

For each issue, where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 3 – Access to Poles, Ducts, Conduits, and Rights of Way. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of this checklist item to the satisfaction of the IUB.¹¹⁴

D. Checklist Item 4 – Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires Qwest to provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”¹¹⁵ The FCC has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and

such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

¹¹⁴ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹¹⁵ 47 U.S.C. § 271(c)(2)(B)(iv).

four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.¹¹⁶

In order to establish that it is “providing” unbundled local loops in compliance with checklist item 4, Qwest is required to demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality, and that it provides nondiscriminatory access to unbundled loops.¹¹⁷

Qwest must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, Qwest has been required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. Qwest is providing competitors with access to unbundled loops regardless of its use of digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

¹¹⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

¹¹⁷ *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

On December 9, 1999, the FCC released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).¹¹⁸ HFPL is defined as “the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions.” This definition applies whether a BOC’s voice customers are served by copper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. However, the HFPL network element is *only* available on a copper loop facility.¹¹⁹

Section 271(c)(2)(B)(iv) also requires that Qwest demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.¹²⁰

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 4. In its “Conditional Statement Regarding August 20, 2001, Report,” issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into

¹¹⁸ See *Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27.

¹¹⁹ See *Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

¹²⁰ See generally *SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers

its current filing, has complied with the requirements of checklist item 4 –
Unbundled Local Loops, to the satisfaction of the IUB.¹²¹

E. Checklist Item 5 – Unbundled Local Transport

Section 271(c)(2)(B)(v) of the competitive checklist requires Qwest to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”¹²² The FCC has required that BOCs provide both dedicated and shared transport to requesting carriers.¹²³ Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.¹²⁴ Shared transport consists of transmission facilities shared by more than one carrier,

with access to unbundled loops in a manner that allows competing carriers “to provide any telecommunications service that can be offered by means of that network element”).

¹²¹ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 18-39, issued December 21, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

¹²² 47 U.S.C. § 271(c)(2)(B)(v).

¹²³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

¹²⁴ *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and, (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.¹²⁵

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 5. In its "Conditional Statement Regarding August 20, 2001, Report," issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into its current filing, has complied with the requirements of checklist item 5 – Unbundled Local Transport, to the satisfaction of the IUB.¹²⁶

F. Checklist Item 6 – Unbundled Local Switching

Section 271(c)(2)(B)(vi) of the 1996 Act requires Qwest to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."¹²⁷

¹²⁵ *Id.* at 20719, n.650. The FCC also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and, (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

¹²⁶ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 52-64, issued December 21, 2001 (Qwest Application, Iowa Appendix C, Volume 1, Tab 5); and Conditional Statement Reconsidering Board Conditional Statement Regarding August 20, 2001, Report, pp. 1-8, issued May 9, 2002 (Qwest Application, Iowa Appendix C, Volume 1, Tab 10)

¹²⁷ 47 U.S.C. § 271(c)(2)(B)(vi); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.¹²⁸ The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.¹²⁹ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.¹³⁰

In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.¹³¹ The FCC also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.¹³² Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.¹³³

¹²⁸ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

¹²⁹ *Id.*

¹³⁰ *Id.* at 20722-23, para. 207.

¹³¹ *Id.* at 20723, para. 208.

¹³² *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

¹³³ *Id.*

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 6. In its "Conditional Statement Regarding August 20, 2001, Report," issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into its current filing, has complied with the requirements of checklist item 6 – Unbundled Local Switching, to the satisfaction of the IUB.¹³⁴

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

Section 271(c)(2)(B)(vii) of the Act requires Qwest to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."¹³⁵ In the *Ameritech Michigan Order*, the FCC found that "Section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."¹³⁶ Specifically, the FCC found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."¹³⁷ For facilities-based carriers, Qwest must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of

¹³⁴ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 64-66, issued December 21, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

¹³⁵ 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."¹³⁸ Section 271(c)(2)(B)(vii)(II) and Section 271(c)(2)(B)(vii)(III) require Qwest to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.¹³⁹ Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."¹⁴⁰

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 4 – 911/E911 Access and Directory Assistance/Operator Services.

