practice in the long-distance business – to preserve its ability to install different equipment as appropriate based on its future network planning. 25/ Qwest also will provide Touch America with access to and use of its Signaling System 7 ("SS7") network in connection with the four leased circuit switches. 26/

Qwest will make available to Touch America collocation space in a number of its interexchange points of presence ("POPs") to enable Touch America to locate its own telecommunications equipment. 27/ Qwest is assigning to Touch America all contracts for interstate and intrastate access service that it has with U S WEST, other ILECs, and competitive local exchange carriers ("CLECs") relating to the divested services within the 14-state region. 28/

Finally, in another commonplace type of transaction in the long-distance industry, the parties have signed reciprocal wholesale contracts that would

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25/ Touch America also will lease ports on certain *out-of-region* Qwest switches for a limited transition period to facilitate the regrooming of traffic on to the four in-region switches and Touch America's network.

26/ *See* 47 U.S.C. § 271(g)(6); Transition Services Agreement, Attachment SW (Agreements Tab III-B-5), § 6.

27/ *See* Collocation License Agreement (Agreements Tab II-C). The entity providing collocation in these Qwest interexchange carrier facilities will be neither an ILEC nor the successor or assign of an ILEC, as defined in Section 251(h), and the collocation will not be provided for the purpose of obtaining access to Section 251(c)(2) interconnection or Section 251(c)(3) unbundled network elements. Therefore, this collocation arrangement will not be subject to Section 251(c)(6) of the Act or Sections 51.321-51.323 or 64.1400, et seq., of the Commission's rules.

28/ *See* Local Access Assignment & Assumption Agreement Term Sheet (Agreements Tab II-F).

enable Touch America to purchase out-of-region transmission capacity on a wholesale basis from Qwest, and would enable Qwest to purchase in-region transmission capacity on a wholesale basis from Touch America (for purposes such as terminating traffic that originates out-of-region). 29/ These contracts specify prices, but do not require either party to purchase any specific amount of capacity, or capacity along any specific route. 30/

D. Sales Employees to be Transferred to Touch America

Touch America will be hiring new employees as it continues to grow its interexchange business aggressively through this acquisition and otherwise. Conversely, Qwest's requirements for in-region employees will be reduced as a result of its exit from the in-region interLATA market.

The Stock Purchase Agreement between Qwest and Touch America addresses this issue. Touch America will offer employment to approximately 120 in-region sales and marketing employees of Qwest. Touch America will give these identified employees incentives to accept employment from Touch America, and Qwest will reimburse Touch America for the cost of these incentives. 31/ Qwest will

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29/ Qwest will not provide Touch America any *in-region* wholesale capacity.

30/ *See* Bilateral Wholesale Agreement (Agreements Tab II-A) and Side Letter Regarding Wholesale Capacity (Agreements Tab II-B).

31/ *See* Stock Purchase Agreement (Agreements Tab I-A), § 6.13. These incentives do not relate to the performance of the employees upon transfer to Touch America.

distributors to sell operator services through contracts with payphone owners, hotel management companies, and other aggregators.

Divestiture will impact these third party contracts because Qwest no longer will be able to provide in-region interLATA service products for these agents and distributors to sell. At the same time, however, Touch America desires to use some or all of these third party outlets to sell its own products.

To address these issues, Qwest is assigning in part (with respect to in-region services) all contracts with sales agents and distribution channels to Touch America. The key purposes of the assignment are to increase Touch America's means to sell and distribute its services post-divestiture, and to meet contractual obligations to the sales agents and other distribution channels. All agents and distributors whose contracts are being assigned in whole or in part are receiving letters explaining that Qwest will no longer provide service in-region and notifying them of the transfer to Touch America. Qwest will seek the consent of agents and distributors where needed.

