

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Qwest Corporation ) Application No. C-2537  
seeking approval of its revised )  
statement of generally available ) SGAT APPROVED IN PART  
terms (SGAT) pursuant to section ) (GROUP 2 REPORT)  
252(f) of the 1996 Telecommuni- )  
cations Act. ) Entered: November 20, 2001

BY THE COMMISSION:

At issue before the Nebraska Public Service Commission (Commission) is whether certain provisions of the statement of generally available terms (SGAT) submitted by Qwest Corporation (Qwest) on May 22, 2001, meet the requirements of Sections 251, 252 and 271 of the Telecommunications Act of 1996 (Act)<sup>1</sup>, relevant Federal Communications Commission (FCC) regulations and all applicable state law and regulations.

On May 15, 2001, the facilitator of the Seven State Collaborative and workshops, John Antonuk of Liberty Consulting Group, Inc., issued his Report on Workshop One referred to by this Commission as the "Group 2 Report." These Findings of Fact and Conclusions relate to those provisions of the SGAT addressed in the Group 2 Report discussed more fully in these findings.

This Commission has already determined Qwest's compliance with the requirements of these checklist items. These Findings of Fact and Conclusions, therefore, relate to the compliance of the SGAT with the Act. Nevertheless, because the Group 2 Report is what we will evaluate in making our determination on the compliance of various SGAT provisions with the Act, we take this opportunity to note that the process employed in the Multi-State Workshop One was full and fair and afforded interested participants a meaningful opportunity to present their concerns.

To determine whether the SGAT provisions addressed in the workshop comply with the Act, relevant FCC regulations and all applicable state law and regulations, the Commission has reviewed the record of the workshop, including the testimony, briefs and comments submitted by Qwest, competitive local exchange carriers (CLECs), Mr. John Antonuk's (hereinafter, the facilitator) May 15, 2001, Group 2 Report and recommendations, and the comments of the parties in response to the Group 2 Report. Additionally, the Commission has reviewed the list of impasse issues submitted to the Commission on the Group 2 Report and on July 30, 2001, we heard oral arguments regarding whether the Commission should adopt the facilitator's findings relating to the compliance of Qwest's SGAT in the Group 2 Report.

<sup>1</sup> 47 U.S.C. §§ 251, 252, and 271.

The Commission finds that the record of Workshop One is full and complete and provides a proper record to determine the SGAT's compliance with the relevant provisions of the Act, FCC regulations and all applicable state law and regulations. Having considered the record, the Commission makes the following findings of facts and conclusions.

## F I N D I N G S   O F   F A C T   A N D   C O N C L U S I O N S

A.   Interconnection

## Overview:

1.     Section 271(c)(2)(B)(i) of the Act addresses the competitive checklist item involving interconnection: Qwest must provide "...interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1)..."<sup>2</sup>

2.     The FCC has defined the term interconnection as "...the linking of two networks for the mutual exchange of traffic."<sup>3</sup> As of April 30, 2001, Qwest testified it had 18,596 interconnection trunks in service.

3.     In the Group 2 Report the parties raised and resolved a total of 40 issues related to interconnection.<sup>4</sup> The Commission hereby formally adopts the facilitator's Group 2 recommendations to resolve any issues with regard to those 40 issues relating to the compliance of Qwest's SGAT with Sections 251, 252 and 271, implementing FCC regulations and all applicable state law and regulations. In addition, there were 12 issues in interconnection that were deferred and/or disputed. These issues are: 1) indemnification, 2) entrance facilities as interconnection points, 3) expanded interconnection channel termination (EICT) charges for interconnection, 4) mid-span meets points of interface (POIs), 5) routing of Qwest one-way trunks, 6) direct trunked transport in excess of 50 miles, 7) multi-frequency trunking, 8) forecasts and deposits for CLECs with chronic underutilization of trunks, 9) interconnection at access tandem switches, 10) inclusion of Internet protocol(IP) telephony as switched access in the SGAT, 11) charges of providing billing records and 12) combining traffic types on the same trunk group.

4.     Of the twelve-deferred/disputed issues, Qwest agreed to accept the decisions in the Group 2 Report with respect to nine of the issues (Issues 1-5, 7, 8 and 10-12). Qwest, however, took issue with aspects of the Group 2 Report's recommendation regarding issue 6 (obligation to build direct trunked transport in excess of

<sup>2</sup> 47 U.S.C. §§ 251, 252.

<sup>3</sup> 47 C.F.R. § 51.5.

<sup>4</sup> See Group 2 Report at 19.

50 miles) and issue 9 (interconnection at access tandem switches).<sup>5</sup> AT&T accepted the Group 2 Report's recommendation on issues 1, 3-7, 10-12. AT&T, however, requested clarification of issue 2 (entrance facilities as interconnection points), issue 8 (obligation to build to forecasted levels) and issue 9 (interconnection at access tandem switches). AT&T also objected to one aspect of the Group 2 Report deemed closed by the facilitator. No other CLEC objected to any aspect of the Group 2 Report.

5. Because no party disputed the facilitator's resolution of issues 1, 3-5, 7, and 10-12, the Commission formally adopts the Group 2 Report's recommendations with regard to those issues relating to the compliance of Qwest's SGAT: issue 1 (indemnification), issue 3 (EICT Charges), issue 4 (Mid-Span Meet POIs), issue 5 (routing of Qwest one-way trunks), issue 7 (multi-frequency trunking), issue 10 (inclusion of IP telephony as switched access in the SGAT), issue 11 (charges of providing billing records) and issue 12 (combining traffic types on the same trunk group).

Consensus Item: Qwest's offer to provide a Single POI per local access and transport area (LATA)

#### Findings:

6. In SGAT section 7.1.2, Qwest offers to provide CLECs the ability to interconnect at one point or points of interface in the LATA. AT&T attempts to reopen this consensus item by stating that Qwest's current minimum point of presence (MPOP) policy does not conform to the SGAT language agreed upon in the workshops.

7. In the workshops, Qwest committed that it will conform its internal policies and procedures to agreements reached in the workshops within 45 days of the workshop closing.

8. Qwest has implemented a change management system (CICMP) that will provide notification to CLECs of all policy changes that affect CLECs. The Commission understands that CICMP is an issue to be discussed in the general terms and conditions workshop.

#### Conclusions:

9. As the facilitator found in the Group 2 Report, it is unrealistic to expect that every internal document at Qwest will be completely consistent with the language negotiated in the workshops. Qwest must have time to properly implement that which the parties agreed to in the workshops.

