Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by	)	
Qwest Communications International, Inc.	)	WC Docket 02-148
for Authorization To Provide	)	
In-Region, InterLATA Services	)	
in the States of Colorado, Idaho,	)	
Iowa, Nebraska, and North Dakota	)	

IOWA UTILITIES BOARD
REPLY COMMENTS REGARDING
QWEST COMMUNICATIONS INTERNATIONAL, INC.

Diane Munns, Chairman
Mark Lambert, IUB Member
Elliott Smith, IUB Member

Iowa Utilities Board
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Dated: July 29, 2002

The Iowa Utilities Board (IUB) provides the following reply comments to address only a very limited number of issues raised in initial comments concerning Qwest Communications International, Inc.'s (Qwest) consolidated application for authority to provide in-region, interLATA services.

I. TRACK A

The comments of AT&T Corp. (AT&T), Sprint Communications Company L.P. (Sprint), and the Iowa Office of Consumer Advocate,[1] (Iowa OCA) take issue with estimates Qwest provided for competitive access lines.[2] Alleging that Qwest maintains monopoly power over residential service, of particular concern are the estimates of residential access lines.

The IUB addressed this issue within the context of its review of the Track A requirements. Section 271 (c)(1)(A) requires that CLECs be "serving more than a de minimis number of end-users for a fee in their respective service areas."[3] Qwest testified during the IUB proceedings that Iowa CLECs were serving between 163,392 and 216,675 total access lines.[4] Qwest also estimated that CLECs operating in Iowa had captured a 14.2 percent market share. Qwest was unable to provide an exact split between competitive residential and business lines. Estimates were developed and presented by Qwest because

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[1] The Iowa Office of Consumer Advocate is a division of the Iowa Department of Justice.

[2] See Comments of AT&T, pp. 133-137; Comments of Iowa OCA, pp. 5-10; and Comments of Sprint, pp. 9-11.

[3] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services In Michigan,* CC Docket No. 97-137, 12 FCC Rcd 20543, para. 78 (1997). (*Ameritech Michigan Order)*

only the individual CLECs would have the actual data. The IUB accepted the use of estimates, concluding that CLECs in Iowa were serving more than a "de minimis" number of business and residential end users.[5]

The IUB also addressed a related aspect of this issue within the context of its public interest deliberations.[6] The IUB specifically rejected arguments that Congress intended a market share test be applied to the public interest inquiry and concluded that the intent was that, "section 271 can be met in an empty room, provided there is certainty that the door to the room, has been unlocked."[7]

In its comments, Sprint alleged Qwest inflated competitive local exchange company (CLEC) line estimates by including CLEC high-speed data lines not used for local voice service. Sprint noted that it does not compete for local voice service in any of the five states, but Qwest attributes 68,000 competitive access lines to Sprint in those states.[8]

The IUB did not include Sprint as a local service provider in its Track A assessment.[9] The IUB would agree, however, that Qwest's estimates of competitive access lines could include some data lines. As noted above, the IUB

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4 These estimates were provided based on data ending April 30, 2001.

5 See, *Conditional Statement Regarding Public Interest and Track A,* Docket Nos. INU-00-2 and SPU-00-11, issued January 25, 2002, pp. 5-8. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

6 See *Conditional Statement Reconsidering Public Interest,* Docket Nos. INU-00-2 and SPU-00-11, issued June 7, 2002, pp. 14-18. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)

7 *Id.*, p. 17.

8 See Comments of Sprint, pp. 11-13.

9 See *Conditional Statement Regarding Public Interest and Track A,* Docket Nos. INU-00-2 and SPU-00-11, issued January 25, 2002, p. 10. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

accepted the use of estimates cognizant that Qwest would not necessarily know how competitors are using its facilities.

Nevertheless, the IUB noted specific information of actual numbers of competitive access lines, provided directly by a single Iowa CLEC, and concluded that those numbers alone were enough to satisfy the Federal Communications Commission (FCC's) requirement that CLECs in Iowa were serving more than a "*de minimis*" number of end users.[10] Additionally, the IUB noted the FCC's own "Status Report on Local Telephone Competition."[11] The status report relied on by the IUB in its conditional statement was based on data as of December 31, 2000. The most recent status report, reflecting data as of December 31, 2001, show Iowa's CLEC market share at 12 percent.[12] The IUB remains satisfied that CLECs in Iowa are serving more than a "*de minimis*" number of end users.

II. CHECKLIST COMPLIANCE

A. Checklist Item 1 – Interconnection

According to AT&T's comments, Qwest's entrance facility charge denies CLECs reasonable access to CLEC-selected points of interconnection.[13] This was an interconnection issue addressed by The Liberty Consulting Group[14]

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[10] *Id.*, p. 7.
[11] *Id.*, p. 6.
[12] www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0702.pdf
[13] See Comments of AT&T, pp. 73-75.
[14] The Liberty Consulting Group was retained to assist the state commissions collectively by making recommendations for resolution of impasse issues.

(Liberty).[15] Although AT&T disputed Liberty's resolution, the Board subsequently adopted Liberty's resolution in its conditional statement.[16]

Qwest is providing CLECs with inferior interconnection arrangements according to the comments of AT&T.[17] Liberty addressed this interconnection issue and, although AT&T disputed Liberty's resolution, the IUB subsequently adopted Liberty's resolution in its conditional statement.[18]

AT&T suggested Qwest's requirement that CLEC's place interconnection traffic on separate trunk groups is unlawful.[19] This interconnection/reciprocal compensation issue was specifically addressed by Liberty.[20] The IUB subsequently adopted Liberty's resolution in its conditional statement after considering AT&T's objections to Liberty's resolution of the issue.[21]

AT&T alleged in its comments that the length limitation on interconnection trunks imposed by Qwest is unlawful.[22] This interconnection issue was addressed by Liberty.[23] AT&T did not dispute Liberty's proposed resolution in

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[15] See Report on Checklist Items 1, 11, 13 and 14, issued May 15, 2001, pp. 35-36. (Qwest Application, Appendix C, Volume 1, Tab 2)

[16] See *Conditional Statement Regarding May 15, 2001, Report,* Docket Nos. INU-00-2 and SPU-00-11, issued October 12, 2001, p. 4. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

[17] See Comments of AT&T, pp. 75-78.

