

ignore the fact that Qwest’s overall region-wide manual service order accuracy for Resale and UNE-P orders improved to 96.98% in September, and that its performance for Unbundled Loops has consistently been at or around 95% since June. See Qwest III OSS Reply Decl. ¶ 80. It therefore should come as no surprise that the Department of Justice recently found that “Qwest’s data suggests that its current service order accuracy performance is consistent with that of other BOCs whose Section 271 applications have been approved.” DOJ Qwest III Evaluation at 6.

As a last resort, CLECs try to discredit Qwest by raising concerns in connection with Qwest’s service order accuracy measurements, PO-20 and “Service Order Accuracy via Call Center Data” (formerly known as “OP-5++”). But these concerns fall short of demonstrating non-compliance with Section 271. See *generally* Reply Declaration of Michael G. Williams, Performance Measure Result (“Qwest III Williams Reply Decl.”), Att. 15. The remaining ordering-related issues raised by CLECs are relatively few and minor, and likewise do not affect a finding of compliance. See Qwest III OSS Decl. ¶¶ 81-100.

### **C. Provisioning**

CLECs have raised very few provisioning-related issues. Eschelon claims that Qwest’s process for reporting service-affecting troubles during the first 72 hours following installation is unclear. See Eschelon Qwest III Comments at 7-13. But this process was described fully in the Addendum to Qwest’s Supplement Brief in this proceeding and, contrary to Eschelon’s allegations, does not conflict with an explanation Qwest provided in response to a Change Request submitted last year. See Qwest III OSS Reply Decl. ¶¶ 101-104

WorldCom claims that Qwest “returns completion notices at the end of the day regardless of whether orders have been completed” for line sharing and UNE-P LSRs. See WorldCom Qwest III Comments at 15, Lichtenberg Decl. ¶¶ 37-40. With respect to line sharing

LSRs, this is precisely the same argument WorldCom made – and Qwest responded to – previously. See Qwest III OSS Reply Decl. ¶ 106. For UNE-P LSRs, WorldCom’s comments oversimplify and over-generalize what actually occurs. Service orders are not completed simply because a due date has arrived. Rather, they are completed after a multitude of checks, including a check to ensure that the order has not been coded as a jeopardy. See *id.* ¶ 107. On occasion, Qwest may complete a service order despite a jeopardy status. But preliminary analysis shows that this occurs on less than 0.73% of service orders processed for both Wholesale and Retail. See *id.* Moreover, Qwest plans to implement a solution to minimize these occurrences even further in early 2003, *See id.*

**D. Maintenance and Repair**

Only two maintenance and repair-related issues were raised in the comments, both by Eschelon, which claims, first, that Qwest closes design trouble tickets with the incorrect cause and disposition code. See Eschelon Qwest III Comments at 40. But Qwest’s own data show that Qwest accurately codes design services trouble tickets. See Qwest III OSS Reply Decl. ¶ 111. For instance, during the week of September 9, 2002, Qwest achieved 97% coding accuracy for total design troubles reported by Eschelon. See *id.* and Reply Exhibit LN-8. Moreover, KPMG affirmed Qwest’s ability to accurately handle design trouble tickets during the Third Party Test. See Qwest III OSS Reply Decl. ¶ 113. Clearly there is no Section 271 issue here.

Eschelon also alleges that Qwest should have processes in place to provide CLECs with up front notice of M&R charges and to allow CLECs an opportunity to verify and dispute those charges. See Eschelon Qwest III Comments at 41. These are the same issues that Eschelon raised – and Qwest responded to – previously. See Qwest III OSS Reply Decl. ¶ 115. Qwest does in fact provide CLECs with up front notice of M&R charges for design and non-

design services, *see id.* ¶¶ 116-118, and CLECs have multiple opportunities to dispute M&R charges. *See id.* ¶ 119. Once again, there is no Section 271 issue here.

**E. Billing**

CLECs raise no new billing issues in their comments. Both AT&T and Eschelon voice concerns about Qwest's Wholesale bill accuracy. *See* AT&T Qwest III Comments at 64, Finnegan/Connolly/Wilson Decl. ¶ 107-115; Eschelon Qwest III Comments at 41-44. But those concerns relate to issues that either are in the process of being fixed or are not problems to begin with. They also are belied by Qwest's continued strong performance under BI-3A. *See* Qwest III OSS Reply Decl. ¶¶ 125-127. Moreover, issues raised by these CLECs do not indicate systemic problems with Qwest's OSS; rather, they are typical of business-to-business relationships, which alone should render them moot. *See Alabama/Kentucky/Mississippi/North Carolina/South Carolina 271 Order* ¶ 179.

WorldCom expresses concern that its end-users may be late- or double-billed. *See* Qwest III WorldCom Comments at 7-8. But Qwest's systems are designed specifically to ensure that double billing does not occur. *See* Qwest III OSS Reply Decl. ¶¶ 131-132. Moreover, late billing is unlikely because any usage that occurred within the CSR interval typically is made available to WorldCom within a similar interval. *See id.*

AT&T complains about bill auditability. Qwest already has described in detail (and repeatedly) how its Wholesale bills are auditable. *See* Qwest III OSS Reply Decl. ¶ 133. Moreover, the Department of Justice recently found that "CLECs' ability to audit their bills electronically is sufficient to support a positive assessment of Qwest's wholesale billing capabilities." *See* DOJ Qwest III Evaluation at 8.

All of the discrepancies in the BOS bill that AT&T points to pertain to issues that Qwest already has disclosed and fixed, or plans to fix by the end of this year. *See* Qwest III OSS Reply Decl. ¶¶ 134-135. Notably, AT&T was the only CLEC to criticize Qwest for its BOS offering. Qwest has worked – and will continue to work – diligently with AT&T to identify and resolve any concerns regarding its BOS bill. But these concerns are not Section 271-affecting. There is no industry standard that suggests that BOS is the proper format for local competition billing; and, even if there were, compliance with industry standards is not required for Section 271 relief. *See Louisiana 271 Order* ¶137; *New York 271 Order* ¶ 88.

Eschelon argues that the DUF does not contain accurate records of switched access MOU. *See* Eschelon Qwest III Comments at 47-53. But Eschelon only last week provided Qwest with details regarding its claim of dropped usage in May, *nearly six months after it allegedly occurred*. *See* Qwest III OSS Reply Decl. ¶ 147. Moreover, the few data that Eschelon provided were woefully incomplete, thereby preventing Qwest from analyzing Eschelon's claims in this limited time period. *See id* ¶ 147, 149-150.<sup>45/</sup> In any case, KPMG's ROC Test evaluated Qwest's DUF and found that it contains accurate call start and end times. *See id* ¶ 144.

The remaining CLEC billing-related concerns, such as OneEighty's complaint regarding termination record completeness, were in fact due to errors on the part of the CLEC, not Qwest, and have been resolved. In short, the record shows that Qwest's Wholesale bills comply fully with the Commission's requirements that Qwest provide complete, accurate, and auditable bills to CLECs.

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<sup>45/</sup> Qwest is continuing to work with Eschelon and its consultant to investigate its allegations.

#### IV QWEST'S CHANGE MANAGEMENT PROCESS SATISFIES SECTION 271

As shown by the record developed in Qwest I and II, Qwest has satisfied each of the seven change management requirements identified by the FCC under Section 271. 46/ Nothing in the comments here alters this conclusion. The Department of Justice also has found that Qwest has satisfied these requirements. *See DOJ Qwest I Evaluation* ¶¶ 25-31.

As stated in the Qwest I CMP Declaration, Qwest already had in place and implemented at the time of filing its first application a comprehensive, forward-looking, and detailed change management plan that was the result of a collaborative Qwest/CLEC change management redesign process begun over a year ago. The CMP redesign process is now concluded and the change management plan has been finalized in every detail. Reply Declaration of Dana L. Fisher (“Qwest III CMP Reply Declaration”), Att. Ex. 5; Reply Exh. DLF (“CMP Framework”).

Other than the challenge by AT&T prior to the filing of the Qwest III Declaration, none of the other parties in Qwest III challenge the adequacy of Qwest's CMP itself. AT&T points to its prior allegation that Qwest had not demonstrated a pattern of compliance with the CMP. AT&T Qwest III Comments at 50 n.168. The Qwest I and II CMP Declarations demonstrated a strong pattern of compliance over time with the redesigned CMP, a pattern that continues to be

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46/ See *Alabama/Kentucky/Mississippi/North Carolina/South Carolina 271 Order*, App. F, ¶¶ 40-42 (identify seven Section 271 criteria for change management). In the Change Management Declarations, Qwest showed that (1) its CMP information is clearly organized and accessible; (2) competing carriers have substantial input into the design and operation of the CMP; (3) the CMP has a procedure for timely dispute resolution, and (4) it has shown a pattern of compliance over time. *See Qwest I CMP Decl.* ¶¶ 121-172; *Qwest II CMP Decl.* ¶¶ 121-172. In the OSS Declarations, Qwest demonstrated (1) the adequacy of the technical assistance it provides to CLECs in using its OSS; (2) the efficacy of its EDI documentation and (3) the stability of its test environment, which mirrors the production environment. *Qwest I OSS Decl.* ¶¶ 603-779; *Qwest II OSS Decl.* ¶¶ 587-768.

compelling. *See* Qwest I CMP Decl. ¶¶143-172; Qwest II CMP Decl. ¶¶172-197; Qwest II CMP Reply Decl. ¶¶14-29, Qwest III CMP Reply Decl. ¶¶1-7 and Reply Exh. DLF-1 (CMP Process Improvements Matrix, dated October 30, 2002).

Although WorldCom does not challenge the efficacy of the CMP in its Qwest III comments, it alleged specific instances of noncompliance with the CMP in its Qwest II Reply Comments, and cited some others from an Eschelon August 15, 2002 *ex parte* submission in Qwest I. *See* WorldCom Reply Comments ¶¶13-15 and WorldCom Reply Decl. ¶ 30, citing Eschelon August 15, 2002, *ex parte*. Only one of those instances involved any violation of the CMP requirements, and it was isolated and minor in nature. Qwest III CMP Reply Decl. ¶¶1-15.