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<sup>5</sup> Qwest's Comments on the facilitator's Group 2 Report on checklist items 1, 11, 13 and 14 for the Multi-State Proceeding (Qwest's Comments) May 25, 2001.

10. As discussed above, Qwest has committed that it will update internal documents within 45 days of when a workshop concludes. It is expected that Qwest's MPOP policy will conform with SGAT section 7.1.2. To the extent it is not currently in conformance, Qwest must modify the policy through the existing CICMP process.

11. The Commission finds that the SGAT is in compliance with respect to this issue.

Issue 2: Entrance facilities as interconnection points.

12. Entrance facilities are facilities that physically enter a Qwest central office en route from a CLEC switch. They allow parties to mutually exchange traffic. Initially, AT&T asked that entrance facilities be excluded from the SGAT altogether. At this point, however, AT&T asks that it obtain the ability to use special access circuits at total element long run incremental cost (TELRIC) rates for those aspects of the circuits that are dedicated to interconnection.<sup>6</sup>

Findings:

13. Entrance facilities are common aspects of the interface between local carriers and interexchange carriers whose networks must be interconnected in order to allow long distance calls to be completed. Entrance facilities have been secured through interstate tariffs for many years. AT&T expressed concern that Qwest was somehow improperly using digital service, level one (DS1) and digital service, level three (DS3) entrance facilities, which are an access world concept, in the realm of local exchange interconnection.<sup>7</sup>

14. The facilitator concluded that this issue should be addressed in the reciprocal compensation portion of the Group 2 Report where the same issue - ratcheting - was addressed.

Conclusion:

15. The Commission adopts the Group 2 Report with respect to Qwest's SGAT compliance and addresses this issue in the reciprocal compensation portion of this order.

Issue 6: Direct Trunked Transport in Excess of 50 miles in Length

16. Direct Trunked Transport (DTT) is the set of physical facilities that is available between switches to carry traffic

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<sup>6</sup> AT&T Comments and Request for Clarification on the Second Report Concerning Workshop One (AT&T Comments) May 25, 2001, at 7.

<sup>7</sup> Group 2 Report at 35.

between carriers. Both Qwest and the CLECs have agreed to make such facilities available when they are built and available. Qwest has agreed to build DTT for CLECs that are less than 50 miles in length. The issue here is whether Qwest must build DTT for CLECs in excess of 50 miles, on demand. The Group 2 Report recommends that the SGAT provision limiting Qwest's obligation to provide DTT to 50 miles in length be eliminated, thereby requiring Qwest to build DTT anywhere in the LATA on request.<sup>8</sup>

17. Qwest asks for slight clarification of this issue. Qwest asks, as recognized by the Utah Commission, which is a participant in the seven-state process, that Qwest may come before the Commission and ask who, if anyone, must build DTT in excess of 50 miles. Thus, Qwest asks that the SGAT be modified to conform with this conclusion.

#### Findings:

18. DTT, in conjunction with entrance facilities, provides CLECs with the ability to connect the CLEC end office switch to a Qwest tandem or a Qwest end office switch. Qwest has agreed to provide CLECs with DTT without any limitation on length, so long as Qwest has available facilities. Qwest proposed a limitation on the length of DTT facilities Qwest must construct on behalf of a CLEC when no spare DTT facilities are available. Qwest had proposed a 50-mile limit on such construction. CLECs request that Qwest be required to construct DTT without any limit on the length of the facility.

19. The Group 2 Report adopted the CLEC position. If this position is upheld by this Commission, Qwest could be required to construct DTT to span distances of up to several hundred miles to carry local CLEC calls.

20. Although the Act requires incumbent local exchange carriers (ILECs) to permit CLECs the opportunity to interconnect with an incumbent's network at any technically-feasible point, it does not say that Qwest must build those facilities for CLECs without limitation. To the contrary, Congress recognized that there should be some reasonable boundary on an obligation that an ILEC build the CLEC facilities.<sup>9</sup>

21. In the workshop and at the July 30, 2001, hearing, Qwest recommended that the obligation to build transport capacity be

<sup>8</sup> Workshop Report at 6.

<sup>9</sup> e.g., *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997), rev'd on other grounds, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*Iowa Utils. Bd. I*), followed on remand, *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758 (8th Cir. 2000) (*Iowa Utils. Bd. II*) (Although the Act requires ILECs to provide interconnection at any technically feasible point, it does not require "superior quality interconnection").

limited to 50 miles. The FCC has stated, "[r]egarding the distance from an ILEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."<sup>10</sup> The FCC also stated, "the 'point' of interconnection for the purposes of Sections 251(c)(2) and 251(c)(3) remains on the local exchange carrier's network (e.g. main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection."<sup>11</sup> If Qwest were required to build out its facilities to any distance to accommodate interconnection, the FCC's use of the word "limited" in this context, and its statement regarding deferral to state commissions to determine the reasonable distance for mid-span meet points, would have no meaning.

22. Mr. Antonuk, however, disagreed by lifting the limit altogether. Mr. Antonuk rested his decision squarely on cost recovery, finding that there should be no limitation so long as Qwest recovered the costs of providing the service to CLECs. The Group 2 Report, therefore, refers the issue of cost recovery to a state specific cost docket. One of the seven states, however - Utah - did not quite go so far. The Utah Report concluded that "under circumstances where parties cannot reach an agreement [about who should build the DTT], the issue is to be brought before the state commission to be decided upon an individual case basis."<sup>12</sup>

23. Qwest is concerned that CLECs will abuse this provision, effectively asking Qwest to build when it is simply not economical to do so. Qwest asks the Commission adopt the language found in the Utah Commission Report. This would modify SGAT § 7.2.2.1.5 as follows: If Direct Trunked Transport is greater than fifty (50) miles in length, and existing facilities are not available in either parties' 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.

#### Conclusions:

24. We modify the Group 2 Report on this issue. We agree with Qwest that in certain situations it may be inappropriate to require the ILEC to build Direct Trunked Transport in excess of 50 miles. However, the Commission believes that the burden should be on Qwest to demonstrate that a proposed buildout in excess of the

<sup>10</sup> Local Competition Order at ¶ 553 (emphasis added).

<sup>11</sup> Id. (emphasis added).

<sup>12</sup> Utah Report at p. 6, ¶6 (May 15, 2001).