[18] See *Conditional Statement Regarding May 15, 2001, Report,* Docket Nos. INU-00-2 and SPU-00-11, issued October 12, 2001, p. 8. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

[19] See Comments of AT&T, pp. 79-80.

[20] See Report on Checklist Items 1, 11, 13 and 14, issued May 15, 2001, pp. 50-51 and pp. 115-117. (Qwest Application, Appendix C, Volume 1, Tab 2)

[21] See *Conditional Statement Regarding May 15, 2001, Report,* Docket Nos. INU-00-2 and SPU-00-11, issued October 12, 2001, p. 11 and p. 36. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

[22] See Comments of AT&T, pp. 79-80.

[23] See Report on Checklist Items 1, 11, 13 and 14, issued May 15, 2001, pp. 40-41. (Qwest Application, Appendix C, Volume 1, Tab 2)

comments before the IUB, but Qwest did. In rejecting Liberty's proposed resolution and adopting language first proposed by Qwest, the IUB relied on the FCC's August 8, 1996, *Local Competition Order*. [24] Paragraph 553 references a "limited build-out of facilities," and notes that the "parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."[25] Based on this language, the IUB directed the following language be included in section 7.2.2.1.5 of the Iowa statement of generally available terms (SGAT):

> If Direct Trunked Transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will construct facilities to a mid-point of the span.[26]

B. Checklist Item 2 – Unbundled Network Elements

1. Access to OSS

a. Nondiscriminatory Access

In its comments, Covad Communications Company (Covad) contends Qwest's interfaces fail to provide nondiscriminatory access in the area of pre-

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[24] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, para 553 (1996). (*First Local Competition Order)*

[25] *Id*. at para. 553.

[26] See *Conditional Statement Regarding May 15, 2001, Report,* Docket Nos. INU-00-2 and SPU-00-11, issued October 12, 2001, pp. 5-8. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

ordering. AT&T also addressed this issue in its comments.[27] Qwest has no evidence that real-world CLECs using electronic data interchange (EDI) have attained successful integration related to pre-ordering. Therefore, Qwest relied on third party testing by Hewlett-Packard Consulting (HP). Additionally, Qwest produced letters from two companies that design EDI interfaces for CLECs as part of its support.

Statements by HP indicate that integration is highly dependent on the experience of the CLEC. Therefore, while there could be issues that need to be resolved between Qwest and a particular CLEC, HP did not find these issues to be insurmountable, noting that it would be extremely unlikely that Qwest would be able to offer a "one size fits all" package.[28]

Another issue related to pre-ordering that AT&T contends is unacceptable is that Qwest fails to provide nondiscriminatory access to loop qualification information as it fails to provide CLECs with access to its loop facilities assignment and control system (LFACS) database and other sources of loop qualification information.[29] Further, AT&T complains that Qwest does not allow CLECs to perform mechanized loop testing before actual provisioning, something Qwest is able to do when it provisions. Similarly, Covad alleged Qwest has not provided a comparable and necessary router test to the CLECs that it provides to

[27] See Comments of Covad, pp. 2-5, and Comments of AT&T, pp. 39-45.
[28] *See* OSS Decl., Exh. LN-OSS-9 at 40 and Exh. LN-OSS-10 at 39.
[29] See Comments of AT&T, pp. 39-40.

itself. Covad further suggests that any proposed testing procedure remains untested.[30]

As part of the Regional Oversight Committee (ROC), thirteen-state collaborative operational support systems (OSS) test, Test 12.7 evaluated the loop qualification process. KPMG Consulting, Inc. (KPMG) found that Qwest satisfied all components of this test. Testing showed that CLECs have access through Qwest's loop qualification tool.[31]

According to AT&T, Qwest's use of a different database for validating addresses PREMIS than the database customer record information system (CRIS) that serves as the source of the service address information on the customer service record (CSR) leads to a failure to provide nondiscriminatory access because the information of these two databases does not always match.[32]

Test 12 of the ROC OSS test covered migration transactions and the validation of addresses. KPMG found the results to be acceptable.[33]

Another issue raised by AT&T suggested that Qwest denies parity of access to due dates by changing due dates for CLEC orders far more frequently than for its own retail orders. AT&T refers to performance data for performance indicator definition (PID) PO-15 (Due Date Changes).

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[30] See Comments of Covad, pp. 2-4.
[31] (Qwest Application, Appendix G, Volume 4, Tab 18.1)
[32] See AT&T Comments, p. 40.
[33] (Qwest Application, Appendix G, Volume 4, Tab 18.1)

PID P-O 15 was used in for purposes of Test 12 of the ROC OSS test. While AT&T 's observation of due dates changing more frequently for CLECs than Qwest appears to be an accurate one, the results were nevertheless found to be within the tolerance range established for this PID.

Comments suggested that in the area of ordering and provisioning, high rates of order rejections, manual processing of electronically submitted CLEC orders, and manual errors exist, resulting from human error. Covad argued less weight should be given to the Data Reconciliation than to KPMG's findings on human error issues. Covad also suggests that Qwest has not yet meaningfully addressed all the issues found in the adequacy study.

