

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE)
APPLICATION OF QWEST)
CORPORATION REGARDING RELIEF)
UNDER SECTION 271 OF THE)
FEDERAL TELECOMMUNICATIONS)
ACT OF 1996, WYOMING'S)
PARTICIPATION IN A MULTI-STATE)
SECTION 271 PROCESS, AND)
APPROVAL OF ITS STATEMENT OF)
GENERALLY AVAILABLE TERMS)

Docket No. 70000-TA-00-599
(Record No. 5924)

ORDER ON GROUP 2 CHECKLIST ITEMS
(Issued December 4, 2001)

This matter is now before the Wyoming Public Service Commission (Commission) for consideration of the degree to which Qwest Corporation (Qwest) has complied with checklist items 1 (Interconnection and Collocation), 11 (Number Portability), 13 (Reciprocal Compensation) and 14 (Resale) found in the federal Telecommunications Act of 1996 (the federal Act) at 47 U.S.C. § 271(c)(2) (B)(i), (xi) (xiii), and (xiv). We will also determine the extent to which Qwest's Statement of Generally Available Terms (SGAT) for Wyoming provides for the development of a competitive telecommunications market in Wyoming under Sections 251 and 252 (d) and (f) of the federal Act. The Commission, having reviewed the Workshop Report filed in this portion of the proceeding, the written comments and arguments of the parties, having heard oral arguments in open hearing, having reviewed applicable telecommunications utility law, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

1. Because the Group 2 issues are among the most fundamentally significant of any which must be resolved in the proceeding, we recognized their great importance to Wyoming and made a number of procedural accommodations for Wyoming parties to ensure full and fair presentations of all aspects of the Group 2 issues.

2. On May 15, 2001, the consultant retained by the states participating in the Qwest Section 271 compliance proceeding (the Consultant), with the assistance of state commissions staff members, issued his Report on Workshop One (the Workshop Report) giving recommendations to the commissions on the disposition of Group 2 issues in this case.

3. On May 15, 2001, the Commission issued its Order Setting Oral Argument and Scheduling Deliberation Regarding Group 2 Workshop Items, setting oral arguments for public hearing on June 15, 2001, in the Commission's hearing room at Cheyenne, Wyoming, and setting the deliberation on Group 2 issues for July 25, 2001, in the same venue. In this order, Wyoming parties were asked to make presentations [i] on the advisability of adopting, modifying or rejecting the disposition of any issue as then recommended to the Commission on the record, and [ii] regarding any Wyoming-specific Group 2 workshop topics which should come before the Commission for the presentation of additional Wyoming-specific evidence that should be done to allow a fully informed and fair decision for Wyoming in the public interest. In that order, we reminded the parties that "[a]ny party suggesting that further evidence of any kind be taken must be prepared to show why the multi-state proceeding could not and did not address the issue adequately, including full discussion of any facts that could not have been known or presented at the time the record was being developed during

the multi-state proceeding.”

4. On June 15, 2001, pursuant to due notice, the Commission held oral arguments in this portion of the above-captioned proceeding. Qwest, the Consumer Advocate Staff of the Commission (Consumer Advocate Staff) and the group of Visionary Communications, InTTec, NetWright, LLC, trib.com and Opcom, doing business as WCS (collectively, the Visionary Group) appeared through counsel and participated to the extent they deemed necessary. Thereafter, the Commission deliberated this matter, as noticed, on July 25, 2001, and directed the preparation of an order consistent with their decision.

Checklist Item 1: Interconnection

5. Checklist Item 1, Interconnection, based on Section 271(c)(2)(B)(i) of the federal Act, requires Qwest to provide “[i]nterconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1).” Under Section 251(c)(2), Qwest has:

“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.”

Section 252(d)(1) of the federal Act establishes pricing standards for interconnection, stating:

“(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c) (3) of such section --

“(A) shall 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.”

6. The parties to the proceeding resolved a total of 40 issues related to interconnection. (Workshop Report at pp. 19-32.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these interconnection issues.

7. The Workshop Report identified and discussed, at pp. 33-51, 12 unresolved issues concerning Interconnection, including:

1. Indemnification For Failure to Meet Performance Standards,
2. Entrance Facilities As Interconnection Points,

3. EICT Charges for Interconnection Through Collocation
4. Mid-Span Meets POIs,
5. Routing of Qwest One-Way Trunks,
6. Direct Trunked Transport in Excess of 50 Miles in Length,
7. Multi-Frequency Trunking,
8. Obligation to Build to Forecast Levels,
9. Interconnection at Qwest Access Tandem Switches,
10. Inclusion of IP Telephony as Switched Access in the SGAT,
11. Charges For Providing Billing Records, and
12. Combining Traffic Types on the Same Trunk Group.

Of these twelve unresolved issues, Qwest agreed to accept the decisions in the Workshop Report on issues 1-5, 7, 8 and 10-12. No party disputed the Consultant's resolution of issues 1, 3-5, 7, and 10-12. We have reviewed the Workshop Report on these subjects; and we find it in the public interest to adopt the Workshop Report's recommendations on these issues. This leaves Interconnection issues 2, 6, 8 and 9 for further discussion and decision by the Commission.