With respect to the change management criteria not related to the change management process itself, no party has argued at any point in the Qwest Section 271 FCC proceedings that Qwest's technical assistance is inadequate. Now, for the first time, a party (WorldCom) has challenged the efficacy of Qwest's EDI process. WorldCom Qwest III Comments at 12; Lichtenberg Decl. ¶¶1-32. Qwest has provided an extensive description of its EDI documentation and provided copies of that documentation in Qwest I and again in

Qwest II. Qwest I OSS Decl. ¶¶675-680; Qwest II OSS Decl. ¶¶659-664. Qwest also provided compelling evidence in the form of commercial data showing that, as of June 30, 2002, a total of 31 individual CLECs had successfully tested and gone into service using EDI. Qwest II OSS Decl. ¶¶1-2 and Confidential Exhibit LN-OSS-70. *See Alabama/Kentucky/Mississippi/North Carolina/South Carolina 271 Order*, ¶¶188. HP, the pseudo CLEC in the ROC, has also found Qwest's EDI process to be effective. Qwest I OSS Decl. ¶¶696-703

Against this backdrop, WorldCom challenges the efficacy of Qwest's EDI documentation by offering examples of what it deems to be inconsistencies or missing information in the documentation. WorldCom Qwest III Comments at 12, Lichtenberg Decl. ¶¶ 30. Each of WorldCom's specific examples is addressed in an Exhibit to the OSS Reply Declaration. Qwest III OSS Reply Decl. ¶157 and Reply Exh. LN-12. Most of the difficulties WorldCom experiences can be attributed to its reliance on the LSOG, rather than the Developer Worksheets contained in the EDI Disclosure Document, which Qwest recommends. *Id* In any case, none of WorldCom's cited instances would prevent a CLEC from successfully building an EDI interface. *Id*

AT&T and WorldCom argue again in their Qwest III comments that Qwest's stand-alone test environment (SATE) fails to "mirror production." AT&T Qwest III Comments at 64-65 and Finnegan/Connolly/Wilson Decl. ¶¶ 16-122; WorldCom Qwest III Comments at 16-17 and Lichtenberg Decl. ¶¶ 41-47. Qwest has already addressed every one of AT&T's arguments in its prior filings in Qwest I and Qwest II. *See* Qwest III OSS Reply Decl. ¶¶ 162-166. With respect to one of AT&T's arguments – that SATE does not mirror production because it does not include all products that are available in production – Qwest and AT&T have reached a compromise on this impasse issue before the Arizona Corporation Commission. Qwest III OSS Reply Decl. ¶ 166 and Reply Exh. LN-14. That compromise, under which Qwest would add certain products to SATE with a certain threshold volume of transactions, is pending before the ACC Staff. *Id*.

WorldCom advances two new arguments in its Qwest III comments, neither of which has merit. As explained in the Qwest III OSS Reply Declaration, WorldCom's concern about access to directory listing testing functionality (Lichtenberg Decl. ¶¶ 42-44) has been

addressed, effective October 19, 2002, with the introduction of SATE IMA release 11.0, which has that capability (pursuant to CMP prioritization procedures). Qwest III OSS Reply Decl ¶168. That concern also is addressed by the ability of CLECs to test facility based directory listing (FBDL) in the Interoperability environment for earlier releases without providing their own data. *Id* WorldCom's other concern, that SATE test scenarios do not contain certain characteristics and include "only the most basic order types," Lichtenberg Decl. ¶45, has been addressed by Qwest's addition of test scenarios on request for CLECs, including WorldCom. Qwest III OSS Reply Decl. ¶ 172. Qwest's policy, to which CLECs have agreed, provides that test scenarios will not be added more generally to the SATE Data Document, or for future releases, unless requested by more than one CLEC, so as not to clutter the Document unnecessarily. *Id*.

In sum, nothing in the Qwest III comments or in the record of Qwest I or II undercuts Qwest's strong showing that it has met all seven of the Section 271 change management criteria.

#### **V. QWEST'S COMMERCIAL PERFORMANCE CONTINUES TO SATISFY THE REQUIREMENTS OF SECTION 271**

The overwhelming weight of evidence demonstrates that Qwest's performance data are accurate and reliable, and that Qwest's commercial performance continues to meet the standards established by the PIDs. Yet AT&T continues to argue that Qwest's performance data are inaccurate. AT&T Qwest III Comments at 66 This generalized claim, which AT&T admits simply echoes what it "explained in *Qwest I* and *Qwest II*," *id*, Finnegan Decl. ¶ 10, offers nothing new to overcome Qwest's showing that its performance "has been scrutinized beyond that experienced by any other BOC," in that two separate third parties found the data reliable,

and two separate third parties validated the results in data reconciliation. Qwest I Reply Comments at 10-15; see *also* Qwest II Reply Comments at 7-12. Qwest already has irrefutably demonstrated that its performance measures and data have undergone even more thorough third-party auditing, internal and external controls, collaborative workshops, data reconciliation, and state oversight, than those of previous successful Section 271 applicants. Qwest I Reply Comments at 10-11.

Moreover, Qwest's commercial performance results continue to reflect that Qwest complies with Section 271, notwithstanding AT&T's vain effort to reinforce previous points through state-by-state review of several measurement results, see AT&T Qwest III Comments, Finnegan Decl. ¶¶ 34-122, or the other disparities variously raised by other parties or observable in Qwest's performance. See Qwest III Williams Reply Decl. ¶¶ 48-51. Together with the existing record, the additional data provided with the current Application, Qwest III Supplemental Brief, Att. 5, App. D, show Qwest on the whole either sustaining its satisfactory performance or generally improving it.<sup>47/</sup> Qwest continues to meet an impressive 93% to 94% of the standards established in its PIDs. See Qwest III Williams Reply Decl. ¶ 48.

With respect to the relative handful of specific issues raised by AT&T and CLECs such as Eschelon, the discussion that follows demonstrates the fallacy of the CLEC allegations that Qwest's performance results are not accurate and reliable. Rather, the Commission should find that Qwest's commercial data are "sufficiently reliable for purposes of . . . section 271

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<sup>47/</sup> See *also* Qwest III Wyoming PSC Comments at 5 (updated data show "Qwest has, on balance, maintained or improved its overall performance"); Qwest III Idaho PUC Comments at 3 (PUC "reviewed the . . . data included with the revised application [and] "did not find any pattern . . . that would lead to a conclusion that Qwest's overall performance had diminished"); Qwest III Nebraska PSC Comments at 2 (PSC "reviewed Qwest's August performance data" and "[b]ased upon this most recent commercial performance . . . continues to recommend approval of Qwest's 271 application").

analysis,” *Georgia/Louisiana 271 Order*, ¶ 20, and that its commercial performance results show that Qwest provides interconnection and access to network elements in compliance with Section 271

**A. Qwest’s PO-20 and Order Accuracy-Call Center Measurements are Sufficient to Support a Finding of Compliance with Section 271**

Qwest’s PO-20 and Order Accuracy-Call Center Service Order Quality measurements of new service quality are anything but “ill-defined, incomplete, and inadequate to show statutory compliance,” as claimed by AT&T. <sup>48/</sup> As a preliminary matter, it should be noted that AT&T’s challenge rests on the assumption that these measurements must carry the entire burden of demonstrating Qwest’s new service quality, while ignoring the broader context that includes Liberty’s data reconciliation and the OSS test, which left open only a single limited question regarding manual order-processing quality. <sup>49/</sup> In any event, despite an abundance of evidence reflecting the acceptable quality of Qwest’s order accuracy, Qwest elected to provide additional information in the form of PO-20 (percentage of orders without errors, based on evaluation of specified fields on sampled orders) and Order Accuracy-Call Center results (based on CLEC

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<sup>48/</sup> AT&T Qwest III Comments, Finnegan Decl., ¶ 5. The Order Accuracy-Call Center Service Order Quality measurement, previously referred to as, *inferalia*, “OP-5++,” “Service Order Accuracy” or “Service Order Accuracy – via Call Center Data,” is referred to hereinafter as the “Order Accuracy-Call Center” measurement.

<sup>49/</sup> Conversely, the exceptions AT&T relies upon, AT&T Qwest III Comments, Finnegan Decl. ¶ 5, (referencing Exceptions 3028 and 3043), were closed by KPMG with very good results (97% and 99%, respectively). See AT&T Qwest III Comments, Finnegan Decl., Attachments 4 and 5. KPMG identified only one remaining Observation (3110), which did not rise to the level of an exception, because it addressed a single aspect of ordering quality, service intervals (consisting of accuracy of application dates and due dates), not expected to indicate failure of a test requirement. Qwest did not have to pursue this item to closure through further re-testing, because sufficient evidence already existed, through data reconciliation conducted by Liberty Consulting, to demonstrate acceptable order-processing quality, and additional results showed no problems with other aspects of ordering quality. See Qwest III Williams Reply Decl. ¶ 8.

calls to Qwest's ISC regarding LSR/service order discrepancies). These measurements confirm that Qwest's order accuracy is very good (93% for Resale/UNE-P POTS and 95% for Unbundled Loops) with respect to ordering fields affecting application date accuracy, due date accuracy, and other fields that could be manually examined in PO-20. 50/ In addition, the Order Accuracy-Call Center data also confirm that the incidence of problems experienced by CLECs related to order accuracy is very small (less than 1%). *Id* Taken in the context of overall OSS test results, the PO-20 and Order Accuracy-Call Center results focus on the proper dimensions of order quality, while being open for modification in the future, 51/ and they show that Qwest's order processing is reasonably accurate from two separate perspectives – order sampling and CLEC calls to centers. *Id*.

