a problem or question, a vendor was able to write an Observation or an Exception. *Id.* Most of the Observations or Exceptions were resolved by Qwest improving its performance or revising its procedures. *Id.* However, Qwest could elect to close an Observation or Exception as unresolved. *Id.*

The following evaluations were included in the ROC test: (1) Pre-ordering, Ordering, and Provisioning Functional Evaluation; (2) Order Flow-Through Evaluation; (3) Pre-ordering, Ordering, and Provisioning Volume Performance Test; (4) Maintenance and Repair Functionality and End-to-End Trouble Report Processing Tests, including a Maintenance and Repair Volume Test; (5) Billing Usage and Carrier Bill Functionality Test; (6) CLEC Support Processes and Procedures Review; (7) Change Management Test; and (8) Performance Measure Audit. Qwest Exhibit 88 at 15.

Qwest's Position

Qwest explained that the ROC/OSS Test contained 711 evaluation criteria. Qwest Exhibit 88 at 20. Of the 711 criteria, 684 had defined success criteria and 27 were labeled as diagnostic. *Id.* Of the 684 non-diagnostic criteria, Qwest satisfied 645. *Id.* Qwest was assigned a "not satisfied" result for 11 criteria, an "unable to determine" result for 25 criteria, and the remaining three were found to be "not applicable." Of almost 500 Observations and Exceptions, only nine Exceptions and one Observation were closed as unresolved, and five Exceptions were closed as inconclusive. *Id.* Qwest asserted that "many of the evaluation criteria designated 'not satisfied,' 'unable to determine' or 'not complete' in the Final Report, and the majority of the closed/unresolved Observations and Exceptions are mitigated by Qwest's commercial performance and other evidence." *Id.* at 21. Qwest further maintained that "none of the handful of unsatisfied evaluation criteria or closed/unresolved Observations and Exceptions have any significant impact on a CLEC's ability to provide service. These few items in no way diminish the conclusion that follows from the totality of the evidence, including Qwest's overall test performance and strong commercial performance results, that Qwest has satisfied its OSS-related Section 271 obligations." *Id.* at 21-22.

With respect to pre-ordering, Qwest stated that pre-ordering allows a CLEC to obtain and verify information in advance of submitting an order, on a real time basis. *Id.* at 22. Test 12 (in part) and Test 12.7 assessed Qwest's pre-ordering performance. *Id.* Qwest stated it satisfied 37 of 37 non-diagnostic pre-ordering related test criteria. *Id.* at 22-23. Qwest further stated that for the past four months, commercial data demonstrates that Qwest has met or exceeded the PID response time benchmark for each pre-ordering activity. *Id.* at 23.

For ordering, Qwest stated that a CLEC can begin the ordering process by submitted an LSR via IMA-EDI or IMA-GUI, or by faxing the order to a Service Delivery Center. *Id.* at 25. Qwest asserted a CLEC also has two additional electronic interface for ordering via the Access Service Request Process. *Id.* Qwest stated that KPMG evaluated Qwest's ability to process orders in four separate tests: (1) a Functionality Test (part of Test 12); (2) a Manual Order Processing Evaluation (Test 12.8); (3) an Order Flow-Through Evaluation (Test 13); and (4) a Volume Performance Test (Test 15). *Id.* at 26. Test 12 evaluated the accuracy, accessibility, completeness, and timeliness of Qwest's EDI, GUI, and manual ordering interfaces; the clarity of Qwest's ordering documentation; and the timeliness, accuracy, and completeness of Qwest's order responses. *Id.* at 26. Test 12.8 evaluated order handling procedures for manually submitted orders and for orders submitted via EDI or GUI that drop out and require manual handling. *Id.* at 35. Test 13 analyzed the ability of Qwest to flow orders through IMA interfaces without manual intervention. *Id.* at 37. Test 15 evaluated Qwest's systems and processes associated with pre-order and order processes, and validated the performance of the interfaces and systems at future projected transaction volumes. *Id.* Qwest satisfied 88 of 94 non-diagnostic ordering related test criteria, with two criteria labeled "not satisfied" and four labeled "unable to determine." *Id.* at 25. Qwest asserted that the test results provide "compelling evidence that Qwest accommodates and processes CLEC orders accurately and expeditiously." *Id.* at 26.

For provisioning, Qwest stated that the ROC/OSS Test "confirms that Qwest provisions CLEC orders accurately and expeditiously." *Id.* at 39. Qwest explained that KPMG evaluated Qwest's ability to provision orders in three separate tests: (1) a Provisioning Evaluation (Test 14.0); (2) a Provisioning Process Parity Evaluation (Test 14.7); and (3) a Provisioning Coordination Process Evaluation (Test 14.8). *Id.* Test 14 "involved verifying that orders submitted were properly provisioned as requested on the LSR, provisioned as documented in Qwest's internal Methods and Procedures, and that the provisioning was completed on time." *Id.* Test 14.7 was designed to determine the extent to which Qwest's provisioning processes and systems for CLECs operate at parity with Qwest's retail operations. *Id.* at 46. In Test 14.8, KPMG reviewed Qwest's procedures, process, and operation environment used to support coordinated provisioning with CLECs. *Id.* at 47. Qwest noted that it had satisfied 96 of 104 non-diagnostic evaluation criteria. *Id.* at 39.

With respect to maintenance and repair, Qwest stated that a CLEC has three ways to access Qwest's maintenance and repair functionalities: (1) Customer Electronic Maintenance Repair/Repair Call Expert; (2) Electronic Bonding-Trouble Administration; and (3) calling or faxing a Qwest Service Center. *Id.* at 49. The KPMG evaluation of maintenance and repair involved six tests: (1) a CEMR Functional Evaluation (Test 16); (2) a MEDIACC-EB-TA Functional Evaluation (Test 17); (3) an M&R End-to-End Trouble Report Processing (Test 18); (4) an M&R Work Center Support Evaluation (Test 18.7); (5) an End-to-End M&R Process Evaluation (Test 18.8); and (6) a Network Surveillance and Outage Support Evaluation (Test 24.9). *Id.* at 49-50. Test 16 reviewed "the trouble administration functional elements of CEMR, their conformance to documented specifications, and an analysis of its functionality in comparison to Qwest's retail front-end systems." *Id.* at 50. The object of Test 17 was to validate the existence and expected behavior of Qwest's EB-TA gateway functionality. *Id.*

at 52. Test 18 concerned the execution of maintenance and repair test scenarios to evaluate Qwest's performance in making repairs under the conditions of certain wholesale maintenance scenarios. *Id.* at 53. Test 18.7 was described by Qwest as "a comprehensive operational analysis of the work center processes developed by Qwest to respond to CLEC questions, problems and issues pertaining to wholesale trouble reporting and repair operations." *Id.* at 59. The purpose of Test 18.8 was to measure the functional equivalence of the maintenance and repair processing for wholesale and retail trouble reports. *Id.* With Test 24.9, Qwest's process, procedures, and other operational elements associated with Qwest's network surveillance responsibilities were reviewed. *Id.* Qwest stated that the KPMG evaluation demonstrated that Qwest provides CLECs with maintenance and repair functionality in substantially the same time and manner as it provides such functionality to itself. *Id.* at 49.