Interconnection Issue 6

8. Qwest objected to the Workshop Report's suggested resolution of Interconnection Issue 6 regarding Direct Trunked Transport in Excess of 50 Miles in Length which would have required Qwest to build direct trunked transport (DTT) in excess of 50 miles, eliminating any limitation on the obligation except that it should be analyzed in a costing docket to obtain more clarity and perhaps impose some limitations. (Workshop Report, p. 41.) This could require Qwest to build DTT, the infrastructure available between switches to carry traffic between carriers, in excess of 50 miles in length. Qwest and interested competitive local exchange carriers have already agreed to make such facilities available when they exist and are available. In Qwest's Comments on the Facilitator's Report on Checklist Items 1, 11, 13 and 14 for the Multi-state Proceeding, filed with the Commission on May 29, 2001 (the Qwest Comments), Qwest noted that it has agreed to build DTT up to 50 miles in length and had argued that it should not have to build DTT in excess of this distance. Qwest, however, proposed in the Qwest Comments, at p. 11, a compromise amendment to the SGAT which would provide:

"7.2.2.1.5 If direct trunked transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will bring the matter before the Commission for resolution on an individual case basis."

9. Given the character of Wyoming's telecommunications markets, we expect that instances in which DTT longer than 50 miles would be required by an interconnecting carrier will be relatively rare; but we acknowledge that there are areas in which the sparse population of the state might require such construction. Since it is possible for such facilities to be extremely long in Wyoming, we find that the best and most efficient solution is to accept Qwest's proposal to bring such situations to the Commission for resolution on a case-by-case basis. Costing and cost recovery issues can be addressed in such a proceeding and the Commission will provide a knowledgeable forum with local expertise to resolve problems that might arise. If it is possible for a costing proceeding to shed further light on the subject in establishing prices or discerning some rational economic limitations on Qwest's responsibility, we support using a costing docket to further clarify this interconnection issue. We will adopt the Qwest proposal for paragraph 7.2.2.1.5 of the SGAT. This will protect Qwest from abusive or unrealistic (uneconomical) requests by CLECs. The outlying areas which CLECs could reach with DTT facilities longer than 50 miles would, at least in Wyoming, most probably produce relatively small traffic volumes, on the basis of which Qwest might have no more than a slim chance of recovering its costs. The Commission is best situated to provide a decision under the circumstances

present in Wyoming; and we therefore modify the Workshop Report on this issue as discussed above.

Interconnection Issue 9

10. Qwest objected to the Workshop Report's suggested resolution of Interconnection Issue 9 regarding interconnection at its access tandem switches. Qwest sought to allow CLECs to have access only at local tandem or end-office switches, precluding access at access tandems. Subsections 251(c)(2)(B) and (C) of the federal Act require that Qwest provide for interconnection ". . . at any technically feasible point within the carrier's network; 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 . . ." AT&T argued, *inter alia*, that Qwest's stance did not conform to Subsections 251(c)(2)(B), noting that it would require AT&T to bear unnecessary expense in constructing trunking to Qwest end-office switches, even to serve a single customer. Other CLECs raised similar arguments. (Workshop Report, pp. 45-46.) Qwest made technical arguments in opposition, stating that it had constructed essentially two separate networks to transport local traffic and switched access, and observing, *inter alia*, that allowing local traffic to interconnect at the access tandem would strand capacity at local switches and cause capacity problems for its switched access network. (Workshop Report, p. 46.) The Consultant found that interconnection at the access tandem was technically feasible but also noted that there is some evidence that Qwest's network configuration "as it concerns the division of tandem switches" could cause problems at higher usage levels. The Workshop Report was careful, however, to balance the need to allow competitors to choose to interconnect at technically feasible points with the need to consider the problems that some possible interconnection configurations might cause. (Workshop Report, pp. 47-48.) Qwest argued that the 512 CCS (centum call seconds) standard, an amount of traffic equal to one DS1 line, would be the appropriate standard for identifying the point at which, for economic cost and physical traffic volume reasons, interconnecting CLECs should have to obtain direct trunking facilities instead of using tandem trunking. (Transcript of June 15, 2001, oral arguments before the c, pp. 20-21.)

11. All carriers, and, more importantly, the public, have an interest in limiting call blockage as much as is reasonably possible. Qwest claims that the 512 CCS rule will protect it, CLECs and end-users from unnecessary call blockage. This standard is contained within many interconnection agreements in the state of Wyoming; and the Commission understands that no other CLEC has challenged the standard in other Section 271 proceedings.

12. We must balance the need to allow CLECs to choose their points of interconnection wherever possible, but must balance this with the need for reasonable limits on this ability when the choice might degrade the public switched network. We therefore approve the changes to Section 7.2.2.9.6 of the SGAT as recommended in the Report because it strikes the needed balance. It should read as follows:

"7.2.2.9.6 The parties shall terminate Exchange Access Service (EAS/Local) traffic on tandem or end office switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact. Furthermore, Qwest may propose to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem. If the CLEC provides a written statement of its objections to a Qwest cost-equivalency proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will have a material adverse affect on the operation of its network and (b) upon a finding that doing so will have no material adverse impact on the operation of the CLEC, as compared with interconnection at such access tandem."

As a necessary adjunct to the change approved above, we accept the necessity of revising the last sentence of Section 7.1.1 of the SGAT to allow Qwest to demonstrate the clear risk of switch exhaust in interconnections at tandem switches (where it is not using the network for local traffic purposes similar

to those of the connecting CLEC). That last sentence should read:

“New or continued Qwest local tandem to Qwest access tandem and Qwest access tandem to Qwest access tandem switch connections are not required where Qwest can demonstrate that such connections present a risk of switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any affiliate's end users.”