**B. Qwest's OP-5 PID Properly and Reasonably Captures New Service Installation Quality**

AT&T and Eschelon make a number of claims regarding the efficacy of Qwest PID OP-5 (New Service Installation Quality) and the results reported under that measurement, the central thrust of which **is** that **OP-5** enhances Qwest's performance by improperly excluding troubles. *See generally* Eschelon Qwest III Comments at 8-30; see also AT&T Qwest III Comments, at 67. However, Eschelon's and AT&T's claims are belied by the origin and

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50/ Qwest III Williams Reply Decl. ¶ 9. As to Eschelon's claims arising out of its examination of Pending Service Order Notifications ("PSONs"), Eschelon Qwest III Comments at 21-27, Qwest's Addendum to this Application provided the results of a quantitative analysis that demonstrated "PSON to LSR mismatches occurred only on 1.06% of LSRs." Qwest III Supplemental Brief, Add., "Service Order Accuracy," at 7.

51/ Qwest has emphasized its willingness to discuss both measurements further with parties in the context of Long Term PID Administration ("LTPA"). See Qwest III Williams Reply Decl. ¶ 9 & Att. 1. To the extent States and CLECs have questions regarding PO-20, they will be addressed in the LTPA, which has already held its first meeting. Service order accuracy will be among the first subjects to be addressed. See *id.* ¶ 11

evolution of OP-5, see Qwest III Williams Reply Decl. ¶¶ 13-14, and both CLECs make a number of incorrect assumptions as well. For example, AT&T and Eschelon both erroneously assert that OP-5 does not capture new service problems reported to the ISC. AT&T Qwest III Comments, Finnegan Decl. ¶¶ 25-27; Eschelon Qwest III Comments at 11. In addition, Eschelon stretches the definition of OP-5 PID beyond the breaking point, claiming it must include all service-affecting troubles regardless of how they are reported to Qwest, and AT&T challenges the reliability of OP-5 using examples that do not address reliability. They also misinterpret OP-5's rules for exclusions. All told, neither the general concerns underlying the AT&T and Eschelon complaints regarding OP-5, nor their specific assertions about that PID, support a finding other than that Qwest complies with Section 271

The troubles Qwest excludes from OP-5 are proper based on the PID definition. See Qwest III Williams Reply Decl. ¶¶ 25-28. Qwest has shown that CLEC calls to the ISC within 72 business hours of service installation generally fall into four categories, 52/ only one of which is eligible for inclusion under OP-5. See Qwest III Williams Reply Decl. ¶¶ 25-28. AT&T's and Eschelon's concerns regarding what OP-5 captures are unfounded, given that calls to the ISC reporting problems appropriately resolved by trouble reports in Qwest's repair systems do in fact give rise to trouble reports by the ISC. See *id.* ¶¶ 16-19. Yet AT&T and Eschelon still worry that CLEC calls reporting problems to the ISC will somehow be excluded from OP-5 simply because the call goes to the ISC rather than to a repair center. AT&T Qwest III Comments, Finnegan Decl. ¶ 26. However, when an installation problem attributable to Qwest following new service order completion arises, and a CLEC follows proper reporting procedures – including calling the ISC if a problem occurs in the first 72 hours following

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52/ Qwest III Supplemental Brief, Add., "Reporting Service Affecting Troubles" at 1

installation – Qwest creates a trouble ticket and OP-5 captures the problem. Qwest III Williams Decl. ¶¶ 17. If the problem relates to order accuracy due to LSR/Service Order mismatches rather than provisioning, it appears in Qwest’s Order Accuracy-Call Center results. 53/

In addition to its misplaced assumptions, Eschelon makes the unreasonable claim that OP-5 should include all service-affecting troubles without regard to how they are reported. Eschelon Qwest III Comments at 13-14. Eschelon attempts to justify this approach by culling language from OP-5’s definition to reach the blanket conclusion that “[i]f the trouble affects service, it should be included in OP-5,” then arguing that this standard “applies to all troubles ‘received’ by Qwest, without stating how received.” *Id.* This argument is contrary to the PID negotiated in the ROC collaborative, however, and is at odds with the fact that no other ILEC’s measurement corresponding to OP-5 (including those relied upon in Section 271 Applications the FCC has granted), includes every service-affecting trouble, regardless of type or manner reported. 54/

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531 *Id.* Eschelon’s supposition that Qwest does not create trouble reports for new installation-related problems called into the ISC or CSIE, which Eschelon bases on Qwest’s response to a single Change Request (“CR”) in the CMP, *see* Eschelon Qwest III Comments at 10, is in error. Eschelon misinterprets Qwest’s response to the CR to mean Qwest failed to follow the process described in the Addendum to this Application. Qwest III Williams Reply Decl. ¶¶ 18-19. In fact, Qwest’s process within the first 72 hours after the due date is precisely as described in Qwest’s Addendum. Qwest III Supplemental Brief, Add., “Reporting Service Affecting Troubles” at 14-16. The CR cited by Eschelon is no exception. Qwest III Williams Reply Decl. ¶ 18.

54/ *See* Qwest III Williams Decl. ¶ 20. Eschelon’s concern that subsequent trouble tickets resulting from tagging activities at the customer’s serving terminal, or demarcation (“DEMARC”), are not captured in OP-5 are misplaced. *See* Eschelon Qwest III Comments at 27-30. Under the PID, such subsequent trouble reports should not result in an eligible trouble report for OP-5 reporting purposes. *As* explained in detail elsewhere, *see* Qwest III Williams Reply Decl. at 37-40, if the Qwest technician identifies a defective cable or cable pair while performing DEMARC tagging functions, the technician will generate an internal trouble report to justify, track, and monitor the additional correcting repair activity. Because this subsequent

AT&T asserts that Qwest's results for OP-5 are unreliable, but supports its claim with arguments that do not address the reliability of the PID and that are, in any event, incorrect. Qwest III AT&T Comments at 67. AT&T's challenge must fail, if for no other reason than that AT&T relies on an example it erroneously believes OP-5 does not address. <sup>55/</sup> In the final analysis, though Qwest has long acknowledged that OP-5 has some limitations, *see* Qwest I *ex parte* 07/10/02, Tab 4, reliability is not one of the PID's shortcomings. <sup>56/</sup>

Finally, the "composite hypothetical" Eschelon provides based on "Off-Net conversions," and the various points Eschelon makes in reliance on the hypothetical, Eschelon Qwest III Comments at 11-16, have no probative value with respect to what OP-5 captures. The majority of Eschelon's allegations about what OP-5 does not capture are simply incorrect, *see* Qwest III Williams Reply Decl. ¶ 29, and the remainder simply reflect inherent limitations in OP-5 similar to those Qwest has already addressed. *See* Qwest I *ex parte* 07/10/02, Tab 4. In fact, the hypothetical and the arguments based on it are riddled with problems. This includes Eschelon's erroneous interpretation of the OP-5 PID exclusion "Trouble reports on the day of installation before the installation work is reported by the technician/installer as complete."

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internal trouble report is generated prior to closure of the DEMARC tagging trouble report, it is not captured by OP-5 per the exclusions set forth for that PID. *Id.*

<sup>55/</sup> AT&T's faulty example concerns a provisioning problem where "a customer orders Call Waiting, but Caller ID is provisioned," AT&T Qwest III Comments, Finnegan Decl. ¶ 24, that is incorrectly proposed in the context of a provisioning error. *See* Qwest III Williams Reply Decl. ¶ 22.

<sup>56/</sup> *See* Qwest III Williams Decl. ¶ 21 (citing *Liberty Consulting's Final PMA Report* at 66, ¶ 4(d)). There is no merit to AT&T's claim the Qwest witness Michael Williams "admitted" in hearings in Minnesota that OP-5 does not capture problems corrected through service orders. Qwest III AT&T Comments, Finnegan Decl. ¶ 24 n.21. The statements made during that testimony were in another context and did not pertain to the assertions AT&T levels here. *See* Qwest III Williams Reply Decl. ¶¶ 23-24.

See Qwest III Williams Reply Decl. ¶¶ 30-31. It also includes Eschelon’s focus on “line side switch translations” and its related failure to recognize that troubles reported prior to the technician completing installation work are properly excluded from OP-5 results under the PID’s definition. <sup>57/</sup> No meaningful findings regarding OP-5 or Qwest’s implementation of it can be made based on Eschelon’s hypothetical.

In sum, OP-5 properly and reasonably captures new service installation quality in a manner that is reliable and demonstrates Qwest’s compliance with Section 271. Qwest properly handles exclusions based on the PID definition, such that OP-5 captures everything the PID is intended to track. In addition, Qwest has committed – and has taken significant efforts -- to develop improvements to overcome limitations in OP-5 that exist in the current version PID, which was accepted by all the parties at the time of its inception. See Qwest III Williams Reply Decl. ¶¶ 41-46.

**C. AT&T’s LSR Rejection Rate Claims are Misleading and Incorrect**

AT&T criticizes what it claims is a Qwest rejection rate of 30% for local service requests (“LSRs”). AT&T Qwest III Comments, Finnegan/Connolly/Wilson Decl. ¶¶ 59-60. This argument has no merit. AT&T’s 30% figure is based on two PIDs, PO-4A-2 and PO-4B-2, that measure auto-rejects returned in a matter of seconds and which are only diagnostic standards in any event. Qwest III Williams Decl. ¶ 5. Meanwhile, AT&T ignores LSR rejection results for the one PID the ROC collaborative did establish standards for, PO-3, which measures the

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<sup>57/</sup> *Id.* ¶ 36; see also *id.* ¶ 25 (categorizing typical CLEC calls to the ISC within 72 business hours of service installation). With respect to Eschelon’s complaints regarding line side switch translations, Qwest notes that the preponderance of data reflected by the OSS test demonstrate Qwest is doing very well in the area of switch translations (99% success rate). See *id.* ¶ 36 (citing AT&T Qwest III Comments, Finnegan Decl. ¶ 21 (referencing ROC OSS Test Exception 3043 regarding switch translations)).

timeliness of reject notifications. Qwest's results for this measurement satisfy the standards and clearly demonstrate Qwest is returning auto-rejects in less than 5 seconds on average. <sup>58/</sup>

Notably, neither AT&T nor any other CLEC has alleged that auto-rejects are unduly delayed.