¹³⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

¹⁴⁰ *Id.* § 251(b)(3). The FCC implemented Section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part sub nom. *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); see also *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 7 - 911/E911 Access and Directory Assistance/Operator Services, to the satisfaction of the IUB.¹⁴¹

H. Checklist Item 8 – White Pages Directory Listings

Section 271(c)(2)(B)(viii) of the 1996 Act requires Qwest to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”¹⁴² Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.¹⁴³

In the *Second BellSouth Louisiana Order*, the FCC concluded that, “consistent with the FCC’s interpretation of ‘directory listing’ as used in Section 251(b)(3), the term ‘white pages’ in Section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.”¹⁴⁴ The FCC further concluded, “the term ‘directory listing,’ as used in this Section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”¹⁴⁵

¹⁴¹ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹⁴² 47 U.S.C. § 271(c)(2)(B)(viii).

¹⁴³ *Id.* § 251(b)(3).

¹⁴⁴ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

¹⁴⁵ *Id.* In the *Second BellSouth Louisiana Order*, the FCC stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the FCC’s decision in a later proceeding obviates this comparison, and supports the definition of

The FCC's *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and, (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.¹⁴⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on the issues remaining subject to disagreement related to the group of checklist items listed above. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 8 – White Pages Directory Listings, to the satisfaction of the IUB.¹⁴⁷

directory listing delineated above. See *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

¹⁴⁶ *Id.*

¹⁴⁷ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

I. Checklist Item 9 – Numbering Administration

Section 271(c)(2)(B)(ix) of the 1996 Act requires Qwest to provide “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers,” until “the date by which telecommunications numbering administration, guidelines, plan, or rules are established.”¹⁴⁸ The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.¹⁴⁹ Qwest must demonstrate that it adheres to industry numbering administration guidelines and FCC rules.¹⁵⁰

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 9 – Numbering Administration. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of each checklist item 9 – Numbering Administration, to the satisfaction of the IUB.¹⁵¹

¹⁴⁸ 47 U.S.C. § 271(c)(2)(B)(ix).

¹⁴⁹ *Id.*

¹⁵⁰ See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; see also *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

¹⁵¹ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

J. Checklist Item 10 – Databases and Associated Signaling

Section 271(c)(2)(B)(x) of the 1996 Act requires Qwest to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”¹⁵² In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and, (3) Service Management Systems (SMS).”¹⁵³ The FCC also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).¹⁵⁴ In the *Local Competition First Report and Order*, the FCC defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁵⁵ At that time the FCC required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network

¹⁵² 47 U.S.C. § 271(c)(2)(B)(x).

¹⁵³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

¹⁵⁴ *Id.* at 20755-56, para. 272.

databases.¹⁵⁶ In the *UNE Remand Order*, the FCC clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”¹⁵⁷

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 10 – Databases and Associated Signaling. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 10 - Databases and Associated Signaling, to the satisfaction of the IUB.¹⁵⁸

K. Checklist Item 11 – Number Portability

Section 271(c)(2)(B) of the 1996 Act requires Qwest to comply with the number portability regulations adopted by the FCC pursuant to Section 251.¹⁵⁹ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC.”¹⁶⁰

¹⁵⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁵⁶ *Id.* at 15741-42, para. 484.

¹⁵⁷ *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁵⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹⁵⁹ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁶⁰ *Id.* at § 251(b)(2).

The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁶¹ In order to prevent the cost of number portability from thwarting local competition, Congress enacted Section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the FCC.”¹⁶² Pursuant to these statutory provisions, the FCC requires LECs to offer interim number portability “to the extent technically feasible.”¹⁶³ The FCC also requires LECs to gradually replace interim number portability with permanent number portability.¹⁶⁴ The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,¹⁶⁵ and created a

¹⁶¹ *Id.* at § 153(30).