For billing, Qwest contended that the ROC/OSS test found that "Qwest bills CLECs accurately and expeditiously, and in turn enables CLECs to bill their end-users accurately and expeditiously." *Id.* at 60. Billing was evaluated in five tests: (1) a Billing Usage Functional Evaluation (Test 19); (2) a Carrier Bill Functional Evaluation (Test 20); (3) a Daily Usage Feed Returns, Productions and Distribution Process Evaluation (Test 19.6); (4) a Bill Production and Distribution Process Evaluation (Test 20.7); and (5) an ISC/Billing and Collection Center Evaluation (Test 24.10). *Id.* Test 19 analyzed Qwest's daily message processing, and was designed to ensure that usage record types appear accurately on the Daily Usage Feed ("DUF"). *Id.* at 61. Test 20 evaluated the ability of Qwest to accurately bill usage and monthly recurring charges. *Id.* at 63. Test 19.6 "examined the operational processes and related documentation Qwest uses to create and transmit DUF files, accept DUF returns, and investigate potential errors." *Id.* 61. Test 20.7 evaluated Qwest's operational processes concerning its production and distribution of timely and accurate wholesale bills. *Id.* at 62. With Test 24.10, KPMG examined the process and documentation developed by Qwest to support resellers and CLECs with usage and/or billing related claims, inquiries, problems, and issues. *Id.* at 67. Qwest noted that of 85 evaluation criteria, Qwest satisfied 78 criteria, with seven labeled as "unable to determine." *Id.* at 60.

With respect to CMP, Qwest asserted that its CMP meets the FCC standards. Qwest Exhibit 88 at 71. Qwest stated that it has spent the last eleven months working with CLECs in order to address their concerns with CMP. *Id.* at 71. Qwest contended that the redesign team has reached agreement on all the substantive aspects of the CMP. *Id.* Qwest further stated that it had agreed to an extensive CMP for product and process changes. *Id.* at 73-74. Qwest stated that its overall results for ROC OSS Test 23, the Change Management Evaluation, showed that Qwest had satisfied eleven of the eighteen criteria with seven criteria rated as "unable to determine." *Id.* at 74. Qwest maintained that it provides easily accessible and well-organized information concerning the CMP on its wholesale website. *Id.* at 76. Qwest stated that CLECs have had and will continue to have substantial opportunities for input into the design and operation of the CMP. *Id.* at 78. Further, Qwest claimed that it had developed escalation and dispute resolution jointly with the CLECs. *Id.* at 79. Qwest stated that the escalation procedures apply to all items within the CMP, in addition to issues surrounding the CMP and the administration of the CMP. *Id.* at 79. Qwest asserted that the dispute resolution process contains specific requirements for describing and documenting the dispute. *Id.* at 80.

Qwest declared that it had compiled a strong record of compliance with the redesigned CMP and had instituted training for its personnel to keep them updated on current CMP requirements. *Id.* at 80. Qwest further asserted that it "offers CLECs an extensive array of training and assistance with respect to its OSS" and that the ROC OSS Test results "support the conclusion that Qwest adequately assists CLECs in their use of available OSS functions and the conclusion that Qwest's EDI documentation provides CLECs with sufficiently detailed interface design specifications." *Id.* at 90, 91.

Qwest stated that it provides CLECs with assistance in developing an EDI interface as follows:

> (1) providing CLECs with a well-documented EDI implementation process and individually working with CLECs via a CLEC-specific IMA-EDI development team; (2) making available detailed interface design specifications and other documentation; and (3) working collectively with CLECs on EDI development through the change management process.

Id. at 96. As of June 1, 2002, Qwest stated that 31 CLECs have been certified to use Qwest's EDI and one CLEC is in the process of certification. *Id.* at 97.

Qwest also contended that it makes available a stable testing environment that mirrors production. *Id.* at 99. Qwest said that it provides two alternative testing environments to CLECs -- its stand-alone test environment ("SATE") and its Interoperability environment. *Id.* Qwest explained that "SATE provides a CLEC with the ability to learn how Qwest's IMA-EDI functions work and the ability to test its interface in a test environment that returns pre-defined test scenarios that mimic production responses." *Id.* at 102-103. Qwest's Interoperability environment "validates transactions against actual production data using real production legacy systems to validate the data for pre-order and order transactions, including validation of account data." *Id.* at 101. Qwest stated that seven individual CLECs, as well as five CLECs represented by service bureaus, have successfully completed testing using SATE. *Id.* at 108. Qwest asserted that 26 CLECs have tested through the Interoperability environment and have achieved production status. *Id.* at 109.

Disputed Issues Regarding Pre-Ordering, Ordering and Provisioning[1]

1. Manual Processing of Orders

AT&T's Position

AT&T contended that Qwest was manually handling an excessive number of orders. AT&T Exhibit 15 at 2. AT&T stated that this manual handling of orders led KPMG to find "that there were excessive amounts of human errors being made by Qwest personnel as they processed CLEC orders." *Id.* at 3. AT&T described how KPMG handled this finding and concluded that KPMG mistakenly decided not to retest, but to instead review Qwest documentation and interview and

[1] The Commission notes that FiberCom submitted prefiled testimony that raised some issues regarding OSS but FiberCom chose not to put the testimony into the record. In addition, the Commission points out that Staff discussed other issues that were not brought up by AT&T, which had received an "unable to determine" finding. *See generally* Staff Exhibit 7. The majority of these issues received an "unable to determine" conclusion because of low volumes or because the activities were embedded in automated, as opposed to manual, processes. *Id.* Staff did not find that any of these remaining issues required denial of section 271 approval. *Id.* The Commission does not discuss these issues separately, but, instead, notes that for all of these issues, the Commission may seek to review them in the six-month review process.

observe Qwest employees. *Id.* at 5. AT&T asserted that this approach resulted in the erroneous decision to close Observation 3086. *Id.* In addition, AT&T noted that KPMG did retesting associated with Exception 3120 and found that for 76 manually handled orders, there were 12 instances of human errors resulting in an error rate of 15.8%. *Id.* at 7. KPMG determined that this was a limited review and assigned an "unable to determine" finding to this Exception. *Id.* at 8. AT&T contended that this should have resulted in a "not satisfied" result. *Id.*

AT&T stated that the human error in Qwest's manual processing of CLEC orders affects the PIDs for OP-3 Commitments Met, OP-4 Installation Interval, and OP-6 Delayed Days. *Id.* at 9, 12. AT&T contended that KPMG's "retest data for Exception 3120 as well as other historical retest data caused such concern to KPMG Consulting that it could not find that Qwest had satisfied the test evaluation criteria 12-11-4 and 14-1-44." AT&T concluded that "[u]ntil Qwest has demonstrated to the satisfaction of KPMG Consulting that its performance measurement results for manually processed orders are accurate and reliable, this Commission should not rely upon Qwest's reported performance results for performance measurements OP-3, OP-4, and OP-6." *Id.* at 11-12.

Staff's Position

Regarding Evaluation Criterion 12-11-4 (measurement of preorder/order test results for HPC transactions consistent with KPMG/HPC's measurement), Commission Staff noted that "[d]ue to human error issues identified in Exception 3120 and Observation 3110 regarding manual processing of data intended for use in PID reporting, KPMG identified a need for additional retesting. Qwest elected not to perform additional testing, so KPMG [was] unable to reach a conclusion." Staff Exhibit 7 at 20. Staff concluded that KPMG's finding does not require the Commission to withhold section 271 approval. *Id.* Similarly, for Evaluation Criterion 12.8-2 (which determined whether procedures for electronically submitted non-flow-through orders are defined, documented, and followed), Staff did not believe that the "unable to determine" finding required the Commission to withhold section 271 approval. *Id.*

For Evaluation Criterion 14-1-44 (Qwest's measurement of ordering and provisioning test results for HPC transactions consistent with KPMG/HPC measurement), Staff noted that the problems KPMG initially identified with flow-through orders and measurement were resolved with the aid of retesting. *Id.* at 22-23. However, Staff noted that Qwest had declined to conduct any additional retesting. *Id.* at 23. Staff concluded that "Qwest should continue to inform the Commission concerning its handling of non-flow through orders in South Dakota" but Staff did not believe that KPMG's "unable to determine" finding should cause the Commission to withhold approval. *Id.*

Qwest's Position

With respect to Evaluation Criterion 12-11-4, Qwest asserted that it believes the number of human errors are within a reasonable tolerance level. Qwest Exhibit 88 at 32. Qwest also stated that it has "instituted an extensive quality assurance program, including reviews of manually typed orders that validate the date fields on the orders." *Id.* at 32-33. Qwest contended that it is providing additional employee training and has implemented system enhancements to improve order processing. *Id.* at 33. In addition Qwest stated that it is developing a new PID, PO-20, to measure manual service order accuracy. *Id.* Qwest hoped to begin voluntary manual reporting of this measure with June results reported in July. *Id.* at 34.