**D. Qwest Properly Categorized Eschelon's UNE-Star Lines as UNE-P**

The Commission must reject Eschelon's renewed challenge to Qwest's reporting UNE-Star results within UNE-P data, which includes the Eschelon-specific "UNE-E product Eschelon Qwest III Comments at 44-47. As Qwest has shown, UNE-Star is a UNE combination, not resale, so the proper place to report it is in PID categories specified for combinations, *i.e.*, UNE-P. Qwest II Williams Reply Decl. at ¶¶ 76-81; Qwest I Reply Comments at 74-79.

Because Eschelon's lines were converted to UNE-E/UNE-Star rates by agreement with Eschelon over two years ago, Eschelon's reporting changed to UNE-P, as part of a change of which all CLECs were made aware. <sup>59/</sup> Once arrangements evolved to provide the services as a UNE combination, rather than as Resale, it was no longer appropriate to report them as Resale, and Qwest then re-ran the commercial performance retroactive to the beginning of 2001. *Id.* ¶ 48. Analysis of these results submitted with the Qwest III Supplemental Brief and in an *ex parte* submission shortly thereafter shows that reporting UNE-Star with other UNE combinations

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<sup>58/</sup> Qwest III Supplemental Brief, Att. 5, App. D, Colorado Commercial Performance Results at 78-79; Idaho Commercial Performance Results at 74-75; Iowa Commercial Performance Results at 77-78; Montana Commercial Performance Results at 66-67; Nebraska Commercial Performance Results at 72-73; North Dakota Commercial Performance Results at 65-66; Utah Commercial Performance Results at 76-77; Washington Commercial Performance Results at 78-79; Wyoming Commercial Performance Results at 65-66.

<sup>59/</sup> See Qwest III Williams Reply Decl. ¶ 47-48. Qwest notified CLECs of the change in the Summary of Notes published with Qwest's October 2001 commercial performance results. *Id.* ¶ 47.

has no significant impact. *Id.* ¶ 49. Thus, Eschelon’s complaints lack merit both conceptually and empirically

**VI. QWEST’S RATES FOR UNBUNDLED NETWORK ELEMENTS AND INTERCONNECTION COMPLY WITH TELRIC AND DO NOT CAUSE A “PRICE SQUEEZE”**

Qwest’s rates for UNEs and interconnection in the nine states subject to this application comply with Section 252(d)(1) of the Act and the Commission’s established pricing rules, including the Total Element Long Run Incremental Cost (“TELRIC”) methodology. 47 U.S.C. § 252(d)(1); 47 C.F.R. § 51.501 *et seq.* That conclusion is established by the enormous record compiled in the Qwest I and Qwest II proceedings. In addition, to expedite the consideration of this application and eliminate issues in controversy, Qwest has unilaterally implemented significant reductions to rates that were already TELRIC-compliant. Most recently, Qwest reduced certain non-loop recurring rates in the eight states other than Colorado to moot AT&T’s argument that the Act requires a disaggregated benchmarking analysis as between switching and shared transport, even though that argument is without merit because, among other considerations, those UNEs are always ordered together. 60/

Although AT&T and others recycle various objections to Qwest’s rates, Qwest fully refuted these arguments in the Qwest I and Qwest II proceedings. 61/ AT&T claims

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60/ See, e.g., *New Hampshire/Delaware 271 Order*, ¶¶ 50-54. Given these most recent reductions, it is difficult to understand why AT&T continues to attack Qwest’s benchmarked rates on the ground that they are the product of an aggregated benchmarking analysis. AT&T Qwest III Comments at 76-77, AT&T Lieberman/Pitkin Decl. ¶¶ 14-20. See also *ex parte* letter from David L. Sieradzki, counsel for Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-3 14 (Oct. 7, 2002) (describing rate reductions).

61/ See *generally* Qwest III Thompson/Freeberg Reply Decl., Reply Exh. JLT/TRF-1 (listing opposing parties’ arguments in this proceeding and specific page references to Qwest’s responses to those arguments in Qwest I and Qwest II). For example, AT&T devotes 3 ½ pages of its brief

nonetheless to have “recently discovered” what it calls an “additional TELRIC error” relating to the Colorado PUC’s determination of the network operations expense input to Qwest’s unbundled loop rates.<sup>62/</sup> As a threshold matter, that argument is improperly presented here because AT&T never raised it before the Colorado PUC, and the Commission does not generally consider arguments – particularly state-specific fact-intensive pricing arguments – that a party has failed to raise in the underlying state pricing proceeding. *See, e.g., BellSouth 5-State 271 Order* ¶¶ 31, 78 & n.239; *Vermont 271 Order* ¶ 20. In addition, AT&T’s “recently discovered” argument is flawed on the merits for the several independent reasons discussed in the Reply Declaration of Jerrold L. Thompson and Thomas R. Freeberg (“Qwest III ThompsodFreeberg Reply Decl.”) ¶¶ 6-14.

At bottom, this “recently discovered” argument adds nothing to AT&T’s general claim – which Qwest addressed and refuted in the Qwest I proceeding, see Qwest I Thompson Reply Decl. ¶¶ 64-68 – that actual network operations expenses should be reduced by 50% to compute a forward-looking input within the HAI model. This claim was properly rejected not only by the Colorado PUC, which found that “no support exists” for it, but also by the Arizona Corporation Commission, the Minnesota PUC, and every other state commission in Qwest’s

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and substantial portions of a declaration to arguing that Qwest should have used state-specific minutes-of-use rather than standardized minutes-of-use in its benchmark analysis, AT&T Qwest III Comments at 73-76 & AT&T Lieberman/Pitkin Decl. ¶¶ 8-13. But AT&T says nothing beyond what Qwest has already fully refuted in prior proceedings. Qwest I Reply Comments at 103-05; Qwest I Thompson Reply Decl. ¶¶ 80-89; Qwest II Reply Comments at 88-89; Qwest II Thompson Reply Decl. ¶¶ 11-15. *See also New Jersey 271 Order* ¶ 53 (“use of the standardized demand assumptions in the *Pennsylvania Order* may also be reasonable depending on the particular section 271 application under review”).

<sup>62/</sup> AT&T Qwest III Comments at 71; *see also* AT&T Qwest III Denny Decl., *passim*.

region that has considered it. <sup>63/</sup> Moreover, contrary to AT&T's argument that the Colorado PUC adopted a figure higher than what Qwest advocated, in fact the PUC adopted a network operations expense "dollar additive" that is 4% lower than the figure that Qwest witnesses proposed for use in the context of the HAI model. Finally, AT&T's selective focus on the network operations expense figures obscures the Colorado PUC's overall treatment of Qwest's expenses. Indeed, the PUC-ordered rates aggressively assume that an efficient carrier could operate at an overall level of operating expenses 66% lower than what Qwest actually incurs. Qwest III Thompson/Freeberg Reply Decl. ¶¶ 9-10.

As for AT&T's and other parties' renewed contentions regarding the potential for a "price squeeze" between Qwest's UNE rates and the revenues a CLEC could anticipate receiving, Qwest has already demonstrated that there is no UNE price squeeze in any of the application states, and its recent UNE rate reductions further increased CLEC margins. In fact, AT&T appears to have abandoned its previous assertion that a price squeeze exists in North Dakota, Utah and Wyoming, and acknowledges that its statewide average gross margin in the states for which it still alleges a price squeeze – Iowa, Idaho, Montana, and Washington – is **higher** than it had stated previously. See Qwest III Thompson/Freeberg Reply Decl. ¶ 23. As Qwest has explained before, AT&T has failed utterly to substantiate its asserted cost and revenue figures, which remain subject to the numerous flaws explained at length in Qwest's previous filings. @/ AT&T – not Qwest – bears the burden of proof in demonstrating a price squeeze, <sup>65/</sup>

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<sup>63/</sup> *Colorado Pricing Order*, Qwest I, Att. 5, App. I at 62; see Qwest III Thompson/Freeberg Reply Decl. ¶ 12 n.19 (full citations to Arizona and Minnesota orders).

<sup>64/</sup> The D.C. Circuit's recent decision *WorldCom v. FCC*, No. 01-1198 (D.C. Cir. Oct. 22, 2002), has no impact on the price squeeze arguments raised by any party here. The *WorldCom* court remanded the *Massachusetts 271 Order's* conclusions with respect to price squeeze allegations "for further consideration in light of ' *Sprint v. FCC*, 274 F.3d 549 (D.C. Cir. 2001),

and it has failed completely to carry this burden. *See* Qwest III ThompsodFreeberg Decl.,

¶¶ 23-27.

**VII. NONE OF THE REMAINING OBJECTIONS RAISED BY COMMENTERS PROVIDES ANY BASIS FOR DENIAL OF QWEST'S APPLICATION**

A. "Unfiled Agreement" Issues **Do** Not Present Reasons For Denial **Of** This Application

1. All Interconnection Agreements Are **On** File and Available to Other CLECs

AT&T once again argues that the so-called "unfiled agreements" issue presents a reason for the Commission to deny this application. *See* AT&T Qwest III Comments at 40-50. Several other parties echo AT&T in one respect or another. However, these arguments disregard both the facts and relevant Section 271 law.

This matter already has been the subject of more than extensive debate in the context of Qwest's initial applications. Indeed, the Commission specifically invited comment on the relevance of the unfiled agreements to Section 271. *See* Public Notice, WCB Docket No. 02-148 (rel. Aug. 21, 2002). In response, the State Authorities uniformly urged the Commission to

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which, after that order had been issued, rejected a "virtually identical" price squeeze analysis. Qwest's arguments in Qwest I and Qwest II regarding the price squeeze relied on *post-Sprint* Section 271 orders, and accounted for the *Sprint* court's conclusion that the Commission had failed to "consider" price squeeze claims in light of the Supreme Court's decision in *FPC v. Conway Corp.*, 426 U.S. 271 (1976). The Commission has now fully considered – and rejected – *Conway's* applicability in the telecommunications context. *Vermont 271 Order* ¶ 67.