¹⁶² *Id.* at § 251(e)(2); see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

¹⁶³ *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); see also 47 U.S.C. § 251(b)(2).

¹⁶⁴ See 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

¹⁶⁵ See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

competitively neutral cost-recovery mechanism for long-term number portability.¹⁶⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 11 – Number Portability. The IUB analyzed each of the impasse issues including the resolutions as recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its SGAT. In a reconsideration of one of the impasse issue determinations made by the IUB, further analysis was given to a suggestion by AT&T that it was premature to reach any conclusion regarding Qwest's provisioning of LNP. The request for reconsideration was rejected by the IUB.¹⁶⁷ Qwest, having incorporated the recommendations of the IUB in its current filing, has met the requirements of checklist item 11 – Number Portability, to the satisfaction of the IUB.¹⁶⁸

¹⁶⁶ See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

¹⁶⁷ See Reconsideration of Conditional Statement Regarding Checklist Item 11: Local Number Portability, IUB Docket No. INU-00-2, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 13)

¹⁶⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

L. Checklist Item 12 – Local Dialing Parity

Section 271(c)(2)(B)(xii) requires Qwest to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).”¹⁶⁹ Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”¹⁷⁰ Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation.¹⁷¹

The rules implementing Section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.¹⁷² Moreover, customers of

¹⁶⁹ Based on the FCC’s view that Section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the FCC adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

¹⁷⁰ 47 U.S.C. § 251(b)(3).

¹⁷¹ *Id.* § 153(15).

¹⁷² 47 C.F.R §§ 51.205, 51.207.

competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.¹⁷³

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 12 – Local Dialing Parity. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 12 – Local Dialing Parity, to the satisfaction of the IUB.¹⁷⁴

M. Checklist Item 13 – Reciprocal Compensation

Section 271(c)(2)(B)(xiii) of the Act requires that Qwest enter into “[r]eciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2).”¹⁷⁵ In turn, pursuant to Section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and, (ii) such

¹⁷³ See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

¹⁷⁴ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”¹⁷⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 13 – Reciprocal Compensation. The IUB analyzed each of the impasse issues including the resolutions as recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its filing. In a reconsideration of two of the impasse issue determinations made by the IUB, further analysis was given to issues related to Internet Service Provider (ISP) traffic and the commingling of special access and local traffic. The request for reconsideration was rejected by the IUB.¹⁷⁷ Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 13 – Reciprocal Compensation, to the satisfaction of the IUB.¹⁷⁸

¹⁷⁵ 47 U.S.C. § 271(c)(2)(B)(xiii).

¹⁷⁶ *Id.* § 252(d)(2)(A).

¹⁷⁷ See Reconsideration of Conditional Statement Regarding Checklist Item 13: Reciprocal Compensation, IUB Docket No. INU-00-2, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 14)

¹⁷⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

N. Checklist Item 14 – Resale

Section 271(c)(2)(B)(xiv) of the Act requires Qwest to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”¹⁷⁹ Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”¹⁸⁰ Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”¹⁸¹ Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under Section 251(c)(4)(A).¹⁸²

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on the issues remaining subject to disagreement related to this checklist item. The IUB analyzed each of the impasse issues including the resolutions as

¹⁷⁹ *Id.* § 271(c)(2)(B)(xiv).

¹⁸⁰ *Id.* § 251(c)(4)(A).

¹⁸¹ *Id.* § 252(d)(3).

¹⁸² *Id.* § 251(c)(4)(B).

recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its filing. A request for the IUB to reconsider its finding of compliance with this checklist item was addressed in a subsequent statement. The request for reconsideration was rejected by the IUB.¹⁸³ Qwest, having incorporated the recommendations in its current filing, has met the requirements checklist item 14 – Resale, to the satisfaction of the IUB.¹⁸⁴

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

Section 271(d)(3)(B) requires that Qwest demonstrate that the "requested authorization will be carried out in accordance with the requirements of Section 272."¹⁸⁵ The FCC set standards for compliance with Section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹⁸⁶ Together, these safeguards will discourage and facilitate the detection of

¹⁸³ See Reconsideration of Conditional Statement Regarding Checklist Item 14: Resale, IUB Docket No. INU-00-2, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 11)

¹⁸⁴ See Conditional Statement Regarding June 11, 2001 Report, IUB Docket No. INU-00-2, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

¹⁸⁵ 47 U.S.C. § 271(d)(3)(B).