Regarding Evaluation Criterion 12.8-2, Qwest asserted that it had satisfactorily addressed all of KPMG issues relating to its test and that KPMG had "determined through additional evaluation and monitoring that 'Qwest's training, continuous improvement measures, and new quality initiative adequately address the identified issues.'" *Id.* at 36. Qwest asserted that "limited manual order processing errors" had led to label this Evaluation Criterion as "unable to determine." *Id.* at 36. Qwest stated that for the same reasons listed for Evaluation Criterion 12-11-4 and Observation 3110, the "unable to determine" finding should not impact the Commission finding that Qwest satisfies the section 271 requirements. *Id.* at 36-37.

With respect to Evaluation Criterion 14-1-44 and Exception 3120, Qwest stated that "KPMG was unable to determine whether Qwest satisfied this criterion because, while KPMG acknowledged that all system issues had been resolved, it had not had the opportunity to definitively determine the impact of manual processing errors, as discussed above, regarding Evaluation Criterion 12-11-4." *Id.* at 46. Qwest stated that this finding, in addition to other findings for Test 14, do not diminish Qwest's overall strong performance in Test 14. *Id.*

Commission's Finding

The Commission first notes that the Department of Justice, in its evaluation of Qwest's application for section 271 authorization for the states of Colorado, Idaho, Iowa, Nebraska, and North Dakota, also expressed concerns regarding Qwest's manual handling of orders. *In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Nebraska, and North Dakota*, WC Docket No. 01-148, Evaluation of the United States Department of Justice, dated July 23, 2002, at 16-22. The DOJ found that "a large quantity of electronically submitted orders are being manually handled by Qwest; however, in determining the adequacy of Qwest's OSS, the quality of the manual handling is more important than the quantity of orders manually handled." *Id.* at 17. The DOJ noted that KPMG had noticed errors on manually handled orders after reviewing and verifying information regarding Qwest's training and monitoring. *Id.* at 21. KPMG then reviewed its data on manually handled orders and found that some 15% had been erroneously handled. *Id.* Due to the small sample size, KPMG requested additional retesting, which Qwest elected not to do. *Id.* The DOJ concluded:

> The lack of regularly reported commercial data on manual accuracy renders the record incomplete. The Department believes that this is a serious issue, particularly given the expert tester's carefully expressed concerns. But for the concerns expressed by KPMG at the close of the test, the positive results on the underlying test criteria would appear to support a finding that Qwest proved the overall adequacy of its processes. Since filing its application, Qwest has submitted substantial evidence regarding its own internal tracking of manual order accuracy, and, if reliable, this data could support a finding that Qwest's processes are sufficient to permit CLECs a meaningful opportunity to compete. The Department agrees with KPMG's assessment that further measures are necessary to permit continued monitoring, recognizes Qwest's willingness to implement a new performance measure and make available information on internal manual accuracy tracking, and believes this monitoring should be implemented promptly to ensure that Qwest continues to maintain the requisite accuracy of manual handling.

Id. at 22 (footnotes omitted).

The Commission notes that Qwest is attempting to respond to these issues by instituting additional employee training and implementing system enhancements. Further, as stated by Qwest, a new PID, PO-20, has been implemented by Qwest in an attempt to address concerns raised by DOJ, as well as others. At its November 20, 2002, meeting, the Commission accepted Qwest's proposed PID on an interim basis. The Commission further notes that Qwest began reporting the results of its new PID, PO-20, in its June of 2002, performance results. For Manual Service Order Accuracy (Benchmark), Qwest's percentage was 90.25%. This is below the benchmark of 95% as proposed in PO-20. For Manual Service Order Accuracy (Diagnostic), Qwest's percentage was 96.46%. The Commission points out that there is only one month of performance data, which is not enough to draw a definitive conclusion on Qwest's performance. The Commission finds that Qwest's performance regarding manual handling of orders must continue to be reviewed. The Commission further finds that the six-month review presents a good opportunity for the Commission, and other interested parties, to revisit these issues surrounding the manual handling of orders. The Commission will then be able to review the results over a longer period of time and CLECs will have another opportunity to present any problems they continue to have in this area.

2. Jeopardy Notices

AT&T's Position

AT&T noted that Qwest had received a "not satisfied" for two jeopardy notice Evaluation Criterions: 1) Evaluation Criterion 12-9-4 which measures whether Qwest systems or representatives provide timely jeopardy notices for resale products and services; and (2) Evaluation Criterion 12-9-5 which measures whether Qwest systems or representatives provide timely jeopardy notices for UNE-P. AT&T Exhibit 15 at 13. These measurements track the percent of time that Qwest provides a jeopardy notice when Qwest misses a committed due date. *Id.* AT&T stated that these failures demonstrate that Qwest has failed to meet its checklist item 2 obligations. *Id.*

Staff's Position

Staff pointed out that for both of these measures, the order volumes were quite low. Staff Exhibit 7 at 9-11. For example, for Evaluation Criterion 12-9-4, there were only eight missed resale orders for all of Qwest's regions. *Id.* at 9. No jeopardy notices were issued so the success rate was 0%. *Id.* Similarly, for Evaluation Criterion 12-9-5, there were 11 missed UNE-P orders for which no jeopardy notice was received. *Id.* at 10. Staff concluded that given these low volumes, the "not satisfied" ratings were not enough to withhold section 271 approval. *Id.* at 10-11. Staff stated that if the Commission had concerns, it could use the six-month review to review Qwest's performance for these two measurements. *Id.*

Qwest's Position

Qwest asserted that the Commission should look at Qwest's commercial performance results concerning these criteria. Qwest Exhibit 88 at 28. For Evaluation Criterion 12-9-4, jeopardy notices for resale, Qwest stated that for each of the past twelve months where data exists, Qwest is "providing jeopardy notifications at parity with retail, in terms of the percentage of late orders for which jeopardy notifications were provided." *Id.* at 29. With respect to Evaluation Criterion 12-9-5 (provision of timely jeopardy notices for UNE-P products and services), Qwest stated that its commercial performance data showed that Qwest met the parity standard for the last twelve months where data exists. *Id.* at 30. Qwest also noted that "[t]he low number of jeopardies overall is a positive result and demonstrates that Qwest has focused its efforts on meeting its installation commitments. . . ." *Id.*

Commission's Finding

The Commission notes, that as pointed out by KPMG at the hearing, "[t]he good news is [KPMG] didn't get a lot of jeopardies during the course of this test. But the bad news is, therefore, [KPMG does not] have a lot of record to go on here." Hearing Transcript for July 11, 2002, at 29. KPMG further stated that jeopardy notices present a "Catch -22" for a company. *Id.* at 30. KPMG explained:

> If they send out the jeopardy notice and they find out they could actually get the work [done], then they've gotten everybody all upset for nothing. If they don't send a jeopardy notice out on a timely basis, then customers get frustrated because there's missed appointments and they don't have their schedules met and so on.

Id. KPMG further noted that "there are certain products and services that have same day or next day types of provisioning. So there's really not time to get a jeopardy notice out in a meaningful way." *Id.* at 29.

The Commission finds that based on Qwest's commercial performance data and the low volumes of the OSS tests, Qwest's "not satisfied" ratings for these measurements do not raise sufficient concerns to withhold section 271 approval. However, the Commission further finds that it may review these measurements during the six-month review.