<sup>65/</sup> *See, e.g., Verizon Delaware/New Hampshire Order* ¶ 145; *Verizon New Jersey Order* ¶ 175; *Verizon Vermont Order* ¶ 73; *BellSouth Georgia/Louisiana Order* ¶ 290; Qwest III ThompsodFreeberg Reply Decl. ¶ 26. The Commission therefore must reject AT&T's claim that the Commission is bound to accept its own internal cost "estimates" because "Qwest has *not* submitted any evidence that contradicts" those estimates. AT&T at 79. Moreover, the only evidence AT&T submits is the same Bickley affidavit that this Commission has already expressly rejected. *See BellSouth Five-State Order* ¶ 288; Qwest III Thompson/Freeberg Reply Decl. ¶ 27.

reject efforts to squeeze this enforcement issue into the Section 271 box. The Colorado PUC, for example, put the matter into proper perspective against the record of Qwest's actions to open its markets and meet Section 271 requirements:

[T]he ROC performed the most rigorous OSS test yet performed on an ILEC in the country. Qwest substantially passed this test. The COPUC developed the most rigorous performance assurance plan yet implemented by an ILEC. The COPUC, with the ROC, Qwest and CLECs, developed the most comprehensive SGAT yet filed by an ILEC. The COPUC reset TELRIC rates for Colorado, which rates have benchmarked the entire region.

*At the end of the day, in light of all these notable market-opening accomplishments, it would be a grave error to deny or delay granting Section 271 authority because of a trifle such as the unfiled agreements -- and a trifle, no less, that is being dealt with through Section 252 transparency and an enforcement investigation.<sup>66/</sup>*

The comment of the Colorado PUC is instructive, not to minimize a compliance issue, but to emphasize its small place in the context of a Section 271 proceeding. Other State Authorities emphasized the same theme in their own comments, stressing that unfiled agreements questions may present enforcement issues but should not delay approval of this application.<sup>67/</sup> And now

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<sup>66/</sup> Colorado PUC Comments, WCB Docket No. 02-148, at 12-13 (Aug. 28, 2002) (emphasis added).

<sup>67/</sup> See, e.g., IUB Comments, WCB Docket No. 02-148 (Aug. 28, 2002) (issue of unfiled agreements has been reviewed and resolved in a separate docket" and should not delay Section 271 approval); North Dakota PSC Comments, WCB Docket No. 02-148 (Aug. 28, 2002) ("reaffirm[ing] its conclusion" that this issue "has remedies that are better implemented outside the Section 271 process"); Idaho PUC Comments, WCB Docket No. 02-148, at 1 (Aug. 28, 2002) (issue should not affect Section 271 consideration).

It also is relevant that the states uniformly turned down AT&T's requests that they reopen their 271 proceedings to consider the unfiled agreements issue in that context. See Order Denying Motion, *In the Matter of the Colorado Public Utilities Commission's Recommendation to the Federal Communications Commission Regarding Qwest Corporation's Provision of In-Region, InterLATA Services in Colorado*, Colorado Public Utilities Comm'n, Docket No. 02M-260T (June 11, 2002); Order to Consider Unfiled Agreements, *In re U S WEST Communications, Inc., n/k/a Qwest Corporation*, Iowa Utilities Board, Docket Nos. INU-00-2, **SPU-00-11** (June 7,

these Authorities have reaffirmed their support for approval of Qwest’s current application in the face of continuing rhetoric regarding unfiled agreements.

Shortly after Qwest filed the Consolidated Application here, the Commission issued its important order in response to Qwest’s Petition for Declaratory Ruling on the question of which contracts between ILECs and CLECs qualify as interconnection agreements that must be filed pursuant to Section 252(a)(1). *See Memorandum Opinion and Order*, WC Docket No. 02-89, FCC 02-276 (rel. Oct. 4, 2002) (“*Declaratory Ruling Order*”). The Commission concluded that a contract must be filed and go through the 90 day approval process if it “creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation . . . .” *Id.* ¶ 8. The Commission provided additional guidance on this issue, noting that settlement agreements that simply provide for “backward-looking” consideration need not be filed. *Id.* ¶ 12. The FCC also indicated no need to file order and contract forms used to request service, or agreements with bankrupt competitors that are entered into at the direction of a

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2002) (“Iowa Order to Consider Unfiled Agreements”); Notice of Commission Action, *In the Matter of the Investigation into Qwest Corporation’s Compliance with Section 271 of the Telecommunications Act of 1996*, Montana Public Service Comm’n, Docket No. D2000.5.70 (June 3, 2002); Motion to Reopen 271 Proceedings Denied, *In the Matter of Qwest Corporation, Denver, Colorado, filing its notice of intention to file Section 271(c) application with the FCC and request for Commission to verify Qwest Corporation’s compliance with Section 271(c)*, Nebraska Public Service Comm’n, Application No. C-1830 (June 12, 2002); Transcript of Special Meeting, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, North Dakota Public Service Comm’n, Case No. PU-314-97-193 (June 13, 2002); *accord*, Order on AT&T Motion to Reopen Proceedings, *In the Matter of the Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996, Wyoming’s Participation in a Multi-State Section 271 Process, and Approval of its Statement of Generally Available Terms*, Wyoming Public Service Comm’n, Docket No. 70000-TA-00-599 (June 18, 2002).

bankruptcy court or trustee and do not modify terms of underlying interconnection agreements,  
*Id.* ¶ 13

Qwest has no objection to the Commission's ruling, and is glad to have substantial closure around this important issue. The FCC ruling places a larger number of ILEC-CLEC contracts into the zone requiring prior regulatory approval than Qwest had suggested was required, and a smaller number than some other parties had proposed. However, Qwest has always stated that its priority is simply to receive clarification of ILEC obligations in this area.

For present purposes, what is most significant is that Qwest already has been applying a policy of making filings under Section 252 that fully encompasses the standard announced by the Commission. This matter is discussed in more detail in the Reply Declaration of Larry Brotherson, Att. 16. Specifically, in May 2002 Qwest instituted new management review procedures for contracts with CLECs and applied a standard under which it has been filing all new contracts, agreements, and letters of understanding negotiated with CLECs that create obligations in connection with Sections 251(b) or (c), no matter the nature or scope of such obligations. Qwest has filed all new contracts entered into with CLECs since the spring that meet this standard. *Id.* ¶ 8. In addition, Qwest has filed all currently effective provisions in other previously unfiled contracts with CLECs involving the nine states here insofar as such provisions involve ongoing current obligations under Sections 251(b) or (c). Qwest filed all relevant agreements in Iowa on July 29, and those agreements were approved on August 27. Similarly, Qwest filed all relevant agreements in the other eight states on August 21 and 22. *Id.* ¶ 9.

As noted, the Qwest policy governing these filing decisions fully encompasses the standard announced by the Commission this month. Hence, the practical effect of these filings is

that all of the company's currently effective interconnection obligations in the nine states are on file and either approved, or waiting on approval. As noted in Exhibit A to Mr. Brotherson's Declaration, three of the eight states covered by the August filings already have approved the contracts as interconnection agreements and permitted them to take effect. The remaining five states have processes in place to complete their review of the contracts on or before November 20, when the 90 day review process provided by Section 252(e)(4) will expire. In the interim, Qwest has posted the filed agreements on its web site and invited CLECs to request the currently effective provisions under the opt-in policies applicable under Section 252(e) pending state commission approval of such provisions. *Id.* ¶¶ 10-12.

Some parties, most notably AT&T, have attempted to argue that Qwest has not made a complete filing of all of its currently-effective contracts with CLECs in the nine states. In particular, AT&T attaches a declaration of Kenneth Wilson in which Mr. Wilson purports to identify contracts that he submits should have been filed as interconnection agreements. AT&T Qwest III Comments, Declaration of Kenneth Wilson, Tab B.

Mr. Wilson, however, is incorrect. In his chart he recognizes that he does not have information as to whether particular agreements, or provisions in agreements, remain in effect, But without this information Mr. Wilson is not in a position to speak to the completeness of Qwest's filings at all. Qwest has reviewed its records again against Mr. Wilson's matrix, and the results are provided here as Exhibit B to the Declaration of Mr. Brotherson. In that Exhibit Qwest confirms that each of the relevant provisions contained in the contracts identified by Mr. Wilson either no longer is in effect, or its currently effective terms are on file and available. Furthermore, Mr. Brotherson speaks to the allegation of Mr. Wilson that Qwest has not filed oral contracts with CLECs that would qualify as interconnection agreements under the Commission's

standards. Mr. Brotherson states that it is not Qwest's business policy or practice to address such interconnection matters other than through written contracts, and that Qwest is not aware of any oral agreements that are in effect today that would come within the purview of Section 252's filing requirement. <sup>68/</sup>

Similarly, PageData has claimed that Qwest failed to file two contracts as interconnection agreements in Idaho although it submitted those contracts in Iowa. However, Mr. Brotherson explains that neither of the contracts cited by PageData contain currently effective terms. They are older agreements that were submitted in Iowa for the different purpose of responding to an order for all contracts with CLECs, without differentiating between ongoing currently effective provisions versus those that had been superseded or terminated. <sup>69/</sup>

In sum, Qwest is in full compliance with Section 252 as interpreted in the Commission's new Declaratory Ruling Petition. All of its current ongoing obligations to CLECs in the nine states arising under Sections 251(b) or (c) are on file and either approved, or pending approval no later than November 20, 2000

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<sup>68/</sup> Brotherson Decl. ¶ 17. Mr. Wilson and others make reference to the findings of an Administrative Law Judge in Minnesota that a written contract between Qwest and McLeod was modified by oral agreement to provide McLeod with a discount on its purchases from Qwest. See AT&T Qwest III Comments at 42. This is a matter that has been greatly disputed; it is Qwest's position that no such oral amendment was allowed by the written agreement or otherwise made. For present purposes, however, what is relevant is that on September 16, 2002, Qwest and McLeod agreed to terminate the written contract and any and all amendments, without addressing whether any such oral amendment even existed. See Brotherson Decl., Exhibit B.

<sup>69/</sup> *Id* ¶ 18. PageData also references an old agreement involving U S WEST New Vector (now Verizon) that is on file in Idaho. As Qwest has explained in proceedings before the Idaho PUC, this agreement is not designed for paging interconnection. See Affidavit of Bryan Sanderson, Case No. USW-T-00-03, ¶¶ 20-22 (filed Oct 4, 2002). In any event, such carrier-specific disputes do not have a place in a Section 271 review.