50 miles is not appropriate. Therefore, Qwest should modify its SGAT § 7.2.2.1.5 as follows:

If Direct Trunked Transport is greater than fifty (50) miles in length, and existing facilities are not available in either parties network, and the parties cannot agree as to which Party will provide the facility, Qwest may apply to the Commission for a waiver on an individual case basis.

#### Issue 8: Obligation to Build to Forecast Levels

25. Qwest has agreed to provide interconnection trunks to CLECs in a timely manner. To obtain information to determine whether and when to build additional facilities, the parties agreed upon an interconnection forecasting process. Qwest's SGAT, however, contained a provision which stated CLECs that historically underutilize the trunks they forecast must provide Qwest with a deposit to build facilities that Qwest does not believe are necessary. The dispute involves the interrelationship between forecasts and deposits, particularly in those instances where a CLEC has chronically (for a period of 18 consecutive months) underutilized its trunks. AT&T disagrees with the Group 2 Report's recommendation.

#### Findings:

26. The purpose of forecasting is to assure sufficient capacity on Qwest's network to avoid call blockage and to encourage efficient use of resources. CLECs have demanded and Qwest has agreed to "ensure that capacity is available to meet CLEC [interconnection] needs as described in the CLEC forecasts."<sup>13</sup> In many instances, this will require Qwest to construct new facilities.

27. Once a CLEC submits its forecast, however, it has no obligation to order interconnection trunks consistent with its forecast. This could leave Qwest in the position of having incurred cost to build new facilities, which then lie underutilized, dormant or dark. On the other hand, the CLEC is not harmed in any way by submitting inaccurate forecasts. The Washington Commission, in a recent order, indicated that "the burden should be a balance between the two parties, and so it is reasonable that there should be a deposit."<sup>14</sup>

28. CLEC utilization rate of forecasted interconnection trunks, historically, is well under 50 percent. Qwest testified

<sup>13</sup> SGAT § 7.2.2.8.4.

<sup>14</sup> Draft order, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 at ¶ 129.

that this underutilization has already cost it an unnecessary \$300 million region-wide.<sup>15</sup>

29. The Group 2 Report resolved this issue by requiring Qwest: (1) to build to the lower of the two forecasts (typically Qwest's) with no charge; (2) if a CLEC has failed to utilize its trunks for 18 continuous months at a rate of at least 50 percent, Qwest will still build to CLEC's higher forecast if CLEC pays a deposit, with the deposit being refunded according to actual trunk usage thereafter; (3) the trunk utilization rate used to determine the need for a deposit is based on actual trunks in service, not the number forecast; and (4) the deposit must be refunded if anyone uses the trunk within a six-month period.<sup>16</sup>

#### Conclusions:

30. We adopt the Group 2 Report's recommendation that accepts Qwest's requirement for a deposit in situations involving chronic underutilization. The CLECs should have some incentive to provide Qwest with accurate forecasts. The Commission finds that the SGAT is in compliance with respect to this issue.

#### Issue 9: Interconnection at Qwest Access Tandem Switches

31. Section 251(c)(2) of the Act states that Qwest must provide interconnection to CLECs for purposes of telephone exchange service and exchange access at any technically-feasible point and at parity with that it provides to itself. CLECs assert that this means that they have unilateral authority to determine where and how to interconnect with Qwest. Qwest asserts that interconnection should be a mutual responsibility under the Act,<sup>17</sup> but concedes that the CLECs who are also interexchange carriers feel strongly about certain forms of local interconnection that create real challenges for Qwest's current local network architecture.

#### Findings:

32. Section 251(c)(2) of the Act requires Qwest to provide interconnection to CLECs at any technically-feasible point and at parity with what it provides to itself. CLECs interpret this to mean that they have unilateral authority to determine where and how to interconnect with Qwest. In the CLECs' opinion, neither Qwest

<sup>15</sup> Seven-State Transcript, December 18, 2001, at 151.

<sup>16</sup> See SGAT §7.2.2.8.6.1.

<sup>17</sup> See 47 U.S.C. §§ 251(a)(1) and 251(b)(5). Qwest submitted direct, rebuttal and surrebuttal testimony of Thomas R. Freeberg to establish Qwest's compliance with the *prima facie* requirements of the interconnection aspects of checklist item 1. Mr. Freeberg testified in both pre-filed testimony and during the Section 271 Workshops that Qwest meets all of the requirements of checklist item 1 and the FCC's rules governing interconnection.



nor its local network architecture has any bearing on these issues. Qwest affirms its willingness to allow interconnection at any technically-feasible point, but believes that its network architecture should be considered a factor in where and how CLECs interconnect. Qwest, therefore, allows interconnection at its access tandems, but asks that one limitation be placed on that interconnection.

33. Qwest claims that interconnection at its access tandem presents problems because its network is bifurcated into two distinct parts: (1) its local network and (2) its long distance network. Qwest's bifurcated network approach led to two distinct sets of tandem switches: (1) those that switch local traffic (local tandems) and (2) those that switch long distance traffic (access tandems). Qwest's network architecture has historically separated local and long distance traffic. Thus, Qwest has separate, mature trunk groups in place to carry both local and long distance calls. These trunk groups are sized to accommodate, with some precision, the call volumes and growth that Qwest has historically experienced. CLECs are effectively asking the Commission to eviscerate this long standing network distinction.

34. The Group 2 Report allows interconnection at the access tandem and places certain limitations on when such interconnection can occur and when Qwest can ask that such interconnection be transitioned to a direct trunk group. For the most part, Qwest does not object with the Group 2 Report. Qwest will allow CLECs to interconnect at the access tandem and carry a certain percentage of their traffic in this manner. The Group 2 Report, however, could be read to allow CLECs to carry all of their traffic through the access tandem. In Qwest's view, this would cause monumental problems that would harm Qwest and CLEC customers alike. The reason: Qwest's long distance network is simply not designed to handle all of the long distance traffic and a substantial and increasing percentage of local traffic.<sup>18</sup>

35. Qwest claims that there is one relatively simple way to protect against most aspects of this concern - require CLECs to utilize direct trunks (move away from the access tandem and create a direct connection between their switch and the end office that receives the increased volume of traffic) when industry-recognized engineering standards warrant the transition. This is known as the 512 CCS (centum call seconds) rule. 512 CCS is the equivalent of one DS1 worth of traffic. It is recognized by many that this is the point at which economics warrant moving away from tandem trunks

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<sup>18</sup> In a table set forth in the reciprocal compensation portion of its brief, Qwest shows the many millions of minutes of traffic exchanged on its local network today. Transitioning this traffic to the trunks designed to handle long distance calls alone would cause severe trunk blockage in many circumstances.

and to direct trunks. Almost every time a CLEC routes a call through a tandem switch, it must also be switched at an end office, thereby requiring the CLEC to pay for Qwest to switch the traffic twice. According to Qwest, when the 512 CCS standard is met, it is generally more economic from a cost perspective and less onerous from a traffic volume perspective to install direct trunks. While the CLECs must install a direct trunk, they must then only pay Qwest to switch the traffic one time. The modification that Qwest seeks to the Group 2 Report on this issue is to require CLECs to transition away from tandem trunking and to direct trunks when the 512 CCS rule is met. Qwest claims that the 512 CCS rule will protect it, CLECs and end-users from unnecessary call blockage.