¹⁸⁶ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub*

improper cost allocation and cross-subsidization between Qwest and its Section 272 affiliate, Qwest Communications Corporation (QCC), and ensure that Qwest does not discriminate in favor of QCC.¹⁸⁷

As the FCC stated in the *Ameritech Michigan Order*, compliance with Section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of Section 272 seek to ensure that BOCs compete on a level playing field.¹⁸⁸ The FCC’s findings regarding Section 272 compliance constitute independent grounds for denying an application.¹⁸⁹

Qwest’s compliance with Section 272 (d)-(g) was not briefed prior to the release of Liberty’s report on the issues related to Section 272, an indication that no participant had issues about Qwest’s compliance with those requirements. Liberty’s report addressed 20 sub-issues under 272 sections (a)-(c). Liberty concluded that the record demonstrated Qwest had met each of the separate affiliate requirements of section 272.¹⁹⁰ However, in addressing evidence provided by AT&T under the books and records requirement of section 272(b), Liberty noted problems Qwest had previously had in bringing its transactions into compliance with applicable accounting requirements.

nom. Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

¹⁸⁷ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹⁸⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹⁸⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹⁹⁰ Liberty September 24, 2001, Report, p. 7.

In recognition of the problems with Qwest's books and records, Liberty recommended additional third-party testing of Qwest's practices for the period April 2001 to August 2001. Liberty suggested that the testing evaluate whether: (a) Qwest is accurate, complete, and timely as it records transactions between Qwest and its 272 affiliate; (b) the relationship between Qwest and its 272 affiliate is carried out at arms length; and, (c) reasonable assurances exist that the practices addressing points (a) and (b) will continue. In all, Liberty tied its recommendation for additional third party testing to six of the 20 sub-issues addressed in its report.

In its post-report comments, Qwest denied the necessity of the third-party testing, but agreed to compliance in order to expedite the section 272 process. Qwest engaged KPMG to conduct the testing based on the recommendations in the September 24, 2001, report. Qwest filed KPMG's report of the examination on November 15, 2001.

Although Liberty concluded that Qwest had met each of the separate affiliate requirements of section 272 and no participant filed comments objecting to any of the report recommendations, after the KPMG report was filed it became clear that impasse issues remained. The comments received by the IUB in response to the KPMG report were broken down into six different issues, including; 1) scope of KPMG examination; 2) detail of KPMG examination; 3) materiality; 4) time period covered by KPMG examination; 5) instances of noncompliance; and, 6) inappropriate use of testimony to refute KPMG findings.

In its "Conditional Statement Regarding 47 U.S.C. § 272 Compliance," issued April 4, 2002, the IUB discussed each of the separate issues that were raised following the release of KPMG's report, concluding that Qwest had satisfied the requirements of 47 U.S.C. Section 272.¹⁹¹

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

In addition to determining whether Qwest satisfies the competitive checklist and will comply with Section 272, Congress directed the FCC to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.¹⁹² The FCC has noted that compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest, an approach reflecting the FCC's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

Because the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination,¹⁹³ the FCC views the public interest requirement

¹⁹¹ See also, Reconsideration of Conditional Statement Regarding 47 U.S.C. § 272 Compliance, IUB Docket No. INU-00-2, issued May 28, 2002 (Qwest Application, Iowa Appendix C, Volume 1, Tab 12. As was indicated, no issues were raised prior to the release of Liberty's September 24, 2001, report concerning Qwest's compliance with Section 272 (d)-(g). In comments filed by AT&T on April 23, 2002, it questioned Qwest's compliance with Section 272 (e)(1). In denying AT&T's request for reconsideration, the IUB noted that no new evidence was presented that was not available to it when it made its initial decision.