**2. Enforcement Actions Related to any Past Failure to File Contracts With CLECs Are Not a Basis For Delaying Action Here**

Qwest recognizes that some states are evaluating the significance of Qwest's past failure to file certain contracts with CLECs that meet the FCC's standard as expressed in the new Declaratory Ruling. The Iowa Board completed such a review in May, concluded that certain agreements should have been filed under the standard the Board announced at that time, and directed Qwest to make a compliance filing, which has been done. The Board did not impose any fines or penalties. <sup>70/</sup> The FCC stated in its Declaratory Ruling that such enforcement proceedings could proceed, and deferred to the states to evaluate other line-drawing questions that arise in the context of specific ILEC-CLEC agreements. <sup>71/</sup>

As noted above, the State Authorities and the Department of Justice continue to support grant of this Application notwithstanding any review of Qwest's past compliance on this issue. The Department previously stated that "it is not apparent that the remedy for . . . prior violations [of Section 251 or 252], if any, lies in these proceedings rather than in effective enforcement through dockets in which such matters are directly under investigation." DOJ Qwest I Evaluation at 3. Just so. The Telecommunications Act and prior Commission precedent make clear that Section 271 proceedings are not the place to litigate past acts. This case is not different from the one addressed by the Commission in its *BellSouth Georgia/Louisiana Order*. In that proceeding two CLECs claimed that a BellSouth interconnection policy violated the

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<sup>70/</sup> See Order Making Tentative Findings, Giving Notice For Purpose of Civil Penalties, and Granting Opportunity to Request Hearing, *In re AT&T Corporation v. Qwest Corporation*, Iowa Utilities Board, Docket No. FCU-02-2 (May 29, 2002).

<sup>71/</sup> Declaratory Ruling Order ¶ 10. The Colorado PUC, for example, has opened a proceeding that will evaluate the scope and significance of any Section 252 filing lapses. However, the Commission continues to support grant of the application here. See CPUC Qwest III Comments.

CLECs’ “rights to interconnect ‘at any technically feasible point’ within BellSouth’s network,” and that, as a result, the BOC had not been satisfying its obligations under checklist items 1 and 9. *BellSouth Georgia/Louisiana Order* ¶ 207. The Commission rejected the CLECs’ argument because (a) the BellSouth policy at issue had been rescinded, *id.* ¶ 208, (b) a Section 271 docket was not the place “to settle new and unresolved disputes about the precise content of an incumbent LEC’s obligations to its competitors,” *id.* (citing *SBC Kansas/Oklahoma Order* ¶ 19), and (c) the issue concerned matters “open . . . before [the] Commission” in another docket. *Id.*

Such considerations counsel in favor of resolving the “unfiled agreements” litigation in the dockets devoted to those issues rather than here. The Commission has recently clarified the law, and Qwest is in compliance with the law. Any enforcement actions regarding Qwest’s past actions will not make the local exchange market in these states any more or less open to competition. While this Commission has said (in the *only* paragraph of FCC authority that the other parties or their witnesses have ever cited on this subject) that it is “interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations,” *Ameritech Michigan Order* ¶ 397, it has made just as clear (indeed, in the very next sentence) that it is not interested in such misconduct for its own sake. Rather, such evidence is relevant only insofar as it “would tend to undermine our confidence that the BOC’s local market is, or will remain, open to competition once the BOC has received interLATA authority.” 72/ The unfiled agreements

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721 *Id.* See also Facilitator’s Public Interest Report at 9 (finding that “the public-interest standard” is not “a punitive one, but rather a forward looking, or predictive one”); Workshop 4, Part 2, Findings and Recommendation Report of the Commission and Procedural Ruling, *In the Matter of the Investigation into the Entry of QWEST CORPORATION, formerly known as US WEST COMMUNICATIONS, INC., into In-Region, InterLATA Services under Section 271 of the*

It does not in any way overshadow the voluminous record evidence here that Qwest's local markets are open to competition now and would remain so after a grant of Qwest application. The unanimous state commission comments, and the district court's views of the Justice Department, are all consistent with this precedent.

AT&T and other parties make much of a recent decision of an Administrative Law Judge in Minnesota concluding that Qwest violated Section 252 by failing to file certain contracts with CLECs. AT&T Qwest III Comments at 42. Minnesota is not one of the states at issue here. In any event, this decision has no material bearing on an application under Section 271.

First of all, Qwest should state for the record that it strongly objects to the findings made in that order, which disregard evidence presented at the hearing and improperly credit hearsay and other untested claims. Qwest also objects to the process violations in the hearing including the key role of a party as the primary witness for the Department of Commerce which also essentially served as counsel for the party in all respects including preparing the testimony of the Department witnesses <sup>73/</sup>. Finally, the ALJ has failed to address the failure of the ALJ to address the significance of various filing lapses he found, or the extent of their discriminatory effect. Qwest demonstrated that in many instances the failure to file had little or no practical effect because it was providing substantially the same terms to all CLECs anyway, or because the terms

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*Telecommunications Act of 1996*, Oregon Public Utility Comm'n, Docket No. UM 823 (Jun. 3, 2002) at 46 (finding that "[t]he public interest test is prospective in nature").

<sup>73/</sup> See Qwest Corporation's Proposed Procedure For Penalty Phase, Exceptions To Administrative Law Judge's Findings Of Fact, Conclusions Of Law, And Recommendation, And Request For Oral Argument, MPUC Docket No. P-421/C-02-197 (filed Sept. 30, 2002).

were materially available through another interconnection agreement, because a provision was in effect only for a short period and/or related to a CLEC-specific matter, or otherwise. The ALJ also disregarded genuine uncertainty regarding the scope of Section 252 filing obligations prior to the Commission's Declaratory Ruling. In the mind of the ALJ, any failure to file was prima facie intentional and discriminatory.

The Minnesota proceeding **is** not over. The PUC has affirmed the ALJ's decision, and briefing is under way with regard to penalties and other remedies. Meanwhile, however, Qwest has reserved all rights to seek judicial review.

Qwest does not minimize any non-compliance, in any circumstances. It has taken remedial action to ensure that it will fully comply with Section 252 as articulated by the Commission. It will continue to address with the states the significance of any past compliance lapses. The relevant point, however, is that none of those prior failings are relevant to this Section 271 application, or provide a basis for denying consumers the benefit of greater long

**B. Allegations Regarding Qwest's Conduct In Connection With QCCC Site Visits Are Without Merit**

Relying solely on the statement of a former Qwest employee, Edward F. Stemple, AT&T purports to have unearthed "truly shocking" behavior by Qwest in the course of certain site visits by representatives of the Department of Justice and the FCC Staff to the Qwest CLEC Coordination Center in Omaha, Nebraska (the "QCCC"). *See* AT&T Qwest III Comments at **3-4** and Stemple Decl. In particular, AT&T alleges that Qwest concealed from visiting regulators mechanized loop testing ("MLT") activities at the QCCC during certain of their visits to the facility in May, June, July and September 2002. *Id.*

AT&T's allegations are demonstrably without merit. Due to the serious nature of the allegations, however, and in order to address questions from Commission Staff and the Justice Department, Qwest's Senior Vice President, Policy and Law, R. Steven Davis, promptly responded to AT&T's charges by letter to the Secretary dated October 21, 2002 (the "Davis Letter") (attached hereto as Appendix A). That letter set out extensive evidence refuting AT&T's and Mr. Stemple's allegations; this evidence is corroborated by the reply declarations attached hereto at Tabs 3-11.

Qwest will not restate all of that evidence here. It is sufficient to point out that Mr. Stemple is a former Qwest employee who has exhibited strong hostility to Qwest and whose employment was terminated on September 4, 2002. *See* Davis Letter at 2; Reply Declaration of Jason Best, Att. 3, at 3. **[\*\*\* CONFIDENTIAL MATERIAL BEGINS \*\*\***

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**CONFIDENTIAL MATERIAL ENDS \*\*\*]** *See also* AT&T Comments, Stemple Decl. at Att. 2 (e-mail from "Swamp Dogg" – evidently, Mr. Stemple -- urging Senator John McCain, with respect to Qwest, to "take her down").

Mr. Stemple alleges (based on double hearsay) that a meeting took place prior to a July 23, 2002, site visit by FCC Staff in which QCCC employees were instructed to conceal their activities with regard to MLT testing. Mr. Stemple admits he was not present at any such meeting, and, in any case, his allegations are untrue. As demonstrated by the declarations of several persons with personal knowledge of the events surrounding each of the QCCC site visits -- including each and every service representative who participated in any visit by the FCC Staff and DOJ -- no such meeting took place, nor were QCCC employees instructed at any time to conceal any of their activities during the FCC or Justice Department site visits. *See* Reply Declaration of Kathie Simpson, Att. 9, at 1-2. *See also* Reply Declaration of Derek Breeling, Att. 4; Cheshier Reply Decl. at 7-8; Reply Declaration of Jeff Leege, Att. 6; Reply Declaration of Kerri Sibert, Att. 8; Reply Declaration of Donovan Trevarro, Att. 10; Reply Declaration of Keith White, Att. 11

Mr. Stemple also alleges that Qwest removed certain MLT-related signage from display at the QCCC during the FCC site visit in order to conceal MLT activities from regulators. This claim also is without merit. As explained in the Davis Letter and in the reply declarations attached hereto, pages referencing performance of MLT testing were removed from certain chart-boards in the QCCC during certain of the site visits. However, this action was not intended or designed to conceal that MLT testing is conducted at the QCCC. Employees continued to do their job, and recall showing MLT-related data. Indeed, as discussed above at Section III.A, the MLT testing done in the QCCC enhances the quality of the center's loop provisioning activity. The pages were taken down from the chart-boards based on an admittedly injudicious decision by a single Qwest employee who was concerned that they would precipitate a discussion about unrelated technical and policy issues regarding pre-order MLT that she was

not prepared to address. *See* Davis Letter at 4-5; Reply Declaration of Nancy Lubamersky, Att. 7 (“Lubamersky Reply Decl.”), at 2. *See also* Cheshier Reply Decl. at 8-9