3. Provisioning of Unbundled Dark Fiber

AT&T's Position

AT&T noted that Qwest was given a "not satisfied" for Evaluation Criterion 14-1-10, which evaluates whether Qwest technicians follow Qwest methods and procedures when installing dark fiber. AT&T Exhibit 15 at 14. AT&T stated that KPMG had issued Exception 3010 due to Qwest's failure to follow its documented methods and procedures. *Id.* at 15. Upon retest, KPMG found that Qwest followed the documented methods and procedures in 64% of the 50 tasks when observing 10 unbundled fiber circuits. *Id.* AT&T asserted that based on the low level of commercial activity for unbundled dark fiber and KPMG's "not satisfied" finding, "the Commission can comfortably conclude that Qwest is not capable of providing either dark fiber for unbundled loops (Checklist Item 4) or interoffice transport (Checklist Item 5) to CLECs." *Id.* at 16.

Staff's Position

Staff pointed out that due to low commercial volumes, testing was suspended. Staff Exhibit 7 at 11. Staff asserted that "the low demand for Dark Fiber that led to the decision to stop testing for the product means the Not Satisfied conclusion for this performance measurement is not a basis for the Commission withholding Section 271 approval. If the Commission continues to have concerns about this performance measurement, Staff notes that the 6-month review of the QPAP could serve as a reminder to revisit Qwest's performance. The Commission would want to consider whether order volumes were still low for Dark Fiber, as well as Qwest's performance level." *Id.* at 11-12.

Qwest's Position

Qwest stated that given the lack of dark fiber orders, "it is difficult for Qwest to prove through commercial data that it provisions UDF [unbundled dark fiber] in accordance with documented methods and procedures." Qwest Exhibit 88 at 40. Qwest asserted that it has made recent updates to its unbundled dark fiber documentation, and, in May of 2002, it modified its process to accept dark fiber orders via an Access Service Request, and it now provisions and bills unbundled dark fiber through its Integrated Access Billings System. *Id.* at 41.

Commission's Finding

The Commission agrees with Staff and finds that due to the low volumes, Qwest's "not satisfied" rating for this measurement does not raise sufficient concerns to not recommend approval. The Commission further finds that the Commission may review this measurement during the six-month review. At that time, the Commission will better be able to evaluate whether Qwest's recent updates and modifications to its processes have produced acceptable results.

4. Provisioning of Enhanced Extended Links

AT&T's Position

AT&T pointed out that Qwest was given a "not satisfied" rating for Evaluation Criterion 14-1-14 which measures whether Qwest provisions EEL circuits by adhering to documented methods and procedures. AT&T Exhibit 15 at 16. KPMG had issued Exception 3104 and, during the retest, KPMG found Qwest technicians followed the documented methods and procedures in 50% of the 15 tasks. *Id.* at 17. AT&T stated that this performance was worse than KPMG's initial findings where Qwest's compliance was 87%. *Id.* at 16-17. AT&T asserted that the Commission should find that Qwest is not capable of providing EELs to CLECs. *Id.* at 18.

Staff's Position

Commission Staff noted that the TAG suspended testing because of low commercial volume. Staff Exhibit 7 at 12. As with dark fiber, Staff concluded that since low demand led to the decision to stop testing, the conclusion of "not satisfied" is not a basis for the Commission withholding section 271 approval. *Id.* Again, Staff noted that the Commission could review Qwest's performance in the 6-month review. *Id.*

Qwest's Position

Qwest stated that it had updated documentation on EELs which KPMG evaluated and found satisfactory. Qwest Exhibit 88 at 41. Qwest asserted that "[b]ecause Qwest has repeatedly shown that it is capable of following documented methods and procedures in other contexts, this Commission can reasonably infer that Qwest is equipped to provision EELs on a timely, non-discriminatory basis." *Id.* at 41-42.

Commission's Finding

The Commission agrees with Staff and finds that due to the low volumes, Qwest's "not satisfied" rating for this measurement does not raise sufficient concerns to not recommend approval. The Commission further finds that the Commission may review this measurement during the six-month review.

5. Provision of UNE-P and Business Resale Services

AT&T's Position

AT&T stated that KPMG found "that Qwest was provisioning UNE-P services and business resale services, where the installation did not require a dispatch, in a discriminatory manner." AT&T Exhibit 15 at 18. AT&T stated that KPMG found Qwest was installing UNE-P services in about three days and Qwest was installing the equivalent retail service in about two days." *Id.* AT&T asserted that Qwest's failure of these ROC tests allow the Commission to conclude that Qwest has failed to demonstrate compliance with checklist item 2 for provisioning UNE-P services and checklist item 14 for business resale services. *Id.*

Staff's Position

Commission Staff noted that the installation interval for resold business POTS is parity with retail service. Staff Exhibit 7 at 13. Staff stated that Qwest failed to meet the standard in the Eastern and Western regions resulting in the issuance of Exception 3086. *Id.* Upon retesting, Qwest continued to fail in the Eastern region, and Exception 3086 was subsequently closed as unresolved as requested by Qwest. *Id.* Staff pointed out that, for this measurement, there was no problem with the size of the sample used for the test and no reason to question the validity of the test. *Id.* Since Qwest stated that it has revised its processes, Staff recommended that the Commission look at recent commercial performance data for this measurement. *Id.* at 13-14. Staff concluded that "[i]f the commercial performance data clearly indicates Qwest does not satisfy the evaluation criterion, the Commission should consider additional tracking and reporting requirements for Qwest, particularly if there are other test items where it does not find Qwest's performance is satisfactory. If the Commission continues to have concerns about this performance measurement, Staff notes that the 6-month review of the QPAP could serve as a reminder to revisit Qwest's performance." *Id.* at 14.

For Evaluation Criterion 14-1-36 (which measures whether the installation interval for UNE-P is at parity with retail), Qwest failed to meet the standard for all three regions in the initial test as well as the retest. *Id.* at 14. Staff gave the same recommendation as above.

Qwest's Position

Qwest stated that the commercial performance results for business POTS shows that Qwest has satisfied the parity standard in each of the last three months. Qwest Exhibit 88 at 42. For UNE-P POTS, Qwest stated it satisfied the parity standard in each of the past four months. *Id.*

Commission's Finding

The Commission notes that, based on Qwest's most recent commercial performance data, Qwest has appeared to have improved its provisioning of UNE-P and business resale. However, the Commission finds that these are important criteria that should continue to be evaluated. The Commission will review Qwest's performance data at the six-month review to ensure that it continues to satisfy the parity standards.

Disputed Issues Regarding Maintenance and Repair

1. Provision of Timely Responses to CLEC Requests to Modify a Trouble Report

AT&T's Position

AT&T pointed out that Qwest received a "not satisfied" for Evaluation Criterion 16-3-5, which measures whether "modify trouble report transactions" are processed within the guidelines established by the benchmark. AT&T Exhibit 15 at 19. In response to the exception issued by KPMG, Exception 3107, Qwest requested that the Exception be closed as unresolved. *Id.* at 20. Subsequently, Qwest performed three internal retests on its own. *Id.* AT&T noted that KPMG did not accept Qwest's three internally administered tests because that approach was inconsistent with methodology set forth by the ROC TAG and there were no provisions in the MTP for consideration of a Qwest-administered test. *Id.* at 19-20. AT&T stated that "[t]he Commission should be suspicious of Qwest's internally produced data given that Qwest had the opportunity for KPMG Consulting to conduct an independent retest and declined to pursue the option that would have produced more trustworthy results." *Id.* at 20.

Staff's Position

Staff said this finding does not, on its own, constitute grounds for withholding section 271 approval. Staff Exhibit 7 at 16.