¹⁹² 47 U.S.C. § 271(d)(3)(C).

¹⁹³ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. See

as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the FCC may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.¹⁹⁴ Another factor that could be relevant to the analysis is whether the FCC has sufficient assurance that markets will remain open after grant of the application. While no one factor appears to be dispositive in its analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the FCC's analysis of checklist compliance, that markets are open to competition.

During the multi-state workshop process, Liberty ruled that any public interest issue that restated an issue from a checklist item in a manner that attempted to merely increase Qwest's burden of proof would be disregarded, indicating that without such a limitation, the intent of Congress in adopting the checklist, while also allowing a separate consideration of public interest matters, would be compromised.

Ameritech Michigan Order, 12 FCC Rcd at 20747 at para. 360-66; see also 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

¹⁹⁴ See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

In its "Conditional Statement Regarding Public Interest and Track A," the IUB considered each of the impasse issues raised as public interest concerns and concluded that it could recommend to the FCC that Qwest had conditionally satisfied the public interest requirements.¹⁹⁵ The conditional status was necessary when the public interest issue was initially analyzed because the IUB had not yet reviewed Qwest's performance assurance plan (IA-QPAP).

In response to the IUB's January 25, 2002, conditional statement, AT&T urged reconsideration of its earlier arguments that Qwest's UNE prices are so high as to present an insurmountable barrier to competition, based on a D.C. Circuit Court of Appeals opinion issued December 28, 2001.¹⁹⁶ Additionally, the Iowa Consumer Advocate requested an oral argument be scheduled to consider the effect of *Sprint* on the public interest issue.

In all, it was requested that the IUB reconsider four separate issues pertaining to the public interest of Qwest's entry into the in-region interLATA market. These included: 1) UNE price squeeze; 2) intrastate access price squeeze; 3) prior Qwest conduct; and, 4) the level of competition. The IUB scheduled an oral argument, which was held March 14, 2002. After considering the arguments, the IUB concluded that it was still able to conditionally

¹⁹⁵ See Conditional Statement Regarding Public Interest and Track A, IUB Docket No. INU-00-02, pp. 1-18, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

¹⁹⁶ See *Sprint Communications Co. L. P. v. Federal Communications Comm'n*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint*)

recommend (subject to the review of the QPAP) to the FCC that the public interest requirements had been met.¹⁹⁷

On May 14, 2002, AT&T filed a motion with the IUB to reopen the Section 271 proceedings to allow admission of additional evidence relating to certain unfiled agreements between Qwest and some new entrants. According to its Motion, AT&T asserted the unfiled agreements related directly to the provision of interconnection services by Qwest and carried significant public interest implications.

The IUB considered in a separate docket the matter of Qwest's failure to file what the IUB determined to be interconnection agreements by issuing its "Order Making Tentative Findings, Giving Notice For Purposes of Civil Penalties and Granting Opportunity to Request Hearing."¹⁹⁸ Thus, in considering the implication of the same agreements as they might relate to the public interest analysis, the IUB found:

In order for Qwest to move beyond a state of "public interest limbo," the Board has previously adopted a standard, "that past behavior must be predictive of future behavior." This standard is met by the Board's May 29, 2002, order in Docket No. FCU-02-2. As noted above, Qwest was put on notice that it would be subject to civil penalties for failing to file agreements in the future. The prospect of significant monetary

¹⁹⁷ For a full discussion of each of the issues, and the IUB's conclusions, see Conditional Statement Reconsidering Public Interest, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)

¹⁹⁸ *In Re: AT&T Corporation v. Qwest Corporation*, IUB Docket No. FCU-02-2, Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing, issued May 29, 2002.

penalties should act as a strong deterrent against future violations.

The resolution of this issue in Docket No. FCU-02-2 would appear to serve the objectives of the FCC. Most recently the FCC indicated the following about the public interest inquiry:

Thus the Commission views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected. (Footnote omitted).