This provides an adequate opportunity for the Commission to hear and resolve problems as they arise. Further, as noted, SGAT Section 7.4.5 exists solely as a limitation on traffic exchanges at access tandems. This section should be stricken from the SGAT. Likewise, the last two sentences of Section 4.11.2 serve only to restrict traffic exchange at access tandems; and it should also be stricken. (Workshop Report at p. 49.) The new language approved above adequately protects the rights of the parties and the interests of the public.

Interconnection Issue 2

13. Entrance facilities as points of interconnection. AT&T sought several revisions to the SGAT regarding entrance points as interfaces between local carriers and interexchange carriers to allow completion of long distance calls. As noted in the Workshop Report at p. 35, this issue involves the question of whether and how CLECs should use and pay for facilities obtained for interstate purposes when they will be used, at least in part, for interconnection and the provision of local services under the federal Act. We agree that the interconnection aspect of this issue is addressed adequately by adopting the “Washington decision” on the subject which would allow CLEC access to unbundled network elements at entrance facilities. That decision states that:

“Qwest must modify its SGAT to permit interconnection using entrance facilities at any technically feasible POI chosen by the CLEC, including interconnection for access to UNES, and must revise SGAT section 7.1.2 as agreed at the workshop.” (Quoted at Workshop Report, p. 36.)

The rest of this issue is largely an issue of reciprocal compensation to be discussed below.

Interconnection Issue 8

14. The obligation to build to forecast levels. If Qwest is to, as it has agreed, provide interconnection trunks to CLECs promptly, it must obtain information from interconnecting CLECs to ensure that the problems of under or over building (e.g., call blocking and expensive and unused additions to plant) are minimized. There is no disagreement among the parties that an interconnection forecasting process is required. The matter in contention in this issue centers on the relationship between CLEC forecasts and deposits required by Qwest to ensure the seriousness of the forecast. We must hold in check the potential abuses of unreasonably high and potentially anticompetitive deposit requirements and unreasonably optimistic CLEC forecasts. However, if Qwest builds trunks because of a forecast, the forecasting CLEC is not obligated to order or pay for all of the trunks built in response to its forecast. The public thus has a stake in fostering competition and, at the same time, not requiring expensive system overbuilding. A CLEC should also be protected from a penalty if a trunk it forecasted is built and used by another entity.

15. The Workshop Report struck a workable balance of equities among the parties, recommending that: [i] Qwest should be required to build to the lower of the two relevant forecasts with no charge; [ii] if a CLEC has not utilized its trunks for 18 continuous months at a rate of at least 50%, Qwest would still be obliged to build trunks to a higher CLECs forecast if the CLEC pays a deposit (which would be refunded based on actual trunk usage thereafter); [iii] trunk utilization rates for determining the need for a deposit will be based on actual trunks in service, not the number forecast; and [iv] the CLEC's relevant deposit must be refunded if anyone uses the trunk within a six month

period. We believe that this encourages accuracy, discourages abuse by either party and accurately and fairly states how the deposits should be determined and refunded. When a trunk is being used, the reason to hold a deposit for it changes from a wise encouragement of prudence to a direct penalty. We thus believe that the SGAT should contain language specifically allowing the refund of CLEC deposits based on the actual usage of trunks no matter who utilizes them. We agree that the following language should be added to the SGAT for this purpose:

“7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.”

(See, Workshop Report, pp. 43-45.)

Interconnection: Single point of interconnection.

16. At Section 7.1.2 of the SGAT, Qwest offers CLECs the ability to interconnect at one point (POI) in a LATA, and there is no particular argument on the issue or its resolution. If Qwest's internal policies and procedures are not yet conformed to agreements reached in the workshops, that is to an extent understandable, given the vast number of changes to Qwest's operations and documentation generated by the multi-state process. Qwest has committed to timely changes (within 45 days of workshop closing); and it has implemented a change management system (CICMP) to notify CLECs of policy changes affecting them. These changes cannot be expected to occur at once, but we will expect them to occur in a thorough and timely manner (and the CICMP process will itself be taken up in the workshop on General Terms and Conditions). Qwest must therefore modify its policies to conform with Section 7.1.2 of the SGAT. That it may have not done so already is not a reason to leave this issue open. We invite any participant in the above-captioned proceeding to bring it to our attention at a later point in time if Qwest has not made the promised changes and updates, but we will consider this item closed now, subject to reopening on the facts.

Checklist item 1: Collocation

17. Under 47 U.S. C. §251(c)(6), ILECs have an obligation 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.”

18. The parties to the proceeding resolved a total of 54 issues related to collocation. (Workshop Report at pp. 52-73.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these interconnection issues.

19. The Workshop Report, at pp. 73-74, identified and discussed four issues which were recommended for deferral or consideration elsewhere, including:

1. Reciprocal Compensation for Collocation Facilities Used for Interconnection (in this Workshop Report),
2. Collocation Costs (deferred for price setting in states, particularly Utah),

3. Lack of Available Facilities (in this Workshop Report), and
4. APOTS-CFA information (to be addressed as an SGAT General Terms and Conditions issue).

We find the proposed disposition of these issues by the Workshop Report to be adequate and in the public interest. We accept them and will not discuss them further here.