During the course of the OSS test related to ordering and provisioning, KPMG noted that human error was attributed to be the primary reason for not meeting the set criteria. KPMG conducted a review of the training provided to Qwest personnel, and the proposed revised training procedures. Although KPMG noted that the revised training could lead to a reduction in human error, it was unable to determine, through the test design, whether these changes actually resulted in a reduction. KPMG was directed by the ROC Steering Committee to conduct a study of the adequacy of existing and proposed performance measures related to manual order handling. Following completion of its review, KPMG provided a list of potential measures related to manual order handling. Qwest has agreed, as noted by the Department of Justice in its

evaluation, to develop new measures in long-term PID administration meetings to address human errors in manual order processing. This will allow for CLEC participation in the development of the definition(s) and is the proper venue for such proposals. Until those meetings occur, Qwest has agreed to track and report local service request/service order (LSR/SO) mismatches related to manual order processing.

AT&T raised additional concerns related to ordering and provisioning, suggesting Qwest does not provide accurate, complete, and timely order status notices that CLECs need, referring to the "Closed/Unable to Determine" classification KPMG gave to Evaluation Criteria 12-9-4 and 12-9-5 of the OSS test.[34]

KPMG found that Qwest did not issue any jeopardy notices for resale products and services and thus it was unable to determine if parity was met. Qwest countered that there were several instances where it was possible that a jeopardy notice could be issued after an issuance of a firm order commitment (FOC).[35] Qwest further stated these notices are properly reported on an aggregate basis. This issue will be reviewed at the six-month review to determine the impact this issue may have. This issue should not preclude Qwest from a showing of Section 271 compliance.

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[34] See Comments of AT&T, p. 43.
[35] Qwest DOJ Issues *Ex Parte* Tab 1 at 1, letter dated July 10, 2002.

Noting Exception 3086 from the ROC OSS final report, AT&T argued Qwest does not provision CLEC orders on a nondiscriminatory basis because the provisioning intervals for unbundled network elements platform (UNE-P) and resale orders are longer than those of Qwest's retail orders.

The IUB reviewed this exception in its conditional statement addressing Qwest's OSS evaluation, at pages 7 and 8.[36] The IUB found that this exception should not preclude Qwest from a showing of Section 271 compliance.

According to AT&T, Qwest has an unreasonably long process for updating customer service codes. Additionally, AT&T argued the 'workaround' solution offered by Qwest still requires excessive CLEC resources.[37]

It is worthwhile to note that AT&T offered an alternative solution through the change management process, followed by presentment of a few counterproposals by Qwest. The systems have not yet been updated, but the parties continue to discuss and consider a proper mechanism that will accommodate all parties. Again, this issue will be reviewed at the six-month mark to determine the progress the parties have made, but should not preclude Qwest from a showing of compliance.

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[36] See *Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry* Docket, IUB Docket No. INU-00-2, issued June 10, 2002, pp. 7-8. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)

[37] See Comments of AT&T, pp. 43-44.

In the area of maintenance and repair, AT&T suggested Qwest does not process CLECs' transactions to modify trouble reports in a timely manner, referring to Exception 3055 issued by KPMG.

The IUB addressed this issue in its conditional statement addressing Qwest's OSS evaluation.[38] On page 5 the IUB noted that Qwest's performance had improved between the first test and the retest. Qwest has agreed to continue to review its training program to ensure proper code usage by its representatives. The IUB determined this exception is not significant enough to conclude that Qwest's OSS is not adequate.[39]

Comments related to billing matters suggested Qwest's test for daily usage feed (DUF) accuracy and completeness was a failure because it took six tries to pass. Additionally, it was argued that Qwest does not use the industry standard "CABS BOS/BDT" format for its wholesale bills, which makes them un-auditable.[40]

The OSS test was a military style test, based on the basic premise that the testing would continue until the established criteria have been met. With each failure, Qwest implemented corrections to its systems until it finally reached the set criteria. Thus, under the military style test concept, Qwest has passed.

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[38] *Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry,* Docket, IUB Docket No. INU-00-2, issued June 10, 2002, pp. 3-5. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)

[39] *Id*. at p. 5.

Qwest should be able to maintain this level into the future, now that it has implemented its corrective measures. It is unreasonable to maintain that Qwest "failed" because it was required to undergo five additional testing situations, and the related creation and implementation of corrections, to pass. What incentive would Qwest have to implement corrections if not to finally "pass" a previously failed set of test criteria?

Qwest has implemented the (BOS/BDT) format beginning July 1, 2002, for its wholesale bills.[41] This format was not tested by KPMG but should alleviate the concerns of all CLECs using the industry standard format. Any further concerns of the difficulty of implementing this format should be addressed at the six-month review. Qwest also allows for auditing to be conducted in the EDI and ASCII formats, thus providing several options for CLECs.

It is also worth note that KPMG included an audit of Qwest's wholesale bills in order to determine if the wholesale bills delivered to CLECs were accurate. Arguably, if KPMG personnel were able to conduct an audit of the bill, CLEC personnel should also be able to do so.

b. Change Management Process

Comments related to change management process (CMP) were that Qwest has not demonstrated a pattern of compliance, over time, with its CMP

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[40] See Comments of AT&T, pp. 45-46. The bill output specifications/bill data tape (BOS/BDT) is a format designed to conform to the industry standard and thus eases the burden on CLECs when auditing utilizing carrier access billing specifications (CABS).

[41] Qwest DOJ Issues *Ex Parte* Tab 1 at 1, letter dated July 10, 2002.

because CMP was still being designed at the time KPMG performed its testing. AT&T contended that none of Qwest's major releases has been fully implemented under the current provisions of the redesigned CMP.[42]

The IUB addressed these concerns after considering CLEC complaints that, because the CMP was still being redesigned, it was noncompliant.[43] The IUB also took into consideration Qwest's statement that basic agreement on all issues impacting 271 compliance, relating to CMP, had been reached, although agreement on specific language had not been completed on smaller issues.