Qwest's Position

Qwest noted that the transactions averaged 27 seconds, rather than the 24 second benchmark. Qwest Exhibit 88 at 50. Further, Qwest asserted that its internal tests showed that it met the 24 second benchmark. *Id.* at 51. In addition Qwest stated that all non-designed edit transactions accounted for only 0.3%, on average, of actual CLEC transaction volumes for the most recent six-month period. *Id.* Qwest asserted that the very low volume of non-design edit transactions combined with a mere three second delay for one test transaction at peak load makes it extremely unlikely that this would have a material impact on a CLEC in a commercial setting. *Id.* at 52.

Commission's Finding

At the hearing, KPMG stated that it did not have an opinion on Qwest's independent testing because KPMG did not examine it. Hearing Transcript for July 11, 2002, at 76. KPMG stated that "[t]here were 13 different performance evaluation criteria that had to do with CEMR interface during the volume test. Qwest passed all of the 13 evaluation criteria during the normal volume test and 12 out of 13 of the evaluation criteria during the peak test. " *Id.* at 75. KPMG further asserted that this failure should not receive much weight because it occurred during peak volumes, it was for a particular type of transaction that is not frequently used, and the amount by which it missed the benchmark was not very large. *Id.* at 128-29. It was KPMG's overall opinion that the record for maintenance and repair demonstrated that Qwest has the necessary mechanisms in place to manage and monitor its maintenance and repair transactions and that they all fundamentally work. *Id.* at 81.

The Commission agrees with KPMG's analysis that the "not satisfied" rating for this Evaluation Criterion should not be afforded much weight. The Commission finds that failing one of

13 criteria, with that failure occurring during a peak test, does not translate into a finding that Qwest's maintenance and repair systems are deficient.

2. Quality of Qwest's Repair Records

AT&T's Position

AT&T noted that Qwest received a "not satisfied" rating for Evaluation Criterion 18-6-1, which determines whether close out codes for out-of-service and service affecting wholesale UNE-P, resale, and Centrex 21 troubles indicated in Qwest's systems, that may or may not require the dispatch of a technician, are consistent with the troubles placed on the line. AT&T Exhibit 15 at 20. Or, in other words, whether Qwest was accurately assigning disposition and cause codes to CLEC trouble reports. *Id.* AT&T stated that Qwest did not meet the benchmark in the initial test, and, in the retest, Qwest incorrectly applied codes on over 11% of the trouble reports. *Id.* at 21. AT&T concluded that "[w]hile Qwest recognized the problem and asserted that it had implemented a solution, Qwest chose to have Exception 3055 closed as unresolved rather than subject itself to the rigor of a KPMG Consulting retest." *Id.* at 22.

Staff's Position

Staff said this finding does not, on its own, constitute grounds for withholding section 271 approval. Staff Exhibit 7 at 16. Again, Staff noted that the Commission could review Qwest's performance in the 6-month review. *Id.*

Qwest's Position

Qwest stated that "as a practical matter, Qwest's performance during the retest would not in any way have negatively impacted an actual CLEC's ability to do business, based on the close-out codes used by Qwest." Qwest Exhibit 88 at 54. Qwest explained that a close out code consists of four digits, with the first two digits identifying whether the trouble was a Qwest issue or a CLEC issue and the second two digits identifying the group or equipment component. *Id.* Qwest asserted that the last two digits have no significance for CLECs since trouble tickets contain a narrative field that often describes the trouble with greater specificity as compared to the close out codes. *Id.* Qwest contended that if KPMG had relied on the narrative field, instead of the code numbers, Qwest would have achieved a 95.08% result. *Id.* at 55. In addition, Qwest stated that it has implemented additional training and a weekly internal audit indicating that the additional training has improved Qwest's close out codes accuracy. *Id.*

Commission's Finding

At the hearing, KPMG stated that it was not aware of looking at Qwest's additional training and weekly internal audit. Hearing Transcript for July 11, 2002, at 79. From its perspective, KPMG stated that it is either coded correctly or it is not coded correctly. *Id.* KPMG stated that the four digit codes exist for a reason and the codes are useful. *Id.* at 78-79.

Although the Commission does not disagree with KPMG that all four digits are important, the Commission finds that the failure is mitigated somewhat by the fact that the narrative field may also provide the CLEC with the same or possibly superior information. The Commission agrees with Staff and finds that Qwest's "not satisfied" rating for this measurement does not raise sufficient concerns to not recommend approval. However, the Commission may review this measurement during the six-month review.

3. Quality of Maintenance and Repair Activities

AT&T's Position

AT&T pointed out that Qwest had received a "not satisfied" finding for the Evaluation Criterion 18-7-1, which measures whether out-of service and service affecting wholesale UNE-P, resale, and Centrex 21 troubles, that may or may not require the dispatch of a technician, are successfully repaired. AT&T Exhibit 15 at 22. AT&T asserted that "[s]uccessful repair of troubles by Qwest that are found in CLEC services is a critical element in the satisfaction of a CLEC's customers. A failure by Qwest to repair the service on the first attempt will necessitate a second visit to the customer and will likely reduce the level of customer satisfaction with the CLEC." *Id.*

Staff's Position

Staff noted that of 259 troubles submitted, 92% were successfully repaired. Staff Exhibit 7 at 17. The benchmark is 95%. *Id.* Qwest did not want any additional testing. *Id.* Staff did not believe that the "not satisfied" finding for this Evaluation Criterion was, by itself, grounds for withholding section 271 approval. *Id.*

Qwest's Position

Qwest disagreed with KPMG's assignment of a 95% benchmark. Qwest Exhibit 88 at 57. KPMG should have looked at PID MR-7 which, Qwest asserted, "measures precisely the performance that KPMG purported to evaluate under criterion 18-7-1. . . ." *Id.* Qwest stated that its "overall performance under MR-7's parity standard has generally been very good. Qwest has satisfied the parity standard with very few failures in the past twelve months." *Id.* at 58.

Commission's Position

At the hearing, KPMG stated that this criterion did not give KPMG a great deal of concern because the primary objective is to get the customer back into service. Hearing Transcript for July 11, 2002, at 130. KPMG explained that the description of the repair that was recorded in the system by Qwest did not match what the description should have been, but that the customer was back in service. *Id.* at 129. KPMG stated that this could be characterized as "all's well that ends well. . . ." *Id.*

The Commission takes no position on whether KPMG correctly assigned a benchmark to this criterion. Instead, the Commission finds that, based on KPMG's description of this criterion, Qwest's failure to satisfy this criterion does not appear to have much of an affect on a CLEC's ability to provide service. Obviously, the most important aspect is whether the customer is back in service.

Disputed Issues Regarding Billing

1. Daily Usage Feed Returns, Production, and Distribution Process Evaluation

AT&T's Position

AT&T noted that during the testing of Qwest's ability to transmit complete and accurate DUFs to CLECs, Qwest failed the test five consecutive times. AT&T Exhibit 15 at 23. Qwest passed on the sixth retest. *Id.* AT&T asserted that "[t]he fact that Qwest failed, on five separate occasions, to provide complete and accurate DUF records to the pseudo-CLEC speaks very poorly of the processes that Qwest uses to produce and distribute those records." *Id.* AT&T further contended that the only apparent way Qwest was able to identify that it even had problems was through the OSS retesting. *Id.* AT&T noted that KPMG had found only two "unable to determine" results for the DUF return process. *Id.* at 24. AT&T contended that KPMG should have factored in the retest test failures. *Id.* at 25. AT&T concluded that Qwest should have been given "not satisfied" ratings for evaluation criteria 19.6-1-1, 19.6-1-4, 19.6-1-5, and 19.6-1-6. *Id.* at 25-26.