20. At pp. 74-95, the Workshop Report identified 15 unresolved issues concerning Collocation, including:

1. "Product" Approach to Collocation
2. Adjacent Collocation Availability
3. Precluding Virtual Collocation at Remote and Adjacent Premises
4. Cross Connections at Multi-Tenant Environments (MTEs)
5. Listing of Space-Exhausted Facilities
6. ICB Pricing for Adjacent and Remote Collocation
7. Conversion of Collocation Type -- Payment of Costs
8. Recovery of Qwest Training Costs
9. Removal of Equipment Causing Safety Hazards
10. Channel Regeneration Charges
11. Qwest Training Costs for Virtually Collocated Equipment
12. Requiring SGAT Execution Before Collocation May Be Ordered
13. Forfeiture of Collocation Space Reservation Fees
14. Collocation Intervals
15. Maximum Order Numbers

Qwest has accepted the decisions set forth in the Workshop Report for 14 of those issues, opposing the disposition of issue 14 regarding Collocation Intervals. (Qwest Comments, p. 12.) AT&T has accepted all but three of the Workshop Report recommendations, opposing those recommendations on issue 1, regarding "Product" Approach to Collocation, issue 4, regarding Cross Connections at Multi-Tenant Environments, and issue 10, regarding Channel Regeneration Charges. Our review of the Workshop Report shows us that the suggested resolution of disputed collocation issues 2-3, 5-9, and 11-13 are reasonable and in the public interest, with this conclusion being reinforced by the agreement of parties with generally opposing points of view on the subject. We therefore adopt the Workshop Report's recommendations with regard to those issues as being well reasoned and in the public interest. In addition, the Workshop Report asked each party to present and defend proposed SGAT language regarding issue 15 regarding maximum order numbers in a given time period.

Collocation Issue 1

21. The "Product" Approach to Collocation. Eight different forms of collocation are provided for under Qwest's SGAT which also states that the BFR (bona fide request) process should be used for other forms of collocation. Competitive local exchange carriers, on the other hand, want to ensure that newer forms of collocation will be made available to them without excessive delays. AT&T also raised objections concerning how to establish changing collocation conditions which depend on underlying technical and administrative documents which are external to the SGAT. As with any emerging issue, there is no way for the SGAT to anticipate every possible form of collocation or to provide for it. The terms and conditions may reasonably vary from those applicable to existing forms of collocation. As the Workshop Report notes, at p. 76, Qwest has agreed to offer new forms of collocation, but this offering does not solve the problems inherent to the offering of any new service or the settling

of differences between the parties. It also does not obviate the need for regulatory involvement to resolve impasses. To anticipate these problems and to address the situation in which Qwest might insist on continuing existing arrangements, the Workshop Report suggests, at p. 76, adding the following after the last sentence of Section 8.1.1 of the SGAT:

“Other types of collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this SGAT. Nothing in this SGAT shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the parties or ordered by the state commission or any other competent authority.”

We believe that this is a well reasoned and fair way to address this situation and to keep collocation options up to date and readily and reasonably available. We adopt the Workshop Report’s suggested resolution of this point.

22. Regarding the matter of the development of documentation to flesh out new collocation options, we do not believe that this issue is materially different from other issues in which documentation must be developed after the fact to make the SGAT function properly. We therefore believe that this facet of the collocation issue should be addressed later in the context of General SGAT Terms and Conditions. The Workshop Report is in accord. See, Workshop Report, pp. 74-77. This will provide a proper venue in which to refine and shorten the BFR process so that it does not itself raise barriers to competition.

Collocation Issue 4

23. Cross Connections at Multi-Tenant Environments. This issue addresses the situation in which Qwest’s facilities will serve more customers than the CLEC will serve. Qwest’s SGAT contains specific provisions in Section 9.3 for how CLECs obtain access to subloops generally, and Qwest has confirmed (in its Emerging Services brief) that it would impose no collocation requirement for accessing subloops provided that the locations in question were within or attached to a customer-owned building. AT&T has requested an additional provision in Section 8.1.1.8.1 of the SGAT to state that collocation is not required to obtain access to subloops. Our review of the record shows that Qwest and AT&T are in substantial agreement that its proposed addition to this section of the SGAT would be allowable. The Workshop Report found that Qwest’s proposal is generally reasonable and noted that it, as embodied in Section 9.3 of the SGAT, will be taken up later in the multi-state process. We find it in the public interest to approve the Workshop Report’s recommendation that Qwest’s general approach provides a solution to the general question of collocation requirements in MTE environments (Workshop Report, p. 80); but we also believe it best to adopt the language proposed by AT&T for inclusion in Section 8.1.1.8.1 of the SGAT as an affirmation of this consensus. Specifically, the approved text of this section should read:

“8.1.1.8.1 With respect to connections for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3. This type of access and cross-connection is not collocation.”

See, AT&T Exhibit WS1-ATT-KLW-14, as discussed, February 26, 2001, Multi-state transcript at 24-26.

Collocation Issue 10

24. Channel Regeneration. Channel regeneration is required to enhance signal strength when the distance between the power source and the CLEC’s collocation point is sufficiently great.