The IUB noted that the fact that some final language was not yet complete should be considered in light of the fact that the CMP, itself, may never be complete. The Board noted that the FCC acknowledged that CMP "completion" is not a section 271 compliance requirement, when it stated:

> We do not expect any change management process to remain static. Rather, a key component of an effective change management process is the existence of a forum in which both competing carriers and the BOC can work collaboratively to improve the method by which changes to the BOC's OSS are implemented.[44]

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[42] See Comments of AT&T, pp. 30-35; Opposition of the CompTel, pp. 3-7; Comments of WorldCom, pp. 19-20; Comments of Eschelon, Inc. pp.27-28.

[43] See *Conditional Statement Regarding Change Management Process Compliance,* Docket Nos. INU-00-2 and SPU-00-11, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 15)

[44] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Service, Inc., d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, 15 FCC Rcd 18354, para. 117, Memorandum Opinion and Order (2000). (*SWBT-Texas 271 Order*)

The IUB also addressed seven specific "pattern of compliance" issues raised by the CLECs. These included three "unresolved" or "inconclusive" KPMG tests, which the IUB determined would not preclude Qwest's CMP from a showing of section 271 compliance. As for the other four "pattern of compliance" issues, the IUB ruled that the evidence provided by the CLECs was neither convincing enough, nor significant enough, to find Qwest's CMP noncompliant.

One of the four "pattern of compliance" issues involved allegations by CLECs that Qwest had not notified its wholesale customers of a certain retail product/process change as required by Qwest's policies, procedures, and oral statements during the redesign meetings.[45] Specifically, Covad alleged that Qwest had informed CLECs, in March of 2000, that it could not provision integrated services digital network (ISDN) loops where there was integrated pair gain (IPG) on the loop. As a consequence, CLECs thought they could not place orders for ISDN loops where IPG was present. Later in March 2002, CLECs learned that Qwest could provision retail ISDN loops with IPG. The IUB weighed the evidence provided by the CLECs against the evidence provided by Qwest and determined that Qwest's evidence was convincing enough to refute the CLECs on this issue. Nevertheless, the Competitive Telecommunications Association (CompTel) now makes similar allegations in its comments, and it provides new evidence and an affidavit not previously presented into evidence

before the IUB. Since the IUB has not seen Qwest's response to CompTel's allegations, it will not comment on CompTel's allegations.

c. Stand Alone Test Environment

AT&T and WorldCom, Inc. (WorldCom) point to the exceptions issued by KPMG, which address Qwest's testing environment.[46] The IUB addressed the adequacy of Qwest's Stand-Alone Test Environment (SATE) in a conditional statement. [47] Specifically, the conditional statement addressed three exceptions relating to the SATE in the ROC OSS test.

Qwest has maintained that its interface testing fully satisfies the requirements of section 271, while the CLECs maintain that the unresolved exceptions indicate that testing fails to provide the safeguards required by the FCC in other 271 proceedings. Qwest argued that numerous CLECs had tested EDI interfaces before going into production using Qwest's SATE. Qwest contended the ROC OSS test results show, for the most part, that Qwest satisfied the test criteria. Thus, Qwest argued the unresolved exceptions went beyond FCC requirements for 271 compliance.

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[45] See *Conditional Statement Regarding Change Management Process Compliance,* Docket Nos. INU-00-2 and SPU-00-11, issued June 6, 2002, pp. 27-29. (Qwest Application, Iowa Appendix C, Volume 1, Tab 15)

[46] See Comments of AT&T, pp. 35-38 and Comments of WorldCom, pp. 20-23.

[47] See *Conditional Statement Regarding Change Management Process Compliance,* Docket Nos. INU-00-2 and SPU-00-11, issued June 6, 2002, pp. 9-18. (Qwest Application, Iowa Appendix C, Volume 1, Tab 15)

The IUB provided an analysis of Exceptions 3077, 3095, and 3109, identified as unresolved by KPMG. In each case, the IUB determined that the exceptions did not preclude a showing of 271 compliance for Qwest's SATE.

2. UNE Combinations

Covad and AT&T have argued that Qwest discriminates against CLECs that Place UNE orders that require construction of new facilities.[48] This issue was addressed by Liberty in its UNE Report.[49] AT&T challenged Liberty's proposed resolution for the issue but the IUB subsequently affirmed Liberty's resolution. In its conditional statement, the Board left SGAT section 9.1.2.1 unchanged.[50]

The IUB noted SGAT section 9.1.2.1 extends to CLECs the responsibility for construction charges, which Qwest's retail customers must pay when facilities are unavailable. The IUB determined that the CLEC's proposal could give CLECs a competitive advantage over Qwest in recruiting retail customers. This advantage could arise when retail customers are located in areas where facilities are unavailable. Such customers could avoid construction charges, pursuant to Qwest's retail tariff, by applying for service with a CLEC.

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[48] See Comments of AT&T, pp. 82-85 and Comments of Covad, pp. 34-35.

[49] See Unbundled Network Element Report, issued August 20, 2001, pp. 21-26. Qwest Application, Appendix C, Volume 1, Tab 7)

[50] See *Conditional Statement Regarding August 20, 2001, Report,* IUB Docket Nos. INU-00-2 and SPU-00-11, issued December 21, 2001, pp. 4-11. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

The IUB considered whether Qwest would build network elements in order to provide service to its retail customers absent changes to SGAT section 9.1.2.1. The IUB noted that the lighting of dark fiber would happen as Qwest upgrades its existing network. Once Qwest decides to light the fiber, for whatever reason, the fiber would become available to CLECs as a UNE (pursuant to the last sentence of SGAT section 9.19).