36. The facilitator also recognized the propriety of the 512 CCS rule. The Group 2 Report reads, "There is an evidentiary basis for concluding that Qwest's network configuration as it concerns the division of tandem switches can cause problems at different usage levels." Antonuk's proposed modification to SGAT § 7.2.2.9.6 retains the 512 CCS standard, however, it makes the 512 CCS rule optional. The CLEC is not required to transition to the direct trunk.

#### Conclusions:

37. The Commission is cognizant of Qwest's concerns in regards to its network configuration; however, the Commission remains concerned about imposing additional costs on CLECs. Therefore, the Commission modifies the Antonuk recommendation. The original §§ 7.2.2.9.6 and 7.2.2.9.6.1 should be deleted and replaced with the following language:

7.2.2.9.6 CLEC may interconnect at either the Qwest local tandem or the Qwest access tandem for the delivery of local exchange traffic. When CLEC is interconnected at the access tandem and where there would be a DS1's worth of local traffic (512 CCS) between CLEC's switch and those Qwest end offices subtending a Qwest local tandem, Qwest may petition the Commission to require the CLEC to transition to a direct trunk group to the Qwest local tandem.

7.2.2.9.6.1 Qwest will allow Interconnection for the exchange of local traffic at Qwest's access tandem without requiring Interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem; and regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust.

38. This SGAT language takes the facilitator's decision and simply provides Qwest with the ability to invoke the application of the 512 CCS rule. It does not give Qwest the alternative of interconnecting elsewhere at its sole discretion if it is willing to absorb the cost differential. The Commission hereby adopts this language.

B. Collocation

Overview:

39. Pursuant to 47 U.S.C. §251(c)(6), Qwest must "provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . ." <sup>19</sup> In addition, the FCC's rules require that "an incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers." <sup>20</sup>

40. The Group 2 Report raised and resolved 54 collocation issues. Therefore, we adopt the Group 2 Report's recommendation with regard to those issues relating to Qwest's SGAT. The Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to all 54 raised and resolved collocation issues.

41. However, four issues were deferred or addressed elsewhere (reciprocal compensation, collocation costs, lack of available facilities and APOTS-CFA information). The Group 2 Report noted that 15 issues remained in dispute. Of the 15 disputed collocation issues, Qwest accepted the decisions in the Group 2 Report with respect to 14 of these issues. Qwest opposes the Group 2 Report's recommendation regarding issue 14 (collocation intervals.) <sup>21</sup> AT&T opposes the Group 2 Report's recommendation on three issues: issue 1 (product approach to collocation); issue 4 (cross connections at multiple tenant environments [MTEs]); and issue 10 (channel regeneration charges). Thus, because neither party raised any objections in their written comments with regard to the disputed collocation issues 2-3, 5-9 and 11-13, we adopt the Group 2 Report's recommendation with regard to those issues as they are applicable to Qwest's SGAT. The Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and

<sup>19</sup> 47 U.S.C. § 251(c)(6).

<sup>20</sup> 47 C.F.R. §§51.323, 51.5.

<sup>21</sup> Qwest's comments at 12.

regulations with respect to disputed collocation issues 2-3, 5-9 and 11-13.

42. In addition, the Group 2 Report asked each party to present and defend proposed SGAT language regarding issue 15 (maximum order numbers). We address the remaining disputed issues concerning collocation below.

Issue 1: "Product" Approach to Collocation

43. Qwest's SGAT includes numerous forms of collocation including, but not limited to, caged physical collocation, cageless physical collocation, ICDF collocation, virtual collocation, shared collocation, adjacent collocation and remote collocation. CLECs want to ensure that new forms of collocation are provided to them in a prompt manner. The Group 2 Report describes this issue as having two distinct aspects: 1) whether it is reasonable for Qwest to require application of the bona fide request (BFR) process before making new forms of collocation (i.e., those not detailed in the SGAT) available; and 2) how to address potential inconsistencies between SGAT provisions and underlying technical and administrative documents that provide equipment specifications, administrative or procedural requirements for ordering and the like. The Group 2 Report found that this issue should be addressed in the general terms workshop.

Findings:

44. A clear understanding of and agreement to the terms and conditions associated with a new Qwest product or service is a fundamental matter of contract law.<sup>22</sup> It would appear unreasonable to require Qwest, or any other provider, to offer a new product or service without prior agreement to the terms and conditions pursuant to which the product or service is offered. There is nothing in the Act that requires Qwest to offer a product or service to CLECs without first agreeing upon how it will be available, used and paid for.

45. There is no basis for declaring that new forms of collocation must be available under the same terms and conditions as apply to different forms of collocation simply because such terms already exist, but do not necessarily reflect the different nature of the collocations involved.

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<sup>22</sup> See e.g., Farnsworth on Contracts § 3.12 (2<sup>nd</sup> ed. 1998) (The offeror is often described as the 'master of the offer' in the sense that, since the offeror confers on the offeree the power of acceptance, the offeror has control over the scope of that power and over how it can be exercised.); 1 Corbin, Contracts § 64 (1963 & Supp.1980) (Describing offeror as the 'master' of his offer.); Restatement of Second Contracts §29, Comment A (1979) (The offeror is the master of his offer.).

Conclusions:

46. We adopt the Group 2 Report's recommendation that there is *insufficient* evidence to rationalize the determination that Section 271 compliance must be delayed. Qwest's approach is consistent with the Act, which recognizes that interconnection agreements must set forth the terms and conditions of access as between the individual parties.<sup>23</sup> The Act clearly anticipates that the rates, terms and conditions for each service will be carefully spelled out in interconnection agreements.