AT&T argued that a forward looking approach to collocation would of necessity assume that no channel regeneration would be needed and that Qwest should not be able to charge for it. Qwest argued that its obligation was to design and engineer an efficient route and cable racking for the desired collocation (see, SGAT, Section 8.2.1.23); and that, where regeneration was “unavoidable,” the CLEC should pay the cost. The Workshop Report did not agree that Qwest should furnish needed regeneration and then not be able to recover the legitimately incurred actual nonrecurring costs, but also concluded that the SGAT should be changed to remove Qwest’s right to charge for regeneration if [i] a location for collocation exists that would not require regeneration or [ii] if such a location exists and is not made available to the CLEC because Qwest has reserved it for its own business use. The Workshop Report suggests, at p. 88, the addition of the following new language to the end of Section 8.3.1.9 of the SGAT to deal with these potential abuses:

“Channel Regeneration Charges shall 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.”

Section 8.3.1.9 rightly allows Qwest to make a “Channel Regeneration Charge” when the distance from the CLEC’s leased physical collocation space or from the collocated equipment, in the case of virtual collocation, to the Qwest network is of sufficient length to require regeneration; and the suggested additional language places reasonable limitations on these charges. We find that AT&T’s reliance upon a theoretical forward-looking approach is incorrect. We believe, therefore, that the Workshop Report’s recommended addition, set forth above, is in the public interest and fairly balances the equities, making it clear that Qwest should not have the power to charge for regeneration where another available collocation location exists where regeneration would not be required, unless a CLEC chooses to remain at the location where regeneration is required.

Collocation Issue 14

25. Collocation Intervals. The question of the amount of time that should be allowed for the provisioning of collocation remains one of the more durable and widely disputed aspects of Group 2. The general argument from CLECs is that the intervals should be relatively short and fixed, with little room for dispute or interpretation and with the provision of fines or penalties for missed deadlines. Qwest generally advocated somewhat longer intervals based on a variety of circumstances which might make provisioning more complex or time consuming. The parties disagreed over whether Qwest should be allowed to extend the interval it takes to provision collocation when the CLEC did not submit a forecast, with Qwest arguing that the FCC’s “national 90-day default interval for provisioning physical collocation” should, in some cases, be as long as 150 days.

26. The Workshop Report notes that neither Qwest nor the CLECs will be able to forecast with consistent precision and concludes that such imperfection should not be punished. The Workshop Report adopted the CLEC position which would require a 90-day collocation interval irrespective of whether CLECs provide Qwest with a forecast. (Workshop Report at pp. 94-95.) We disagree with the Workshop Report on this point. Requiring a 90-day interval for collocation regardless of the presence or absence of a forecast should not be understood as CLEC punishment, but as a different response to collocation requests where a forecast is not present with a premium (of some 30 days) being placed on the more responsible business practice of providing forecasts. We also note that the Post Entry Performance Plan (PEPP, now known as the Qwest Performance Assurance Plan or QPAP) will penalize Qwest for failing to meet required collocation intervals. This could produce the anomalous and undesired result of placing a financial burden on Qwest for the failure by a CLEC to provide a forecast. It is, of course, possible for Qwest to provide an unforecasted collocation in advance of any deadline, but it should not have to pay fines to a CLEC for missing a deadline when the failure of a CLEC to forecast exacerbates the situation. There should be no disincentive for forecasting; but, perhaps more

importantly, there also should be no premium on not forecasting. We therefore reverse the Workshop Report on this issue (Workshop Report, p. 95) and find, in the public interest and as described above, that the collocation provisioning intervals in Qwest's SGAT are sufficient and appropriate.

The potential for abuse of provisioning intervals remains a point of concern for the Commission, but we must balance the interests of the interconnecting parties as carefully as possible and without creating patent unfairness. We will therefore, in reversing the Workshop Report on this point, allow and approve the language proposed by Qwest on the subject for subsections 8.4.2.4.4, 8.4.3.4.3 and 8.4.3.4.4 which maintains a workable balance to encourage promptness by Qwest and forecasting by the CLECs. (See, Qwest Comments, pp. 13-16; and the actual text of the referenced sections found in the accompanying May 25, 2001, "SGAT Lite" as filed with the Commission, at pp. 76-79.)

Collocation Issue 15

27. **Maximum Number of Collocation Orders.** This issue is one of balancing the requirement for timely collocation (i.e., those requests to which the collocation intervals should apply) with the need to keep Qwest's workload from becoming impossible to manage, if it were to receive a large number of collocation orders in a short period of time. The Workshop Report, at p. 96, recognized that this balancing was reasonable; and it invited parties to propose SGAT language to address the situation. In the Qwest Comments at p. 18, Qwest proposed that Section 8.4.1.10 (formerly 8.4.3.3) of the SGAT be retained to address this situation. It provides that the time limits for Qwest's fulfillment of collocation orders would apply to no more than 5 collocation orders per CLEC, per state, per week. Above that level, Qwest would have the ability to negotiate the time intervals individually.

Although the number of interconnection orders will vary over time and from market to market, Wyoming's market is relatively small in comparison to those of other jurisdictions in which Qwest operates. Therefore, Qwest's proposal for a 5 order threshold would be, subject to experience and any modification of the SGAT if needed later, most reasonable in Wyoming of all the states in which it operates. The provision for negotiation over this level requires Qwest and the CLEC to coordinate Qwest's efforts to meet unusually high order volumes. This too is reasonable in light of the requirements of the federal Act for good faith negotiations and fair dealing by interconnecting incumbent local exchange companies. Qwest should have the obligation to meet "reasonably foreseeable demand" for collocation in a routine and timely manner, and collocation interval provisions should apply to this level of activity.