The IUB determined that leaving SGAT section 9.1.2.1 unchanged would maintain a balance in which neither Qwest nor CLECs would have a competitive advantage in recruiting retail customers. If Qwest decided not to invest in a network element, then construction charges would apply to the company who serves the retail customer. Alternatively, if Qwest decided to invest in a network element, then UNE rates would apply, and CLECs could compete for the retail customer.

3. Pricing of UNEs

a. Generally

The IUB notes that many comments filed regarding Qwest's consolidated application for authority to provide in-region, interLATA services questioned the rates to be charged for UNEs. As indicated in its written consultation and evaluation, the IUB did not perform an independent review of each of the UNE rates as proposed by Qwest. Qwest chose to adjust its core UNE rates in Iowa in a manner designed to comply with the FCC's benchmarking analysis, using

total element long-run incremental cost (TELRIC)-based rates recently ordered by the Colorado Public Utilities Commission following a comprehensive proceeding in that state.

The evaluation of the U.S. Department of Justice (DOJ) noted that, due to a failure to adjust the cost estimates used in the benchmarking process to reflect the sale of certain high-cost exchanges, the UNE rates calculated by Qwest are probably too high on average.[51]

Qwest responded to this allegation with an *ex parte* filing, dated July 22, 2002, disclosing a meeting between FCC staff members and Qwest representatives. Documents prepared by Qwest and distributed at the July 19, 2002, meeting indicate that a corrected analysis shows the benchmark levels would be lower in Iowa. According to the filing, the benchmark levels would be lower by 2.9 percent in Iowa.

According to the declaration of Jerrold L. Thompson, the Colorado rates were used as a starting point and adjusted using the same benchmark comparative methodology utilized by the FCC in its reviews of applications for Kansas/Oklahoma, Arkansas/Missouri, Massachusetts, and Pennsylvania. The FCC has indicated in its previous orders that comparisons between states are

[51] See Evaluation of the U.S. Department of Justice, pp. 31-32.

useful in determining whether the proposed rates are just, reasonable, and nondiscriminatory in compliance with checklist item 2.[52]

It would appear that the fate of the UNE rates proposed for Iowa will stand or fall based on the initial determination by the FCC of the pricing determinations made by the Colorado PUC. If the FCC reaches a conclusion that the Colorado rates are just, reasonable, and nondiscriminatory, then it can move to the comparison. The FCC has indicated that where the percentage difference between the applicant state's rates and the benchmark state's rates do not exceed the percentage difference between the applicant state's costs and the benchmark state's costs, as predicted by the USF model, it will find that the applicant has met its burden to show that its rates, as corrected, are TELRIC-compliant in the applicant state.[53]

b. UNE Price Squeeze

The comments state, that wholesale rates are so high, they preclude competitors from earning margins sufficient to compete in the local exchange

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[52] *See Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications, Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma,* Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001). (*SWBT Kansas/Oklahoma Order)*.

[53] *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for authorization to Provide In-Region, InterLATA Services in Pennsylvania,* Memorandum Opinion and Order, 16 FCC Rcd 17419, para. 65 (2001). (*Pennsylvania Order)*.

market. The Iowa OCA maintains that high UNE rates explain the lack of competition in Iowa.[54]

This issue was addressed twice in conditional statements by the IUB. In the first conditional statement, the IUB ruled, based on the *SWBT Kansas/Oklahoma 271 Order*, that the ability of a CLEC to make a profit is irrelevant as long as UNE prices are cost-based. [55]

In the second conditional statement, the IUB reconsidered its position in light of the *Sprin*t remand,[56] noting that Liberty had addressed the price squeeze issue in its multi-state report.[57] Liberty pointed to other avenues of market entry such as resale, business lines, and other subsidies available to competitors who service qualifying residential lines through facilities-based competition. These avenues of entry, along with bundled services over UNE-P, would maximize consumer and producer welfare. The Board concluded that, because CLECs had not quantified with any precision the extent of harm from the alleged price squeeze, the public interest is still met despite *Sprint*.[58]

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[54] See Comments of AT&T, pp. 137-142; Comments of WorldCom, pp. 32-34; Comments of Iowa OCA, pp. 5-10; and Comments of Sprint, pp. 3-9

[55] See *Conditional Statement Regarding Public Interest and Track A,* Docket Nos. INU-00-2 and SPU-00-11, issued January 25, 2002, pp. 14-16. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

[56] See and *Conditional Statement Reconsidering Public Interest,* Docket Nos. INU-00-2 and SPU-00-11, issued June 7, 2002, pp. 4-7. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)

[57] See Liberty Consulting Group's October 22, 2001, Public Interest Report, pp. 5-6. (Qwest Application, Appendix C, Volume 1, Tab 10)

[58] See Comments of AT&T, pp. 85-88

4. Access to Network Elements of Qwest Affiliates

AT&T has argued that Qwest has failed to provide nondiscriminatory access to the network elements of Qwest Affiliates.[59] Liberty addressed this issue in its Emerging Services Report.[60] Liberty added language to SGAT section 9.7.1 requiring Qwest to provide access, not only to what it owns directly, but to all dark fiber for which it has access rights under agreements with any other party - affiliated or not. In its comments on Liberty's report, AT&T proposed additional SGAT changes. The IUB subsequently adopted the SGAT section 9.7.1 language as proposed by Liberty.[61]

In its Comments in this proceeding, dated July 3, 2002, AT&T proposes changes to SGAT section 9.7.2.20. The IUB notes that this section did not appear to be at issue in the multi-state process since no party raised it as an impasse issue during the ROC testing. Colorado's SGAT section 9.7.2.20 appears to have been modified by the Colorado Commission as requested by AT&T would like similar language adopted for Iowa, Idaho, Nebraska, and North Dakota. The Colorado SGAT language apparently provides a CLEC more liberal access rights than allowed under the other state SGATs. The IUB is hesitant to continue to reconsider issues that have been previously litigated and resolved.