The partial assignment of these preexisting contracts will be structured so that Touch America is responsible for paying all commissions on in-region sales and meeting other in-region-related obligations. Qwest will remain responsible to the agents and distributors with respect to out-of-region activity. 35/

35/ Some of Qwest's pre-existing contracts with these agents and distributors provide for minimum volumes, and many of the contracts entitle the agents to

[footnote continues]

have no financial or other relationship with these employees after divestiture. This experienced and talented marketing team will enable Touch America to continue the process of building up its in-region business immediately after divestiture. 32/

Both Touch America and Qwest have agreed not to recruit – or employ – one another's employees in specified categories for approximately 2 ½ years following the divestiture. 33/ This will further ensure that the employees transferred from Qwest to Touch America are likely to remain with Touch America, and in any event will not have any potential interest in Qwest.

E. Third Party Contracts to be Assigned to Touch America

1. Contracts With Sales Agents and Distribution Channels

Today Qwest outsources a significant amount of its sales activity. For example, Qwest uses non-exclusive third-party sales agents and alternative distribution channels to sell services to small- to medium-sized business accounts, as well as to certain large business accounts. 34/ Qwest also uses third party

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32/ These sales employees are sufficiently important to Touch America that it has required a purchase price adjustment if a minimum number of the employees do not accept Touch America employment. *Id.* at § 2.8(b).

33/ *Id.* at § 6.13(d). Specifically, this agreement runs for 18 months after the termination of the Transition Services Agreement, which has a term of one year, with an option to extend for up to an

additional year, but may be terminated earlier at Touch America's option. Transition Services Agreement (Agreements Tab III-A), § 4.4.

34/ In addition, some sales agents who focus exclusively on residential customers have exclusive contracts with Qwest.

Most of these third-party sales agents primarily sell services to residential and smaller business customers. 36/ Thus, while some of them may sell both Touch America services in-region and Qwest services out-of-region, most typically would not sell to large national accounts who might be interested in services both within and outside the U S WEST territory.

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higher commissions based on higher tiers of sales volumes. Subsequent to the divestiture, Qwest and Touch America will honor the terms of these contracts by paying commissions to these agents based on their total sales of both Qwest and Touch America services. Significantly, this arrangement will be available only to pre-existing agents and distributors, and only for the term of their pre-existing contracts (including any option exercised by the agent to extend the contract on the same terms). The arrangement will *not* be available to agents or distributors (current or new) that sign new or modified contracts to represent either Qwest or Touch America subsequent to the divestiture. Qwest and Touch America will not be common parties to such contracts.

To facilitate this arrangement, Qwest will coordinate computation of commission payments on behalf of Touch America for this group of sales agents. Importantly, Touch America will be responsible for paying the commissions to these agents for all sales of in-region services, and Qwest will be responsible for paying commissions for all sales of out-of-region services. The only aspect that will be coordinated is the calculation of the percentage level of these commission payments. (Thus, for example, if an agent's contract specified a 20% commission payment if she achieved $50,000 in sales volume, and the agent sold $40,000 of Qwest services and $15,000 of Touch America services, she would be entitled to the 20% commission separately from each of the carriers. Qwest would pay her 20% of $40,000, or $8,000, and Touch America would pay her 20% of $15,000, or $3,000.) Touch America will be responsible for issuing its own checks to agents (except with respect to operator service distributors, discussed below). These arrangements are reasonable transition devices in the context of this divestiture, and of Qwest's exit from the in-region interLATA market.

36/ Qwest primarily uses in-house sales representatives to sell services to prospective large business customers, who are the entities that are most likely to have customer locations in multiple parts of the country.

2. Contracts with Vendors and Platform Operators

Qwest goes to outside vendors for many of the support functions used in connection with its own services (including ILEC billing and collection, call centers staffed with third-party customer service representatives, printing and distribution of new customer fulfillment kits and calling cards, and other support services). Rather than Qwest purchasing these services from third parties and reselling them to Touch America, the latter will establish its own independent relationships with these third-party vendors to the extent possible. To this end, Qwest is in the process of obtaining some of these vendors' consent to assign, in part, its own contracts with these vendors to Touch America. This matter is discussed in greater detail in section III-B, *infra*.

F. Mechanics of the Divestiture Process

The divestiture will be implemented pursuant to a Stock Purchase Agreement between Qwest and Touch America and the Reorganization Documents described therein. 37/ These documents provide for the following steps to occur prior to the merger of Qwest and U S WEST:

First, Qwest has already created a new corporate entity, TeleDistance, which is 100% owned by a holding company, TeleDistance Holdings, Inc. ("TD Holdings"), which in turn is 100% owned by Qwest. TeleDistance is in the process

37/ *See* Agreements Tab I-A.

of obtaining certificates of public convenience and necessity ("CPCNs") in those in-region states where such certificates are required.