47. Qwest has also shown a willingness to allow CLECs simply to opt in to the terms and conditions of a new product offering (without having to amend their actual agreements) by offering to make products immediately available under the terms and conditions consistent with that product offering.<sup>24</sup>

48. Finally, the CLECs will have an opportunity to raise concerns with the BFR process in the general terms and conditions workshop. It is in that workshop where the parties can address how to best streamline and clarify the BFR process.

49. The Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

Issue 4: Cross Connections at Multi-Tenant Environments (MTEs)

50. Qwest's SGAT contains specific provisions in Section 9.3 for how CLECs obtain access to subloops. AT&T has requested an additional provision in the SGAT -- Section 8.1.1.8.1 - to state that collocation is not required to obtain access to subloops. Qwest has already made this concession in the Emerging Services workshop and does not oppose AT&T's request for additional SGAT language.

<sup>23</sup> See 47 U.S.C. §252(a)(1).

<sup>24</sup> In order to allay any concerns expressed by CLECs about unnecessary delays in making products available, Qwest has offered the following language to be added to 8.1.1:

If Qwest provides a new product offering, CLEC will be allowed to order that offering under the prices, terms and conditions set forth as part of the product offering. Where the product offering provides an opportunity for the terms and conditions automatically to become an amendment to the CLEC's interconnection agreement, the CLEC shall have that option. If the CLEC declines that option, it shall have the opportunity to negotiate a specific amendment to its interconnection agreement. Qwest agrees to negotiate such specific amendments expeditiously.

## Findings:

51. Qwest confirmed in its emerging services brief that there was no collocation requirement for accessing subloops provided that the locations in question were within or attached to a customer-owned building. The Group 2 Report found that Qwest's proposal provides a sound solution to the general question of non-compliance of collocation requirements to MTE terminals. Therefore, Qwest does not oppose the inclusion of AT&T's proposed SGAT language.

## Conclusions:

52. Although we adopt the Group 2 Report's recommendation that Qwest's proposal provides a solution to the general question of non-compliance of collocation requirements to MTE terminals, we also adopt the consensus SGAT language proposed by AT&T.

53. As Qwest has amended its SGAT accordingly, the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

## Issue 10: Channel Regeneration

54. Qwest charges CLECs for channel regeneration when the distance between the power source and the CLEC's collocation are such that channel regeneration is required. AT&T argues that Qwest should never be able to recover for channel regeneration because a perfectly designed central office would allow CLEC's equipment to always be sufficiently close to the Qwest's network equipment such that channel regeneration would not be required. The Group 2 Report found a middle ground and concluded that the SGAT should be changed to remove the right to charge for regeneration if a location for collocation exists that would not require regeneration; however, where no such location exists, Qwest can charge for providing such regeneration. AT&T challenges this issue.

## Findings:

55. SGAT § 8.3.1.9 allows Qwest to charge CLECs a "Channel Regeneration Charge" when the distance from the leased physical collocation space or from the collocated equipment (for virtual collocation) to the Qwest network is of sufficient length to require regeneration. Regeneration is essentially the enhancement of the signal being transmitted to ensure that the signal is strong enough to meet technical requirements when it reaches its ultimate destination and is required when a signal transits longer than certain maximum distance. CLECs claim that because Qwest has "control" over where CLEC equipment is placed, Qwest should pay for regeneration if it is required.

56. The selection of collocation space is not without practical limits, especially in those wire centers with high demand for collocation and limited additional space options. Qwest has a duty under the SGAT to provide the most efficient means of interconnection possible.<sup>25</sup> This will ensure, to the maximum extent possible, that CLEC equipment is placed in such a manner as to avoid the need for signal regeneration. Where regeneration is unavoidable, however, CLECs should incur the cost of this service as part of the cost of collocation.

Conclusion:

57. In its recent decision, the District of Columbia Court of Appeals indicated that "necessary," as it appears in the statute, means "what is required to achieve a desired goal."<sup>26</sup> When the distance from the physical collocation space leased by the CLEC or from the collocated equipment to the Qwest network is of sufficient length, regeneration is "necessary." If regeneration must be provided, it must be paid for. In the *Local Competition Order*, the FCC adopted specific rules to implement the collocation requirements of § 251(c)(6).<sup>27</sup> The Eighth Circuit in *Iowa Utilities Bd. v. FCC* specifically upheld these rules.<sup>28</sup> The Eighth Circuit also specifically found that, "[u]nder the Act, an incumbent LEC will recoup the costs involved in providing interconnection and unbundled access from the competing carriers making these requests."<sup>29</sup> Qwest is entitled to recover its costs associated with collocation.<sup>30</sup>

58. As such, we adopt the Group 2 Report's recommendation that the SGAT should be changed to reflect that Qwest does not have the power to charge for regeneration where there exists another available collocation location where regeneration would not be required, unless a CLEC chooses to remain at the location where regeneration is required.<sup>31</sup>

59. As Qwest has amended its SGAT accordingly, the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

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<sup>25</sup> SGAT Section 8.2.1.23 provides that, "Qwest shall design and engineer the most efficient route and cable racking for the connection . . . ."

<sup>26</sup> *GTE Service Corp. v. FCC*, 205 F.3d 416, 423-424 (DC Ct. App. 2000).

<sup>27</sup> *Local Competition Order* at ¶¶ 555-617.

<sup>28</sup> 120 F.3d at 818.

<sup>29</sup> *Id.* at 810.

<sup>30</sup> Qwest also notes that a channel regeneration charge is specifically provided in SBC's CLEC handbook, and was not an impediment to SBC's successful 271 applications for Texas, Kansas and Oklahoma.

<sup>31</sup> Group 2 Report at 88.

## Issue 14: Collocation Intervals

## Findings:

60. The parties went to impasse over whether Qwest can extend the interval it takes to provision collocation when the CLEC failed to submit a forecast. The SGAT contains a 90-day collocation interval when Qwest receives a forecast at least 60 days in advance of the collocation application. On the other hand, a failure to forecast extends the interval from 90 days to 120 days. Qwest testified that, as of the workshop, it had received virtually no collocation forecasts and its average provisioning interval was approximately 120-130 days. Qwest performance data shows it meets this interval consistently.

61. On August 10, 2000, the FCC issued an order that established a national 90-day default interval for provisioning physical collocation.<sup>32</sup> Through its order the FCC requires incumbents, under ordinary circumstances, to complete all aspects of collocation within 90 days of receiving a requesting carrier's application. On November 7, 2000, in response to requests filed by Qwest, Verizon and SBC, who sought waivers from the 90-day default interval, the FCC released an amended order,<sup>33</sup> which clarified its earlier decision, that extended the 90-day default interval when the CLEC failed to provide a forecast.