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[59] See Comments of AT&T, pp. 85-88

[60] See Third Report – Emerging Services, issued June 11, 2001, pp. 52-55. (Qwest Application, Appendix C, Volume 1, Tab 3)

[61] See *Conditional Statement Regarding June 11, 2001, Report "Third Report",* Docket Nos. INU-00-2 and SPU-00-11, issued October 31, 2001, pp. 19-20. (Qwest Application, Iowa Appendix C, Volume 1, Tab 4)

This is especially true where a party had every opportunity to raise an issue but failed to do so at the appropriate time.

AT&T further contends that Qwest has failed to provide nondiscriminatory access to the network interface device (NID). This issue was addressed by Liberty in its UNE Report.[62] Because AT&T had indicated the issue was no longer at impasse asserting that it would provide its own NID in all circumstances,[63] Qwest did not brief this issue. Nevertheless, in its brief AT&T proposed modifying the final sentence of SGAT section 9.5.2.1 as underlined:

> At no time should either Party remove the other Party's <u>loop</u> facilities from the other Party's NID <u>without appropriately capping off the other Party's loop facilities</u>.

AT&T submitted a Bell Systems document explicitly supporting "capping off" of loop facilities. Liberty stated the Bell Systems document had not been authenticated, and no witness had testified to its general applicability to all of the relevant configurations at issue. Additionally, Liberty stated that its significance and the requirements associated with its implementation were unclear and undefined. Liberty, therefore, rejected AT&T's proposal to modify section 9.5.2.1.

In its conditional statement, the IUB also rejected AT&T's proposal, noting the proposal violated the standard for reopening an issue as outlined in its

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[62] See Unbundled Network Element Report, issued August 20, 2001, pp. 73-74. (Qwest Application, Appendix C, Volume 1, Tab 7)

[63] See May 4, 2001, Multi-state Transcript, pp. 82-83.

docketing order.[64] The IUB stated that AT&T had filed what amounted to technical testimony regarding electrical safety and the National Electrical Code. This left Qwest with no opportunity to challenge the testimony unless the Board ordered another round of briefs.

5. Other UNE Issues

The IUB noted several issues raised by AT&T that do not apply to Iowa. First, AT&T's allegation that Qwest provides discriminatory access to unbundled network elements by exploiting CLEC customer service calls as winback opportunities appears to be a Colorado issue, not an issue in Iowa.[65]

The switching carve-out exception that AT&T expressed concern with also appears to be a Colorado issue, but not an issue in Iowa. Iowa has no cities in Density Zone One of the Top 50 metropolitan statistical area (MSAs).[66]

Further, AT&T has suggested that Qwest improperly discriminates against CLECs by denying them high-quality packet switching functionality. AT&T argues that, although Qwest is obligated to provide unbundled packet switching on a non-discriminatory basis, it offers CLECs only the lowest quality ATM connection from the digital subscriber line access multiplexer (DSLAM) to the CLEC equipment. Unspecified bit rate service (UBRS) is the poorest of five

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[64] See *Conditional Statement Regarding August 20, 2001, Report,* Docket Nos. INU-00-2 and SPU-00-11, issued December 21, 2001, pp. 49-52. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

[65] See Comments of AT&T, pp. 91-94.

[66] See Comments of AT&T, pp. 95-98.

grades of service offered by Qwest to its retail customers. But UBRS is the only grade of service Qwest makes available to CLECs and their retail customers.

The IUB is not aware of this issue being raised in the multi-state process, nor was the issue addressed in any of its conditional statements.

C. Checklist Item 4 – Unbundled Local Loops

In its comments, AT&T alleged Qwest denies CLECs reasonable access to unbundled dark fiber by impermissibly applying the commission's test for use restrictions on enhanced extended link (EELs).[67] This argument was raised by AT&T in the multi-state process and fully considered. Liberty viewed AT&T's argument that it is inappropriate to apply the local exchange use restriction to dark fiber as being without foundation. In its conditional statement, the IUB adopted Liberty's reasoning and conclusion.[68]

D. Checklist Item 5 – Unbundled Local Transport

In its comments, AT&T maintains that Qwest denies CLECs reasonable and non-discriminatory access to unbundled local transport.[69] This argument centers on the price distinction of unbundled dedicated interoffice transport (UDIT) and extended unbundled dedicated interoffice transport (EUDIT). AT&T has consistently argued this issue, raising it in its comments following Liberty's report, and again before the IUB prior to its conditional statement being issued.

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[67] See Comments of AT&T, pp. 102.
[68] See *Conditional Statement Regarding June 11, 2001, Report "Third Report,"* IUB Docket No. INU-00-2, issued October 31, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 4)
[69] See Comments of AT&T, pp. 99.

Liberty concluded that the multi-state checklist proceeding was not the right forum to determine the appropriate pricing of UNEs on a state-by-state basis, a conclusion the IUB agreed with in its conditional statement.

E. Checklist Item 10 – Databases and Associated Switching Non-discriminatory Access to Databases

Touch America, Inc. (Touch America) complains that Qwest has failed to provide it with access to Qwest databases it needs to properly service its customers.[70] Liberty concluded Qwest had satisfied checklist item 10.[71] No comments were filed objecting to Liberty's conclusions and the IUB subsequently accepted Liberty's conclusions in its first conditional statement.[72]

The IUB notes that Touch America did not bring its issues to the state proceeding by requesting intervention and presenting evidence until June 4, 2002, even though the docket had been open since February of 2000. In its order denying the petition to intervene, the IUB noted that the FCC was aware of Touch America's allegations.[73] The FCC has been very straightforward in its expectation that issues concerning checklist items should not be raised for the first time during the FCC's review of a section 271 application. The IUB is troubled that Touch America appears to assume that it need not be bound by

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[70] See Opposition of Touch America, pp. 10-11.