Second, Qwest and its affected subsidiaries will transfer the in-region services, assets and contract relationships described above to TeleDistance immediately prior to completion of Qwest's merger with U S WEST. Qwest's affected subsidiaries will dividend the assets to Qwest, and Qwest will contribute the assets to TD Holdings, which in turn will contribute the assets to TeleDistance. A unique Carrier Identification Code ("CIC"), 0244, has been assigned for TeleDistance, and all in-region Qwest switched services will have been switched over to 0244 prior to sale of TeleDistance to Touch America. 38/ Similarly, prior to divestiture, all interLATA dedicated circuits with one or both termination points in-region will be reprovisioned to Touch America network facilities (either pre-existing facilities or the new fiber facilities being acquired from Qwest as part of this transaction). 39/

38/ Qwest will take steps to ensure that its regular CICs for out-of-region services are blocked for callers within the in-region states by the date of the merger. This will prevent casual callers in-region from placing dial-around calls over Qwest's network.

39/ Because the work of regrooming circuits from one network to another is time-consuming, this process will begin before closing. To facilitate this process, Qwest will acquire network capacity from Touch America on customary terms to provide service to certain customers during the interim period after circuits have been regroomed to Touch America's facilities, but before the divestiture transaction closes. At closing the relevant customer obligations will be transferred through the sale of TeleDistance, and the capacity agreement will terminate.

Finally, Qwest will transfer the stock of TD Holdings to Touch America, and Touch America will pay cash to Qwest for TD Holdings and its wholly-owned subsidiary, TeleDistance. 40/ At approximately the same time, Qwest will cause the name of TeleDistance to be changed to Touch America Services, Inc., and the name of TD Holdings to be changed to Touch America Services Holdings, Inc. Once the steps described in this and the preceding paragraph have been implemented, Qwest and U S WEST will immediately close their merger.

Qwest and Touch America have made a number of regulatory filings to accomplish this divestiture. The parties have asked the in-region states with jurisdiction over the matter for their consent to the transfer of control of TeleDistance to Touch America. They also have filed Section 214 applications with the FCC requesting consent to the transfer of control. 41/ As discussed above, Qwest and Touch America have requested waivers of the FCC's and certain state

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40/ The Stock Purchase Agreement provides for a customary post-closing adjustment to protect Touch America and ensure that it has purchased a viable business going-forward. Specifically, the purchase price is subject to an adjustment 90 days post-closing. Adjustments will be made: (1) if customers transferred from Qwest opt not to remain with Touch America, and (2) if sales personnel opt not to transfer to or remain with Touch America. *See* Stock Purchase Agreement (Agreements Tab I-A), § 2.8.

41/ All of the related assignments of Section 214 authorizations to TeleDistance from other Qwest affiliates to organize the latter will be pro forma assignments for which prior Commission approval is not necessary, pursuant to Sections 63.1 and 63.24(a)(5) of the Commission's rules.

commissions' rules requiring LOAs or verification of oral consent before the change of customers' presubscribed carrier may occur.

G. Services and Assets that Qwest Will Retain

Qwest is not divesting any services and assets other than those discussed above. First, Qwest is retaining virtually all of its in-region fiber network. Qwest is not selling any fibers on its north-south routes through Minnesota, Iowa, and Nebraska and through Washington, Oregon, and California, or on its east-west routes through Colorado, Utah, Oregon, and Washington and through Utah, Nevada, and California. 42/ As noted above, Qwest is selling to Touch America only four fibers on the Denver-to-El Paso-to-Brawley route, two fibers between Brawley and Los Angeles and related optronics and ATM/frame relay switches, and Qwest is leasing to Touch America use of four in-region circuit switches with an option to purchase.