62. CLECs continue to object to SGAT provisions that condition Qwest's delivery of collocation on the existence of CLEC forecasts. Specifically, CLECs question the 120-day interval for virtual and physical collocation absent a CLEC forecast (SGAT §§ 8.4.2.4.3, 8.4.3.4.3, 8.4.3.4.4).

63. The Group 2 Report adopted the CLECs position and required a 90-day collocation interval, irrespective of whether CLECs provide Qwest with a forecast.

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<sup>32</sup> See Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Order Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, FCC 00-297, ¶ 64 (rel. August 10, 2000) (FCC00-297).

<sup>33</sup> Memorandum Opinion and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 00-2528 (rel. Nov. 7, 2000) (amended order).



## Conclusions:

64. Mr. Antonuk recognized that "[i]t is true that the lesser the quality of CLEC forecasting the greater will be Qwest's difficulty in responding to collocation requests," however, he still did not increase the interval for failure to forecast. Mr. Antonuk rested his decision on the premise that the SGAT should not punish CLECs for "a failure to provide perfect foresight." We find this to be reasonable and, hereby, adopt his findings in part. However, in light of the potential complexity of the various requests for collocation, Qwest may petition the Commission, within the first 30 days of a CLEC request for collocation, for an extension of time in which to complete a specific collocation.

65. Assuming that Qwest amends its SGAT accordingly, the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

## Issue 15 - Maximum Number of Collocation Orders

66. The SGAT contains a provision (SGAT § 8.4.1.10, formerly § 8.4.3.3) that limits the CLEC to issuing five collocation orders per state per week. The facilitator recognized that, "Qwest should have the opportunity to adjust collocation intervals when the workload becomes unmanageable."

## Findings:

67. As the facilitator recognized, the FCC has found that there should be some limits on the numbers of collocations a CLEC can issue at any one time. In its BellSouth Louisiana II Section 271 decision, the FCC stated that ILECs should only be required to prepare for reasonably foreseeable volumes.<sup>34</sup> Businesses prepare for the norm, not the exception. As established by the Qwest exhibits,<sup>35</sup> the amount of order volume from CLECs can vary by more than 10-fold in any given month, with even greater variations on a given day or week. This provision of the SGAT entitles Qwest to coordinate with a CLEC, where necessary, to meet unusually high demand.

68. The FCC confirmed this view in its recent collocation decision which held that, "... we believe that an incumbent LEC has had ample time since the enactment of Section 251(c)(6) to develop internal procedures sufficient to meet this deadline [national default interval], *absent the receipt of an extraordinary*

<sup>34</sup> Second BellSouth Louisiana Order at ¶ 54 (Oct. 1998).

<sup>35</sup> See Exhibit WSI- QWE-MSB 11.

number of complex collocation applications within a limited time frame."<sup>36</sup> State commissions have the authority to adopt "significantly longer" provisioning intervals, when presented with evidence that would justify this need. Thus, the FCC clearly contemplated exceptions to collocation provisioning intervals under these exact circumstances.

69. Qwest, therefore, proposed to retain the following SGAT language:

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.

70. The question raised by the facilitator, effectively, is whether the limitation on the number of applications a CLEC can submit is justified recognizing that Qwest must have staff in place to meet "reasonably foreseeable demand." Furthermore, Qwest's proposal would appear to disregard the complexity of any one such application.

#### Conclusions:

71. While the Commission agrees that CLECs should plan accordingly and order their collocations in stages, not all at once; the Commission declines to adopt in entirety the SGAT language proposed by Qwest on this subject. Instead, the Commission proposes the following language be adopted instead:

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 at least 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 may be individually negotiated if authorization is obtained from the Commission. 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.

<sup>36</sup> FCC 00-297 at ¶ 24 (emphasis added).

72. Assuming that Qwest amends its SGAT accordingly, the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

C. Number Portability

Overview:

73. Number portability is defined as the ability of customers "to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one service provider to another."<sup>37</sup> Section 271(c)(2)(B) of the Act, or checklist item 11, requires Qwest to comply with the number portability regulations adopted by the FCC.<sup>38</sup> Section 251(b)(2) requires all LECs "to provide to the extent technically-feasible, number portability in accordance with requirements prescribed by the Commission."<sup>39</sup>

74. The Group 2 Report raised and resolved 13 number portability issues. Therefore, we adopt the Group 2 Report's recommendation with regard to those issues regarding Qwest's SGAT. However, only one issue remains at dispute - whether Qwest properly coordinates long term number portability (LNP) with the loop cut-overs. Qwest does not dispute the resolution of this issue. It also appears, now that Qwest has made an additional post-workshop concession, that AT&T does not dispute the resolution of this issue either.

75. We address the remaining issue(s) concerning number portability below. As to all issues that had been or remain at dispute, the Commission finds that Qwest has properly implemented the Group 2 Report through amendments to its SGAT.

76. The Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to number portability.

<sup>37</sup> 47 U.S.C. §153(30).

<sup>38</sup> 47 U.S.C. §271(c)(2)(B)

<sup>39</sup> Id., §251(b)(2)

## Issue 1: LNP with Loop Cut-Over

77. When Qwest provisions LNP, its objective is to complete all of its work such that CLEC can complete its work without any disruption. To ensure this occurred, Qwest originally disconnected its line at 11:59 p.m. on the day the port was scheduled to occur. AT&T claimed that the disconnect should occur the next day to ensure AT&T completed its scheduled work before the disconnect. Although the Group 2 Report found for Qwest on this issue, Qwest nonetheless agreed to disconnect the line at 11:59 on the day after the scheduled port. This portion of the issue is now consensus and the Commission adopts the resolution of the parties.

78. AT&T also demanded that Qwest develop a system that would check to ensure that the CLEC had completed its portion of the number port before disconnecting Qwest's line. On this point, the Group 2 Report required Qwest to complete a study to determine what it would cost to complete this work. No one challenges this aspect of the Group 2 Report. Therefore, the Commission adopts this as the functional resolution of the parties.