Other than this, Mr. Stemple’s allegations are meritless. No changes were made to Qwest’s practices or procedures during site visits, and employees were instructed to perform their work in the normal manner during these visits. *See* Davis Letter at 5; Cheshier Decl. at 9-10; Lubamersky Reply Decl. at 3. AT&T and Mr. Stemple have not demonstrated otherwise. <sup>74/</sup>

### **C. Other Issues**

#### **1. Track A**

Qwest has demonstrated – and each of the State Authorities has confirmed – that there are CLECs providing service predominantly over their own facilities to more than a *de minimis* number of both residential and business customers in each of the application states and that the Track A requirements have therefore been satisfied. *See generally* Supplemental Declaration of David L. Teitzel, “The State of Local Exchange Competition – Track A Requirements,” Qwest III, Att. 5, App. A, Tab 1. Although the Idaho PUC’s written consultation specifically confirms that Track A has been satisfied in Idaho, the Idaho PUC points to some alleged “errors” in Qwest’s competitive data. *See* Qwest III Idaho PUC Written Consultation

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<sup>74/</sup> Touch America repeats its argument that Qwest has been violating Section 271 under the “contrived concept of ‘lit capacity’ IRUs.” Touch America Qwest III Comments at 14. Touch America argues that Qwest’s announcement of possible restatements of revenues from IRU asset sales is somehow an admission that these asset sales violate Section 271. This is not correct. Sales of optical capacity assets are not the provision of “telecommunications services” as defined in Section 153(43) of the 1996 Act. Qwest already has addressed this issue in its reply comments in Qwest I and II. *See* Qwest I Reply Comments at 125 fn. 110; Qwest II Reply Comments at 124 n.97. Any restatement of revenues received from optical capacity asset sales will not change the fact that these items are assets, and that such transactions (which Qwest advised the Commission would continue after its merger with U S WEST) do not implicate Section 271.

at 3 and Hall Affidavit. Specifically, the Idaho PUC suggests that it “has no record of certain CLECs and that certain other CLECs “are not currently providing . . . local exchange service” in Idaho. <sup>75/</sup> However, contrary to the Idaho PUC’s submission, Qwest reiterates that all of the wholesale provisioning data included as part of Mr. Teitzel’s declaration were culled directly from Qwest’s wholesale billing system. Nevertheless, despite the uncertain activities of certain CLECs, Ms. Hall’s affidavit specifically confirms that at least three predominantly facilities-based carriers are providing service to residential end users in Idaho. <sup>76/</sup>

## 2. Checklist Item 1: Interconnection

Qwest satisfies the requirements of Checklist Item 1 of Section 271 of the 1996 Act concerning interconnection. <sup>77/</sup> Level 3 complains, however, that Qwest does not count Internet-bound traffic when determining the relative use of the two-way facilities carrying traffic on Qwest’s side of the point of interface. Level 3 raises an argument that the Commission has confirmed has no place in a Section 271 proceeding, and that is unfounded for other legal and

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<sup>75/</sup> See Qwest III Idaho PUC Written Consultation, Hall Affidavit at 2-3. Ms. Hall’s affidavit does not specify how she has arrived at her conclusion regarding these CLECs.

<sup>76/</sup> *Id.* at 2. These three CLECs are Project Mutual Telephone Company (“PMT”), McLeodUSA and CTC Telecom, Inc. (“CTC”). PMT serves both residential and business customers in Burley and Heyburn, Idaho, exclusively *via* its own facilities. McLeodUSA is a predominantly facilities-based CLEC serving residential and business customers in various communities in Idaho *via* a combination of its own facilities, stand-alone UNE loops, UNE-Platform and resale. CTC is a facilities-based CLEC subsidiary of Cambridge Telephone, an Independent LEC, serving a primarily residential subdivision in Eagle, Idaho. This community is in the greater Boise area and is within Qwest’s Idaho service territory. See *generally* Qwest I *ex parte* 070902.

<sup>77/</sup> See *generally* Declaration of Thomas R. Freeberg, Interconnection, Qwest I Att. 5, App. A; Declaration of Thomas R. Freeberg, Interconnection, Qwest II Att. 5, App. A.

factual reasons, as explained in greater detail in the Qwest III ThompsodFreeberg Reply Declaration ¶¶ 29-31. 78/

### 3. Checklist Item 6: Unbundled Switching

AT&T notes in its Comments that Qwest has recently revised its method of counting lines for purposes of the switching carve-out. AT&T Qwest III Comments at 80. As described in Qwest's Application, Qwest now counts customer lines on a per-end-user-location basis, rather than a per-wire-center basis, to determine the applicability of the switching carve-out. Qwest III Addendum, Tab 11, at 1. AT&T is incorrect, however, in its assertion that this change constitutes an acknowledgment that "Qwest's previous policy was unlawful." AT&T Qwest III Comments at 80 n.282.

In the first place, the Commission has given no indication, and Qwest does not concede, that the Wireline Competition Bureau's *Virginia Arbitration Order* is binding on nonparties. Furthermore, even if Qwest were required to comply with the *Virginia Arbitration Order*, it is not "beyond doubt," as AT&T asserts, that Qwest's former policy was inconsistent with its terms. Qwest's former position on the switching carve-out was different from the position Verizon took in the Virginia arbitration. Verizon proposed to count all of an end-user customer's lines in an entire LATA for purposes of applying the switching carve-out, whereas under its former policy Qwest would have counted an end-user customer's lines within a single, identified density zone-one wire center within the top 50 Metropolitan Statistical Areas identified

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78/ With respect to AT&T's and OneEighty's offhand comments regarding Qwest's compliance with Checklist Item 1, Qwest has refuted these arguments in prior Section 271 filings incorporated by reference into this proceeding. *See generally* Qwest I Reply Declaration of Thomas R. Freeberg; Qwest II Reply Declaration of Thomas R. Freeberg.

in the *UNE Remand Order*.<sup>79/</sup> Finally, Qwest’s position on the appropriate manner of applying the switching carve-out was entirely consistent with the language of the *UNE Remand Order*, and all but one of the states included in this application approved Qwest’s position as well.<sup>80/</sup>

The Commission has identified the parameters of the switching carve-out as a subject for consideration in its triennial UNE review proceeding.<sup>81/</sup> Until the Commission issues an order in that proceeding, the appropriate method of counting lines remains an open question. Qwest’s former position therefore was not “unlawful.” Qwest has nevertheless determined that, should it implement the switching carve-out, which it has not yet done, it will do so in a manner that is consistent with the *Virginia Arbitration Order*.<sup>82/</sup>

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<sup>79/</sup> See Qwest II Reply Declaration of Lori A. Simpson at 19 n.35; see also *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, ¶¶ 360-63 (July 17, 2002).

<sup>80/</sup> The only state that required Qwest to count lines on a per-location basis was Washington. See Declaration of Lori A. Simpson, Unbundled Switching, Qwest II Att. 5, App. A, at \_\_\_\_.

<sup>81/</sup> *Triennial UNE Review NPRM*, 16 FCC Rcd at 22806-08 ¶¶ 56-59.

<sup>82/</sup> Qwest has addressed other allegations raised by commenters in its prior submissions incorporated by reference in this proceeding. AT&T’s and WorldCom’s rehash of their arguments concerning issues related to Checklist Items 2 and 4 (see AT&T Qwest III Comments at 81, WorldCom Qwest III Comments at 18), add nothing new to the arguments contained in their Qwest I and Qwest II comments. Qwest therefore refers the Commission to its earlier responses:

- Construction of new facilities. See Qwest II Reply Comments at 71-77
- Access to facilities owned by Qwest affiliates. See Qwest I Reply Comments at 80-82.
- Combining network elements with telecommunications services. See Qwest I Reply Comments at 72.
- UNE-P provisioning intervals. See Qwest II Reply Declaration of Lori A. Simpson, at 14-15.

## CONCLUSION

The local exchange market in each of the application states is demonstrably open to competition. Qwest has satisfied its statutory checklist obligations and otherwise complied with the requirements of the 1996 Act, and it will continue to do so in the future. Its entry into the interLATA market in each of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming will fulfill the promise of competition for all the residents of these states

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- Access to the NID. See Qwest II Reply Declaration of Karen A Stewart at 29-30.

Additional issues related to Checklist Items 2 and 4 are addressed in the Declarations of Lori A. Simpson and Karen A. Stewart that accompany these Supplemental Reply Comments.

With respect to AT&T's contentions regarding Qwest's compliance with Checklist Item 5 (and dark fiber), see Qwest I Reply Declaration of Karen A. Stewart at 12-14 and Qwest II Reply Declaration of Karen A. Stewart at 13-19; with respect to WorldCom's allegations regarding Qwest's compliance with Checklist Items 7(II/III), see Qwest I Reply Declaration of Lori A. Simpson at 14-18 and Qwest II Reply Declaration of Lori A. Simpson at 24-31; and with respect to OneEighty's allegations regarding Qwest's compliance with Checklist Item 11, see Qwest I Reply Declaration of Margaret S. Bumgarner at 10-12 and Qwest II Reply Declaration of Margaret S. Bumgarner at 11-15.

Accordingly, for all the reasons stated herein and in its opening brief, Qwest's  
Consolidated Application should be granted

Respectfully submitted,

**QWEST COMMUNICATIONS  
INTERNATIONAL INC.**

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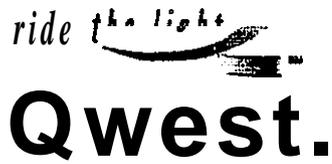
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October 25, 2002

## **APPENDIX A**



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**R. Steven Davis**  
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October 21, 2002

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-B204  
Washington, D.C. 20554

Re: WC Docket No. **02-314** – Application of Qwest Communications International Inc. for Authorization to Provide In-Region. InterLATA Service in the **States** of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming

Dear **Ms.**Dortch

I should begin by noting that Mr. Stemple is a former employee who has exhibited **strong** hostility to Qwest, including during the time at issue here. In the last few words of his e-mail to Senator John McCain attached to his declaration. **Mr.** Stemple demonstrated that sentiment: He

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Marlene H. Dortch  
Federal Communications Commission  
October 21, 2002  
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says of Qwest, "Take her down." <sup>1</sup> As Mr. Stemple acknowledges in his declaration, Qwest terminated his employment on September 4, 2002. Qwest will describe Mr. Stemple's employment history in a confidential declaration with its Reply Comments.