It should be noted that Qwest has already sold a portion of the capacity that it originally constructed on these routes to third parties in the form of IRU contracts, both for the conveyance of dark fiber and for the conveyance of lit fiber capacity. 43/ Qwest is not legally able, and is not required, to unwind the sale of

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42/ For a map of Qwest's nationwide fiber backbone network, see http://www.qwest.com/about/inside/network/northamerican.html.

43/ Qwest currently provides high capacity transmission service and associated backhaul service for Project Abilene, the next-generation Internet science research effort operated by the University Corporation for Advanced Internet Development

[footnote continues]

such IRUs, which constitute telecommunications facilities and not telecommunications services subject to Section 271. 44/ As the Commission has stated, "the one-time transfer of ownership and control of an interLATA network is not an interLATA service, which means it falls entirely outside the section 271/272 framework that governs interLATA services." 45/ Qwest also intends to continue selling similar telecommunications facilities in the future.

("UCAID"). UCAID is a public charity that makes capacity and other services available to participating universities and research institutions. Qwest provides service to this important research effort at rates that are substantially below market levels.

While most of the service provided to Project Abilene is located outside the U S WEST region, some of these high-speed transmission circuits have one or both ends in the region. Qwest has developed a plan that avoids disruption of the Abilene research network while complying fully with Section 271. Specifically, Qwest will make a contribution, in the form of IRUs in the relevant transmission capacity, to a newly formed and/or one or more existing non-profit organizations. This contribution will be final and permanent, and Qwest will have no right to re-acquire the rights in these IRUs. The entity receiving these IRUs will make the capacity available to UCAID. (For tax reasons, UCAID itself is unable to accept such a large gift.) Qwest will also provide needed technical assistance.

44/ There is ample FCC precedent for treating such IRUs as sales of network facilities, rather than telecommunications services. *See, e.g., Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3923, ¶ 130 (1995); *Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices For Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers*, 7 FCC Rcd 4561, 4564 n.1 (1992), *recon.*, 8 FCC Rcd 4173 (1993); *International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities, and Assignment of Data Network Identification Codes*, 104 FCC 2d 208, 256-57, ¶ 64 (1986).

45/ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, Second Order on Reconsideration,

[footnote continues]

Divestiture and the requirements of the Telecom Act will seriously restrict the use that Qwest can make of its remaining in-region network assets until Qwest is able to satisfy the requirements of Section 271. For now, Qwest will use these facilities to carry Section 271-permissible telecommunications services (such as switched long distance services that originate out-of-region and terminate in-region, and dedicated services that transit the region but neither originate nor terminate in-region). Once U S WEST obtains in-region interLATA authority under Section 271, Qwest expects to use these facilities to provide in-region interLATA telecommunications service.

Qwest is not divesting any of its out-of-region interLATA telecommunications services, which are clearly authorized under Section 271(b)(2). 46/ Qwest will continue to provide toll-free service that terminates out-of-region, which the Act treats like service originating out-of-region. 47/ Qwest will

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12 FCC Rcd 8653, 8683 n.110 (1997), *aff'd on other grounds sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997).

46/ 47 U.S.C. § 271(b)(2). International call-back service originating in a foreign country and terminating in-region would be included in this exception. "Call-back providers offer a means of delivery different from that ordinarily utilized by a customer in a foreign country, but the service delivered (IMTS) is identical." *VIA USA, Ltd.*, Order on Reconsideration, 10 FCC Rcd 9540, ¶ 38 (1995).

47/ 47 U.S.C. § 271(j).

also continue providing services that the Act defines as "incidental interLATA services," including paging service, in-region. 48/

Finally, Qwest will continue to provide information services to both in-region and out-of -region customers. These information services include Internet access services (dial-up, dedicated, and DSL-based), as well as web hosting, application hosting, security/firewall services, and others. Qwest will provide these information services, but will no longer provide any in-region interLATA transmission service in connection with them. That interLATA transmission service will be unbundled and sold separately to the end user by a Global Service Provider ("GSP"). Touch America will be the GSP in most, but not all cases. 49/

III. TRANSITIONAL SUPPORT SERVICES

A. Touch America's Need For Support Services

Touch America's acquisition of Qwest's in-region business will substantially increase Touch America's revenue and customer base. While Touch America plans to expand its systems and employee base in the very near future to handle the increase in the size of its business, the company will need a limited set of support services from Qwest, for an initial, transitional period. Touch America

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48/ 47 U.S.C. § 271(g); *see especially* § 271(g)(4) (treating commercial mobile radio services, including paging, as incidental).