## Findings:

79. When a CLEC fails to inform Qwest about its failure to complete loop provisioning prior to the time the CLEC advised Qwest to execute the switch disconnects, Qwest proceeds under the assumption that the work has been completed. This can result in a disconnect of the customer's line and an out of service situation in the event that the CLEC neglects to provide Qwest with timely notification. To guard against this situation, Qwest has agreed to disconnect the number at 11:59 p.m. on the night after the port, thereby giving CLECs one additional day to notify Qwest of any problems. This change is reflected in Qwest's SGAT and has resulted in consensus.

80. One purpose of LNP was to create a purely mechanized process. This was why Congress mandated a transition from interim number portability - a manual process - to LNP. As a result, LNP has received much industry attention, which has resulted in fairly standardized industry practice. Qwest participates in industry forums and follows industry practices with respect to number portability. AT&T now wants Qwest to develop capabilities and adopt processes that it concedes have never been developed anywhere in the nation.<sup>40</sup> The entire purpose of this process change is to create a separate process within Qwest that ensures that CLECs have completed their work before Qwest disconnects its line. AT&T has not demonstrated why it has been unable to accomplish its work, or

<sup>40</sup> Colorado Transcript, October 23, 2000, at 97-100; see also, Seven-State Transcript, February 26, 2001 at 105; 121-122.

at least notify Qwest that it has not, when other CLECs apparently have not found the need for this extra requirement. To the extent it is necessary, however, Qwest already offers a process to CLECs that should ensure this occurs.

81. Qwest also offers a "managed cut" to ensure the number has ported before the disconnect occurs. The managed cut process requires Qwest technicians to coordinate with the CLEC technicians during the porting process. Thus, the managed cut offers CLECs a manual process that guarantees that the loop cut-over is completed and the number port activated prior to disconnect.

82. Qwest, therefore, offers CLECs both a fully automated flow-through process (traditional LNP) and a manual process (managed cuts) both of which allow the CLEC to stop number porting before the disconnect occurs.

#### Conclusions:

83. Qwest provides the same method of coordination for number portability for CLEC provided loops as it makes available for Qwest unbundled loops. Qwest is only responsible for its own processes, not for how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment.<sup>41</sup>

84. With regard to the timing of disconnect notification, the Group 2 Report's recommendation requires that Qwest halt the disconnect if it receives notices from the CLEC by 8:00 p.m. Qwest has agreed to extend the disconnect notification deadline to 11:59 p.m. on the day *after* the number port.

85. For these reasons the Commission adopts the Group 2 Report relating to Qwest's SGAT and the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

#### D. Reciprocal Compensation-checklist item 13

##### Overview:

86. Reciprocal compensation refers to the method for compensating carriers for transporting and terminating local calls that originate on the network of another carrier. Section 271(c)(2)(B)(xiii) of the Act requires that the incumbent's access and interconnection agreements include reciprocal compensation

<sup>41</sup> Draft order, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001, at ¶ 212.

arrangements that are consistent with the requirements of Section 252(d)(2), which governs the transport and termination of traffic.<sup>42</sup>

87. The parties to the workshop agreed to import the record and consensus reached in the states of Colorado and Washington. The Commission hereby adopts all of the consensus items agreed to, by importation from other dockets regarding Qwest's SGAT. The Group 2 Report also resolved two issues with regard to reciprocal compensation (the tandem switching definition and including IP telephony in switched access). We therefore adopt the Group 2 Report's recommendations with regard to these two issues relating to Qwest's SGAT. However, five issues remained in dispute. Of the five disputed items, Qwest, in its written comments did not challenge any of the Group 2 Report's recommendations.<sup>43</sup> AT&T commented on only one issue, "Ratcheting." Both Qwest and AT&T provided written comments on implementation of the FCC's recent order on reciprocal compensation for internet service provider (ISP) traffic. This was at the specific request of the facilitator because the decision post-dated the workshop. Therefore, we adopt the Group 2 Report's recommendation to the three issues with regards to Qwest's SGAT and specifically address the ISP traffic and Ratcheting issues separately below.

88. For these reasons we adopt the Group 2 Report and the Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to reciprocal compensation.

#### Issue 1: Internet Service Provider Traffic

##### Findings:

89. One of the disputed issues was whether Qwest must pay reciprocal compensation for the transport and exchange of ISP traffic. On this issue, Qwest asserted that reciprocal compensation was for the exchange and termination of local traffic. ISP traffic is interstate in nature. Qwest cited to FCC decisions confirming this point. Although the CLECs challenged Qwest's interpretation, the FCC eliminated any doubt when it released a dispositive decision on the subject on April 27, 2001.<sup>44</sup>

90. The facilitator recognized the binding nature of this decision and found that "the treatment of ISP traffic as a condition for approval of checklist item 13 requirements is

<sup>42</sup> 47 U.S.C. § 252(d)(2).

<sup>43</sup> Qwest's Comments at 22.

<sup>44</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 01-131 (Apr. 27, 2001) (hereinafter *Reciprocal Compensation Decision*).

inappropriate." Nonetheless, the facilitator did hold that the states have a substantial interest in ensuring that the SGAT contains language that conforms with the FCC's recent decision. Thus the facilitator requested that all parties present a proposal that conforms with the new decision. Qwest's proposal, which tracks the FCC's decision precisely, is as follows:

"Congress, through section 251(g), expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic. Accordingly, . . . ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)."<sup>45</sup> Accordingly, the SGAT specifically exempts ISP traffic from the category of traffic for which reciprocal compensation must be paid. For insertion at SGAT § 7.3.6.

"Given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses. [The FCC] believe[s] that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high traffic volumes that are entirely one-directional."<sup>46</sup> The SGAT, therefore, utilizes bill and keep as the recovery mechanism for ISP traffic "because it eliminates a substantial opportunity for regulatory arbitrage."<sup>47</sup>

The SGAT "initiates a 36-month transition towards a complete bill and keep recovery mechanism."<sup>48</sup>

The SGAT "cap[s] the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. Thus, "[b]eginning on

<sup>45</sup> Reciprocal Compensation Decision at ¶ 3.

<sup>46</sup> Reciprocal Compensation Decision at ¶ 4.

<sup>47</sup> Reciprocal Compensation Decision at ¶ 6.

<sup>48</sup> Reciprocal Compensation Decision at ¶ 7.

the effective date of this Order [June 14, 2001], and continuing for six months, inter-carrier compensation for ISP-bound traffic will be capped at a rate of \$.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at \$.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at \$.0007/mou."<sup>49</sup>

The SGAT caps the "total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation." For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling."