[71] See Report on Checklist Items 3, 7, 8,9,10, and 12, issued March 19, 2001, pp. 51-53. (Qwest Application, Appendix C, Volume 1, Tab 1)

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

[73] See *Order Denying Petition to Intervene and Motion to Reopen Proceedings*, IUB Docket No. INU-00-2, issued June 11, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 47)

such "restrictive" due process concerns, a concern that was only deepened by Touch America's June 28, 2002, letter acknowledging that it was not to be granted an *ex parte* meeting in this proceeding because the issues it wanted to discuss were the same as those being considered in a complaint proceeding which prohibits *ex parte* meetings.

F. Checklist Item 14 – Resale

AT&T's allegation that Qwest is not making digital subscriber loop (DSL) available for resale on reasonable and nondiscriminatory terms and conditions is a new issue, being raised for the first time in this forum.[74]

New Edge Network, Inc. (New Edge) argues in its comments that not all of Qwest's services are available for resale.[75] This issue was not discussed directly by Liberty as an impasse issue. New Edge has accused Qwest of denying CLECs the appropriate wholesale discounts for all of its services. Specifically, New Edge points to Qwest’s unwillingness to offer certain asynchronous transfer mode (ATM) and Frame relay services to CLECs at wholesale prices.

III. COMPLIANCE WITH REQUIREMENTS FOR SEPARATE AFFILIATE TRANSACTIONS

AT&T has raised a plethora of concerns related to Qwest's compliance with the requirements of section 272. The IUB finds it curious that AT&T has raised many of these issues related to Qwest's compliance with the requirements for separate affiliate transactions, recognizing that AT&T filed no comments

following the filing of Liberty's report, prior to the issuance of a conditional statement. Further, the issues listed below were not ones that AT&T requested be reconsidered by the IUB. Thus, it is troubling to see these issues, previously considered and resolved with no apparent concern by AT&T, in the form of a request for reconsideration, being resurrected and treated as major obstacles by AT&T in this forum.

AT&T's statement in its comments that Qwest and QCC have not established that they "operate independently" as required by section 272(b)(1) appears to be nothing more than a general complaint. This was not identified as an impasse issue for discussion by Liberty and was not briefed prior to the IUB's issuance of its conditional statement.

The suggestion that Qwest has not established compliance with the separate-employees requirement of section 272(b)(3) is discussed by Liberty in its report on section 272 issues. Liberty concluded that Qwest had proven its compliance with section 272(b)(3), a conclusion the IUB agreed with in its conditional statement.

AT&T further argues that Qwest does not meet the section 272(b)(5) requirement that all transactions with the section 272 affiliate be at arm's length, reduced to writing, and publicly available.

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[74] See Comments of AT&T, p. 104.
[75] See Opposition of New Edge, p. 10.

Liberty considered this issue in its report, concluding that Qwest had proven its compliance with section 272(b)(5). The IUB agreed with Liberty's conclusion in its conditional statement.

AT&T's argument that Qwest has not demonstrated compliance with its nondiscrimination obligations under section 272(c) is the same issue raised by Touch America. In its report on section 272 issues, Liberty considered this argument and concluded that the issues had been addressed in previous workshops and reports. Additionally, Liberty noted that the issues had not been contested by any of the parties in those previous discussions.

AT&T has questioned that Qwest has not presented any evidence to establish compliance with the joint marketing restrictions of section 272(g). AT&T pointed out that section 272(g) was not part of the KPMG audit. However, Liberty did not recommend an audit of 272(g), the Board agreed with Liberty's recommendation, and no party filed comments following the release of Liberty's recommendation to request that the audit be expanded.

IV. COMPLIANCE WITH ISSUES RELATED TO PUBLIC INTEREST

A. Agreements Not Filed

Several parties raised concerns related to the public interest implications of the existence of interconnection agreements that had not been filed by Qwest. The IUB addressed the issue of Qwest's unfiled or secret agreements in Docket No. FCU-02-2 – a formal complaint proceeding. In that proceeding, the IUB drew

tentative conclusions that three unfiled agreements were interconnection agreements. Based on those conclusions, the IUB determined Qwest had violated §§ 251 and 252, as well as an Iowa administrative rule, requiring the filing of interconnection agreements. Qwest was required to file any other unfiled agreements within 60 days from the date of issuance of the tentative findings and was put on notice that it would be subject to civil penalties, pursuant to Iowa Code § 476.51, for future violations.[76]

This issue was also addressed within the context of the review of Qwest's 271 application when the IUB considered motions by AT&T and the Iowa OCA to import the unfiled agreements into the public interest proceedings. The IUB reasoned, however, that the goal of the public interest inquiry is to identify and correct problems, beyond the competitive checklist, that would impede the opening of local markets. The Board, concluding it had already accomplished that goal in Docket No. FCU-02-2, denied the motions by AT&T and the Iowa OCA.[77]

Allegations that the unfiled agreements related directly to the silencing of Qwest's opponents in the 271 process were also addressed by the IUB, in reaching its conclusion that no evidence was presented that would indicate the 271 process was not complete and exhaustive with respect to the checklist items,

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[76] See *Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing*, Docket No. FCU-02-2, issued May 29, 2002.