The FCC appears to regard the goal of the public interest inquiry as an opportunity to identify and correct problems, beyond the competitive checklist, that would impede the opening of local markets to competition. As for Qwest's unfiled agreements, it would seem that the Board has already acted to accomplish that goal in Docket No. FCU-02-2.¹⁹⁹

At the conclusion of the process, having considered all initial impasse issues, reconsideration of impasse determinations, and the impact of any interconnection agreements not previously filed with it, the IUB still found that it could recommend to the FCC that Qwest has met the public interest requirement.

The FCC has delineated five general characteristics that must be part of a Section 271 performance assurance plan part of a "zone of reasonableness" analysis. These include:

¹⁹⁹ See Order to Consider Unfiled Agreements, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 24)

- Meaningful and significant incentive to comply with designated performance standards.
- Clearly articulated and pre-determined measures and standards encompassing a range of carrier-to-carrier performance.
- Reasonable structure designed to detect and sanction poor performance when and if it occurs.
- Self-executing mechanism that does not open the door unreasonably to litigation and appeal.
- Reasonable assurance that the reported data are accurate.²⁰⁰

After a rather lengthy process of collaborations, workshops, testimony, and briefs, the IUB was presented with a report by Liberty that outlined close to 70 issues related to Qwest's proposed performance assurance plan that remained at impasse. Additionally, Liberty made recommendations for 29 separate changes to the QPAP initially filed (following the initial eleven-state collaborative) by Qwest.

The IUB issued a conditional statement addressing each of the issues identified as being at impasse, and making a determination specific to each impasse issue.²⁰¹ Following the issuance of its statement regarding the QPAP, the IUB was asked to reconsider six issues.²⁰²

²⁰⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd 3953 para. 433.

²⁰¹ For a full review of the IUB's analysis of each of the impasse issues, see, *Conditional Statement Regarding Qwest Performance Assurance Plan*, IUB Docket No. INU-00-2, issued May 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 9)

²⁰² See *Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan*, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 17)

The IUB noted that in addition to the FCC's enforcement authority under Section 271(d)(6):

The QPAP will be incorporated into Qwest's statement of generally available terms and conditions (SGAT) as Exhibit K. As part of an interconnection agreement, adopted by a CLEC, it then must be reviewed by the Board pursuant to 47 U.S.C. § 252. Section 272 expressly provides the Board the authority to create and enforce a performance assurance plan, as part of an interconnection agreement.²⁰³

The IUB contends that the Iowa QPAP will provide sufficient assurance that markets will remain open after a grant by the FCC of authority to provide in-region, interLATA service in the State of Iowa.

VII. OTHER CONSIDERATIONS

The FCC adopted general procedural requirements related to the processing of all applications for authorization under Section 271.²⁰⁴ Included in those filing requirements is the following statement:

We encourage state commissions to include in their evaluations a discussion of any complaints that have been filed against the BOC, either at the state commission or in federal court, pursuant to sections 251 and 252 of the Act.

Because no time frame of reference is indicated, the following is a list of complaints filed against Qwest with the IUB since the initiation of its docket to investigate Qwest's compliance with Section 271 requirements. Also provided is

²⁰³ *Id.* at 23.

a brief statement of the allegations made, a truncated procedural history, and the disposition of the complaint by the IUB.

Docket No. FCU-00-1 – Goldfield Access Network, L.C. v. U S West Communications, Inc., filed January 20, 2000. Goldfield alleged anticompetitive acts in violation of Iowa Code §§ 476.100 and 476.101 (Iowa's local exchange competition statutes) and the Goldfield/Qwest interconnection agreement. Specifically, the complaint alleged violations pertaining to issues of local number portability, EAS service, and service quality. The Board held a hearing on March 2, 2000. On April 14, 2000, the Board ruled against Goldfield as outlined in its Order Denying Complaint.