The SGAT contains "a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in this Order."<sup>50</sup>

#### Conclusions:

91. Qwest's redlined SGAT contains language that conforms to the above proposal, which again comes directly from the FCC decision. Thus, the Commission approves this SGAT conforming language as consistent with federal law and all applicable state law and regulations.

<sup>49</sup> Reciprocal Compensation Decision at ¶ 8.

<sup>50</sup> Reciprocal Compensation Decision at ¶ 8.



## Issue 3: Ratcheting

92. There are two related issues involved here: (1) commingling of local with interLATA toll traffic on the same trunk group (commingling) and (2) the ability of CLECs to use that commingling to ratchet federal interexchange carrier access rates downward (ratcheting). AT&T asserted that it should be able to commingle local and interLATA interexchange access traffic on federally tariffed special access circuits and "ratchet" down the tariffed rate, using special access rates for that percentage that is toll and TELRIC rates for that percentage that is local.

93. Qwest has consistently opposed ratcheting of rates on trunks with commingled traffic. The Group 2 Report rejected AT&T's arguments as inconsistent with federal law and AT&T universal service obligations.

## Findings:

94. The FCC's supplemental order and supplemental order on clarification rejected commingling because of concern about the potential for bypass of special access by using unbundled network elements.<sup>51</sup> The CLEC's current request does not differ from one previously addressed by the FCC. At the follow-up workshop in Washington, Qwest presented the *ex parte* comments of WorldCom on commingling and ratcheting, and presented testimony that the commingling proposed in that *ex parte* submission was the same proposal that AT&T and WorldCom advocated at the workshop.<sup>52</sup> Specifically, at the Washington workshops, AT&T and WorldCom claimed that they were not seeking to commingle local and toll traffic in the same trunk group, the type of commingling they claim the FCC prohibited. Rather, for local traffic, AT&T and WorldCom wished to use spare DS1 circuits on high-speed digital special access facilities while using the remaining circuits for interstate traffic and asserted that the FCC did not address *this* alternative.

95. WorldCom made precisely the same proposal at pages 6 and 7 of its *ex parte* submission to the FCC that Qwest submitted in Washington Workshop 1 as Exhibit 169. Specifically, WorldCom requested that CLECs be permitted to purchase their local transport facilities at TELRIC rates instead of as special access, convert DS1 lines used to carry local traffic to TELRIC-rate facilities, bring those facilities to an ILEC end office at DS3, and "multiplex the DS1s onto the DS3 they have purchased out of the ILECs' special access tariffs."<sup>53</sup> WorldCom claimed that a prohibition on this type

<sup>51</sup> *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, (rel. June 2, 2000) (supplemental order).

<sup>52</sup> Washington Workshop 1 Ex. 169.

<sup>53</sup> *Id.* at 6.

of combining would be inefficient and require CLECs to operate duplicative networks.<sup>54</sup> WorldCom also claimed that the local circuits would be segregated from toll circuits, and that ratcheting of rates should be permissible to reflect that a portion of the facilities are used to carry local traffic.<sup>55</sup>

96. The FCC considered each of these claims and specifically rejected all of them as well as WorldCom's commingling proposal:

We further reject the suggestions that we eliminate the prohibition on "commingling" . . . in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services.<sup>56</sup>

97. In imposing the moratorium on commingling, the FCC was concerned that interexchange carriers would use local facilities, priced at TELRIC, to avoid special access charges that currently support universal service. As with the commingling of UNEs with special access circuits, "universal service could be harmed" by commingling interconnection facilities and special access circuits and ratcheting rates because interexchange carriers would "use the incumbent's network without paying their assigned share of the incumbent's costs normally recovered through access charges . . . ."<sup>57</sup>

98. Nonetheless, Qwest's SGAT does allow CLECs to use spare capacity on existing special access circuits for interconnection so long as they continue to pay traditional special access rates for the facilities.

#### Conclusions:

99. The FCC has been clear by stating that CLECs cannot convert special access circuits to TELRIC-rated facilities unless they meet the conditions in the *Supplemental Order* and *Supplemental Order Clarification*. Commingling and ratcheting of rates to TELRIC will disrupt universal service subsidies prior to the completion of FCC proceedings on this issue and inappropriately usurp the FCC's authority. Since there is no provision of the Act and no FCC order that requires carrying of local interconnection on special access circuits, and certainly not at discounted rates, there is no basis for finding that Qwest fails to meet the requirements of checklist item 13. The Group 2 Report specifically agrees with these conclusions.

<sup>54</sup> Id. at 7.

<sup>55</sup> Id. at 7.

<sup>56</sup> Supplemental Order Clarification ¶ 28 (citing MCI *ex parte* in footnote 79 of paragraph 28).

<sup>57</sup> Id.

100. The Commission finds that the SGAT is in compliance with respect to this issue. Accordingly, we adopt the recommendation of the Group 2 Report. Qwest's proposal provides AT&T and other CLECs the opportunity to enjoy the available efficiencies but protects the integrity of the pricing system.

101. The Commission finds that Qwest's SGAT is in compliance with Sections 251, 252 and 271 of the Act, implementing FCC regulations and all applicable state law and regulations with respect to this issue.

E. Resale

102. Section 271(c)(2)(B)(xiv) of the Act requires Qwest to make "telecommunications services . . . available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3)."<sup>58</sup>

103. Thirty-two issues were raised and resolved in the Group 2 Report. Ten issues remained in dispute. Qwest, in its written comments, agreed not to challenge any aspect of the decisions regarding these issues in the Group 2 Report. In addition, Qwest noted that it agreed to make the SGAT changes required in the Group 2 Report. Similarly, AT&T did not challenge any of the ten disputed resale items in its written comments.

104. Therefore, we adopt the Group 2 Report's recommendations with regard to all of the resale issues. We also find that Qwest has properly implemented the required changes set forth in the Group 2 Report by filing compliant SGAT language.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Qwest's SGAT meets the requirements of Sections 251, 252 and 271 of the Act, relevant FCC regulations and all applicable state law and regulations with respect to the Group 2 Report as set forth above.

<sup>58</sup> 47 U.S.C. § 271(c)(2)(B)(xiv); 47 U.S.C. § 251(c)(4); 47 U.S.C. § 252(d)(3).

Application No. C-2537

PAGE 28

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of November, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*David L. ...*

*Ann C. Boyle*

*Frank E. Landis*

//s// Frank E. Landis

*Thomas J. ...*  
Chairman

ATTEST:

*John S. ...*

Executive Director