The language proposed by Qwest for retention in the Wyoming SGAT is found at Section 8.4.1.10.

"The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs."

We agree that this language generally addresses the situation and does so fairly, with the exception that the actual SGAT language should particularly identify its applicability to Wyoming so that there is no doubt that the requirement applies in a Wyoming context and not in a more general sense. Therefore, we will approve the following language for Section 8.4.1.10:

"The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (Section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week in Wyoming. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in Wyoming, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week in Wyoming, depending on the volume of Applications pending from other CLECs."

Finally, this language is also required because it treats all CLECs with relative equality. No one CLEC should be able to absorb all of Qwest's ability to respond to collocation orders by placing a large order in a short period of time to the exclusion of other companies seeking to have their orders filled in a timely manner also. Qwest has shown that large and uneven numbers of collocation orders in a short period of time do tax its ability to respond in a timely manner and meet its performance requirements. This fairly balances the pertinent requirements and is in the public interest because it does not require Qwest to over deploy resources to address theoretically possible levels of collocation orders but gives it clear targets to meet and a clear path for others to take in getting Qwest to fulfill their orders.

Checklist Item 11: Local Number Portability

28. Checklist Item 11, Local Number Portability. The term "number portability" is defined at Section 3(a)(2)(46) of the federal Act as meaning:

"... 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."

Section 251(b)(2) of the federal Act gives all local exchange carriers the duty "... to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Finally, Section 271(c)(2)(B)(xi) of the federal Act sets up interim and final number portability requirements as Checklist item 11. A Bell operating company meets the requirement of this item if it offers access and interconnection which includes:

"Until the date by which the Commission [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations." [Editorial material added.]

29. The parties to the proceeding resolved a total of 13 issues related to number portability. (Workshop Report at pp. 98-100.) We have reviewed the Workshop Report on these points and find the conclusions well reasoned and in the public interest. We will therefore adopt the Workshop Report's recommendations on these number portability issues.

30. The Workshop Report also identified a non-SGAT issue concerning the actual ability of Qwest to port numbers in a timely manner. It noted that the Wyoming Consumer Advocate Staff expressed concerns that "huge delays" in transferring service have been seen in Wyoming, and that the problem would not be settled "... until competitive companies have had some experience with Qwest pursuant to the SGAT terms and conditions." (Workshop Report, p. 101.) This is a portion of the Consumer Advocate Staff's general caution that actual experience should be the test for Qwest's opening of its local exchange markets to competition. The Workshop Report addressed this general argument in its Common Issues section. There the Consultant commented that:

"The survey presented by the Wyoming CAS is not without benefit in these proceedings. It can be taken as evidence that Qwest has had historical performance problems in serving CLECs. What the survey does not do, however, is to lay a sufficient foundation for overcoming the belief that OSS testing and post entry performance plans may serve adequately to provide a basis for determining whether Qwest should secure Section 271 approval. It is not certain how this conclusion might have been different, had CLECs complied better with the repeated requests of the participating state commissions to make these workshops more focused on "real world" experience. That is speculative; what is not is that CLECs have stood largely silent on the question of supporting general complaints and concerns with detailed information relating to the kind of issues that at least some of them were willing to provide responses to in the Wyoming CAS survey.

"Where that leaves us in these workshops is with the conclusion that we must look largely to the OSS test and

the post entry assurance plan to guide final judgments on the kinds of performance issues that the WCAS survey raised. That opportunity will come; the commissions have already stated in their procedural orders that they will create a means for doing so.” (Workshop Report, p. 18.)

We will reserve further judgment on this issue pending further information to be presented to the Commission regarding Group 5 and Group 5A issues and regarding the ROC third-party OSS testing, all of which will be done before the end of this year; but we will rely heavily on the test and plan in our decision.

31. The Workshop Report identified one number portability issue remaining unresolved, that being coordinating local number portability and loop cutovers. This aspect of number portability deals with the necessity of coordinating the porting of a number to a CLEC with the disconnection of the line by Qwest. The carriers must ensure that a customer’s number has been ported before the disconnect occurs so that customers do not experience lapses in service. In working with AT&T on this issue, Qwest agreed to disconnect (cut over) the line at 11:59 pm on the day after the scheduled port, thus greatly reducing the problem of a customer being out of service for a time if a CLEC did not complete its work on time. The consensus reached on this point is a positive result which clearly serves the public interest. We adopt this resolution, noting with approval the discussion of the Workshop Report at p. 105, which shows the value of this resolution in the case of facilities based competition as well as competition in a resale environment. The levelness of the playing field should not depend on the form of market entry chosen by the competitor. Qwest has added an appropriate change to the SGAT, and it addresses, and exceeds, the suggested requirement of the Workshop Report, at p. 107, that, “If a CLEC requests Qwest to do so by 8 p.m. Mountain Time, Qwest will assure that the Qwest loop is not disconnected that day.”

32. Taking similar care to ensure continuous service to customers, AT&T asked Qwest to develop a way to verify that the CLEC had completed its portion of a number port before Qwest disconnected the customer’s Qwest’s line. The Workshop Report at p. 107, asked Qwest to commit to study more automated means of coordinating cutovers to minimize service disruptions. The ability to verify smoothly and efficiently will eliminate service problems and may keep costs down for Qwest and connecting CLECs. We approve of this resolution and note that no party has disagreed on the subject.