Staff's Position

Staff did not address the retesting but did address the "unable to determine" results for criteria 19.6-1-17 and 19.6-1-19. Staff Exhibit 7 at 24-25. For Evaluation Criterion 19.6-1-17 (which involves where a DUF is corrected and returned on a defined schedule), Staff asserted that CLECs typically do not ask for DUFs to be corrected and returned, but instead ask for a new DUF. *Id.* at 24. Given that CLECs do not follow the "correct and return" procedure, Staff concluded that the Commission did not need to give the "unable to determine" finding any weight. *Id.* at 24. Staff came to the same conclusion for Evaluation Criterion 19.6-1-19, which measures whether CLECs can readily obtain the status of a DUF return request.

Qwest's Position

Qwest also noted that for criteria 19.6-1-17 and 19.6-1-19, KPMG found that no CLECs subscribe to this automated process so KPMG could not evaluate these criteria. Qwest Exhibit 88 at 62.

Commission's Finding

At the hearing, KPMG confirmed that the reason for the "unable to determine" findings is "that there is a defined process for returning DUF files that is not used by any of the commercial CLECs." Hearing Transcript for July 11, 2002, at 82. Thus, with respect to criteria 19.6-1-17 and 19.6-1-19, the Commission finds that the "unable to determine" findings are not significant given that CLECs do not use this process.

With respect to AT&T's contention that the retests should have been factored in and "not satisfied" ratings given to Qwest for evaluation criteria 19.6-1-1, 19.6-1-4, 19.6-1-5, and 19.6-1-6, the Commission first notes that Qwest did pass this test eventually. However, the Commission also recognizes that Qwest's initial failures requires the Commission to treat this area of testing with heightened scrutiny. Thus, the Commission may review Qwest's performance in this area during its six-month review.

Disputed Issues Regarding Change Management Process

1. Adherence to the CMP Over Time

AT&T's Position

AT&T pointed out that Qwest received "unable to determine" findings for criteria 23-1-7, 23-1-8, 23-1-9, 23-2-7, 23-2-8, 23-2-9, and 23-2-2. AT&T Exhibit 15 at 26-27. In its post-hearing brief, AT&T noted that for Exception 3094, which relates to criteria 23-2-8 and 23-2-9, and Exception 3110, which relates to criteria 23-1-7 and 23-1-9, KPMG conducted retesting but was unable to conclusively verify Qwest's consistent adherence. AT&T's Brief Regarding Qwest's Change Management Process at 5-9. For Exception 3111, which relates to criteria 23-1-8, AT&T noted that KPMG was unable to confirm adherence to a new process for prioritization and packaging of new IMA releases. *Id.* at 8. AT&T asserted that these findings show that Qwest is unable to prove it has met the FCC's criteria and adhered to it over time. *Id.* at 27.

Staff's Position

For these measures, Staff stated that since the CMP process was not done, KPMG was not able to reach a conclusion about the adequacy of the CMP. Staff Exhibit 7 at 28. Staff recommended that the Commission ask Qwest for a progress report and an estimate of when the process will be complete. If the Commission determines from that additional evidence presented by Qwest that Qwest has completed or is continuing to progress toward completing the CMP redesign, then the Commission should find that the "unable to determine" findings are not an obstacle to granting section 271 approval. *Id.* at 28-32.

Qwest's Position

Qwest asserted that KPMG issued exceptions regarding these criteria because KPMG was unable to observe Qwest's adherence to the procedures. Qwest Exhibit 88 at 77, 87, 88. Qwest claimed that the new processes are clearly documented. *Id.* Qwest stated that the parties to the redesign process have resolved all of the significant CLEC concerns. *Id.* at 72. Qwest further maintained that it has submitted detailed evidence establishing a six-month record of nearly 99% compliance with the redesigned process. *Id.* at 73. Qwest contended that KPMG's inability to follow Qwest's compliance over a long period of time should not impact a finding that Qwest is in compliance with section 271. *Id.* at 77.

Qwest stated that, with regards to Exception 3094, KPMG conducted limited retesting and the retests showed that Qwest did adhere to the redesigned process during the period KPMG observed. Qwest Corporation's Post-Hearing Reply Brief Regarding Change Management at 4. With respect to Exception 3110, Qwest asserted that in the retest, Qwest complied with the process in each instance. *Id.* at 5. Qwest claimed that it "has complied with 100% of the OSS interface release documentation interval notification deadlines that have occurred thus far." *Id.* at 6. Regarding Exception 3111, Qwest asserted that "KPMG had already observed Qwest's adherence to each phase of the prioritization and packaging processes for major system releases that were in place and agreed to via CMP at the time of executing the process. These observations demonstrated Qwest's compliance with the process." *Id.* at 8.

Commission's Finding

At the hearing, KPMG noted that, for Test 23, many of the "unable to determine" findings were due to the fact that at the time of the final report, the CMP process was still a work in progress." Hearing Transcript for July 11, 2001, at 89. KPMG stated it "had to conclude the test without being able to come to a final conclusion on these particular evaluation criteria." *Id.* at 91. KPMG further asserted that there were "a lot of people working very hard to try to make this change management process a robust one and one that's responsive to the needs of the community as a whole." *Id.*

The Commission finds that KPMG's inability to reach a conclusion on this issue does not require the Commission to find Qwest not in compliance. The Commission instead relies on Qwest's compliance record with the redesigned CMP and may review these issues in its six-month review.

2. Availability of Stand-Alone Test Environment

AT&T's Position

AT&T noted that Qwest received a "not satisfied" for Evaluation Criterion 24.6-1-8 which measures whether SATE is made available to customers for all supported interfaces. AT&T Exhibit 15 at 27. AT&T asserted that this finding showed that Qwest has not satisfied, in its entirety, the FCC requirements. *Id.* In its post-hearing brief, AT&T asserted that VICKI, Qwest's newer stand-alone test environment, is an important addition to SATE, but it falls short of meeting the mirroring objective. AT&T's Brief Regarding Qwest's Change Management Process at 12. AT&T pointed out that KPMG found that VICKI had some shortcomings. *Id.* at 13-14.

Staff's Position

Staff noted that the specific problems KPMG found were that the SATE transaction responses are manually generated and the environment does not support flow-through transactions. Staff Exhibit 7 at 17. Staff stated that KPMG also identified problems related to adding functionality to SATE. *Id.* Staff concluded that these problems, alone, are not grounds for withholding section 271 approval.

Qwest's Position

Qwest asserted that it addressed the issues raised by KPMG "through the implementation of automated responses (VICKI) in January 2002 and through the implementation of flow-through capability." Qwest Exhibit 88 at 111. Qwest also asserted that the FCC does not require flow-through capability. *Id.* With respect to the issue of adding new IMA products or existing products not currently supported by SATE, Qwest maintained that these concerns have been resolved in the Redesign Process and that CLECs and Qwest have agreed on a process to add products and make other changes to SATE. *Id.* at 112.

Commission's Finding

At the hearing, KPMG explained that Test 24.6 reviews interface development and tests new software releases prior to a public release. Hearing Transcript for July 11, 2002, at 93-94. KPMG stated that this was an important issue but that it had not investigated the changes that had been made since the release of the final report. *Id.* at 130-131.

The Commission notes that there are two PIDs that measure Qwest's stand-alone test environment. One of the PIDs, PO-19B, will "run transactions both in these test environments and turn around and run them into production to make sure that they mirror each other. . . ." Hearing Transcript for July 11, 2002, at 193. The Commission finds that if there continue to be problems after the changes made by Qwest, a party may bring that to the Commission's attention in the six-month review. The Commission finds that the "not satisfied" finding for this criterion is not sufficient for the Commission to find that Qwest has not satisfied section 271 requirements.