Docket No. FCU-00-2 – Crystal Communications, Inc. v. U S West Communications, Inc., filed May 24, 2000. Crystal alleged anticompetitive acts in violation of Iowa Code §§ 476.100 and 476.101 (Iowa's local exchange competition statutes). Specifically, the complaint alleged that U S West had disconnected a number of Crystal's resale customers based on orders from the customers' previous service provider, CommSouth. Qwest filed a response to the complaint stating that it had taken steps to prevent recurrence of the circumstances that resulted in the complaint. On June 30, 2000, Crystal filed a letter requesting the complaint be withdrawn. On July 24, 2000, the Board issued an Order Granting Request to Withdraw Complaint and Closing Docket.

Docket No. FCU-02-1 – Cox Iowa Telecom, LLC v. Qwest Corporation, filed January 3, 2002. Cox alleged that Qwest's decision to offer local service freezes was an anticompetitive act. A hearing was held on March 4, 2002. On April 3, 2002, the Board issued a Final Decision and Order ruling that Qwest's imposition of local service freezes would have a detrimental effect on local service competition. Qwest was prohibited from further provision of local service freezes in Iowa. Any Iowa customers previously enrolled in the local

²⁰⁴ See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001).

service freeze option were to be notified and removed from the program.

Docket No. FCU-02-2 – AT&T Corporation v. Qwest Corporation, filed on February 27, 2002. AT&T alleged that Qwest had entered into a series of secret agreements granting preferential treatment to some CLECs. AT&T noted a similar complaint before the Minnesota Public Utilities Commission where agreements had not been filed with the state commission as required by 47 U.S.C. §§ 251 and 252. On April 1, 2002, the Board ordered the parties to the complaint to file initial and reply briefs.

On May 29, 2002, the Board issued an Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing. In that order the Board drew a tentative conclusions that three unfiled agreements were interconnection agreements. Based on those conclusions, the Board determined Qwest had violated §§ 251 and 252, as well as an Iowa rule, requiring the filing of interconnection agreements. Qwest was required to file any other non-filed interconnection agreements with the Board within 60 days. Qwest was put on notice that it would be subject to civil penalties, pursuant to Iowa Code § 476.51, for future violations. Qwest, however, was given 20 days to request a hearing on the Board's tentative conclusions. If Qwest did not request a hearing, the Board's tentative conclusions would become final.

On June 18, 2002, Qwest filed a motion to extend the deadline, for requesting a hearing. On June 19, 2002, the Board issued an Order Granting Motion for Extension of Time until June 28, 2002. On June 28, 2002, Qwest filed a Statement Concerning the Iowa Utilities Board's May 29, 2002 Order and Motion indicating it would not request a hearing.

However, Qwest stated that its filing of agreements would generally fall into two categories. The first would be "contractual arrangements" which would appear to fall within the Board's definition of "interconnection agreement" as outlined in the May 29, 2002, order. The second would be documents, which do not reasonably appear to be

interconnection agreements under § 252(a)(1), but which might fall within the Board's definition of "interconnection agreement." Qwest would present the second category of documents, on a case-by-case basis, and request the Board's assistance in determining whether the particular document would fall within the interconnection agreement definition articulated by the Board.

Qwest also noted that this issue is currently pending before the FCC.²⁰⁵ Thus, Qwest requested the Board keep the docket open to bring the Board's attention to any inconsistency between the Board's § 252(a) standard and that adopted by the FCC. Additionally, Qwest requested the docket remain open to permit the parties to seek clarification of the Board's "interconnection agreement" definition in light of its experience in attempting to apply it.

²⁰⁵ See, *In the Matter of Qwest Communications International Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Docket No. 02-89(FCC).

VIII. CONCLUSION

The Iowa Utilities Board has determined that Qwest has complied with each of the statutory requirements for entry into the in-region, interLATA service market and recommends that the FCC grant Qwest's application for the State of Iowa.

Respectfully submitted,

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ON BEHALF OF THE IOWA
UTILITIES BOARD

Dated: July 3, 2002.