49/ For a complete explanation of the GSP arrangement, *see infra* at Section V-C.

intends to take these services for a very short period of time – three to six months for many of the services, and up to one to two years for others.

B. Assignment of Qwest Contracts With Third Party Vendors

Qwest makes heavy use of third party vendors of support services in its own business, including contracting with such vendors for customer care activity, billing and collection, and many other functions. Since the parties entered into the divestiture agreement, operational teams have looked closely at how Touch America can draw on these third party contracts to supplement its own operational support capabilities. Furthermore, Qwest and Touch America have examined how the latter could be put in a direct contractual relationship with these vendors, with the goal of doing so as much as possible.

This process is well under way. The parties anticipate that, by the divestiture closing, Qwest will transfer to Touch America its arrangements for the following in-region support services: (1) billing arrangements with U S WEST (used for billing the large majority of in-region residential customers); (2) billing arrangements with a service bureau that represents most out-of-region ILECs (used for billing calling card and operator service charges for out-of-region residential customers who use their calling cards in-region); (3) providers of customer care centers staffed with customer service representatives to answer questions and take orders on behalf of carriers from residential and small business customers over the telephone; (4) graphic design and printing firms to produce marketing materials,

new customer welcome kits, and calling cards; and (5) service bureaus that conduct third-party verification of new customer orders.

Work is continuing in this area, and Touch America may enter into further support service contracts with third party vendors prior to closing. Collectively these vendors should substantially help Touch America take on its new customer obligations while minimizing the need for any Qwest involvement.

C. Transitional Support From Qwest

Touch America also has contracted with Qwest for certain short term support to help with the transition of the divested business. This support is available to Touch America, but the company is not required to take any minimum amount. Any Qwest activity will be transparent to customers, who will always see Touch America as the service provider. Any Qwest activity will be under the direction and control of Touch America. And in any event, this involvement will be limited in duration. 50/

1. Ninety Day Cutover Service

First, for up to 90 days after the divestiture, Qwest will cause a third party vendor, on behalf of Touch America, to provide initial welcome material fulfillment, including processing and distribution of welcome materials and calling

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50/ In addition, certain support functions will be provided in connection with the special product arrangements described below: calling card, prepaid card, operator services, and information services.

cards to the customers transferred as part of the divestiture, as well as to new customers. 51/ Touch America will need to obtain this third party support service through Qwest only for a short period; after that the company should have its own vendor relationships in place.

2. Six Month Transitional Services

For the first six months after the divestiture, Qwest will provide several types of transitional support services to Touch America. First, Qwest will provide order entry service, consisting of manually entering handwritten data from sales forms into computer systems to set up new customer accounts. Second, Qwest will provide knowledge transfer services relating to network functions. These services include working with Touch America technical staff to help Touch America establish and coordinate provisioning activities; 52/ transferring data from Qwest systems to Touch America systems; providing training manuals and explaining network management and maintenance procedures; and assisting in the installation of software.

51/ Transition Services Agreement, Attachment SW, §§ 2.1(c) & 2.2.

52/ It is important to clarify the term "provisioning." "Provisioning" is not synonymous with "providing" as the term is used in the Act. Rather, provisioning consists of technical functions necessary to the installation of service to a customer. Telecommunications companies sometimes perform provisioning functions using their own employees, but frequently contract out provisioning to individual technicians or to vendor companies. Qwest very often makes use of contractors for its own provisioning functions.

Third, Qwest will provide certain limited professional services to Touch America. Specifically, Qwest will make available to Touch America a group of customer service representatives and technicians who will provide customer care on Touch America's behalf to a specified subset of large commercial customers deemed to be "major accounts" or "national accounts." These so-called Major Account Support Team, or "MAST," agents will work under Touch America's direction and control and will use Touch America's brand name in all interactions with customers. These agents will: (1) provide billing support (*i.e.*, answer questions about customers' bills) to this limited group of customers; (2) implement move, add, change, and delete orders for those customers; and (3) when customers call with technical complaints, issue network trouble tickets and solve technical problems when possible to do so from the call center, using software-based platforms in Qwest Network Operating Centers ("NOCs"). When necessary and upon customer request, the MAST agents will escalate the handling of such network troubles to Touch America management.