[77] See *Order to Consider Unfiled Agreements*, Docket Nos. INU-00-2 and SPU-00-11, issued June 7, 2002, pp. 1-11. (Qwest Application, Iowa Appendix P, Volume 3, Tab 24)

even with the absence of certain CLECs. This conclusion was based, in part, on an understanding that the ROC OSS test was not dependent on CLEC participation, but rather utilized a pseudo-CLEC for testing purposes. The Board concluded that AT&T and other CLECs were vigorous in their participation, but there is no way of knowing, had there not been unfiled agreements, whether other CLECs would have had the inclination to participate.[78]

B. Past Conduct

AT&T points to complaint proceedings in Minnesota, Washington, and Colorado, suggesting they are adequate rationale for the FCC to reject Qwest's Iowa 271 application.[79]

In addressing the Minnesota UNE-P testing complaint,[80] the IUB noted that the Minnesota ALJ did not recommend withholding section 271 approval in Minnesota. Instead, a monetary penalty was recommended. Therefore, the IUB reasoned that the ALJ must have considered the penalty, alone, appropriate for the anti-competitive actions Qwest allegedly performed. Additionally, the IUB questioned the reasonableness of another state commission supplementing the Minnesota penalty by indefinitely withholding section 271 authority, based on a proceeding in another jurisdiction.

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[78] *Id.*, at p. 10.
[79] See Comments of AT&T, pp. 122-123; 131-132.
[80] See *Conditional Statement Reconsidering Public Interest,* Docket Nos. INU-00-2 and SPU-00-11, issued June 7, 2002, pp. 10-13. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)

The IUB did note that the fact that AT&T prevailed in the Minnesota complaint, demonstrates there are procedures in place for addressing wholesale complaints. The Minnesota decision shows that significant penalties, imposed through traditional regulatory complaint proceedings, are useful in guarding against anti-competitive behavior and noted that once Qwest obtains section 271 approval, QPAP penalties would also guard against anti-competitive behavior. Under the QPAP, Qwest's failure to meet specified PIDs would trigger automatic penalties. Therefore, after section 271 approval, regulatory oversight and sanctions towards anti-competitive behavior should increase. Similarly, Qwest's incentive not to engage in anti-competitive behavior should also increase.

The IUB has not specifically addressed the complaints in Washington or Colorado noted by AT&T. Nevertheless, the IUB maintains its position that there is no precedent for it "to add its own penalty to a complaint proceeding that occurred elsewhere on a record not before it."[81]

AT&T and Touch America note various times Qwest has allegedly violated the requirements of section 271. Touch America also notes its "lit capacity IRU" complaints. Both companies argue these violations should preclude Qwest from being granted 271 approval.[82]

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[81] *Id.*, at p. 13.
[82] See Comments of AT&T, pp. 123-129 and Opposition of Touch America, pp. 12-22.

Approximately ten "violations" were noted by the IUB in its first conditional statement on public interest.[83] For several of the violations, the IUB agreed that Qwest had already been held accountable for failing to correctly interpret what constitutes in-region, interLATA service, and concluded the violations were not predictive of Qwest's conduct after a grant of 271 authority. Thus, the IUB determined Qwest's past infractions were not of the nature to support a finding that Qwest's entry into the in-region, interLATA market would contravene the public interest. Some of the other "violations" were seen by the IUB as good-faith disputes. Still other "violations" involved allegations of a complaint by a third party in a non-participating workshop state. These were seen as insufficient to demonstrate a pattern of past abuse significant enough to question the public interest of permitting Qwest to enter the in-region, interLATA market.

Touch America waited until the public interest inquiry was complete before raising its "lit capacity IRU" complaints as an issue for consideration. Although the IUB denied Touch America's motion to intervene,[84] it noted that the issue is currently before the FCC.[85]

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[83] See *Conditional Statement Regarding Public Interest and Track A,* Docket Nos. INU-00-2 and SPU-00-11, issued January 25, 2002, pp. 23-27. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

[84] See *Order Denying Petition to Intervene and Motion to Reopen Proceedings*, Docket Nos. INU-00-2 and SPU-00-11, issued June 11, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 47)

[85] See *In the Matter of Touch America, Inc. v. Qwest Communications International Inc., et al.*, File No. EB-02-MD-003 (filed Feb. 8, 2002) ("*IRU Complaint*"); *see also In the Matter of Touch America, Inc. v. Qwest Communications International Inc., et al.*, File No. EB-02-MD-004 ("*Divestiture Complaint*") (filed Feb. 11, 2002).

C. CLEC Industry

Sprint points to the bankruptcies and financial turmoil within the CLEC industry, noting that it has made it extremely difficult for surviving CLECs to obtain capital and expand. As a result, the market shares of competitors will shrink. Sprint complains that the public interest inquiry has disregarded the implications of regional bell operating companies (RBOCs) not moving out-of-region to compete in the local service market.[86]

In reconsidering this issue, the IUB noted the FCC's position from paragraph 427 of the *Bell Atlantic New York 271 Order*.[87] There the FCC stated that to deny section 271 authority, under the public interest test, the BOC must be guilty of a "sin of omission or commission." Neither CLEC bankruptcies nor the fact that other RBOCs have decided not to compete in Qwest's region can be attributed to Qwest's actions. Thus, the IUB maintains that Sprint's concerns do not satisfy the criteria for denying 271 authority under the public interest test.

D. Performance Assurance Plan

AT&T states the data reconciliation process was extremely limited in scope and had too many discrepancies to be used as a reliable indicator of Qwest's data. Further, the burden was placed on the CLECs to determine if the conclusions were in error rather than Qwest proving the accuracy of the data.[88]

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[86] See Comments of Sprint, pp. 4-9.
[87] See *Conditional Statement Reconsidering Public Interest,* Docket Nos. INU-00-2 and SPU-00-11, issued June 7, 2002, p. 15. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)
[88] See Comments of AT&T, pp. 46-48.

This issue was considered by the IUB and discussed in its conditional statement regarding the data reconciliation. AT&T was one of the CLECs participating in this study and agreed to the parameters of the study. AT&T agreed to the scope of the test and was afforded the opportunity to contest the findings throughout the long review.

V. CONCLUSION

The Iowa Utilities Board maintains it previous assertion that Qwest has complied with each of the statutory requirements for entry into the in-region, interLATA service market and continues to recommend 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 29, 2002.