33. We note with approval that Qwest offers a closely coordinated manual process for coordinating cutovers which requires Qwest and CLEC technicians to coordinate in the porting process. Qwest also offers a fully automated flow-through process. The existence of both these processes will allow the interconnecting carriers to stop number porting before an unintended disconnect occurs.

34. We applaud the sincere efforts of the parties to address number portability issues, and to go beyond the Workshop Report in some instances to do so. We will now await the results of the ROC OSS third-party testing procedure to see whether that consensus works in practice. After the testing, we will make further determinations on this issue.

Checklist Item 13: Reciprocal Compensation

35. Checklist Item 13, Reciprocal Compensation, is found at Section 271(c)(2)(B)(xiii) of the federal Act. It requires that access or interconnection offered by a Bell operating company to other carriers include “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)” of the federal Act, which provides:

“(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC-

“(A) IN GENERAL- For the purposes of compliance by an incumbent local exchange carrier with

section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

“(i) such terms and conditions 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 determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

“(B) RULES OF CONSTRUCTION- This paragraph shall not be construed--

“(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

“(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.”

Section 251(b)(5) places the duty on Qwest to establish a reciprocal compensation arrangement for transport and termination of traffic, essentially, local calls that originate on the network of another carrier.

36. Rather than putting on witnesses on this Checklist item, the parties to the workshop agreed to introduce the record and consensus reached in the Colorado and Washington hearings on reciprocal compensation into the record of this multi-state proceeding. The Workshop Report also resolved the reciprocal compensation issues of [i] the definition of tandem switching, and [ii] including IP telephony in switched access. We find, after a review of the relevant Workshop Report, record and other documents in the record of this case, that it is in the public interest to approve and adopt the resolution of the consensus items and the resolved items, as discussed in the Workshop Report, at pp. 109-110. Thereafter, five issues remained in dispute here (as they did in other jurisdictions), including:

1. Excluding ISP Traffic from Reciprocal Compensation;
2. Qwest's Host-Remote Transport Charge;
3. Commingling of InterLATA and Local Traffic on the Same

Trunk Groups;

4. Exchange Service Definition; and
5. Including Collocation Costs in Reciprocal Compensation.

Qwest did not challenge the resolutions proposed by the Workshop Report. (Qwest Comments at p. 22.) AT&T commented only on the issue of “ratcheting” in the context of unresolved issue 3, Commingling of InterLATA and Local Traffic on the Same Trunk Groups.

Reciprocal Compensation Issue 1

37. The question of whether or not ISP traffic should be excluded from reciprocal compensation was raised, and Qwest did not want to make reciprocal compensation payments with respect to ISP traffic. The applicability of reciprocal compensation to ISP traffic turned on the intrastate or interstate character of this traffic. The FCC settled the question in its April 27, 2001, decision, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket 96-98, FCC 01-131. It clearly stated that ISP traffic would be considered interstate in nature and thus not subject to reciprocal compensation as local traffic.

The Workshop Report addresses the issue by asking that workshop participants propose essentially curative SGAT language to ensure that it complies with the FCC's April 27, 2001, decision.

(Workshop Report, p. 113.) In Exhibit A, pp. 37-38, to Qwest's Comments, it made a detailed proposal for an SGAT section 7.3.6 and subsections concerning ISP-bound traffic. The SGAT proposal is conceptually tied to the FCC's April 27, 2001, order in Qwest's Comments, at pp. 22-23, and is summarized below. The SGAT:

- specifically exempts, at section 7.3.6, ISP traffic from the category of traffic for which reciprocal compensation must be paid.
- utilizes bill and keep as the recovery mechanism for ISP traffic because it eliminates an opportunity to gain a competitive advantage simply by shifting costs to other carriers, since ISP traffic generates substantial amounts of one-way traffic and bill and keep prevents collection of costs from other carriers. The SGAT provides for a 36-month transition towards a complete bill and keep recovery mechanism.
- puts in place a staged series of reductions in charges per minute of use for intercarrier compensation for ISP bound traffic during the transition to avoid the possibly drastic effects of a "flash cut" and to lessen the incentive to pursue arbitrage abuse.
- places a series of graduated caps on the total number of ISP-bound minutes for which an interconnecting local exchange carrier may receive reciprocal compensation.
- makes a presumption that traffic exchanged between interconnecting LECs which exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound, but subject to the ability of a company to demonstrate to the Commission that this is not true.

We find that Qwest's proposed mechanism provides for a balancing of interests during the transition to a bill and keep regime for ISP-bound traffic. We conclude that Qwest's proposed SGAT language furthers the public interest and conforms to the FCC decision as proposed generally above and should be approved.

Reciprocal Compensation Issue 3

38. AT&T and others commented on the "Ratcheting" issue involved in issue 3, Commingling of InterLATA and Local Traffic on the Same Trunk Groups. They thought that they should be able to make "efficient use" of "spare" special access circuits for interconnection. The two issues are [i] whether or not local and interLATA toll traffic should be commingled on the same trunk group, and [ii] should the economies of this use be allowed (i.e., should this type of traffic movement be allowed to "ratchet" federal interexchange carrier access rates downward. This practice involves carrying both types of traffic on the subject circuit but, in effect, "ratcheting" down the federally tariffed rate, applying special access rates for toll traffic and TELRIC rates for the part that is local.