The team of customer service representatives performing these functions, although employed (or retained as contractors) by Qwest, will be working full-time on Touch America's behalf during the six-month period that this form of support is in effect, and will be segregated from personnel serving Qwest's

customers. 53/ These representatives will answer a separate toll-free number for Touch America customers, and will always use Touch America's brand name to ensure that customers are clearly informed at all times that the provider of in-region services is Touch America. Both the assigned Touch America representatives (Qwest employees and contractors dedicated to serving Touch America customers) and Qwest representatives will be housed in the same call center buildings and will use the same call center facilities and computer systems. 54/

This arrangement will enable Touch America to ensure that it fulfills its contractual service quality commitments to this group of large business

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53/ Touch America will reimburse Qwest for the salaries and benefits of these employees on an hourly basis for the limited time they are dedicated to Touch America. *See* Transition Services Agreement, Attachment RC (Agreements Tab III-B-2), §2-2.

54/ If a customer mistakenly calls into the wrong carrier's toll-free number, and the technician determines that the problem is on the network of the other carrier, then the technician would refer the customer to an agent of the other carrier. For example, a Qwest technician would tell the customer something like the following: "I'm sorry, but the problem is on a circuit that Qwest doesn't provide. It may be that it's on a circuit provided by Touch America. Would you like the 800 number for a Touch America representative, or would you prefer that I send a trouble ticket over to Touch America?" If the customer asks for the Touch America phone number, the Qwest representative will provide it. If the customer so requests, the representative will directly transfer the customer to Touch America. If the customer asks the representative to send a trouble ticket, the representative will send an e-mail message regarding the trouble report to the dedicated group of MAST employees who are working on behalf of Touch America, and those employees will be tasked with resolving the problem and communicating with the customer regarding the solution to the problem.

customers with more complex requirements until the company is able to increase its staffing to provide these services with its own employees or contractors. As noted above, this arrangement will terminate no later than six months after closing.

3. Transitional Support for One to Two Years

Qwest has agreed to make available to Touch America certain billing and collection services, software licensing and data processing, and switch maintenance for an initial term of one year, with an option for Touch America to renew for up to two successive six-month periods. 55/ As previously noted, Touch America is not required to take these services, and may terminate at any time.

a. Billing and Collection

Qwest will provide billing and collection services to Touch America under the terms of this contract. Qwest will apply the rate tables supplied by Touch America to Touch America's call detail records to generate invoice information. For the large majority of residential customers who will have their Touch America long distance services billed on their ILEC invoices, Qwest will transmit the billing information to the ILEC or the billing clearinghouse, with whom Touch America will have its own independent billing and collection contracts. If U S WEST is the

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55/ *See* Transition Services Agreement (Agreements Tab III-A). It should be noted, however, that there are interdependencies among some of these services. For example, Touch America may decline to utilize Qwest's software and information systems, but if it does so then Qwest will not be able to provide billing and collection services. *Id.* at Attachment SW (Agreements Tab III-B-5).

ILEC, U S WEST will continue to perform billing and collection just as it does today for other unaffiliated IXCs.

For business customers and the minority of residential customers who have their long-distance charges direct-billed on a Touch America-branded invoice, Qwest will prepare and mail an invoice under Touch America's brand name and logo. These direct-billed customers will remit payment by check payable to Touch America, sent to a P.O. box address operated by Qwest. Qwest will ensure that Touch America receives the revenue for the service it provides, using a settlement method common in the industry known as "Purchase of Accounts Receivable." 56/ When customers fail to remit payment, Qwest will engage in collection efforts, using Touch America's brand name. Touch America's name will be used during every contact with customers.