Mr. Stemple's principal allegation is contained in paragraphs 8 and 9 of his declaration. In those paragraphs he alleges, based upon double hearsay, that a meeting took place before the July 23 visit by the FCC staff to the QCCC. Mr. Stemple admits that he was not present at the alleged meeting. Nevertheless, he asserts that he was "told" by unnamed individuals that other unnamed individuals were allegedly involved in the following meeting:

These employees told me that certain employees had been taken into a room and told by Kathie Simpson, who was second in command at the QCCC, that they had been selected to be observed in the performance of their jobs by the visiting FCC staff.

However, they were also told that, while the FCC people were sitting in, they were not to pull up the MLT screen or to mention MLT. They were also told that, if the FCC staff asked about MLT, they should say that they did not run them. [Stemple Declaration, paras. 8 and 9].

These allegations are absolutely untrue. No such meeting took place and no such instructions were given. In fact, Kathie Simpson (the Qwest manager Mr. Stemple accuses of impropriety) was not even at work on the day in question – she was on vacation the entire week.

Since receiving the Stemple Declaration, Qwest has interviewed each of the service representatives who took part in the July 23 FCC visit to the QCCC – as well as similar visits by the Department of Justice on May 15, 2002 and by the FCC Staff on June 5 and September 27, 2002. Each of the service representatives involved in the visits state that nothing took place that even resembled the alleged meeting or work activity direction described by Mr. Stemple. Each of the service representatives report the following:

- The only instruction they were given for the visits was to show what they did during their jobs.
- They were not told to avoid showing any aspect of the work of the QCCC, including MLT testing.
- They were not told to give any false, misleading or erroneous information.
- They were not told to avoid any subject, including MLT testing.

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<sup>1</sup> See e-mail from "Swamp Dogg" to Senator McCain attached to Mr. Stemple's Declaration at Attachment 2. Although the e-mail does not contain the name and address of the sender, Qwest assumes that Mr. Stemple is fact is "Swamp Dogg."

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In fact, two of the service representatives recall displaying MLT test results during one of the first two visits.

Qwest also disputes Mr. Stemple's allegation that he approached his manager, Jason Best, about "hiding this from federal regulators" and that Mr. Best threatened to fire him if he told the visitors about the MLT testing. Mr. Best states that no such discussion took place. Mr. Best and Mr. Stemple did have a discussion during the July 23 visit. Mr. Best observed Mr. Stemple walking around, rather than performing his job. Mr. Best told Mr. Stemple to return to his work, but Mr. Stemple did not express concerns about hiding things from regulators, and Mr. Best did not threaten to fire Mr. Stemple if he told the FCC Staff about MLT testing.

Even leaving aside strong Qwest policy against the conduct Mr. Stemple alleges, his characterization of the situation does not make sense. There is nothing inappropriate about the MLT testing that Qwest performs at the QCCC. On the contrary, the testing is part of the overall quality check and repair activity that is performed for CLEC orders during the loop cutover process to assure that the provisioned loop will perform as specified.

The QCCC was opened in May, 2001 and is the Qwest Network Overall Control Office that exclusively coordinates the provisioning of unbundled loops for Qwest's 14-state region. One of its primary goals is to improve CLEC satisfaction with the provisioning of unbundled loops, a goal the QCCC has met as demonstrated by relevant performance data. To that end, the QCCC engages in numerous quality assurance processes in the provisioning of unbundled loops to CLECs. For circuits that are being transferred from Qwest retail or wholesale dial tone to a CLEC unbundled loop, Qwest performs several tests in the days before the scheduled transfer. One such provisioning test is the 48-hour dial tone test, in which Qwest verifies that dial tone exists to the CLEC switch. Another such test is the performance of an MLT two to three days prior to the due date for a CLEC unbundled loop. The QCCC instituted this process because it found that it was receiving trouble reports from CLECs shortly after installation of certain loops with marginal performance problems. To ensure that these marginal conditions were repaired prior to turning the loop over to the CLEC and, in turn, the CLEC customer, the QCCC instituted processes for performing an MLT on all unbundled loops it provisioned on behalf of CLECs.

All MLTs that the QCCC performs occur as a part of the provisioning process for unbundled loops. The QCCC does not perform MLTs on behalf of Qwest retail.<sup>2</sup> Nor does it perform such tests for CLECs before an LSR is submitted. Similarly, the QCCC does not perform MLTs to determine if a loop could support a particular type of service prior to the submission of an order.

The information returned by the MLT tests done by the QCCC is retained by Qwest only as a record of the loop conversion activities. It is not maintained anywhere as a record of the characteristics of the loop. Because the test is run by the QCCC only on CLEC loop orders and

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<sup>2</sup> Other divisions of Qwest perform MLT for other primarily repair purposes, but none of those activities result in Qwest's retail access to pre-order loop information that is not available to CLECs.

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after the CLEC submits an LSR, the resulting information is used only to provide assurance that the provisioned loop will perform as specified.

Thus, the MLTs that the QCCC performs have no relationship to or connection with loop qualification. The information returned by the MLT is minimal and is not used to populate any of Qwest's databases that contain loop make up information, such as the Loop Facilities Assignment System ("LFACS") or the Loop Qualification Database. Instead, information from the MLT is "cut" from the coordinator's screen and "pasted into the remarks section of Qwest's Work Force Administrator (WFA) system. In addition, a hard copy of the CLEC's MLT results is maintained with the other test results for that unbundled loop conversion in a file at the QCCC. This is part of the QCCC's processes for maintaining all documentation associated with each coordinated cut that it performs. The remarks section of WFA is not a readily accessible or searchable field. As noted above, the test results are maintained as part of the record of the loop conversion activity.

Finally, Qwest would like to address an allegation in Mr. Stemple's e-mail to Senator McCain. Mr. Stemple alleges that on July 23 "the management in my center removed all visible reference to what we call MLT testing from bannerboards and team checklists that could be observed by the regulators." Mr. Stemple presumably is referring to employee performance information that addresses whether employee teams are conducting provisioning-related tests as required. More specifically, the QCCC has four provisioning teams that engage in MLT testing in addition to their other duties. The QCCC posts information on a chart-board for each team that includes pages with information on the percentage of time that teams have completed particular tests required in the course of the loop conversion process, including the 48 hour check and the MLT test, as well as other information relevant to the teams' performance of their duties. This is the only signage in the QCCC referencing MLT testing. (The pages do not include test result data from the tests themselves. They track only whether the tests were performed at all.)

Upon arriving at the QCCC for the May 15 site visit, Nancy Lubamersky, a Senior Director of Qwest's 271 team, noticed the pages referencing MLT testing on the chart-boards and asked that they be removed. She did this not to hide the fact that the QCCC was conducting MLT testing, but because she did not want to trigger a discussion about unrelated technical and policy issues regarding pre-order MLT that she was not prepared to address that day. Ms. Lubamersky has been involved in telecommunications regulatory issues for more than twenty years, and she has a well-deserved reputation for honesty and integrity. It is a source of great pride to Ms. Lubamersky to be able to respond thoroughly to every single question asked by a regulator. In this instance, because she would not be able to respond to potential MLT questions, she asked that the pages referencing MLT testing be taken down. This was a judgment that Ms. Lubamersky greatly regrets. However, it did not reflect any intention to change the operation of the QCCC or mislead regulators. Unfortunately, this initial lapse was repeated during the June 5 FCC visit. Pages referencing MLT test completion were posted on the chart-boards during the July 23 visit although without the MLT label. MLT information was posted and labeled during the September 27 FCC visit.

This background provides important context for the July 25, 2002 e-mail from Mary Pat Cheshier, the Director of Operations of the QCCC, which is attached to Mr. Stemple's

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**Marlene H. Dortch**

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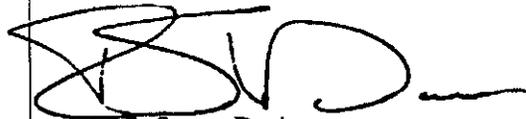
declaration. Because the references on the chart-boards to the MLT tests had been removed before the first visits, some employees of the QCCC questioned whether there was something wrong with them performing the tests. Ms. Cheshier's e-mail is merely an attempt to clarify for employees that there was nothing improper with performing the MLT tests, and give her imperfect understanding of why the references had been removed. Taken out of context, the e-mail is unfortunately worded, but it was an attempt to explain the truth - that there is absolutely nothing wrong with the MLT testing that is conducted at the QCCC.

There is one thing that both Ms. Lubamersky and Ms. Cheshier remember vividly. When she asked that the MLT references be taken down, Ms. Lubamersky told Ms. Cheshier that she was not telling her to deviate from normal procedures during the visit. They both remember that Ms. Cheshier's responded that even if Ms. Lubamersky told her to, she would not instruct her people to change what they do just because a regulator is visiting.

In short, the only one of Mr. Stemple's accusations that is factually correct is that information on MLT testing was removed from the chart-boards before certain site visits to the QCCC by regulators. This action, while ill advised, was the result of a lapse in judgment by a Qwest employee. No changes were made to Qwest practices or procedures, and employees were instructed to perform their work in the normal manner during the visit and demonstration. Mr. Stemple and AT&T have not -- as indeed they cannot -- demonstrate otherwise. Indeed, the MLT test and repair activity benefits CLECs.

Finally, and most important, none of these matters should obscure the fundamental fact that Qwest is meeting the statutory requirements of Section 271. Indeed, the activities of the QCCC demonstrate the lengths to which Qwest has gone to meet CLEC needs. AT&T is trying to create a smokescreen through the allegations of a terminated employee with no knowledge of the facts and circumstances to which he speaks. Our reply comments and associated declarations will address this matter further. But none of this is relevant to our application to obtain authority to compete with AT&T in the interexchange market.

Sincerely,



R. Steven Davis

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