The Workshop Report at p. 116, properly frames the issue and the equities:

"This issue is one of balancing efficiency against universal service. No participant denied that WCOM and AT&T's proposed commingling and ratcheting would result in a more efficient use of CLEC networks. However, the FCC, along with most state commissions, has identified universal service as an important regulatory goal. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. Adoption of SGAT provisions that have the potential to undermine the effectiveness of the current pricing mechanism for special access requires a more comprehensive review of all Qwest pricing policies and their effect on universal service than has been accomplished in this proceeding."

The Workshop Report analyzed federal statements on the issue and concluded that, at least pending further federal rulings on the subject, ratcheting should not be allowed because of the financial

incentive it would give to interexchange carriers to use unbundled network elements (UNE) to bypass special access services. On the issue of whether special access circuits may actually be used for interconnection purposes and because the problem is, at this point, one of pricing policy, the Workshop Report adopted Qwest's proposal to allow the efficiency but avoid the pricing problem by permitting special access circuits to be used for local interconnection but requiring them to be priced as special access circuits. Workshop Report, p. 117.

We agree that this is the best resolution of the issue. A pricing-based moratorium on commingling can be put in place through the use of special access pricing because the problem is not so much with the use of the circuits as with the gaming of pricing in a system in transition. We agree also that the potential for damage to universal service should not be ignored. We therefore find and conclude that it serves the public interest best to accept Qwest's proposal that language to this effect should be in the SGAT, i.e., that competitive local exchange carriers may use spare capacity on existing special access circuits for interconnection so long as they pay special access rates for the facilities.

39. Subject to any pricing, implementation or other considerations that may later be shown to be relevant with respect to reciprocal compensation issues, we will adopt the Workshop Report on this Checklist item as being in the public interest.

Checklist Item 14: Resale

40. Checklist Item 14, Resale, is found at Section 271(c)(2)(B)(xiv) of the federal Act. It requires that access or interconnection offered by a Bell operating company to other carriers include "Telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."

41. Thirty-two Resale-related issues were raised and resolved in the workshop process. (Workshop Report, pp. 120-130.) With respect to the eleven issues thereafter remaining in dispute, we note that Qwest (Qwest Comments, pp. 24-25) accepted the Workshop Report decisions on these issues, and that it agreed to make the relevant changes to bring its SGAT into compliance with these decisions. (See, Workshop Report, pp. 131-143.) Similarly, AT&T did not challenge any of the eleven disputed Resale issues in its written comments to the Commission. (A numbering error in the Workshop Report, at p. 140, makes it appear that there are ten such issues. There are eleven and we have numbered them correctly for discussion purposes below.)

42. Qwest has implemented the Resale-related language changes detailed in the Workshop Report by amending its SGAT language. Notable among these agreements is Qwest's acquiescence in a general agreement applicable to SGAT signatories that no signatory would engage in marketing to customers of other companies who mistakenly contact the party (i.e., when they are not seeking information from the specific company called). (Conclusion on disputed Resale issue 2, Marketing During Misdirected Calls, Workshop Report, p. 134.) Beyond that, some issues must await the results of the ROC third-party OSS testing process before they can be considered finally resolved. These include, for example:

- a. 5. Inaccurate Billing of Resellers;
- b. 6. Ordering and Other OSS Issues;
- c. 9. Merger-Related PIC Charges.

Some issues are [i] too vaguely raised in the workshop process and may be later identified and dealt with in OSS testing, or [ii] properly left for resolution in the OSS process. We agree with the Consultant that, with respect to either type of issue, the OSS process should be given a chance to resolve them. However, any party may bring up issues which the OSS testing process has failed to

resolve at the end of that process. We remind the parties that the burden carried by a participant seeking to reopen an issue or launch a new issue after the OSS testing process is very heavy. Subject to these considerations, we find the Workshop Report and the issue resolutions contained in it with respect to Resale properly balance the interests of the public and carry out the intent of the federal Act. Therefore, we will adopt the Workshop Report's recommendations with regard to Resale issues. Any further finding by the Commission on Qwest's satisfaction of the requirements of Checklist Item 14, Resale, is subject to successful completion of the ROC OSS third party testing and to the successful resolution of any issues identified therein as material to the workshop process.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Qwest shall make timely modifications to its change management process as described hereinabove. Persons adversely affected by the failure of such timely modifications shall bring the situation to the attention of the Commission.

2. Qwest shall make the above-required changes to the terms and conditions of its Statement of Generally Available Terms.

3. We reverse the Workshop Report on Collocation Issue 14, Collocation Intervals. We accept and order Qwest's proposed resolution of this issue, set forth hereinabove, to be made a part of the Wyoming SGAT.

4. The Commission will not, at this time, make any final recommendation concerning Qwest's compliance with Checklist items 1 (Interconnection and Collocation), 11 (Number Portability), 13 (Reciprocal Compensation) or 14 (Resale). Further action by the Commission on a final recommendation regarding compliance is subject to the satisfactory resolution of the issues deferred to other workshops, to the ROC OSS testing proceeding, or to a costing docket, and to such further order of the Commission as it shall deem advisable.

5. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on December 4, 2001.

PUBLIC SERVICE COMMISSION OF WYOMING

STEVE ELLENBECKER, Chairman

STEVE FURTNEY, Deputy Chair

KRISTIN H. LEE, Commissioner

(SEAL)
Attest:

STEPHEN G. OXLEY, Chief Counsel