Certain pre-existing Qwest customers will, subsequent to the divestiture, purchase both in-region services from Touch America and out-of-region services from Qwest. These customers may range from large business accounts

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56/ *See* Transition Services Agreement, Attachment PAR (Agreements Tab III-B-6). In this settlement method, the billing party (here, Qwest) will purchase the "accounts receivable," *i.e.*, the right to the revenues due and owing from customers, from the party on whose behalf the bills are being rendered. The following simplified hypothetical illustrates the arrangement. Suppose direct-billed customers owe Touch America $100,000 for a given month. Qwest would pay Touch America $100,000 for these accounts receivable (or a slightly lower amount, adjusted for the cost of expected uncollectibles, credits issued to Touch America accounts, etc.), and then would collect and keep the cash from the customers.

with significant operations in both areas, to out-of-region residential customers who occasionally travel into the region and place calling card calls. This category of customers will receive bills that will state clearly that the out-of-region services are provided by Qwest and the in-region services are provided by Touch America, and that properly break out, in separate sections of the bill, charges for services provided by the respective carriers. 57/ The toll-free phone numbers of both carriers will appear on the bill. 58/ Comparable to ILEC bills that contain charges from an unrelated long distance carrier, the invoice in these cases will contain a clear explanation of which services were provided by which of the carriers and which charges pertain to which carrier. The bills will make it clear to customers that Touch America, not Qwest, is the provider of in-region service.

b. Licensing and Usage of Partitioned Information Systems

Qwest has developed a number of proprietary database programs and information systems that enable it to bill and collect and provide customer care in connection with the telecommunications services it provides to its own customers. These systems include:

- the PROD database, which stores and processes data regarding the pricing, terms, and conditions of various products and offerings;
- systems for account managers to transmit information into PROD;

57/ *See* 47 C.F.R. § 64.2001(a)(1) & (2) ("truth-in-billing" rules).

58/ 47 C.F.R. § 64.2001(d).

- systems that enter new customer orders, process the steps necessary to set up the customer's service, track the status of that process, and transmit files to outside vendors that send fulfillment (welcome) kits and calling cards;
- systems that enable customer service agents to obtain access to customer account information and to adjust customer bills;
- software that prepares detailed call record data, compares it with rate tables, and takes the initial steps of generating invoices;
- information systems that automate the collection of accounts receivable;
- systems that facilitate prompt resolution of network problems by improving communication and coordination among the personnel involved in resolving network service problems;
- systems that compute and report on the commission payments due to agents and distributors; and
- various web-based interface systems that allow customer service agents and customers themselves to interact with the systems described above.

Given the complexity of these systems, and the fact that all the information regarding the customers that Qwest will transfer to Touch America is included in these databases and information systems, Qwest has agreed to license Touch America to utilize the systems for a one-year period, with an option to renew for up to two successive six-month periods. 59/

This arrangement has two elements. First, Qwest will grant Touch America a license to utilize the proprietary client software to remotely access the data stored in these information systems. Second, Qwest will provide Touch America with data processing services, under which Qwest's computers will process

data relating to Touch America's telecommunications offerings. In this way, Touch America representatives will be able to utilize the existing Qwest databases to maintain accounts for existing Touch America customers, set up new accounts, obtain access to call detail records and other customer data in order to provide customer service, and engage in certain other provisioning activities.

Significantly, under this licensing arrangement Qwest will create security precautions in its information systems to ensure that sales staffs and customer service representatives of Touch America have no access to information regarding services provided by Qwest, and sales staffs and customer service representatives of Qwest have no access to information regarding services provided by Touch America. 60/ This level of security will be achieved by assigning a Generic Account Group ("GAG") code, corresponding to either Qwest or Touch America, to each account and service. Accounts and services will have security precautions, including password protections, to ensure that customer-facing Qwest

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59/ *See* Transition Services Agreement, Attachment SW (Agreements Tab III-B-5), § 5.3.