3. Availability and Segregation of Carrier-to-Carrier Test Environments

AT&T's Position

AT&T noted that Qwest had received a "not satisfied" finding for Evaluation Criterion 24.6-2-9 which determines whether carrier-to-carrier test environments are available and segregated from Qwest's production and development environments. AT&T Exhibit 15 at 27. AT&T asserted that this finding showed that Qwest has not satisfied, in its entirety, the FCC requirements. *Id.*

Staff's Position

Staff stated that Qwest has a Tester to monitor test transactions and "KPMG found that, due to necessary manual intervention of the Qwest Tester, two-non-designed services test trouble reports submitted by a CLEC passed through to the Qwest Production Screeners." *Id.* at 18. Again, Staff concluded that these problems, alone, are not grounds for withholding section 271 approval.

Qwest's Position

Qwest first asserted that "the FCC has not required that BOCs provide CLECs with an electronic interface for maintenance and repair activities in order to obtain Section 271 approval." Qwest Exhibit 88 at 113. In addition, Qwest stated that KPMG issued the Exception "because test scenarios for non-designed services are processed by the Loop Maintenance Operations System ("LMOS") production mainframe." *Id.* at 114. Qwest maintained that the use of the LMOS is advantageous to the CLEC because it allows the full functionality of EB-TA to be tested. *Id.* at 115. Qwest further noted that CLECs have successfully tested using EB-TA and the testing of the interface was not impeded when combined with the LMOS production environment. *Id.*

Commission's Finding

At the hearing, KPMG explained that Evaluation Criterion 24.6-2-9 concerns the fact that there is no MEDIACC for the electronic bonding of trouble administration. Hearing Transcript for July 11, 2002 at 95. KPMG noted that very few CLECs use this interface and opined that this is "probably not a significant industry issue unless the industry changes and decides to begin to start implementing this interface on a wide scale basis, which they have not done in the last few years." *Id.* at 95, 115.

The Commission agrees and finds that KPMG's "unable to determine" finding for this measurement does not raise sufficient concerns to withhold section 271 approval.

4. Voting Process

AT&T's Position

In its post-hearing brief, AT&T noted that the CMP document now contains several references to voting. AT&T's Brief Regarding Qwest's Change Management Process at 10. AT&T stated that there are seven items on which CMP participants will vote. *Id.* AT&T stated, however, that there is no agreed upon language for the voting process, and until the parties reach agreement, critical aspects of the CMP cannot be implemented. *Id.*

Qwest's Position

Qwest responded that new voting provisions were finalized on July 10, 2002, and prior to that time, the CMP operated under the existing voting process. Qwest Corporation's Post-Hearing Reply Brief Regarding Change Management at 11. Qwest stated that it "will now implement the new provisions as soon as practicable and the CMP will continue to operate under those provisions." *Id.*

Commission's Position

The Commission finds that since the parties have reached agreement, this issue appears to be resolved.

Diagnostic Measures

The Commission first notes that no party asserted that a particular result for a diagnostic measure showed that Qwest is not meeting its OSS requirements. At the hearing, KPMG stated that "there are a number of these PIDs for which the ongoing process of PID administration is going to evolve these from diagnostic to some kind of benchmark or parity standard." Hearing Transcript for July 11, 2002, at 51. KPMG declined to give an opinion on the diagnostic PIDs, reasoning that a benchmark or parity standard should be determined through a collaborative process that affords the parties due process. *Id.* at 51-52. The Commission agrees and finds that diagnostic PIDs may evolve into non-diagnostic PIDs but this should occur within a collaborative process. However, the fact that a measurement may be diagnostic does not prevent a party from contending that Qwest's performance for that measurement should be improved. The Commission will continue to look at the diagnostic PID results in its six-month review.

COMMERCIAL PERFORMANCE DATA

With respect to performance data, the FCC has held that if there are no statistically significant differences between a BOC's provision of service to competing carriers and its own retail customers or if a BOC's provision of service to competing carriers satisfies the performance benchmark, the FCC will generally not look any further. *Verizon/New York 271 Order* at ¶ 58. Even if significant differences in performance exists, the FCC may conclude "that such differences have little or no competitive significance in the marketplace." *Id.* at ¶ 59. The FCC may also look at "how many months a variation in performance has existed and what the trend has been in recent months. A steady improvement in performance over time may provide us with an indication that problems are being resolved." *Id.* The FCC has stated:

> The determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us. There may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. Other measures may tell a different story, and provide us with a more complete picture of the quality of service being provided.

Id. at ¶ 60.

Qwest asserted that "[v]iewed under the proper legal standard, Qwest's audited performance results demonstrate that it is providing service to competing carriers in substantially the same time and manner as Qwest provides to itself, and in a manner that allows an efficient CLEC a meaningful opportunity to compete. . . ." Qwest Exhibit 72 at 4. Qwest stated that its performance data is accurate and reliable. The ROC hired Liberty Consulting Group (Liberty) to conduct an audit of Qwest's wholesale performance measures. Hearing Transcript for April 25, 2002, at 8. Liberty issued its final audit report on September 25, 2001. With respect to the audit of Qwest's performance measures, Liberty concluded that "Qwest's wholesale performance measures accurately and reliably reported on their actual performance." *Id.* at 9-10.

In addition to the audit, ROC requested that Liberty conduct a data reconciliation effort. *Id.* at 9. Three CLECs, AT&T, WorldCom, and Covad, participated in the project. *Id.* at 10. During the project, Liberty evaluated approximately 10,000 orders or trouble tickets. *Id.* at 13. Liberty issued 13 Observations and One Exception, all of which were eventually closed. *Id.* at 14. At the conclusion of the data reconciliation project, Liberty found that "Qwest's performance measures accurately and reliably report on their actual performance." *Id.* at 20.

Qwest explained that it tracks and reports its wholesale and retail performance in accordance with the ROC PIDs. Qwest Exhibit 71 at 2. The PIDs use two performance standards: (1) where a retail analogue exists, wholesale performance must be at parity with retail; and (2) where no retail analogue exists, wholesale performance must meet a set benchmark. *Id.* at 2-3. Qwest asserted that its "performance results demonstrate that Qwest is providing every element of the checklist at an acceptable level of quality." *Id.* at 4. Qwest asserted that a review of its commercial performance data "shows that Qwest is making each checklist item available in either substantially the same time and manner or such that an efficient CLEC has a meaningful opportunity to compete." *Id.* at 82-83. Qwest further contended that it is making each checklist item available at an acceptable level of quality. *Id.* at 83.

At the hearing Qwest provided "blue charts" designed to show its level of performance. Qwest provided blue charts for South Dakota and Regional results. *See* Qwest Exhibits 73, 74. A dark blue box for a measurement indicated that Qwest had zero misses or met the standard in three of the last four months, if the one miss was not in the most recent month. Hearing Transcript for April 25, 2002, at 47. A medium blue box indicated that Qwest had one miss in the last four months, with that miss being the most recent month of data or Qwest had two misses in the last four months. *Id.* A light blue box showed that Qwest missed three of four months. *Id.* at 47-48.

Checklist Item 1

For checklist item 1, interconnection, Qwest's South Dakota Blue Chart contained 11 metrics, with 10 showing Qwest achieved parity in at least three of the last four months. Qwest Exhibit 73 at 2. For collocation, Qwest's Regional Blue Chart showed eight metrics and each metric that had data met the ROC benchmark. *Id.* at 3.

Checklist Item 2

With respect to checklist item 2, unbundled network elements, Qwest showed the results for pre-order information, flow-through, billing, and UNE combinations. *Id.* at 4-9. For pre-order, Qwest's South Dakota Blue Chart contained 57 metrics, showing 52 were at parity in at least three of the last four months, with no data for the remaining five. *Id.* at 5. For flow-through for eligible LSRs, Qwest's Regional Blue Chart showed 8 metrics that were all above the ROC benchmark. Qwest Exhibit 74 at 7. For billing, Qwest's South Dakota Blue Chart shows that Qwest achieved the standard for at least three of the last four months for only 4 of 8 metrics. Qwest Exhibit 73 at 8.

Similarly, for the Regional Blue Chart, the chart shows that Qwest achieved the standard for at least three of the last four months for only 3 of 8 metrics. Qwest Exhibit 74 at 9. Qwest asserted that it had corrected the problems and that billing accuracy and completeness had increased in the most recent months for BI-3A , BI-4A, PO-7A, and PO-7B. Hearing Transcript for April 25, 2002, at 57. For UNE combinations, the South Dakota Blue Chart showed Qwest attained parity for 50 of the 60 metrics, with 2 measures having no activity. Qwest Exhibit 73 at 9.

In its comments, AT&T pointed out the billing problems experienced by Qwest. AT&T Exhibit 9 at 6-7. AT&T also stated that Qwest was having problems with OP-4, installation interval for UNE-P, and MR-8, trouble rate for UNE-P Centrex. *Id.* at 8.

With respect to billing, the Commission finds that Qwest has continued to experience uneven performance for B1-3A in South Dakota through June of 2002. However, Qwest has improved its performance in the other billing areas. The Commission further finds that Qwest has subsequently improved its performance for the installation interval for UNE-P (OP-4C) in South Dakota as demonstrated by its most recent measurements filed with the Commission which are through June 2002. However, Qwest continues to be unable to reach parity for UNE-P Centrex repair (MR-8, Trouble Rate). In addition, Qwest's performance for trouble rate for UNE-P Centrex 21 repair has declined in the last few months (MR-8, Trouble Rate).

Checklist Item 3

For checklist item 3, access to poles, ducts, conduits, and rights-of-way, there are no performance measures established by ROC. Qwest Exhibit 71 at 40.

Checklist Item 4

With respect to checklist item 4, unbundled loops, Qwest's South Dakota Blue Chart showed that for 40 measurements with activity, Qwest met the performance objective for 38 measurements in at least three of the last four months. Qwest Exhibit 73 at 10-12.

Checklist Item 5

Regarding checklist item 5, unbundled dedicated interoffice transport, the Regional Blue chart shows Qwest met 31 of the 32 measurements in at least three of the last four months. Qwest Exhibit 73 at 14.[2]

Checklist Item 6

For checklist item 6, unbundled switching, there are no performance measurements for stand-alone unbundled switching. Qwest Exhibit 71 at 66.

Checklist Item 7

With respect to checklist item 7, regarding 911, directory assistance and operator services, Qwest pointed out that most of the measures associated with this checklist item are database

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[2] The South Dakota volumes were too low to adequately demonstrate Qwest's performance. *See* Qwest Exhibit 73 at 13.

updates and, thus, are parity by design. Qwest Corporation's Opening Post-Hearing Brief on Performance at 23. This means that CLECs obtain non-discriminatory access by definition. *Id.* For the measurements that are not parity by design, Qwest's Regional Blue Chart showed 16 metrics for 911. Qwest Exhibit 74 at 15. For 15 of the 16 metrics, Qwest achieved parity in at least three of the last four months. *Id.*[3]

Checklist Item 8

For checklist item 8, white pages directory listings, the PIDs are parity by design. Qwest Corporation's Opening Post-Hearing Brief on Performance at 25. Qwest stated it completed updates to the directory listings database in an average of 0.09 seconds or less, with an accuracy rate of over 93.5%. *Id.*

Checklist Item 9

With regard to checklist item 9, number administration, Qwest stated it loaded and tested 100% of CLEC NXX codes prior to the Local Exchange Routing Guide effective date for South Dakota, as well as regionally. Qwest Exhibit 71 at 72.

Checklist Item 10

For checklist item 10, call-related databases and associated signaling, Qwest stated that pursuant to the "parity by design" measurement, Qwest uses a queuing and routing system that treats all carriers alike. *Id.* at 73. The one performance measure for this checklist item measures the time to update the line information database. *Id.* This measurement is reported on a regional basis and the update process does not distinguish between updates for Qwest versus updates for CLECs. *Id.*

The Commission notes that although Qwest's performance had deteriorated in the November 2001 through February 2002 time frame, its most recent performance updates, which show results through June 2002, demonstrate that Qwest has decreased the amount of time it takes to update its database.

Checklist Item 11

With respect to checklist item 11, number portability, Qwest's South Dakota Blue Chart shows Qwest met four of the five metrics in the last four months. Qwest Exhibit 73 at 16. The other measure had no data.[4]

Checklist Item 12

Regarding checklist item 12, local dialing parity, this item does not have any performance measures. Qwest Exhibit 71 at 75.

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[3] AT&T stated that the E911 database administrator was not allowing CLECs to update the E911 database. AT&T Exhibit 9 at 14. The Commission believes this issue has been resolved as noted in its order regarding checklist item 7.

[4] *Id.* AT&T brought up an issue regarding the new disconnect process, however the Commission believes this issue has been taken care of in its order regarding local number portability.

Checklist Item 13

For checklist item 13, reciprocal compensation, Qwest stated that for South Dakota, Qwest's bills were 100% complete of each of the last four months. Qwest Corporation's Opening Post-Hearing Brief on Performance at 25; Qwest Exhibit 73 at 17.

Checklist Item 14

Regarding checklist item 14, Qwest stated that the standard for resale is parity. Qwest Corporation's Opening Post-Hearing Brief on Performance at 27. Qwest focused on the large volume services, residential POTS, business POTS, and Centrex 21 service. *Id.* Qwest's South Dakota Blue Chart showed 87 metrics, of which Qwest met 75 for at least three of the last four months, with four measurements having no activity. Qwest Exhibit 73 at 18.

AT&T stated that for installation commitments met for residential resale, no dispatches, Qwest is providing discriminatory treatment. AT&T Exhibit 9 at 11. AT&T further stated that the repeat report rate for residential resale, MR-7, no dispatches, showed CLECs experience more repeat troubles. *Id.* AT&T next brought up MR-8, the trouble rate for residential resale and MR-8, the trouble rate for business resale. *Id.* at 12, 13-14. AT&T noted that for OP-4 installation interval for business resale, no dispatches, Qwest was providing discriminatory service. *Id.* at 12.

The Commission finds that for installation commitments met for residential resale, no dispatches, in South Dakota, Qwest has improved its performance in this area (OP-3C). For repeat report rate for residential resale, MR-7C, no dispatches, the Commission notes that Qwest continues to experience uneven performance in this area. With regard to MR-8, the trouble rate for residential resale and MR-8, the trouble rate for business resale, the most recent South Dakota results show Qwest has improved its performance for residential resale but its most recent performance for business resale trouble rates is uneven. For OP-4C, installation interval for business resale, no dispatches, Qwest has improved its performance in its most recent results.

Commission's Finding Regarding OSS

The Commission finds that when the results of the ROC OSS test and Qwest's commercial performance data are viewed in their entirety, Qwest has demonstrated that it has substantially met the statutory and FCC standards concerning OSS. Although the Commission has noted specific areas where Qwest is not meeting the benchmarks and/or parity, the Commission does not find those deficiencies to be sufficient to recommend that the FCC deny Qwest's section 271 petition. The Commission further notes that if Qwest is granted section 271 approval, the Commission will continue to review Qwest's performance, most notably through the six-month review process. If Qwest's overall performance begins to show signs of deterioration to the extent that the Commission determines Qwest is no longer meeting the statutory or FCC standards, the Commission will promptly inform the FCC. Moreover, the Commission will also be able to review any declines in performance outside of the six-month review process.

It is therefore

ORDERED, that the Commission finds Qwest has shown substantial compliance with the requirements relating to the provisioning of operational support systems.

Dated at Pierre, South Dakota, this 22nd day of November, 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: Delaine Kolbo

Date: 11/22/02

(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