60/ There are a few exceptions to this security rule. Back-office systems support personnel responsible for managing and maintaining these information systems would have access to the data of both carriers' customers. In addition, personnel involved in collections would have access to the invoices of both carriers. To the extent out-of-region Qwest customers travel in-region and place calling card calls over Touch America, Qwest customer service representatives would have access to the relevant billing records to facilitate responding to customer questions. The converse would also be true. Finally, certain customer service supervisors and managers would have "super-user" access to all data in the systems for training and quality control purposes.

representatives have the ability to view only accounts and services with Qwest GAG codes, and Touch America representatives have the ability to view only accounts and services with Touch America GAG codes. This will ensure full functional separation of the carriers' service offerings and prevent Qwest or Touch America customer service representatives from obtaining unauthorized access to information about the other carrier's offerings or about customers of the other carrier.

c. Switch Monitoring and Maintenance

Qwest will provide to Touch America certain defined monitoring and maintenance services for the term of the Transitional Services Agreement. 61/ Qwest personnel, on behalf of Touch America, will monitor and maintain the four in-region circuit switches that Touch America is leasing. 62/ Qwest will also maintain multiplexers and digital cross-connect systems associated with those switches on behalf of Touch America.

D. The Arrangements Are Consistent With Section 271 and Applicable Precedents

The transitional support services will be governed by clear legal principles that will ensure full compliance with Section 271, as it has been interpreted by the Commission.

61/ *See* Transition Services Agreement, Attachment SW (Agreements Tab III-B-5), § 3.

62/ *Id.* at § 3.2.

- In every oral and written interaction with customers, it will be clearly communicated that Touch America is the provider of in-region service. Only Touch America's brand name and identity – not Qwest's – will be associated with the in-region services provided by Touch America. This will ensure that customers will never have any cause for confusion about who is providing their service. They will never have any basis to draw the conclusion that Qwest has anything to do with the in-region services provided by Touch America.

- Touch America will always perform the core functions of carriers, including determining its own rates, making its own decisions about marketing and promotion, setting its own policies about sales agents and other distribution channels, and retaining ultimate control over its own network facilities.

- The support services will be limited to the types of services that interexchange carriers typically out-source: *i.e.*, billing and collection, call center services provided by a dedicated team of customer service representatives, and monitoring and maintenance of designated network equipment.

- Qwest will *not* receive charges based in any way upon Touch America's customer revenues.

- Qwest will not provide any marketing support to Touch America. Rather, as discussed above, all in-region marketing staff is being transferred en masse to Touch America.

In sum, Qwest will not provide any in-region interLATA telecommunications under the Commission's interpretation of "providing" in *AT&T v. Ameritech* or otherwise. 63/ Rather, these transitional arrangements are limited to their intended purpose – to enable Touch America to ramp up its operations, continue high-quality service to the customers it is acquiring, to

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63/ *AT&T Corp. v. Ameritech Corp., et al.*, Memorandum Opinion and Order, 13 FCC Rcd 21438 (1998), *aff'd sub nom. U S WEST Communications, Inc., v. FCC*, 177 F.3d 1057 (D. C. Cir. 1999), *cert. denied*, 120 S.Ct. 1240 (2000) ("*AT&T v. Ameritech*").

facilitate Touch America's ability to sustain and grow its customer base, and to ensure that customers receive the benefit of their bargained-for contracts.

Provision of these support services does not give Qwest any material benefit uniquely associated with the ability to include an in-region long-distance component in a local offering. As an initial matter, these arrangements have nothing to do with in-region *local* service, a main concern in *AT&T v. Ameritech*. 64/ In any event, the arrangements benefit Touch America and customers, but do not give Qwest any material benefit, other than enabling Qwest to meet its objective of a smooth transition for its current customers in the context of divestiture.

Nor does Qwest receive a special benefit from parting with its hard-to-come-by professional employees and contractors to facilitate the growth of Touch America's business. Qwest needs those employees and contractors to run its own telecommunications business. And while Qwest is willing to provide support services to Touch America to facilitate the transfer of customers and make the divestiture work, Qwest's business plans are not focused on provision of such

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64/ *Id.*, 13 FCC Rcd at 21465, ¶ 37. In *AT&T v. Ameritech*, the FCC found that the RBOC was leveraging its unique competitive position in the local market into the in-region interLATA long distance market. In contrast, Qwest has no unique advantage in the out-of-region long distance market that it can leverage with a in-region long distance partner. It has only a disadvantage compared to carriers such as AT&T or MCI who can offer a full service on their own in a market – inter-exchange service – that the Commission finds fully competitive.